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NOTICE BY THE ADAMS COUNTY
CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statements of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphan's Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Friday, July 8, 2011 at 8:30 a.m.

ROBERTS—Orphan's Court Action Number OC-63-2011. The First and Final Account of H. Gene Fultz, Executor of the Estate of Frances Jane Howard, deceased, late of Oxford Township, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

6/24 & 7/1

DISSOLUTION NOTICE

NOTICE IS HEREBY GIVEN that BONHAM IM/IT SERVICES, INC., a Pennsylvania corporation, with an address of 601 Sycamore Street, Celebration, FL 34747, have approved a proposal that the corporation voluntarily dissolve, and that the Board of Directors is now engaged in winding up and settling the affairs of the corporation under the provisions of the Pa. Business Corporation Law of 1988, as amended, and the corporation has filed with the Department of State of the Commonwealth of Pennsylvania on May 19, 2011, Articles of Dissolution.

David K. James, III, Esq.
234 Baltimore Street
Gettysburg, PA 17325

6/24

HULL VS. STEWART & TATE ET AL

1. In cases involving the streets exception to governmental immunity, the inquiry is whether a dangerous condition of streets caused the plaintiff's injuries. A condition of the street is the cause of an individual's injuries when the condition arose from the street itself, not from an artificial condition placed on the street. Therefore, before a jury can determine whether there was a dangerous condition, there must be a legal determination as to whether Plaintiff's injuries were caused by a condition of the street.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 09-S-1549, MICHELE L. HULL AND FRED D. HULL
VS. STEWART & TATE, INC. AND READING TOWNSHIP

Donald L. Reinhart, Esq., for Plaintiffs

Gregory L. Hirtzel, Esq., for Defendant Stewart & Tate, Inc.

Brooks R. Foland, Esq., for Defendant Reading Township

Campbell, J., February 11, 2011

OPINION

Before this Court are Defendant, Reading Township's, and Defendant, Stewart & Tate's, Motions for Summary Judgment. In the interests of efficiency, both motions will be discussed and disposed of in this Opinion.

A review of the record reveals that there are few facts about which the parties agree in the instant case. On or about April 21, 2008, Reading Township and Stewart & Tate, a paving company, entered into a contract by which Stewart & Tate would complete road work on Wolf Road, in Reading Township, Adams County, Pennsylvania.¹ The work on Wolf Road was but one part of the contract, as the contract involved work on several other roads located in Reading Township. The portion of the project relating to Wolf Road was completed on June 23, 2008 and July 15, 2008, respectively.

On August 25, 2008, at approximately 10:53 a.m., Plaintiff Michele Hull left her home and turned southbound onto Wolf Road. Mrs. Hull was driving her four door Mazda and was traveling between 30 to 35 mph, as the posted speed limit on Wolf Road was 35 miles per hour. While traveling on Wolf Road, Mrs. Hull's car

¹ The specifications of the work to be done and obligations of the parties to the contract between Reading Township and Stewart & Tate are in dispute. In fact, there are serious discrepancies among the parties as to the interpretation of this contract. The parties have actually secured expert reports concerning the interpretations and meaning of the contract within the industry.

drifted to the right, and the passenger side tires of her car encountered a drop-off on Wolf Road. While attempting to return to the roadway, Mrs. Hull lost control of her vehicle, and her vehicle then rolled over, striking an embankment. As a result of this incident, Mrs. Hull suffered serious injuries, including the amputation of two fingers and multiple surgeries.

Plaintiffs, Michele L. Hull and Fred D. Hull, initiated this cause of action by filing a Complaint in the Court of Common Pleas of York County. By agreement of the parties, the case was transferred to this Honorable Court in the Court of Common Pleas of Adams County. Plaintiffs filed a Third Amended Complaint on or about November 21, 2009. In their Third Amended Complaint, Plaintiffs assert claims against Reading Township for negligence (Count I), vicarious negligence (Count II) and loss of consortium (Count IV). Also in their Third Amended Complaint, Plaintiffs assert claims of vicarious negligence (Count III) and loss of consortium (Count IV) against Stewart & Tate.

On December 10, 2009, Stewart & Tate filed its Answer with New Matter and Cross-Claim to Plaintiffs' Third Amended Complaint. In its New Matter, Stewart & Tate alleged that Reading Township was solely liable, and if Stewart & Tate was found to be liable in any way, Reading Township would be liable over to Stewart & Tate for indemnification and/or contribution.

On December 17, 2009, Reading Township filed its Answer with New Matter and New Matter Cross-Claim to Plaintiffs' Third Amended Complaint. In its New Matter, Reading Township alleged it was entitled to immunity under the Political Subdivision Tort Claims Act. In its New Matter Cross-Claim, Reading Township alleged that Stewart & Tate was solely liable, and if Reading Township was found to be liable in any way, Stewart & Tate would be liable over to Reading Township for indemnification and/or contribution of any verdict.

On October 25, 2010, Reading Township filed its Motion for Summary Judgment. On November 4, 2010, Stewart & Tate filed its Motion for Summary Judgment. On November 23, 2010, Plaintiffs' filed their Response to Reading Township's Motion for Summary Judgment. Reading Township filed its Brief in Support of Summary Judgment on December 2, 2010, and Plaintiffs filed their Brief in

Opposition to Reading Township's Motion for Summary Judgment on December 14, 2010. On December 16, 2010 Stewart & Tate filed its Brief in Support of Summary Judgment, and Plaintiffs filed their Brief in Opposition to Stewart & Tate's Motion for Summary Judgment on December 30, 2010. This Court held oral argument on both Motions for Summary Judgment on January 4, 2011.

Under the Pennsylvania Rules of Civil Procedure a court may enter summary judgment when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. **Pa. R. Civ. P. 1035.2**; *Strine v. Commonwealth*, 894 A.2d 733, 737 (Pa. 2006). Summary judgment is only appropriate where the pleadings, depositions, answers to interrogatories, omissions and affidavits, and other materials demonstrate that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Roche v. Ugly Duckling Car Sales, Inc.*, 879 A.2d 785, 789 (Pa. Super. 2005) (quotations and citations omitted). The burden of demonstrating the lack of any genuine issue of material fact falls upon the moving party, and, in ruling on the motion, the court must consider the record in the light most favorable to the non-moving party. *Id.* However, where a motion for summary judgment has been supported with depositions, answers to interrogatories, or affidavits, the non-moving party may not rest on the mere allegations or denials in its pleadings. *Accu-Weather, Inc. v. Prospect Communications, Inc.*, 644 A.2d 1251, 1254 (Pa. Super. 1994). Rather, the non-moving party must by affidavit or in some other way provided for within the Rules of Civil Procedure, set forth specific facts showing that a genuine issue of material fact exists. *Id.* Summary judgment is only appropriate in those cases which are free and clear from doubt. *McCannaughey v. Building Components, Inc.*, 637 A.2d 1331, 1333 (Pa. 1994).

Reading Township's Motion for Summary Judgment

This Court will first address Reading Township's Motion for Summary Judgment. Reading Township argues that it is entitled to summary judgment because it has immunity under the Political Subdivision Tort Claims Act (PSTCA) and no exception to immunity applies.² Under the PSTCA, "no local agency shall be liable for any

² The parties do not dispute that Reading Township constitutes a "local agency" for purposes of immunity under the PTSCA.

damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person.” **42 Pa. C.S.A. § 8541.** However, the PSTCA also provides for certain exceptions to the immunity that local agencies generally enjoy. *See* **42 Pa. C.S.A. § 8542.** A local agency may be liable for damages if:

- (1) The damages would be recoverable under common law or a statute creating a cause of action if the injury were caused by a person not having available a defense under 8541...; and
- (2) The injury was caused by the negligent acts of the local agency or an employee thereof acting within the scope of his office or duties with respect to one of the categories listed in subsection (b)...

42 Pa. C.S.A. § 8542(a)(1)-(2).³

The following exceptions may impose liability upon a local agency:

- (1) Vehicle liability;
- (2) Care, custody or control of personal property;
- (3) Real property;
- (4) Trees, traffic controls and street lighting;
- (5) Utility service fees;
- (6) Streets;
- (7) Sidewalks;
- (8) Care, custody or control of animals.

42 Pa. C.S.A § 8542(b)(1)-(8).

Instantly, Plaintiffs allege the streets exception to Reading Township’s immunity is applicable. Specifically, the streets exception, as provided by 42 Pa. C.S.A. § 8542(b)(6), 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:

* * * * *

³ It is important to note that Reading Township does not allege that the threshold requirements of 42 Pa. C.S.A § 8542(a)(1)-(2) are not met by Plaintiffs. It appears that Reading Township’s main contention is that no exceptions to immunity apply as found in 42 Pa. C.S.A. 8542(b)(1)-(8). Alternatively, Reading Township argues that the only exception that could potentially apply is the streets exception; however, according to Reading Township, Plaintiffs’ have not met the requirements under this exception.

(6) *Streets* --

- (i) A dangerous condition of streets owned by the local agency, 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)(6)(i).

In cases involving the streets exception to governmental immunity, the inquiry “is whether a dangerous condition *of* streets caused the plaintiff’s injuries.” **42 Pa. C.S.A § 8542(b)(6)(i)**; *Walinsky v. St. Nicholas Ukrainian Catholic Church & Borough of Minersville*, 740 A.2d 318, 321 (Pa. Cmwlth. 1999) (emphasis added). “[I]n cases involving the streets exception, liability depends, first, on the legal determination that an injury was caused by a condition of [the street] itself, deriving, originating from, or having the [street] as its source, and, only then, the factual determination that the condition was dangerous.” *Id.* (quoting *Finn v. City of Philadelphia*, 664 A.2d 1342, 1346 (Pa. 1995)). A condition of the street is the cause of an individual’s injuries when the condition arose from the street itself, not from an artificial condition placed on the street. *Osborne v. Cambridge Twp.*, 736 A.2d 715, 724 (Pa. Cmwlth. 1999); *see, e.g., Lockwood v. City of Pittsburgh*, 751 A.2d 1136, 1140 (Pa. 2000) (holding that the lack of a guardrail along a street was not a dangerous condition of the street itself); *Finn*, 664 A.2d at 1344-45 (in the context of the sidewalk exception to immunity, holding that the accumulation of grease on a sidewalk did not constitute a dangerous defect of the sidewalk itself). Therefore, before a jury can determine whether there was a dangerous condition, there must be a legal determination as to whether Plaintiff, Michele Hull’s, injuries were caused by a condition *of* the street. *Walinsky*, 940 A.2d at 321 (emphasis added).

Instantly, Reading Township argues that the streets exception to immunity is inapplicable because the drop-off and narrow width of

Wolf Road, coupled with its lack of painted edge lines, do not constitute conditions of the street. I disagree. The road edge drop-off, narrow width, and lack of painted lines on Wolf Road are not artificial conditions similar to grease on a sidewalk in *Finn*, or a lack of a guardrail along a street in *Lockwood* that would render the streets exception inapplicable. Rather, when considering the totality of all three conditions – the drop-off, narrow width, and lack of painted edge lines – all are characteristics and conditions of Wolf Road and part of the road itself. Therefore, Reading Township’s argument fails.

Plaintiffs also presented evidence suggesting that Mrs. Hull’s injuries were caused by the drop-off, supporting their theory of the case – that the drop-off of Wolf Road, coupled with its narrow width and lack of painted lines, constitute a dangerous condition of the street. Specifically, at her deposition, Mrs. Hull testified that while driving on Wolf Road at approximately 30-35 miles per hour, her car drifted to the right and the tires on the passenger side encountered the drop-off. (**Reading Township’s Ex. C, Def.’s Mot. for Summ. J., Dep. of Michele Hull, N.T. p. 34**). As a result of encountering the drop-off on Wolf Road, Mrs. Hull lost control of her vehicle. (*Id.* at 34, 40). Mrs. Hull’s vehicle then crossed into the oncoming lane of traffic, crossed back into her own lane, and then struck an embankment. (*Id.* at 41-42). Officer Morehead, who responded to Mrs. Hull’s car accident, testified that he determined the cause of Mrs. Hull’s accident to be the pavement edge drop-off along Wolf Road. (**Reading Township’s Ex. D, Def.’s Mot. for Summ. J., Dep. of Officer Morehead, N.T. p. 21**). Moreover, Plaintiffs’ expert, Joseph Muldoon, P.E., prepared an expert report in which Mr. Muldoon examined Wolf Road and determined that there are no fog lines and that Wolf Road measures approximately 18 feet, rather than 20 feet as asserted by the Township. (**Pls.’ Ex. B, Pls.’ Resp. to Reading Township’s Mot. for Summ. J.**). Based on his findings, Mr. Muldoon opined that Wolf Road’s drop off constituted a dangerous condition causing Mrs. Hull’s accident. (*Id.*) Mr. Muldoon further opined based on his expertise that the dangerousness of the drop-off was enhanced by the narrow width of Wolf Road and the absence of both fog lines and a shoulder. (*Id.*).

Mrs. Hull’s testimony, and Officer Morehead’s testimony, as well as the expert report by Mr. Muldoon, suggest that the drop-off, combined with the narrow width and lack of lines painted on Wolf Road,

caused Mrs. Hull's accident. Additionally, photo documentation of Wolf Road at the alleged location of the accident show a road elevated in relation to surrounding surfaces and there are no lines or road markings on Wolf Road, and there are varying measurements as to the depth of the drop-off. (**Pls.' Exs. C, D, Pls.' Resp. to Reading Township's Mot. for Summ. J.**). Finally, and, most interestingly, there are no allegations by Reading Township that it lacked notice of the drop-off and condition of Wolf Road. Therefore, Plaintiffs have met the threshold requirements of the applicability of the streets exception to immunity, *i.e.*, showing that Mrs. Hull's injuries were caused by a condition of the street and that Reading Township knew of the Wolf Road's condition.

Based on this conclusion, it is for the jury to determine whether the drop-off, narrow width and lack of painted lines collectively constituted dangerous conditions.⁴ *See Walinsky*, 940 A.2d at 321. Accordingly, Reading Township's Motion for Summary Judgment is denied.⁵

Stewart & Tate's Motion for Summary Judgment

Defendant, Stewart & Tate, also filed a Motion for Summary Judgment. Specifically, Stewart & Tate alleges that it is entitled to summary judgment based on the government contractor defense. The government contractor defense provides that in the absence of negligence or willfully tortuous conduct on the part of an independent contractor, he is not liable for injuries caused by the performance of his contract with a government instrumentality in accordance with its plans and specifications. *Valley Forge Gardens v. James D. Morrissey, Inc.*, 123 A.2d 888, 890 (Pa. 1956); *Ference v. Booth & Flinn Co.*, 88 A.2d 413, 414 (Pa. 1952). Both *Valley Forge Gardens* and *Ference* "limit a public works contractor's liability for third-party tort claims only where the evidence establishes that the contractor complied with the technical specifications of the government contract *and* the evidence fails to establish the contractor's

⁴ At oral argument, counsel for Reading Township conceded there was factual dispute as to the exact measurement of the drop-off. Thus, a genuine issue of material fact exists, and summary judgment on that basis would be inappropriate.

⁵ Based on this Court's denial of Reading Township's Motion for Summary Judgment based on Plaintiffs' negligence claim, Reading Township's Motion for Summary judgment based on Plaintiff, Fred Hull's, loss of consortium claim is also denied. *See, e.g., Andrus v. American Color and Chemical Corp.*, 4 Pa. D & C.4th 539, 544 (C.P. Clinton, Feb. 15, 1990) (holding that when the plaintiff's claim for injury is litigable, the spouse's claim for loss of consortium is also appropriate).

negligence in completing that work.” *Coolbaugh v. Com., Dept. of Transp.*, 816 A.2d 307, 312 (Pa. Super. 2003) (emphasis original). The *Coolbaugh* court further noted that:

[a] public works contractor is only entitled to insulation from liability if the record does not support a question of negligence arising from the contractor’s performance of the contracted work. If the evidence establishes that the contractor did not complete the project in a workmanlike manner, the contractor’s technical compliance with contract specifications will *not* insulate it from liability to third parties sounding in negligence. Stated differently, fulfillment of the contract specifications does not necessarily satisfy the standard of care owed to the plaintiff in a negligence action. Accordingly, if, at the completion of discovery, the evidence raises a question of material fact concerning the matter and extent to which the contractor breached a duty to the plaintiff, the contract specifications defense is *not* grounds for summary judgment.

Id. (emphasis added) (citations omitted).

Instantly, Stewart & Tate alleges that it is entitled to summary judgment based on the government contractor defense because it complied with all contract specifications contained within the contract it entered into with Reading Township. In response Plaintiffs argue that Stewart & Tate did not adhere to the contract specifications, and that Plaintiff, Michele Hull, was injured as a direct result of Stewart & Tate’s negligence in adhering to the contract specifications. Both parties dispute the actual specifications and requirements of the contract and the interpretations of those requirements. Thus, an examination of the contract between Reading Township and Stewart & Tate is necessary for disposition of this issue.

On April 21, 2008, Reading Township and Stewart & Tate entered into a contract for work on Wolf Road. The contract contained the following provision:

The contractor proposes to furnish and deliver all materials (including Form CS-4171, CERTIFICATE OF COMPLIANCE, and/or TR-465 DAILY BITUMINOUS MIXTURE CERTIFICATION) and to do and perform all work on the following project as more specifically set

forth in the Schedule of Prices (Attachment), in accordance with drawings and specifications on file at READING TOWNSHIP, 2ND CLASS as well as the supplements contained herein and/or attached hereto and current PennDOT Specifications (Publication 408), except (a) bidders need not be prequalified by PennDOT (sec.102.01), and (b) Volumetric testing of bituminous paving materials is not required (Sec. 409).

(Stewart & Tate's Ex. C, Def.'s Mot. for Summ. J.)

Attachment 1 to the contract contained the following information regarding the work to be performed on Wolf Road, which provided, in relevant part:

LOCATION OF WORK

- 1) T-618 Wolf Road: From SR#1005 Germany Road to SR#1007 Stoney Point Road.

DESCRIPTION OF WORK:

- 1) Wolf Road: Scratch and apply 1 1/2" 9.5 mm Superpave 0 to .3 ESAL PG64-22, SRL-L or better on section of roadway 20 ft. x 2778 L.F. and joint seal and poly patch with double application of Microsurfacing Type B.

(Id.)

Attachment 1-A to the contract further provided, in relevant part, that:

Traffic control and safety devices would be provided by the [c]ontractor. (Maintenance and Protection of Traffic to comply with current MUTCD, Publication 212 and Publication 213).

(Id.)

The parties' interpretations of the contract differ significantly. According to Plaintiffs, Stewart & Tate did not perform in accordance with the contract because Wolf Road was not paved to a width of 20 feet, but rather Wolf Road, measuring 18 feet, was merely resurfaced. Plaintiffs further allege that Pursuant to PennDOT Publication 408, the 2-to-5 inch drop off of Wolf Road was not addressed with bituminous wedges or appropriate material to eliminate said drop-off. Plaintiffs also allege that pursuant to Section 901

of PennDOT Publication 408, low shoulder signs should have been installed at appropriate intervals to warn motorists and that contrary to the PennDOT Maintenance Manual, shoulders of a minimum of two feet wide were not placed along Wolf Road. Finally, Plaintiffs allege that contrary to the PennDOT Pavement Marking Handbook, fog lines had not been placed along the pavement edge on Wolf Road. According to Plaintiffs, Stewart & Tate had a duty to provide ongoing protections against dangerous pavement-edge drop offs created during construction. Based on all of these allegations, Plaintiffs allege that Stewart & Tate did not comply with the contract specifications.

On the other hand, Stewart & Tate contends that, pursuant to the contract, it was only obligated to resurface Wolf Road as it existed and that the contract does not contain any provisions regarding widening the road, fixing the drop-off or constructing shoulders adjacent to Wolf Road. Essentially, Stewart & Tate argues that the contract only provided for resurfacing of Wolf Road as it existed and nothing beyond that. Stewart & Tate also contends that upon completion of the project on Wolf Road, Reading Township inspected its work, approved of its work, and released the bond to Stewart & Tate, all of which occurred prior to Mrs. Hull's accident. Therefore, according to Stewart & Tate, at the time of the accident, it had successfully and satisfactorily completed the Wolf Road project and it no longer had any obligations relating to Wolf Road.

Both Plaintiffs and Stewart & Tate have presented expert reports supporting their respective interpretations of the contract. Obviously these expert reports conflict, and the contract itself is unclear as to what specific obligations each party undertook during the Wolf Road project. The contract indicates that Stewart & Tate would scratch and apply superpave to a road measuring 20 feet. Problematically, Wolf Road only measures approximately 18 feet. Also, both parties rely on the language contained in Publication 408 to support their respective positions regarding addressing the drop-off, and each expert report produced by each party has interpreted the applicable provisions differently. Stewart & Tate attempts to rely on the depositions of Gary Sauble, Reading Township's Director of Public Works, and its own employee, Harry Brose, Division Manager for the Roadite Division of Stewart & Tate to support its argument that Stewart & Tate was only to resurface Wolf Road as it existed and that the

Township would take care of any drop-off and shoulder issues. However, this testimony is self-serving and cannot be properly considered when deciding a motion for summary judgment under the *Nanty-Glo* rule, which provides that:

[s]ummary judgment is prohibited where the moving party relies exclusively on oral testimony, either through testimonial affidavits or deposition testimony, to establish the absence of a genuine issue of material fact except where the moving party supports the motion by using admissions of the opposing party of the opposing party's own witnesses.

Lineberger v. Wyeth, 894 A.2d 141, 149 (Pa. Super. 2006) (quotations and citations omitted).

This Court, based on the contractual terms contained in the contract between Reading Township and Stewart & Tate, is unable to discern the true obligations and intentions of the parties, as the contract is susceptible to two reasonable interpretations, making the contract ambiguous. *See Trizachahn Gateway LLC v. Titus*, 976 A.2d 474, 483 (Pa. 2009) (“A contract is ambiguous if it is reasonably susceptible of different interpretations and capable of being understood in more than one sense.”). As such, a contract that is ambiguous is interpreted by the finder of fact, not the Court. *See id.* Therefore, this Court cannot conclude that Stewart & Tate complied with all the specifications contained within the contract it had with Reading Township, and cannot definitively conclude that Stewart & Tate completed the contract in a workmanlike manner. Accordingly, Stewart & Tate has not met the requirements of the government contractor defense.

In response to Stewart & Tate's Motion for Summary Judgment, Plaintiffs have also alleged that Stewart & Tate had a social duty to act without negligence when carrying out its contract with Reading Township. Plaintiffs point to *St. Clair v. B & L Paving Co.*, 411 A.2d 525 (Pa. Super. 1979) to support their position. In *St. Clair*, the Superior Court found that a paving company owed a social duty to third parties when the paving company had completed work on a public road and that work created a pavement edge drop-off which subsequently killed a driver on the road. *Id.* at 526-27. In reaching this conclusion, the Superior Court noted:

Those who undertake an activity pursuant to a contract have both a self-imposed contractual duty and a “social” duty imposed by law to act without negligence. This social duty extends to persons who, although strangers to the contract, are within the foreseeable orbit of risk of harm. More specifically, our courts impose a duty on any person who on behalf of the possessor of [l]and negligently creates an artificial condition resulting in injuries to others; and this, regardless of whether the contractor has surrendered possession of the land and his work has been accepted.

Id. at 526 (quotations and citations omitted).

The *St. Clair* court ultimately held that the case was entitled to go to trial because the paving company owed a duty to third persons, as the paving company entered onto Commonwealth land, performed a road resurfacing contract, and left the road dangerously elevated above the berm. *Id.* at 527.

This Court finds that the *St. Clair* decision is applicable to the instant case, as the present facts are eerily similar to those in *St. Clair*. In response to Stewart & Tate’s Motion for Summary Judgment, Plaintiffs have alleged that Stewart & Tate has a social duty to the safety of the public by virtue of entering into a contract with Reading Township, a government instrumentality. Stewart & Tate performed the work on Wolf Road, resulting in a drop-off, the measurement of which is in dispute by the parties. Stewart & Tate, therefore, owed a duty to third persons and cannot expect that duty to be relieved once its work was accepted by Reading Township.

In summary, there is a factual dispute regarding whether Stewart & Tate complied with the contract specifications. There is also a substantial question of material fact under the *St. Clair* rationale concerning whether Stewart & Tate breached its social duty to Plaintiff, Michele Hull, a third party. Accordingly, Stewart & Tate’s Motion for Summary Judgment is denied.

ORDER

AND NOW, this 11th day of February, 2011, Defendant, Reading Township’s Motion for Summary Judgment is denied. Defendant, Stewart & Tate’s Motion for Summary Judgment is also denied.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates 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**ESTATE OF GLADYS V. HOBBS, DEC'D**

Late of Liberty Township, Adams County, Pennsylvania

Personal Representative: Andrew C. Keller, 521 Blacks Mountain Road, Waterfall, PA 16689

Attorney: Wertime & Guyer LLP, 35 North Carlisle Street, Suite A, Greencastle, PA 17225

ESTATE OF ANTHONY MARTINO, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: Robert Martino, 1955 South Easton Rd., Doylestown, PA 18901

Attorney: Clayton R. Wilcox, Esq., P.O. Box 176, Littlestown, PA 17340

ESTATE OF HERTHAL C. RAI, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Barbara J. Byers, c/o David F. Spang, Esq., Walker, Connor and Spang, LLC, 247 Lincoln Way East, Chambersburg, PA 17201

Attorney: David F. Spang, Esq., Walker, Connor and Spang, LLC, 247 Lincoln Way East, Chambersburg, PA 17201

SECOND PUBLICATION**ESTATE OF MARY IDA BROWN, DEC'D**

Late of the Borough of East Berlin, Adams County, Pennsylvania

Executor: Michal E. Brown, c/o Craig A. Hatch, Esq., Gates, Halbruner, Hatch & Guise, P.C., 1013 Mumma Road, Suite 100, Lemoyne, PA 17043

Attorney: Craig A. Hatch, Esq., Gates, Halbruner, Hatch & Guise, P.C., 1013 Mumma Road, Suite 100, Lemoyne, PA 17043

ESTATE OF LAWRENCE D. FOLKEMER, SR., DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Lawrence D. Folkemer, Jr., 1399 Dodgeton Drive, Frisco, TX 75034

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

ESTATE OF FABIAN GENAHL, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Monica Andacht, 1215 S.E. 27th St., Cape Coral, FL 33904

Attorney: John J. Mooney, III, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF EDITH K. SHAFFER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Richard M. Shaffer, Jr., 230 Hirschmann Road, Biglerville, PA 17307; Carolyn N. Black, 54 Apple Lane, Biglerville, PA 17307; Gayle K. Ingle, 16 Sedgwick Drive, East Berlin, PA 17316

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, 126 Baltimore St., Gettysburg, PA 17325

ESTATE OF JANE T. STAUB, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Sue M. Bream, c/o Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

THIRD PUBLICATION**ESTATE OF LOIS R. BAIR, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executrices: Audrey Neiderer a/k/a Audrey E. DeBruyne, 655 Highland Ave., Gettysburg, PA 17325; Christine J. Mummert, 320 Terrace Ave., Hanover, PA 17331

Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

ESTATE OF LUTHER A. FREED, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Robert S. Freed, 1143 Turnberry Lane, York, PA 17403; James A. Freed, 6043 Old Hanover Rd., Spring Grove, PA 17362

ESTATE OF CATHERINE LEEDY, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: William S. Leedy, 1860 Bullfrog Road, Fairfield, PA 17320

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, 126 Baltimore St., Gettysburg, PA 17325

ESTATE OF VERA ALICE LENTZ, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Administrator: Michael L. Lentz, c/o Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

Attorney: Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

ESTATE OF THELMA L. ROWLAND, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart LLP, 40 York Street, Hanover, PA 17331

Attorney: James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart LLP, 40 York Street, Hanover, PA 17331

