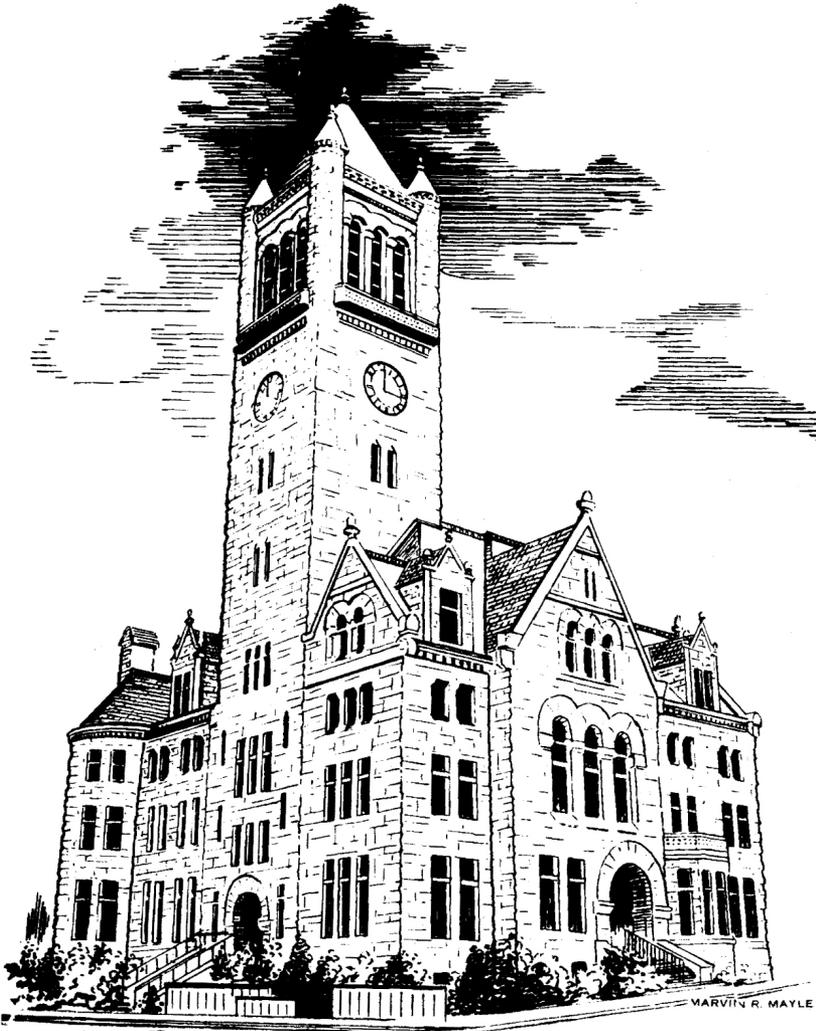


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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

CAROL ANN CHILDS, a/k/a CAROL A. CHILDS, late of North Union Township, Fayette County, PA (3)

Administrator: Arthur G. Childs
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

NORMA J. HUNCHUCK, a/k/a NORMA JEAN HUNCHUCK, late of Georges Township, Fayette County, PA (3)

Co-Executors: Matthew A. Hunchuck and Gregory A. Hunchuck
c/o Fitzsimmons and Barclay
55 East Main Street, Suite 102
Uniontown, PA 15401
Attorney: James N. Fitzsimmons

EUGENE E. LEONE, late of Menallen Township, Fayette County, PA (3)

Personal Representative: Joseph D. Leone
c/o 2 West Main Street, Suite 110
Uniontown, PA 15401
Attorney: Ricardo J. Cicconi

RODD LOUGH, a/k/a RODD L. LOOUGH, SR., late of North Union Township, Fayette County, PA (3)

Personal Representative: Judith L. Lough
c/o Higinbotham Law Offices
45 East Main Street, Suite 500
Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

JACK C. MOORE, late of Luzerne Township, Fayette County, PA (3)

Executor: Jack C. Moore, II
c/o 11 Pittsburgh Street
Uniontown, PA 15401
Attorney: Thomas W. Shaffer

MARY ANN ONUSKO, a/k/a MARY A. ONUSKO a/k/a MARY ONUSKO, late of Perry Borough, Fayette County, PA (3)

Administrator: Allen L. Cohen
100 Greenwood Avenue
Wyncote, PA 19095

HARRY E. PHILLIPS, a/k/a HARRY EDWARD PHILLIPS, late of Franklin Township, Fayette County, PA (3)

Executor: Timothy W. Mattie
c/o Davis & Davis
107 East Main Street
Uniontown, Pa 15401
Attorney: Gary J. Frankhouser

JAMES L. POPOCHOCK, a/k/a JAMES LEO POPOCHOCK, late of Upper Tyrone Township, Fayette County, PA (3)

Administrator C.T.A.: Robert B. Ferguson, Jr.
105 Spring Street
Scottdale, PA 15683
c/o 201 North Chestnut Street
P.O. Box 342
Scottdale, PA 15683
Attorney: James S. Lederach

KENNETH W. VAN SICKLE, a/k/a KENNETH VAN SICKLE, a/k/a KENNETH W. VANSICKLE, a/k/a KENNETH VANSICKLE, late of Menallen Township, Fayette County, PA (3)

Personal Representative: Rebecca A. Meyer
9973 Route 286W
Homer City, PA 15748
c/o 121 West Second Street
Greensburg, PA 15601
Attorney: Lawrence F. Becker, III

Second Publication

MARGARET M. AVERY, a/k/a MARGARET MAE AVERY, late of Fairchance, Fayette County, PA (2)
Executrix: Dale Jean Weslowsky
 168 Edenborn Road
 Masontown, Pa 15461
 c/o Newcomer Law Office
 4 North Beeson Boulevard
 Uniontown, PA 15401
Attorney Ewing D. Newcomer

STEVE A. BRICKER, a/k/a STEVE BRICKER, a/k/a STEVE ANDREW BRICKER, late of Georges Township, Fayette County, PA (2)
Administrator: Steve A. Bricker, II
 c/o John & John
 96 East Main Street
 Uniontown, PA 15401
Attorney: Simon B. John

RUTH NICKLOW, late of Bullskin Township, Fayette County, PA (2)
Co-Executors: Donald E. Nicklow and Dawn E. Miller
 c/o Molinaro Law Offices
 P.O. Box 799
 Connellsville, PA 15425
Attorney: Carmine V. Molinaro, Jr.

KATHRYN VANNOSDEIN, late of Stewart Township, Fayette County, PA (2)
Personal Representatives:
 David VanNosdein and Daniel VanNosdein
 c/o Higinbotham Law Office
 45 East Main Street, Suite 300
 Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

First Publication

ELLEN HAMER, late of Washington Township, Fayette County, PA (1)
Co-Executors: Diane L. Diehl and Kathleen Hamer
 605 Lookout Avenue
 Belle Vernon, PA 15012
 c/o 823 Broad Avenue
 Belle Vernon, PA 15012
Attorney: Mark E. Ramsier

MARY E. LIMA, a/k/a MARY E. HERBERT, late of Vanderbilt Borough, Fayette County, PA (1)
Personal Representative: Pamela A. Wiltrott
 c/o Watson Mundorff Brooks & Sepic, LLP
 720 Vanderbilt Road
 Connellsville, PA 15425
Attorney: Charles W. Watson

JOHN R. MADDAS, a/k/a JOHN R. MADDAS, SR., late of Dunbar, Fayette County, PA (1)
Personal Representative:
 John Robert Maddas, Jr.
 c/o Watson Mundorff Brooks & Sepic, LLP
 720 Vanderbilt Road
 Connellsville, PA 15425
Attorney: Charles W. Watson

ANDREW M. SHAFFER, a/k/a ANDY MIKE SHAFFER, a/k/a, ANDY M. SHAFFER, late of North Union Township, Fayette County, PA (1)
Executrix: Barbara DeCarlo
 c/o Adams & Adams
 55 East Church Street, Suite 101
 Uniontown, PA 15401
Attorney: Jason F. Adams

FRANCES VAUGHNS, a/k/a FRANCES R. VAUGHNS, a/k/a FRANCES RUBY VAUGHNS, late of Uniontown, Fayette County, PA (1)
Administratrix: Lisa G. Vaughns
 c/o John & John
 96 East Main Street
 Uniontown, PA 15401
Attorney: Simon B. John

LEGAL NOTICES

NOTICE

Notice is hereby given that a Certificate of Organization was filed with the Pennsylvania Department of State, on November 6, 2017, for a Limited Liability Company, organized under the Limited Liability Company Law of 1994, as from time to time amended. The name of the Company is KATO HOLDINGS, LLC, having an address of 176 Tobin School Road, Smithfield, Pennsylvania, 15478.

James E. Higinbotham, Jr., Esquire
 HIGINBOTHAM LAW OFFICES
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 Uniontown, PA 15401
 Telephone: 724-437-2800

IN THE COURT OF COMMON PLEAS OF
 FAYETTE COUNTY, PENNSYLVANIA
 ORPHANS' COURT DIVISION
 NO. 71 ADOPT 2017

IN RE: ADOPTION OF
 SARAH FOWLER

NOTICE

TO: Unknown Unknown (Father)

A petition has been filed asking the Court to put an end to all rights you have to your child, Sarah Fowler. The court has set a hearing to consider ending your rights to your child. That hearing will be held in Courtroom No. 4 of the Fayette County Courthouse, Uniontown, Fayette County, Pennsylvania, on Wednesday, December 13 at 1:30 p.m. You are warned that even if you fail to appear at the scheduled hearing the hearing will go on without you and your rights to your child may be ended by the court without your being there.

YOU HAVE A RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH

BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. 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.

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IN THE COURT OF COMMON PLEAS OF
 FAYETTE COUNTY, PENNSYLVANIA
 ORPHANS' COURT DIVISION
 NO. 74 ADOPT 2017

IN RE: ADOPTION OF
 BELLA MCFADDEN

NOTICE

TO: Unknown Unknown (Father)

A petition has been filed asking the Court to put an end to all rights you have to your child, Bella McFadden. The court has set a hearing to consider ending your rights to your child. That hearing will be held in Courtroom No. 4 of the Fayette County Courthouse, Uniontown, Fayette County, Pennsylvania, on Tuesday, January 9, 2018 at 9:30 a.m.. You are warned that even if you fail to appear at the scheduled hearing the hearing will go on without you and your rights to your child may be ended by the court without your being there.

YOU HAVE A RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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PROTHONOTARY FEE SCHEDULE

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION

IN RE: PETITION OF :
NINA CAPUZZI FRANKHOUSER, :
PROTHONOTARY FOR FEE : No. 2430 of 2017, G.D.
INCREASE : President Judge Wagner

ORDER

AND NOW, this 20th day of November, 2017, upon and after consideration of the foregoing Petition and for cause shown, the prayer of the same is hereby granted and the Fee Increase and total New Fee as set forth on Exhibit "A" of said Petition are hereby approved.

BY THE COURT:
WAGNER, J.

ATTEST:
Nina Capuzzi Frankhouser
Prothonotary

PROTHONOTARY FEE SCHEDULE

Nina Capuzzi Frankhouser, Prothonotary Prothonotary's Office Fee Schedule Effective January 1, 2018

- Personal Checks Not Accepted
- All professional checks returned for insufficient funds will be assessed a \$30.00 fee.
- There will be no refunds after filing
- Please make all checks payable to Fayette County Prothonotary
- STAFF IS NOT PERMITTED TO PROVIDE LEGAL ADVICE

Fees Effective January 1, 2018

▪ Per Page	\$0.25
▪ Certified Copies	\$14.00
● FAMILY COURT ACTIVITY	
▪ Complaint in Divorce	\$134.00
♦ Each Additional Count	\$68.00
▪ Divorce w/Custody	\$78.00
▪ Custody Complaint	\$117.00
▪ Custody (Mediation Fee)	\$100.00
▪ Out of State Custody	\$68.00
▪ Out of State/County Divorce Decree	\$60.00
▪ Election to Resume Maiden Name	\$6.00
▪ Change Name-Widow 54 Pa. C.S.A.A. §70.1	\$52.00
▪ Resume Maiden Name (Out of County Divorce)	\$66.00
▪ Praecipe to Transmit	\$20.00
● APPEALS	
▪ MDJ Appeals	** \$98.00
▪ License/Registration Suspension	\$110.00
▪ Appoint Board of View	\$110.00
▪ Statement of Objection	\$110.00
▪ Tax Sale Objection	\$110.00
▪ Tax Assessment Objection	\$110.00
▪ Appellate Court	
♦ Fayette County Fee	\$42.00
♦ Appellate Court Fee	Refer to State Website
▪ Zoning Appeals	\$110.00

● CIVIL ACTIONS	
▪ Assumpsit	** \$117.00
▪ Tort	** \$117.00
▪ Ejectment	** \$117.00
▪ Equity	** \$117.00
▪ Mandamas	** \$117.00
▪ Mortgage Foreclosure	** \$117.00
▪ Partition	** \$117.00
▪ Replevin	** \$117.00
▪ Complaints in Confession of Judgment in Ejectment	** \$117.00
▪ Writ of Summons	** \$117.00
▪ Re-Issue Writ of Summons	\$8.00
▪ Lis Pendens (1st Filing)	** \$117.00
▪ Reinstatement Complaint	\$8.00
▪ Declaration of Taking/Condemnation	\$110.00
▪ Foreign Subpoena	\$48.00
▪ Quiet Title/ Petition to Appoint Arbitrator	\$110.00
▪ Minor's Compromised Settlement	
▪ Compromised Settlement-Partial Only	
▪ Bill of Costs/Certificate	\$2.50
▪ Change of Venue Motion/Petition	\$110.00
▪ Petition as First Filings and for Abandoned Vehicles	\$110.00
▪ Change of Name unrelated to Divorce	\$110.00
▪ Praecipe to Dismiss/Settle/Withdraw	\$7.00
** <u>FEE IS DUE ONLY WHEN NOT PAID PRIOR WITH</u> <u>INITIAL FILING</u>	

● JUDGMENT ACTIVITY	
▪ Judgment: General, Note, or Arrearage from DR	\$22.00
▪ MDJ Transcript	\$22.00
▪ Landlord Tenant Wage Attachment	\$21.00
▪ Exemplification-Triple Seal (out of state)	\$14.00
▪ From Out of State Court/Abstract of Judgment	\$22.00
▪ To Another Court in State of Pa	\$13.00
▪ Writ of Execution/Possession	\$21.00
▪ Writ of Revival	\$30.00
▪ Agreement to Revive	\$22.00
▪ Assignment of Judgment	\$7.00
▪ Release of Judgment	\$7.00
▪ Satisfaction of Judgment	\$7.00
▪ Satisfaction of Judgment w/ Certificate	\$10.00
▪ Out of County Writ	\$21.00
▪ Default Judgment	\$24.00
● MECHANICS/MUNICIPAL LIEN ACTIVITY	
▪ No Lien Agreement	\$21.00
▪ Municipal Lien Claim (satisfaction included)	** \$28.00
▪ Mechanics Lien Claim (satisfaction included)	** \$28.00
▪ Mechanics Lien Complaint	** \$117.00
▪ Writ of Scire Facias	** \$117.00
▪ Satisfaction of Lien (lien filed prior to 02/01/2016)	\$7.00
● COMMONWEALTH AND FEDERAL TAX LIENS	
▪ Federal Tax Lien	\$21.00
▪ Commonwealth Lien/Judgment Roll	\$21.00
▪ Suggestion of Non Payment	\$21.00
▪ Satisfaction of Lien	\$7.00
● MISCELLANEOUS	
▪ Subpoenas	\$1.50
▪ Petition to Strike	\$68.00
▪ Notary Signature Registration	\$2.25
▪ Surety Bonds (New)/Certificate of Authority	\$58.00
▪ School Audit Report	\$67.00
▪ Motion to Continue Hearing/Arbitration	\$27.25
▪ Notarial Seal Certificate	\$2.25
▪ Statement of Intention to Proceed	25.00

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION

LUIGI DILSILVESTRO,	:
Plaintiff,	:
vs.	:
JIMMY K. BOYD, JONETTA L. BOYD,	:
and REDSTONE TOWNSHIP,	:
Defendants,	:
vs.	:
JOANNE L. COLETTI,	: No. 1570 of 2013, G.D.
Additional Defendant.	: Honorable Nancy D. Vernon

OPINION AND ORDER

Vernon, J.

November 21, 2017

Before the Court is the Motion for Summary Judgment filed by Defendant, Redstone Township to the Complaint of Plaintiff, Luigi DiSilvestro, requesting Plaintiff's claim against the Township be dismissed as a result of immunity under the Tort Claims Act.

STANDARD OF REVIEW

Summary judgment may be granted only in cases where it is clear and free from doubt that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Kafando v. Erie Ceramic Arts Co.*, 764 A.2d 59,61 (Pa.Super. 2000). Pa.R.C.P. 1035.2 states:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report [...].

In deciding a motion for summary judgment, the court must examine the record in a light most favorable to the non-moving party and resolve any doubt in his favor. *Swartley v. Hoffner*, 734 A.2d 915, 919 (Pa.Super. 1999). The non-moving party may not rest on averments in its pleadings and must demonstrate by evidence that there exists a genuine issue for trial. *Younginger v. Heckler*, 410 A.2d 340, 342 (Pa.Super. 1979).

Under Rule 1035.2(2), if a defendant is the moving party, he may make the showing necessary to support the entry of summary judgment by pointing to materials which indicate that the plaintiff is unable to satisfy an element of his cause of action. *Ertel v.*

Patriot-News Co., 674 A.2d 1038, 1042 (Pa. 1996). The non-moving party must adduce sufficient evidence on an issue essential to its case, and on which it bears the burden of proof, such that a jury could return a verdict favorable to the non-moving party, and may not rest upon the averments contained in its pleadings. *Amabile v. Auto Kleen Car Wash*, 376 A.2d 247 (Pa.Super. 1977). The non-moving party must also demonstrate that there is a genuine issue for trial. *Id.*; Pa. R. Civ. P. 1035.2(2). If the non-moving party fails to satisfy this burden, a genuine issue of material fact does not exist and the moving party is entitled to judgment as a matter of law. *Tenos v. State Farm Ins. Co.*, 716 A.2d 626 (Pa.Super. 1998).

With these principles to guide us, we will now consider the Motion for Summary Judgment filed by the Township.

DISCUSSION

The factual basis of Plaintiff's cause of action stems from the alleged negligence of the Township to properly maintain and care for property at 4 Steel Street. The property was condemned by the Township on September 1, 2008, pursuant to Redstone Township Ordinance No. 114, Section 108, but legal title remained in the ownership of Defendants, Jimmy K. Boyd and Jonetta L. Boyd. Plaintiff alleges that on August 20, 2011, Additional Defendant, Joanne L. Coletti, was traveling in a westerly direction on Steel Street attempting to cross Republic Road when Plaintiff was traveling north on Republic Road on a motorcycle. Plaintiff alleges Additional Defendant was unable to see or view oncoming traffic on Republic Road which was caused by "brush, shrubs, grass, and/or other overgrown vegetation or items which were present" on the property at 4 Steel Street. See, Complaint, ¶20.

The Township moves to dismiss Plaintiff's negligence claims set forth in Count II of his Complaint arguing that as a local governmental agency, it is entitled to governmental immunity as preserved in the Pennsylvania Political Subdivision Tort Claims Act. Plaintiff responded that three possible exceptions applied to governmental immunity, namely the real property, trees, and street exceptions.

Except as otherwise provided, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency, any employee thereof, or any other person. 42 Pa.C.S. § 8541. Exceptions to governmental immunity are created by statute. 42 Pa.C.S.A. §8542. The expressed legislative intent in the Political Subdivision Tort Claims Act is to insulate the Commonwealth and its political subdivisions from liability and requires courts to interpret the exceptions to governmental immunity narrowly against injured plaintiffs. *Moles v. Borough of Norristown*, 780 A.2d 787 (Pa.Cmwlth. 2001).

The care, custody, or control of real property in the possession of the local agency may result in the imposition of liability on a local agency. 42 Pa.C.S. § 8542(b)(3). The Courts have held that the real estate exception to governmental immunity is a narrow exception. The real property exception only applies where the municipality possesses the property, and "possession requires total control over the property by the local agency." *City of Pittsburgh v. Estate of Stahlman*, 677 A.2d 384, 387 (Pa.

Commw. Ct. 1996). Possession does not exist “merely because the local agency has the power and authority to inspect private property.” *Garrifo Real Estate Holdings Co. v. City of Philadelphia*, 2007 WL 1410607, at *6 (E.D. Pa. May 11, 2007); *City of Pittsburgh*, 677 A.2d at 387. In addition, “mere occupation of the premises for a limited period is insufficient to impose liability.” *City of Pittsburgh*, 677 A.2d at 387; *Gramlich v. Lower Southampton Twp.*, 838 A.2d 843, 848 (Pa. Commw. Ct. 2003). Rather, “the local agency must have total control over the premises for more than a limited period of time.” *Alvarez v. City of Philadelphia*, 2003 WL 22595204, at *3 (E.D. Pa. Oct. 29, 2003).

Here, Plaintiff requests the Court to hold that the Township’s condemnation of the property located at 4 Steel Street equates to “possession” such that the real property exception to governmental immunity may apply. The Court cannot identify any authority that extends “possession” to include “condemnation” and has been provided none by the parties. A review of the current case law does not provide for this extension. As such, the real property exception to governmental immunity cannot be met by Plaintiff without the necessary element of possession of the property by the Township.

Turning to the “tree” exception, 42 Pa.C.S. § 8542(b)(4) provides an exception to governmental immunity for a “dangerous condition of trees [...]” The plain language of this exception requires the dangerous condition to be one caused by a “tree.” Plaintiff’s Complaint alleges the dangerous condition was caused by “brush, shrubs, grass, and/or other overgrown vegetation or items which were present” on the property at 4 Steel Street. See, Complaint, ¶20. Plaintiff does not plead that a tree caused a dangerous condition. This exception to governmental could not be extended to overgrowth as those are not a “tree” as defined within the very narrow statutory exception.

Since Plaintiffs failed to establish the real property or tree exception to governmental immunity, summary judgment will granted on these two theories only because, as a matter of law, Redstone Township is immune from liability.

Lastly, Plaintiff alleges the “streets” exception to governmental immunity should apply as to the overgrowth blocking the view of motor vehicles entering into the intersection. A dangerous condition of streets owned by the local agency may result in the imposition of liability on the local agency. 42 Pa.C.S. § 8542(b)(6)(i). Under the streets exception to governmental immunity, the condition of the street owned by the local agency must be dangerous, and the type of injury caused by that dangerous condition must be reasonably foreseeable. *Campbell v. Commonwealth Dept. of Transp.*, 524 A.2d 1066 (Pa. Commw. 1987).

At oral argument, the Township admitted that a factual issue remained as to whether the trees, bushes or overgrowth on Steel Street, a municipal road, was located in the right-of-way of the Township such that the “streets exception” may apply or whether it was on the private property owned by the Boyd Defendants such that the “streets exception” would not apply. Accordingly, we will DENY the Motion for Summary Judgment on this narrow factual issue, without prejudice for the Township to re-present following discovery on the issue of the location of the tree, bush or overgrowth.

WHEREFORE, we will enter the following Order.

ORDER

AND NOW, this 21st day of November, 2017, upon consideration of the Motion for Summary Judgment filed by Defendant, Redstone Township, to the Complaint of Plaintiff, Luigi DiSilvestro, it is hereby ORDERED and DECREED that the Motion is GRANTED in part and DENIED in part. As to the real property and tree exceptions to governmental immunity, the Motion is GRANTED and Plaintiff is prohibited from proceeding on these exceptions. As to the streets exception, the Motion is DENIED without prejudice to re-present following discovery on the location of the trees, bushes or overgrowth on Steel Street.

BY THE COURT:
NANCY D. VERNON, JUDGE

ATTEST:
Nina Capuzzi Frankhouser
Prothonotary

WINTER SOCIAL

Fayette County
Bar Association's

Winter Social

Thursday, December 14th
Marilyn's on Main
4:30 pm – 6:30 pm

In memory of our colleague, *Mary Campbell Spegar*,
please bring new, unwrapped toys for donation to
Fayette County Children & Youth Services.
Monetary donations payable to "CYS Advisory Board"

RSVP by 12/7

Cindy at 724-437-7994 or cindy@fcbar.org

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