Northampton County Reporter

(USPS 395-280)

VOL. LIX EASTON, PA August 4, 2016 NO. 31

Robert J. Dronebarger, Jr. and Kathleen Dronebarger, Plaintiffs v. Michael Yaworski and Cecelia Yaworski, Defendants

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INSERT: Pink: 1. 2016 Bench Bar Conference
2. 2016 Calendar
3. "Bipartisan Budget Act of 2015 and the Important Update to Social Security Claiming Strategies"
4. Quarterly Association Meeting

NOTICE TO THE BAR...

NCBA Quarterly Association Meeting
Thursday, September 15, 2016
Registration form inside.

* * * * * * * *

NCBA Annual Memorial Service
Tuesday, September 20, 2016, Courtroom #1

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The Northampton County Reporter will be published every Thursday by the Northampton County Bar Association, 155 South Ninth St., Easton, PA 18042-4399. All legal notices relating to the business of the county, are required by rule of Court, to be published in this Journal. All legal notices must be submitted in typewritten form and are published exactly as submitted by the advertiser. Neither the Law Reporter nor the printer will assume any responsibility to edit, make spelling corrections, eliminate errors in grammar or make any changes to content.

Subscription Price—$75.00 per year.

Periodical Postage Paid at Easton, PA and additional office.

Postmaster: Send all communications and address changes to:

NORTHAMPTON COUNTY REPORTER
155 South Ninth St., Easton, PA 18042-4399
Telephone (610) 258-6333 FAX (610) 258-8715
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Editor

NOTICE TO NCBA MEMBERS – BAR NEWS

Annual Memorial Service—Tuesday, September 20, 2016
Courtroom #1, N.C. Courthouse
Frank Skrapits, Thomas Maloney, Samuel Litzenberger, William Exaros.

2016 Bench Bar Conference
October 6-8, 2016
Hyatt Regency, Chesapeake Bay Golf Resort, Spa and Marina
Cambridge, Maryland.

Barristers Boast
Have you received an honor or award for community work? Do you have a new grandchild? Have you heard good news about one of your NCBA colleagues that should be shared?
Good news items about fellow members should be sent to: marybeth@norcobar.org.

How come we choose from just two people to run for president and 50 for Miss America? ~ Author unknown

ESTATE AND TRUST 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. Notice is also hereby given of the existence of the trusts of the deceased settlors set forth below for whom no personal representatives have been appointed within 90 days of death. All persons having claims or demands against said estates or trusts are requested to make known the same, and all persons indebted to said estates or trusts are requested to make payment, without delay, to the executors or administrators or trustees or to their attorneys named below.

FIRST PUBLICATION

BRYFOGLE, MITZI M., dec'd.
Late of the Borough of Nazareth, Northampton County, PA
Executor: Eric J. Bryfogle c/o Theresa Hogan, Esquire, Attorney-at-Law, 340 Spring Garden Street, Easton, PA 18042
Attorney: Theresa Hogan, Esquire, Attorney-at-Law, 340 Spring Garden Street, Easton, PA 18042

CUMMINGS, MARY LOU, dec'd.
Late of Bethlehem, Northampton County, PA
Personal Representatives: Pamela L. Cummings and Matthew G. Cummings c/o Kirby G. Upright, Esquire, King Spry Herman Freund & Faul LLC, One West Broad Street, Suite 700, Bethlehem, PA 18018
Attorneys: Kirby G. Upright, Esquire, King Spry Herman Freund & Faul LLC, One West Broad Street, Suite 700, Bethlehem, PA 18018

IMBODY, JEANETTE R., dec'd.
Late of the Borough of Nazareth, Northampton County, PA
Executor: Robert C. Miller a/k/a Robert Clarence Miller
Attorneys: Gladys E. Wiles, Esquire, Snyder & Wiles, P.C., 7731 Main Street, Fogelsville, PA 18051

McCANN, ROBERT M., dec'd.
Late of Northampton County, PA
Revocable Trust of Robert M. McCann dated 12/04/2003 as amended
Settlor: Robert M. McCann
Successor Co-Trustees: Ann L. McCann and W. Tyler McCann c/o Fitzpatrick Lentz & Bubba, P.C., 4001 Schoolhouse Lane, P.O. Box 219, Center Valley, PA 18034-0219
Attorneys: Fitzpatrick Lentz & Bubba, P.C., 4001 Schoolhouse Lane, P.O. Box 219, Center Valley, PA 18034-0219

PUNTURO, ROSEMARY, dec'd.
Late of the Borough of Bangor, Northampton County, PA
Executrix: Loretta Schiavone, c/o David J. Ceraul, Esquire, 22 Market Street, P.O. Box 19, Bangor, PA 18013-0019
Attorney: David J. Ceraul, Esquire, 22 Market Street, P.O. Box 19, Bangor, PA 18013-0019

ROGERS, MARJORIE A., dec'd.
Late of the Borough of Freemansburg, Northampton County, PA
Executor: Kelly B. Rogers, 244 Main Street, Freemansburg, PA 18017

ZAVECZ, WILLIAM R., dec'd.
Late of Bethlehem, Northampton County, PA

Executrix: Helen A. Kocsi c/o Wendy A. Nicolosi, Esquire, Broughal & DeVito, L.L.P., 38 West Market Street, Bethlehem, PA 18018
Attorneys: Wendy A. Nicolosi, Esquire, Broughal & DeVito, L.L.P., 38 West Market Street, Bethlehem, PA 18018

SECOND PUBLICATION

ALTMAN, HARVEY, dec'd.
Late of the Township of Upper Mount Bethel, Northampton County, PA
Administrators: Linda Laviano Gardner and Trent Daniel Laviano c/o Trent D. Laviano, Esquire, P.O. Box 10654, Knoxville, TN 37939
Attorney: Trent D. Laviano, Esquire, P.O. Box 10654, Knoxville, TN 37939

BUSSE, EDITH, dec'd.
Late of Bethlehem, Northampton County, PA
Administrator: Wilfried M. Busse c/o Roth Law Firm, 123 North Fifth Street, Allentown, PA 18102
Attorneys: Roth Law Firm, 123 North Fifth Street, Allentown, PA 18102

DelVILLAGGIO, JOHN C., dec'd.
Late of Bethlehem, Northampton County, PA
Executor: Carl P. DelVillaggio c/o Robert B. Roth, Esquire, The Roth Law Firm, 123 North Fifth Street, Allentown, PA 18102
Attorneys: Robert B. Roth, Esquire, The Roth Law Firm, 123 North Fifth Street, Allentown, PA 18102

DOUGHERTY, THOMAS B., dec'd.
Late of Walnutport, Northampton County, PA
Executrices: Rosemary Kern, 855 South Lincoln Avenue, Walnutport, PA 18088 and Kathleen M. Knecht, 534 Third Street, Apt. 603, Catasauqua, PA 18032
Attorneys: Stephen A. Strack, Esquire, Steckel and Stopp, 125 S. Walnut Street, Suite 210, Slatington, PA 18080

DRAKE, CAROLYN L., dec'd.
Late of Williams Twp., Northampton County, PA
Administratrix: Carlee L. Stackhouse, 240 Moyers Ln., Easton, PA 18042
Attorneys: John R. Zonarich, Esquire, Skarlatos Zonarich LLC, 17 S. 2nd St., 6th Fl., Harrisburg, PA 17101

GARDELLA, MARY J., dec'd.
Late of the Township of Moore, Northampton County, PA
Executor: Joe E. Holdren, 560 Bridgewater Avenue, Bridgewater, NJ 08807
Attorney: Daniel G. Spengler, Esquire, 110 East Main Street, Bath, PA 18014

HAY, ELMER J., JR., dec'd.
Late of the City of Easton, Northampton County, PA
Administrator C.T.A.: Jeffrey J. Hay c/o Robert C. Brown, Jr., Esquire, Fox, Oldt & Brown, 940 West Lafayette Street, Suite 100, Easton, PA 18042-1412
Attorneys: Robert C. Brown, Jr., Esquire, Fox, Oldt & Brown, 940 West Lafayette Street, Suite 100, Easton, PA 18042-1412

INDERELST, ARTHUR F., dec'd.
Late of Palmer Twp., Northampton County, PA
Executor: John N. Inderelst c/o John H. Potts, Esquire, 200

Eagle Rd., Ste. 106, Wayne, PA 19087
Attorney: John H. Potts, Esquire, 200 Eagle Rd., Bldg. 2, Ste. 106, Wayne, PA 19087

MERTZ, MELISSA S., dec'd.
Late of the City of Easton, Northampton County, PA
Administratrix: Tammy L. Mertz c/o Ralph J. Bellafatto, Esquire, 4480 William Penn Highway, Easton, PA 18045
Attorney: Ralph J. Bellafatto, Esquire, 4480 William Penn Highway, Easton, PA 18045

MYCHAJLIW, EUGENE J. a/k/a EUGENE JAROSLOW MYCHAJLIW a/k/a EUGENE MYCHAJLIW, dec'd.
Late of Bethlehem Twp., Northampton County, PA
Executor: Borys J. Mychajliw, 178 Ranch Road, Newtown, PA 18940
Attorney: William S. Ravenell, Esquire, 166 Allendale Road, King of Prussia, PA 19406

RESZEK, HELEN, dec'd.
Late of Upper Nazareth Township, Northampton County, PA
Executor: Edward H. Butz, Esquire, 7535 Windsor Drive, Suite 200, Allentown, PA 18195
Attorney: Edward H. Butz, Esquire, 7535 Windsor Drive, Suite 200, Allentown, PA 18195

RUSLING, WILLIAM E., dec'd.
Late of the City of Bethlehem, Northampton County, PA
Executor: Robert H. Littner, 512 North New Street, Bethlehem, PA 18018
Attorneys: Robert V. Littner, Esquire, Littner, Deschler & Littner, 512 North New Street, Bethlehem, PA 18018

SURMA, WILLIAM R., dec'd.
Late of the Borough of Nazareth, Northampton County, PA
Executrix: Lisa S. Borick c/o Daniel E. Cohen, Attorney, Seidel, Cohen, Hof & Reid, L.L.C., 3101 Emrick Blvd., Suite 205, Bethlehem, PA 18020
Attorneys: Daniel E. Cohen, Attorney, Seidel, Cohen, Hof & Reid, L.L.C., 3101 Emrick Blvd., Suite 205, Bethlehem, PA 18020

THOMPSON, DONNA J., dec'd.
Late of the Township of Lower Nazareth, Northampton County, PA
Executor: Jodey R. Thompson c/o Daniel E. Cohen, Attorney, Seidel, Cohen, Hof & Reid, L.L.C., 3101 Emrick Blvd., Suite 205, Bethlehem, PA 18020
Attorneys: Daniel E. Cohen, Attorney, Seidel, Cohen, Hof & Reid, L.L.C., 3101 Emrick Blvd., Suite 205, Bethlehem, PA 18020

WALKER, LOIS C., dec'd.
Late of Moore Township, Northampton County, PA
Executrix: Susan Carol Walker c/o Law Offices of Lawrence B. Fox, P.C., 1834 Pennsylvania Avenue, Hanover Township, Allentown, PA 18109
Attorneys: Law Offices of Lawrence B. Fox, P.C., 1834 Pennsylvania Avenue, Hanover Township, Allentown, PA 18109

YENCHO, GREGORY J., dec'd.
Late of the City of Bethlehem, Northampton County, PA
Administrator: Richard R. Dancho c/o Kevin F. Danyi,

Esquire, Danyi Law Offices, P.C., 133 East Broad Street, Bethlehem, PA 18018
Attorneys: Kevin F. Danyi, Esquire, Danyi Law Offices, P.C., 133 East Broad Street, Bethlehem, PA 18018

THIRD PUBLICATION

COONEY, JAMES R., JR. a/k/a JAMES R. COONEY, dec'd.
Late of Hellertown, Northampton County, PA
Administratrix: Julie A. Cooney, 23 Hess Ave., Hellertown, PA 18055
Attorneys: John R. K. Solt, Esquire, John R. K. Solt, P.C., 2045 Westgate Dr., Suite 404B, Bethlehem, PA 18017

HAJDINYAK, ANNA G., dec'd.
Late of the Township of Forks, Northampton County, PA
Executor: Joseph Panaccio c/o Herster, Newton & Murphy, 127 N. 4th St., P.O. Box 1087, Easton, PA 18044-1087
Attorneys: Herster, Newton & Murphy, 127 N. 4th St., P.O. Box 1087, Easton, PA 18044-1087

JENNINGS, DEAN CHARLES, dec'd.
Late of the Borough of Roseto, Northampton County, PA
Administrator: Chad M. DiFelice c/o Gary Neil Asteak, Esquire, 726 Walnut Street, Easton, PA 18042
Attorney: Gary Neil Asteak, Esquire, 726 Walnut Street, Easton, PA 18042

MEZA, PETER, dec'd.
Late of Bethlehem, Northampton County, PA
Executor: James Meza c/o Douglas J. Tkacik, Esquire, 18 East Market Street, P.O. Box 30, Bethlehem, PA 18016-0030
Attorney: Douglas J. Tkacik, Esquire, 18 East Market Street, P.O. Box 30, Bethlehem, PA 18016-0030

NICOLO, RAFFAELA C., dec'd.
Late of Bethlehem, Northampton County, PA
Executor: Samuel A. Ninfo c/o Sabetti Law Offices, 224 West Broad Street, Bethlehem, PA 18018
Attorney: Daniel P. Sabetti, Esquire, 224 West Broad Street, Bethlehem, PA 18018

PADEN, WILLARD W., dec'd.
Late of the City of Bethlehem, Northampton County, PA
Executrix: Christine L. Paden, 1125 Wood Street, Bethlehem, PA 18018
Attorney: James J. Holzinger, Esquire, 1216 Linden Street, P.O. Box 1409, Bethlehem, PA 18016

PFEIFFER, BETTY JANE, dec'd.
Late of Plainfield Township, Northampton County, PA
Executrix: Linda L. Garvey c/o Ralph J. Bellafatto, Esquire, 4480 William Penn Highway, Easton, PA 18045
Attorney: Ralph J. Bellafatto, Esquire, 4480 William Penn Highway, Easton, PA 18045

SNYDER, DONALD J., dec'd.
Late of Easton, Northampton County, PA
Administratrix: Wendy L. Zeller, 3105 Heatherton Dr., Aston, PA 19014
Attorney: Steven B. Molder, Esquire, 904 Lehigh Street, Easton, PA 18042

NOTICES OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth for:

COLOR FOR KIDS, INC.

The corporation had been incorporated under the Pennsylvania Nonprofit Corporation Law of 1988 as amended.

McFALL, LAYMAN & JORDAN, P.C.
134 Broadway
Bangor, PA 18013

Aug. 4

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed on July 18, 2016, in the Pennsylvania Department of State for:

ROCK ISLAND TRANSPORT, INC.

in accordance with the provisions of the Pennsylvania Business Corporation Law of 1988.

DANIEL E. COHEN, ATTORNEY
SEIDEL, COHEN HOF
& REID, L.L.C.
3101 Emrick Boulevard
Suite 205
Bethlehem, PA 18020

Aug. 4

FICTITIOUS NAME REGISTRATION NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Act No. 295 of 1982 of intention to file, or the fling of, in the Office of the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, a certificate for the conduct of a business in Pennsylvania, under the assumed or fictitious name, style or designation of:

GROW LOVE

with its principal place of business at: 2572 Mountain Road, Bath, Pennsylvania 18014. The names of the persons owning or interested in said business are Christopher Thomas and Amelia Thomas. The certificate has been/will be filed on (or after) July 28, 2016.

Aug. 4

LIMITED LIABILITY COMPANY NOTICE

NOTICE IS HEREBY GIVEN that a Certificate of Organization for a Domestic Limited Liability Company has been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on July 25, 2016 for the purposes of obtaining a Certificate of Organization of a proposed domestic limited liability company to be organized under the provisions of the Pennsylvania Limited Liability Company Law of 1994, 15 Pa. C.S. §8901 et seq. and any successor statute, as amended from time to time.

The name of the limited liability company is:

KRAEMER ELECTRIC LLC

Alfred S. Pierce, Esquire
Pierce & Steirer, LLC
124 Belvidere Street
Nazareth, PA 18064

Aug. 4

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

City of Easton
vs.
Jackie Ann Savage, Executrix
of the Estate of
John E. Savage, Jr., Deceased
NO. C-48-CV-2009-0716

NOTICE IS HEREBY GIVEN that the above was named as Defendant in a civil action instituted by plaintiff. This is an action to recover delinquent water, sewer and trash fees for the years 2006-2007, for the property located at 48 N. Delaware Drive,

Easton, Pennsylvania, Tax Parcel No. L9NE3B 8 9. A municipal claim in the amount of $722.63 was filed on or about January 27, 2009 for this claim and a Writ of Scire Facias was filed.

You are hereby notified to plead to the writ in this case, on or before 20 days from the date of this publication or a Judgement will be entered.

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered without further notice for the relief requested by the plaintiff. You may lose property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Lawyer Referral Service
P.O. Box 4733
Easton, PA 18043-4733
(610) 258-6333

PORTNOFF LAW ASSOCIATES, LTD.
P.O. Box 391
Norristown, PA 19404-0391
(866) 211-9466

July 21, 28; Aug. 4

IN THE COURT OF COMMON PLEAS, NORTHAMPTON COUNTY
CIVIL ACTION—LAW
NOTICE OF ACTION IN MORTGAGE FORECLOSURE
Nationstar Mortgage LLC d/b/a Champion Mortgage Company
Plaintiff
vs.
The Unknown Heirs of Janet Ann Miller, Deceased, Mortgagor and Real Owner,
Defendant(s)
NO. C-48-CV-2016-5535

To: The Unknown Heirs of Janet Ann Miller, Deceased, Mortgagor and Real Owner, Defendant(s), whose last known address is 616 Washington Avenue, Northampton, PA 18067

This firm is a debt collector and we are attempting to collect a debt owed to our client. Any information obtained from you will be used for the purpose of collecting the debt. You are hereby notified that Plaintiff, Nationstar Mortgage LLC d/b/a Champion Mortgage Company, has filed a Mortgage Foreclosure Complaint endorsed with a notice to defend against you in the Court of Common Pleas of Northampton County, Pennsylvania, docketed to No. C-48-CV-2016-5535, wherein Plaintiff seeks to foreclose on the mortgage secured on your property located, 616 Washington Avenue, Northampton, PA 18067, whereupon your property will be sold by the Sheriff of Northampton County. Notice: You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after the Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot

afford one, go to or telephone the office set forth below. This office can provide you with information about hiring a lawyer. If you cannot afford to hire a lawyer, this office may be able to provide you with information about agencies that may offer legal services to eligible persons at a reduced fee or no fee.

Lehigh Valley Legal Services
65 E. Elizabeth Ave.
Ste. 903
Bethlehem, PA 18018
(610) 317-8757

MICHAEL T. McKEEVER, ESQUIRE
KML LAW GROUP, P.C.
Attys. for Plaintiff
Mellon Independence Center
701 Market St.
Ste. 5000
Philadelphia, PA 19106-1532
(215) 627-1322

Aug. 4

PUBLIC NOTICE
U.S. BANKRUPTCY JUDGESHIP VACANCY
MIDDLE DISTRICT OF PENNSYLVANIA

Chief Judge Theodore A. McKee of the United States Court of Appeals for the Third Circuit announces the application process for a bankruptcy judgeship in the Middle District of Pennsylvania, seated in Harrisburg. A bankruptcy judge is appointed to a 14-year term pursuant to 28 U.S.C. §152.

To be qualified for appointment an applicant must:

(a) Be a member in good standing of the bar of the highest court of at least one state, the District of Columbia, or the Commonwealth of Puerto Rico and a member in good standing of every other bar of which they are members.

(b) (1) Possess, and have a reputation for, integrity and good character; (2) possess, and have demonstrated, a commitment to equal justice under the law; (3) possess, and have demonstrated, outstanding legal ability and competence; (4) indicate by demeanor, character, and personality that the applicant would exhibit judicial temperament if appointed; and (5) be of sound physical and mental health sufficient to perform the essential duties of the office.

(c) Not be related by blood or marriage to (1) a judge of the United States Court of Appeals for the Third Circuit; (2) a member of the Judicial Council of the Third Circuit; or (3) a judge of the district court to be served, within the degrees specified in 28 U.S.C. §458, at the time of the initial appointment.

(d) Have been engaged in the active practice of law for a period of at least five years. The Judicial Council may consider other suitable legal experience as a substitute for the active practice of law.

The selection process will be confidential and competitive. The annual salary for this position will be $186,852. Persons shall be considered without regard to race, color, age, gender, religion, national origin, disability or religious

affiliation. The name of the candidate selected for the position will be published for public comment prior to appointment. The name of the person selected will also be submitted to the Director of the Administrative Office, who shall request background reports by the Federal Bureau of Investigation (FBI) and the Internal Revenue Service (IRS).

The application process is entirely automated. No paper applications will be accepted. Applications must be submitted electronically by **Friday, August 12, 2016.** Applications must be submitted only by the potential nominee personally, indicating the person's willingness to serve if selected. The individual selected must comply with the financial disclosure requirements pursuant to the Ethics in Government Act of 1978, Pub. L. No. 95-521, 92 Stat. 1824 (1978) (codified as amended at 5 U.S.C. app. §§101-111).

To apply, go to www.ca3.uscourts.gov for more information or call the Circuit Executive's Office at (215) 597-0718.

July 21, 28; Aug. 4

ROBERT J. DRONEBARGER, JR. and KATHLEEN DRONEBARGER, Plaintiffs v. MICHAEL YAWORSKI and CECELIA YAWORSKI, Defendants

Preliminary Objections—Demurrer—Easement—Maintenance—Improvement.

Servient landowner Plaintiffs filed a Complaint against dominant landowner Defendants bringing claims of intentional wrongful conduct, negligence, fraud and deceit and damage to real property in connection with allegations that Defendants, as holders of an easement across Plaintiffs' land for ingress and egress to and from their own property and as the parties responsible for maintaining the same, had wrongfully paved the route, thereby damaging and diminishing the value of Plaintiffs' land. Defendants filed preliminary objections to the Complaint. By the first of their preliminary objections, Defendants asserted a demurrer to the Complaint alleging Plaintiffs' failure to state a cause of action. Defendants based their objection on an assertion that their paving of the route was properly undertaken pursuant to their duty to maintain it. Upon consideration, the Court, citing to case law suggesting that the paving undertaken by Defendants was not maintenance, but an unauthorized improvement to the land, overruled the demurrer,

Finally, the Defendants alleged that Plaintiffs' damages were not sufficiently pled. Noting that items of special damage must be specifically pled, and further noting that the Complaint set forth the specific bases of all damages claimed but did not set forth a specific dollar amount in connection with such damages due to the unavailability of estimates at the time the pleading was filed, the Court concluded that Defendants had been put on fair notice of Plaintiffs' damage claims, and it overruled the objection.

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—No. C-0048-CV-2015-9358.

Richard Pepper, Esquire, for Plaintiffs.

Gary Asteak, Esquire, for Defendants.

Order of Court entered on December 23, 2015 by Dally, J.

ORDER

AND NOW, this 23rd day of December 2015, the Preliminary Objections of Defendants Michael and Cecelia Yaworski are hereby OVERRULED, as set forth more fully in the attached Statement of Reasons.

STATEMENT OF REASONS

Procedural History

Plaintiffs Robert J. and Kathleen Dronebarger ("Plaintiffs") commenced the instant action against Defendants Michael and Cecelia Yaworski ("Defendants") on October 8, 2015 with the filing of a Complaint setting forth claims for Intentional Wrongful Conduct; Negligence; Fraud and Deceit; and Damage to Real Property. In furtherance of these claims, Plaintiffs aver that they and Defendants are the owners of adjoining real properties situate in the 2400 block of Northwood Avenue in Easton, Northamp-

ton County. Complaint, ¶¶1-5. Plaintiffs further aver that from October 13, 1965 forward, Plaintiffs' property has been subject to a recorded right-of-way inuring to the benefit of Defendants for the purposes of "ingress, egress and regress." Complaint, ¶6. Additionally, Plaintiffs aver that "[a]t all times prior to August 6, 2015, the said right-of-way ... was an unimproved gravel pathway across Plaintiff's [sic] lawn ... ." Complaint, ¶8. Plaintiffs also aver that "[a]t no time have the Defendants ever had any legal authority to modify or change the said gravel right-of-way over the land of Plaintiffs," but since 2012 on, Defendants had repeatedly sought Plaintiffs' consent to excavate and pave the right-of-way, which Plaintiffs consistently declined. Complaint, ¶¶9-11. However, Plaintiffs aver that notwithstanding Plaintiffs' lack of consent and Defendants' lack of authority, "on or about August 6, 2015 the Defendants secretly and surreptitiously engaged the services of a professional contractor to execute, construct and install a paved driveway from the street across the lawn of the Plaintiffs to the property of the Defendants." Complaint, ¶16. Finally, Plaintiffs aver that upon the discovery of the same, Plaintiff Kathy Dronebarger confronted Defendant Cecelia Yaworski about the unlawfully constructed driveway, and that by way of response, "Defendant Cecelia Yaworski acknowledged that she had in fact hired such a contractor and did, in fact, have the paved driveway excavated and installed across the Plaintiffs' property and that she offered no excuse or explanation for it." Complaint, ¶19.

On November 4, 2015, Defendants responded to the Complaint by the filing of preliminary objections and a brief in support of the same. Plaintiffs filed a brief in opposition to the preliminary objections on December 7, 2015, and they came before the undersigned via the Argument Court list of December 9, 2015. They are now ready for disposition.

Standard of Law

Pennsylvania Rule of Civil Procedure 1028 provides that "any party to any pleading" may file preliminary objections thereto. Pa. R.C.P. 1028(a). Such objections shall be limited to an assertion as to the lack of personal or subject matter jurisdiction; failure of a pleading to conform to rule of law of court; the inclusion of scandalous or impertinent matter; insufficient specificity of the pleading; the legal insufficiency of the pleading; lack of capacity to sue; failure to adhere to joinder rules; failure to exhaust statutory remedies; availability of non-statutory remedies and the pendency of a separate action or an alternative resolution to the dispute. Pa. R.C.P. 1028(a)(1)-(8).

"It is well-established that in the review of preliminary objections, the facts that are well-pleaded, material, and relevant will be considered as true, together with such reasonable inferences as may be drawn from such facts." *Mellon Bank, N.A. v. Fabinyi,* 437 Pa. Super. 559, 567, 650 A.2d 895, 899 (1994). Where the disposition of preliminary objections could

result in the dismissal of a claim, they should only be sustained in cases that are "clear and free from doubt." *Bower v. Bower,* 531 Pa. 54, 57, 611 A.2d 181, 182 (1992). A case is clear and free from doubt where it is plain from "all of the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish his right to relief." *Id.*

Discussion

Defendants raise two preliminary objections, the first of which is in the form of a demurrer to the Complaint in its entirety. As the basis for the demurrer, Defendants point to the language of the recorded right-of-way, attached to the Complaint as "Exhibit A." The recorded right-of-way appended to the Complaint, is made between Dennis and Barbara Montague, as owners of the property now owned by Plaintiffs, to William and Anna Salosky, granting them: "[t]he free and uninterrupted use, liberty and privilege of, and passage in and along" the right-of-way, "[t]ogether with free ingress, egress and regress to [the Grantees]," and extending the same to "their purchaser or purchasers of each lot, their heirs, assigns, tenants, occupiers or possessors, of the ground contiguous on the South to the said passageway at all times and seasons forever hereafter into, along and upon and out of said passageway ... ." Complaint, Exhibit A. The recorded right-of-way further provides that "[i]t is agreed that William D. Salosky and Anna M. Salosky, his wife, or their purchaser ... heirs and assigns shall have the duty to maintain the said passageway as a passageway in the event of use by the said William D. Salosky and Anna M. Salosky, his wife, or their purchaser ... heirs and assigns." *Id.* Based upon their duty to maintain the right-of-way pursuant to the recorded instrument, Defendants argue that they cannot be held liable to Plaintiffs for any fraud or other bad act as a result of the paving that they undertook on August 6, 2015.

In support of their position, Defendants cite to a case decided by the Bucks County Court of Common Pleas in 1956, *Oughton v. Continental Associates, Inc.,* 20 D. & C.2d 551 (Pa. Com. Pl. Bucks Co. 1956). As Plaintiffs properly note, the issue in *Oughton* was the servient landowner's right to payment by the dominant landowner for the repaving of a previously blacktopped driveway which the dominant landowner had a duty to repair. In denying the servient landowner's request for contribution, the court stated that "[c]hanges in the physical nature of an easement of passage by the *dominant* owner without the consent of the servient owner, as by paving or other improvement, may or may not amount to a violation of the user depending upon considerations of reasonableness and necessity." *Id.* at 555. Briefly noting case law involving similar matters, the court went on to dismiss them summarily by noting that "none of them involved the ... question [raised in Oughton ...] of liability to reimburse for extraordinary and unusual improvements by one party *without the consent of the other and of questioned necessity*." *Id.* (emphasis added). Ultimately, the court

determined that the repaving of the drive constituted a "substantial improvement ... rather than a mere preservation" of the easement to keep it "in good order and repair." *Id.* at 560.

It is thus clear that to the extent *Oughton* is persuasive in the instant case, it militates against Defendants' demurrer. Rather than supporting any right by Defendants to pave the roadway across Plaintiffs' lawn as a means of maintaining it, *Oughton* suggests that such an undertaking amounted to an unpermitted improvement. Further, the law is clear that:

> The right of an easement owner and the right of the landowner are not absolute, irrelative, and uncontrolled, but are so limited, each by the other, that there may be a due and reasonable enjoyment of both; nothing passes, except what is requisite to its fair enjoyment. The owner of a dominant estate, therefore, may not exercise the rights granted to him or her without regard to the rights of the servient owner. Thus, if an easement is used for any purpose inconsistent with that for which it is granted, the grantee becomes a trespasser to the extent of the unauthorized use.

7 Summ. Pa. Jur. 2d Property §18:5 (2d ed.).

In light of the foregoing, the Court, taking into account the plain language of the written easement upon which Plaintiffs' claims are based, and taking the averments of the Complaint as true, hereby OVERRULES Defendants' demurrer.

The final preliminary objection for the Court's consideration is addressed to the alleged insufficient specificity of Plaintiffs' statement of damages.

> Pursuant to Pa. R.C.P. No. 1019(f), averments of time, place and *items of special damages* must be specifically stated. (Emphasis added.) Damages are either general or special. General damages are those that are the usual and ordinary consequences of the wrong done. Fort Washington Res., Inc. v. Tannen, 901 F.Supp. 932 (E.D.Pa.1995); Parsons Trading Co. v. Dohan, 312 Pa. 464, 167 A. 310 (1933). Special damages are those that are not the usual and ordinary consequences of the wrong done but which depend on special circumstances. *Id*. General damages may be proven without specifically pleading them; however, special damages may not be proved unless special facts giving rise to them are averred. Laing v. Colder, 8 Pa. 479 (1848); Boden v. Gen. Tel. Co., 32 Som. 128 (Pa.Com.Pl.1975).

Hooker v. State Farm Fire and Casualty Company, 880 A.2d 70, 77 (Pa. Commw. 2005) (emphasis in original).

In their Complaint, Plaintiffs allege that:

> 20. By reason of the foregoing wrongful and intentional conduct on the part of the Defendants, the Plaintiffs are in-

formed and believe they have suffered and incurred and will continue to suffer and incur damages, losses, costs and expenses including but not being limited to the following:

a. the costs and expense of retaining professional contractors to excavate, demolish and entirely remove the unlawful driveway of the Defendants from their lawn;

b. the costs and expense of retaining professional landscape contractors to restore their property to its former condition, if possible;

c. the costs and expense of securing the required permits and municipal authorizations to excavate, remove and dispose of the unlawful driveway of the Defendants;

d. the employment of legal counsel.

21. In addition to the aforesaid losses, damages, costs and expenses, the Plaintiffs are informed and believe that by reason of the foregoing unlawful conduct of the Defendants, the value of the Plaintiffs' land has been materially diminished.

22. The aforesaid costs, losses, damages and expenses are not presently capable of exact calculation but are reasonably expected to exceed the limits of compulsory arbitration.

Complaint, ¶¶20-22. On these averments, Plaintiffs seek judgment in excess of Fifty Thousand Dollars ($50,000.00) plus costs, counsel fees and all other relief to which they are legally entitled.

By the foregoing averments, Plaintiffs have clearly specified their items of alleged damage, leaving only the dollar amounts of such damage unknown, but estimating the same to be in excess of Fifty Thousand Dollars ($50,000.00). Defendants are thereby put on notice that Plaintiffs are seeking recompense for the restoration of their land to its prior condition, and for the alleged diminution in the value of the land as a result of Defendants' actions. Plaintiffs having very specifically pled their items of damage to the extent that they are presently known, the Court hereby OVERRULES Defendants' preliminary objection alleging their insufficient specificity.

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