

Adams County Legal Journal

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-712 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of November, 1997, 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 tract of land situate, lying and being in the Borough of East Berlin, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a spike on the Eastern side of Abbottstown Street, said spike being 3.75 feet East of the face of the Eastern curb and at land now or formerly of Edna M. Jacobs; thence by said Jacobs land and running 1.8 feet from the front corner of the house to 1 foot at the rear corner of the house South 65 degrees 57 minutes East 247.0 feet to a spike at the West side of Stoner Alley; thence by the Western side of Stoner Alley South 28

degrees 38 minutes West, 77.5 feet to a spike on the North side of Locust Street; thence on the North side of Locust Street North 62 degrees 15 minutes West, 72 feet to a spike at land now or formerly of Wayne M. Nell and wife; thence by said land North 29 degrees 13 minutes East, 45.14 feet to an iron pin; thence by the same North 65 degrees 58 minutes West, 173.0 feet to a spike, being approximately 4 feet East of the East curb face on the East side of Abbottstown Street; thence by said Street North 23 degrees 58 minutes East 27.5 feet to a spike, the place of BEGINNING.

CONTAINING 0.234 Acres.

THIS description was taken from a draft of survey made December 8, 1975, by Geo. M. Wildasin, Professional Engineer.

TAX PARCEL #4-224

TITLE TO SAID PREMISES IS VESTED IN John C. Schlaline and Diane L. Schlaline, his wife by Deed from Glenn B. Nickey and Carolyn J. Nickey, hus-

band and wife dated 12/18/87, recorded 12/21/87, in Record Book 476, Page 24.

SEIZED and taken into execution as the property of **John C. Schlaline and Diane L. Schlaline** and to be sold by me
Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 16, 1997.

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 December 8, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/26 & 10/3,10



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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 96-S-704 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 24th day of October, 1997, 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 Union Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a point in the center of Legislative Route 01029 (Bollinger Road) at corner of land now or formerly of O. Strickler; thence by said land of O. Strickler, and passing through a steel pin set back 42.80 feet from the last mentioned point, South 22 degrees 29 minutes 48 seconds West, 529.29 feet to a steel pin at corner of other land now or formerly of Robert E. Glass, North 78 degrees 55 minutes 43 seconds West, 305.94 feet to a steel pin; thence by the same, and passing through a steel pin set back 27.4 feet from the next mentioned point, North 03 degrees 39 minutes 06 seconds West, 256.86 feet to a point in the center of Legislative Route 01029 aforesaid; thence in said center of Legislative Route 01029, North 71 degrees 28 minutes 39 seconds East, 547.48 feet to a point the place of BEGINNING. CONTAINING 3.3820 acres.

BEING the same which Lawrence V. Young, United States Bankruptcy Trustee, for Ivan E. Arentz, Jr., and Brenda S. Arentz, by deed dated October 26, 1987, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 471 at page 1033, sold and conveyed to Gerald W. Davis and Laura L. Davis, his wife, the Defendants herein.

IMPROVED WITH a bi-level, single-family dwelling with attached two-car garage.

SEIZED and taken into execution as the property of **Gerald W. Davis and Laura L. Davis** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 4, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on November 17, 1997, and distribution will be made in accordance with said schedule, unless

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

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

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

9/19, 26 & 10/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-641 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of November, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT TRACT of land situate, lying and being in the Borough of Bendersville, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a post along the South side of an alley at corner of land now or formerly of Arch Reed; thence by the South side of said alley North 89 1/2 degrees East, 242.5 feet to an iron pin at the Southwest corner of the intersection of said alley and a 20 foot public alley; thence along the West side of the said last mentioned public alley South 24 1/2 degrees East, 61 feet to an iron pin along the West side of said last mentioned 20 foot public alley; thence along the West side of land now or formerly of Romayne Blocher South 3 degrees West, 329.5 feet to an iron pin at land now or formerly of Arch Reed; thence by land now or formerly of Arch Reed North 89 1/2 degrees West, 275 feet to an iron pin; thence by land now or formerly of Arch Reed North 3 degrees East, 386 feet to a post, the place of BEGINNING.

CONTAINING 2 acres, 66 perches and 14 square feet.

THE above description was taken from a draft of survey made August 27, 1942, by P.S. Orner, Registered Surveyor.

BEING Tax Parcel #1-2.

TITLE TO SAID PREMISES IS VESTED IN William L. Cullison, Jr. and Tammy L. Cullison, his wife, by Deed from Wilmer R. Shreve, Sr. and Louise A. Shreve, his wife, dated 7/14/95 recorded 7/17/95 in Record Book 1055 page 145.

SEIZED and taken into execution as the property of **WILLIAM L. CULLISON, JR. AND TAMMY L. CULLISON** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 16, 1997.

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 December 8, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/26 & 10/3, 10

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State for OPTILAB, INC., a corporation organized under the Pennsylvania Business Corporation Law of 1988.

Fox, Rothschild, O'Brien
& Frankel, LLP
Solicitors

760 Constitution Drive, P.O. Box 673
Exton, PA 19341-0673

10/3

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application has been filed under the Fictitious Names Act, 54 Pa. C.S.A. §§ 301 et seq., as amended, with the Secretary of the Commonwealth, in Harrisburg, Pennsylvania, on September 8, 1997, for conducting business under the assumed or fictitious name of EXOTHERM PRODUCTS. The address of the principal office or place of business to be carried on under or through the fictitious name is: 995 Red Rock Road, Gettysburg, Pennsylvania 17325. The name and address of the only person who is a party to the registration is: Robert L. White, 995 Red Rock Road, Gettysburg, PA 17325.

John W. Phillips, Esq.
Attorney

10/3

ESTATE OF RAFFENSPERGER

1. In Will contests, a nonsuit may be granted at the close of the contestant's case only when it is clear that the contestant has presented insufficient evidence to maintain the action.

2. The burden of proving testamentary capacity is initially with the proponent; however, a presumption of testamentary capacity arises upon proof of execution of two subscribing witnesses and thereafter the burden of proof as to incapacity shifts to the contestants to overcome the presumption by clear, strong, and compelling evidence.

3. A testator possesses testamentary capacity if he knows those who are the natural objects of his bounty, of what his estate consists, and what he desires done with it, even though his memory may have been impaired by age or disease.

4. A greater degree of proof of mental incapacity is required in Will contests than to show inability to conduct one's business affairs.

5. Mere failure of memory on occasion does not constitute incapacity to execute a Will.

6. In order to constitute undue influence sufficient to void a Will, there must be imprisonment of the body and mind, fraud, or threats, misrepresentations, or circumvention, or inordinate flattery, or physical or moral coercion, to such a degree as to prejudice the mind of the testator, to destroy his free agency and to operate as a present restraint upon him in making the Will.

7. A confidential relationship appears when the circumstances make it certain that the parties do not deal on equal terms, but, on the one side there is overmastering influence, or, on the other weakness, dependence, trust, justifiably reposed, in both situations an unfair advantage is possible.

In the Court of Common Pleas, Adams County, Pennsylvania, Orphans' Court No. OC-139-94, ESTATE OF: MARTHA RAFFENSPERGER, DECEASED.

Donald B. Swope, Esq., for Contestants
Barbara Jo Entwistle, Esq., for Proponents
Richard E. Thrasher, Esq., for PNC Bank

MEMORANDUM OPINION ON PROPONENTS' MOTION FOR DIRECTED VERDICT

Kuhn, J., November 13, 1996.

This case involves a will contest. Decedent, Martha E. Raffensperger, died on June 2, 1994. On June 9, 1994, a Last Will and Testament executed by Decedent and dated April 26, 1994, was probated by PNC Bank, N.A., Executor named therein. On December 9, 1994, Contestants, Curtis Swisher, Darryl G. Swisher, Sheree D. Duncan and Rhonda Swisher, who are Decedent's grandchildren through Decedent's son, Clarence Swisher, filed an appeal from probate challenging Decedent's testamentary capacity when she executed the Will and whether she was subject to undue influence by another grandchild,

Roxey Baker, at the time the Will was executed. Extensive discovery followed.

A hearing on the appeal was held September 23, 1996, with the undersigned presiding. At the conclusion of Contestants' case a request for directed verdict was made by the Proponent, PNC. Bank, N.A., and two of the beneficiaries under the probated Will, Roxey Baker and Barry Swisher. This Opinion is written to dispose of those motions.

Decedent was born on June 16, 1907. She gave birth to two children, Margaret deCheubell and Clarence Swisher. Margaret deCheubell had two children, Roxey Baker and Brenda Mills. Clarence Swisher had three children to his first wife and five children to his second wife.

Relevant and credible testimony revealed the following history.

Decedent has always been close to her granddaughter, Roxey Baker. Roxey Baker lived with her mother and Decedent during the early years of her life and for many years thereafter lived within two blocks of Decedent's home. She had frequent contact with Decedent and every Friday did Decedent's hair.

In 1979, Decedent began a professional relationship with the late S. M. Raffensperger, Esquire, a well-respected Gettysburg attorney, when he drafted Decedent's Will. Decedent's husband died in December, 1982. In January, 1983, Mr. Raffensperger drafted an Agreement whereby Decedent conveyed her home to her daughter, Margaret deCheubell, and her son-in-law, John deCheubell, in exchange for their promise to care for her during the balance of her lifetime. Subsequently in 1984, Mr. Raffensperger drafted a power-of-attorney for Decedent which nominated Gettysburg National Bank as attorney-in-fact. The power-of-attorney was not to become effective until Decedent's physician advised the attorney-in-fact in writing that Decedent was incapable of transacting business for herself.

On July 7, 1992, Decedent executed a Will prepared by Mr. Raffensperger. After minor bequests this Will provided that the residue of Decedent's estate would be divided in the following shares: one-half to Clarence Swisher, per stirpes, one-sixth to Roxey Baker, per stirpes, one-sixth to the Gettysburg National Bank in trust with the income to go to Decedent's granddaughter, Brenda Mills, and one-sixth to Margaret deCheubell.

In December, 1992, at the age of 85 years, Decedent was taken to the office of Andrew Bloschichak, M.D., a family physician in Gettysburg, by her daughter, Margaret. At that time Decedent was slumped over in a wheel chair, mumbling and making no sense. For several months Dr. Bloschichak provided care for Decedent at her home, however, her

physical condition was deteriorating and hospitalization followed on March 25, 1993.

On March 31, 1993, Dr. Bloschichak wrote a letter describing Decedent's condition. The purpose of the letter was to assist in getting her into an extended nursing facility. That letter described the following medical problems: severe insulin dependent diabetes mellitus, congestive heart failure, coronary insufficiency, chronic artrial fibrillation, senile dementia compounded by cerebral insufficiency, recurrent syncope, severe degenerative arthritis (especially the knees), severe degenerative disc disease of spine and depression.

In early April, 1993, Decedent was admitted to the Gettysburg Lutheran Home. During the first several weeks at that facility Decedent was determined that she could care for herself and that she was leaving the facility. Although Decedent physically improved Dr. Bloschichak opined that her underlying problems did not disappear. He determined that the situation at the Lutheran Home allowed Decedent's acute problems to be stabilized but there was no cure for her chronic problems or senile dementia. Within a short time Decedent was able to ambulate with a walker.

On April 13, 1993, Dr. Bloschichak wrote a letter wherein he stated his belief that Decedent "cannot adequately make financial or medical decisions on her own behalf nor enter into contracts." As a result of this letter Decedent's power-of-attorney was activated by CCNB, successor to the Gettysburg National Bank.

On April 26, 1993, Decedent called Attorney Raffensperger indicating that she wanted to make changes in her Will. Mr. Raffensperger contacted Paul Ketterman, trust officer for CCNB, and was advised of the contents of Dr. Bloschichak's March 31 and April 13, 1993, letters. The following day Mr. Raffensperger notified Decedent that he would not modify Decedent's Will because of the contents of Dr. Bloschichak's April 13, letter. After speaking with Dr. Bloschichak personally Mr. Raffensperger again advised Decedent on May 10, 1993, that he would not modify her Will.

At or about this same time Decedent was expressing to Roxey Baker that she was interested in having her Will changed. In June, 1993, Decedent began discussing the 1983 Agreement. Decedent was expressing that her daughter had reneged on the Agreement by having her placed in the Lutheran Home instead of caring for her in her daughter's home. Decedent was indicating that her daughter's share of her estate should therefore be reduced. At that time Roxey Baker was not aware of Dr. Bloschichak's letters nor Mr. Raffensperger's reasons for refusing to rewrite Decedent's Will.

There is no indication that Roxey Baker was encouraging Decedent's thought processes other than to tell her grandmother to do whatever she wanted. Roxey Baker visited Decedent 3-4 times per week at the Lutheran Home.

By the end of October, 1993, Decedent again contacted Mr. Raffensperger to write a new Will. Mr. Raffensperger contacted Dr. Bloschichak but felt he was unable to receive a clear answer regarding Decedent's mental status. Therefore, he once again refused to provide the services requested.

Throughout the period Decedent was at the Lutheran Home Dr. Bloschichak opined that her senile dementia would "wax and wane." He described her senile dementia as mild to moderate and ranked it as a 3 on a 10 point scale with 0 being normal and 10 being very severe. Some days she expressed very strong opinions on certain issues and was not easily influenced. He characterized her as having diminished short term memory with retention of long term memory. On other days she was more confused. On December 6, 1993, upon returning from a Thanksgiving visit at Roxey Baker's home nursing notes reflected that Decedent's short term memory seemed improved. Some days Decedent knew Dr. Bloschichak and some days, such as April 9, 1994, she failed to recognize him. However, admittedly the doctor did not visit Decedent on a daily basis. Sometimes he didn't see her for 7-30 days. Decedent did recognize Roxey Baker and Margaret deCheubell. She told the doctor the names of her children and knew she had grandchildren.

Nursing notes for 1994 were confusing. For example, the report for March and April, 1994 indicated that Decedent "always" exhibited short and long term memory impairment. In the May report short term memory was checked from the hours of 11:00 a.m.-3:00 a.m. and long term memory impairment was checked for the hours of 11:00 a.m.-7:00 p.m. but not otherwise noted. The same reports and nurses' notes documented the history of someone who could articulate her wants and needs and in numerous aspects of life acted rather independently.

From a physical standpoint on Decedent's good days at the Lutheran Home she would appear happy and engage in activities. On her bad days she would be grouchy and not participate in activities.

Late in 1993, Dr. Bloschichak requested that Ray Bowen, psychologist, perform a mental status evaluation of Decedent. Dr. Bloschichak was dissatisfied with the report because he felt it was not a full status report. Although Dr. Bowen's report was not made part of the record, it appears that Dr. Bowen felt Decedent was suffering from mild depression.

On December 1, 1993, Gettysburg Attorney Richard Thrasher, Esquire, received a telephone call from Decedent regarding the 1983 Agreement and a new Will. Decedent had contact with Mr. Thrasher in 1988 when he was representing the Adams County Office of Aging in an investigation of allegations that Decedent was not receiving proper care while at her daughter's home. On February 3, 1994, Attorney Thrasher visited Decedent at the Lutheran Home. Roxey Baker was present. Roxey Baker knew that Mr. Raffensperger had been Decedent's attorney but Decedent informed her that Mr. Raffensperger had declined to modify the existing Will and that he had recommended Attorney Thrasher. The main focus of that discussion was Decedent's unhappiness at being in the Lutheran Home and her desire to enforce the 1983 Agreement. Decedent's existing Will was discussed as well as the size of her estate. Mr. Thrasher was made aware that Mr. Raffensperger had refused to write a new Will but he was not advised of the reasons for that refusal. Discussions were had regarding Decedent's ability to reallocate portions of her daughter's share of the estate rather than pursuing the unpleasant prospect of a lawsuit on the Agreement. Mr. Thrasher advised Decedent to think it over and let him know what she wanted to do.

Within 3-4 days after this meeting Attorney Thrasher contacted Paul Ketterman stating that he had spoken to Decedent, that he was advising against a lawsuit on the 1983 Agreement but that he thought Decedent could change her Will. Mr. Ketterman concurred and indicated to Mr. Thrasher that he believed Decedent was competent to execute a Will.

On March 3, 1994, Decedent contacted Attorney Thrasher to inquire regarding the cost of drafting a new Will. In response to Mr. Thrasher's answer Decedent compared the price to what Mr. Raffensperger would charge and said she would call back later.

From late January thru mid-April, 1994, Decedent was making inquiry about transferring to a lesser structured personal care level at the Lutheran Home. This was not possible because Decedent was not capable of monitoring her own medications primarily because she was unable to read the labels due to her eyesight. She was also expressing the idea that her granddaughter was going to build a room on her house for Decedent to occupy.

There is an indication that on April 13, 1994, Decedent had difficulty in dialing the telephone at the nurses' station. The Court gives this incident little weight. At this time Decedent was almost 87 years old. She knew the number she was attempting to call but had difficulty with using "9" to get an outside line. The Court does not find this to be

unusual for an elderly person who probably had little experience with prefix dialing.

On April 14, 1994, Roxey Baker contacted Attorney Thrasher, at Decedent's request, indicating that Decedent wanted a new Will and outlined some of the basic terms. It should be noted that Mr. Thrasher was not Roxey Baker's personal attorney: On April 18, 1994, Decedent and Roxey Baker met Attorney Thrasher at his office. At that time Decedent knew her heirs and roughly the size of her estate. She advised Mr. Thrasher of the changes she wanted in her Will. Roxey Baker did not offer any suggestions or terms despite Decedent's attempt to gain Mrs. Baker's opinion. Roxey Baker would simply respond "whatever you want is fine." In fact, Attorney Thrasher's impression was that Roxey Baker was attempting to refrain from influencing Decedent. That day Attorney Thrasher prepared a draft of a Will per the information received from Decedent and forwarded a copy to her. This draft Will provided the following bequests: \$1,000 to a church; jewelry items to Margaret deCheubell and Brenda Mills; furniture items to Roxey Baker; \$25,000 in trust with the income going to Margaret deCheubell and upon her death the principle to be distributed equally between Roxey Baker and Brenda Mills; \$25,000 in trust for the benefit of Brenda Mills; and the remainder to be divided one-half to Clarence Swisher or, if deceased, to his son, Barry Swisher, and one-half to Roxey Baker or, if deceased, to Decedent's grandchildren in equal shares.

Barry Swisher is the oldest son of Clarence Swisher. Decedent indicated to Roxey Baker that she was treating him differently than Clarence's other children because he was raised "poorly" in comparison to the other children.

On April 25, 1994, Attorney Thrasher visited Decedent at the Lutheran Home. Roxey Baker was not present. The terms of the proposed Will were reviewed. Decedent appeared to understand but asked no questions. Decedent again spoke of getting her home back. Attorney Thrasher felt Decedent was not ready to sign the Will at that time and left without a signature.

That same day Roxey Baker visited Decedent and advised her that her son, Clarence, was very ill and had an estimated two weeks to live. This news was upsetting to Decedent. It appears that this visit was made in the evening after Attorney Thrasher's departure. Mrs. Baker testified that she knew Decedent was scheduled to visit Clarence within the next two days and felt she should be aware of his condition so that the shock would not be so great when she saw him.

At about 11:00 p.m. on April 25, 1994, Decedent fell at the Lutheran Home. The following day Dr. Blosschichak and Paul Ketterman were notified of this occurrence. Dr. Blosschichak did not consider the fall to be of significant consequence.

There is no indication that Dr. Blosschichak saw Decedent between April 9 - April 26, 1994. At 1:00 p.m. on April 26, 1994, Decedent was given Ativan, a mild sedative, which has a possible side effect of slowing one's thought processes. Although Dr. Blosschichak felt this medication could affect Decedent's mental condition while executing a Will he was uncertain whether it did so in this case. Shortly thereafter, Roxey Baker signed Decedent out of the Lutheran Home and took her first to Mr. Ketterman's office. She and Decedent then walked to Mr. Thrasher's office where the Will was reviewed. Mr. Thrasher asked Decedent if she wanted Roxey Baker to step out of the room but Decedent replied that was not necessary. The news of Clarence Swisher's condition was discussed and Decedent appeared appropriately upset. Decedent appeared competent to Attorney Thrasher and displayed no evidence of being disoriented. After executing the proposed will, Decedent and Roxey Baker then returned to Mr. Ketterman's office, went for a milkshake and returned to the Lutheran Home. The new Will was deposited at the bank and Roxey Baker was given the 1992 Will which she retained.

Two days later Decedent suffered a stroke and clearly was not competent thereafter. Clarence Swisher died in mid-May, 1994, and Decedent died on June 2, 1994.

It is very clear that throughout the time she was a resident of the Lutheran Home Decedent had an intense desire to return to her home and to some degree blamed her daughter for putting her there. She was also constantly concerned about the cost of Lutheran Home services. Nevertheless, it is likewise clear that Decedent was willing to expend personal funds to have a room placed on Roxey Baker's home for her use. There is no evidence, however, that Roxey Baker influenced or encouraged Decedent in that regard or that she took any steps to remove Decedent from the Lutheran Home. However, it is also clear that Decedent was aware the bank had charge over her financial affairs. Dr. Blosschichak observed no evidence that Roxey Baker was trying to influence Decedent.

Testifying on behalf of the Contestants were Roxey Baker (on cross), Attorney Thrasher (on cross), Dr. Blosschichak and Sheree Duncan. It is interesting to note that Decedent's daughter, Margaret deCheubell, did not testify, even though her share of the estate was

reduced from the 1992 will and despite the fact that she had regular contact with Decedent at the Lutheran Home.

Sheree Duncan is one of Clarence Swisher's daughters. She lived approximately 90 minutes from Decedent's home. From 1992-4, most of her contact with Decedent occurred at the Swisher home although the frequency of that contact is unknown. Mrs. Duncan testified that she visited Decedent at the Lutheran Home approximately once per month and that Decedent never recognized her unless she was first identified. Then Decedent would only speak of past events.

DISCUSSION

Recently, our Superior Court discussed the standard of review of the evidence we must apply.

In will contests, a nonsuit may be granted at the close of the contestant's case only when it is clear that the contestant has presented insufficient evidence to maintain the action... When ruling on a motion for nonsuit, the trial court views the evidence in the light most favorable to the contestant and gives the contestant the benefit of all favorable evidence and all reasonable inferences therefrom...

Burns v. Kabboul, 407 Pa. Super. 289, 312, 595 A.2d 1153, 1165 (1991), Alloc. den. 604 A.2d 247 (1992) (citations omitted).

TESTAMENTARY CAPACITY

The law is clear that,

The burden of proving testamentary capacity is initially with the proponent; however, a presumption of testamentary capacity arises upon proof of execution of two subscribing witnesses. Thereafter, the burden of proof as to incapacity shifts to the contestants to overcome the presumption by clear, strong, and compelling evidence.

In re: Estate of Kuzma, 487 Pa. 91, 95, 408 A.2d 1369, 1371 (1979).

Here, the parties stipulated that the Proponent, PNC Bank, N.A., met its initial burden.

The burden then shifted to Contestants to prove incapacity.

The law regarding testamentary capacity is also clear.

A testator possesses testamentary capacity if he knows those who are the natural objects of his bounty, of what his

estate consists, and what he desires done with it, even though his memory may have been impaired by age or disease. *Id.*

Furthermore,

The condition of the testator at the very time of execution is crucial; however, evidence of capacity or incapacity for a reasonable time before and after execution is admissible as indicative of capacity...Finally, old age, sickness, distress or debility of body neither proves nor raises a presumption of incapacity. *Id.*

A greater degree of proof of mental incapacity is required here than to show inability to conduct one's business affairs. *Estate of Ziel*, 467 Pa. 531, 537, 359 A.2d 728, 732 (1976).

Viewing the record presented in a light most favorable to Contestants the Court is nevertheless compelled to grant the motion for directed verdict. There is no doubt that Decedent suffered memory impairment as a result of senile dementia. However, Dr. Bloschichak described the level of that disease as "mild to moderate." He ruled out Alzheimer's disease. In his letter of April 13, 1994, the doctor was addressing Decedent's inability to conduct her business affairs. He acknowledged not being aware of the legal criteria for testamentary capacity and rendered no opinion as to whether Decedent did or did not have such capacity.

Attorney Thrasher is a well respected member of the legal community. The Court finds his testimony to be credible. His observations of Decedent, especially during the period April 18-26, 1994, is of critical significance. On April 26, 1994, he found Decedent to be acting competently. He found that Decedent was well aware of the natural objects of her bounty. Even Dr. Bloschichak noted that Decedent was aware of her children and grandchildren. Perhaps one might suggest that lack of regular contact with Clarence's children combined with Decedent's short term memory impairment evidences that through disease she was not aware of them and therefore did not include them in her Will. This is effectively countered by the fact that grandchildren, Barry Swisher and Brenda Mills, were named beneficiaries without any evidence that they had regular contact with Decedent either. Furthermore, the fact that a testator preferred some grandchildren over others raises no presumption of lack of testamentary capacity. In re: *DeMaio's Estate*, 363 Pa. 559, 562, 70 A.2d 339, 341 (1950). Although Decedent may not have recognized Mrs. Duncan, it appears that once so identified Decedent was able to converse regarding family

matters. Although Decedent may have experienced forgetfulness from time to time regarding whether she had a meal, whether she had taken medication, and in recognizing certain persons, mere failure of memory on occasion does not constitute incapacity.

Attorney Thrasher observed also that Decedent was aware of the size of her estate. It was also clear that she knew what she wanted to do with her estate. Her 1994 Will was different than the 1992 Will but not dramatically different in its overall format. In each Will Margaret deCheubell, Clarence Swisher, Roxey Baker and Brenda Mills were beneficiaries. The only significant difference in the identity of the beneficiaries was to give Clarence's share to his son, Barry, in the latest Will instead of to all his children, as stated in the first Will. That subtle difference was adequately explained.

UNDUE INFLUENCE

Contestants contend that Roxey Baker exerted undue influence upon Decedent. When, as here, the proponent of a will proves the formalities of its execution the contestant has the burden of proving undue influence by clear and convincing evidence that there was a confidential relationship, that the person enjoying that relationship received the bulk of the estate, and that the decedent's intellect was weakened. Once so established, the burden falls upon the proponent to disprove undue influence. Estate of Reichel, 484 Pa. 610, 614, 400 A.2d 1268, 1270 (1979).

In order for the evidence to be clear and convincing on the particular subject at issue,

The witnesses must be found to be credible, that the facts to which they testify are distinctly remembered and the details thereof narrated exactly and in due order, and that their testimony is so clear, direct, weighty, and convincing as to enable the jury to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. In re: Estate of Jackiella, 353 Pa. Super 581, 586, 510 A.2d 815, 817 (1986).

It has been said that,

In order to constitute undue influence sufficient to void a will, there must be imprisonment of the body and mind...fraud, or threats, misrepresentations, or circumvention, or inordinate flattery, or physical or moral coercion, to such a degree as to prejudice the mind of the testator, to destroy his free agency and to operate as a

present restraint upon him in making the will. *Olshefski's Estate*, 337 Pa. 420, 424, 11 A.2d 487, 489 (1940) (quoting *Koon's Estate*, 293 Pa. 465, 471, 143 A. 125, 126-7 (1928)).

The word "influence" does not refer to every type of conduct which affects the testator's mind but rather to the type of control acquired over the testator which virtually destroys his free will. *Ash's Estate*, 351 Pa. 317, 322, 41 A.2d 620, 622 (1945). Thus, proof of opportunity to exercise undue influence, *Cookson's Estate*, 325 Pa. 81, 188 A. 904 (1937), the giving of care or attention to the testator, *Cressman's Estate*, 346 Pa. 400, 31 A.2d 109 (1943), or a blood relationship, *Aggas v. Murnnell*, 302 Pa. 78, 152 A. 840 (1930), does not automatically establish undue influence. Family relationships will naturally affect and influence the dispositive scheme, *King Will*, 369 Pa. 523, 87 A.2d 469 (1952), as will attempts to persuade or solicit the testator, *Cookson's Estate*, supra., but this is natural and proper in a family setting unless those efforts restrain the testator's mind.

Initially, Contestants were required to prove the existence of a confidential relationship between Roxey Baker and Decedent.

Although no precise formula has been devised to ascertain the existence of a confidential relationship, it has been said that such a relationship is not confined to a particular association of parties, but exists whenever one occupies toward another such a position of advisor or counselor as reasonably to inspire confidence that he will act in good faith for the other's interest. *Estate of Keiper*, 308 Pa. Super. 82, 86, 454 A.2d 31, 33 (1982).

Stated otherwise, a confidential relationship appears "when the circumstances make it certain the parties do not deal on equal terms, but, on the one side there is an overmastering influence, or, on the other weakness, dependence, trust, justifiably reposed, in both situations an unfair advantage is possible." *Leedom v. Palmer*, 274 Pa. 22, 25, 117 A. 410, 411 (1922).

Evidence in this case which demonstrates against the existence of a confidential relationship include: (1) Mrs. Baker was not the scrivener of the Will; (2) Decedent had not given Mrs. Baker a power-of-attorney; (3) Mrs. Baker did not act as a defacto power-of-attorney by writing checks for Decedent; (4) lack of showing that Mrs. Baker handled Decedent's business or financial affairs; (5) Mrs. Baker made no attempts to isolate Decedent and, if fact, she had access to any family member or other acquaintance; (6) Attorney Thrasher interviewed

Decedent several times and reviewed the Will with her during times that Decedent did not rely on Mrs. Baker's input; (7) Attorney Thrasher's and Dr. Blosschichak's observations that Mrs. Baker demonstrated no attempt to influence Decedent; (8) Mrs. Baker was not named as executrix in the Will; and (9) Decedent's gruff and strong opinionated personality. The only evidence presented that might suggest a confidential relationship include: (1) the grandparent-grandchild relationship, (2) the frequency of contact between Decedent and Mrs. Baker; and (3) Mrs. Baker's presence when the Will was executed. Each of these latter factors have been adequately explained or neutralized by the evidence presented.

We find no basis for concluding that Contestants have established the existence of a confidential relationship in this matter. For this reason alone, we can conclude lack of showing of undue influence.

For clarification purposes, however, we will briefly address the remaining two elements needed to prove undue influence. Under the provisions of the 1992 Will Roxey Baker was to receive approximately one-sixth of the estate whereas under the 1994 Will she is to receive slightly less than one-half of the estate. This adjustment qualifies to establish that she is to get a bulk of the estate.

With regard to whether Decedent had a weakened intellect, the law provides that weakened intellect can be something less than testamentary incapacity. Estate of Ziel, 467 Pa. at 542, 359 A.2d at 734. We conclude that Decedent's mental condition, as outlined herein, meets this criteria.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 13th day of November, 1996, in accordance with the attached Opinion the Court finds that Contestants have not proven lack of Decedent's testamentary capacity at the time of the execution of her Will on April 26, 1994, or that Roxey Baker exercised undue influence over Decedent in the dispositive scheme of said Will.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-732 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of November, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a PK nail located in the center line of Legislative Route 01006, said PK nail also located North 5 degrees 7 minutes 48 seconds East, 185 feet from a railroad spike in the center of the intersection of Legislative Route 01006 and Legislative Route 01007; thence by land now or formerly of Philip D. Fazenbaker and wife and running through an iron pin located 30 feet from the beginning of this line, South 83 degrees 7 minutes 48 seconds West, 253.48 feet to an iron pin; thence by same North 22 degrees 27 minutes 28 seconds West, 108.41 feet to an iron pin; thence by same and running through an iron pin located 30 feet from the end of this line, North 59 degrees 7 minutes 48 seconds East, 368.53 feet to a PK nail located in the center of the aforementioned Legislative Route 01006; thence along the center line of said Legislative Route 01006, South 5 degrees 7 minutes 48 seconds West, 260 feet to a PK nail, the place of BEGINNING. CONTAINING 1.194 acres.

THE above description was taken from a subdivision plan prepared by Kenneth C. Quigley, dated March 16, 1976.

TAX PARCEL #F-10-20

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

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 12, 1997.

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 December 8, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/26 & 10/3, 10

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-247 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of November, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point in the center of State Highway Route No. 34 leading from Gettysburg to Carlisle; thence running in the center of same, North one-half (1/2) degree East, one hundred and eight (108) feet to another point in the center of said highway; thence running by land now or formerly of Ray Edwin Unger, North eighty-eight and one-fourth (88 1/4) degrees East, three hundred and eighty-two (382) feet to a stake and stones; thence running by land now or formerly of Sara Rife, South three-fourths (3/4) degree West, one hundred and twenty (120) feet to a stake and stones; thence running by land now or formerly of Frank Thomas, South eighty-nine and one-half (89 1/2) degrees West, three hundred and seventy-eight (378) feet to a point in said highway, the place of beginning. CONTAINING 1 Acre and 20 square feet.

PARCEL 70 MAP F10

SEIZED and taken into execution as the property of **Richard S. Fancovic and Mary A. Fancovic** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
June 3, 1997.

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 December 1, 1997, 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.

10/03, 10 & 17

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 EUGENE D. HARTMAN, SR. AKA EUGENE D. HARTMAN, DEC'D

Late of Littlestown Borough, Adams County, Pennsylvania

Executor: Eugene D. Hartman, Jr., 210 East King Street, Littlestown, PA 17340

Attorney: Keith R. Nonemaker, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331

ESTATE OF CHAD MICHAEL LIVELSBERGER, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Administrator: Michael R. Livelsberger, 1520 Abbottstown Pike, Hanover, PA 17331

Attorney: Mark David Frankel, Esquire

SECOND PUBLICATION

ESTATE OF PEGGY N. FIORELLO, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Robert E. Pate

Attorney: Robert Clofine, Esquire, One West Marketway, York, PA, 17401-1231

ESTATE OF RUTH MARIE RIPKA, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executrices: Phyllis D. Waltz; Barbara M. Comitz; Joan A. Golaszewski; and Janet C. Cantler

Attorney: Douglas H. Gent, Esquire, Hanover Station, 1157 Eichelberger Street, Hanover, PA 17331

THIRD PUBLICATION

ESTATE OF LLOYD T. BORTNER, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executors: Lloyd T. Bortner, Jr., 25 Woodcrest Circle, Littlestown, PA 17340; Susan E. Rosensteel, 879 Herr's Ridge Road, Gettysburg, PA 17325

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

ESTATE OF JOHN W. MOSER, SR. a/k/a JOHN W. MOSER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Dixie M. Vivaldi, 98 Walker Avenue, Gettysburg, PA 17325

Attorney: Audrey E. Woloshin

ESTATE OF ERSA F. SIX, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Roger L. Stair, 1086 Sell Station Road, Littlestown, PA 17340

Attorney: Donald W. Dorr, Esquire, 126 Carlisle Street, Hanover, PA 17331

ESTATE OF MARIAN S. SMITH, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Leslie Ann Deardorff, 366 Carrolls Tract Road, Fairfield, PA 17320

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

ESTATE OF JOSEPH P. STAUB, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executors: Thomas J. Staub, 403 DeIone Avenue, McSherrystown, PA 17344; Joseph A. Staub, 627 Cricket Lane, McSherrystown, PA 17344

Attorney: Keith R. Nonemaker, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for GOLDEN LANE ANTIQUES & COLLECTIBLES, INC. were filed with the Department of State of the Commonwealth of Pennsylvania on September 15, 1997, under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988, P.L. 1444.

Rudisill, Guthrie, Nonemaker,
Guthrie & Yingst
Solicitor

10/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-737 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 31st day of October, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

LOCATION of property: 1 East Locust Lane, New Oxford, PA Parcel 9-27

ALL that certain strip of land lying between the property line of Lot No. 14 owned by Charles Robert Rutter, III and Andrea W. Rutter, husband and wife, and the center line of Legislative Route A-6810 known as Hanover Street (referred to on draft of survey of Oxford Estates prepared by George M. Wildasin, P.E. dated December 4, 1979, subdivided by William E. Sacra, Jr., on the same date, a plat of which is recorded in Adams County Plan Book 34 at page 58, as Legislative Route 01004 and Hanover Road), situate in Oxford Township, Adams County, Pennsylvania.

BEGINNING at a point on the property line of East Locust Lane at a corner of Lot No. 15 on the hereinafter referred to draft of survey; thence along Lot No. 15, South thirty-six (36) degrees fifty (50) minutes twenty-nine (29) seconds East, one hundred seventeen and thirty-three hundredths (117.33) feet to a point; thence South thirty-seven (37) degrees thirteen (13) minutes forty-nine (49) seconds West, one hundred eleven and sixty-four hundredths (111.64) feet to a point in the right-of-way of Legislative Route 01004 (Hanover Road); thence in the right-of-way such Legislative Route, North thirty-six (36) degrees zero (0) minutes zero (0) seconds West, one hundred fifteen (115) feet to a point; thence by a curve to the right, the radius of which is thirty-five (35) feet, an arc length of fifty-four and ninety-eight hundredths (54.98) feet, having a long chord bearing and distance of North nine (9) degrees zero (0) minutes zero (0) seconds East, forty-nine and fifty hundredths (49.50) feet to a proposed monument on the property line of East Locust Lane; thence by same, North fifty-four (54) degrees zero (0) minutes zero (0) seconds East, sixty-five and zero hundredths (65.00) feet to a point; thence by a curve to the left, the radius of which is three hundred twenty-four and one hundred ninety-nine thousandths (324.199) feet, an arc length of five and thirteen hundredths (5.13) feet, having a long chord distance and bearing of North fifty-three (53) degrees thirty-four (34) minutes forty-eight (48) seconds East, five and thirteen hundredths (5.13) feet to a point, the place of Beginning.

CONTAINING 13,895.082 square feet or 0.319 acres.

BEING the same premises which Charles Robert Rutter, III and Andrea W. Rutter, husband and wife, by deed dated February 19, 1988 and recorded in the Recorder of Deeds Office of Adams County on March 15, 1988 at Record

Book 482, Page 1133, granted and conveyed unto Joseph C. Reilly and Judy E. Knepper.

SEIZED and taken into execution as the property of **Joseph C. Reilly and Judy E. Reilly** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 23, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on November 24, 1997, 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.

10/3, 10 & 17

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-218 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of November, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate on the eastern side of Hillcrest Drive, in Butler Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a steel pin on the East side of Hillcrest Drive at lands now or formerly of Bernard F. Smith, Lot No. 4, as more particularly established on the subdivision plan hereinafter referred to; thence by lands of Bernard F. Smith, Lot No. 4, North 83 degrees 36 minutes 20 seconds East, 114.81 feet to a steel pin in or near the center of a stream; thence in and along said stream and by other lands now or formerly of Clair F. Ditzler and Marie R. Ditzler, South 27 degrees, 16 minutes 5 seconds East, 100.89 feet to the center line of the top of a manhole cover at lands now or formerly of Ronald D. Godlove and Mary Ruth Godlove, Lot No. 6; thence by lands of Ronald D. Godlove and Mary Ruth Godlove, Lot No. 6, South 81 degrees 25 minutes 45 seconds West, 150.87 feet to a steel pin on the east side of Hillcrest Drive; thence along the east side of Hillcrest Drive, North 6 degrees 23 minutes 40 seconds West, 100 feet to a steel pin on the east side of Hillcrest Drive at lands now or formerly of Bernard F. Smith, Lot No. 4, the place of BEGINNING. CONTAINING 12,949 square feet.

THE foregoing description was taken from a draft of survey prepared by

Richard W. Boyer, Professional Land Surveyor, dated September 29, 1987, as recorded in Adams County Plat Book 49 at page 71; reapproved on 10/14/92, recorded in Plat Book 61 at page 56, and identified thereon as Lot No. 5

KNOWN AS 10 HILLCREST DRIVE, BIGLERVILLE, PA.

BEING THE SAME PREMISES WHICH Terry L. Williams et al by deed dated December 22, 1995 and recorded in Adams County Deed Book 1130 Page 184 granted and conveyed unto Benjamin C. Lewis and Suzanne E. Lewis.

TO BE SOLD AS THE PROPERTY OF BENJAMIN C. LEWIS AND SUZANNE E. LEWIS UNDER ADAMS COUNTY JUDGEMENT NO. 97-S-218.

Parcel: 07-3-177

SEIZED and taken into execution as the property of **Benjamin C. Lewis and Suzanne E. Lewis** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 15, 1997.

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 December 1, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/19, 26 & 10/3

Adams County Legal Journal

Vol. 39

October 10, 1997

No. 20, pp. 111-114

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-712 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of November, 1997, 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 tract of land situate, lying and being in the Borough of East Berlin, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a spike on the Eastern side of Abbottstown Street, said spike being 3.75 feet East of the face of the Eastern curb and at land now or formerly of Edna M. Jacobs; thence by said Jacobs land and running 1.8 feet from the front corner of the house to 1 foot at the rear corner of the house South 65 degrees 57 minutes East 247.0 feet to a spike at the West side of Stoner Alley; thence by the Western side of Stoner Alley South 28 degrees 38 minutes West, 77.5 feet to a spike on the North side of Locust Street; thence on the North side of Locust Street North 62 degrees 15 minutes West, 72 feet to a spike at land now or formerly of Wayne M. Nell and wife; thence by said land North 29 degrees 13 minutes East, 45.14 feet to an iron pin; thence by the same North 65 degrees 58 minutes West, 173.0 feet to a spike, being approximately 4 feet East of the East curb face on the East side of Abbottstown Street; thence by said Street North 23 degrees 58 minutes East 27.5 feet to a spike, the place of BEGINNING.

CONTAINING 0.234 Acres.

THIS description was taken from a draft of survey made December 8, 1975, by Geo. M. Wildasin, Professional Engineer.

TAX PARCEL #4-224

TITLE TO SAID PREMISES IS VESTED IN John C. Schlaline and Diane L. Schlaline, his wife by Deed from Glenn F. Nickey and Carolyn J. Nickey, husband and wife dated 12/18/87, recorded 12/21/87, in Record Book 476, Page 24.

SEIZED and taken into execution as the property of **John C. Schlaline and Diane L. Schlaline** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 16, 1997.

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 December 8, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/26 & 10/3, 10

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-532 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of November, 1997, 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 Freedom Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a steel pin marking an original corner between land now or formerly of Harry Scott and land now or formerly of Douglas R. Piper and wife; thence by land of Harry Scott, North 39 degrees 44 minutes 58 seconds East, 299.42 feet to a steel pin; thence by the same and running through a steel pin located 35 feet from the end of this line, South 41 degrees 41 minutes 26 seconds East, 110.38 feet to a railroad spike in the center of Legislative Route 010152; thence continuing in the center of said Legislative Route and by land now or formerly of Douglas R. Piper and wife, South 9 degrees 50 minutes 11 seconds East, 112.94 feet to a railroad spike in the center of said Legislative Route; thence continuing in the center of said Legislative Route, and by land now or formerly of Douglas R. Piper and wife, South 13 degrees 54 minutes 11 seconds East, 80 feet to a railroad spike in the center of said Legislative Route; thence by land now or formerly of Douglas R. Piper and wife and running through a steel pin located 22 feet from the beginning of this line, North 82 degrees 16 minutes 30 seconds West, 306.17 feet to a steel pin, the place of BEGINNING. CONTAINING 1.0075 acres.

THE foregoing description was obtained from a draft of a survey made by Donald E. Worley, Registered Surveyor, dated September 18, 1975.

BEING that which D. Ray Piper, Jr. and Barbara V. Piper, husband and wife, by deed dated September 5, 1989, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 532 at page 866, sold and conveyed unto Thomas Lowman and Dorothy Lowman.

HAVING A DWELLING ERECTED thereon known as 2011 Pumping Station Road, Gettysburg (Fairfield), Freedom Township, Adams County, Pennsylvania.

BEING THE SAME PREMISES which D. Ray Piper, Jr. and Barbara V. Piper by deed dated September 5, 1989 and recorded in Adams County Record Book 532, Page 866 granted and conveyed unto Thomas Lowman and Dorothy Lowman.

TO BE SOLD AS THE PROPERTY OF THOMAS LOWMAN AND DOROTHY LOWMAN UNDER ADAMS COUNTY JUDGMENT NO. 97-S-532.

PARCEL D16-18

SEIZED and taken into execution as the property of **Thomas Lowman and Dorothy Lowman** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 24, 1997.

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 December 8, 1997, 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.

10/10, 17 & 24

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-641 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of November, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT TRACT of land situate, lying and being in the Borough of Bendersville, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a post along the South side of an alley at corner of land now or formerly of Arch Reed; thence by the South side of said alley North 89 $\frac{1}{2}$ degrees East, 242.5 feet to an iron pin at the Southwest corner of the intersection of said alley and a 20 foot public alley; thence along the West side of the said last mentioned public alley South 24 $\frac{1}{2}$ degrees East, 61 feet to an iron pin along the West side of said last mentioned 20 foot public alley; thence along the West side of land now or formerly of Romayne Blocher South 3 degrees West, 329.5 feet to an iron pin at land now or formerly of Arch Reed; thence by land now or formerly of Arch Reed North 89 $\frac{1}{2}$ degrees West, 275 feet to an iron pin; thence by land now or formerly of Arch Reed North 3 degrees East, 386 feet to a post, the place of BEGINNING.

CONTAINING 2 acres, 66 perches and 14 square feet.

THE above description was taken from a draft of survey made August 27, 1942, by P.S. Orner, Registered Surveyor.

BEING Tax Parcel #1-2.

TITLE TO SAID PREMISES IS VESTED IN William L. Cullison, Jr. and Tammy L. Cullison, his wife, by Deed from Wilmer R. Shreve, Sr. and Louise A. Shreve, his wife, dated 7/14/95 recorded 7/17/95 in Record Book 1055 page 145.

SEIZED and taken into execution as the property of **WILLIAM L. CULLISON, JR. AND TAMMY L. CULLISON** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 16, 1997.

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 December 8, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/26 & 10/3, 10

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-81 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of November, 1997, 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 Cumberland Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a post on lines of land now or formerly of Charles B. Hartman and Clayton Hartman; thence running by land now or formerly of Clayton Hartman, North 60 $\frac{1}{2}$ degrees East, 232.5 feet to a post; thence running by land of the same, South 38 degrees East, 183.5 feet to a point in a public road; thence running in said public road, South 47 $\frac{1}{2}$ degrees West, 152 feet to another point in said public road; thence running by land now or formerly of Charles B. Hartman, North 38 $\frac{1}{2}$ degrees West, 138.4 feet to a post; thence by land of the same, South 69 $\frac{1}{2}$ degrees West, 35.5 feet to a post; thence by land of the same, North 64 $\frac{1}{2}$ degrees West, 93 feet to a post, the place of BEGINNING. CONTAINING 127.5 perches.

BEING the same tract of land whi Dee B. Surber, now Dee Bedsole Polley, and Glenn Richard Polley, her husband, by deed dated August 5, 1994, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 924 at page 83, conveyed to Mark K. Nichols and Jacquelyn L. Nichols, husband and wife, the Defendants herein.

IMPROVED WITH a two-story, single-family dwelling.

SEIZED and taken into execution as the property of **Mark K. Nichols and Jacquelyn L. Nichols** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 23, 1997.

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 December 1, 1997, 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.

10/10, 17 & 24

ADAMS COUNTY NURSERY, INC. VS.
A. R. BARNES, INC. ET AL.

1. A demurrer will only be sustained where the law says with certainty that the plaintiff has failed to state a cause of action for which relief can be granted.

2. A Complaint must not only give the Defendant notice of what the Plaintiff's claim is and the grounds upon which it rests, but it must also formulate the issues by summarizing those facts essential to support the claim.

Willard R. Burns, Esq., for Plaintiff

Daniel D. Krebs, Esq., for Defendant

OPINION ON PRELIMINARY OBJECTIONS OF
DEFENDANT, A. R. BARNES, INC.

Kuhn, J., November 14, 1996.

Plaintiff, Adams County Nursery, Inc., has filed a multi-count Complaint against Defendants, A. R. Barnes, Inc., t/a H B & H Contractors, and Butler Manufacturing Company, t/a Butler Buildings. It is alleged that on August 31, 1992, Plaintiff contracted with Barnes to design and construct a pre-engineered steel building. Butler was allegedly retained by Barnes to design and manufacture the structure. On March 3, 1994, substantial portions of said building collapsed causing extensive damage. Plaintiff has sued Barnes for negligence (Count I), Breach of contract (Count II), breach of warranty (Count IV) and strict liability (Count V). Barnes filed preliminary objections in the form of a demurrer and/or motion for more specific pleading which are before the Court for disposition.

It is well known that a demurrer admits all well pleaded and material facts set forth in a complaint as well as all inferences reasonably deducible therefrom. It does not admit conclusions of law but does test the legal sufficiency of the pleadings. Therefore, the demurrer will only be sustained where the law says with certainty that the plaintiff has failed to state a cause of action for which relief can be granted. Gettysburg Area Industrial Development Authority, 37 Ad. Co. L.J., 67, 69 (1995).

Essentially Barnes contends that Plaintiff has violated Pa. R.C.P. 1019(a) which requires the pleader to aver material facts on which a cause of action is stated. Our pleading rules require that

A complaint must not only give the defendant notice of what the plaintiff's claim is and the grounds upon which it rests, but it must also formulate the issues by summarizing those facts essential to support the claim.

Smith v. Brown, 283 Pa. Super. 116, 120, 423 A.2d 743, 745 (1980).

See also *Krajsa v. Key punch, Inc.*, 424 Pa. Super. 230, 235, 622 A.2d 355, 357 (1993) wherein the Superior Court added that,

We recognize the proposition that the Rules of Civil Procedure are to be liberally interpreted. See, Pa. R.C.P. 126. "However, liberal construction does not entail total disregard of those rules concerning pleading."

Barnes argues that Plaintiff has failed to set forth essential facts relating to how the building collapsed.

In Count I Plaintiff attempts to aver a cause of action in negligence. That legal theory requires a plaintiff to plead and prove 1) a duty of care, 2) a breach of that duty, 3) that the breach was the proximate cause of plaintiff's injury and 4) the injury itself. *Waddell v. Bowers*, 415 Pa. Super. 469, 473, 609 A.2d 847, 849 (1992), *Alloc. den.* 618 A.2d 402 (1992). Barnes suggests that Plaintiffs have failed to plead the third element.

We will assume that Barnes had a duty to construct a safe building. In Paragraph 13 Plaintiff alleges that Barnes was negligent in a) failing to properly and adequately supervise construction, b) permitting the building to be designed and constructed in an unsafe manner, c) failing to properly inspect and analyze existing design conditions, d) failing to properly design, construct, install, erect or warn of danger caused by constructing a vertical wall lower than an adjacent building, e) failing to properly erect and assemble the building, f) failing to install devices for increased risk of drift conditions, g) failing to warn of defects, h) failing to inspect during and after construction, i) designing or constructing the building in a defective and dangerous condition, j) failing to provide adequate building materials, k) failing to follow proper engineering, architectural and construction practices, l) failing to use the proper degree of skill, m) failing to properly design the building, n) failing to prepare adequate blueprints, o) failing to construct in accordance with the plans, p) under designing the structure for expected load capacities, q) designing the building in a defective manner, r-s) failing to utilize competent contractors, t-u) failing to design and construct to withstand snow, ice and wind loads, v) failing to design and install sufficient roof slope, w) failing to properly supervise the workers and x) failing to perform in a good and workmanlike manner.

A review of these allegations leads to the conclusion that they fail, standing alone, to properly aver proximate cause. There are no factual

averments supporting the conclusions stated nor averments as to how those conclusions were related to the collapse of the building. Without averring how the building collapsed and how that would have been prevented if Barnes had not been negligent Plaintiff has not fulfilled the requirement of the pleading rules. The connection between the reason for the collapse, the alleged negligence and the damages is more than just form, it is essential to a proper allegation of negligence.

The same argument applies to Count II. To properly allege a breach of contract there must be a connection between the breach and the damages in order for there to be recovery. Plaintiff alleges that the averments of Paragraph 13 constitute the breach. For the reasons set forth above the pleadings are inadequate here as well.

In Count IV Plaintiff alleges that Barnes warranted that all work would be of good and workmanlike quality; that the building was of merchantable quality and fit for its particular purpose and that Barnes breached these warranties by not providing a building of merchantable quality or one fit for its intended purpose. Again, Barnes objects to the lack of averment of a causal connection between the alleged breach and the damage suffered.¹ For the reasons set forth above the same ruling must be entered. There needs to be factual averments supporting the legal conclusions that a breach occurred. For example, Plaintiff has failed to set forth factual allegations of improper workmanship or building defects.

In Count V Plaintiff alleges that Barnes supplied the building and its parts in an unreasonably dangerous and defective condition and is therefore strictly liable under §402(a) of Restatement (Second) of Torts. Barnes objected to recovery for the type of economic loss alleged. However, Barnes has not briefed this issue but instead briefed other issues not raised in its preliminary objections. The issues briefed but not properly raised will be ignored. The issue not briefed is considered waived.

Finally, Barnes argues that Plaintiff has not set forth with particularity the apportionment of damages among the various counts. More specifically, Barnes objects to the "lump sum" recitation of damages without an itemization of damages to 1) the building, 2) the adjacent building, and 3) business. We agreed that Plaintiffs' averments are insufficient.

¹In its brief Barnes also discussed other objections which were not raised in its preliminary objections. Because they were not properly raised they will be ignored.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 14th day of November, 1996, Preliminary Objections filed by Defendant, A. R. Barnes, Inc., are sustained. Plaintiff is granted twenty (20) days from the date of mailing of this Order to file an amended pleading.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-732 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of November, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a PK nail located in the center line of Legislative Route 01006, said PK nail also located North 5 degrees 7 minutes 48 seconds East, 185 feet from a railroad spike in the center of the intersection of Legislative Route 01006 and Legislative Route 01007; thence by land now or formerly of Philip D. Fazenbaker and wife and running through an iron pin located 30 feet from the beginning of this line, South 83 degrees 7 minutes 48 seconds West, 253.48 feet to an iron pin; thence by same North 22 degrees 27 minutes 28 seconds West, 108.41 feet to an iron pin; thence by same and running through an iron pin located 30 feet from the end of this line, North 59 degrees 7 minutes 48 seconds East, 368.53 feet to a PK nail located in the center of the aforementioned Legislative Route 01006; thence along the center line of said Legislative Route 01006, South 5 degrees 7 minutes 48 seconds West, 260 feet to a PK nail, the place of BEGINNING. CONTAINING 1.194 acres.

The above description was taken from a subdivision plan prepared by Kenneth C. Quigley, dated March 16, 1976.

TAX PARCEL #F-10-20

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

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 12, 1997.

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 December 8, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/26 & 10/3, 10

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-247 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of November, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point in the center of State Highway Route No. 34 leading from Gettysburg to Carlisle; thence running in the center of same, North one-half (1/2) degree East, one hundred and eight (108) feet to another point in the center of said highway; thence running by land now or formerly of Ray Edwin Unger, North eighty-eight and one-fourth (88 1/4) degrees East, three hundred and eighty-two (382) feet to a stake and stones; thence running by land now or formerly of Sara Rife, South three-fourths (3/4) degree West, one hundred and twenty (120) feet to a stake and stones; thence running by land now or formerly of Frank Thomas, South eighty-nine and one-half (89 1/2) degrees West, three hundred and seventy-eight (378) feet to a point in said highway, the place of beginning. CONTAINING 1 Acre and 20 square feet.

PARCEL 70 MAP F10

SEIZED and taken into execution as the property of **Richard S. Fancovic and Mary A. Fancovic** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
June 3, 1997.

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 December 1, 1997, 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.

10/03, 10 & 17

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-69 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of November, 1997, 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 Hamiltonban Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin in the center of the Waynesboro-Emmitsburg Road, known as Old Highway Route 16; thence along Lot No. 3 of subdivision hereinafter set forth North 36 degrees 55 minutes East 233.4 feet to an iron pin and stones; thence along lands now or formerly of C. A. Wills South 27 degrees 30 minutes East 416.3 feet to an iron pin in the center of said Old Highway Route 16; thence in the center of said Old Highway Route 16 North 61 degrees 20 minutes West 378.7 feet to the place of BEGINNING. CONTAINING 1 acre, more or less.

IT being Lot No. 4 on map of subdivision of property of Mearl B. McCleef, single man, surveyed and drawn by John H. McCellan, Registered Surveyor, dated August 27, 1955.

BEING the same which Mearl B. McCleef, single, by deed dated June 18, 1960, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 229 at page 226 conveyed to Maurice E. Sites and Lillian M. Sites, husband and wife, the Defendants herein.

IMPROVED WITH a one-story, ranch-style, single-family dwelling with an attached two-car garage.

SEIZED and taken into execution as the property of **Maurice E. Sites and Lillian M. Sites** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 23, 1997.

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 December 1, 1997, 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.

10/10, 17 & 24

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-549 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of November, 1997, 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 Liberty Township, now Carroll Valley Borough, Adams County, Pennsylvania, being (Lot No. 23) in Section A, bounded and described as follows:

BEGINNING at a point in the center of Fawn Trail; thence in the center of said Fawn Trail North 88 degrees 26 minutes 40 seconds East, 202.34 feet to a point in the center of intersection of said Fawn Trail; with Spring Trail; thence in said Spring Trail South 7 degrees 10 minutes West, 117.34 feet to a point in the center of said Spring Trail at Lot No. 22; thence by said lot South 88 degrees 26 minutes 40 seconds West, 202.34 feet to other land of grantor (Charnita, Inc.); thence by said land North 7 degrees 10 minutes East, 117.34 feet to the place of BEGINNING.

THE above description was taken from a plan of lots labeled "Section A. Charnita" and dated March 10, 1965, prepared by Gordon L. Brown, R.S., recorded in Adams County Miscellaneous Docket 3 at page 733.

BEING Tax Parcel No. 23-104

BEING KNOWN AS 40 SPRING TRAIL, FAIRFIELD, PA

TITLE TO SAID PREMISES IS VESTED IN David H. Landis and Donna J. Landis, his wife by Deed from Harry D. Pitt and Babette Pitt, his wife dated 8-4-1986 and recorded 8-5-1986 in Deed Book 432 Page 1038.

SEIZED and taken into execution as the property of **David H. Landis and Donna J. Deardorff-Landis** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 18, 1997.

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 December 1, 1997, 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.

10/10, 17 & 24

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-296 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of November, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

EXHIBIT A

ALL those two contiguous tracts of land situate in Menallen Township, Adams County Pennsylvania, bounded and described as follows:

Tract No. 1: BEGINNING for a point at an existing steel rod and stones at corner of land now or formerly of Rice and Rice, Inc. and Paul G. Pitzer; thence along said Pitzer's land, North 29 degrees 38 minutes 00 seconds West 165.14 feet to a steel rod set in the center line of an existing 12 ft. wide gravel road; thence in, along and through said 12 ft. wide gravel road, the following four courses and distances: (1) North 63 degrees 20 minutes 50 seconds East 82.22 feet to a spike set in the center line of said road; (2) North 52 degrees 40 minutes 20 seconds East 95.44 feet to a spike in the center line of said road; (3) North 68 degrees 19 minutes 45 seconds East 125.70 feet to a spike set at a point in said road; and (4) South 32 degrees 45 minutes 45 seconds East 333.98 feet to a spike set in the center line of said gravel road at land now or formerly of Rice & Rice, Inc., aforesaid; thence along lands now or formerly of Rice & Rice, Inc., South 89 degrees 23 minutes 40 seconds West 365.29 feet to an existing steel rod and stones, the point and place of BEGINNING. CONTAINING 1.787 acres.

THE foregoing description of Tract No. 1 is identified as Lot No. 2 on a final plan prepared for Roger E. Flickinger by Mark Alan Kuntz, Professional Land Surveyor, dated June 18, 1986, revised on September 14, 1987, which said plan is recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 48 at page 86.

Tract No. 2: BEGINNING at an existing steel rod and stones at corner of land now or formerly of Anthony Showers and land now or formerly of Rice & Rice, Inc.; thence by land now or formerly of Rice & Rice, Inc., South 89 degrees 23 minutes 40 seconds West 154.15 feet to an existing spike in the center line of a gravel drive; thence in the center of said gravel drive, and by Tract No. 1 hereby conveyed, North 32 degrees 45 minutes 45 seconds West, 33.9 feet to a spike in said drive; thence by land now or formerly of Tony R. Flickinger and Rebekah S. Baggett, North 68 degrees 19 minutes 45 seconds East 17.36 feet to a point; thence by land now or formerly of Anthony Showers, South 48 degrees 8 minutes 20 seconds East 428 feet to an existing steel rod and stones along land now or formerly of Rice & Rice, Inc., the place of BEGINNING. CONTAINING 0.576 acre.

THE foregoing description of Tract No. 2 was obtained from a draft of survey made by Mark A. Kuntz, Surveyor, dated March 16, 1990, recorded in the office of the aforesaid Recorder of Deeds in Plat Book 55 at page 91, the tract hereby conveyed being designated as Lot No. 1A on said plan.

BEING the same which Roger E. Flickinger and Catherine Marie Flickinger by deed dated July 15, 1994, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 913 at page 115, conveyed to Myles F. Eberhart and Pamela F. Eberhart, husband and wife, the Defendants herein.

Tract No. 2 is TOGETHER WITH AND SUBJECT TO the right on the part of Roger E. Flickinger and Catherine M. Flickinger, their heirs and assigns, to use in common with Tony R. Flickinger and Rebekah S. Baggett, their heirs and assigns, the existing private right of way designated as a gravel drive on the aforesaid draft recorded in Plat Book 55 at page 91.

IMPROVED WITH a single-story, brick dwelling with two detached garages.

SEIZED and taken into execution as the property of **Myles F. Eberhart and Pamela A. Eberhart** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 17, 1997.

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 December 8, 1997, 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.

10/10, 17 & 24

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 HARRY T. BAUMGARDNER, DEC'D
 Late of Menallen Township, Adams County, Pennsylvania
 Executor: Robert Smith, c/o Marcus A. McKnight III, Esquire, 60 West Pomfret Street, Carlisle, PA 17013
 Attorney: Irwin, McKnight & Hughes, 60 West Pomfret Street, Carlisle, PA 17013

ESTATE OF VICTORIA M. BUOHL, DEC'D
 Late of Straban Township, Adams County, Pennsylvania
 Executrix: Hazel B. Tawney, now Hazel T. Kuykendall, 249 Barlow Street, Gettysburg, PA 17325
 Attorney: John R. White, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF VIRGIE V. STONER, DEC'D
 Late of Franklin County, Quincy Township, Pennsylvania
 Executor: Cleason L. Stoner, Sr., c/o 250 York Street, Hanover, PA 17331
 Attorney: Samuel A. Gates

SECOND PUBLICATION

ESTATE OF EUGENE D. HARTMAN, SR. AKA EUGENE D. HARTMAN, DEC'D
 Late of Littlestown Borough, Adams County, Pennsylvania
 Executor: Eugene D. Hartman, Jr., 210 East King Street, Littlestown, PA 17340
 Attorney: Keith R. Nonemaker, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331

ESTATE OF CHAD MICHAEL LIVELSBERGER, DEC'D
 Late of Berwick Township, Adams County, Pennsylvania
 Administrator: Michael R. Livelsberger, 1520 Abbottstown Pike, Hanover, PA 17331
 Attorney: Mark David Frankel, Esquire

THIRD PUBLICATION

ESTATE OF PEGGY N. FIORELLO, DEC'D
 Late of Oxford Township, Adams County, Pennsylvania
 Executor: Robert E. Pate
 Attorney: Robert Clofine, Esquire, One West Marketway, York, PA, 17401-1231

ESTATE OF RUTH MARIE RIPKA, DEC'D
 Late of Germany Township, Adams County, Pennsylvania
 Executrices: Phyllis D. Waltz; Barbara M. Comitz; Joan A. Golaszewski; and Janet C. Cantler
 Attorney: Douglas H. Gent, Esquire, Hanover Station, 1157 Eichelberger Street, Hanover, PA 17331

FICTITIOUS NAME NOTICE

The Shepherd's Choice of Gettysburg that application was filed with the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, on July 25, 1997, for conducting of business under the fictitious name of THE SHEPHERD'S CHOICE OF GETTYSBURG.

Gleason, Di Francesco, Shahade, Barbin & Markovitz
 Penn Traffic Building - Ste 350
 319 Washington Street
 Johnstown, PA 15901

10/10

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-627 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of November, 1997, 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 lying and being in the Borough of Biglerville, Adams County, Pennsylvania, more particularly described in accordance with a final subdivision plan prepared by Boyer Surveys dated February 16, 1990 and recorded in Adams County Plat Book 54 at Page 89, known as Lot No. 1 thereon, and described as follows:

BEGINNING at a chisel mark set on the curb line of Fourth Street at the southern edge of Lot No. 2 as shown on said plan; thence along the southern edge of said Lot No. 2, North 87 degrees 10 minutes 00 seconds East, 130.00 feet to a point at Lot No. 8 as shown on said plan; thence by same, South 2 degrees 50 minutes 00 seconds East, 20.83 feet to a point; thence by same South 83 degrees 22 minutes 15

seconds West, 130.29 feet to a chisel mark set on the aforesaid curb line; thence along said curb line, North 2 degrees 50 minutes 00 seconds West, 29.46 feet to the chisel mark set at the point and place of BEGINNING. CONTAINING 3,269 square feet, more or less.

HAVING THEREON ERECTED A DWELLING KNOWN AS 20 4TH STREET, BIGLERVILLE, PA.

BEING THE SAME PREMISES WHICH Donald P. Rorick and Mary F. Rorick by deed dated September 30, 1992 and recorded in Adams County Deed Book 643, Page 1068 granted and conveyed unto Darren M. Dutterer and Deana N. Dutterer.

TO BE SOLD AS THE PROPERTY OF DARREN M. DUTTERER AND DEANA N. DUTTERER UNDER ADAMS COUNTY JUDGMENT NO. 96-S-627.

PARCEL: 05-004-0091

SEIZED and taken into execution as the property of **Darren M. Dutterer and Deana N. Dutterer** and to be sold by me

Bernard V. Miller
 Sheriff

Sheriff's Office, Gettysburg, PA
 September 24, 1997.

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 December 8, 1997, 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.

10/10, 17 & 24

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-737 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 31st day of October, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

LOCATION of property: 1 East Locust Lane, New Oxford, PA Parcel 9-27

ALL that certain strip of land lying between the property line of Lot No. 14 owned by Charles Robert Rutter, III and Andrea W. Rutter, husband and wife, and the center line of Legislative Route A-6810 known as Hanover Street (referred to on draft of survey of Oxford Estates prepared by George M. Wildasin, P.E. dated December 4, 1979, subdivided by William E. Sacra, Jr., on the same date, a plat of which is recorded in Adams County Plan Book 34 at page 58, as Legislative Route 01004 and Hanover Road), situate in Oxford Township, Adams County, Pennsylvania.

BEGINNING at a point on the property line of East Locust Lane at a corner of Lot No. 15 on the hereinafter referred to draft of survey; thence along Lot No. 15, South thirty-six (36) degrees fifty (50) minutes twenty-nine (29) seconds East, one hundred seventeen and thirty-three hundredths (117.33) feet to a point; thence South thirty-seven (37) degrees thirteen (13) minutes forty-nine (49) seconds West, one hundred eleven and sixty-four hundredths (111.64) feet to a point in the right-of-way of Legislative Route 01004 (Hanover Road); thence in the right-of-way such Legislative Route, North thirty-six (36) degrees zero (0) minutes zero (0) seconds West, one hundred fifteen (115) feet to a point; thence by a curve to the right, the radius of which is thirty-five (35) feet, an arc length of fifty-four and ninety-eight hundredths (54.98) feet, having a long chord bearing and distance of North nine (9) degrees zero (0) minutes zero (0) seconds East, forty-nine and fifty hundredths (49.50) feet to a proposed monument on the property line of East Locust Lane; thence by same, North fifty-four (54) degrees zero (0) minutes zero (0) seconds East, sixty-five and zero hundredths (65.00) feet to a point; thence by a curve to the left, the radius of which is three hundred twenty-four and one hundred ninety-nine thousandths (324.199) feet, an arc length of five and thirteen hundredths (5.13) feet, having a long chord distance and bearing of North fifty-three (53) degrees thirty-four (34) minutes forty-eight (48) seconds East, five and thirteen hundredths (5.13) feet to a point, the place of Beginning.

CONTAINING 13,895.082 square feet or 0.319 acres.

BEING the same premises which Charles Robert Rutter, III and Andrea W. Rutter, husband and wife, by deed dated February 19, 1988 and recorded in the Recorder of Deeds Office of Adams County on March 15, 1988 at Record

Book 482, Page 1133, granted and conveyed unto Joseph C. Reilly and Judy E. Knepper.

SEIZED and taken into execution as the property of **Joseph C. Reilly and Judy E. Reilly** and to be sold by me
Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 23, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on November 24, 1997, 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.

10/3, 10 & 17

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-218 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of November, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that lot of ground situate on the eastern side of Hillcrest Drive, in Butler Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a steel pin on the East side of Hillcrest Drive at lands now or formerly of Bernard F. Smith, Lot No. 4, as more particularly established on the subdivision plan hereinafter referred to; thence by lands of Bernard F. Smith, Lot No. 4, North 83 degrees 36 minutes 20 seconds East, 114.81 feet to a steel pin in or near the center of a stream; thence in and along said stream and by other lands now or formerly of Clair F. Ditzler and Marie R. Ditzler, South 27 degrees, 16 minutes 5 seconds East, 100.89 feet to the center line of the top of a manhole cover at lands now or formerly of Ronald D. Godlove and Mary Ruth Godlove, Lot No. 6; thence by lands of Ronald D. Godlove and Mary Ruth Godlove, Lot No. 6, South 81 degrees 25 minutes 45 seconds West, 150.87 feet to a steel pin on the east side of Hillcrest Drive; thence along the east side of Hillcrest Drive, North 6 degrees 23 minutes 40 seconds West, 100 feet to a steel pin on the east side of Hillcrest Drive at lands now or formerly of Bernard F. Smith, Lot No. 4, the place of BEGINNING. CONTAINING 12,949 square feet.

THE foregoing description was taken from a draft of survey prepared by

Richard W. Boyer, Professional Land Surveyor, dated September 29, 1987, as recorded in Adams County Plat Book 49 at page 71; reapproved on 10/14/92, recorded in Plat Book 61 at page 56, and identified thereon as Lot No. 5

KNOWN AS 10 HILLCREST DRIVE, BIGLERVILLE, PA.

BEING THE SAME PREMISES WHICH Terry L. Williams et al by deed dated December 22, 1995 and recorded in Adams County Deed Book 1130 P, 184 granted and conveyed unto Benjamin C. Lewis and Suzanne E. Lewis.

TO BE SOLD AS THE PROPERTY OF BENJAMIN C. LEWIS AND SUZANNE E. LEWIS UNDER ADAMS COUNTY JUDGEMENT NO. 97-S-218.

PARCEL: 07-3-177

SEIZED and taken into execution as the property of **Benjamin C. Lewis and Suzanne E. Lewis** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 15, 1997.

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 December 1, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser must settle for property on or before filing date.

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

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

9/26 & 10/3, 10

Adams County Legal Journal

Vol. 39

October 17, 1997

No. 21, pp. 115-120

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-81 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of November, 1997, 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 Cumberland Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a post on lines of land now or formerly of Charles B. Hartman and Clayton Hartman; thence running by land now or formerly of Clayton Hartman, North $60\frac{1}{2}$ degrees East, 232.5 feet to a post; thence running by land of the same, South 38 degrees East, 183.5 feet to a point in a public road; thence running in said public road, South $47\frac{1}{2}$ degrees West, 152 feet to another point in said

public road; thence running by land now or formerly of Charles B. Hartman, North $38\frac{1}{2}$ degrees West, 138.4 feet to a post; thence by land of the same, South $69\frac{1}{2}$ degrees West, 35.5 feet to a post; thence by land of the same, North $64\frac{1}{2}$ degrees West, 93 feet to a post, the place of BEGINNING. CONTAINING 127.5 perches.

BEING the same tract of land which Dee B. Surber, now Dee Bedsole Polley and Glenn Richard Polley, her husband, by deed dated August 5, 1994, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 924 at page 83, conveyed to Mark K. Nichols and Jacquelyn L. Nichols, husband and wife, the Defendants herein.

IMPROVED WITH a two-story, single-family dwelling.

SEIZED and taken into execution as the property of **Mark K. Nichols and**

Jacquelyn L. Nichols and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 23, 1997.

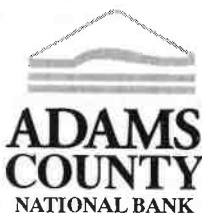
TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 1, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser 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.

10/10, 17 & 24

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



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-247 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of November, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

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

BEGINNING at a point in the center of State Highway Route No. 34 leading from Gettysburg to Carlisle; thence running in the center of same, North one-half (1/2) degree East, one hundred and eight (108) feet to another point in the center of said highway; thence running by land now or formerly of Ray Edwin Unger, North eighty-eight and one-fourth (88 1/4) degrees East, three hundred and eighty-two (382) feet to a stake and stones; thence running by land now or formerly of Sara Rife, South three-fourths (3/4) degree West, one hundred and twenty (120) feet to a stake and stones; thence running by land now or formerly of Frank Thomas, South eighty-nine and one-half (89 1/2) degrees West, three hundred and seventy-eight (378) feet to a point in said highway, the place of beginning. CONTAINING 1 Acre and 20 square feet.

PARCEL 70 MAP F10

SEIZED and taken into execution as the property of **Richard S. Fancovic and Mary A. Fancovic** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
June 3, 1997.

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 December 1, 1997, 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.

10/03, 10 & 17

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-69 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of November, 1997, 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 Hamiltonban Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin in the center of the Waynesboro-Emmitsburg Road, known as Old Highway Route 16; thence along Lot No. 3 of subdivision hereinafter set forth North 36 degrees 55 minutes East 233.4 feet to an iron pin and stones; thence along lands now or formerly of C. A. Wills South 27 degrees 30 minutes East 416.3 feet to an iron pin in the center of said Old Highway Route 16; thence in the center of said Old Highway Route 16 North 61 degrees 20 minutes West 378.7 feet to the place of BEGINNING. CONTAINING 1 acre, more or less.

IT being Lot No. 4 on map of subdivision of property of Mearl B. McCleafe, single man, surveyed and drawn by John H. McCellan, Registered Surveyor, dated August 27, 1955.

BEING the same which Mearl B. McCleafe, single, by deed dated June 18, 1960, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 229 at page 226 conveyed to Maurice E. Sites and Lillian M. Sites, husband and wife, the Defendants herein.

IMPROVED WITH a one-story, ranch-style, single-family dwelling with an attached two-car garage.

SEIZED and taken into execution as the property of **Maurice E. Sites and Lillian M. Sites** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 23, 1997.

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 December 1, 1997, 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.

10/10, 17 & 24

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purposes of obtaining a Certificate of Incorporation of a proposed business corporation to be organized under the provision of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1992, P.L. 1444, No. 177, as amended. The name of the Corporation is BORITT, INC.

Boritt, Inc.
500 Plank Road
Gettysburg, PA 17325

10/17

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on August 7, 1997, 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 DOUBLE EL FARMS, 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.

10/17

COMMONWEALTH VS. REXROTH

1. The time that a court keeps a jury deliberating is mainly a matter of discretion.
2. When an issue of ultimate fact has been determined by a valid and final judgment, the issue cannot again be litigated between the same parties in any future court proceedings.
3. The test for double jeopardy is now whether crimes involve the same or different elements.
4. Generally, acquittal of a greater crime does not prevent retrial when a jury is deadlocked on a lesser offense.
5. It is well settled that a Defendant may be convicted as an accessory though only charged as a principal.

In the Court of Common Pleas, Adams County, Pennsylvania, Criminal NO. CC-396-95, COMMONWEALTH OF PENNSYLVANIA VS. WILLIAM REXROTH.

Michael A. George, Esq., District Attorney
Charles H. Field, Esq., for Defendant

STATEMENT PURSUANT TO PA.R.APP.P. 1925

Spicer, P.J., November 15, 1996.

Defendant appeals from the Clerk of Court's order dated October 21, 1996, denying post sentence motions in accordance with Pa.R.Crim.P. 1410. Defendant was sentenced on May 23, 1996, on charges of recklessly endangering another person and criminal mischief, each of which was a misdemeanor of the second degree. Concurrent sentences of eleven and one half to twenty three months were imposed, along with fines and an order of restitution.

Sentences were entered following jury verdicts of guilty on April 19, 1996. The verdicts were returned after defendant's second trial on these charges. On February 9, 1996, the first jury acquitted defendant of aggravated assault, but was unable to reach verdicts on the two misdemeanors. Post sentence motions were filed, but were not addressed. We assume that the same issues will be argued on appeal and, since those motions involve the February trial, we must discuss it and the background of this case.

First of all, this case involves shootings by William Monroe on March 11, 1995. Mr. Monroe was a passenger in a truck driven by defendant. Although numerous automobiles were damaged, no personal injuries occurred.

It might be helpful to include a little geography of Adams County, especially the Gettysburg area. Distances given will be the undersigned's estimates. Although the Commonwealth displayed a street map of Adams County (exhibit 12) during the second trial, it was never

introduced. The Commonwealth's theory that Rexroth was Monroe's knowing accomplice was partly based upon the fact that Rexroth and Monroe traveled substantial distances after Monroe procured a gun. The District Attorney argued that statements made by Monroe indicated a desire for vengeance and that the gun was too big to hide. In overruling a demurrer, at the second trial, this judge commented that the jury could infer that Rexroth knew about the weapon because of the size of the gun. (N.T. 72, 2nd trial)

On March 11, 1995, Monroe lived at 593 Arendtsville Road, (S.R. 234) Biglerville. Biglerville is seven or eight miles north of Gettysburg and Arendtsville is west of Biglerville. Defendant resided at 2225 Table Rock Road (L.R. 01006), with a Gettysburg post office address. Table Rock is four or five miles northeast of Gettysburg.

Carlisle Street, in the Borough of Gettysburg, runs northwardly from Lincoln Square in the center of town and ultimately becomes Pennsylvania Route 34. It also travels to Biglerville and a fork to the east, about a mile north of town, is the Table Rock Road. The first street north of the square is Railroad Street, which runs east and west. DeLap Alley intersects with Railroad street and runs northwardly, parallel to Carlisle Street, behind properties fronting on Carlisle Street. One of these properties is an apartment building referred to during trial as Zentz apartments. Monroe shot at cars in the parking lot behind this building.

The restaurant-tavern referred to as Big Boppers is located on Pennsylvania Route 97, about a mile south of Gettysburg. This road runs from Gettysburg to Littlestown. Proceeding northward from this establishment, a person would enter the borough, then arrive at the intersection of Baltimore Street and Steinwehr Avenue (Business Route 15, south). Baltimore Street becomes Carlisle Street on the north side of Lincoln Square. A Sheetz convenience store is located at the intersection of Steinwehr and Baltimore.

On March 11, 1995, Mr. Monroe was involved in an altercation with persons referred to as Mexicans at Big Boppers. Monroe was incensed when his wife was slapped and a friend was hit over the head and pistol whipped. Both Monroe and his friend were at the establishment with their spouses. Monroe saw Rexroth in the parking lot, but could not say whether or not defendant participated in the fight. After his friend was taken to the hospital, Monroe and defendant drove to Monroe's house, where Monroe got a Feather AT 9 millimeter gun. This weapon could be fired with or without a stock. On the date in question, a stock was attached. Monroe said he stuffed the gun into the top of his trousers and hid it under his coat. He and Rexroth then drove to defendant's house,

where they changed vehicles. Defendant then drove his truck, with Monroe a passenger, back into Gettysburg. Going to Sheetz for gas, they saw some of the individuals involved in the earlier confrontation at Big Boppers. As Rexroth pumped gas, Monroe alighted from the vehicle and spoke to the individuals involved.

Rexroth told the police that he knew Monroe was angry and that Monroe said it wasn't over. Rexroth told Monroe he knew where some of the Mexicans lived and drove Monroe there. After turning into DeLap Alley, Rexroth drove his truck to the parking lot behind Zentz apartments.

According to Monroe, Rexroth had no idea that the latter intended to shoot. However, Rexroth stopped when told to do so. Aiming his gun from the truck window, Monroe sprayed the area with bullets. Several cars were damaged. Armondo Zavala was in one of the cars which was stuck by bullets. However, he was not injured.

The first trial occurred on a Friday. The jury retired to deliberate at 4:40 p.m.. Questions were extensively addressed at 6:01 p.m. and 8:13 p.m.. Although the record indicates the jury returned with verdicts at 8:47 p.m., the verdicts said the jury had reached no decision. A discussion ensued between the court and the jury foreman (see N.T. 160 et seq.) The foreman said:

Foreman: Yes, that is why that was given at this time. We have asked all the questions that we find that we cannot agree on hoping that further clarification will bring one way or another. Unfortunately it did not to the extent necessary for an unanimous vote. (id 161)

The court then polled the jury to determine if it was deadlocked. Indications were that it was not. Several jurors believed that additional instructions could help. The jury again retired at 8:53 p.m. and the following occurred:

MR. GEORGE: Your Honor, at this point the Commonwealth is satisfied for a mistrial or for a hung jury.

MR. FIELD: I would abide by that.

THE COURT: I'm afraid you can't abide by it.

MR. FIELD: I believe in listening to the jury, I think that the jury has said that they cannot reach a decision. I think maybe the people said maybe with a little more explanation we're hoping that some other people would change their mind and not necessarily I think that was more maybe wishful thinking than anything. They were hoping

that these hard heads would change their mind whatever their position.

THE COURT: Mr. Rexroth, would you come up here a minute please.

The United States constitution provides that no person shall be twice placed in jeopardy of life or limb for the same offense. And that provision has been interpreted in many ways but one of which is that unless a trial ends before verdict for good and sufficient reasons, that you may not be tried again for these charges. If you request that the jury be discharged, then you're giving up any right to argue at a later time that you can't be faced with a second trial. Do you understand?

THE DEFENDANT: What?

MR. FIELD: If you would like the jury to be dismissed because they can't reach a decision, you could still face trial again. Would you like them to keep deliberating because they said it may be possible?

THE DEFENDANT: Yeah, because if I can get it over with today, I would like to get a verdict today on it.

THE COURT: So you're not moving for a mistrial.

MR. FIELD: Yes, Mr. Rexroth I think would like to at least give them a little more time.

(N.T. 164, 165)

At 9:21 p.m. the jury reported they were deadlocked on counts four and five, but found Rexroth not guilty of count one. The court again polled the jury and determined that it was deadlocked. The jury was then excused.

We quote the transcript not to show that defendant waived anything, but to indicate that it was becoming obvious that the jury was not going to reach a unanimous decision on all charges. Those who were hopeful during the first poll were vindicated by a not guilty verdict on count one, but during the second poll everyone agreed that further deliberations would be fruitless.

The time that a court keeps a jury deliberating is mainly a matter of discretion. *Commonwealth v. Chester*, 526 Pa. 578, 587 A.2d 1367 (1991); *Commonwealth v. Johnson*, 542 Pa. 384, 668 A.2d 97 (1995). The hour was getting late and the undersigned gave lengthy clarifying instructions. We do not think the decision to discharge the jury was unreasonable, under all the circumstances.

Defendant's arguments that double jeopardy arises from the not guilty verdict and prevents retrial deserves thoughtful consideration. Whether we speak of collateral estoppel, or double jeopardy, the considerations are the same. When an issue of ultimate fact has been determined by a valid and final judgment, the issue cannot again be litigated between the same parties in any future court proceedings. *Commonwealth v. Tolbert*, 448 Pa.Super. 189, 670 A.2d 1172 (1995). However, the test is not conduct, but elements of the crimes under consideration. Merger is the test, with the operative consideration being whether elements are the same or different. Merger is generally a rule of statutory construction designed to determine if the legislature has provided that punishment for one offense encompasses punishment for another offense arising from the same criminal act or transaction. If a person is convicted of several crimes based on the same facts, merger occurs only if crimes are greater and/or lesser included offenses. *Commonwealth v. Anderson*, 538 Pa. 574, 650 A.2d 20 (1994). The test for double jeopardy is now whether crimes involve the same or different elements. *Commonwealth v. Breeland*, 445 Pa.Super. 147, 664 A.2d 1355 (1995) alloc dn 674 A.2d 1066 (1995); *Commonwealth v. Beckwith*, 449 Pa.Super. 433, 674 A.2d 276 (1996); *Commonwealth v. Yerby*, ___ Pa. ___, 679 A.2d 217 (1996).

Generally, acquittal of a greater crime does not prevent retrial when a jury is deadlocked on a lesser offense. *Commonwealth v. Smith*, 426 Pa.Super. 31, 626 A.2d 178 (1993) alloc dn 537 Pa. 663, 644 A.2d 487 (1993). (Acquittal of first degree murder, jury deadlocked on third; retrial affirmed).

It would seem clear that aggravated assault, as a felony of the first degree, requires elements different than for either recklessly endangering or criminal mischief. *Commonwealth v. O'Hanlon*, 539 Pa. 478, 653 A.2d 616 (1995); cf. *Commonwealth v. Hlatky*, 426 Pa.Super. 66, 626 A.2d 575 (1993) alloc dn 537 Pa. 663, 644 A.2d 1200 (1993). Not only is there required an element of circumstances manifesting an extreme indifference to the value of human life, specific intent is necessary, since no bodily injury occurred. Attempted aggravated assault is a specific intent crime and the first jury was so instructed. (See e.g., N.T. p. 139). *Commonwealth v. Brown*, 413 Pa.Super. 421, 605 A.2d 429 (1992). *Commonwealth v. Flemings*, 421 Pa.Super. 110, 617 A.2d 749 (1992) alloc gr 533 Pa. 656, 582 A.2d 322 (1993). Reversed on other grounds 539 Pa. 404, 652 A.2d 1282 (1995). (Defendant need not know victim is a police officer.)

It would appear, therefore, that defendant was not exposed to double jeopardy because of his second trial.

Defendant's motions mentioned that Rexroth was charged as a principal, but conviction was obtained on an accomplice theory. The undersigned is not aware of this issue being raised, but believes it lacks merit. "It is well settled that a defendant may be convicted as an accessory though only charged as a principal." Commonwealth v. Potts, 388 Pa.Super. 593, 293, 566 A.2d 287, 291 (1989) alloc gr 525 Pa. 656, 582 A.2d 322 (1989). Rexroth certainly cannot claim that he was surprised during his second trial, since he had the benefit of hearing essentially all of the Commonwealth's evidence and arguments during the first trial.

The main issue was whether defendant intended to aid Monroe in his retaliation. The evidence was sufficient to allow the jury to make this determination. Rexroth knew that Monroe was angry and said the incident involving the Mexicans was not over. He then drove Monroe to the parking lot under circumstances from which the jury could have concluded that he knew Monroe had obtained a gun for the purpose of wreaking vengeance and was armed.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-549 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of November, 1997, 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 Liberty Township, now Carroll Valley Borough, Adams County, Pennsylvania, being (Lot No. 23) in Section A, bounded and described as follows:

BEGINNING at a point in the center of Fawn Trail; thence in the center of said Fawn Trail North 88 degrees 26 minutes 40 seconds East, 202.34 feet to a point in the center of intersection of said Fawn Trail, with Spring Trail; thence in said Spring Trail South 7 degrees 10 minutes West, 117.34 feet to a point in the center of said Spring Trail at Lot No. 22; thence by said lot South 88 degrees 26 minutes 40 seconds West, 202.34 feet to other land of grantor (Charnita, Inc.); thence by said land North 7 degrees 10 minutes East, 117.34 feet to the place of BEGINNING.

THE above description was taken from a plan of lots labeled "Section A. Charnita" and dated March 10, 1965, prepared by Gordon L. Brown, R.S., recorded in Adams County Miscellaneous Docket 3 at page 733.

BEING Tax Parcel No. 23-104

BEING KNOWN AS 40 SPRING TRAIL, FAIRFIELD, PA

TITLE TO SAID PREMISES IS VESTED IN David H. Landis and Donna J. Landis, his wife by Deed from Harry D. Pitt and Babette Pitt, his wife dated 8-4-1986 and recorded 8-5-1986 in Deed Book 432 Page 1038.

SEIZED and taken into execution as the property of **David H. Landis and Donna J. Deardorff-Landis** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 18, 1997.

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 December 1, 1997, 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.

10/10, 17 & 24

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-296 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of November, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

EXHIBIT A

ALL those two contiguous tracts of land situate in Menallen Township, Adams County Pennsylvania, bounded and described as follows:

Tract No. 1: BEGINNING for a point at an existing steel rod and stones at corner of land now or formerly of Rice and Rice, Inc. and Paul G. Pitzer; thence along said Pitzer's land, North 29 degrees 38 minutes 00 seconds West 165.14 feet to a steel rod set in the center line of an existing 12 ft. wide gravel road; thence in, along and through said 12 ft. wide gravel road, the following four courses and distances: (1) North 63 degrees 20 minutes 50 seconds East 82.22 feet to a spike set in the center line of said road; (2) North 52 degrees 40 minutes 20 seconds East 95.44 feet to a spike in the center line of said road; (3) North 68 degrees 19 minutes 45 seconds East 125.70 feet to a spike set at a point in said road; and (4) South 32 degrees 45 minutes 45 seconds East 333.98 feet to a spike set in the center line of said gravel road at land now or formerly of Rice & Rice, Inc., aforesaid; thence along lands now or formerly of Rice & Rice, Inc., South 89 degrees 23 minutes 40 seconds West 365.29 feet to an existing steel rod and stones, the point and place of BEGINNING. CONTAINING 1.787 acres.

THE foregoing description of Tract No. 1 is identified as Lot No. 2 on a final plan prepared for Roger E. Flickinger by Mark Alan Kuntz, Professional Land Surveyor, dated June 18, 1986, revised on September 14, 1987, which said plan is recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 48 at page 86.

Tract No. 2: BEGINNING at an existing steel rod and stones at corner of land now or formerly of Anthony Showers and land now or formerly of Rice & Rice, Inc.; thence by land now or formerly of Rice & Rice, Inc., South 89 degrees 23 minutes 40 seconds West 154.15 feet to an existing spike in the center line of a gravel drive; thence in the center of said gravel drive, and by Tract No. 1 hereby conveyed, North 32 degrees 45 minutes 45 seconds West, 33.9 feet to a spike in said drive; thence by land now or formerly of Tony R. Flickinger and Rebekah S. Baggett, North 68 degrees 19 minutes 45 seconds East 17.36 feet to a point; thence by land now or formerly of Anthony Showers, South 48 degrees 8 minutes 20 seconds East 428 feet to an existing steel rod and stones along land now or formerly of Rice & Rice, Inc., the place of BEGINNING. CONTAINING 0.576 acre.

THE foregoing description of Tract No. 2 was obtained from a draft of survey made by Mark A. Kuntz, Surveyor, dated March 16, 1990, recorded in the office of the aforesaid Recorder of Deeds in Plat Book 55 at page 91, the tract hereby conveyed being designated as Lot No. 1A on said plan.

BEING the same which Roger E. Flickinger and Catherine Marie Flickinger, by deed dated July 15, 1994, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 913 at page 115, conveyed to Myles F. Eberhart and Pamela F. Eberhart, husband and wife, the Defendants herein.

Tract No. 2 is TOGETHER WITH AND SUBJECT TO the right on the part of Roger E. Flickinger and Catherine M. Flickinger, their heirs and assigns, to use in common with Tony R. Flickinger and Rebekah S. Baggett, their heirs and assigns, the existing private right of way designated as a gravel drive on the aforesaid draft recorded in Plat Book 55 at page 91.

IMPROVED WITH a single-story, brick dwelling with two detached garages.

SEIZED and taken into execution as the property of **Myles F. Eberhart and Pamela A. Eberhart** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 17, 1997.

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 December 8, 1997, 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.

10/10, 17 & 24

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-532 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of November, 1997, 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 Freedom Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a steel pin marking an original corner between land now or formerly of Harry Scott and land now or formerly of Douglas R. Piper and wife; thence by land of Harry Scott, North 39 degrees 44 minutes 58 seconds East, 299.42 feet to a steel pin,; thence by the same and running through a steel pin located 35 feet from the end of this line, South 41 degrees 41 minutes 26 seconds East, 110.38 feet to a railroad spike in the center of Legislative Route 010152; thence continuing in the center of said Legislative Route and by land now or formerly of Douglas R. Piper and wife, South 9 degrees 50 minutes 11 seconds East, 112.94 feet to a railroad spike in the center of said Legislative Route; thence continuing in the center of said Legislative Route, and by land now or formerly of Douglas R. Piper and wife, South 13 degrees 54 minutes 11 seconds East, 80 feet to a railroad spike in the center of said Legislative Route; thence by land now or formerly of Douglas R. Piper and wife and running through a steel pin located 22 feet from the beginning of this line, North 82 degrees 16 minutes 30 seconds West, 306.17 feet to a steel pin, the place of BEGINNING. CONTAINING 1.0075 acres.

THE foregoing description was obtained from a draft of a survey made by Donald E. Worley, Registered Surveyor, dated September 18, 1975.

BEING that which D. Ray Piper, Jr. and Barbara V. Piper, husband and wife, by deed dated September 5, 1989, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 532 at page 866, sold and conveyed unto Thomas Lowman and Dorothy Lowman.

HAVING A DWELLING ERRECTED thereon known as 2011 Pumping Station Road, Gettysburg (Fairfield), Freedom Township, Adams County, Pennsylvania.

BEING THE SAME PREMISES which D. Ray Piper, Jr. and Barbara V. Piper by deed dated September 5, 1989 and recorded in Adams County Record Book 532, Page 866 granted and conveyed unto Thomas Lowman and Dorothy Lowman.

TO BE SOLD AS THE PROPERTY OF THOMAS LOWMAN AND DOROTHY LOWMAN UNDER ADAMS COUNTY JUDGMENT NO. 97-S-532.

PARCEL D16-18

SEIZED and taken into execution as the property of **Thomas Lowman and Dorothy Lowman** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 24, 1997.

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 December 8, 1997, 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.

10/10, 17 & 24

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 GINGER L. BUPP, a/k/a GENEVRA L. BUPP, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Executors: Kevin O. Bupp; Melissa K. (Bupp) Hower
Attorney: David C. Smith, Esquire, 334 Main Street, McSherrystown, PA 17334

ESTATE OF LOUISE MARY MUIR, a/k/a LOUISE M. MUIR, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Executrix: Dorothy C. Oglesby, 7 Lake Shore, Lakehurst, NJ 08733
Attorney: Catherine J. Gault, Esquire, 31 South Washington Street, Gettysburg, PA 17325

ESTATE OF VIOLET C. HUGHES WIDEK, DEC'D
Late of Butler Township, Adams County, Pennsylvania
Executor: Steve M. Ondek, 470 Guernsey Road, Biglerville, PA 17307
Attorney: Pyle and Entwistle, 25 South Washington Street, Gettysburg, PA 17325

ESTATE OF GRACE M. SMITH, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Executor: Kermit J. Smith, 17 Heights Avenue, Hanover, PA 17331
Attorney: Larry W. Wolf, Esquire, 215 Broadway, Hanover, PA 17331

ESTATE OF GOLDIE W. STERNER, a/k/a GOLDIE IRENE STERNER, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Executor: PNC Bank, NA, c/o Paul Ketterman, 10 York Street, Gettysburg, PA 17325
Attorney: Catherine J. Gault, Esquire, 31 South Washington Street, Gettysburg, PA 17325

SECOND PUBLICATION

ESTATE OF HARRY T. BAUMGARDNER, DEC'D
Late of Menallen Township, Adams County, Pennsylvania
Executor: Robert Smith, c/o Marcus A. McKnight III, Esquire, 60 West Pomfret Street, Carlisle, PA 17013
Attorney: Irwin, McKnight & Hughes, 60 West Pomfret Street, Carlisle, PA 17013

ESTATE OF VICTORIA M. BUOHL, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Executrix: Hazel B. Tawney, now Hazel T. Kuykendall, 249 Barlow Street, Gettysburg, PA 17325
Attorney: John R. White, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF VIRGIE V. STONER, DEC'D
Late of Franklin County, Quincy Township, Pennsylvania
Executor: Cleason L. Stoner, Sr., c/o 250 York Street, Hanover, PA 17331
Attorney: Samuel A. Gates

THIRD PUBLICATION

ESTATE OF EUGENE D. HARTMAN, SR. AKA EUGENE D. HARTMAN, DEC'D
Late of Littlestown Borough, Adams County, Pennsylvania
Executor: Eugene D. Hartman, Jr., 210 East King Street, Littlestown, PA 17340
Attorney: Keith R. Nonemaker, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie & Yingst, 40 York Street, Hanover, PA 17331

ESTATE OF CHAD MICHAEL LIVELSBERGER, DEC'D
Late of Berwick Township, Adams County, Pennsylvania
Administrator: Michael R. Livelsberger, 1520 Abbottstown Pike, Hanover, PA 17331
Attorney: Mark David Frankel, Esquire

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-627 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of November, 1997, 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 lying and being in the Borough of Biglerville, Adams County, Pennsylvania, more particularly described in accordance with a final subdivision plan prepared by Boyer Surveys dated February 16, 1990 and recorded in Adams County Plat Book 54 at Page 89, known as Lot No. 1 thereon, and described as follows:

BEGINNING at a chisel mark set on the curb line of Fourth Street at the southern edge of Lot No. 2 as shown on said plan; thence along the southern edge of said Lot No. 2, North 87 degrees 10 minutes 00 seconds East, 130.00 feet to a point at Lot No. 8 as shown on said plan; thence by same, South 2 degrees 50 minutes 00 seconds East, 20.83 feet to a point; thence by same South 83 degrees 22 minutes 15 seconds West, 130.29 feet to a chisel

mark set on the aforesaid curb line; thence along said curb line, North 2 degrees 50 minutes 00 seconds West, 29.46 feet to the chisel mark set at the point and place of BEGINNING. CONTAINING 3,269 square feet, more or less.

HAVING THEREON ERECTED A DWELLING KNOWN AS 20 4TH STREET, BIGLERVILLE, PA.

BEING THE SAME PREMISES WHICH Donald P. Rorick and Mary F. Rorick by deed dated September 30, 1992 and recorded in Adams County Deed Book 643, Page 1068 granted and conveyed unto Darren M. Dutterer and Deana N. Dutterer.

TO BE SOLD AS THE PROPERTY OF DARREN M. DUTTERER AND DEANA N. DUTTERER UNDER ADAMS COUNTY JUDGMENT NO. 96-S-627.

PARCEL: 05-004-0091

SEIZED and taken into execution as the property of **Darren M. Dutterer and Deana N. Dutterer** and to be sold by me
Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 24, 1997.

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 December 8, 1997, 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.

10/10, 17 & 24

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-737 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 31st day of October, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

LOCATION of property: 1 East Locust Lane, New Oxford, PA Parcel 9-27

ALL that certain strip of land lying between the property line of Lot No. 14 owned by Charles Robert Rutter, III and Andrea W. Rutter, husband and wife, and the center line of Legislative Route A-6810 known as Hanover Street (referred to on draft of survey of Oxford Estates prepared by George M. Wildasin, P.E. dated December 4, 1979, subdivided by William E. Sacra, Jr., on the same date, a plat of which is recorded in Adams County Plan Book 34 at page 58, as Legislative Route 01004 and Hanover Road), situate in Oxford Township, Adams County, Pennsylvania.

BEGINNING at a point on the property line of East Locust Lane at a corner of Lot No. 15 on the hereinafter referred to draft of survey; thence along Lot No. 15, South thirty-six (36) degrees fifty (50) minutes twenty-nine (29) seconds East, one hundred seventeen and thirty-three hundredths (117.33) feet to a point; thence South thirty-seven (37) degrees thirteen (13) minutes forty-nine (49) seconds West, one hundred eleven and sixty-four hundredths (111.64) feet to a point in the right-of-way of Legislative Route 01004 (Hanover Road); thence in the right-of-way such Legislative Route, North thirty-six (36) degrees zero (0) minutes zero (0) seconds West, one hundred fifteen (15) feet to a point; thence by a curve to the right, the radius of which is thirty-five (35) feet, an arc length of fifty-four and ninety-eight hundredths (54.98) feet, having a long chord bearing and distance of North nine (9) degrees zero (0) minutes zero (0) seconds East, forty-nine and fifty hundredths (49.50) feet to a proposed monument on the property line of East Locust Lane; thence by same, North fifty-four (54) degrees zero (0) minutes zero (0) seconds East, sixty-five and zero hundredths (65.00) feet to a point; thence by a curve to the left, the radius of which is three hundred twenty-four and one hundred ninety-nine thousandths (324.199) feet, an arc length of five and thirteen hundredths (5.13) feet, having a long chord distance and bearing of North fifty-three (53) degrees thirty-four (34) minutes forty-eight (48) seconds East, five and thirteen hundredths (5.13) feet to a point, the place of Beginning.

CONTAINING 13,895.082 square feet or 0.319 acres.

BEING the same premises which Charles Robert Rutter, III and Andrea W. Rutter, husband and wife, by deed dated February 19, 1988 and recorded in the Recorder of Deeds Office of Adams County, on March 15, 1988 at Record

Book 482, Page 1133, granted and conveyed unto Joseph C. Reilly and Judy E. Knepper.

SEIZED and taken into execution as the property of **Joseph C. Reilly and Judy E. Reilly** and to be sold by me
Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 23, 1997.

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on November 24, 1997, 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.

10/3, 10 & 17

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, October 27, 1997, at 9:00 o'clock a.m.

SPANGLER—Orphans' Court Action Number OC-87-97. The First and Partial Account of Adams County National Bank, Executor of the Will of Amos L. Spangler, deceased, late of Union Township, Adams County, Pennsylvania.

HOCKENSMITH—Orphans' Court Action Number OC-98-97. The First and Final Account of Barbara J. Elkins and Francis E. Hockensmith, Co-Executor of the Estate of Betty J. Hockensmith, deceased, late of the Borough of Littlestown, Adams County, Pennsylvania.

MILLER—Orphans' Court Action Number OC-104-97. The First and Final Account of Donald E. Miller, Executor of the Last Will and Testament of Pauline N. Miller, deceased, late of the Borough of Biglerville, Adams County, Pennsylvania.

WAGNER—Orphans' Court Action Number OC-106-97. The First and Final Account of William J. Groff and Scott R. Bell, Executors of the Estate of Paul I. Wagner, deceased, late of Oxford Township, Adams County, Pennsylvania.

SPEELMAN—Orphans' Court Action Number OC-108-97. The First and Final Account of Linda Speelman, Executrix of the Estate of Luther Junior Speelman

a/k/a Luther J. Speelman, deceased, late of Union Township, Adams County, Pennsylvania.

FUNK—Orphans' Court Action Number OC-110-97. The First and Final Account of Adams County National Bank, Executor of the Estate of Leo J. Funk, deceased, late of Borough of McSherrystown, Adams County, Pennsylvania.

GALLAGHER—Orphans' Court Action Number OC-111-97. The First and Final Account of Ira Ross Linebaugh and Fa. Lucille Linebaugh, Executors of the Last Will and Testament of Eleanor M. Gallagher, deceased, late of Liberty Township, Adams County, Pennsylvania.

MCGLAUGHLIN—Orphans' Court Action Number OC-112-97. The First and Final Account of Guy F. Donaldson, Executor of the Last Will and Testament of Esther B. McLaughlin, deceased, late of Oxford Township, Adams County, Pennsylvania.

CARBAUGH—Orphans' Court Action Number OC-116-97. The First and Final Account of Rose M. Topper, Executrix of the Estate of Charles J. Carbaugh, deceased, late of Oxford Township, Adams County, Pennsylvania.

DAVIS—Orphans' Court Action Number OC-117-97. The First and Final Account of Adams County National Bank, Executor, of the Last Will and Testament of Richard Yohn Davis, deceased, late of Huntingdon Township, Adams County, Pennsylvania.

WAGNER—Orphans' Court Action Number OC-118-97. The First and Final Account of Michael P. Wagner, Executor of the Estate of Mary Bernadine Wagner, deceased, late of the Borough of New Oxford, Adams County, Pennsylvania.

MILHIMES—Orphans' Court Action Number OC-121-97. The First and Final Account of Opal Milhimes and Ronald Milhimes, Executors of the Estate of Marian M. Milhimes, deceased, late of Oxford Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

10/17, 24

Adams County Legal Journal

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October 24, 1997

No. 22, pp. 121-126

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-81 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of November, 1997, 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 Cumberland Township, Adams County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a post on lines of land now or formerly of Charles B. Hartman and Clayton Hartman; thence running by land now or formerly of Clayton Hartman, North 60 $\frac{1}{2}$ degrees East, 232.5 feet to a post; thence running by land of the same, South 38 degrees East, 183.5 feet to a point in a public road; thence running in said public road, South 47 $\frac{1}{2}$ degrees West, 152 feet to another point in said

public road; thence running by land now or formerly of Charles B. Hartman, North 38 $\frac{1}{2}$ degrees West, 138.4 feet to a post; thence by land of the same, South 69 $\frac{1}{2}$ degrees West, 35.5 feet to a post; thence by land of the same, North 64 $\frac{1}{2}$ degrees West, 93 feet to a post, the place of BEGINNING. CONTAINING 127.5 perches.

BEING the same tract of land which Dee B. Surber, now Dee Bedsole Polley and Glenn Richard Polley, her husband, by deed dated August 5, 1994, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 924 at page 83, conveyed to Mark K. Nichols and Jacquelyn L. Nichols, husband and wife, the Defendants herein.

IMPROVED WITH a two-story, single-family dwelling.

SEIZED and taken into execution as the property of **Mark K. Nichols and**

Jacquelyn L. Nichols and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 23, 1997.

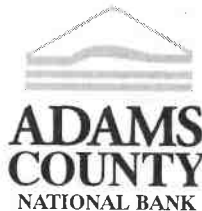
TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on December 1, 1997, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 10 days after the filing thereof. Purchaser 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.

10/10, 17 & 24

Quality Customer Service.
Our promise to you every day.



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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-519 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 5th day of December, 1997, 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 Northern right-of-way of South Lincoln Drive, a 60 feet wide right-of-way, at corner of Lot No. 31, on the subdivision plan hereinafter referred to; thence along the Northern right-of-way line of South Lincoln Drive, by a curve to the right, having a radius of 125 feet the long chord bearing and distance of which is North 20 degrees 17 minutes 46 seconds West 155.14 feet for an arc distance of 167.37 feet to a point at Lot No. 33 on the subdivision plan hereinafter referred to; thence along Lot No. 33, and through the center partition wall of a double dwelling house South 63 degrees 39 minutes 32 seconds East 121.13 feet to a point at Lot No. 30 on the subdivision plan hereinafter referred to; thence along Lots No. 30 and 31, South 30 degrees 49 minutes 03 seconds West, 106.35 feet to a point on the Northern right-of-way line of South Lincoln Drive, the point and place of beginning; containing 9,309 square feet and being Lot No. 32 on 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.

IT BEING THE SAME PREMISES WHICH Constance Anne Mortenson n/k/a Constance Anne Wright and Trent Wright, her husband, by their Deed, dated June 28, 1993, and recorded July 2, 1993, in the Office of Recorder of Deeds in and for Adams County, Pennsylvania, at Deed Book Volume 747, Page 202, granted and conveyed unto Daniel J. Hoke and Angela M. Hoke, his wife.

PARCEL MAP #10-94.

SEIZED and taken into execution as the property of **Daniel J. Hoke and Angela M. Hoke** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
October 7, 1997.

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 December 29, 1997, 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.

10/24 & 11/7 & 14

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-69 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of November, 1997, 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 Hamiltonban Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin in the center of the Waynesboro-Emmetsburg Road, known as Old Highway Route 16; thence along Lot No. 3 of subdivision hereinafter set forth North 36 degrees 55 minutes East 233.4 feet to an iron pin and stones; thence along lands now or formerly of C. A. Wills South 27 degrees 30 minutes East 416.3 feet to an iron pin in the center of said Old Highway Route 16; thence in the center of said Old Highway Route 16 North 61 degrees 20 minutes West 378.7 feet to the place of BEGINNING. CONTAINING 1 acre, more or less.

IT being Lot No. 4 on map of subdivision of property of Mearl B. McCleaf, single man, surveyed and drawn by John H. McClellan, Registered Surveyor, dated August 27, 1955.

BEING the same which Mearl B. McCleaf, single, by deed dated June 18, 1960, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Deed Book 229 at page 226 conveyed to Maurice E. Sites and Lillian M. Sites, husband and wife, the Defendants herein.

IMPROVED WITH a one-story, ranch-style, single-family dwelling with an attached two-car garage.

SEIZED and taken into execution as the property of **Maurice E. Sites and Lillian M. Sites** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 23, 1997.

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 December 1, 1997, 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.

10/10, 17 & 24

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Pennsylvania Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, for the purposes of obtaining a Certificate of Incorporation of a proposed corporation to be organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 144, No. 177, as amended. The name of the corporation is DANWENJES, INC. DBA VILLAGE DRYCLEANERS & MAILROOM.

10/24

CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on October 10, 1997 a Petition For Change of Name was filed by Louise M. Cornbower in the above named Court praying for a decree to change her name from Louise M. Cornbower to Louise M. Elaine.

The Court has fixed November 24, 1997 at 10:30 a.m. in Courtroom No. 1, Adams County Courthouse, 111 Baltimore Street, Gettysburg, PA 17325 as the time and place for the hearing of said Petition which is when and where persons interested may appear and show cause, if any they have, why the prayer of said Petitioner should not be granted.

Bulleit, Schultz & Thrasher
Richard E. Thrasher,
Attorney for Petitioner
16 Lincoln Square
Gettysburg, PA 17325

10/24

ROGERS VS. COOPER

1. A demurrer will only be sustained where the law says with certainty that the plaintiff has failed to state a cause of action for which relief can be granted.

2. The elements of unjust enrichment are described as benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for the defendant to retain the benefit without payment of value.

3. Where unjust enrichment is found, the law implies a contract, referred to either as a quasi contract or a contract implied in law, which requires the defendant to pay the plaintiff the value of the benefit conferred.

4. Where an owner does not contract with a material man the measure of damages is the value of the benefit to the owner and not the value of the invoice submitted.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 96-S-218, WILLIAM C. ROGERS, JR. T/D/B/A R & D STEEL COMPANY VS. MARJORIE COOPER.

Gregory L. Lensbower, Esq., for Plaintiff

Matthew L. Guthrie, Esq., for Defendant

OPINION ON DEFENDANT'S PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT

Kuhn, J., November 1, 1996.

Plaintiff filed an Amended Complaint in which he averred that Defendant owns a barn along York Road in Adams County which she leases to Flo Turner. Ms. Turner allegedly used the barn as an auction barn and as a place to repair furniture. The barn was damaged by fire on October 25, 1995. At Turner's request Plaintiff made repairs to the barn with the cost of labor and materials being \$14,670.00. Turner refused to pay and Plaintiff seeks recovery against Defendant. Defendant filed preliminary objections in the nature of a demurrer alleging that Plaintiff has failed to state a cause of action.

It is well known that a demurrer admits all well pleaded and material facts set forth in a complaint as well as all inferences reasonably deducible therefrom. It does not admit conclusions of law but does test the legal sufficiency of the pleadings. Therefore, the demurrer will only be sustained where the law says with certainty that the plaintiff has failed to state a cause of action for which relief can be granted. *Seils v. Gettysburg Area Industrial Development Authority*, 37 Ad. Co. L.J. 67, 69 (1995).

Plaintiff seeks recovery under a theory of unjust enrichment. It has been stated that,

“Unjust enrichment” is essentially an equitable doctrine...We have described the elements of unjust en-

richment as “benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for the defendant to retain the benefit without payment of value.”...The application of the doctrine depends on the particular factual circumstances of the case at issue. In determining if the doctrine applies, our focus is not on the intention of the parties, but rather on whether the defendant has been unjustly enriched...

The most important factor to be considered in applying the doctrine is whether the enrichment of the defendant is unjust... Where unjust enrichment is found, the law implies a contract, referred to as either a quasi contract or a contract implied in law, which requires the defendant pay to plaintiff the value of the benefit conferred. In short, the defendant makes restitution to the plaintiff in quantum meruit...

Schenck v. K.E. David, Ltd., 446 Pa. Super. 94, 97-8, 666 A.2d 327, 328-9 (1995), Alloc. den. 676 A.2d 1200 (1995). (citations omitted).

The problem with Plaintiff's Amended Complaint is that it fails to aver a factual basis for alleging that the enrichment was unjust. For example, it does not aver that Defendant induced or misled Plaintiff in any way or that Defendant knew of the repairs being made and stood by passively. For this reason the demurrer must be granted.

In passing we will mention a concern regarding the alleged damages. Plaintiff is seeking the amount of his invoices. This is not the measure of damages for unjust enrichment. Where an owner does not contract with a material man the measure of damages is the value of the benefit to the owner not the value of the invoice submitted. *D. A. Hill Company v. CleveTrust Realty Investors*, 524 Pa. 425, 432, 573 A.2d 1005, 1009 (1990).

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 1st day of November, 1996, Defendant's Preliminary Objections To Amended Complaint are granted and Plaintiff's Amended Complaint is dismissed.

Plaintiff is granted 20 days from the date of mailing of this Order to file an amended pleading.

T-WING FARMS, INC. VS. LEDDEN, ET AL

1. Initially it is the function of the Court to determine whether the communication complained of is capable of a defamatory meaning.

2. A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third parties from associating or dealing with him or if it ascribes to another conduct, character or a condition that would adversely affect his fitness for the proper conduct of his proper business, trade or profession.

3. In determining whether the communication is defamatory, the court must consider the effect the statement would fairly produce, or the impression it would naturally engender, in the minds of the average persons among whom it is intended to circulate.

4. While a communication may be deemed capable of defamatory meaning by innuendo even though the words used are not in themselves defamatory, the innuendo must be warranted, justified and supported by the publication.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 95-S-1157, T-WING FARMS, INC. VS. ALAINE LEDDEN, THOMAS LEDDEN, INDIVIDUALLY AND D/B/A STOCKHOLM MOTEL.

James W. Abraham, Esq., for Plaintiff
Barbara Jo Entwistle, Esq., for Defendants

OPINION ON DEFENDANTS' PRELIMINARY OBJECTIONS

Kuhn, J., November 15, 1996.

In this matter Plaintiff, T-Wing Farms, Inc., filed a Complaint against Defendants, Alaine and Thomas Ledden, claiming that they made defamatory statements about Plaintiff. The Complaint attaches as an exhibit an article appearing in the Gettysburg Times on August 8, 1995. That article discusses a Straban Township meeting held the previous day when township residents were discussing a fly infestation problem allegedly emanating from Plaintiff's chicken farm. Alaine Ledden is quoted as having spoken to Plaintiff's President, Mark Stambaugh, and reported "He said, 'They're not T-Wing flies so pick a number and sue me.'" Plaintiff alleges that the same statement was made by Ledden to WGAL-TV.

Plaintiff claims that Ledden's statement is false because she never spoke to Mr. Stambaugh and because the farm is not the source of a fly problem. Plaintiff alleges that as a result of Defendant's statements it has suffered damage.

Defendants filed preliminary objections in the form of a demurrer, a motion for more specific pleading, and a motion to dismiss for failure to join a necessary party.

We recognize that the Courts of this Commonwealth will not lightly sustain a demurrer.

In considering preliminary objections in the nature of a demurrer, the question presented is whether, on the facts averred, the law says with certainty that no recovery is possible...A demurrer admits every well-pleaded material fact set forth in the complaint, as well as all inferences reasonably deducible therefrom, but not conclusions of law...The law does not provide a 'magic formula' to determine sufficiency of a plaintiff's complaint, however, the law is clear that a demurrer can only be sustained in a case free from doubt. . . .

Bartanus v. Lis, 332 Pa. Super. 48, 52, 480
A.2d 1178, 1180 (1984) (citations omitted.)

Our Superior Court has recently recited the law on defamation wherein it said,

In an action for defamation the plaintiff must prove: (1) the defamatory character of the communication; (2) publication by the defendant; (3) its application to the plaintiff; (4) understanding by the recipient of its defamatory meaning; (5) understanding by the recipient of it as intended to be applied to plaintiff; (6) special harm to the plaintiff; (7) abuse of a constitutionally privileged occasion. 42 Pa. C.S. §8343(a) (Purdons 1982). Initially, it is the function of the court to determine whether the communication complained of is capable of a defamatory meaning...A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him...A communication is also defamatory if it ascribes to another conduct, character or a condition that would adversely affect his fitness for the proper conduct of his proper business, trade or profession...If the court determines that the challenged publication is not capable of a defamatory meaning, there is no basis for the matter to proceed to trial; however, if there is an innocent interpretation and an alternate defamatory interpretation, the issue must proceed to the jury...

In determining whether the communication is defamatory, the court must consider the effect the statement would

fairly produce, or the impression it would naturally engender, in the minds of the average persons among whom it is intended to circulate...The words must be given by judges and juries the same significance that other people are likely to attribute to them...Furthermore, the nature of the audience hearing the remarks is a critical factor in determining whether the communication is defamatory...It is also important to note communications which may annoy or embarrass a person are not sufficient as a matter of law to create an action in defamation...

Maier v. Maretti 448 Pa. Super. 276, 282-3, 671 A.2d 701, 704 (1995) (citations omitted).

Keeping this standard in mind we find, as a matter of law, that the statement attributed to Defendant, *Alaine Ledden*, is not capable of a defamatory meaning. Plaintiff contends that the reader of the newspaper article would reasonably infer that Defendant is blaming Plaintiff for the fly problem, that Plaintiff is failing to control the fly problem and that Plaintiff is improperly conducting its farm business. We find no such interpretation when considering the article as a whole.

A review of the newspaper article shows that several persons expressly accused Plaintiff of being the source of the fly infestation problem. It also refers to a lawsuit filed by the township against Plaintiff to alleviate the problem and a threat by private citizens to do the same. In contrast, the statement attributable to Defendant does no more than repeat a corporate officer's alleged denial that Plaintiff is responsible for the problem. At most it demonstrates a flippant attitude toward the issue. The statement may have embarrassed Mr. *Stambaugh*, but it is not reasonable to conclude that it lowered the community's estimation of Plaintiff or deterred others from dealing with Plaintiff.

The Court recognizes that communication may be deemed capable of defamatory meaning by innuendo even though the words used are not in themselves defamatory. *Livingston v. Murray*, 417 Pa. Super. 202, 214, 612 A.2d 443, 449 (1992). However, the innuendo must be warranted, justified and supported by the publication. *Id.* Innuendo cannot be used to enlarge the natural meaning of words and give them some meaning which they will not naturally support. The innuendo suggested by Plaintiff is not supported by the publication. In fact, the statement attributable to Defendant is the only one which suggests Plaintiff is not responsible for the problem.

Because of the conclusion reached, the Court need not address the other issues raised in the preliminary objections.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 15th day of November, 1996, Defendants' preliminary objections in the nature of a demurrer are granted. Plaintiff's Complaint is hereby dismissed.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-549 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of November, 1997, 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 Liberty Township, now Carroll Valley Borough, Adams County, Pennsylvania, being (Lot No. 23) in Section A, bounded and described as follows:

BEGINNING at a point in the center of Fawn Trail; thence in the center of said Fawn Trail North 88 degrees 26 minutes 40 seconds East, 202.34 feet to a point in the center of intersection of said Fawn Trail; with Spring Trail; thence in said Spring Trail South 7 degrees 10 minutes West, 117.34 feet to a point in the center of said Spring Trail at Lot No. 22; thence by said lot South 88 degrees 26 minutes 40 seconds West, 202.34 feet to other land of grantor (Charnita, Inc.); thence by said land North 7 degrees 10 minutes East, 117.34 feet to the place of **BEGINNING**.

THE above description was taken from a plan of lots labeled "Section A. Charnita" and dated March 10, 1965, prepared by Gordon L. Brown, R.S., recorded in Adams County Miscellaneous Docket 31 page 733.

BEING Tax Parcel No. 23-104

BEING KNOWN AS 40 SPRING TRAIL, FAIRFIELD, PA

TITLE TO SAID PREMISES IS VESTED IN David H. Landis and Donna J. Landis, his wife by Deed from Harry D. Pitt and Babette Pitt, his wife dated 8-4-1986 and recorded 8-5-1986 in Deed Book 432 Page 1038.

SEIZED and taken into execution as the property of **David H. Landis and Donna J. Deardorff-Landis** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 18, 1997.

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 December 1, 1997, 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.

10/10, 17 & 24

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-296 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of November, 1997, at 10:00 o'clock in the forenoon at the Courthouse in the Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

EXHIBIT A

ALL those two contiguous tracts of land situate in Menallen Township, Adams County Pennsylvania, bounded and described as follows:

Tract No. 1: BEGINNING for a point at an existing steel rod and stones at corner of land now or formerly of Rice and Rice, Inc. and Paul G. Pitzer; thence along said Pitzer's land, North 29 degrees 38 minutes 00 seconds West 165.14 feet to a steel rod set in the center line of an existing 12 ft. wide gravel road; thence in, along and through said 12 ft. wide gravel road, the following four courses and distances: (1) North 63 degrees 20 minutes 50 seconds East 82.22 feet to a spike set in the center line of said road; (2) North 52 degrees 40 minutes 20 seconds East 95.44 feet to a spike in the center line of said road; (3) North 68 degrees 19 minutes 45 seconds East 125.70 feet to a spike set at a point in said road; and (4) South 32 degrees 45 minutes 45 seconds East 333.98 feet to a spike set in the center line of said gravel road at land now or formerly of Rice & Rice, Inc., aforesaid; thence along lands now or formerly of Rice & Rice, Inc., South 89 degrees 23 minutes 40 seconds West 365.29 feet to an existing steel rod and stones, the point and place of **BEGINNING. CONTAINING 1.787 acres.**

THE foregoing description of Tract No. 1 is identified as Lot No. 2 on a final plan prepared for Roger E. Flickinger by Mark Alan Kuntz, Professional Land Surveyor, dated June 18, 1986, revised on September 14, 1987, which said plan is recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Plat Book 48 at page 86.

Tract No. 2: BEGINNING at an existing steel rod and stones at corner of land now or formerly of Anthony Showers and land now or formerly of Rice & Rice, Inc.; thence by land now or formerly of Rice & Rice, Inc., South 89 degrees 23 minutes 40 seconds West 154.15 feet to an existing spike in the center line of a gravel drive; thence in the center of said gravel drive, and by Tract No. 1 hereby conveyed, North 32 degrees 45 minutes 45 seconds West, 33.9 feet to a spike in said drive; thence by land now or formerly of Tony R. Flickinger and Rebekah S. Baggett, North 68 degrees 19 minutes 45 seconds East 17.36 feet to a point; thence by land now or formerly of Anthony Showers, South 48 degrees 8 minutes 20 seconds East 428 feet to an existing steel rod and stones along land now or formerly of Rice & Rice, Inc., the place of **BEGINNING. CONTAINING 0.576 acre.**

THE foregoing description of Tract No. 2 was obtained from a draft of survey made by Mark A. Kuntz, Surveyor, dated March 16, 1990, recorded in the office of the aforesaid Recorder of Deeds in Plat Book 55 at page 91, the tract hereby conveyed being designated as Lot No. 1A on said plan.

BEING the same which Roger E. Flickinger and Catherine Marie Flickinger, by deed dated July 15, 1994, and recorded in the office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 913 at page 115, conveyed to Myles F. Eberhart and Pamela F. Eberhart, husband and wife, the Defendants herein.

Tract No. 2 is TOGETHER WITH AND SUBJECT TO the right on the part of Roger E. Flickinger and Catherine M. Flickinger, their heirs and assigns, to use in common with Tony R. Flickinger and Rebekah S. Baggett, their heirs and assigns, the existing private right of way designated as a gravel drive on the aforesaid draft recorded in Plat Book 55 at page 91.

IMPROVED WITH a single-story, brick dwelling with two detached garages.

SEIZED and taken into execution as the property of **Myles F. Eberhart and Pamela A. Eberhart** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 17, 1997.

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 December 8, 1997, 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.

10/10, 17 & 24

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 RALPH J. GROUP, DEC'D
Late of Huntingdon Township, Adams County, Pennsylvania
Executors: Roger B. Irwin, Donald A. Group
Attorney: Roger B. Irwin, Esquire, Irwin, McKnight & Hughes, 60 West Pomfret Street, Carlisle, PA 17013

ESTATE OF GARFIELD G. STERNER, DEC'D
Late of Franklin Township, Adams County, Pennsylvania
Executrix: Gladys C. Sterner, P.O. Box 44, 2830 Chambersburg Road, Cashtown, PA 17310
Attorney: Harold A. Eastman, Jr., 16 Lincoln Square, Gettysburg, PA 17325

SECOND PUBLICATION

STATE OF GINGER L. BUPP, a/k/a JENEVRAL L. BUPP, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Executors: Kevin O. Bupp; Melissa K. (Bupp) Hower
Attorney: David C. Smith, Esquire, 334 Main Street, McSherrystown, PA 17334

ESTATE OF LOUISE MARY MUIR, a/k/a LOUISE M. MUIR, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Executrix: Dorothy C. Oglesby, 7 Lake Shore, Lakehurst, NJ 08733
Attorney: Catherine J. Gault, Esquire, 31 South Washington Street, Gettysburg, PA 17325

ESTATE OF VIOLET C. HUGHES ONDEK, DEC'D
Late of Butler Township, Adams County, Pennsylvania
Executor: Steve M. Ondek, 470 Guernsey Road, Biglerville, PA 17307
Attorney: Pyle and Entwistle, 25 South Washington Street, Gettysburg, PA 17325

ESTATE OF GRACE M. SMITH, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Executor: Kermit J. Smith, 17 Heights Avenue, Hanover, PA 17331
Attorney: Larry W. Wolf, Esquire, 215 Broadway, Hanover, PA 17331

ESTATE OF GOLDIE W. STERNER, a/k/a GOLDIE IRENE STERNER, DEC'D
Late of Oxford Township, Adams County, Pennsylvania
Executor: PNC Bank, NA, c/o Paul Ketterman, 10 York Street, Gettysburg, PA 17325
Attorney: Catherine J. Gault, Esquire, 31 South Washington Street, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF HARRY T. BAUM-GARDNER, DEC'D
Late of Menallen Township, Adams County, Pennsylvania
Executor: Robert Smith, c/o Marcus A. McKnight III, Esquire, 60 West Pomfret Street, Carlisle, PA 17013
Attorney: Irwin, McKnight & Hughes, 60 West Pomfret Street, Carlisle, PA 17013

ESTATE OF VICTORIA M. BUOHL, DEC'D
Late of Straban Township, Adams County, Pennsylvania
Executrix: Hazel B. Tawney, now Hazel T. Kuykendall, 249 Barlow Street, Gettysburg, PA 17325
Attorney: John R. White, Campbell & White, 122 Baltimore Street, Gettysburg, PA 17325

ESTATE OF VIRGIE V. STONER, DEC'D
Late of Franklin County, Quincy Township, Pennsylvania
Executor: Cleason L. Stoner, Sr., c/o 250 York Street, Hanover, PA 17331
Attorney: Samuel A. Gates

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-627 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of November, 1997, 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 lying and being in the Borough of Biglerville, Adams County, Pennsylvania, more particularly described in accordance with a final subdivision plan prepared by Boyer Surveys dated February 16, 1990 and recorded in Adams County Plat Book 54 at Page 89, known as Lot No. 1 thereon, and described as follows:

BEGINNING at a chisel mark set on the curb line of Fourth Street at the southern edge of Lot No. 2 as shown on said plan; thence along the southern edge of said Lot No. 2, North 87 degrees 10 minutes 00 seconds East, 130.00 feet to a point at Lot No. 8 as shown on said plan; thence by same, South 2 degrees 50 minutes 00 seconds East, 20.83 feet to a point; thence by same South 83 degrees 22 minutes 15 seconds West, 130.29 feet to a chisel mark set on the aforesaid curb line; thence along said curb line, North 2 degrees 50

minutes 00 seconds West, 29.46 feet to the chisel mark set at the point and place of BEGINNING. CONTAINING 3,269 square feet, more or less.

HAVING THEREON ERECTED A DWELLING KNOWN AS 20 4TH STREET, BIGLERVILLE, PA.

BEING THE SAME PREMISES WHICH Donald P. Rorick and Mary F. Florick by deed dated September 30, 1992 and recorded in Adams County Deed Book 643, Page 1068 granted and conveyed unto Darren M. Dutterer and Deana N. Dutterer.

TO BE SOLD AS THE PROPERTY OF DARREN M. DUTTERER AND DEANA N. DUTTERER UNDER ADAMS COUNTY JUDGMENT NO. 96-S-627.

PARCEL: 05-004-0091

SEIZED and taken into execution as the property of **Darren M. Dutterer and Deana N. Dutterer** and to be sold by me
Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 24, 1997.

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 December 8, 1997, 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.

10/10, 17 & 24

NOTICE

ADAMS COUNTY TAX CLAIM BUREAU HEREBY GIVES notice that it presented a Consolidated Return of Sale to the Court of Common Pleas of Adams County, Pennsylvania on October 9, 1997, of the Sale of Real Estate for delinquent taxes made September 12, 1997. The Consolidated Return of Sale was confirmed nisi on October 14, 1997. Objections or exceptions thereto may be filed by any owner or lien creditor within thirty (30) days after the Court has made a confirmation nisi of the Consolidated Return or Return the Return will be confirmed absolutely.

Adams County Tax Claim Bureau
Danielle Asper, Director

10/21

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-532 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of November, 1997, 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 Freedom Township, Adams County, Pennsylvania, bounded and described as follows:

BEGINNING at a steel pin marking an original corner between land now or formerly of Harry Scott and land now or formerly of Douglas R. Piper and wife; thence by land of Harry Scott, North 39 degrees 44 minutes 58 seconds East, 299.42 feet to a steel pin.; thence by the same and running through a steel pin located 35 feet from the end of this line, South 41 degrees 41 minutes 26 seconds East, 110.38 feet to a railroad spike in the center of Legislative Route 010152; thence continuing in the center of said Legislative Route and by land now or formerly of Douglas R. Piper and wife, South 9 degrees 50 minutes 11 seconds East, 112.94 feet to a railroad spike in the center of said Legislative Route; thence continuing in the center of said Legislative Route, and by land now or formerly of Douglas R. Piper and wife, South 13 degrees 54 minutes 11 seconds East, 80 feet to a railroad spike in the center of said Legislative Route; thence by land now or formerly of Douglas R. Piper and wife and running through a steel pin located 22 feet from the beginning of this line, North 82 degrees 16 minutes 30 seconds West, 306.17 feet to a steel pin, the place of BEGINNING. CONTAINING 1.0075 acres.

THE foregoing description was obtained from a draft of a survey made by Donald E. Worley, Registered Surveyor, dated September 18, 1975.

BEING that which D. Ray Piper, Jr. and Barbara V. Piper, husband and wife, by deed dated September 5, 1989, and recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania, in Record Book 532 at page 866, sold and conveyed unto Thomas Lowman and Dorothy Lowman.

HAVING A DWELLING ERECTED thereon known as 2011 Pumping Station Road, Gettysburg (Fairfield), Freedom Township, Adams County, Pennsylvania.

BEING THE SAME PREMISES which D. Ray Piper, Jr. and Barbara V. Piper by deed dated September 5, 1989 and recorded in Adams County Record Book 532, Page 866 granted and conveyed unto Thomas Lowman and Dorothy Lowman.

TO BE SOLD AS THE PROPERTY OF THOMAS LOWMAN AND DOROTHY LOWMAN UNDER ADAMS COUNTY JUDGMENT NO. 97-S-532.

PARCEL D16-18

SEIZED and taken into execution as the property of **Thomas Lowman and Dorothy Lowman** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
September 24, 1997.

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 December 8, 1997, 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.

10/10, 17 & 24

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, October 27, 1997, at 9:00 o'clock a.m.

SPANGLER—Orphans' Court Action Number OC-87-97. The First and Partial Account of Adams County National Bank, Executor of the Will of Amos L. Spangler, deceased, late of Union Township, Adams County, Pennsylvania.

HOCKENSMITH—Orphans' Court Action Number OC-98-97. The First and Final Account of Barbara J. Elkins and Francis E. Hockensmith, Co-Executor of the Estate of Betty J. Hockensmith, deceased, late of the Borough of Littlestown, Adams County, Pennsylvania.

MILLER—Orphans' Court Action Number OC-104-97. The First and Final Account of Donald E. Miller, Executor of the Last Will and Testament of Pauline N. Miller, deceased, late of the Borough of Biglerville, Adams County, Pennsylvania.

WAGNER—Orphans' Court Action Number OC-106-97. The First and Final Account of William J. Groft and Scott R. Bell, Executors of the Estate of Paul I. Wagner, deceased, late of Oxford Township, Adams County, Pennsylvania.

SPEELMAN—Orphans' Court Action Number OC-108-97. The First and Final Account of Linda Speelman, Executrix of the Estate of Luther Junior Speelman a/k/a Luther J. Speelman, deceased, late of Union Township, Adams County, Pennsylvania.

FUNK—Orphans' Court Action Number OC-110-97. The First and Final Account of Adams County National Bank, Executor of the Estate of Leo J. Funk, deceased, late of Borough of McSherrystown, Adams County, Pennsylvania.

GALLAGHER—Orphans' Court Action Number OC-111-97. The First and Final Account of Ira Ross Linebaugh and Faith Lucille Linebaugh, Executors of the Last Will and Testament of Eleanor M. Gallagher, deceased, late of Liberty Township, Adams County, Pennsylvania.

MCGLAUGHLIN—Orphans' Court Action Number OC-112-97. The First and Final Account of Guy F. Donaldson, Executor of the Last Will and Testament of Esther B. McLaughlin, deceased, late of Oxford Township, Adams County, Pennsylvania.

CARBAUGH—Orphans' Court Action Number OC-116-97. The First and Final Account of Rose M. Topper, Executrix of the Estate of Charles J. Carbaugh, deceased, late of Oxford Township, Adams County, Pennsylvania.

DAVIS—Orphans' Court Action Number OC-117-97. The First and Final Account of Adams County National Bank Executor, of the Last Will and Testament of Richard Yohn Davis, deceased, late of Huntington Township, Adams County, Pennsylvania.

WAGNER—Orphans' Court Action Number OC-118-97. The First and Final Account of Michael P. Wagner, Executor of the Estate of Mary Bernadine Wagner, deceased, late of the Borough of New Oxford, Adams County, Pennsylvania.

MILHIMES—Orphans' Court Action Number OC-121-97. The First and Final Account of Opal Milhimes and Ronald Milhimes, Executors of the Estate of Marian M. Milhimes, deceased, late of Oxford Township, Adams County, Pennsylvania.

Peggy J. Breighner
Clerk of Courts

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



Member FDIC

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 97-S-519 issuing out of the Court of Common Pleas of Adams County, and to me directed, will be exposed to Public Sale on Friday, the 5th day of December, 1997, 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 Northern right-of-way of South Lincoln Drive, a 60 feet wide right-of-way, at corner of Lot No. 31, on the subdivision plan hereinafter referred to; thence along the Northern right-of-way line of South Lincoln Drive, by a curve to the right, having a radius of 125 feet the long chord bearing and distance of which is North 20 degrees 17 minutes 46 seconds West 155.14 feet for an arc distance of 167.37 feet to a point at Lot No. 33 on the subdivision plan hereinafter referred to; thence along Lot No. 33, and through the center partition wall of a double dwelling house South 63 degrees 39 minutes 32 seconds East 121.13 feet to a point at Lot No. 30 on the subdivision plan hereinafter referred to; thence along Lots No. 30 and 31, South 30 degrees 49 minutes 03 seconds West, 106.35 feet to a point on the Northern right-of-way line of South Lincoln Drive, the point and place of beginning; containing 9,309 square feet and being Lot No. 32 on 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.

IT BEING THE SAME PREMISES WHICH Constance Anne Mortenson n/k/a Constance Anne Wright and Trent Wright, her husband, by their Deed, dated June 28, 1993, and recorded July 2, 1993, in the Office of Recorder of Deeds in and for Adams County, Pennsylvania, at Deed Book Volume 747, Page 202, granted and conveyed unto Daniel J. Hoke and Angela M. Hoke, his wife.

PARCEL MAP #10-94.

SEIZED and taken into execution as the property of **Daniel J. Hoke and Angela M. Hoke** and to be sold by me

Bernard V. Miller
Sheriff

Sheriff's Office, Gettysburg, PA
October 7, 1997.

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 December 29, 1997, 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.

10/24, 31 & 11/7

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 September 22, 1997, 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 TOP TO BOTTOM, INC.

The purpose for which the corporation has been organized is: property cleaning and maintenance. 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.

Top To Bottom, INC.
233 Baltimore Street
Gettysburg, PA 17325

10/31

H & S SUPPLY, INC. VS. WILLIAMS

1. If the facts as pleaded state a claim for which relief may be granted *under any theory of law* then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected.

2. Normally, the court has wide discretion in determining whether an allegation is a conclusion of law or an averment of fact.

3. The absence in a contract of an express declaration of intention to benefit a third party may be overlooked if circumstances are so compelling that recognition of the beneficiary's rights is appropriate to effectuate the intention of the parties and performance satisfies the promisee's obligations.

4. The essential elements of unjust enrichment involve the following: (1) benefits conferred on defendant by plaintiff, (2) appreciation of such benefits by Defendant and; (3) acceptance and retention of the benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value.

In the Court of Common Pleas, Adams County, Pennsylvania, Civil No. 96-S-370, H & S SUPPLY, INC. VS. DAVID D. WILLIAMS AND KATHY A. WILLIAMS AND BANK OF HANOVER AND TRUST COMPANY.

Bernard A. Yannetti, Jr., Esq. for Plaintiff
Steven P. Miner, Esq., for Defendant

OPINION ON PRELIMINARY OBJECTIONS

Spicer, P.J., November 22, 1996.

For purposes of convenience, we will refer to David D. Williams and Kathy A. Williams as "Williams," and Bank of Hanover and Trust Company as "Bank."

Plaintiff, a Pennsylvania business corporation, filed its complaint September 6, 1996, alleging that Williams contracted with Richard E. Simpson to construct a residence on Williams' land. Simpson is said to have "entered an agreement, on behalf of" Williams for plaintiff to supply heating, air conditioning, plumbing and electrical supplies. ¶6. Plaintiff says it provided material and has not been paid. Simpson has filed for bankruptcy.

Bank was the construction lender. Plaintiff avers that it has demanded payment for material delivered but that both Bank and Williams refuse to pay. Plaintiff further alleges that the benefit conferred upon defendants is more than the value of invoices submitted, and demands judgment for \$13,779.78.

Plaintiff premises its action against Williams on a theory of unjust enrichment and asks that the court impose a constructive trust. It bases its suit against Bank on unjust enrichment and negligence. It alleges

that “[p]laintiff was misled by Defendant Bank in that Defendant Bank breached its fiduciary duty by failing to insure material suppliers were compensated by the Contractor,” ¶42. Paragraph 43 alleges that plaintiff relied on the bank to perform its fiduciary duties.

Although numerous copies of invoices are attached to the complaint as exhibits, no copies of agreements appear. All invoices were issued in the name of “Richard Simpson,” or “Richard E. Simpson, Builder.”

Both Williams and Bank have filed preliminary objections in the nature of demurrers. The standard by which such objections are judged has been stated as follows (all citations are omitted in the body of the quote):

A demurrer can only be sustained where the complaint is clearly insufficient to establish the pleader’s right to relief...For the purpose of testing the legal sufficiency of the challenged pleading a preliminary objection in the nature of a demurrer admits as true all well-pleaded material, relevant facts...and every inference fairly deducible from those facts...The pleader’s conclusions or averments of law are not to be considered to be admitted as true by a demurrer...Since the sustaining of a demurrer results in the denial of the pleader’s claim or a dismissal of his suit, a preliminary objection in the nature of a demurrer should be sustained only in cases that clearly and without doubt fail to state a claim for which relief may be granted...If the facts as pleaded state a claim for which relief may be granted under any theory of law then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected.

McClellan v. Health Maintenance Organization of Pennsylvania, 413 Pa.Super. 128, 134, 604 A.2d 1053, 1056 (1992) alloc dn 532 Pa. 664, 616 A.2d 985 (1992), quoting various cases. See also *Scarpitti v. Weborg*, 530 Pa. 366, 609 A.2d 147 (1992).

Since we have quoted from the *McClellan* case, we think it appropriate to point out that, in that case, Superior Court held that allegations of agency were admitted by a demurrer. However, the opinion indicates that sufficient facts were pleaded to justify that determination. Normally, the court has wide discretion in determining whether an allegation is a conclusion of law or an averment of fact. 2 Goodrich Amram 2d §1019(a):8.

Plaintiff has not said Simpson acted as agent for Williams, only that he purchased material on their behalf. This may be interpreted in many ways, we suppose, but a general contractor builds, and can be said to act, for the owner who hires him. It is not benefit that determines the relationship, but the right of control. Plaintiff has alleged that Simpson was a general contractor and we do not read ¶16 as factually averring a relationship of principal-agent. The statement is not supported by any allegations which would make that construction reasonable.

We also point out that plaintiff's failure to identify contracts as written gives rise to the inference they were oral. *id.*, §1019(h):3.

Ruling on the objections will require us to proceed through the complaint and consider allegations in light of the theories advanced by plaintiff.

With respect to Bank, we deal with negligence and unjust enrichment. Pertinent allegations begin in ¶30 and continue thereafter. Plaintiff states that Bank had a duty to pay Simpson only after completion of certain tasks, and to inspect the property before each construction draw to ensure that improvements were completed and in compliance with building and zoning codes. As we have previously stated, ¶42 alleges that plaintiff was misled by Bank's failure to comply with its fiduciary duty to see that suppliers were paid by Simpson.

Traditional elements of negligence apply, which are duty, breach, causation and damages. *Cost v. Cost*, 450 Pa.Super. 685, 677 A.2d 1250 (1996). That case dealt with a suit by a spouse who signed an indemnification and release in a business buy out and was instituted against an attorney who handled the transaction. The spouse sued in negligence and saw her complaint dismissed on demurrer. Superior Court held that the complaint failed to recite facts from which could be inferred a reasonable belief that the attorney was representing her during the deal.

Elements of negligent malpractice may differ somewhat from the case at bar, but duty is still the crucial element. There is nothing in the complaint which justifies a finding that Bank undertook an obligation to safeguard plaintiff's interests, nor any facts from which it can be determined that it would have been reasonable for plaintiff to believe the bank had undertaken such responsibility. Although plaintiff alleges the existence of a duty, it has not said from where that duty arises and this court can find no such source.

Normally, there is no duty between a construction lender and a supplier. Supreme Court has offered the following, concerning unjust enrichment:

There is no evidence of record that CleveTrust either requested anything from the subcontractors or misled anyone; in fact, it did nothing more than exercise its rights under the construction loan agreement to discontinue construction installment payments and foreclose on the property. The subcontractors in this case voluntarily waived their rights to mechanics' liens and went forward without being protected by a performance bond. These decisions were business calculations which carried a certain amount of risk. It would be manifestly unfair for this Court to restructure these contractual arrangements in such a way as to place all of the risk on CleveTrust, thus insulating the subcontractors from any responsibility for their own decisions and making CleveTrust, in effect, the insurer of the subcontractors' interests.

D.A. Hill Co. v. CleveTrust Realty, 524 Pa. 425, 433, 573 A.2d 1005, 1010 (1990).

Although plaintiff has alleged that it was misled by Bank's failure to discharge fiduciary duties, it has said nothing about representations or requests that were made by Bank. Plaintiff, as the subcontractors did in CleveTrust, may have assumed its interests would be protected by Bank and may have been both surprised and disappointed when this did not occur. However, it has alleged nothing to make such expectation grow into a legal duty. Supreme Court has held that more is required than reliance upon a duty assumed to exist. Present allegations, standing alone, are insufficient to impose a duty on Bank, and must look elsewhere to see if such a duty was established contractually.

There are a few hints in the complaint that the construction loan agreement was in writing, but nothing definite appears. This puts plaintiff in the unenviable and, perhaps untenable position of arguing that an oral contract, the terms of which are only sketchily alleged, meets requirements established by our appellate courts.

Generally, parties to an agreement must express an intention to benefit a third party and the intention must affirmatively appear in the contract. There is a two part test: First, recognition of the beneficiary's right must be appropriate to effectuate the intention of the parties and, second, the performance must satisfy the promisee's obligation to pay

money to the beneficiary or give the beneficiary the benefit of the promised performance. The absence of an express declaration of intention to benefit a third party may be overlooked if circumstances are so compelling that recognition of the beneficiary's rights is appropriate to effectuate the intention of the parties and performance satisfies the promisee's obligations. *Scarpitti v. Weborg*, supra.; *Fran and John's Auto Center v. Allstate*, 432 Pa.Super. 449, 638 A.2d 1023 (1994). Generally, as was pointed out in *D.A. Hill Co. v. CleveTrust Realty*, supra., subcontractors must rely on mechanics' liens and performance bonds to protect their economic interests. A performance bond, or suretyship agreement, is in fact a three party contract where an obligation to pay is expressly undertaken by a surety. *General Equipment v. Westfield Insurance Co.*, 430 Pa.Super. 526, 635 A.2d 173 (1993) alloc dn 537 Pa. 663, 644 A.2d 1200 (1993).

It is clear that circumstances in this case are not so compelling as to justify third party beneficiary status. Plaintiff may occupy that position only if both parties to the contract expressed an intention to benefit plaintiff. See *Torchia v. Keystone Foods Corporation*, 431 Pa.Super. 83, 635 A.2d 1082 (1993) alloc dn 537 Pa. 666, 644 A.2d 1203 (1993).

Generally, it is the duty of the court to interpret contracts. *Bamber v. Lumbermens Mutual Casualty Co.*, ___ Pa.Super. ___, 680 A.2d 901 (1996). However, the complaint contains no language, only conclusions about Bank's duties. The fact that Bank was to inspect the property before releasing funds may show an intent to protect the mortgagor. It does not show an intent to benefit plaintiff. In short, there are no allegations which would justify finding an expressed intention that Bank pay subcontractors to satisfy Simpson's obligations to those persons.

Much of what we have said also applies to Williams.

The essential elements of unjust enrichment involved the following: (1) benefits conferred on defendant by plaintiff, (2) appreciation of such benefits by defendant and; (3) acceptance and retention of the benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value. *Burgettstown-Smith v. Langeloth*, 403 Pa.Super. 84, 588 A.2d 43 (1991). A constructive trust is an equitable remedy to prevent unjust enrichment. *Robbins v. Kristofic*, 434 Pa.Super. 392, 643 A.2d 1079 (1994) alloc dn 539 Pa. 654, 651 A.2d 541 (1994).

In essence, the complaint alleges the following: a) Williams and Simpson entered into a construction agreement; b) Simpson procured

material from plaintiff without paying; 3) Simpson used the material in constructing Williams' house and; 4) Simpson has declared bankruptcy.

The situation may be unfortunate, from plaintiff's standpoint, but hardly rise to unjust enrichment. Bankruptcy may diminish plaintiff's expectations of payment, but does not discharge Williams' duty to pay whatever might still be owing on the contract. Williams could not sue plaintiff for faulty installation or construction by Simpson.

In short, we conclude that plaintiff's situation is no different than that described in *D.A. Hill Co. v CleveTrust*, supra. However, in the event plaintiff may allege specific contractual provisions to support its arguments, we will allow an opportunity to amend.

ORDER

AND NOW, this 22nd day of November, 1996, preliminary objections are sustained. The complaint shall be dismissed unless plaintiff files amendments within the next twenty (20) days. Plaintiff may also file an amended complaint within that same time period.

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 BEVERLY E. HARNER, DEC'D

Late of Mount Pleasant Township, Adams County, Pennsylvania
 Administrator: William R. Harner, 723 White Hall Road, Littlestown, PA 17340

Attorney: Bernard A. Yannetti, Jr., Esquire, Hartman & Yannetti Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF PAMELA JEAN MILLER, DEC'D

Late of New Oxford, Adams County, Pennsylvania

Administrator: Jerry Morningstar, 2995 Fifth Avenue, York, PA 17430
 Attorney: John James Mooney, III, Esquire, Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF RICHARD L. VITEK, JR., DEC'D

Late of the Borough of Fairfield, Pennsylvania

Executor: Richard L. Vitek, Sr., 6 Skyline Trail, Fairfield, PA 17320

Attorney: Matthew R. Battersby, Esquire, 20 West Main Street, P.O. Box 215, Fairfield, PA 17320

ESTATE OF PAULINE F. WILDASIN, DEC'D

Late of the Borough of Abbottstown, Adams County, Pennsylvania

Executor: George Morrell Wildasin, 371 West High Street, Abbottstown, PA 17301

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

ESTATE OF MELBA B. WOJTKOWIAK, DEC'D

Late of Mount Joy Township, Adams County, Pennsylvania

Executors: Raymond A. Wojtkowiak, 560 Dellinger Road, Mt. Wolf, PA 17347; Jesse D. Wojtkowiak, 1299 Harney Road, Littlestown, PA 17340

Attorney: Keith R. Nonemaker, Esquire, Rudisill, Guthrie, Nonemaker, Guthrie, & Yingst, 40 York Street, Hanover, PA 17331

SECOND PUBLICATION

ESTATE OF RALPH J. GROUP, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executors: Roger B. Irwin; Donald A. Group

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

ESTATE OF GARFIELD G. STERNER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Gladys C. Sterner, P.O. Box 44, 2830 Chambersburg Road, Cashtown, PA 17310

Attorney: Harold A. Eastman, Jr., 16 Lincoln Square, Gettysburg, PA 17325

THIRD PUBLICATION

ESTATE OF GINGER L. BUPP, a/k/a GENEVRA L. BUPP, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executors: Kevin O. Bupp; Melissa K. (Bupp) Hower

Attorney: David C. Smith, Esquire, 334 Main Street, McSherrystown, PA 17334

ESTATE OF LOUISE MARY MUIR, a/k/a LOUISE M. MUIR, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Dorothy C. Oglesby, 7 Lake Shore, Lakehurst, NJ 08733

Attorney: Catherine J. Gault, Esquire, 31 South Washington Street, Gettysburg, PA 17325

ESTATE OF VIOLET C. HUGHES ONDEK, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executor: Steve M. Ondek, 470 Guernsey Road, Biglerville, PA 17307

Attorney: Pyle and Entwistle, 25 South Washington Street, Gettysburg, PA 17325

ESTATE OF GRACE M. SMITH, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Kermit J. Smith, 17 Heights Avenue, Hanover, PA 17331

Attorney: Larry W. Wolf, Esquire, 215 Broadway, Hanover, PA 17331

ESTATE OF GOLDIE W. STERNER, a/k/a GOLDIE IRENE STERNER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: PNC Bank, NA, c/o Paul Ketterman, 10 York Street, Gettysburg, PA 17325

Attorney: Catherine J. Gault, Esquire, 31 South Washington Street, Gettysburg, PA 17325

