

Northampton County Reporter

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Northampton County Reporter Digest—2003-12

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The Northampton County Court Announces Dates and Times for Swearing-In Ceremonies

The Northampton County Court is pleased to announce the Swearing-In Ceremony for District Attorney John Morganelli and his staff, County Controller John Schimmel, incumbent and newly elected district justices and county council members will be held on **Monday, January 5, 2004 at 1:30 p.m. in Courtroom No. 1.**

In addition, please note that the **Induction Ceremony of the Hon. Emil A. Giordano** as Judge of the Northampton County Court of Common Pleas will be held on **Wednesday, January 21, 2004 at 2:00 p.m. in Courtroom No. 1.**

**NORTHAMPTON COUNTY BAR ASSOCIATION
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Northampton County Reporter
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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.

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Robert C. Brown, Jr., Esquire
Editor

NOTICES TO NCBA MEMBERS—BAR NEWS

☞ **CHECK OUT THE SWEARING-IN SCHEDULE ON THE FRONT PAGE!**

LEGAL NOTICES DEADLINE FOR CHRISTMAS: The deadline for receiving Legal Notices for the December 25th issue of the Reporter is NOON on Friday, December 19, 2003.

LEGAL NOTICES DEADLINE FOR NEW YEAR'S: The deadline for receiving Legal Notices for the January 1, 2004 issue of the Reporter is 10:00 A.M. on Monday, December 29, 2003.

NCBA OFFICE WILL BE CLOSED December 25th & 26th for the Christmas Holiday and January 1st for New Year's Day. The NCBA Office will close at NOON on Wednesday, December 24th and NOON on Wednesday, December 31st.

INCLUDED IN THIS ISSUE is the 2004 Northampton Court of Common Pleas Court Calendar.

INCLUDED IN THIS ISSUE is the list of 2004 NCBA Officers & Board of Governors.

ANNOUNCEMENTS & REGISTRATION FORMS:

January 16th—*SKI DAY* at Blue Mountain with Bar Association of Lehigh Valley

January 22nd—Annual Association Meeting & Program (TBA)

February 19th—Lunch/Lecture “Environmental Law as it relates to Real Estate”

March 26th—Reception for the Court—Silver Creek Country Club

◆PBI/CLE SEMINAR @ NCBA◆

March 3, 2004—“Trial Preparation: The 100 Day Countdown”—9:30 a.m. to 5:30 p.m.—6/0 CLE Credits. Register early by calling (800) 932-4637 or go online at www.pbi.org

BAR ASSOCIATION OF LEHIGH COUNTY (BALC)

SPONSORED SEMINARS FOR 2004:

[**January 21st**—“U.S. Patriot Act: A Constitutional Overview”] [**January 22nd** “Alternate Dispute Resolution”] [**January 28th** “DUI Law Update”] The above seminars are all from 12:00 Noon to 1:30 p.m. *Lunch included.* Call BALC for details and/or to register at (610) 433-6401, Ext. 16. ◆Please note that the December 18th seminar “U.S. Patriot Act” has been rescheduled to January 21st.

NORTHAMPTON COUNTY COURT OF COMMON PLEAS

HOLIDAY COURT SCHEDULE

☞ **December 24, 2003:** The Courthouse *will be open until NOON.* Morning motions will be heard.

☞ **December 26, 2003:** The Courthouse *will be open* and normal motions schedule will occur.

☞ **December 29, 2003:** Miscellaneous Court is scheduled on this date.

☞ **December 31, 2003:** The Courthouse *will be open* and normal motions schedule will occur.

☞ **January 2, 2004:** The Courthouse *will be open* and normal motions schedule will occur.

ESTATE NOTICES

Notice is hereby given that in the estate 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**BARTLETT, CLAUDIA JESSUP**

a/k/a CLAUDIA J. BARTLETT, dec'd.

Late of Nazareth, Northampton County, PA

Co-Executors: James Theodore Bartlett, 13515 Shaker Blvd., Apt. B, Cleveland, OH 44120 and Marjorie Bartlett Hill, P.O. Box 13, Wheeler, OR 97147

Attorneys: Peters, Moritz, Peischl, Zulick & Landes, LLP, 1 South Main Street, Nazareth, PA 18064

JONES, EVELYN L., dec'd.

Late of Bethlehem Township, Northampton County, PA

Co-Executors: Samuel K. Jones and Kermit J. Jones c/o Jon A. Swartz, Esquire, Joseph J. Plunkett, P.C., 2030 Tilghman Street, Suite 202, Allentown, PA 18104-4354

Attorneys: Jon A. Swartz, Esquire, Joseph J. Plunkett, P.C., 2030 Tilghman Street, Suite 202, Allentown, PA 18104-4354

POKOTELLO, DOROTHY, dec'd.

Late of the Township of Moore, Northampton County, PA

Executrix: Samantha Schmoeyer, 6456 Locust Road, Bath, PA 18014

Attorney: Daniel G. Spengler, Esquire, 110 East Main Street, Bath, PA 18014

REIS, RACHAEL H. a/k/a R.H.

REIS a/k/a RACHAEL REIS, dec'd.

Late of the Township of Lower Saucon, Northampton County, PA

Executor: Edward W. Adams c/o Michael E. Riskin, Esquire, Riskin and Riskin, 18 E. Market St., P.O. Box 1446, Bethlehem, PA 18016-1446

Attorneys: Michael E. Riskin, Esquire, Riskin and Riskin, 18 E. Market St., P.O. Box 1446, Bethlehem, PA 18016-1446

SCHMELL, BERTRAM G., dec'd.

Late of the Township of Hanover, Northampton County, PA

Executor: Robert L. Schmell c/o William P. Leeson, Esquire, Leeson, Leeson & Leeson, 70 E. Broad Street, P.O. Box 1426, Bethlehem, PA 18016-1426

Attorneys: William P. Leeson, Esquire, Leeson, Leeson & Leeson, 70 E. Broad Street, P.O. Box 1426, Bethlehem, PA 18016-1426

SMOTHERS, MARJORIE, dec'd.

Late of the City of Bethlehem, Northampton County, PA

Co-Executors: John E. Smothers and Bonnie Smothers Tohid c/o Kevin Frank Danyi, Esquire, Danyi Law Offices, P.C., 133 East Broad Street, Bethlehem, PA 18018

Attorneys: Kevin Frank Danyi, Esquire, Danyi Law Offices,

P.C., 133 East Broad Street,
Bethlehem, PA 18018

**WILLIAMSON, LUCENA B.
a/k/a LUCENA WILLIAM-
SON**, dec'd.

Late of 7925 Valley View Road,
East Allen Township, North-
ampton County, PA

Co-Executors: Bruce D. Wil-
liamson, 134 East Elm Street,
Allentown, PA 18109 and
Wayne D. Williamson, 5179
Hillside Road, Northampton,
PA 18067

Attorneys: Edward A. Fedok,
Esquire, Stevens & Lee, 190
Brodhead Road, Suite 200,
P.O. Box 20830, Lehigh Val-
ley, PA 18002-0830

ZEMBA, DANIEL L., dec'd.

Late of Bethlehem, Northamp-
ton County, PA

Executrix: Nancy Zemba, c/o
Thomas C. Anewalt, Esquire,
McCarthy & Anewalt, LLP,
1248 Hamilton Street, Allentown,
PA 18102

Attorneys: Thomas C. Ane-
walt, Esquire, McCarthy &
Anewalt, LLP, 1248 Hamilton
Street, Allentown, PA 18102

SECOND PUBLICATION

AZZOLINA, CAROLINE B.,
dec'd.

Late of the City of Easton,
Northampton County, PA

Administratrix: Jennie Reda,
344 Thomas Street, Phillips-
burg, NJ 08865

Attorney: Samuel P. Murray,
Esquire, 720 Washington
Street, Easton, PA 18042

CALLAHAN, ADELAIDE, dec'd.

Late of the Township of Wash-
ington, Northampton County,
PA

Executrix: Joan Levinskas 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

ERTLE, MARIE J., dec'd.

Late of Bethlehem Township,
Northampton County, PA

Executor: Ronald P. Ertle c/o
John W. Rybak, Esquire,
Rybak & Rybak, 408 Adams
Street, Bethlehem, PA 18105

Attorneys: John W. Rybak,
Esquire, Rybak & Rybak, 408
Adams Street, Bethlehem, PA
18105

HUTH, ELSIE S., dec'd.

Late of the Township of Upper
Nazareth, Northampton
County, PA

Co-Executors: Ethel M.
Florey, 2949 Bath Pike, Naza-
reth, PA 18064, Kenneth W.
Huth, 3090 Oakland Road,
Bethlehem, PA 18020 and May
A. Rice, a/k/a May R. Dud-
ding, 4411 Hillendale Road,
Bangor, PA 18013

Attorney: Daniel G. Spengler,
Esquire, 110 East Main
Street, Bath, PA 18014

MORGAN, SANDRA L., dec'd.

Late of the City of Bethlehem,
Northampton County, PA

Executrix: Gwyndlyn Long
c/o John J. Bartos, Esquire,
3976 Township Line Road,
Bethlehem, PA 18020

Attorney: John J. Bartos, Es-
quire, 3976 Township Line
Road, Bethlehem, PA 18020

SEIFERT, EDWARD J., dec'd.

Late of the Township of Lower
Saucon, Northampton Coun-
ty, PA

Co-Administrators: David J. Seifert or Donald P. Seifert, 2540 Martin Ln., Hellertown, PA 18055

TAYLOR, DORIS A., dec'd.

Late of the Borough of Bath, Northampton County, PA
 Executor: James A. Taylor c/o McFall, Layman & Jordan, P.C., Attorneys at Law, 134 Broadway, Bangor, PA 18013
 Attorneys: McFall, Layman & Jordan, P.C., Attorneys at Law, 134 Broadway, Bangor, PA 18013

VASKO, THOMAS J., dec'd.

Late of Hellertown, Northampton County, PA
 Co-Executors: Gregory J. Galle and Richard A. Galle c/o Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726
 Attorney: Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726

THIRD PUBLICATION

BLATNIK, LOUIS S., JR., dec'd.

Late of the City of Easton, Northampton County, PA
 Administratrix: Bernadine J. Federanich, c/o Mary Ann Snell, Esquire, 915 West Broad Street, Bethlehem, PA 18018
 Attorney: Mary Ann Snell, Esquire, 915 West Broad Street, Bethlehem, PA 18018

BRODT, LILLIAN E., dec'd.

Late of Bethlehem Township, Northampton County, PA
 Co-Executrices: Judith A. Edinger, 5514 Shawnee Drive, Bethlehem, PA 18017 and Elaine M. Carmen, 12 Lambert Street, Washington, NJ 07882

Attorneys: Peters, Moritz, Peischl, Zulick & Landes, LLP, 1 South Main Street, Nazareth, PA 18064

EISENHART, EDWIN K., JR., dec'd.

Late of the Borough of Bangor, Northampton County, PA
 Executrix: Dorothy Eisenhart Secor, c/o McFall, Layman & Jordan, P.C., 134 Broadway, Bangor, PA 18013
 Attorneys: McFall, Layman & Jordan, P.C., Attorneys at Law, 134 Broadway, Bangor, PA 18013

LAWRENCE, AUDREY K., dec'd.

Late of the City of Bethlehem, Northampton County, PA
 Executor: Bruce James Lawrence, c/o Kolb, Vasiliadis and Florenz, 65 East Elizabeth Avenue, Suite 804, Bethlehem, PA 18018-6516
 Attorneys: Jacob S. Kolb, Esquire, Kolb, Vasiliadis and Florenz, 65 East Elizabeth Avenue, Suite 804, Bethlehem, PA 18018-6516

**IN THE NORTHAMPTON
 COUNTY COURT OF
 COMMON PLEAS**

ORPHANS' COURT DIVISION

The following Executors, Administrators, Guardians & Trustees have filed Accounts in the Office of the Orphans' Court:

ESTATE; Accountant

GERALDINE A. ALBERT a/k/a G.A. ALBERT a/k/a G.G. ALBERT a/k/a GERALDINE ALBERT; Marjorie A. Russo, Administratrix

GLADYS M. DIEHL; Lisa J. Woods and Lori J. Diehl, Co-Executrices

WESTON F. EBNER; Richard Dale Ebner and Joan Kay Braden, Co-Executors

ROBERT J. FROCK; Roy J. Ludwick and Robert H. Sheriff, Co-Executors

LISA HUFF; Investors Trust Company, Guardian

GERALDINE E. SHERER; Geraldine E. Koch, Administratrix
AUDIT NOTICE

All Parties interested are notified that an audit list will be made up of all Accounts and the said list will be called for audit at the Northampton County Government Center, Easton, PA on: FRIDAY, DECEMBER 19, 2003 AT 9:00 A.M. IN COURT-ROOM #1.

Dorothy L. Cole
Clerk of Orphans' Court
Dec. 4, 11

**NOTICE OF INCORPORATION
VISHAL TRADING, INC.**

incorporated in the Commonwealth of Pennsylvania under the provisions of Pennsylvania Business Corporation Law of 1988.

Dec. 11

**NOTICE OF NONPROFIT
INCORPORATION**

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

The name of the corporation is:

**LIBERTY GIRLS
LACROSSE CLUB**

The corporation has been incorporated under provisions of the Pennsylvania Nonprofit Corporation Law of 1988.

MICHAEL J. FINA, ESQUIRE
Solicitor

1271 Biafore Ave.
Bethlehem, PA 18017

Dec. 11

CERTIFICATE OF AUTHORITY

NOTICE IS HEREBY GIVEN that **Tencza Corporation**, a corporation incorporated under the laws of the State of New Jersey has applied for a certificate of authority under the provisions of the Business Corporation Law of 1988. The address of its principal office under the laws of the State of New Jersey is 591 Memorial Parkway, Phillipsburg, New Jersey 08865. The address of its proposed registered office in the Commonwealth of Pennsylvania is 2569 Nazareth Road, Easton, Pennsylvania 18045.

JAMES F. MARSH, ESQUIRE
109 N. 7th Street
Stroudsburg, PA 18360
(570) 421-7200

Dec. 11

**CERTIFICATE OF
ORGANIZATION**

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, pursuant to the provisions of the Limited Liability Company Law of the Commonwealth of Pennsylvania, Act of December 7, 1994 (P.L. 703, No. 106), by the following company:

MIKLEAN CONSULTING, L.L.C.

The Certificate of Organization was filed on October 29, 2003.

WILLIAM KURT MALKAMES,
ESQUIRE

509 Linden Street
Allentown, PA 18101

Dec. 11

NOTICE OF DISSOLUTION

NOTICE IS HEREBY GIVEN that: **PETER H. STEIXNER AND SON, INC.**, a Pennsylvania corporation,

having its office at: 3720 Carter Road, Bethlehem, PA 18020, has adopted a Resolution to dissolve the corporation and that the Board of Directors is now engaged in settling the affairs of the corporation so that the corporate existence shall be ended by the issuance of a Certificate of Dissolution by the Department of State of the Commonwealth of Pennsylvania under the provisions of Chapter 19, Subchapter F, Section 1977 and the Business Corporation Law of 1988, Act of December 21, 1988, as amended. (P.L. 1444, No. 177).

DANIEL P. SABETTI, ESQUIRE
224 West Broad Street
Bethlehem, PA 18018

Dec. 11

ASSOCIATE

Southeastern Pennsylvania based defense firm seeks full-time associate for its Bethlehem Office. Associate must possess 5+ years litigation experience. Competitive salary and benefits offered. For immediate consideration, please fax resume to Hiring Partner, (610) 332-3401.

Dec. 11, 18

PARALEGAL

Bethlehem area law firm has a position available for a full-time Paralegal. Civil litigation experience required. Knowledge of Word/WordPerfect necessary with strong organizational and typing skills. Timeslips and Excel a plus. Fax resume to Cecile Patriarca, Office Manager, at (610) 866-9490 or mail to 107 North Commerce Way, Bethlehem, PA 18017.

Dec. 4, 11

NORTHAMPTON COUNTY REPORTER DIGEST—2003-12
RECENT DECISIONS OF THE COURTS OF COMMON PLEAS
OF NORTHAMPTON COUNTY

**JAY BENFIELD AND PEGGY BENFIELD, PLAINTIFFS, v.
CANJALYN CONSTRUCTORS, INC., A/K/A CANJALYN CONTRACTORS,
INC., AND C.C., INC., DEFENDANTS v. ST. JOHN'S UNITED
CHURCH OF CHRIST, ADDITIONAL DEFENDANT**

Motion To Disqualify Counsel—Closely-Held Corporation—Conflict of Interest—Duty of Loyalty—Attorney-Client Relationship—Fiduciary Duty—Pa. Rules of Professional Conduct 1.7, 1.9, 1.10

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. 2001-1532.

Order of Court entered denying defendant's motion to disqualify plaintiffs' counsel.

Kelly Clifford Rambo, Esquire for Plaintiffs.

Steven Ciero, Esquire for Defendants.

Order of Court entered January 7, 2003 by Robert A. Freedberg, President Judge

DESCRIPTION OF DECISION

Defendant C.C., Inc. filed motion to disqualify law firm from representing plaintiffs. The firm formerly represented on an individual basis Cheryl and Charles Werkheiser in a personal injury suit. Charles Werkheiser was also majority shareholder in C.C. Inc., a defendant in the instant case. C.C., Inc. contended that the law firm should be disqualified in the instant litigation because of a conflict of interest arising from its representation of Charles Werkheiser in the earlier case. C.C., Inc. also contended that the firm breached a duty of loyalty to the client. Further, while it acknowledged that the cases were factually unrelated, it asserted that the firm may have obtained insights about Charles Werkheiser which would be to his and its disadvantage. The firm responded that it never had an attorney-client relationship with C.C., Inc., and contended that it received no information pertinent to this case against C.C., Inc., while representing Werkheiser in the earlier litigation.

The court held that the law firm represented the individual Charles Werkheiser in the previous case, not C.C., Inc., therefore there was no violation of Rule of Professional Conduct 1.7(a) when the firm undertook the Benfield case against C.C., Inc. Further, C.C., Inc. had no standing to assert a violation of Rule 1.9 because it was not a "former client" of the firm. The court also held that disqualification was not required because the matters were not "substantially related" for the sake of Rule of Professional Conduct 1.9 which precludes a lawyer from representing a person in a "substantially related matter" in which the person's interests are materially adverse to those of a former client. The court denied defendant's motion to disqualify plaintiff's counsel.

COMMONWEALTH OF PENNSYLVANIA
v. JOSHUA GEIER, DEFENDANT

Petition to Transfer—Decertification—Juvenile—Homicide

In the Court of Common Pleas of Northampton County, Pennsylvania, Criminal Division, No. 2002-3603.

Order of Court entered halting the criminal prosecution of defendant and transferring the matter to the juvenile court division of Northampton County.

John M. Morganelli, Esquire, for the Commonwealth.

Anthony J. Martino, Esquire for Defendant.

Order of Court entered June 13, 2003 by Robert A. Freedberg, President Judge.

DESCRIPTION OF DECISION

Thirteen-year-old defendant petitioned to transfer pending criminal homicide prosecution to juvenile court. The court considered each factor enumerated in 42 Pa.C.S.A. §6355(a)(4)(iii), which included (1) the impact of the offense on the victim or victims; (2) the impact of the offense on the community; (3) the threat to safety of the public or any individual posed by the child; (4) the nature and circumstances of the offense allegedly committed by the child; (5) the degree of the child's culpability; (6) the adequacy and duration of dispositional alternatives available under this chapter and in the adult criminal justice system; and (7) whether the child is amenable to treatment, supervision or rehabilitation as a juvenile. The court found that the defendant had established by a preponderance of the evidence that the transfer of this matter to the juvenile system would serve the public interest.

JOHN O. EHRTZ AND ARLEEN EHRTZ, PLAINTIFFS
v. RICHARD FOLEY AND KATHLEEN FOLEY, DEFENDANTS

Lease/Purchase Agreement—Personal Representative—Estate—Amendment of Pleading—Parol Evidence Rule—Dead Man's Statute

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. 2001-4126.

Verdict of Court entered against defendants in the amount of \$200,000.

Joseph P. Yannuzzi, Esquire for Plaintiffs.

Stanley J. Margle, Esquire for Defendant Kathleen Foley.

Alan D. Williams, Esquire for Defendant Richard Foley.

Verdict of Court entered January 15, 2003 by Robert A. Freedberg, President Judge.

DESCRIPTION OF DECISION

Plaintiff, a beneficiary under her father's will, and her husband filed a complaint alleging breach of a lease/purchase contract between defendants and decedent. Plaintiffs alleged the existence of an alternative oral agreement supplementing the written contract. Defendants contended that no such alternative agreement existed.

The Court concluded that the caption of the case and the pleadings should be amended to reflect that the suit is brought by decedent's daughter in her capacity as the executrix and personal representative of decedent's estate, not in her individual capacity. Further, the Court found that defendants were jointly and severally liable to the plaintiff in her capacity as the executrix of decedent's estate.

Editor's Note: Notice of Appeal to the Superior Court of Pennsylvania was filed on May 14, 2003.

**KELVIN AND VALERIE GODSHALK, APPELLANTS v. BOROUGH OF
BANGOR ZONING HEARING BOARD, APPELLEE**

Zoning—Land Use Appeal—Variance—Occupancy Permit—Parking—Pre-Existing Nonconforming Use—Abandonment—Doctrine of Natural Expansion—Municipalities Planning, Code 53 P.S. §§11003-A, 11005-A, 10107—Sunshine Act

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. 2002-3174.

Order of Court entered denying appellants' appeal.

James F. Preston, Esquire for Appellants.

Leonard Zito, Esquire for Appellee.

Order of Court entered February 13, 2003 by Robert A. Freedberg, President Judge.

DESCRIPTION OF DECISION

Appellants appealed findings of Zoning Hearing Board, which had denied issuance of a variance and sustained zoning officer's denial of appellants' application for occupancy permit. This Court denied the appeal. The Court found that the Board did not abuse its discretion in reaching its conclusions. The Court also found that appellants had waived their claim that the Board violated the Sunshine Act, but that if the Court were to address the issue, it would find that the Board did not violate the Act when it participated in an off-the-record executive session before concluding its hearing on this matter.

**RAYMOND A. TRUSZKOWSKI, ADMINISTRATOR OF THE ESTATE OF
RICHARD TRUSZKOWSKI, DECEASED, PLAINTIFF, v. APRIL L.
CORDTS, ESQUIRE, PERSONAL REPRESENTATIVE OF THE
ESTATE OF JOHN DORNBAACH, DECEASED, AND TOWNSHIP
OF MOORE, DEFENDANTS**

Petition To Strike Judgment—Personal Representative—Estate—Statute of Limitations—Waiver—Jurisdiction

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. 1992-C-11492.

Order of Court entered denying petitioner Erie Insurance Exchange's petition to strike the judgment entered on March 26, 1999 in the above-captioned matter.

Joseph H. Riches, Esquire for Petitioner.

Ronald W. Shipman, Esquire for Respondent.

Order of Court entered on April 15, 2003 by Robert A. Freedberg, President Judge.

DESCRIPTION OF DECISION

Erie Insurance filed the instant petition to strike the March 26, 1999 judgment in this matter arguing that the judgement was void because April Cordts, Esq. had been made a party to the action after the running of the statute of limitations. The court noted that the statute of limitations does not divest the court of jurisdiction over either the cause or action or the parties, but is merely a procedural bar to recovery which may be waived by consent or conduct implying consent. Also, the statute of limitations is an affirmative defense properly raised through a responsive pleading. Here, Cordts acquiesced to plaintiff's amendment of the caption to this action after the running of the statute of limitations by failing to affirmatively raise the issue. Therefore, Cordts waived the issue of whether this action was improperly brought after the running of the statute of

limitations. This court had proper jurisdiction over this matter and over the parties when it entered judgment on March 26, 1999. The judgment was not void, nor did any fatal defect appear on the record.

**CAROLYN VERBA, PLAINTIFF, v. BROWN & BROWN
OF LEHIGH VALLEY, INC., DEFENDANT**

Wrongful Termination—Employment Agreement—At-Will Employee—Noncompetition—Non-Disclosure—Non-Solicitation—Preliminary Objections—Demurrer—Insufficient Specificity

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. C0048CV2002001457.

Order of Court entered sustaining defendant's preliminary objection in the nature of a demurrer and affording plaintiff twenty (20) days to file a second amended complaint.

Donald P. Russo, Esquire for Plaintiff.

Nancy Conrad, Esquire for Defendant.

Order of Court entered on June 16, 2003 by Robert A. Freedberg, President Judge.

DISCRIPTION OF DECISION

Plaintiff's complaint, containing one count of wrongful discharge, alleged that she was terminated because she had been advised by her legal counsel not to sign an employment agreement; she also alleged that the agreement did not comply with Pennsylvania law regarding noncompetition agreements for the following, reasons: (1) because defendant sought to restrict plaintiff's employment and business opportunities for a period of two years subsequent to the end of her employment with defendant and it did not define a geographical area within which the employment restrictions would apply, (2) because the agreement did not indicate that it would expire in the event that plaintiff would be involuntarily terminated, (3) because the agreement would have denied plaintiff her right to trial by jury, and (4) because defendant attempted to force plaintiff to sign the employment agreement at a time that she was already an employee of the defendant. Defendant's preliminary objection argued that the complaint failed to raise a sufficient claim and was not sufficiently specific.

The Court found that plaintiff failed to state a claim upon which relief could be granted. Plaintiff did not establish any violation by defendant of public policy justifying plaintiff's claim of wrongful termination. The Court sustained defendant's preliminary objection in the nature of a demurrer.

IN RE: ESTATE MINNIE E. BRIGHT

Will—Executor—Option To Purchase—Zoning Ordinance—Lapse—Ambiguity

In the Court of Common Pleas of Northampton County, Pennsylvania, Orphans' Court Division, No. 2001-1008.

Order of Court entered ordering that the option to purchase four lots adjacent to specified property is null and void and that the personal representative of the estate may dispose of the property in accord with the will.

Theresa Hogan, Esquire for Petitioner.

Paul and Arlene Lopresti, Pro se.

Order of Court entered September 10, 2002 by Robert A. Freedberg, President Judge.

DESCRIPTION OF DECISION

Executor petitioned court to declare null and void an option created in the will of Minnie E. Bright which granted an option to her next door neighbors, Paul and Arlene Lopresti to buy "the four vacant lots adjacent to 326 Tenth Street, West Easton, Northampton County, Pennsylvania at the value as appraised in my Estate." This address, 326 Tenth Street, identifies the Loprestis' residence. Bright further provided that the option must be exercised by the Loprestis within 30 days of the receipt of the appraisal, and the purchase price paid within 60 days thereafter. The will further provided that if the Loprestis failed to pay the purchase price within 60 days, the option shall lapse, and the executor was authorized to dispose of the property.

In attempting to exercise the option, a dispute arose over the definition of "lot" as used in the will. The Loprestis contended that "lot" meant a lot as defined in the zoning ordinance rather than a plat lot. The court considered extrinsic evidence to resolve a latent ambiguity and determine what testator meant by "four vacant lots." The court rejected the Loprestis' interpretation of "lot" because (1) their interpretation would deprive the parcel on which Bright's residence was located of a side yard and half of its backyard; (2) the deeds to Bright and her husband of the land between their residence and the Lopresti property referred to each 20 foot wide plat lot as "lot"; thus, she had a basis for considering each 20 foot wide expanse as a "lot;" and (3) the Loprestis' position was that Bright intended to offer an option to purchase four buildable lots pursuant to the zoning ordinance, yet there was no evidence that Bright intended to enable the Loprestis to build four residences; rather, it appeared that Bright's intent was to give the Loprestis an opportunity to secure control over land adjacent to their property at the appraised value rather than transfer it to a stranger. Therefore, the court declared the option null and void because it was not exercised within the specified time frame.

COMMONWEALTH OF PENNSYLVANIA**v. MARY ANN EASTMAN, DEFENDANT**

Pa. R. Crim. P. 600—Speedy Trial—Due Diligence—75 Pa. C.S.A. §§ 3731(a)(1), (a)(4), 3301(a)

In the Court of Common Pleas of Northampton County, Pennsylvania, Criminal Division, No. 1988-87.

Order of Court entered denying defendant's pretrial motion to dismiss pending criminal charges.

Abraham P. Kassis, Esquire for the Commonwealth.

Joseph P. Yannuzzi, Esquire for Defendant.

Order of Court entered December 13, 2002 by Robert A. Freedberg, President Judge.

DESCRIPTION OF DECISION

Defendant filed the instant motion pursuant to Pa. R. Crim. P. 600, claiming that more than 365 days had passed since the filing of the criminal complaint and were attributable to the Commonwealth for its failure to perform a duly diligent search for defendant for nearly 13 years. Defendant sought dismissal of the charges against her. The Commonwealth contended that the period of time challenged by defendant was excusable because the defendant made herself unavailable and violated bail. The Court denied the defendant's pretrial motion, finding that defendant had an obligation under her bail agreement to keep the authorities notified of changes of address. The Court found that because defendant failed to fulfill that responsibility and failed to claim

mail at the address she provided to the authorities, the challenged period of time was not attributable to the Commonwealth. Further, the Court found that the Commonwealth did make reasonable efforts to notify and locate defendant. Therefore, with the exclusion of that time period, 365 days had not passed within the meaning of Pa. R.Crim.P. 600 since the filing of the criminal complaint.

**EASTON RADIOLOGY ASSOCIATES, P.C., ET AL., PLAINTIFFS v.
VALLEY PREFERRED, DEFENDANT**

Preliminary Objections—Demurrer—Conspiracy to Interfere with Contractual Obligations—Tortious Interference—Contract—Conspiracy to Interfere With Contractual and Perspective Contractual Relations—Insufficient Specificity—Demurrer—Specificity—Restatement (Second) of Torts §§766, 767

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. 2001-4818.

Order of Court entered overruling defendant preliminary objections.

Gilbert B. Abramson, Esquire for Plaintiffs.

Frederick P. Lehr, Esquire for Defendant.

Order of Court entered September 24, 2002 by Robert A. Freedberg, President Judge.

DESCRIPTION OF DECISION

Plaintiffs filed a complaint alleging, two counts: (1) conspiracy to interfere with contractual and prospective contractual relations, and (2) tortious interference. Plaintiffs are Easton Radiology Associates, P.C. (“ERA”) and board certified radiologists who are shareholders of ERA. Plaintiffs averred that defendant, an insurer which contracts with employers to provide employee health insurance, previously paid full costs for services at ERA for those patients covered by defendant. Plaintiffs claim that one of its competitors and the defendant conspired to put plaintiffs out of business. Plaintiffs averred that defendant then pursued that objective by refusing to continue paying the technical component of services performed by plaintiff. Plaintiffs claimed that this refusal to pay caused financial damage to their business and interfered with existing and prospective contracts between plaintiffs and patients.

Defendant filed preliminary objections asserting (1) plaintiffs’ noncompliance with Pa. R.C.P. 1019(a) by failing to provide in a concise summary form the material facts necessary to assert the causes of action for civil conspiracy and tortious interference, (2) insufficient specificity under Pa. R.C.P. 1028(a)(3), and (3) legal insufficiency of pleadings in the nature of demurrer under Pa. R.C.P. 1028(a)(4). The Court denied these preliminary objections, finding that plaintiffs sufficiently set forth the material facts necessary to assert the causes of action for civil conspiracy and tortious interference, and that plaintiffs’ complaint contained averments, if accepted as true, that establish that recovery would be possible for conspiracy to tortiously interfere and tortious interference

**ALAN C. ERDMAN, PLAINTIFF v. CENTIMARK CORPORATION;
G.M.H. DEVELOPMENT GROUP, INC.; G.E. FINANCIAL ASSURANCE
HOLDINGS, INC.; THOMAS E. HALL & ASSOCIATES, INC.; ALLIANCE
ENVIRONMENTAL SYSTEMS, INC.; THE KACHELE GROUP, INC. D/B/A
THE KACHELE GROUP; AND ERIC P. KACHELE D/B/A THE
KACHELE GROUP, DEFENDANTS**

*Preliminary Objections—Writ of Summons—Complaint—Contractor—Subcontractor—
Indemnification—Joinder—Crossclaim—Pa. R.C.P. 2252(b), 2253, 2252(d), 1026—
Demurrer—Immunity—Affirmative Defense*

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. 2001-6739.

Order of Court entered overruling defendant's preliminary objections.

Mary Altomose, Esquire for Plaintiff.

Alan Ross, Esquire for Defendant G.M.H. Development Group, Inc.

Brent Green, Esquire for Defendant Centimark Corporation.

Stacey Broad, Esquire for Defendant G.E. Financial Assurance Holdings, Inc.

Order of Court entered November 19, 2002 by Robert A. Freedberg, President Judge.

DESCRIPTION OF DECISION

Plaintiff filed praecipe for writ of summons naming, *inter alia*, the owner of the construction site, GE Financial Assurance Holdings, Inc. ("GE"), the contractor and construction manager GMH Development Group, Inc. ("GMH"), and plaintiff's employer, subcontractor Centimark ("Centimark").

Plaintiff later filed complaint naming, *inter alia*, GE and GMH as defendants whose negligence contributed to his injuries. However, complaint did not name or make allegations against Centimark. GMH filed joinder complaint pursuant to Pa. R.C.P. 2252(b) alleging that Centimark was "alone liable and/or jointly and/or severally liable or liable over to the original defendants" pursuant to indemnification clause in contract signed by GMH and Centimark. Upon Centimark's preliminary objections, GMH withdrew that joinder complaint. GE then filed a crossclaim pursuant to Pa. R.C.P. 2252(d), naming Centimark, and alleging that Centimark, under the indemnification clause, "is required to defend, indemnify and hold harmless GE." Centimark filed its preliminary objections to GE's crossclaim. GMH then filed its amended joinder complaint, adding allegations of Centimark's negligence resulting in plaintiff's accident. Centimark filed new preliminary objections to GMH's amended joinder complaint. This Court overruled defendant's preliminary objections, finding that GMH's joinder of Centimark as an additional party was proper, that the amended joinder complaint of GMH and crossclaim of GE stated valid causes of action, that GMH's joinder complaint did not request relief only available to defendant GE and Thomas E. Hall & Associates, Inc., and that allegations added to GMH's joinder complaint through GMH's amended joinder were not "time-barred."

**COMMONWEALTH OF PENNSYLVANIA v.
NICOLE GEIDER, DEFENDANT**

Omnibus Pretrial Motion—Pa. R.Crim.P. 519, 544—D.U.I.—75 Pa. C.S.A. §§ 3731(a)(1), (a)(4)—Refiling of Criminal Complaint—Prejudice

In the Court of Common Pleas of Northampton County, Pennsylvania, Criminal Division, No. 2002-1568.

Order of Court entered denying defendant's omnibus pretrial motion to dismiss pending criminal charges.

Abraham P. Kassis, Esquire for the Commonwealth.

Michael P. Gough, Esquire for Defendant.

Order of Court entered October 29, 2002 by Robert A. Freedberg, President Judge.

DESCRIPTION OF DECISION

Defendant's omnibus pretrial motion sought dismissal of pending criminal charges based upon Commonwealth's alleged violations of Pa. R.Crim.P. 519 and 544.

Defendant first argued that Pa. R.Crim.P. 519 was violated (1) when she was arrested Saturday, March 3, 2001, and the criminal complaint was filed Monday, March 12, 2001, and again (2) when the second criminal complaint was filed February 20, 2002. Therefore, defendant contended that she was entitled to have the charges against her dismissed because neither the first nor the second complaint was timely filed. The court held that dismissal for a violation of Pa. R.Crim.P. 519 is improper unless defendant is prejudiced by the delay, and here, while defendant cited her inability to locate a potential witness to her arrest and her mounting legal fees as examples of prejudice, her testimony was that she never attempted to contact this potential witness, but now believes he is no longer accessible to her. Thus, because the first criminal complaint was promptly filed, although not within the prescribed five-day period, defendant was given timely notice of her pending prosecution. Her inability to locate that witness could not be considered a result of the brief delay in the filing of the first criminal complaint. Further, no authority could be found holding that legal fees constitute a prejudice warranting dismissal of criminal charges.

Defendant next argued that Pa. R.Crim.P. 544 was violated when second criminal complaint was issued against her without written approval by an attorney for the Commonwealth. Defendant argued that she was entitled to have the charges against her dismissed. The court held that the instant case did not involve repeated rearrests, and one of the three preliminary hearings was at defendant's request for a remand. Further, the court did not find any improper scheme by the Commonwealth to harass defendant. Again, defendant's inability to locate a potential witness and her mounting legal fees did not constitute prejudice warranting dismissal. Finally, while there was no indication in the record that the refiling, of the criminal complaint against defendant was approved by an attorney for the Commonwealth in compliance with Rule 544, defendant did not cite authority requiring dismissal of the charges on this ground. There was clear authority establishing that refiling of criminal complaints was permissible, and the instant defect appeared curable as the statutes of limitation for the charged offenses had not yet expired. Finally, while an attorney for the Commonwealth may not have approved in writing the refiling of the second criminal complaint, there was undeniably a current effort by the District Attorney to proceed with prosecution, thus constituting a ratification of the refiling.