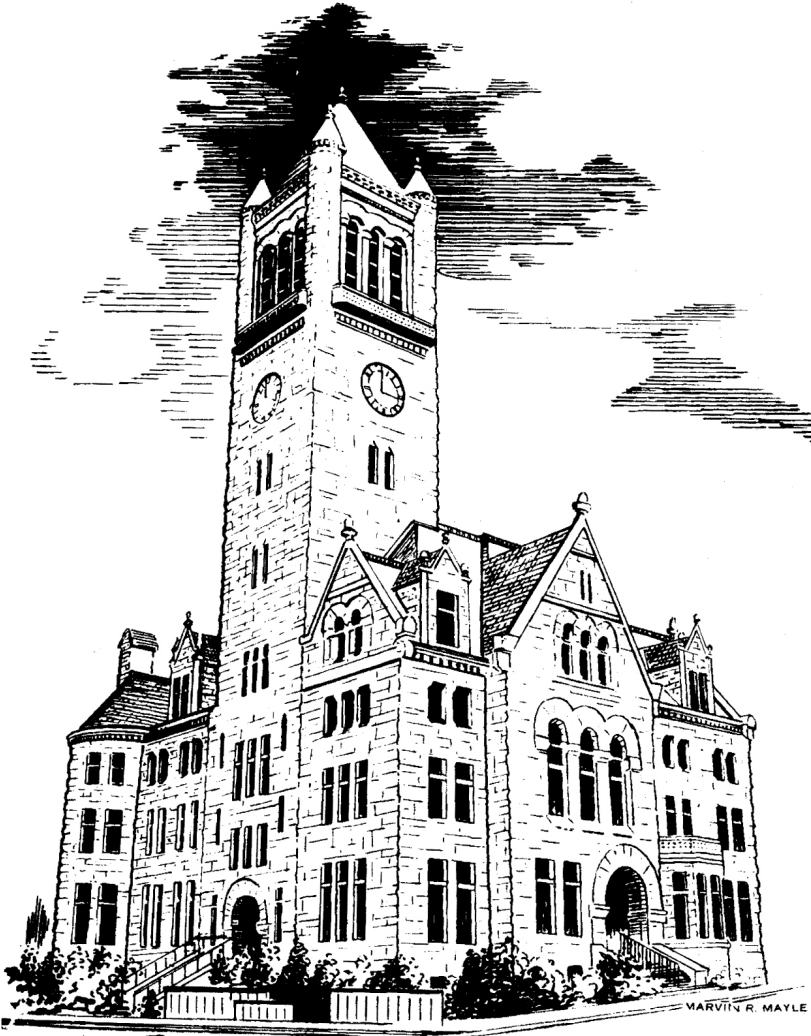


# FAYETTE LEGAL JOURNAL

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## FAYETTE LEGAL JOURNAL

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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

**SAM BILL, JR. a/k/a SAMUEL J. BILL, JR., a/k/a SAMUEL JOSEPH BILL, JR.**, late of Redstone Township, Fayette County, PA (3)

*Personal Representative:* Patricia Ann Bill  
c/o Davis & Davis  
107 East Main Street  
Uniontown, PA 15401  
*Attorney:* James T. Davis

**PAUL M. GABELT**, late of Bullskin Township, Fayette County, PA (3)

*Executrix:* Carolyn W. Maricondi  
c/o P. O. Box 760  
Connellsville, PA 15425  
*Attorney:* Carolyn W. Maricondi

**CAROL ANN MIHALLIK, a/k/a CAROL A. MIHALLIK**, late of Masontown, Fayette County, PA (3)

*Executrix:* Andrea Sue Mihallik  
c/o Zebley Mehalov & White, P.C.  
18 Mill Street Square  
P.O. Box 2123  
Uniontown, PA 15401  
*Attorney:* Daniel R. White

**WILMA JEAN ORBASH, a/k/a WILMA J. ORBASH**, late of South Union Township, Fayette County, PA (3)

*Executor:* Vaughn J. Orbash  
c/o Radcliffe & DeHaas, L.L.P.  
2 West Main Street, Suite 700  
Uniontown, PA 15401  
*Attorney:* William M. Radcliffe

**MARY LOU SHEPLER**, late of Washington Township, Fayette County, PA (3)

*Executor:* Kenneth L. Shepler  
135 Shepler Lane  
Fayette City, PA 15438  
c/o 823 Broad Avenue  
Belle Vernon, PA 15012  
*Attorney:* Mark E. Ramsier

### Second Publication

**JOANN ALTOMONTE**, late of Hiller, Fayette County, PA (2)

*Administratrix:* Stephanie Altomonte  
739 Shady Drive  
Pittsburgh, PA 15228  
c/o 1322 Fifth Avenue  
Corapolis, PA 15108  
*Attorney:* Max C. Feldman

**RAYMOND SCOTT BARNHART, a/k/a RAYMOND S. BARNHART, a/k/a SCOTT BARNHART**, late of Connellsville, Fayette County, PA (2)

*Executrix:* Brenda Barnhart  
c/o Casini & Geibig, LLC  
615 West Crawford Avenue  
Connellsville, PA 15425  
*Attorney:* Jennifer M. Casini

**MARGARET BROESICKE**, late of Uniontown, Fayette County, PA (2)

*Executor:* Han-Joachim Broesicke  
2320 Bill Howard Place  
El Paso, TX 79936  
c/o 189 West High Street  
Waynesburg, PA 15370  
*Attorney:* J. William Hook

**IRENE P. DEMARCHI**, late of Bullskin Township, Fayette County, PA (2)

*Personal Representative:*  
Kimberly A. DeMarchi  
c/o 17 North Diamond Street  
Mount Pleasant, PA 15666  
*Attorney:* Marvin D. Snyder

**FRANK J. KOPOSKO**, late of North Union Township, Fayette County, PA (2)

*Personal Representatives:* Brenda L. Kopusko and Christine D. Dayton  
c/o George Port & George  
92 East Main Street  
Uniontown, PA 15401  
*Attorney:* Joseph M. George

**DAVID E. MARSHALL**, late of LaBelle, Fayette County, PA (2)

*Administrator:* Cynthia Marshall  
1041 LaBelle Road  
LaBelle, PA 15450  
c/o Phillips, Phillips & Smith-DeLach, P.C.  
29 East Beau Street  
Washington, PA 15301  
*Attorney:* William D. Phillips

**ANN MURPHY, a/k/a ANN CARYL MURPHY**, late of Jefferson Township, Fayette County, PA (2)

*Executor:* William F. Lilley  
c/o Adams & Adams  
55 East Church Street, Suite 101  
Uniontown, PA 15401  
*Attorney:* Jason F. Adams

**DELORES REKRUT**, late of Menallen Township, Fayette County, PA (2)

*Executor:* Thomas W. Hunter  
c/o 99 East Main Street  
Uniontown, PA 15401  
*Attorney:* Robert A. Gordon

**JOHN M. RELOVSKY, a/k/a JOHN M. RELOVSKY, SR.**, late of Luzerne Township, Fayette County, PA (2)

*Executor:* John M. Relovsky, Jr.  
c/o 51 East South Street  
Uniontown, PA 15401  
*Attorney:* Webster & Webster

**RICHARD VARGO**, late of Luzerne Township, Fayette County, PA (2)

*Co-Executors:*  
Kathleen Rowe and Angela Stiner  
c/o 99 East Main Street  
Uniontown, PA 15401  
*Attorney:* Robert A. Gordon

**MARY JO ZAGAR**, late of Perryopolis Borough, Fayette County, PA (1)

*Executor:* Edward A. Barker, Jr.  
15201 Grace Place  
Waterford, VA 20197  
c/o Shire Law Firm  
1711 Grand Boulevard  
Park Centre  
Monessen, PA 15062  
*Attorney:* Mark J. Shire

## First Publication

**ERNEST D. ARNOLD, a/k/a ERNEST ARNOLD**, late of Perryopolis Borough, Fayette County, PA (1)

*Executor:* Daniel J. Arnold  
c/o Zebley Mehalov & White, P.C.  
18 Mill Street Square  
P.O. Box 2123  
Uniontown, PA 15401  
*Attorney:* Daniel R. White

**ROSE A. KODRIC**, late of South Union Township, Fayette County, PA (1)

*Executor:* Steve A. Andrasy  
c/o 4 North Beeson Boulevard  
Uniontown, Pa 15401  
*Attorney:* Sheryl R. Heid

**BLANCHE DASCANI, a/k/a BLANCHE W. DASCANI**, late of Bullskin Township, Fayette County, PA (1)

*Executor:* Paul Dascani  
P.O. Box 805  
Connellsville, PA 15425  
c/o 4312 Old William Penn Highway  
Murrysville, PA 15668  
*Attorney:* Thomas Earhart

## LEGAL NOTICES

### LEGAL NOTICE

A hearing on the Involuntary Termination of Parental Rights of John Doe, natural father of a minor child born to Jessica L. Lowry on September 7, 2012 in Uniontown Hospital, Uniontown, Fayette County, Pennsylvania, will be held on February 12, 2018, at 10:30 A. M. in Court Room Number 1 of the Fayette County Court House, 61 East Main Street, Uniontown, Pennsylvania, 1401.

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing 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 petitioner. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE 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.

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Connellsville, PA 15425

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## SHERIFF'S SALE

Date of Sale: March 15, 2018

By virtue of the below stated writs out of the Court of Common Pleas of Fayette County, Pennsylvania, the following described properties will be exposed to sale by James Custer, Sheriff of Fayette County, Pennsylvania on Thursday, March 15, 2018, at 2:00 p.m. in Courtroom Number Five at the Fayette County Courthouse, Uniontown, Pennsylvania.

The terms of sale are as follows:

Ten percent of the purchase price, or a sufficient amount to pay all costs if the ten percent is not enough for that purpose. Same must be paid to the Sheriff at the time the property is struck off and the balance of the purchase money is due before twelve o'clock noon on the fourth day thereafter. Otherwise, the property may be resold without further notice at the risk and expense of the person to whom it is struck off at this sale who in case of deficiency in the price bid at any resale will be required to make good the same. Should the bidder fail to comply with conditions of sale money deposited by him at the time the property is struck off shall be forfeited and applied to the cost and judgments. All payments must be made in cash or by certified check. The schedule of distribution will be filed the third Tuesday after date of sale. If no petition has been filed to set aside the sale within 10 days, the Sheriff will execute and acknowledge before the Prothonotary a deed to the property sold. (3 of 3)

James Custer  
Sheriff Of Fayette County

Phelan Hallinan Diamond & Jones, LLP

No. 2199 of 2017 GD  
No. 351 of 2017 ED

**U.S. Bank National Association, as Trustee for Residential Asset Mortgage Products, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2005-Efc5,**

**Plaintiff,**

**v.**

**Timothy J. Bechtold A/K/A Timothy Bechtold**

**Raecyne W. Bechtold,**  
**Defendant(s).**

By virtue of a Writ of Execution No. 2199 OF 2017 GD, U.S. Bank National Association, as Trustee for Residential Asset Mortgage Products, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2005-Efc5 v. Timothy J. Bechtold A/K/A Timothy Bechtold Raecyne W. Bechtold, owner(s) of property situate in the CONNELLSVILLE CITY, Fayette County, Pennsylvania, being 504 South Pittsburgh Street, Connellsville, PA 15425-4013  
Parcel No.: 05 07-0209

Improvements thereon: RESIDENTIAL DWELLING

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STERN & EISENBERG PC  
EDWARD J. MCKEE, ESQUIRE

No. 2389 of 2013 GD  
No. 344 of 2017 ED

**Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2005-QS14,**

**Plaintiff,**

**V.**

**Randy Canose and Kelly Canose,**  
**Defendant(s).**

SITUATE IN FRANKLIN TOWNSHIP, FAYETTE COUNTY, PENNSYLVANIA, BEING KNOWN AS 772 VIRGIN RUN ROAD, FRANKLIN, PA 15486.

PARCEL NO. 13-06-0058

IMPROVEMENTS - RESIDENTIAL REAL ESTATE

SOLD AS THE PROPERTY OF- RANDY  
CANOSE AND KELLY CANOSE

---

Phelan Hallinan Diamond & Jones, LLP

No. 197 of 2017 GD

No. 350 of 2017 ED

**Bank of America, N.A., as Successor by  
Merger to BAC Home Loans Servicing, LP  
f/k/a Countrywide Home Loans  
Servicing, LP**

**Plaintiff**

**V.**

**Lisa M. Collins,  
Defendant(s).**

By virtue of a Writ of Execution No. 197  
OF 2017 GD, Bank of America, N.A., as  
Successor by Merger to BAC Home Loans  
Servicing, LP f/k/a Countrywide Home Loans  
Servicing, LP v. Lisa M. Collins, owner(s) of  
property situate in the MENALLEN  
TOWNSHIP, Fayette County, Pennsylvania,  
being 110 Postoffice rd, Waltersburg, PA 15488  
-1019

Parcel No.: 22-02-0046

Improvements thereon: RESIDENTIAL  
DWELLING

---

STERN AND EISENBERG, PC  
JESSICA N. MANIS, ESQ.

No. 478 of 2017 GD

No. 337 of 2017 ED

**Wilmington Savings Fund Society, FSB DBA  
Christiana Trust as Trustee for HLSS  
Mortgage Master Trust for the benefit of the  
holders of the Series 2014-1 Certificates  
issued by HLSS M011gag Master Trust c/o  
Ocwen Loan Servicing, LLC,**

**Plaintiff,**

**V.**

**Robert Deline a/k/a Robert Jesse Deline and  
Christina Deline a/k/a Christiana A. Deline,  
Defendant(s).**

SITUATE IN THE THIRD WARD OF  
THE BULLSKIN TOWNSHIP, FAYETTE  
COUNTY, PENNSYLVANIA, BEING

KNOWN AS 208 Hammondville Street, Mount  
Pleasant, PA 15666

PARCEL NO. 04-01-0034

IMPROVEMENTS - RESIDENTIAL  
REAL ESTATE

SOLD AS THE PROPERTY OF - Robert  
Deline a/k/a Robert Jesse Deline and Christina  
Deline a/k/a Christiana A. Deline

---

No. 1643 of 2017 GD

No. 352 of 2017 ED

**CITTMORTGAGE, INC.**

**vs.**

**KRIS GASTER**

ALL THAT CERTAIN PIECE OR  
PARCEL OF LAND SITUATE IN GEORGES  
TOWNSHIP, FAYETTE COUNTY,  
PENNSYLVANIA

BEING THE SAME PREMISES which  
Cindy Gaster a/k/a Cindy S. Gaster, an  
unremarried widow, by her Attorney in Fact,  
Chad W. Gaster, by Deed dated September 29,  
2016 and recorded October 17, 2016 in the  
Office of the Recorder of Deeds in and for  
Fayette County in Deed Book Volume 3322,  
Page 676, granted and conveyed unto KRIS  
GASTER.

BEING THE SAME PREMISES which  
Cindy Gaster a/k/a Cindy S. Gaster, an  
unremarried widow, by her Attorney in Fact,  
Chad W. Gaster, by Deed dated September 29,  
2016 and recorded October 17, 2016 in the  
Office of the Recorder of Deeds in and for  
Fayette County in Deed Book Volume 3322,  
680, granted and conveyed unto KRIS  
GASTER.

BEING KNOWN AS: 56 EAST ELM  
STREET, FAIRCHANCE, PA 15436

PARCEL #14-29-002202 AND 14-29-  
002301

Richard M. Squire & Associates, LLC  
 By: Richard M. Squire, Esquire  
 Bradley J. Osborne, Esquire  
 Sarah K. McCaffery, Esquire  
 ID. Nos. 04267 / 312169 / 311728  
 One Jenkintown Station, Suite 104  
 115 West Avenue  
 Jenkintown, PA 19046  
 Telephone: 215-886-8790  
 Fax: 215-886-8791

No. 2046 of 2017 GD  
 No. 339 of 2017 ED

County, Pennsylvania, in Deed Book Volume 753, Page 203.

BEING THE SAME PREMISES which Edward J. Sullivan and Nannie E. Sullivan, husband and wife, by Deed dated December 8, 1959 and recorded December 8, 1959 in the Office of the Recorder of Deeds in and for the County of Fayette, in Deed Book 923, Page 613, granted and conveyed unto Fred W. Tuning and Susanna B. Tuning, husband and wife, in fee.

And the said Fred W. Tuning departed this life on June 3, 2017 And the said Susanna B. Tuning departed this life on June 28, 2014

**U.S. Bank National Association, not in its individual capacity but solely as trustee for the RMAC Trust, Series 2016-CTT, PLAINTIFF**  
**V.**

**Patricia Georgiana, solely as Heir to the Estates of Susanna B. Tuning, a/k/a Susanna M. Tuning, deceased**

**Unknown Heirs of the Estate of Susanna B. Tuning, a/k/a Susanna M. Tuning, deceased**  
**DEFENDANT(S).**

TAX PARCEL NO.: 34-24-0143  
 PROPERTY ADDRESS: 409 Derrick Road Uniontown, PA 15401  
 IMPROVEMENTS: Single Family Dwelling

SEIZED AND TAKEN in execution as the property of Patricia Georgiana, solely as Heir to the Estates of Susanna B. Tuning, a/k/a Susanna M. Tuning, deceased and Unknown Heirs of the Estate of Susanna B. Tuning, a/k/a Susanna M. Tuning, deceased

ALL THAT CERTAIN lot or parcel of land situate in South Union Township, Fayette County, Pennsylvania, being Lot No. 14 in the High Hills Plan of Lots as recorded in the Office of the Recorder of Deed of Fayette County, Pennsylvania, in Plan Book Volume 8, Page 250.

EXCEPTING AND RESERVING, thereout and therefrom all coal and mining rights as heretofore conveyed or reserved by deed or deeds of record.

UNDER AND SUBJECT to all those certain protective covenants and building restrictions on the High Hill Plan of Lots as set forth in Declaration dated May 15, 1952 and recorded in the recorder's Office of Fayette

UDREN LAW OFFICES, P.C.  
 WOODCREST CORPORATE CENTER  
 111 WOODCREST ROAD, SUITE 200  
 CHERRY HILL, NJ 08003-3620  
 856-669-5400

No. 1296 of 2016 GD  
 No. 345 of 2017 ED

**PNC Bank, National Association**  
**Plaintiff**  
**V.**

**PATRICIA L. JOHNSON, INDIVIDUALLY AND AS A KNOWN HEIR OF THOMAS H. JOHNSON UNKNOWN HEIRS, SUCCESSORS, ASSIGNS AND ALL PERSONS, FIRMS OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER THOMAS H. JOHNSON**  
**Defendant(s).**

ALL THAT CERTAIN LOT OF LAND SITUATE IN PERRY TOWNSHIP, FAYETTE COUNTY, PENNSYLVANIA:  
 BEING KNOWN AS 202 Main Street, Perryopolis, PA 15473  
 PARCEL NUMBER: 27-08-0036  
 IMPROVEMENTS: Residential Property



Phelan Hallinan Diamond & Jones, LLP

No. 310 of 2017 GD  
 No. 338 of 2017 ED

Phelan Hallinan Diamond & Jones, LLP

No. 2100 of 2017 GD  
 No. 354 of 2017 ED

**Lsf9 Master Participation Trust**  
**Plaintiff**  
**V.**  
**Janice M. Luft**  
**Defendant(s)**

By virtue of a Writ of Execution No. 310-OF-2017-GD Lsf9 Master Participation Trust v. Janice M. Luft, owner (s) of property situate in the UPPER TYRONE TOWNSHIP, Fayette County, Pennsylvania, being 118 Broad Street, Scottsdale, PA 15683-1808

Parcel No.: 39040018  
 Improvements thereon: RESIDENTIAL DWELLING

**Wells Fargo Bank, NA**  
**Plaintiff**  
**V.**  
**David A. Miller**  
**Tiffany L. Miller**  
**Defendant(s)**

By virtue of a Writ of Execution No. 2100-OF-2017-GD, Wells Fargo Bank, NA v. David A. Miller, Tiffany L. Miller, owner(s) of property situate in the NORTH UNION TOWNSHIP, Fayette County, Pennsylvania, being 59 Reppert Boulevard, Uniontown, PA 15401-2515

Parcel No.: 25-39-0069  
 Improvements thereon: RESIDENTIAL DWELLING

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No. 1580 of 2017 GD  
 No. 334 of 2017 ED

**The Bank of New York Mellon F/K/A The Bank of New York as successor in interest to JP Morgan Chase Bank, N.A. as Indenture Trustee for Newcastle Mortgage Securities Trust 2006-1**  
**Plaintiff,**  
**vs.**  
**Shelley L. Machesky; William P. Machesky**  
**Defendants.**

ALL that certain parcel of land lying and being situate in the City of Uniontown, County of Fayette, and Commonwealth of Pennsylvania, known as 57 Pershing Avenue, Uniontown, PA 15401 having erected thereon a dwelling house.

Being known and designated as Tax ID No.: 38030017

BEING the same premises which Ruth Murphy, an unmarried widow, by Deed dated February 26, 1979 and recorded in and for Fayette County, Pennsylvania in Deed Book 1250, Page 802, granted and conveyed unto William P. Machesky and Shelley L. Machesky, his wife.

---

No. 1017 of 2016 GD  
 No. 361 of 2017 ED

**THE UNITED FEDERAL CREDIT UNION,**  
**Plaintiff,**  
**vs.**  
**DALE REAM, also known as DALE S. REAM and KELLEY REAM,**  
**Defendants.**

TRACT ONE: ALL that certain lot or parcel situate in the Borough of Fairchance, Fayette County, Pennsylvania, described as Tax Parcel No. 11-06-0025 and more particularly described in a deed dated October 25, 2005 and recorded in Record Book 2838, page 1194.

TRACT TWO: ALL those certain three lots situate in Fairchance Borough, Fayette County, Pennsylvania, described as Tax Parcel No. 11-06-0026 and more particularly described in a deed dated January 5, 2004 and recorded in Record Book 2891, page 419.

The street address of the subject property is 80 and 82 N. Morgantown Street, Fairchance, Pennsylvania 15436.

Seized and taken in execution as the property of Dale Ream, also known as Dale S. Ream and Kelley Ream, owners or reputed owners of the property, at the suit of The United Federal Credit Union in the Court of Common

Pleas of Fayette County, Pennsylvania at No. 1015 of 2016, G.D.

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No. 1015 of 2016 GD  
No. 362 of 2017 ED

**THE UNITED FEDERAL CREDIT UNION,**  
**Plaintiff,**  
**vs.**  
**DALE REAM, also known as DALE S.**  
**REAM and KELLEY REAM,**  
**Defendants.**

TRACT ONE: ALL that certain lot or parcel situate in the Borough of Fairchance, Fayette County, Pennsylvania, described as Tax Parcel No. 11-06-0025 and more particularly described in a deed dated October 25, 2005 and recorded in Record Book 2838, page 1194.

TRACT TWO: ALL those certain three lots situate in Fairchance Borough, Fayette County, Pennsylvania, described as Tax Parcel No. 11-06-0026 and more particularly described in a deed dated January 5, 2004 and recorded in Record Book 2891, page 419.

The street address of the subject property is 80 and 82 N. Morgantown Street, Fairchance, Pennsylvania 15436.

Seized and taken in execution as the property of Dale Ream, also known as Dale S. Ream and Kelley Ream, owner s or reputed owner s of the property, at the suit of The United Federal Credit Union in the Court of Common Pleas of Fayette County, Pennsylvania at No. 1015 of 2016, G.D.

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**JUDICIAL OPINION**

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

|                         |   |                       |
|-------------------------|---|-----------------------|
| COLUMBIA GAS COMPANY OF | : |                       |
| PENNSYLVANIA,           | : |                       |
| Plaintiff,              | : |                       |
| vs.                     | : |                       |
| LOWER TYRONE TOWNSHIP,  | : | No. 884 of 2016, G.D. |
| Defendant.              | : | Judge Nancy D. Vernon |

**OPINION AND ORDER**

VERNON, J.

December 5, 2017

Before the Court are the Preliminary Objections of Defendant, Lower Tyrone Township, to the Amended Complaint filed by Plaintiff, Columbia Gas Company of Pennsylvania, requesting this Court apply governmental immunity by dismissing Plaintiff’s Amended Complaint for legal insufficiency upon the argument that neither the utility service facilities exception nor the motor vehicle exception to the Tort Claims Act applies.

**DISCUSSION**

In ruling on preliminary objections, the Court must accept as true all well-pleaded, material and relevant facts. *Mellon Bank v. Fabinyi*, 650 A.2d 895, 899 (Pa. Super. 1994). “[C]onclusions of law, unwarranted inferences from the facts, argumentative allegations or expressions of opinion” need not be accepted as true. *Myers v. Ridge*, 712 A.2d 791, 794 (Pa. Commw. 1998). “Preliminary objections, the end result of which would be dismissal of a cause of action, should be sustained only in cases that are clear and free from doubt.” *League of Women Voters of Pennsylvania v. Commonwealth*, 692 A.2d 263, 267 (Pa. Commw. 1997).

Columbia Gas alleges that on or about June 4, 2015, employees of Lower Tyrone Township were engaged in replacing old underground utility facilities in Upper Hulltown, Dawson, Fayette County. See, Amended Complaint ¶7. In replacing its facilities, Lower Tyrone Township was using an excavator and struck the gas lines of Columbia Gas causing them to break. *Id.* at ¶8, 9.

The Township lodges the within preliminary objections arguing that as a local governmental agency, it is entitled to governmental immunity as preserved in the Pennsylvania Political Subdivision Tort Claims Act. Columbia Gas responded that two possible exceptions applied to governmental immunity, namely the utility service facilities and vehicle liability 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).

Columbia Gas alleges that the underground lines the Township was replacing constituted a dangerous condition such that the utility service facilities exception to governmental immunity would apply. See, Amended Complaint ¶7. The utility exception to local governmental immunity as set forth in Section 8542(b)(5) provides:

(b) Acts which may impose liability. The following acts by a local agency or any of its employees may result in the imposition of liability on a local agency:

...

(5) Utility service facilities.--A dangerous condition of the facilities of steam, sewer, water, gas or electric systems owned by the local agency and located within rights-of-way, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the local agency had actual notice or could reasonably be charged with notice under the circumstances of the dangerous condition at a sufficient time prior to the event to have taken measures to protect against the dangerous condition.

42 Pa.C.S.A. §8542(b)(5).

At the time of the filing of the instant preliminary objections, case law from the Commonwealth Court held that in order for the utility exception to apply “the allegedly dangerous condition must have derived or originated from, or had its source as the local agency’s realty.” *Metropolitan Edison Co. v. City of Reading*, 125 A.3d 499, 502 (Pa.Cmmw.Ct. 2015). In the interim, the Supreme Court of Pennsylvania has reversed the Commonwealth Court’s holding in finding that “the originating cause of the dangerous condition, whether by the negligence of the local agency or otherwise, is irrelevant to a proper application of the Utility Exception. Instead, the negligent act necessary to trigger the Utility Exception is the failure of a local agency to remediate a dangerous condition of which it has notice.” *Metropolitan Edison Co. v. City of Reading*, 162 A.3d 414, 424 (Pa. 2017).

The Supreme Court “precisely list[ed] the requirements for an exception from governmental immunity under the Utility Exception in subsection 8542(b)(5):

- a dangerous condition of a utility service facility owned by the local agency and located within rights-of-way;
- the dangerous condition created a foreseeable risk of injury of the kind of injury that later occurred;
- the local agency had notice of the dangerous condition or could reasonably be charged with notice;
- despite said notice, the local agency, with the means and personnel to do so under the circumstances presented, failed to take necessary and appropriate remedial measures to protect against injury resulting from the dangerous condition; and

- the failure to remediate the dangerous condition was a proximate cause of the injury and resulting damages.”

Id. at 423.

A review of the Amended Complaint reveals that the pleadings only allege, “By their very nature, the old underground utility facilities constituted a ‘dangerous condition’ pursuant to 42 Pa.C.S. §854(b)(5).” Upon this new precedent, we will sustain the preliminary objection as to the utility service facilities exception and permit Columbia Gas opportunity to amend its Complaint to comply with the pleading requirement as outlined in the five bullet points enumerated by the Supreme Court.

Turning to the vehicle liability preliminary objection, the operation of any motor vehicle in the possession or control of the local agency may result in the imposition of liability on a local agency. 42 Pa.C.S. §8542(b)(1). Columbia Gas alleges that the excavator which caused the damage was a “motor vehicle” pursuant to Section 8542(b)(1). The Township argues that an excavator is not a “motor vehicle” but instead directs the Court to the definition of “motor vehicle” as defined in the Motor Vehicle Code which would classify an excavator as “special mobile equipment.”

However, the statute that provides for the vehicle liability exception to governmental immunity states: “As used in this paragraph, “motor vehicle” means any vehicle which is self-propelled and any attachment thereto, including vehicles operated by rail, through water or in the air.” 42 Pa.C.S. §8542(b)(1). Thus, “motor vehicle” is defined within the very statute that provides for the vehicle liability exception to governmental immunity and the Court need not look to surrounding codes or case law for a definition. As such, for purposes of the vehicle liability exception, since an “excavator” is a “vehicle which is self-propelled,” it would fall within the exception to governmental immunity. Finding that the pleadings are sufficient that Columbia Gas could meet the vehicle liability exception to the Tort Claims Act, this objection will be overruled.

WHEREFORE, we will enter the following Order.

### **ORDER**

AND NOW, this 5th day of December, 2017, upon consideration of the Preliminary Objections of Defendant, Lower Tyrone Township, to the Amended Complaint filed by Plaintiff, Columbia Gas Company of Pennsylvania, it is hereby ORDERED and DECREED that the objections are overruled in part and sustained in part.

It is further ORDERED and DECREED that the preliminary objection with regard to the utility service facilities exception is sustained and Plaintiff is granted forty-five (45) days to file a Second Amended Complaint.

It is still further ORDERED and DECREED that the preliminary objection with regard to the vehicle liability exception is overruled.

BY THE COURT:  
NANCY D. VERNON, JUDGE

ATTEST:  
PROTHONOTARY



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