

Adams County Legal Journal

Vol. 60

September 21, 2018

No. 20, pp. 62-66

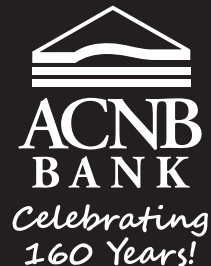
IN THIS ISSUE

THOMAS V. RUSH VS. BON TON BUILDERS, INC.

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ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly by Adams County Bar Association, Edward G. Puhl, Esq., Editor and Business Manager.

Business Office – 117 BALTIMORE STREET, ROOM 305, GETTYSBURG, PA 17325-2313. Telephone: (717) 334-1553

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ARTICLES OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation – Domestic Non-Profit Corporation were filed with the Department of State, Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on September 11, 2018, for SOUTH HEIGHTS TOWNHOUSES COMMUNITY OWNERS ASSOCIATION, INC., under the provisions of the Pennsylvania Non-Profit Corporation Law of 1988.

Barley Snyder
Solicitors

9/21

IN THE COURT OF COMMON PLEAS,
ADAMS COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA
ORPHANS' COURT DIVISION
RT-8-2018 (A)

TO: PATRICK COOVER

NOTICE

You are hereby notified that a Petition for Involuntary Termination of Parental Rights to Child has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for October 18, 2018 at 1:00 PM in Courtroom No. 1, Fourth Floor of the Adams County Courthouse, 111-117 Baltimore St., Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not statutory grounds exist for the involuntary termination of your parental rights with respect to the child born on May 25, 2007.

You should contact 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.

Court Administrator
Adams County Courthouse
111-117 Baltimore Street
Gettysburg, Pennsylvania 17325
Telephone Number 717-337-9846 or
1-888-337-9846

Melissa Tanguay Laney, Esq.
Solicitor, Adams County Children and
Youth Services

9/21, 9/28 & 10/5

IN THE COURT OF COMMON PLEAS,
ADAMS COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA
ORPHANS' COURT DIVISION
RT-8-2018 (B)

TO: CHRYSAL KOSER

NOTICE

You are hereby notified that a Petition for Involuntary Termination of Parental Rights to Child has been filed in the Orphans' Court Division of the Court of Common Pleas of Adams County, Pennsylvania. A hearing has been set for October 18, 2018 at 1:00 PM in Courtroom No. 1, Fourth Floor of the Adams County Courthouse, 111-117 Baltimore St., Gettysburg, Adams County, Pennsylvania, for the purpose of determining whether or not statutory grounds exist for the involuntary termination of your parental rights with respect to the child born on May 25, 2007.

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9/21, 9/28 & 10/5

THOMAS V. RUSH VS. BON TON BUILDERS, INC.

1. A court in which venue is proper and which has jurisdiction should decline to proceed with the cause when the parties have freely agreed that litigation shall be conducted in another forum and where such an agreement is not unreasonable at the time of litigation.

2. If the agreed upon forum is available to plaintiff and said forum can do substantial justice to the cause of action then plaintiff should be bound by his agreement.

3. The party seeking to obviate the agreement has the burden of proving its unreasonableness.

4. In actions pending in a county which involve a common question of law or fact or which arise from the same transaction or occurrence, the court on its own motion or on motion of any party may order a joint hearing or trial of any matter in issue in the actions, may order the actions consolidated, and may make orders that avoid unnecessary cost or delay.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, 2017-S-916, THOMAS V. RUSH VS. BON
TON BUILDERS, INC.

Christopher A. Naylor, Esq., Attorney for Plaintiff

Arthur J. Becker, Jr., Esq., Attorney for Defendant

George, P. J., September 10, 2018

OPINION

On March 25, 2015, Thomas V. Rush (“Rush”) entered a construction agreement and purchased property from Bon Ton Builders, Inc. (“Bon Ton”). The property is located at 140 Crosswinds Drive, Littlestown, Pennsylvania. Rush currently brings suit seeking damages and injunctive relief related to his purchase and occupancy of the property. In his Complaint, Rush alleges six causes of action: (1) breach of written contract; (2) breach of oral contract; (3) negligent construction; (4) unjust enrichment; (5) unfair trade practices and consumer protection violations; and (6) a request for injunctive relief involving deed restrictions related to the property and development. Bon Ton has responded with a number of preliminary objections including a claim of improper venue. For the reasons set forth below, the preliminary objection related to improper venue will be sustained and the remaining preliminary objections will be transferred to the York County Court of Common Pleas.

The cornerstone of Bon Ton’s challenge to venue is found in the construction agreement entered between the parties. The relevant portion of that contract provides:

Any litigation arising out of this Agreement must be filed in the Court of Common Pleas of York County, Pennsylvania, regardless of where the contract was entered into or where the Dwelling is built.

Bon Ton argues that this language is binding on the parties and requires the matter to be litigated in York County. Rush counters that while the language may impact the venue of the breach of written contract action, the remaining causes of action are unrelated to the contract and thus properly raised in Adams County unaffected by the contractual term. Rush reasons, therefore, that since the majority of the claims are properly filed in Adams County, the remaining breach of written contract action should similarly be consolidated in Adams County for purposes of efficiency and judicial economy.

In *Autochoice Unlimited, Inc. v. Avangard Auto Fin., Inc.*, 9 A.3d 1207, 121 (Pa. Super. 2010), the Superior Court addressed the controlling law on forum selection clauses as follows:

The modern and correct rule is that, while private parties may not by contract prevent a court from asserting its jurisdiction or change the rules of venue, nevertheless, a court in which venue is proper and which has jurisdiction should decline to proceed with the cause when the parties have freely agreed that litigation shall be conducted in another forum and where such an agreement is not unreasonable at the time of litigation. Such an agreement is unreasonable only where its enforcement would, under all circumstances existing at the time of litigation, seriously impair plaintiff's ability to pursue his cause of action. Mere inconvenience or additional expense is not the test of unreasonableness since it may be assumed that plaintiff received under the contract consideration for these things. If the agreed upon forum is available to plaintiff and said forum can do substantial justice to the cause of action, then plaintiff should be bound by his agreement. Moreover, the party seeking to obviate the agreement has the burden of proving its unreasonableness.

Id. at 1215.

Rush acknowledges this controlling principle of law; however, he claims that five out of the six causes of action raised in his Complaint

fall outside of the scope of the form selection cause. He claims the cause of action alleging breach of oral contract claim involves a subsequent oral contract entered between the parties approximately 10 months after execution of the written contract. He further suggests the negligence, unjust enrichment, and unfair trade practices claims are tort claims independent of contractual duties and, as such, venue properly lies in Adams County as it is the jurisdiction where all relevant events occurred. Finally, Rush maintains that the cause of action for injunctive relief is unrelated to the home construction as it involves deed restrictions concerning the uses of all properties in the development.

In addressing Rush's argument, appellate instruction on rules of contractual interpretation is helpful. "[W]hen a written contract is clear and unequivocal, its meaning must be determined by its contents alone. It speaks for itself and a meaning cannot be given to it other than that expressed." *Steuart v. McChesney*, 444 A.2d 659, 661 (Pa. 1982). Instantly, the current contract's use of the words "arising out of" is unambiguous, clear, and definite. *See generally McCabe v. Old Republic Ins. Co.*, 228 A.2d 901, 903 (Pa. 1967) (holding phrase "arising out of" an insurance policy is unambiguous, "clear and definite"). The word "arise" is defined by Merriam-Webster Collegiate Dictionary, 11th Edition (2003), as, inter alia, "to originate from a source" or "to come into being..." This expansive definition was recognized in *Mfrs. Cas. Ins. Co. v. Goodville Mut. Cas. Co.*, 170 A.2d 571, 573 (Pa. 1961), wherein the Supreme Court defined "arising out of" as being "causally connected with, not proximately caused by."

In applying the clear and unequivocal language of the written contract entered between the parties, Rush's argument is unpersuasive. One only need review the allegations in the Complaint to conclude all aspects of this litigation are not only casually connected with the written contract but actually originate therefrom. For instance, the oral breach of contract claim involves an alleged agreement on the part of Bon Ton to pay a portion of the mortgage which financed the contractual purchase of the property and construction of the home. Although the Complaint does not specifically identify the quid pro quo for the alleged oral agreement, reading the Complaint in its entirety implies Bon Ton offered the payment as consideration

for the untimely completion of the construction: an obligation imposed on Bon Ton by the terms of the contract.

The cause of action related to negligent construction specifically alleges that “Rush contracted with Bon Ton to purchase a [p]roperty, and for Bon Ton to develop the site and construct the [r]esidence on the [p]roperty.” Complaint para. 39. Based on this allegation, Rush goes on to claim that Bon Ton owed a duty which was subsequently breached. Similarly, the unjust enrichment cause of action seeks recovery of Rush’s payment to Bon Ton which was allegedly made to “construct the [r]esidence per the parties’ [c]ontract.” Complaint para. 48. In like fashion, the unfair trade practices cause of action seeks recovery based upon Bon Ton’s utilization of products in construction of the home inferior to those represented in the contract. See generally Complaint para. 54-56 and 63-65. In reading the Complaint concerning these several causes of action, Rush’s own language makes it clear that the causes of action “originated” or “came into being” through the written contract which includes the choice of forum clause. Under these circumstances, Rush cannot now credibly argue that these causes of action do not “arise” from the written contract.

The sole remaining claim in the Complaint is a request for injunctive relief in which Rush seeks injunctive relief as a result of an alleged violation of the declaration of restrictions affecting the development within which the property is located. Unquestionably, the contract which contains the choice of forums clause is the document from which Rush’s legal obligation to purchase the property, and consequently Bon Ton’s legal obligation to sell the property, arose. While it is true that the declaration of restrictions is legally enforceable as an independent action, it cannot be denied that the purchase of the property which triggered Rush’s rights under the declaration of restrictions flows directly from the written contract at issue.

In reaching this conclusion, I recognize the relationship between the contract and the declaration of restrictions is sufficiently tenuous to require a different result had the action for injunctive relief been the sole claim. Nevertheless, when combined with the other five causes of action which clearly arise from the contract, it is important to remain mindful of Pennsylvania Rule of Civil Procedure 213 which provides:

In actions pending in a county which involve a common question of law or fact or which arise from the same transaction or occurrence, the court on its own motion or on motion of any party may order a joint hearing or trial of any matter in issue in the actions, may order the actions consolidated, and may make orders that avoid unnecessary cost or delay.

Id. Given that the claim for injunctive relief appears to be an after thought to the claims which produced this litigation, and also taking into account the significant common issues of fact which arise from the transaction entered between the parties, forwarding all the actions to the forum chosen between the parties will best avoid unnecessary cost and delay. Rush has not advanced any claim that transfer of this cause of action to the York County Court of Common Pleas would in any way impede his ability to pursue his claim. Indeed, the property is located a relatively short distance from the York County line and convenient to both forums.

For the foregoing reasons, this action will be transferred to the York County Court of Common Pleas pursuant to Pennsylvania Rule of Civil Procedure 1006.

ORDER OF COURT

AND NOW, this 10th day of September, 2018, the Adams County Prothonotary's Office is directed to forward to the Prothonotary of the York County Court of Common Pleas certified copies of all documents filed in this action pursuant to Pennsylvania Rule of Civil Procedure 1006(3). Defendant's remaining preliminary objections and all further proceedings shall proceed in the York County Court of Common Pleas. Costs related to the petition for transfer and removal of the record shall be paid by the Defendant in the first instance to be taxable as costs in the case at the time of final disposition.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary of or 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**ESTATE OF WILLIAM CINTRON, DEC'D**

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executrix: Rosemary A. Ashby, c/o William H. Poole, Jr., Esq., Bellomo & Associates, LLC, 3198 East Market Street, York, PA 17402

Attorney: William H. Poole, Jr., Esq., Bellomo & Associates, LLC, 3198 East Market Street, York, PA 17402

ESTATE OF WILLIAM J. JENKS a/k/a WILLIAM JOSEPH JENKS, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania

Executrix: Lynn Grim, c/o Donald P. Roberts, Esq., Burke Vullo Reilly Roberts, 1460 Wyoming Avenue, Forty Fort, PA 18704

Attorney: Donald P. Roberts, Esq., Burke Vullo Reilly Roberts, 1460 Wyoming Avenue, Forty Fort, PA 18704

ESTATE OF RUTH H. WILLHEIM, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania

Executor: Frank R. Willheim, Sr., c/o Elinor Albright Rebert, Esq., 515 Carlisle St., Hanover, PA 17331

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle St., Hanover, PA 17331

SECOND PUBLICATION**ESTATE OF JOAN CRUSHONG, DEC'D**

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executrix: Mary Sue Stewart, 555 Water Street, Fairfield, PA 17320

Attorney: Robert E. Campbell, Esq., Salzmans Hughes, P.C., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JOYCE K. DEARDORFF, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Nancy J. Bross, c/o Barley Snyder, 14 Center Square, Hanover, PA 17331

Attorney: Barley Snyder, 14 Center Square, Hanover, PA 17331

ESTATE OF DELORES J. HAMMOND, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administratrix: Deborah D. Brimer, Administratrix, c/o Jared S. Childers, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

Attorney: Jared S. Childers, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

ESTATE OF KENNETH N. KUYKENDALL, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Marvin J. Barnhart, c/o Barbara Entwistle, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

Attorney: Barbara Entwistle, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

ESTATE OF MARGARET M. McCALLA a/k/a MARGARET MAE McCALLA DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executor: John Carl McCalla, P.O. Box 21184, Catonsville, MD 21228

Attorney: Robert L. McQuaide, Esq., Barley Snyder, Suite 204, 18 Carlisle Street, Gettysburg, PA 17325

ESTATE OF KATHI S. REYNOLDS, DEC'D

Late of the Borough of Carroll Valley, Adams County, Pennsylvania

Administrator: Allen H. Reynolds, 3 Skylark Trail, Fairfield, PA 17320

Attorney: Jan G. Sulcove, Esq., Family First Estate Services, 1110 Kennebec Drive, Chambersburg, PA 17201

ESTATE OF GERALDINE R. SHANEBROOK, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Co-Executrices: Barbara A. Dinges and Karen R. George, c/o Robert E. Campbell, Esq., Salzmans Hughes, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325-2311

Attorney: Robert E. Campbell, Esq., Salzmans Hughes, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325-2311

THIRD PUBLICATION**ESTATE OF IRIS I. BOLLINGER, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Co-Executors: Frank H. Higgins and Kimberly A. Peterman, c/o Barley Snyder, LLP, 14 Center Square, Hanover, PA 17331

Attorney: Barley Snyder, LLP, 14 Center Square, Hanover, PA 17331

ESTATE OF TINA MARIE S. GRIM, DEC'D,

Late of Huntingdon Township, Adams County, Pennsylvania

Deana Wolfe, P.O. Box 98, Aspers, PA 17304

ESTATE OF ROBERT T. KOONTZ, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Judy A. Koontz, 213 South Fourth Street, McSherrystown, PA 17344

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

ESTATE OF JANET R. RUHLMAN, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executor: Robert G. Flickinger, 2245 Bon-Ox Road, New Oxford, PA 17350

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

