

Northampton County Reporter

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Northampton County Reporter Digest—2008-4

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INSERT: Green: 1. Quarterly Association Meeting

2. 2008 Calendar of Events

3. Lehigh Valley Iron Pigs vs. Scranton/Wilkes Barre Yankees

4. PBI/CLE Seminars—NCBA Office—April-August, 2008

Yellow: 1. April Happy Hour

2. "Practice before United States Magistrate Judges of the United States District Court for the Eastern District of Pennsylvania"

3. "The Gift of Stress"

4. New York Yankees vs. Toronto Blue Jays

NOTICE TO THE BAR....

Registration forms for the Yankees vs. Blue Jays game and the Iron Pigs vs. Scranton/Wilkes Barre are inside.

* * * * *

YLD sponsored Happy Hour for all members: 5:00—8:00 p.m. @ Starters Riverport, Bethlehem. Details and registration form inside. Register early for the chance to win two tickets to the Iron Pigs game on July 2nd.

**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

NOTICE TO NCBA MEMBERS – BAR NEWS

Yankees vs. Blue Jays game June 2, 2008—more than half of the tickets are sold. If you plan to join us for the Yankees game, send in your reservation form and payment soon!

Lunch Lecture Programs

“Practice before United States Magistrate Judges of the United States District Court for the Eastern District of Pennsylvania” presented by Honorable Henry S. Perkin, United States Magistrate Judge—Friday, April 18, 2008. Registration form inside.

“The Gift of Stress” presented by Kenneth Hagreen, Esq.—Wednesday, April 30, 2008. Registration form inside.

Quarterly Association Meeting

Thursday, May 22, 2008, 12:00 p.m. at the Best Western, Bethlehem.

Program: **Malpractice Avoidance Seminar**. Registration form inside.

Save the Dates!

July 24, 2008—Summer Outing

October 17 & 18, 2008—Bench Bar Conference

Career Day Programs

It is that time of year when the middle schools and high schools ask our attorneys to help out with Career Day presentations. If you are asked directly by teachers to help with their in-school Career Days, or any other programs, please call the NCBA Office. We are keeping track of which schools we visit and with which teachers we have working relationships. We also have curriculum information for your use and giveaways.

Kings are not born: they are made by artificial hallucination.—George Bernard Shaw

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**ADAMCHIK, MARIA, dec'd.**

Late of 135 Wassergass Road, Hellertown, Northampton County, PA

Executrix: Anastasia Symanovich c/o Kirby G. Upright, Esquire, King Spry Herman Freund & Faul LLP, One West Broad Street, Suite 700, Bethlehem, PA 18018

Attorneys: Kirby G. Upright, Esquire, King Spry Herman Freund & Faul LLP, One West Broad Street, Suite 700, Bethlehem, PA 18018

DELABAR, HILDA A., dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executor: Richard D. Delabar, 321 Easton Road, P.O. Box 521, Riegelsville, PA 18077

Attorneys: Robert A. Nitchkey, Jr., Esquire, Hemstreet, Nitchkey & Freidl, 730 Washington Street, Easton, PA 18042

FLAGLER, GLENN, dec'd.

Late of Williams Township, Northampton County, PA

Executor: Glenn Lewis Flagler c/o Ralph J. Bellafatto, Esquire, 4480 William Penn Highway, Easton, PA 18045

Attorney: Ralph J. Bellafatto, Esquire, 4480 William Penn Highway, Easton, PA 18045

FOX, ANNA, dec'd.

Late of the Borough of Nazareth, Northampton County, PA

Co-Executors: Gary F. Fox and James A. Fox c/o Alfred S. Pierce, Esquire, I.D. No. 21445, 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

GRIFFITH, GEORGE L., dec'd.

Late of Lower Saucon Township, Northampton County, PA

Co-Executors: Susan P. Vizzard and G. Robert Griffith c/o Timothy J. Duckworth, Esquire, Mosebach, Funt, Dayton & Duckworth, P.C., P.O. Box 20770, Lehigh Valley, PA 18002-0770

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

GRUBE, CATHERINE E., dec'd.

Late of the Township of Forks, Northampton County, PA

Executor: David C. Bruckman c/o Steven N. Goudsouzian, Esquire, 2925 William Penn Highway, Suite 301, Easton, PA 18045-5283

Attorney: Steven N. Goudsouzian, Esquire, 2925 William Penn Highway, Suite 301, Easton, PA 18045-5283

HOCKMAN, CAROLE M., dec'd.

Late of the Township of Forks, Northampton County, PA

Executrix: Barbara J. Cantu,
1322 Pebble Dr., San Carlos, CA
94070

Attorney: Nancy T. Schneider-
man, Esquire, 2704 William
Penn Hwy., P.O. Box 3443, East-
on, PA 18043

KALMAN, ELLEN W., dec'd.

Late of Bath, Northampton
County, PA

Executor: Charles Kalman, III
c/o Jeffrey F. Hussar, Esquire,
946 Third Street, Whitehall, PA
18052

Attorney: Jeffrey F. Hussar, Es-
quire, 946 Third Street, White-
hall, PA 18052

MILLER, ELEANORE M., dec'd.

Late of Bethlehem, Northampton
County, PA

Executrix: Laura L. Foulke c/o
Noonan & Prokup, 526 Walnut
Street, Allentown, PA 18101-
2394

Attorneys: Noonan & Prokup,
526 Walnut Street, Allentown,
PA 18101-2394

MULLON, MARIE R., dec'd.

Late of the Township of Bushkill,
Northampton County, PA

Executor: Gene F. Roscioli, Es-
quire, 830 Lehigh Street, Easton,
PA 18045

Attorney: Gene F. Roscioli, Es-
quire, 830 Lehigh Street, Easton,
PA 18045

SOKALSKY, ANNA, dec'd.

Late of the Township of Hanover,
Northampton County, PA

Executrix: Deborah Ann Roeder,
4330 Wellesley Road, Bethle-
hem, PA 18017

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

SECOND PUBLICATION

BUTTO, VINCENZA, dec'd.

Late of the Township of Williams,
Northampton County, PA

Executor: Santo J. Butto c/o
Theodore R. Lewis, Esquire,
Lewis and Walters, 46 S. 4th
Street, P.O. Box A, Easton, PA
18044-2099

Attorneys: Theodore R. Lewis,
Esquire, Lewis and Walters, 46
S. 4th Street, P.O. Box A, Easton,
PA 18044-2099

FEHNEL, ALBERTA S., dec'd.

Late of the Township of Palmer,
Northampton County, PA

Co-Executors: Robert R. Fehnel
and Neal B. Fehnel c/o Theodore
R. Lewis, Esquire, Lewis and
Walters, 46 S. 4th Street, P.O.
Box A, Easton, PA 18044-2099

Attorneys: Theodore R. Lewis,
Esquire, Lewis and Walters, 46
S. 4th Street, P.O. Box A, Easton,
PA 18044-2099

FILCHNER, BERNARDEN M.,
dec'd.

Late of 346 N. Penn Dixie Road,
Bath, Northampton County, PA
Executor: Joseph G. Hllavacova
c/o Linda S. Luther-Veno, Es-
quire, 1605 N. Cedar Crest Blvd.,
Suite 106, Allentown, PA
18104

Attorney: Linda S. Luther-Veno,
Esquire, 1605 N. Cedar Crest
Blvd., Suite 106, Allentown, PA
18104

GILFERT, WILLIAM N., dec'd.

Late of Bethlehem, Northampton
County, PA

Executrix: Phyllis A. Harding
a/k/a Phyllis A. Rader c/o Rob-
ert Van Horn, Esquire, 740
Hamilton Street, 2nd Floor, Al-
lentown, PA 18101

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

HELLER, FLORENCE A., dec'd.

Late of Upper Nazareth Township, Northampton County, PA
Co-Executrices: Nancy M. Mertz, 165 South Church Street, Nazareth, PA 18064-2007 and Carol A. Rumsey, 350 North Broad Street Ext., Nazareth, PA 18064-9522

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

HUTCHENS, BETTY S., dec'd.

Late of Palmer Township, Northampton County, PA
Co-Executors: William B. Hutchens, 7 Hawthorne Court, Easton, PA 18045-1928 and Nazareth National Bank and Trust Co. a/k/a National Penn Investors Trust Company, 1620 Pond Road, Allentown, PA 18104-2266

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

KOECHIG, EDWARD R., dec'd.

Late of the Borough of Wind Gap, Northampton County, PA
Executrix: Iva E. Perz 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

KOONS, ROBERT L., dec'd.

Late of Bethlehem, Northampton County, PA

Executrix: Debra A. White a/k/a Debra A. Koons 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

KOZLOWSKI, BLANCHE B., dec'd.

Late of the Borough of Hellertown, Northampton County, PA
Executrix: Bernice S. Shiner 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

MILLER, RUSSELL B. a/k/a RUSSELL B. MILLER, JR., dec'd.

Late of the Township of Palmer, Northampton County, PA

Co-Executrices: Ruth Ann Barr and Debra Lynn Kish a/k/a Debra L. Swanson 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

MYER, RICHARD J., dec'd.

Late of Easton, Northampton County, PA

Executrix: Lucinda Myer c/o Robert B. Roth, Esquire, The Roth Law Firm, 123 North Fifth Street, Allentown, PA 18102

Attorneys: Robert B. Roth, Esquire, The Roth Law Firm, 123 North Fifth Street, Allentown, PA 18102

ORTALANO, DOROTHY MAE, dec'd.

Late of the City of Easton, Northampton County, PA

Administrator: Thomas K. Ortalano c/o Thomas L. Walters, Esquire, Lewis and Walters, 46 S. 4th Street, P.O. Box A, Easton, PA 18044-2099

Attorneys: Thomas L. Walters, Esquire, Lewis and Walters, 46 S. 4th Street, P.O. Box A, Easton, PA 18044-2099

RAMOS, LUIS A., dec'd.

Late of Bethlehem Township, Northampton County, PA

Executrix: Sharon Ramos, 1410 Seventh St., Bethlehem, PA 18020

THIRD PUBLICATION**ALMASSI, KATHERINE,** dec'd.

Late of 602 East 21st Street, Northampton, Northampton County, PA

Executor: Barry Dobil, 2066 Becker Street, Allentown, PA 18106

Attorney: William G. Malkames, Esquire, 509 Linden Street, Allentown, PA 18101-1415

BARKS, GEORGE T., dec'd.

Late of Nazareth Borough, Northampton County, PA

Executor: Theodore R. Barks c/o Charles J. Arena, Esquire, 583 Skippack Pike, Ste. 100, Blue Bell, PA 19422.

Attorney: Charles J. Arena, Esquire, 583 Skippack Pike, Ste. 100, Blue Bell, PA 19422.

CASTILLO, ARISDIDES, dec'd.

Late of 434 Filbert Street, Easton, Northampton County, PA

Executrix: Ana Alfaro c/o Torres Law Offices, P.C., 432 N. 7th Street, Allentown, PA 18102

Attorneys: Torres Law Offices, P.C., 432 N. 7th Street, Allentown, PA 18102

FARACE, JOHN L., dec'd.

Late of Roseto, Northampton County, PA

Executor: Anthony J. Martino, Esquire, Zito, Martino and Karasek, LLP, 641 Market Street, Bangor, PA 18013

Attorneys: Anthony J. Martino, Esquire, Zito, Martino and Karasek, LLP, 641 Market Street, Bangor, PA 18013

HECKMAN, ROBERT C., SR., dec'd.

Late of Lower Nazareth Township, Northampton County, PA

Executor: Robin Manini c/o Paul A. Florenz, Esquire, Kolb, Vasiliadis and Florenz, 74 West Broad Street, Ste. 170, Bethlehem, PA 18018-5738

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

HUGHES, RAYMOND J., SR., dec'd.

Late of the Borough of Bath, Northampton County, PA

Co-Executors: Raymond J. Hughes, Jr., 241 Aurora Street, Phillipsburg, NJ 08865 and Judith L. Reinert, 145 Bullman Street, Phillipsburg, NJ 08865

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

PICHERE, STELLA, dec'd.

Late of the Township of Moore, Northampton County, PA

Administratrix: M. Michele Pichere, 70 Hickory Hills Drive, Bath, PA 18014

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

ROOT, WILLIAM LESHER, III,
dec'd.

Late of Bethlehem, Northampton
County, PA

Executor: William Lawrence
Root, 328 Timothy Way, Rich-
mond, KY 40475-2644.

ROSEMAN, YOLAN M. a/k/a YO-
LAN ROSEMAN, dec'd.

Late of the City of Bethlehem,
Northampton County, PA

Executor: Stephen G. Roseman
c/o Thomas P. Stitt, Esquire,
576 Nazareth Pike (RT 191),
Nazareth, PA 18064-8400

Attorney: Thomas P. Stitt, Es-
quire, 576 Nazareth Pike (RT
191), Nazareth, PA 18064-8400

SABATINO, CYNTHIA M., dec'd.

Late of Roseto, Northampton
County, PA

Executrix: Mrs. Grace Sabatino,
724 Roosevelt Avenue, Roseto,
PA 18013

Attorneys: Anthony J. Martino,
Esquire, Zito, Martino and Kara-
sek, LLP, 641 Market Street,
Bangor, PA 18013

LIMITED LIABILITY COMPANY
NOTICE

NOTICE IS HEREBY GIVEN that
a Certificate of Organization for a
Domestic Limited Liability Company
was filed with the Department of State
of the Commonwealth of Pennsylvania,
at Harrisburg, Pennsylvania, on
March 17, 2008, 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:

WAYNE PAFF EXTERIOR
RENOVATIONS LLC
Alfred S. Pierce, Esquire
Pierce & Dally, LLP

124 Belvidere Street
Nazareth, PA 18064

Apr. 10

IN THE NORTHAMPTON COUNTY
COURT OF COMMON PLEAS
ORPHANS' COURT DIVISION

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

ESTATE; Accountant

EDWIN F. FAUSTNER; James F.
Faustner, Executor

JOHN S. KRAEMER; Carl F. Krae-
mer and Jonathan C. Kraemer, Co-
Executors

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, APRIL 25, 2008 AT
9:00 A.M. IN COURTROOM #1.

Dorothy L. Cole
Clerk of Orphans' Court

Apr. 10, 17

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

IN THE MATTER OF PETITION FOR
THE CHANGE OF NAME OF
MINOR CHILD D.R.S.

NO. C-48-CV-2008-3305

NOTICE

NOTICE IS HEREBY GIVEN that
on April 4, 2008, the Petitioners, Mary
A. Yacovelli and James A. Sloan, filed
a Petition for Change of Name in the
Court of Common Pleas of Northamp-
ton County, Pennsylvania. Petitioners
are requesting a order to change the

name of their son Devon Ronald Sloan to Devon Yacovelli Sloan.

The Court has fixed May 13, 2008 at 9:00 a.m. in Courtroom Number 4 of the Northampton County Courthouse, 669 Washington Street, Easton, Pennsylvania 18042 as the time and place for the hearing on said Petition, when and where all interested parties may appear and show cause, if any, why the request of the Petitioners should not be granted.

BETH A. KNICKERBOCKER,
ESQUIRE
I.D. NO. 65818

Attorney for Petitioners
Mary A. Yacovelli
and James A. Sloan

100 N. Third Street
Third Floor
Easton, PA 18042

Apr. 10

PARALEGAL

Full-time estates and trusts paralegal needed for busy Lehigh Valley law firm. Must be computer literate and knowledge of Lackner 6-in-1

Estate Administration Program a plus. Willing to train the right person. Excellent benefits. Salary commensurate w/experience. Send resume in confidence to Hiring Partner, Mosebach, Funt, Dayton & Duckworth, P.C., P.O. Box 20770, Lehigh Valley, PA 18002-0770.

Apr. 10, 17

**CITY OF ALLENTOWN
SOLICITOR'S OFFICE**

Paralegal—FT for legal research, document preparation, litigation support and other administrative duties. Paralegal certification required.

Legal Secretary—FT for all clerical tasks; financial records and all other secretarial duties. Legal Sec. exp. required.

Applicants must have exceptional organizational, interpersonal, oral, written & multi-tasking skills. Send resume to 435 Hamilton St., Rm. 233, Allentown, PA 18101 by March 20; excellent salary & benefit pkg. Go to www.allentownpa.gov for job descriptions. EOE

Mar. 20, 27; Apr. 3, 10

**ANDREW D. HOFFMAN
MEMBER ANNOUNCEMENT**

Zator Law Offices, LLC takes great pleasure in announcing that Andrew D. Hoffman, Esquire, has been named a Member of the Firm. Attorney Hoffman earned his Juris Doctor as a cum laude graduate of The Dickinson School of Law where he belonged to the Woolsack Honor Society. He received his Bachelor of Arts degree, magna cum laude, from Villanova University, where he was admitted to the Phi Beta Kappa National Academic Honor Society. While at Villanova he was also awarded the Medallion for Academic Excellence. Complementing the Firm's focus on business, commercial, and corporate law as well as municipal work, land use/development, zoning, estate planning, litigation and general civil practice, Mr. Hoffman concentrates his practice in business, commercial and contract law, real estate, land use/development, planned communities and condominiums, computer law and tax assessment appeals.

Apr. 10

NORTHAMPTON COUNTY REPORTER DIGEST—2008-4
RECENT DECISIONS OF THE COURTS OF COMMON PLEAS
OF NORTHAMPTON COUNTY

**EMC MORTGAGE CORPORATION v.
PAMELA E. LUTZ AND MARK J. LUTZ**

Plaintiff's Motion for Summary Judgment

In the Civil Court of Common Pleas of Northampton County, Pa., Civil Action—Law, No. C-48-CV-2006-7882.

Order of Court entered granting Plaintiff's Motion for Summary Judgment.

Thomas I. Puleo, Esquire for the Plaintiff.

Kevin T. Fogerty, Esquire for the Defendant.

Order of Court entered on September 24, 2007 by Paula A. Roscioli, Judge.

DESCRIPTION OF DECISION

The Plaintiff, EMC Mortgage Corporation, initiated its second motion for summary judgment in an *in rem* action to foreclose on a mortgage on property owned by the Defendants, Pamela E. Lutz and Mark J. Lutz. The Defendants' mortgage had been in default since May 1, 2004. The Plaintiff sent the Defendants a Notice of Intention to Foreclose and a Notice of Homeowners' Emergency Mortgage Assistance Act of 1983 ("Act") listing a \$172,561.47 payment due to cure the mortgage default. The Defendants did not make this payment, and the Plaintiff initiated the foreclosure action on September 29, 2006.

The Plaintiff had initially moved for summary judgment on the basis that the Defendants failed to raise any material issue of fact or law to the Plaintiff's mortgage foreclosure action. The Defendants successfully defended against this motion for summary judgment on the ground that the Court lacked jurisdiction because the Plaintiff had sent the Defendants an inaccurate Act No. 91 Notice. In its second motion for summary judgment, however, the Plaintiff alerted the Court to section 1680.401c of the Act, which rendered the Act No. 91 Notice inapplicable to the Defendants' mortgage. Section 1680.401c provides that an Act No. 91 Notice is not required where (1) the mortgagor is more than twenty-four (24) months delinquent, and (2) the aggregate amount of arrearages on the mortgage exceed the sum of sixty thousand dollars (\$60,000).

The Court therefore concluded that the Act, including the requirement of an Act No. 91 Notice, did not apply to the Defendants' mortgage. The Court then proceeded to address the merits of the Plaintiff's motion for summary judgment. The Court first concluded that the Defendants' failure to deny the Plaintiff's allegation of default with specificity was deemed to be an admission. The Court therefore concluded that the Plaintiff was entitled to the relief provided in the mortgage agreement between the parties in the event of a default by the Defendants. However, the Court concluded that there remained a genuine issue of material fact as to the calculation of the total amount due on the mortgage. The Court therefore declined to grant the Plaintiff summary judgment with respect to the total amount claimed by the Plaintiff in its Complaint.

COMMONWEALTH OF PENNSYLVANIA v. JOSEPH ALFORD*Petition for Post-Conviction Relief*

In the Court of Common Pleas of Northampton County, Pennsylvania, Criminal Division, No. 2006-413.

Order of the Court denying Petitioner's Motion for Post-Conviction Collateral Relief.

First Deputy District Attorney Terence P. Houck for the Commonwealth.

Victor E. Scomillio, Esquire for the Petitioner.

Order of the Court entered on October 22, 2007 by Paula A. Roscioli, Judge.

DESCRIPTION OF DECISION

The Petitioner, Joseph Alford, moved for post-conviction collateral relief pursuant to 42 Pa. C.S.A. §9543(a)(2)(ii) of the Post Conviction Relief Act ("PCRA") for ineffective assistance of counsel. The Petitioner contended that he had accepted a plea offer of 5 to 10 years in state confinement at his preliminary hearing, but that his attorney, Anthony Karam Jr., Esquire, failed to act on this acceptance. Attorney Karam, on the other hand, asserted that it was the Petitioner's decision to reject the 5 to 10 year plea offer and instead proceed to trial. The Petitioner alleged that he was harmed by Attorney Karam's failure to accept the 5 to 10 year plea offer because the Commonwealth subsequently withdrew the offer and replaced it with an 8 to 20 year plea offer. The Petitioner also contended that his guilty plea was not knowingly and voluntarily entered because he was not aware that he was also pleading guilty to a gun charge.

The Court's review of the record revealed that it was the Petitioner's conscious decision to reject the Commonwealth's 5 to 10 year plea offer, and not the result of ineffective assistance of counsel on the part of Attorney Karam. The Court found Attorney Karam's testimony at the Petitioner's PCRA hearing to be credible and persuasive. This testimony was corroborated by Attorney Karam's subsequent application for withdrawal on the ground that the Petitioner could not afford to pay his trial fees. The Court found it self-evident that Attorney Karam would not have been concerned about the Petitioner's ability to pay his legal fees during trial if the Petitioner had truly intended to accept the Commonwealth's 5 to 10 year plea offer. Moreover, Attorney Mark L. Minotti, who replaced Attorney Karam after his withdrawal from the case, also testified credibly and persuasively at the Petitioner's PCRA hearing that the Petitioner wanted to take his case to trial. The Court therefore found that the only conclusion supported by the record was that the Petitioner's desire for a trial, and not the error or omission of trial counsel, was responsible for the failure to preserve the 5 to 10 year plea offer.

The Court's review of the Petitioner's guilty plea also revealed that the Petitioner entered this guilty plea voluntarily, knowingly, and intelligently. The Court's review of the record revealed an in-depth plea colloquy during which the Court explained to the Petitioner the nature of the plea he was being offered, the minimum and maximum sentence associated with his plea, and the Petitioner's constitutional right to trial and other associated rights. When asked whether the Commonwealth's version of the events, which included an assertion that the Petitioner had shot the victim in the neck, the Petitioner had responded, "yes." The Court therefore concluded that the Petitioner's decision to enter his guilty plea was voluntarily and intelligently entered under the totality of the circumstances.

**BRIAN K. BOND v. CITY OF BETHLEHEM, JAMES SMITH,
SUPERINTENDENT OF STREETS, DEFENDANT JOHN DOE # 1,
DEFENDANT JOHN DOE # 2**

Defendant's Preliminary Objections for Legal Insufficiency of the Plaintiff's Claim

In the Civil Court of Common Pleas of Northampton County, Pa., Civil Action—
Law, No. C-48-CV-2006-5210.

Order of Court granting Defendant's demurrer.

Michael P. Gough, Esquire for Plaintiff.

James J. Dodd-o, Esquire for Defendant.

Order of the Court entered on October 16, 2007, by Paula A. Roscioli, Judge.

DESCRIPTION OF DECISION

The Plaintiff had entered a claim in personal injury for an alleged trip and fall at the intersection of Stefko Boulevard and Cayuga Avenue in Bethlehem on November 12, 2005. The Plaintiff alleged that the Defendant, the City of Bethlehem, negligently permitted leaves and debris to accumulate and thereby obscure a metal grate along the intersection near the Plaintiff's home. The Plaintiff asserted that this accumulation of debris amounted to a highly dangerous condition that caused the Plaintiff serious bodily injury when the Plaintiff attempted to step down from the sidewalk edge to the Cayuga Avenue street level.

The Defendant filed preliminary objections to the Plaintiff's complaint, asserting, *inter alia*, that the Plaintiff's pleading was legally insufficient to state a claim for negligence against the Defendant City under the *Political Subdivision Tort Claims Act* ("PSTCA"). The PSTCA provides a general grant of immunity that, subject to certain exceptions, prohibits a local agency from liability for damages to any person or property by any act of the local agency or an employee thereof. At issue in this case were three exceptions to governmental immunity under the PSTCA: (1) the "utility service facilities exception"; (2) the "streets exception"; and (3) the "sidewalk exception."

The Defendant's demurrer was based on the Pennsylvania Supreme Court's interpretation of the "sidewalk exception" in *Finn v. City of Philadelphia*. In *Finn*, the Pennsylvania Supreme Court held that a foreign substance deposited on an otherwise intact sidewalk was insufficient to justify piercing the city's governmental immunity. The Defendant further argued that the holding in *Finn* applied to identical statutory language in the other exceptions at issue.

The Court agreed with the Defendant. The Supreme Court's decision in *Finn* made it clear that proof of a defect in the sidewalk itself, such as an improperly designed sidewalk or a badly maintained or deteriorating sidewalk, was necessary in order to pierce the governmental immunity. The factual allegations in the Plaintiff's complaint fell squarely within the scope of the Supreme Court's decision in *Finn*. The Court also concluded that the Supreme Court's determination that the statutory language "dangerous condition of" in the "sidewalk exception" was unambiguous required the Court to apply the reasoning in *Finn* to identical statutory language in the "utility service facilities exception" and the "streets exception" to the PSTCA. Thus, the Plaintiff's failure to allege that the dangerous condition that allegedly caused his fall was in any way derived from the Commonwealth's realty meant that the Plaintiff's complaint was legally insufficient to pierce the governmental immunity provided by the PSTCA.

**CHAAR SADDLERY, L.L.C. v. GWENEVERE MARX, INDIVIDUALLY
AND GWENEVERE MARX D/B/A LEHIGH VALLEY DOG TRAINING &
GROOMING CENTER**

Plaintiff's Motion for Permanent Injunction

In the Civil Court of Common Pleas of Northampton County, Pa., Civil Action—
Law, No. C-48-CV-2007-1644.

Order of Court granting Plaintiff's request for a permanent injunction.

Christopher M. Reid, Esquire for Plaintiff.

Mark H. Scoblionko, Esquire for Defendant.

Order of the Court entered on September 5, 2007 by Paula A. Roscioli, Judge.

DESCRIPTION OF DECISION

The Plaintiff, Chaar Saddlery, LLC, represented by Christopher Reid, Esquire, sought permanent injunctive relief from the Court to prohibit the Defendant, Gwenevere Marx, individually and d/b/a Lehigh Valley Dog Training & Grooming Center, represented by Mark Scoblionko, Esquire, from operating the Defendant's dog training business for a period of one year. At issue in this case was the enforceability of a restrictive covenant in an agreement signed by the parties on December 10, 2006.

The Defendant asserted that the restrictive covenant was not enforceable because (1) the agreement was not supported by sufficient consideration; (2) the restrictive covenant was void as against public policy because the Defendant was an independent contractor; (3) the geographic radius of the restrictive covenant was overbroad; and (4) the Plaintiff did not establish that it had a legitimate, protectible interest that could be enforced by the covenant. The Defendant also argued that injunctive relief was not appropriate because the Plaintiff had not established that it had suffered an actual and substantial injury that could not be adequately compensated by damages.

The Court held that the restrictive covenant was enforceable under Pennsylvania law, and concluded that the Plaintiff established its right to injunctive relief as a result of the Defendant's actions in contacting the Plaintiff's former customers for the purpose of inducing them to become customers of the Defendant's competing business in violation of the restrictive covenant.

The Court concluded that the agreement between the parties satisfied the elements for a valid restrictive covenant in Pennsylvania. The Court found that the formation of the independent contractor relationship between the parties constituted sufficient consideration to enforce the restrictive covenant. The Court then held that the independent contractor agreement was "sufficiently analogous to that of an employment agreement" to justify the application of equitable principles. Next, the Court evaluated the geographic radius of the restrictive covenant and concluded that it was "reasonably limited in time and territory." Finally, the Court concluded that the restrictive covenant was intended to protect the Plaintiff's customer goodwill and its customer list, which are both recognized as legitimate business interests in Pennsylvania.

The Court found that the Defendant's interference with the Plaintiff's customers was sufficient to establish an "actual and substantial injury" to the Plaintiff for which there was no adequate legal remedy.

METRO ELECTRICAL INSTALLATION COMPANY v. WILSON AREA SCHOOL DISTRICT ET AL., DEFENDANT(S), AND LOBAR, INC. AND FEDERAL INSURANCE COMPANY, AND UNITED STATES FIDELITY & GUARANTY COMPANY, ADDITIONAL DEFENDANT(S).

Defendant's Motion for Summary Judgment

In the Civil Court of Common Pleas of Northampton County, Pa., Civil Action—Law, No. C0048CV2004009183.

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

John R.K. Solt, Esquire for the Plaintiff.

Domenic P. Sbrocchi, Esquire, Thomas R. Davies, Esquire, Andrew B. Cohn, Esquire for the Defendants.

Order of Court entered on October 4, 2007 by Paula A. Roscioli, Judge.

DESCRIPTION OF DECISION

The Defendant, Wilson Area School District ("School District") moved for summary judgment against the Plaintiff, Metro Electrical Installation Company, on the Plaintiff's claim for damages allegedly resulting from the Plaintiff's performance of its contractual obligations as the electrical contractor for the School District's building project. The Defendant asserted two grounds in support of its motion for summary judgment: (1) that a "no damages for delay" clause in the contract between the parties prohibited the Plaintiff from seeking compensation from the Defendant; and (2) even if the "no damages for delay" clause did not prohibit the Plaintiff from seeking damages, the Plaintiff waived those claims by signing a change order with language absolving the Defendant of any liability and by submitting its final application for payment without identifying unsettled claims in writing and then accepting final payment from the Defendant.

The Court denied the Defendant's motion. The law in Pennsylvania is that a "no damages for delay" clause is unenforceable where the party seeking to enforce the clause has caused the delay damages by failing to take an essential action to the execution of the contract. The Court concluded that there was a genuine issue in this case concerning the Defendant's role in causing the Plaintiff's delay damages where the Plaintiff asserted that the Defendant had failed to promptly execute a contract that was a necessary prerequisite for the rest of the project to move forward. The Court therefore concluded that summary judgment on the ground that the Plaintiff's claim was barred by the "no damages for delay" clause was improper.

The Court also rejected the Defendant's assertion that the Plaintiff's execution of the change order absolved the Defendant of any liability for delay damages that the Plaintiff may have accrued. The Court reasoned that a factual ambiguity existed as to when, if ever, the change order became valid. In addition, the plain language of the change order indicated that it was intended to have a limited application that would not necessarily render all previous delay damages waived.

Finally, the Court concluded that the Plaintiff's acceptance of final payment did not constitute a ground for the entry of summary judgment where there was ambiguity concerning whether the Plaintiff had identified an "unsettled" claim at the time it accepted final payment.

PERIODICAL PUBLICATION

*** Dated Material. Do Not Delay. Please Deliver Before Monday, April 14, 2008**

