

Northampton County Reporter

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Northampton County Reporter Digest—2007-7

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INSERT: Blue: 1. “State Intermediate Punishment and Other Sentencing Alternatives for Drug-Related Offenders”
2. NCBA 2007 Summer Outing and Registration Form
3. 2007 Calendar of Events

NOTICE TO THE BAR...

The Summer Outing is in two weeks—register now!

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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

NOTICE TO NCBA MEMBERS – BAR NEWS

Lunch Lecture:

“State Intermediate Punishment and Other Sentencing Alternatives for Drug-Related Offenders”—July 16, 2007 @ N.C. Courthouse.
Registration form inside.

Summer Outing Registration—Thursday, July 19, 2007. Registration form inside.

Save the Date—Saturday, October 6, 2007.

Knowledge can be communicated but not wisdom.—Herman Hesse, 1877-1962

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**DURKEE, JACKSON L. a/k/a JACK DURKEE, dec'd.**

Late of Bethlehem, Northampton County, PA

Co-Executors: William B. K. Parry, Jr. and Janice Perry c/o James M. Schildt, Esquire, Williams and Schildt, 1007 W. Broad St., Quakertown, PA 18951

Attorneys: James M. Schildt, Esquire, Williams and Schildt, 1007 W. Broad St., Quakertown, PA 18951

FIEBRANTZ, SYBIL E., dec'd.

Late of the Township of Hanover, Northampton County, PA

Executor: R. Richard Fiebrantz c/o Littner, Deschler & Littner, 512 N. New Street, P.O. Box 1407, Bethlehem, PA 18016-1407

Attorneys: Littner, Deschler & Littner, 512 N. New Street, P.O. Box 1407, Bethlehem, PA 18016-1407

GROSS, THEODORE P., dec'd.

Late of the Borough of Pen Argyl, Northampton County, PA

Executor: Robert M. Gross 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

KANE, JOSEPH B., dec'd.

Late of Bethlehem Township, Northampton County, PA

Estate of Joseph B. Kane c/o Richard W. Shaffer, Esquire, Shaffer Law Offices LLC, 1605 N. Cedar Crest Boulevard, Ste. 514, Allentown, PA 18104

Attorneys: Richard W. Shaffer, Esquire, Shaffer Law Offices LLC, 1605 N. Cedar Crest Boulevard, Ste. 514, Allentown, PA 18104

MARKAN, EMMA E., dec'd.

Late of the Township of Bethlehem, Northampton County, PA

Administratrix: Laurie J. Cahill c/o Mary Ann Snell, Esquire, Suite 311, 3400 Bath Pike, Bethlehem, PA 18017

Attorney: Mary Ann Snell, Esquire, Suite 311, 3400 Bath Pike, Bethlehem, PA 18017

MILLER, RALPH J., JR. a/k/a RALPH J. MILLER a/k/a RALPH MILLER, JR. a/k/a RALPH MILLER, dec'd.

Late of Northampton County, PA

Co-Executors: Debbie L. Miller a/k/a Debbie Riedy and David R. Miller c/o Jeffrey R. Dimmich, Esquire, Dimmich, Guldin, Dinkelacker & Brienza, P.C., Suite 1, 2970 Corporate Court, Orefield, PA 18069

Attorneys: Jeffrey R. Dimmich, Esquire, Dimmich, Guldin, Dinkelacker & Brienza, P.C.,

Suite 1, 2970 Corporate Court,
Orefield, PA 18069

SECOND PUBLICATION

**CROW, JEFFREY R. a/k/a JEFF
CROW a/k/a JEFFREY ROSS
CROW**, dec'd.

Late of Bethlehem, Northampton
County, PA

Executor: Ronald G. Crow c/o
Eric R. Strauss, Esquire, Worth,
Magee & Fisher, P.C., 515 Lin-
den Street, 3rd Floor, Allentown,
PA 18101

Attorneys: Eric R. Strauss, Es-
quire, Worth, Magee & Fisher,
P.C., 515 Linden Street, 3rd
Floor, Allentown, PA 18101

**CROZIER, DAVID L. a/k/a DAVID
CROZIER**, dec'd.

Late of the Borough of Wilson,
Northampton County, PA

Executrix: Marilyn Snuggs c/o
Robert C. Patterson, Esquire,
711 Lehigh Street, Easton, PA
18042

Attorney: Robert C. Patterson,
Esquire, 711 Lehigh Street, East-
on, PA 18042

DAVIS, DORIS A., dec'd.

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

Co-Executors: Linda L. Davis
and Scott C. Davis c/o Craig A.
Dally, Esquire, Pierce & Dally,
LLP, 124 Belvidere Street, Naza-
reth, PA 18064

Attorneys: Craig A. Dally, Es-
quire, Pierce & Dally, LLP, 124
Belvidere Street, Nazareth, PA
18064

GREENBERG, JEROME, dec'd.

Late of Wilson Borough, North-
ampton County, PA

Executrix: Nancy R. Greenberg
c/o Joel M. Scheer, Esquire,

Fishbone & Scheer, 940 West
Lafayette Street, Easton, PA
18042

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

**HAWK, HELEN F. a/k/a HELEN
HAWK**, dec'd.

Late of Plainfield Township,
Northampton County, PA

Co-Executors: Randy A. Nes-
feder, 3120 Washington Street,
Bethlehem, PA 18020 and Keith
R. Nesfeder, 419 Moravian Street,
Nazareth, PA 18064

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

JENNINGS, RANDY E., dec'd.

Late of Bangor, Northampton
County, PA

Executrix: Mary M. Jennings, 55
O.W. Road, Bangor, PA 18013

Attorneys: Matthew J. Goodrich,
Esquire, Zito, Martino and Kara-
sek, L.L.P., 641 Market Street,
Bangor, PA 18013

KOZACHONOK, OLGA, dec'd.

Late of the Borough of Heller-
town, Northampton County, PA

Executor: David Schweisgut c/o
Frank S. Poswistilo, Esquire, 204
N. Thirteenth Street, Easton, PA
18042

Attorney: Frank S. Poswistilo,
Esquire, 204 N. Thirteenth
Street, Easton, PA 18042

NOLF, ARLENE H., dec'd.

Late of the Township of Palmer,
Northampton County, PA

Co-Executrices: Arletta L. Nolf,
2164 Whitehead Road, Nazareth,
PA 18064 and Barbara J. Par-
sons, 2706 Auburn Avenue,
Easton, PA 18045

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

RICH, RITA, dec'd.

Late of Bethlehem, Northampton County, PA

Administratrix: Rochelle M. Petros, 2521 West Boulevard, Bethlehem, PA 18017

Attorneys: Robert W. Brown, Esquire, Brown, Brown, Solt & Ferretti, 1425 Hamilton Street, Allentown, PA 18102

RINKER, MARY LOUISE, dec'd.

Late of the City of Bethlehem, Northampton County, PA

Administrator: Wayne J. Rinker c/o Kevin F. Danyi, JD, LL.M., Danyi Law Offices, P.C., 133 East Broad Street, Bethlehem, PA 18018

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

SCHMIDT, HAROLD N., dec'd.

Late of the Borough of Hellertown, Northampton County, PA
Co-Executors: Bruce N. Schmidt and Diane M. Luybli 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

SMITH, PAUL H., dec'd.

Late of the Township of Williams, Northampton County, PA

Executrix: Darlean Ann Kline c/o Stanley M. Vasiliadis, Esquire, Vasiliadis & Associates, 2551 Baglyos Circle, Suite A-14, Bethlehem, PA 18020

Attorneys: Stanley M. Vasiliadis, Esquire, Vasiliadis & Associates,

2551 Baglyos Circle, Suite A-14, Bethlehem, PA 18020

SULLIVAN, JAMES J., JR. a/k/a JAMES J. SULLIVAN, dec'd.

Late of the Township of Plainfield, Northampton County, PA
Executrix: Matilda Grande 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

WALD, DONALD E., dec'd.

Late of Bath, Northampton County, PA

Administratrix: Mrs. Donna R. Stein c/o John D. Lychak, Esquire, Law Offices of John D. Lychak, P.C., 35 East Elizabeth Avenue, Suite 21, Bethlehem, PA 18018

Attorneys: John D. Lychak, Esquire, Law Offices of John D. Lychak, P.C., 35 East Elizabeth Avenue, Suite 21, Bethlehem, PA 18018

WOLFER, JULIA T., dec'd.

Late of the Borough of Northampton, Northampton County, PA

Co-Administrators: Gregory J. Wolfer and Christine M. Durney c/o Dean C. Berg, Esquire, P.O. Box 10, 1820 Main Street, Northampton, PA 18067

Attorney: Dean C. Berg, Esquire, P.O. Box 10, 1820 Main Street, Northampton, PA 18067

THIRD PUBLICATION

ACHEY, TRICIA A., dec'd.

Late of the Borough of Hellertown, Northampton County, PA
Administrator: David L. Achey 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

BAXTER, REBECCA L., dec'd.

Late of the Borough of Tatamy, Northampton County, PA

Executor: Daniel M. Baxter, 233 High Street, Tatamy, PA 18085

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

DECKER, CHARLES M., SR.,

dec'd.

Late of the Township of Forks, Northampton County, PA

Co-Executrices: Peggy McCormick and Linda Decker a/k/a Linda Decker Eckhard c/o Thomas L. Walters, Esquire, Lewis and Walters, 46 South Fourth Street, P.O. Box A, Easton, PA 18044-2099

Attorneys: Thomas L. Walters, Esquire, Lewis and Walters, 46 South Fourth Street, P.O. Box A, Easton, PA 18044-2099

DOYLE, JANE L. a/k/a JANE DOYLE, dec'd.

Late of the Township of Forks, Northampton County, PA

Co-Executrices: Linda J. Hughes and Judith A. Amadore c/o Joel M. Scheer, Esquire, Fishbone and Scheer, 940 West Lafayette Street, Easton, PA 18042

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

FINN, JAMES P., dec'd.

Late of Palmer Township, Northampton County, PA

Co-Executrices: Helen Wernett and Mary Frances Drew c/o Brett B. Weinstein, Esquire 705

W. Dekalb Pike, King of Prussia, PA 19406

Attorney: Brett B. Weinstein, Esquire, 705 W. Dekalb Pike, King of Prussia, PA 19406

GAST, DRUSELLE O., dec'd.

Late of Bethlehem, Northampton County, PA

Executrix: Alice Petry Gast 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

JAMANN, CLEMENT P., dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executor: Frederick Jamann c/o Jacob S. Kolb, Esquire, Kolb, Vasiliadis and Florenz, 74 West Broad Street, Ste. 170, Bethlehem, PA 18018-5738

Attorneys: Jacob S. Kolb, Esquire, Kolb, Vasiliadis and Florenz, 74 West Broad Street, Ste. 170, Bethlehem, PA 18018-5738

JEFFREY, JANE P., dec'd.

Late of the Township of Palmer, Northampton County, PA

Executrix: Lauralee Field c/o Henry R. Newton, Esquire, Herster, Newton & Murphy, 127 N. 4th St., P.O. Box 1087, Easton, PA 18044-1087

Attorneys: Henry R. Newton, Esquire, Herster, Newton & Murphy, 127 N. 4th St., P.O. Box 1087, Easton, PA 18044-1087

KIMMINOUR, MARY B., dec'd.

Late of Bethlehem, Northampton County, PA

Co-Executors: Benjamin Kimminour and Amanda G. Kim-

minour c/o William W. Matz, Jr.,
Esquire, 211 W. Broad Street,
Bethlehem, PA 18018-5517
Attorney: William W. Matz, Jr.,
Esquire, 211 W. Broad Street,
Bethlehem, PA 18018-5517

LINDNER, ANNA, dec'd.

Late of the City of Bethlehem,
Northampton County, PA
Executor: Mr. Richard Lindner,
341-A Spring Street, Bethlehem,
PA 18018
Attorney: Vaughn A. Terrinoni,
Esquire, 3976 Township Line
Road, Bethlehem, PA 18020

MANN, MARY S., dec'd.

Late of the Borough of Nazareth,
Northampton County, PA
Co-Executors: Eileen F. Fehr,
132 Nazareth Drive, Nazareth,
PA 18064 and Elwood S. Mann,
2828 Valley Woods Road, Hat-
field, PA 19440
Attorney: Daniel G. Spengler,
Esquire, 110 East Main Street,
Bath, PA 18014

MONDSCHIEIN, VERNA A., dec'd.

Late of the Township of Moore,
Northampton County, PA
Co-Executrices: Barbara Kocher,
2469 Fox Road, Bath, PA 18014
and Monica McCandless, 2453
Fox Road, Bath, PA 18014
Attorney: Daniel G. Spengler,
Esquire, 110 East Main Street,
Bath, PA 18014

TOTH, MARY a/k/a MARY S. TOTH, dec'd.

Late of the City of Bethlehem,
Northampton County, PA
Co-Executors: Robert S. Toth
and Mary Lou Enneking c/o
Glenn T. Roth, Jr., Esquire, 450
West Market Street, P.O. Box
450, Pottsville, PA 17901

Attorney: Glenn T. Roth, Jr.,
Esquire, 450 West Market Street,
P.O. Box 450, Pottsville, PA
17901

TRUST NOTICE

NOTICE IS 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 trusts are
requested to make known the same,
and all persons indebted to said
trusts are requested to make pay-
ment, without delay, to the trustees
or to their attorneys named below.

BLAIR, FRANK O., dec'd.

Late of the City of Bethlehem,
Northampton County, PA
Trustee: Alan D. Blair, 746 Red-
fern Lane, Bethlehem, PA
18017
Attorneys: Joseph F. Leeson, Jr.,
Esquire, Leeson, Leeson &
Leeson, 70 East Broad Street,
P.O. Box 1426, Bethlehem, PA
18016-1426

July 5

NOTICE OF INCORPORATION

NOTICE IS HEREBY GIVEN that
Articles of Incorporation have been
filed with the Pennsylvania Depart-
ment of State on June 4, 2007, pur-
suant to the Corporation Law of 1988,
Act 177, as amended. The name of
the corporation is:

**Extreme-scape
and Excavating, Inc.**

GREGG M. FEINBERG, ESQUIRE
1390 Ridgeview Drive
Suite 301
Allentown, PA 18104-9065

July 5

**ARTICLES OF AMENDMENT
NOTICE**

NOTICE IS HEREBY GIVEN that Articles of Amendment—For Profit, Business-stock, was filed with the Pennsylvania Department of State at Harrisburg, Pennsylvania, for the purpose of creating a Business-Stock Corporation under the Business Corporation Law of 1988, as amended.

The name of the corporation was: AAA Send, Inc.

The new name of the corporation is: **EURAUTOCA, INC.**

The Articles of Amendment were filed on May 29, 2007.

JOHN EVERETT COOK, ESQUIRE
1835 Main Street
Northampton, PA 18067

July 5

**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 or about April 13, 2007 for the purpose of creating a Limited Liability Company under the Limited Liability Company Law of 1994, P.L. 703, No. 106.

The name of the limited liability company is:

YM PROPERTIES, LLC

John Everett Cook, Esquire
1835 Main Street
Northampton, PA 18067

July 5

PART-TIME PER DIEM LAWYER

Lehigh Valley firm seeks part-time per diem lawyer for personal injury and civil litigation matters. Interested applicants should fax resume to (610) 437-1572 ATTN Managing Partner.

June 14, 21, 28; July 5

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

NOTICE OF ACTION IN
MORTGAGE FORECLOSURE
Deutsche Bank National Trust
Company, as Trustee for the
registered holders of GSAMP Trust
2005-SD2, Mortgage Pass-Through
Certificates, Series 2005-SD2,
PLAINTIFF

vs.

Unknown Heirs, Successors,
Assigns and All Persons, Firms, or
Associations Claiming Right, Title or
Interest from or under Frederick W.
Brunges, deceased,
DEFENDANT(S)

NO. C-48-CV-2007-1800

To the Defendants, Unknown Heirs, Successors, Assigns and All Persons, Firms, or Associations Claiming Right, Title or Interest from or under Frederick W. Brunges, deceased: TAKE NOTICE THAT THE Plaintiff, Deutsche Bank National Trust Company, as Trustee for the registered holders of GSAMP Trust 2005-SD2, Mortgage Pass-Through Certificates, Series 2005-SD2 has filed an action Mortgage Foreclosure, as captioned above.

NOTICE

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections 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 against you without further notice for the relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER GO TO OR TELEPHONE THE OF-

FICE 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.

Northampton Lawyer
Referral Center
155 S. Ninth Street
Easton, PA 18042

ILANA ZION, ESQUIRE
SHAPIRO & KREISMAN, LLC
Attorneys for Plaintiff

3600 Horizon Dr.
Suite 150
King of Prussia, PA 19406
(610) 278-6800

July 5

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NORTHAMPTON COUNTY REPORTER DIGEST—2007-7
RECENT DECISIONS OF THE COURTS OF COMMON PLEAS
OF NORTHAMPTON COUNTY

**IRA J. KRAMER AND EMMA L. KRAMER, STEPHEN M. GASPAROVIC AND
CONSTANCE A. GASPAROVIC, JEFFREY D. HIGHAM AND DANA M.
HIGHAM, PAULA. PREKOPA AND MARIANNE PREKOPA, MICHAELA.
MAHOLICK AND CHRISTA M. MAHOLICK, JOHN M. FRACASSI AND
RHONDA K. FRACASSI, NICHOLAS R. SABATINE, JR. AND CONNIE C.
SABATINE, AND SUSAN S. SABATINE v. TOLL PA XI, L.P. AND JAMES K.
CARTY AND SHARON L. CARTY**

*Deed Restrictions—Mistake of Fact—Scrivener’s Error—Restrictive Covenants—Chain
of Title—Constructive Notice—Equity—Pennsylvania Unfair Trade Practices and Con-
sumer Protection Law, 73 P.S. §§202-1 to -9.3*

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Divi-
sion—Law, No. C48-CV-2006-367.

Order of Court denying Plaintiffs’ request for relief.

Nicholas R. Sabatine, III, Esquire for Plaintiffs.

Brian M. Monahan, Esquire for Plaintiffs.

Stanley J. Margle, III, Esquire for Defendants, James Carty and Sharon Carty.

James B. McIlvain, Esquire for Defendant, Toll PA XI, L.P.

Decision of Court entered October 5, 2006 by Paula A. Roscioli, Judge.

DESCRIPTION OF DECISION

Plaintiffs brought this matter to trial, alleging that Defendants violated several deed restrictions and requesting various equitable relief, including permanent injunctions against Toll and Carty, a rescission of the sale of lots from Carty to Toll and Plaintiffs’ attorney fees. Further, Plaintiffs alleged that Defendants violated the Unfair Trade Practices and Consumer Protection Law and sought injunctive relief, actual damages and treble damages. The Court denied Plaintiffs’ request for relief on all counts.

Mistakes are sometimes so apparent on the face of an instrument that the courts will construe the instrument as it ought to have been drawn. Nevertheless, evidence in support of a request to reform an instrument must be clear, precise and indubitable.

Defendants presented clear and convincing evidence at trial that Kramer’s Deed contained a mistake, and moreover, the relevant provision in Kramer’s Deed contained a logical error such that it was appropriate to reform the Kramer Deed.

A property owner has the duty to become aware of recorded restrictions in the chain of title and will be bound to such restrictions even absent actual notice.

The weight of authority is to the effect that if a deed or a contract for the conveyance of one parcel of land, with a covenant or easement affecting another parcel of land owned by the same grantor, is duly recorded, the record is constructive notice to a subsequent purchaser of the latter parcel. The rule is based generally upon the principle that a grantee is chargeable with notice of everything affecting his title which could be discovered by an examination of the records of the deeds or other muniments of title of his grantor.

Defendant, Toll, was charged with constructive notice of the restrictive covenants included in the Kramer Deed. Despite Toll’s constructive notice of these restrictions,

because their enforcement would be clearly harmful to Carty and because Toll's development of this subdivision will certainly not harm Plaintiffs and may in fact benefit them, the Court will not rescind the sale of lots to Toll nor enjoin them from developing Jacobsburg Manor Estates.

Equity will not enforce restrictions that are not reasonably clear, or that are vague and uncertain.

Kramer Deed Restriction # 27, requiring adherence to the natural aesthetics of the land development, was impermissibly vague.

A private plaintiff must establish three elements in order to state a valid cause of action under the Pennsylvania Unfair Trade Practices and Consumer Protection Law: (1) a purchase of goods or services which results in (2) an ascertainable loss of money or property, and said loss is caused by (3) the unlawful action of another as defined in the Act. 73 P.S. §202-9.2

Plaintiffs did not purchase or lease any goods or services from Toll. Therefore, Plaintiffs lack standing to pursue their claim against Toll. Plaintiffs established that they purchased a good (*i.e.*, real estate) from Carty. However, Plaintiffs failed to produce evidence of any ascertainable loss of money or property, and Plaintiffs' could not establish their substantive claims against Carty.

Editor's Note: Plaintiffs appealed the decision of the trial court to the Superior Court. The Superior Court quashed Plaintiffs' appeal on December 22, 2006. *See* 3172 EDA 2006.

DONALD H. LANDIS, JR. v. WILLIAM R. WAMBOLD

Summary Judgment—Assured Clear Distance Ahead Rule, 75 Pa.C.S. §3361

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. C-48-CV-2005-7685

Order of Court denying Defendant's Motion for Summary Judgment.

W. Austin Allen, III, Esquire for Plaintiff.

John W. Ashley, Esquire for Defendant.

Decision of Court entered November 8, 2006 by Paula A. Roscioli, Judge.

DESCRIPTION OF DECISION

Defendant filed a Motion for Summary Judgment, asserting that Plaintiff violated Pennsylvania's assured clear distance ahead rule in that he ran into the rear of Defendant's motorcycle. Summary Judgment was denied.

Summary judgment may be granted only in those cases in which no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law.

The assured clear distance ahead rule requires a motorist to be capable of bringing his or her vehicle to a stop within the distance that he or she can clearly see. However, the rule is not violated every time a motorist fails to do so. The mere happening of a rear end collision does not constitute negligence as a matter of law on the part of the operator of the vehicle in the rear. Rather, the manner in which an accident occurs is a circumstance to be considered in determining the issue of negligence.

A rear end collision may create an inference that the vehicle in the rear was negligent, but the Court must draw all inferences in favor of the non-moving party when considering a motion for summary judgment. Moreover, Plaintiff disputes the manner in which the accident occurred.

**KEVIN KIMMICK AND MARJORIE KIMMICK v. WILLIAM J. KOVACS, JR.,
AND JUDY B. KOVACS v. KEY CONSOLIDATED 2000, INC. d/b/a
KEYSTONE INSPECTION SERVICE, STEVE DUNNE AND JOHN GOGAL**

Preliminary Objections—Demurrer—Third-Party Beneficiary—Pennsylvania Home Inspection Law, 68 Pa. C.S.A §§7504, 7508

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. C48-CV-2003-8786.

Order of Court overruling Additional Defendants' Preliminary Objections.

Kevin J. Kelleher, Esquire for Plaintiffs.

George A. Heitzman, Esquire for Defendants.

Bradley Warren Weidenbaum, Esquire for Additional Defendants.

Decision of Court entered November 21, 2006 by Paula A. Roscioli, Judge.

DESCRIPTION OF DECISION

Plaintiffs filed an Amended Complaint seeking to hold Defendants liable for failing to disclose material defects in real property which Plaintiffs purchased from Defendants. Defendants filed a Complaint joining Additional Defendants and claiming that they are third-party beneficiaries to the contract between Plaintiffs and Additional Defendants and that, if any defects in the Subject Property existed, Additional Defendants were negligent in failing to discover and disclose such defects to Plaintiffs and Defendants. Additional Defendants filed Preliminary Objections in the nature of a demurrer to the Joinder Complaint, objecting to recognition of Defendants' third-party beneficiary status and objecting to recognition of any duty of care owed by Additional Defendants to Defendants.

Before the Court may sustain preliminary objections that will result in the denial of a claim or dismissal of a suit, our determination to do so must be free and clear of doubt.

There are two ways to establish third-party beneficiary status: (1) by the express terms of the contract or (2) by the surrounding circumstances where such circumstances are so compelling that recognition of the right is appropriate.

Defendants aver that they are third-party beneficiaries to the contract between Plaintiffs and Additional Defendants; that Additional Defendants entered said contract knowing that Defendants would rely upon the home inspection report produced as a result of said contract; and as a matter of law, Additional Defendants must know that the seller in a pending real estate transfer is entitled to rely upon the information contained in a home inspection report. See 68 Pa. C.S.A §7508. Upon consideration of the facts averred by Defendants and the law in Pennsylvania, we find that Defendants have sufficiently pleaded that they are entitled to third-party beneficiary status.

Additional Defendants are required by law to provide reasonably prudent home inspections. See 68 Pa. C.S.A §7504. Moreover, the Legislature has recognized a clear right in the seller to rely on the results of a home inspection performed pursuant to the Home Inspection Law. Therefore, we find that Additional Defendants owed a duty of care to Defendants.

H. T. LYONS, INC. v. FIDELITY & DEPOSIT COMPANY OF MARYLAND

Summary Judgment—Bond of Indemnity—Pennsylvania Bond Law, 8 P. S. §194(b)

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. C48-CV-2004-8144, Consolidated with: C48-CV-2005-5701; C48-CV-2005-4251.

Order of Court granting Plaintiff's Motion for Partial Summary Judgment and denying Plaintiff's Motion for Complete Summary Judgment.

Mark H. Scoblionko, Esquire for Plaintiff.

Cornelius Van Galen, Esquire for Defendant.

Decision of Court entered December 8, 2006 by Paula A. Roscioli, Judge.

DESCRIPTION OF DECISION

Plaintiff filed suit against Defendant in an effort to collect against a payment bond issued by Defendant to Eastern Construction Associates, Inc. Plaintiff filed a Motion for Partial Summary Judgment averring that Plaintiff had complied with all timing and notice requirements set forth in the terms of the payment bond and a Motion for Complete Summary Judgment.

Summary judgment may be granted only in those cases in which no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law.

Plaintiff satisfied all the requirements set forth in Paragraphs 4 and 11 of the Bond regarding timing and notice of a claim against a bond and acted in accordance with Pennsylvania Bond Law. *See* 8 P.S. §194(b).

Generally, a judgment against the principal is conclusive against his sureties. However, the probative significance of a judgment obtained by confession or default is much less than that of a judgment after trial on the merits.

Plaintiff received no judgment on the merits against the principal, rather judgment of default was granted against the principal as a sanction resulting from discovery violations. Moreover, Defendant filed an Answer in which Defendant disputed factual averments relevant to Plaintiff's dispute.

COMMONWEALTH OF PENNSYLVANIA v. JORDAN D. YOUNG

Probable Cause—Constructive Possession

In the Court of Common Pleas of Northampton County, Pennsylvania, Criminal Division, No. 2006-1828.

Order of Court denying Defendant's Motion to Suppress Physical Evidence and Petition for Writ of Habeas Corpus.

Michael Thompson, Esquire for Commonwealth.

Philip D. Lauer, Esquire for Defendant.

Decision of court entered December 20, 2006 by Paula A. Roscioli, Judge.

DESCRIPTION OF DECISION

Defendant filed an Omnibus Pretrial Motion with the Court, including (1) a Motion to Suppress Physical Evidence and (2) a Petition for Writ of Habeas Corpus.

To be constitutionally valid, a warrantless arrest must be supported by probable cause. Probable cause is determined by evaluating the totality of circumstances.

Sergeant Vangelo testified that, to his knowledge, "at the time" he arrived at the residence, there were individuals in the apartment with no lawful reason for being

there. This information is more than sufficient to establish probable cause that *anyone* found inside the residence at that time was committing a crime. Therefore, we find that the police had probable cause to arrest Defendant. Because we find that the police had probable cause to arrest Defendant, there is no basis upon which to suppress the physical evidence found in Defendant's possession.

The Commonwealth must establish a *prima facie* case against Defendant. A *prima facie* case consists of evidence, read in the light most favorable to the Commonwealth, that sufficiently establishes both the commission of a crime and that the accused is probably the perpetrator of that crime. Constructive possession is the ability to exercise a conscious domain over the illegal substance: the power to control the contraband and the intent to exercise control. Constructive possession may be proved through circumstantial evidence, and the totality of circumstances can be examined to determine if constructive possession exists.

Circumstantial evidence was sufficient to enable a jury to infer that Defendant had power and intent to control contraband found within residence from which Defendant fled.

MAZDA AMERICAN CREDIT v. ELAN OVALL

Judgment on the Pleadings—Breach of Contract—Joint and Several Liability, 13 Pa. C.S.A. §3116(a)

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. C-48-CV-2006-1731.

Order of Court granting Plaintiff's Motion for Judgment on the Pleadings.

Joann Needleman, Esquire for Plaintiff.

Elan Ovall, Pro Se, Defendant.

Decision of Court entered December 27, 2006 by Paula A. Roscioli, Judge.

DESCRIPTION OF DECISION

Plaintiff filed a Motion for Judgment on the Pleadings. Defendant failed to respond to Plaintiff's Motion. Plaintiff's Motion granted.

In order to properly plead a breach of contract, Plaintiff must establish (1) the existence of a contract, including its essential terms; (2) a breach of a duty imposed by the contract; and (3) resultant damages. Defendant admits these elements in his Answer to Plaintiff's Complaint.

The law in Pennsylvania is that where two or more persons have the same liability for a debt, each person is jointly and severally liable. *See* 13 Pa. C.S.A. §3116(a). Joint and several liability is defined as liability that may be apportioned either among two or more parties or to only one or a few select members of the group, at the adversary's discretion.

Despite entering into this contract along with his estranged wife, Defendant may be held solely liable to Plaintiff.

JULY 2007

MON	TUE	WED	THU	FRI
2 Juvenile DRS	3 DRS	4 Independence Day	5 Juvenile	6 Misc. Hearings
9 Juvenile Criminal	10 Criminal	11 Criminal	12 Juvenile Arraignments Criminal	13 Misc. Hearings
16 Juvenile ARD/ Summaries	17 Status Fines & Costs	18 Civil Call Misc. Hearings	19 Judges' Conference	20 Judges' Conference
23 Juvenile Non-Jury	24 Non-Jury	25 Non-Jury	26 Juvenile Non-Jury	27 Misc. Hearings O.C. Audit
30 Juvenile Arraignments	31			