

Northampton County Reporter

(USPS 395-280)

VOL. LIV

EASTON, PA January 5, 2006

NO. 53

Northampton County Reporter Digest—2006-1

CONTENTS

Audit—Orphans' Court	9	Limited Liability Company Notice	9
Bar News	3	Northampton County Reporter Digest—	
Corporate Fictitious Name		2006-1	13
Registration Notice	8	Notice of Disbarment	10
Estate Notices	4	Notice of Suspension	10
Legal Notice	9	Notices of Incorporation	8

INSERTS: Lilac: 1. Annual Association Meeting
2. 2006 Calendar of Events
3. Annual 'Day on the Slopes' Registration Form
4. PBI/CLE Seminars—NCBA Office—February-April, 2006
Cream: NCBA 2006 Committee Preference Form

NOTICE TO THE BAR ...

The Northampton County Court Announces Dates and Times for Swearing-in Ceremonies—see page 3.

Change in June, 2006 Naturalization Court—Due to the unavailability of the Immigration Department on June 27, 2006, Naturalization Court has been changed to Thursday, June 29, 2006 at 1:30 p.m.

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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.

Subscription Price—\$55.00 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

Robert C. Brown, Jr., Esquire

Editor

NOTICES TO NCBA MEMBERS—BAR NEWS

☞ **Annual Association Meeting**—January 12, 2006, 5:30 p.m., Holiday Inn, Bethlehem. Program speaker: Honorable Jack A. Panella

“A Brief History of the Northampton County Bench”

Registration form enclosed.

☞ **INCLUDED IN THIS ISSUE:**

- **NCBA** Calendar of Events, PBI Seminars and Committee Meeting schedule
- “**Annual Day on the Slopes**” February 3, 2006—Registration form
- **Committee Preference Form**

☞ **THE NORTHAMPTON COUNTY COURT ANNOUNCES DATES AND TIMES FOR SWEARING-IN CEREMONIES**

The **Induction Ceremony of the Hon. Anthony S. Beltrami** as Judge of Northampton County Court of Common Pleas will be held on **Friday, January 20, 2006 at 1:00 p.m. in Courtroom #1**. (Note: this is a change in time from the original notice)

If you have any questions, please call the Court Administrator’s Office at (610) 559-6700.

☞ **Real Fact:** Before mercury, brandy was used to fill thermometers.

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**BOEHMER, ROBERT T.,** dec'd.

Late of the Township of Lower Mt. Bethel, Northampton County, PA

Co-Executrices: Kathleen E. Howard a/k/a Kathleen O'Neill Leary and Eileen A. Zacharda 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

DORSHIMER, MARLA LOU, dec'd.

Late of the Township of Bushkill, Northampton County, PA
 Executor: David A. Dorshimer c/o Gregory R. Reed, Esquire, Attorney-at-Law, 141 South Broad Street, P.O. Box 299, Nazareth, PA 18064-0299

Attorney: Gregory R. Reed, Esquire, Attorney-at-Law, 141 South Broad Street, P.O. Box 299, Nazareth, PA 18064-0299

FASL, LORRAINE M., dec'd.

Late of the Borough of Nazareth, Northampton County, PA

Executor: Craig J. Fassel c/o Gregory R. Reed, Esquire, Attorney-at-Law, 141 South Broad Street, P.O. Box 299, Nazareth, PA 18064-0299

Attorney: Gregory R. Reed, Esquire, Attorney-at-Law, 141 South Broad Street, P.O. Box 299, Nazareth, PA 18064-0299

KOSMAN, PHYLLIS A., dec'd.

Late of the Borough of North Catasauqua, Northampton County, PA

Administrator C.T.A.: Cordell Strohl, 1135 East James Street, Lehighton, PA 18235

Attorneys: James A. Wimmer, Esquire, Philip & Wimmer, 419 Delaware Avenue, P.O. Box 157, Palmerton, PA 18071

KRAVECZ, IRENE H., dec'd.

Late of Forks Township, Northampton County, PA

Executor: Norman A. Peil, Jr., P.O. Box 20770, Lehigh Valley, PA 18002-0770

Attorneys: Mosebach, Funt, Dayton & Duckworth, P.C., P.O. Box 20770, Lehigh Valley, PA 18002-0770

LANE, JANE M., dec'd.

Late of the Borough of Portland, Northampton County, PA

Co-Executors: William E. Lane and David M. Lane 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

McHUGH, WILLIAM A., dec'd.

Late of the Township of Forks, Northampton County, PA

Executor: Joel M. Scheer, Esquire, Fishbone & Scheer, 940 West Lafayette Street, Easton, PA 18042

Attorneys: Joel M. Scheer, Esquire, Fishbone & Scheer, 940 West Lafayette Street, Easton, PA 18042

MILLER, IDA, dec'd.

Late of the Borough of Wilson, Northampton County, PA
Administrator: Sidney Golden, 828 Balata St., Easton, PA 18042

Attorneys: Gary M. Miller, Esquire, Miller & Davison, 210 E. Broad Street, Bethlehem, PA 18018

MITCH, ELSIE, dec'd.

Late of Bethlehem, Northampton County, PA

Executrix: Joan M. Honer, 2577 Easton Road, Hellertown, PA 18055

PALOS, HELEN E., dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executrix: Susan E. Bennetch 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

SAUERZOPF, SOPHIE, dec'd.

Late of the Borough of Nazareth, Northampton County, PA

Co-Executors: Donna Hontz, 3407 Drighton Court, Bethlehem, PA 18020 and Augustave Sauerzopf, 371 Hillview Avenue, Nazareth, PA 18064

Attorneys: Peters, Moritz, Peischl, Zulick & Landes, LLP, 1 South Main Street, Nazareth, PA 18064-2083

SCHULTER, HANS, dec'd.

Late of Bethlehem, Northampton County, PA

Executor: Richard J. Endy 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

SEIPLE, MARGARET I., dec'd.

Late of Bath, Northampton County, PA

Executor: Daniel J. Seiple 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

SIEG, RUTH L., dec'd.

Late of the Borough of Nazareth, Northampton County, PA

Executor: Keystone Nazareth Bank & Trust, Nancy S. Berlin, Vice President-Senior Fiduciary Officer, 76 South Main Street, Nazareth, PA 18064

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

YELLES, LEON A., dec'd.

Late of the Township of East Allen, Northampton County, PA

Executor: Richard A. Yelles c/o Alfred S. Pierce, Esquire, Pierce & Dally, LLP, 124 Belvidere Street, Nazareth, PA 18064

Attorneys: Alfred S. Pierce, Esquire, I.D. No. 21445, Pierce & Dally, LLP, 124 Belvidere Street, Nazareth, PA 18064

YELOVICH, ELIZABETH, dec'd.

Late of the Borough of Freemansburg, Northampton County, PA

Executor: Joseph S. Yelovich c/o Keith D. Cacciatore, Esquire, Suite 302, 2045 Westgate Drive, Bethlehem, PA 18017

Attorney: Keith D. Cacciatore, Esquire, Suite 302, 2045 Westgate Drive, Bethlehem, PA 18017

SECOND PUBLICATION

DIEHL, JAMES C., dec'd.

Late of Upper Nazareth Township, Northampton County, PA

Executors: Jean B. Diehl, 157 Rose Inn Avenue, Nazareth, PA 18064 and Kirk B. Diehl, 3330 North Leisure World Boulevard, Silver Spring, MD 20906

Attorneys: Peters, Moritz, Peischl, Zulick & Landes, LLP, 1 South Main Street, Nazareth, PA 18064-2083

KLUMP, ARLENE M., dec'd.

Late of the Borough of Nazareth, Northampton County, PA

Executors: Sandra M. Palmisano and Gary D. Klump c/o Gregory R. Reed, Esquire, 141 South Broad Street, P.O. Box 299, Nazareth, PA 18064-0299

Attorney: Gregory R. Reed, Esquire, 141 South Broad Street, P.O. Box 299, Nazareth, PA 18064-0299

LIERO, MABEL, dec'd.

Late of Pen Argyl, Northampton County, PA

Executrix: Marlene Hunter, 1070 Constitution Avenue, Pen Argyl, PA 18072

Attorney: Gilbert J. Negrete, Jr., Esquire, 251 East Broad Street, Bethlehem, PA 18018

MILLER, HORACE R., dec'd.

Late of Bethlehem, Northampton County, PA

Personal Representative: Jeffrey T. Bogert c/o Peter P. Perry, Esquire, 1600 Lehigh Parkway East, 1E, Allentown, PA 18103-3097

Attorney: Peter P. Perry, Esquire, 1600 Lehigh Parkway East, 1E, Allentown, PA 18103-3097

PRICE, EMILY a/k/a EMILY A. PRICE, dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executor: Louis Price 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

REIBMAN, PAUL DAVID a/k/a PAUL D. REIBMAN, dec'd.

Late of Easton, Northampton County, PA

Executrix: Julie Louise Reibman c/o Noonan & Prokup, 526 Walnut St., Allentown, PA 18101

Attorneys: Noonan & Prokup, 526 Walnut St., Allentown, PA 18101

REINERT, JOYCE R., dec'd.

Late of the City of Easton, Northampton County, PA

Executor: Bradley D. Reinert c/o Raymond J. DeRaymond,

Esquire, 717 Washington Street, Easton, PA 18042-4386
 Attorney: Raymond J. DeRaymond, Esquire, 717 Washington Street, Easton, PA 18042-4386

THIRD PUBLICATION

BARLIEB, HELEN M., dec'd.

Late of the Township of Plainfield, Northampton County, PA
 Executrix: Brenda M. Stoudt, 486 Albert Road, Wind Gap, PA 18091

CONKLIN, DOUGLAS B., SR., dec'd.

Late of the Township of Bushkill, Northampton County, PA
 Administrator: Loretta M. Conklin, 786 Muschlitz Road, Nazareth, PA 18064

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

FRIEND, MARIANNA E., dec'd.

Late of Lower Saucon Township, Northampton County, PA

Co-Executors: Nancy A. Schrader and Earnest L. Friend, Jr. 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

KROBOTH, RALPH W., dec'd.

Late of Bushkill Township, Northampton County, PA
 Executrix: Linda R. Shivek, 401 West Pennsylvania Avenue, Pen Argyl, PA 18072

Attorneys: Peters, Moritz, Peischl, Zulick & Landes, LLP, 1 South Main Street, Nazareth, PA 18064-2083

McCARROLL, ELAINE L., dec'd.

Late of the City of Bethlehem, Northampton County, PA
 Executrix: Eileen J. McCarroll 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

PANIK, JOSEPH C., JR., dec'd.

Late of Bethlehem, Northampton County, PA

Executrix: Tammy Shoaf c/o Robert Van Horn, Esquire, 740 Hamilton Street, 2nd Floor, Allentown, PA 18101

Attorney: Robert Van Horn, Esquire, 740 Hamilton Street, 2nd Floor, Allentown, PA 18101

ROBERTSON, WARREN B., dec'd.

Late of the Borough of Nazareth, Northampton County, PA

Executor: Stephen Robertson c/o Joel H. Ziev, Esquire, 700 Washington Street, Easton, PA 18042

Attorney: Joel H. Ziev, Esquire, 700 Washington Street, Easton, PA 18042

ROMANIC, MICHAEL, dec'd.

Late of the Township of Palmer, Northampton County, PA
 Co-Executrices: Joann Fulmer and Judith Palinkas c/o Karl H. Kline, Esquire, Karl Kline P.C., 2925 William Penn Highway, Suite 301, Easton, PA 18045-5283

Attorneys: Karl H. Kline, Esquire, Karl Kline P.C., 2925 William Penn Highway, Suite 301, Easton, PA 18045-5283

STEELY, KENNETH E., dec'd.
Late of the City of Bethlehem,
Northampton County, PA
Executor: Ricky K. Steely 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

TRESCAK, ANNA C., dec'd.
Late of the Township of Lower
Saucon, Northampton County,
PA

Executor: George S. Trescak
c/o Mary Ann Snell, Esquire,
3400 Bath Pike, Suite 311,
Bethlehem, PA 18017-2485

Attorney: Mary Ann Snell, Es-
quire, 3400 Bath Pike, Suite
311, Bethlehem, PA 18017-
2485

WALKER, ELEANOR B., dec'd.
Late of Easton, Northampton
County, PA

Executor: Vincent R. Mul-
laney c/o William H. Dayton,
Jr., Esquire, Mosebach, Funt,
Dayton & Duckworth, PC, P.O.
Box 20770, Lehigh Valley, PA
18002-0770

Attorneys: William H. Dayton,
Jr., Esquire, Mosebach, Funt,
Dayton & Duckworth, PC, P.O.
Box 20770, Lehigh Valley, PA
18002-0770

NOTICES OF INCORPORATION

**POSH WOLVERINE
VENTURES, INC.**

has been incorporated under the
provisions of the Pennsylvania Busi-
ness Corporation Law of 1988.

ASTOR WEISS KAPLAN
& MANDEL

200 S. Broad St.
The Bellevue
6th Fl.
Philadelphia, PA 19102

Jan. 5

NOTICE IS HEREBY GIVEN that
Articles of Incorporation have been
filed with the Department of State
of the Commonwealth of Pennsyl-
vania, at Harrisburg, Pennsylvania,
for the purpose of obtaining a Cer-
tificate of Incorporation of a pro-
posed business corporation to be
organized under the provisions of
the Pennsylvania Business Corpo-
ration Law of 1988, approved De-
cember 21, 1988, P.L. 1444, No.
177, as amended.

The name of the corporation is:
SUBLIME ENTERPRISES, INC.

The Articles of Incorporation
were filed on October 27, 2005.

ANTHONY J. MARTINO,
ESQUIRE

641 Market Street
Bangor, PA 18013

Jan. 5

**CORPORATE FICTITIOUS NAME
REGISTRATION NOTICE**

NOTICE IS HEREBY GIVEN,
pursuant to the provisions of Act
295 of 1982, as amended, of the
filing of, in the Office of the Secre-
tary of the Commonwealth of Penn-
sylvania, at Harrisburg, Pennsylva-
nia, a certificate for the conduct of
a business in Pennsylvania, under
the assumed or fictitious name, style
or designation of:

UNCLE MILTY'S

with its principal place of business
at: 106 Bankway Street, Lehighton,
PA 18235.

The name and address of the
entity owning or interested in said
business is: JLKM, Inc., 462 East
Lawn Road, Nazareth, PA 18064.

F. PAUL LAUBNER, ESQUIRE
425 Allentown Drive
Allentown, PA 18109

Jan. 5

**LIMITED LIABILITY COMPANY
NOTICE**

NOTICE IS HEREBY GIVEN that Notice of Certificate of Organization—Domestic Limited Liability Company were filed with the PA Dept. of State at Harrisburg, PA, for the purpose of creating a Limited Liability Company under the Limited Liability Company Law of 1994, P.L. 703, No. 106, under the name of:

The name of the LLC is:
370 MT. BETHEL, LLC

The Certificate of Organization was filed on December 12, 2005.

THOMAS L. WALTERS, ESQUIRE
LEWIS & WALTERS

46 S. Fourth Street
Easton, PA 18042

Jan. 5

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

CIVIL DIVISION

IN RE: PETITION OF BRIAN
SCOTT GAREY a Minor, by his
Guardian Ad Litem, LEONARD M.
MELLON, ESQUIRE

NO. C0048CV2005-00-9501

NOTICE FOR CHANGE OF NAME

NOTICE IS HEREBY GIVEN that on December 29, 2005, the Petition of BRIAN SCOTT GAREY, a minor, by his legal guardian, LEONARD M. MELLON, ESQUIRE, was filed in the above Court, praying for a decree to change his name to BRIAN SCOTT DANIELS.

The Court has fixed February 17, 2006 at 9:00 A.M., in the Northampton County Government Center, 669 Washington Street, Easton, Pennsylvania 18042, in Room 229, as the time and place for the hearing of said Petition, when and where all persons interested may appear

and show cause, if any they have, why the prayer of the said Petition should not be granted.

LEONARD M. MELLON, ESQUIRE
I.D. NO. 46815
Guardian Ad Litem
151 S. 7th Street
Easton, PA 18042
(610) 559-9990

Jan. 5

**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

LYNNETTE DIANA BALTZ
a/k/a LYNNETTE D. BALTZ; Mark
David Baltz, Executor

ELVA D. GARREN; Joy G.
Edelman a/k/a Joy Garren Hem-
ming & Gyl G. Corona, Executrices,
Stated by Joy G. Edelman a/k/a
Joy Garren Hemming, Surviving
Executrix

WELDON C. GOLD; Larry J.
Gold & Sharon L. Schuch, Co-Ex-
ecutors

OLIVE MARY HOENSTINE; Key-
stone Nazareth Bank and Trust Co.,
Formerly Nazareth National Bank
and Trust Co., Executor

CRAIG M. MIHALIK; Joan F.
Mihalik, Administratrix

MERRYL RENTSCHLER; Key-
stone Nazareth Bank & Trust Co.,
Formerly Nazareth National Bank &
Trust Co.

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, JANUARY 27, 2006
AT 9:00 A.M. IN COURTROOM #1.

Dorothy L. Cole
Clerk of Orphans' Court
Jan. 5, 12

NOTICE OF DISBARMENT

NOTICE IS HEREBY GIVEN that by Order of the Supreme Court of Pennsylvania dated December 22, 2005, Donald S. Himmelreich has been DISBARRED ON CONSENT from the Bar of this Commonwealth, to be effective January 21, 2006.

Elaine M. Bixler
Secretary of the Board
The Disciplinary Board of the
Supreme Court of Pennsylvania
Jan. 5

NOTICE OF SUSPENSION

NOTICE IS HEREBY GIVEN that by Order of the Supreme Court of Pennsylvania issued December 29, 2005, JEFFREY S. SMITH is SUSPENDED from the practice of law for a period of two years, to be effective January 28, 2006.

Elaine M. Bixler
Secretary of the Board
The Disciplinary Board of the
Supreme Court of Pennsylvania
Jan. 5



Investment consulting for those responsible for acting as stewards of financial assets

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Cornerstone Advisors Asset Management, Inc.
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610-694-0900 / 800-923-0900

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Allentown, PA 18104
610-437-1375 / 800-553-3232

Paralegal Excellence

- Northampton Community College's ABA-approved paralegal program prepares graduates to work with supervising attorneys for the effective delivery of legal services in law offices throughout the region.
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NORTHAMPTON COUNTY REPORTER DIGEST—2006-1
RECENT DECISIONS OF THE COURTS OF COMMON PLEAS
OF NORTHAMPTON COUNTY

EASTON RADIOLOGY ASSOCIATES, P.C., PLAINTIFF v.
EASTON HOSPITAL, DEFENDANT

Preliminary Objections—Demurrer—Breach of Contract—Intentional Interference With Prospective or Existing Contractual Relations—Restatement (Second) of Torts §§766, 766A and 766B

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. C0048CV200003086.

Preliminary Objection sustained.

Gilbert B. Abramson, Esquire and Stanley B. Cheiken, Esquire for Plaintiff.

Kathleen Chancler, Esquire and Jonathan B. Sprague, Esquire for Defendant.

Order of Court and Statement of Reasons filed March 19, 2002 by Robert A. Freedberg, President Judge.

DESCRIPTION OF DECISION

Plaintiff filed a complaint alleging breach of contract, intentional interference with prospective or existing contractual relations and deceit. These actions arose out of a contractual relationship between the parties wherein plaintiff was the exclusive provider of radiology services at an outpatient facility constructed, owned and managed by defendant.

Defendant filed a preliminary objection in the nature of a demurrer to count VIII of plaintiff's amended complaint (count VI of plaintiff's second amended complaint). This court sustained defendant's preliminary objection to count VIII of plaintiff's amended complaint holding that Pennsylvania required more than the allegation of mere breach of contract to state a claim for intentional interference with contractual relations. The court granted plaintiff twenty (20) days leave to file a second amended complaint. Defendant asserts that count VI of plaintiff's second amended complaint should be stricken because the allegations were not altered in any significant way from the amended complaint. The court found no significant alteration in count VI of plaintiff's second amended complaint, sustained defendant's preliminary objection and dismissed count VI from the complaint.

MULLER CHEVROLET, ISUZU, INC. v. JOSEPH PIETRUSZKIEWICZ
A/K/A JOSEPH J. PIETRUSZKIEWICZ

Preliminary Objections—Lack of Jurisdiction—Improper Venue

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division, No. C0048 CV2005-2432.

Order of Court entered in favor of Defendant.

Deborah R. Erbsstein, Esquire for Plaintiff.

Matthew C. Potts, Esquire for Defendant.

Order of Court entered on July 18, 2005 by F.P. Kimberly McFadden, Judge.

DESCRIPTION OF DECISION

Defendant filed Preliminary Objections asserting lack of jurisdiction and/or improper venue in Northampton County. Defendant entered into a Contract with Plaintiff, which

contained a Forum Selection Clause. Pursuant to the Forum Selection Clause, “The law of New Jersey will govern this transaction... In the event of any dispute, the exclusive forum, the venue, and place of jurisdiction will be in New Jersey unless otherwise required by law.”

This Court followed the holding in *Churchill Corp. v. Third Century, Inc.*, 396 Pa. Super. 314, 578 A.2d 532 (1990), and held that a court should decline to proceed with the cause when the parties have freely agreed that litigation shall be conducted in another forum and where such agreement is not unreasonable at the time of litigation. Therefore, this Court granted Defendant’s Preliminary Objection.

COMMONWEALTH OF PENNSYLVANIA v. |
DWIGHT BOASE, DEFENDANT
COMMONWEALTH OF PENNSYLVANIA v.
JAMAL BROWN, DEFENDANT

Articulable and Reasonable Suspicion for a Vehicle Stop of a Witness or Suspect—Inevitable Discovery Doctrine—Terry Frisk—Distinction Between Probable Cause and Prima Facie Evidence—Constructive Possession

Court of Common Pleas of Northampton County, Pennsylvania, Criminal Division—Nos. 2005-689 and 2005-690.

Order of Court entered denying Defendants’ motions to suppress evidence and dismiss drug-related charges and granting Defendants’ motion to dismiss gun-related charges.

Michael Thompson, Esquire for Commonwealth.

Victor Scomillio, Esquire for Defendant Boase.

Eric Dowdle, Esquire for Defendant Brown.

Order of Court entered on July 26, 2005 by Leonard N. Zito, Judge.

DESCRIPTION OF DECISION

An Easton resident reported through 911 that he heard three gunshots outside his residence and immediately thereafter observed two men run past his home. He also provided descriptions of the two men. A shots-fired bulletin was issued initially without descriptions of suspects. Within a minute of the bulletin, the first officer responding pulled over an Acura that was within a one-block radius of the residence and asked if the occupants heard gunshots. When they replied that they had not, the officer let them leave. Then a second dispatch reported the descriptions as one black male wearing a white tee shirt and one black male wearing a dark colored sweatshirt. The officer realized that the front passenger in the Acura was a black male wearing a white tee shirt and proceeded to cut off the Acura at another street.

However, before he could effectuate a second vehicle stop, another officer pulled over the vehicle to determine whether it was being driven by an unlicensed driver as he had previously that day been involved with a stop of the vehicle while it was being operated by an unlicensed driver. At the prior stop, the owner, a licensed driver, arrived on the scene and retrieved the vehicle from the officer. This time the licensed owner was, in fact, operating the vehicle. Under *Commonwealth v. Andersen*, 753 A.2d 1289 (Pa. Super. 2000), the Court ruled that the second stop to determine who was driving was an unlawful stop as the officer did not know the identity of the driver prior to executing the stop. The Commonwealth, however, was able to show by a preponderance of the evidence that the other officer would have been able to stop the vehicle

relative to the shots-fired call which stop would have been supported by the requisite reasonable suspicion. Accordingly, the Court ruled that under the inevitable discovery doctrine, *Commonwealth v. Ingram*, 814 A.2d 264, 272 (Pa. Super. 2002), no evidence would be suppressed based on the unlawful vehicle stop. In reaching its conclusion that the inevitable discovery doctrine applied, the Court concluded that the initial stop to determine whether the occupants of the Acura were material witnesses was also a lawful stop. In this part, the decision collects authority of the respective states on vehicle stops of potential witnesses.

Together, the officers then conducted a lawful pat-down search in reasonable fear for their safety, given the shots-fired call. As a result of the pat-down search, one of the defendants was found in possession of crack cocaine. The officers also discovered on the center console of the vehicle a handgun which had been covered by a bandana. The second defendant was arrested for joint constructive possession of the handgun without a license. A search following arrest discovered cocaine hidden in the underwear of the second defendant. The Court found that there was probable cause to arrest the defendants for unlawful possession of the gun viewing the circumstances as the officers confronted them. However, a jury could not permissibly find the element of constructive possession satisfied beyond a reasonable doubt. Accordingly, the Court dismissed the gun-related charges but denied motions to suppress and dismiss drug-related charges.

HOLLY V. CALANTONI, PLAINTIFF v. BETHLEHEM AREA SCHOOL DISTRICT AND STEPHANIE PELUSO, DEFENDANTS

Motion for Summary Judgment—Political Subdivision Tort Claims Act—Sovereign Immunity—Vehicle Liability—Allegation of Permanent Loss of Bodily Function, Permanent Disfigurement or Permanent Dismemberment

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. 2001-1725.

Order of the Court denying the defendants', Bethlehem Area School District and Stephanie Peluso's, Motion for Summary Judgment.

John R. Vivian, Esquire and Barbara R. Reinkert, Esquire for Plaintiff.

Maureen A. Jordan, Esquire for Defendants.

Order of the Court entered on February 1, 2005 by Edward G. Smith, Judge.

DESCRIPTION OF DECISION

The court denied the defendants' Motion for Summary Judgment. The plaintiff was injured in an accident when her vehicle swerved to avoid a bus driven by the defendant, Stephanie Peluso, and owned by the defendant, Bethlehem Area School District. The plaintiff alleged that the vehicle exception to sovereign immunity, 42 Pa.C.S. §8542(b)(1), applied, and that she suffered permanent loss of bodily function, permanent disfigurement, and past and future loss of earnings. The plaintiff produced her medical records and other "independent" evidence indicating that some of her injuries may be permanent in nature. As such, following the principles established by the Pennsylvania Supreme Court in *Walsh v. City of Philadelphia*, 526 Pa. 277, 585 A.2d 445 (1991) and by the Commonwealth Court in *Laich v. Bracey*, 776 A.2d 1022 (Pa. Commw. 2001) and *Alexander v. Benson*, 812 A.2d 785 (Pa. Commw. 2002), the court held that a genuine issue of material fact existed as to whether the plaintiff suffered a permanent loss of bodily function or a permanent disfigurement.

**COMMONWEALTH OF PENNSYLVANIA v.
LEON F. KRAMM, III, DEFENDANT**

Omnibus Pretrial Motion—Motion To Suppress—Vehicle/Traffic Stop—Probable Cause

In the Court of Common Pleas of Northampton County, Pennsylvania, Criminal Division, No. 2004-2143.

Order of the Court denying the defendant, Leon F. Kramm, III's, Motion to Suppress.

Abraham Kassis, Esquire for the Commonwealth.

Chester A. Reybitz, Esquire for Defendant.

Order of the Court entered on November 1, 2004 by Edward G. Smith, Judge.

DESCRIPTION OF DECISION

The court denied the defendant's Omnibus Pretrial Motion, in the nature of a Motion to Suppress, where the evidence from the arresting officer was sufficient to establish probable cause, warranting a stop of the defendant's vehicle. The court found that the arresting officer's testimony was credible that he was properly operating a "VASCAR" speed timing device on Route 378 when he observed the defendant's vehicle travel between the painted markings on the roadway and determined the defendant's speed to be in excess of the posted speed limit. These facts were sufficient to establish probable cause for the stop.

**MICHAEL CARUSO, APPELLANT v. LOWER SAUCON TOWNSHIP AND
LOWER SAUCON TOWNSHIP COUNCIL, APPELLEES**

Land Use Appeal—Conditional Use Application

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. 2004-0334.

Decision of the Court reversing the decision of Lower Saucon Township Council denying the appellant's conditional use application.

James F. Preston, Esquire for Appellant.

B. Lincoln Treadwell, Esquire for Appellees.

Order of the Court entered on October 4, 2004 by Edward G. Smith, Judge.

DESCRIPTION OF DECISION

The appellant filed a land use appeal from the decision of the appellees denying his conditional use application for a driveway and bridge to access his property. The appellant's property could not be accessed along its frontage without crossing Saucon Creek, which the Lower Saucon Zoning Ordinance classified as a Riparian Buffer Corridor Area. As such, the appellant sought to construct a road to cross over and upon the Saucon Creek Riparian Buffer Corridor Area.

The appellees denied the conditional use application because: (1) The proposed use was not in accordance with Lower Saucon Township's Comprehensive Plan; (2) The proposed use was not in the best interests of the municipality, the convenience of the community and the public welfare; (3) The proposed use did not conform to all applicable requirements and ordinances; (4) The proposed use was not suitable in terms of its effect on highway traffic and safety; (5) Appellant did not provide evidence that the proposed project would provide for adequate access to a public road without creating a hazardous condition; and (6) The proposed use adversely altered the character of sur-

rounding neighborhoods and did not protect adjoining residents from an objectionable use.

The court reversed the decision of the Lower Saucon Township Council denying the appellant's conditional use application to permit the construction of a driveway and bridge. The court concluded that: (1) the Lower Saucon Zoning Ordinance recognized the use as a permitted use and the use was in accordance with the Comprehensive Plan; (2) the objectors failed to prove to the highest degree of probability that the proposed use would affect the public welfare in a way not normally expected for this type of use; (3) the appellees improperly relied on §180-95(C)(3) of the Zoning Ordinance, as most of the section's subsections were inapplicable to the conditional use at issue and the appellant appeared to satisfy the only relevant subsection, §180-95(C)(3)(j), by introducing a geology study into the official record; (4) the appellees committed an error of law in finding that the proposed project did not satisfy §90-23(B)(1) of the Township's Floodplain Management Ordinance; (5) the appellant presented sufficient evidence that the use would not present a substantial threat to the community and the record contained no opposing evidence that the use and location would have an adverse effect on traffic; and (6) no substantial evidence existed in the record to support the appellee's findings that the driveway would adversely affect surrounding neighborhoods.

**COMMONWEALTH OF PENNSYLVANIA v.
JOSEPH LUKE DOWLING, DEFENDANT**

Omnibus Pretrial Motion—Motion to Quash—Prima Facie Case

In the Court of Common Pleas of Northampton County, Pennsylvania, Criminal Division, No. 2004-2352.

Order of the Court denying the defendant, Joseph Luke Dowling's, Motion to Quash. Jacqueline Tashner, Esquire for the Commonwealth.

Melissa Rudas, Esquire and Nuria Sjolund, Esquire for Defendant.

Order of the Court entered on January 7, 2005 by Edward G. Smith, Judge.

DESCRIPTION OF DECISION

The court denied the defendant's Omnibus Pretrial Motion, in the nature of a Motion to Quash, where the evidence presented at the Preliminary Hearing was sufficient to establish a *prima facie* case of Aggravated Assault, Harassment, Simple Assault, and Reckless Endangering. The court explained that although at the Preliminary Hearing the Commonwealth did not introduce any direct evidence of the defendant's actions towards his wife, the Commonwealth could establish the elements of the above defenses by wholly circumstantial evidence. Second, the court concluded that the Commonwealth adduced sufficient evidence to show that the defendant acted with the requisite *mens rea* and that the defendant caused serious bodily injury to support the Aggravated Assault charge.

**CITY OF EASTON, PLAINTIFF v. MARIO RUSSO, DEFENDANT;
CITY OF EASTON, PLAINTIFF v. GEORGE PITTAS, DEFENDANT;
CITY OF EASTON, PLAINTIFF v. JOSEPH F. LIPTAK AND
GLADYS LIPTAK, DEFENDANTS**

Objections to Free and Clear Sale—Municipal Claims and Tax Liens Act—Lien Divestiture by Free and Clear Sale—Lien Priority

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, Nos. 1995-9544, 1999-7803, 1999-7798, 2000-7349, 2003-4760.

Order of the Court granting the plaintiff, City of Easton's, Petition to sell properties free and clear.

Robert P. Daday, Esquire for plaintiff.

B. Lincoln Treadwell, Esquire for Objectors, The Northampton County Tax Claims Bureau.

Orders of the Court entered on March 10, 2005 by Edward G. Smith, Judge.

DESCRIPTION OF DECISION

The court concluded that the plaintiff could pursue collection of delinquent real estate taxes and municipal claims in accordance with the Municipal Claims and Tax Liens Act (the "MCTLA"). As such, the court entered orders permitting the plaintiff to sell the properties free and clear of all tax and municipal claims, liens, mortgages, charges and estates. The County had argued that the plaintiff could not divest the County of its tax liens by using the MCTLA to conduct a free and clear sale. The court determined that the plaintiff did not need the express approval of the County before proceeding with a sale that would potentially divest the County of its tax liens. Additionally, the court concluded that any argument concerning the plaintiff's ability to purchase the properties at the free and clear sale and the amount of any such purchases was purely speculative at this point in the proceedings. Moreover, the MCTLA did not require the plaintiff to act as trustee for the County.

The court also held that the County's objection to the possible distribution of the proceeds from the free and clear sales was unripe and untimely. The court explained that the proper time for the County's objections to the possible distribution of proceeds from the sale is after the sheriff files the proposed distribution schedule pursuant to Pennsylvania Rule of Civil Procedure 3136. Moreover, the court concluded that, at the time of distribution, the plaintiff's municipal claims would not take priority over the County's tax liens.

DESIGNPOINT, INC., PLAINTIFF v.

APEX HOSPITALITY CORPORATION, DEFENDANT

Preliminary Objections—Demurrer—Breach of Contract—Time Is of the Essence

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. 2004-7410.

Order of the Court overruling the plaintiff, Designpoint, Inc.'s, Preliminary Objections to the defendant, Apex Hospitality Corporation's, Counterclaim.

Steven E. Hoffman, Esquire for Plaintiff.

Jane E. Leopold-Leventhal, Esquire and William T. Dudeck, Esquire for Defendant.

Order of the Court entered on April 26, 2005 by Edward G. Smith, Judge.

DESCRIPTION OF DECISION

The court overruled the plaintiff's Preliminary Objections to the defendant's Counterclaim. The plaintiff and defendant entered into a letter agreement to renovate property for the purposes of opening a franchise of Hilton Hotels. The plaintiff filed a Complaint for non-payment of invoices, and the defendant counterclaimed that the plaintiff failed to perform its obligations by April 1, 2004, resulting in substantial losses of income. The plaintiff objected to the Counterclaim, claiming that the defendants were alleging a breach of a time is of the essence contract, which was not provided for by the letter agreement. The court determined that the defendant's Counterclaim was not a claim for a breach of a time is of the essence provision, but only stated that the plaintiff had failed to complete the required work within a reasonable time, which would have allowed the defendant's hotel to open and operate as a franchisee of Hilton Hotels by April 1, 2004.

**DON JONES, PLAINTIFF v. ROBERT MARSH D/B/A
PIONEER AIR CARGO, DEFENDANT**

Preliminary Objections—Service of Process—General Appearance

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. 2004-2143.

Order of the Court sustaining the defendant, Robert Marsh d/b/a Pioneer Air Cargo's, Preliminary Objections for improper service.

William P. Coffin, Esquire for Plaintiff.

Francis Recchuiti, Esquire for Defendant.

Order of the Court entered on October 7, 2004 by Edward G. Smith, Judge.

DESCRIPTION OF DECISION

The court sustained the Preliminary Objections of the defendant. The defendant claimed that he was improperly served with a copy of the Complaint. The plaintiff conceded that the defendant was not properly served with process pursuant to Pennsylvania Rules of Civil Procedure 400 and 402. However, the plaintiff claimed that the defendant waived service of process because the defendant's attorney entered a general appearance. The court noted that a defendant only manifests an intent to submit to a court's jurisdiction when the defendant takes "some action (beyond merely entering a written appearance) going to the merits of the case, which evidences an intent to forego objection to the defective service." As such, the court concluded that the defendant did not waive service of process by his attorney entering a general appearance or by merely filing preliminary objections.

**FLAW, INC. T/A RECYCLE OIL CO., PLAINTIFF v. CNA AND AMERICAN
CASUALTY COMPANY OF READING, PA, DEFENDANTS**

Preliminary Objections—Insurance—Raising Insurance Coverage Exclusions as Preliminary Objections—Motion to Strike References to Bad Faith—Absolute Pollution Exclusions—Contract Interpretation—Resolution of Ambiguities

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. C0048CV2004-3862.

Order of the Court overruling the plaintiff, Flaw, Inc. t/a Recycle Oil Co.'s, Preliminary Objections to the defendants, CNA and American Casualty Company of Reading, PA's, Preliminary Objections and overruling the defendants' Preliminary Objections to the plaintiff's Complaint.

John Mattioni, Esquire for Plaintiff.

Ronald P. Schiller, Esquire and Nicole J. Rosenblum, Esquire for Defendants.

Order of the Court entered on February 1, 2005 by Edward G. Smith, Judge.

DESCRIPTION OF DECISION

The court overruled the plaintiff's Preliminary Objections to the defendants' Preliminary Objections, concluding that the defendants properly raised coverage exclusions as grounds for a demurrer. The defendants were not limited to raising the coverage exclusions as new matter.

The court also overruled the defendants' Preliminary Objections in the nature of a demurrer. The defendants contended that coverage was barred by the absolute pollution exclusion contained in a commercial general liability policy ("CGL Policy") or the pollution exclusion and handling of property exclusion in a business auto policy. Noting the Pennsylvania Supreme Court's statement in *Madison Construction Co. v. Harleysville Mutual Insurance Co.*, 557 Pa. 595, 735 A.2d 100 (1999), that the interpretation of pollution exclusions in CGL policies is a hotly litigated insurance coverage issue, the court determined that the parties needed to further develop the record to determine the intent of the parties concerning the exclusions in the CGL Policy and the business auto policy.

Upon agreement of the parties, the court sustained the defendants' Preliminary Objection in the nature of a motion to strike references to bad faith by the defendants in the Complaint.

**TAMMY D. KIPP, PLAINTIFF v. CHRISTINE IOBST AND
LEHIGH VALLEY EXECUTIVES, LLC T/D/B/A
REALTY EXECUTIVES, DEFENDANTS**

Preliminary Objections—Demurrer—Motion To Strike—Twenty-Day Filing Rule—Unfair Trade Practices and Consumer Protection Law—Real Estate Licensing and Registration Act—Private Causes of Action—Gist of the Action Doctrine—Inclusion of Scandalous or Impertinent Matter

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. 2004-7147.

Order of the Court overruling the plaintiff, Tammy D. Kipp's, Preliminary Objections to the defendants, Christine Iobst and Lehigh Valley Executives, LLC t/d/b/a Realty Executives', Preliminary Objections and sustaining in part and overruling in part the defendants' Preliminary Objections to the plaintiff's Complaint.

Brian F. Achey, Esquire for Plaintiff.

James L. Goldsmith, Esquire and Douglas L. Cassel, Esquire for Defendants.

Order of the Court entered on June 14, 2005 by Edward G. Smith, Judge.

DESCRIPTION OF DECISION

The court overruled the plaintiff's Preliminary Objections to the defendants' Preliminary Objections. The defendants' Preliminary Objections were filed five days after the twenty-day period proscribed by Pennsylvania Rule of Civil Procedure 1026. The court concluded that, due to the extensive complaint, which contained eight counts and 133 paragraphs, the defendants had just cause for the minimal delay in filing their Preliminary Objections. Moreover, the plaintiff failed to assert how she suffered any prejudice by the delay.

The court sustained in part and overruled in part the defendants' Preliminary Objections to the plaintiff's Complaint. First, the court concluded that the "gist of the action" doctrine did not apply to the plaintiff's claims for negligent misrepresentation and fraudulent misrepresentation. The plaintiff's allegations were directed toward the professional conduct of the defendants, and the allegations did not suggest an enforceable contract. Second, concerning the plaintiff's claims under the Unfair Trade Practices and Consumer Protection Law (the "UTPCPL"), the court held that: (1) the UTPCPL applied to sales of real estate and to the services of a real estate broker; (2) the plaintiff sufficiently pled a legally cognizable cause of action for intentional misrepresentation to satisfy the "catch-all" provision of the UTPCPL; and (3) the record needed to be further developed concerning the relationship between the plaintiff and the defendants for the court to determine whether the plaintiff was a person who purchased or leased goods or service primarily for consumer use. Third, the court concluded that the Real Estate Licensing and Registration Act precluded a private cause of action for any alleged violations of the Act. Finally, the court determined that the defendants failed to show any prejudice that the language complained of was scandalous or impertinent, and therefore overruled the defendants' motion to strike.

**GARY L. PECHOTA AND JULIE A. PECHOTA, PLAINTIFFS v.
TECHNICOLOR PROPERTIES, LLC, DEFENDANT**

For Decision—Injunction—Private Nuisance—Noise

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Equity, No. 2004-0915.

Order of the Court finding in favor of the defendant, Technicolor Properties, LLC, and against the plaintiffs, Gary L. Pechota and Julie A. Pechota.

Constantine M. Vasiliadis, Esquire for Plaintiffs.

Joseph S. D'Amico, Jr., Esquire for Defendant.

Order of the Court entered on April 29, 2005 by Edward G. Smith, Judge.

DESCRIPTION OF DECISION

The plaintiffs brought a claim for an injunction ordering the defendant to cease discharging air through its water heater vents that directly face the plaintiffs' home. The plaintiffs claimed that this noise created an actionable private nuisance. The court concluded that the noise did not constitute a private nuisance. First, the court determined that the facts of the case did not demonstrate that the defendant intended to cause noise, which could be heard by the plaintiffs in their home, when it installed the ventilation for the two water heaters. Additionally, the court noted that even if it had concluded that the defendant acted intentionally, the defendant's actions were not unreasonable. The court based its determination on the trial testimony as well as a view of the premises and the water heater ventilation units. Second, the court held that the plaintiffs failed to prove that the defendant acted negligently or recklessly with regard to the operation of the ventilation units. Specifically, the operation of the defendant's business requires the large water heating units, and appropriate ventilation system. Moreover, the defendants attempted to alleviate any possible noise by adding a muffler to the ventilation system. Finally, the plaintiffs failed to show that they suffered significant harm by any noise invasion because they did not demonstrate that the noise would be offensive to normal persons living in a largely commercial urban setting.

**JOHN SIMITZ AND EILEEN SIMITZ, PLAINTIFFS v. LINDA VILLANI,
LISA VILLANI, DEFENDANTS AND MATTHEW S. LAPOS,
ADDITIONAL DEFENDANT**

*Motion for Summary Judgment—Duty of Possessor of Land Towards Third Parties—
Licensee—Slip and Fall*

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. 2003-4589.

Order of the Court denying the defendants, Linda Villani and Lisa Villani's, Motion for Summary Judgment.

Thomas J. Maloney, Esquire and Daniel M. O'Donnell, Esquire for Plaintiffs.

Gregory P. Voci, Esquire for Defendants.

Michael P. Shay, Esquire for Additional Defendant.

Order of the Court entered on May 5, 2005 by Edward G. Smith, Judge.

DESCRIPTION OF DECISION

The court denied the defendants' Motion for Summary Judgment. The parties agreed that the plaintiff, John Simitz was a licensee when he allegedly slipped and fell on a patch of ice on a sidewalk in front of the defendants' home. Mr. Simitz claimed that he suffered serious injuries because of the fall. The plaintiffs contended that the defendants failed to remove snow and ice from their sidewalk, causing the plaintiff's injuries. The court concluded that the factual record, including the depositions of the defendants, indicated that genuine issues of material fact existed as to whether the defendants knew or had reason to know of the icy condition on the sidewalk on the date of the incident.

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