

# FAYETTE LEGAL JOURNAL

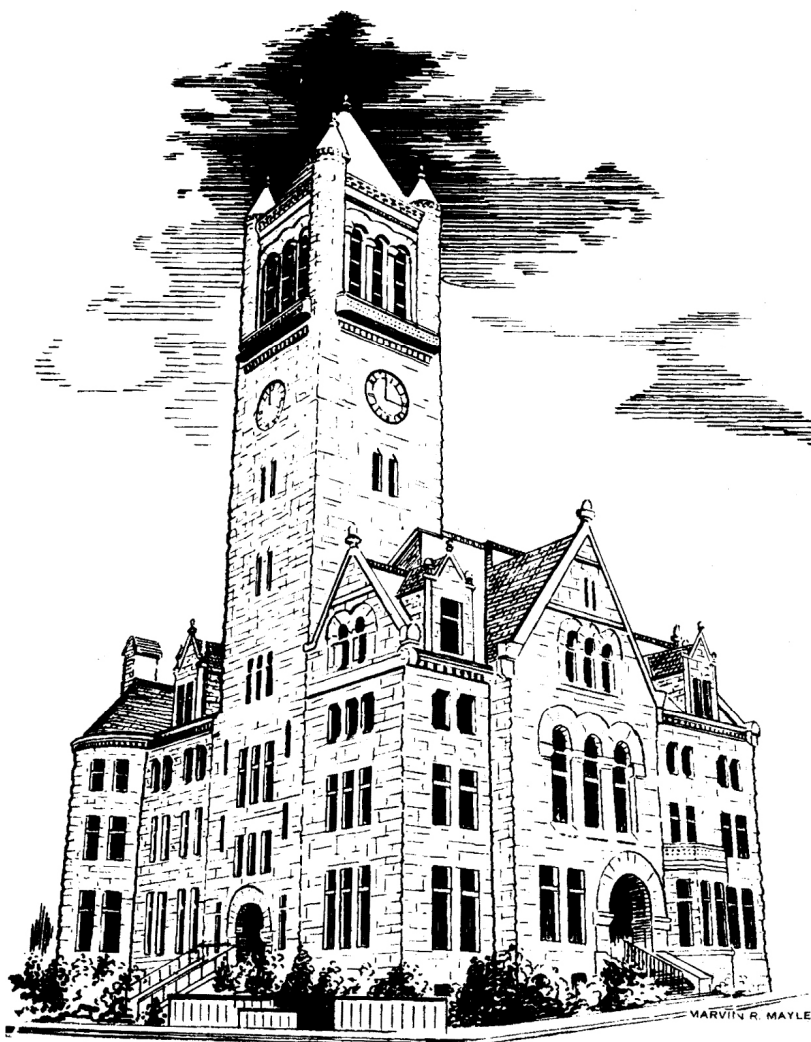
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VOL. 82

SEPTEMBER 21, 2019

NO. 38

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## FAYETTE LEGAL JOURNAL

The FAYETTE LEGAL JOURNAL is published weekly by the Fayette County Bar Association, 45 East Main Street, Suite 100, Uniontown, Pennsylvania 15401, 724-437-7994. Legal advertisements should be submitted online at [www.fcbar.org](http://www.fcbar.org) no later than 12:00 noon on Friday for publication the following Saturday. No date of publication is promised, however. Legal notices are published exactly as submitted by the advertiser. Copyright 2001 Fayette County Bar Association. All rights reserved.

**Co-Editors:** Garnet L. Crossland and Melinda Deal Dellarose

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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

**LORRAINE BABICH**, late of Uniontown, Fayette County, PA <sup>(3)</sup>

*Executor:* Louis R. Geller, Jr.  
232 Welsh Road  
Washington, PA 15301  
c/o Shire Law Firm  
1711 Grand Boulevard  
Park Centre  
Monessen, PA 15062  
*Attorney:* Mark J. Shire

**HELEN DOLAN**, late of Bullskin Township, Fayette County, PA <sup>(3)</sup>

*Executor:* Dolly Baker  
2402 Brownfield Drive  
Greensburg, PA 15601  
c/o Schimizzi Law, LLC  
35 West Pittsburgh Street  
Greensburg, PA 15601  
*Attorney:* Richard Schimizzi

**ALICE W. JEFFERYS**, late of Uniontown, Fayette County, PA <sup>(3)</sup>

*Executor:* Lisa A. Jefferys  
7706 Cypress Walk  
Fort Myers, FL 33966  
c/o 51 East Main Street  
Uniontown, PA 15401  
*Attorney:* Anthony Dedola

**PAUL J. MOSCOVITS**, late of Luzerne Township, Fayette County, PA <sup>(3)</sup>

*Personal Representative:* Joseph Moscovits  
c/o Davis & Davis  
107 East Main Street  
Uniontown, PA 15401  
*Attorney:* Samuel J. Davis

**ALEXANDER M. MOUNAYAR, SR., a/k/a ALEXANDER MITRI MOUNAYAR, SR.**, late of North Union Township, Fayette County, PA <sup>(3)</sup>

*Personal Representative:* Karen M. Widmeyer  
c/o George & George, LLP  
92 East Main Street  
Uniontown, PA 15401  
*Attorney:* Joseph M. George

**LINDA L. SMITH**, late of Belle Vernon, Fayette County, PA <sup>(3)</sup>

*Executor:* Vernon Eugene Smith  
35 Locust Avenue  
Charleroi, PA 15022  
c/o Sinko Zimmerman, LLC  
Suite 200 One Adam Place  
310 Seven Fields Blvd.  
Seven Fields, PA 16046  
*Attorney:* Betsy A. Zimmerman

### Second Publication

**MARY F. DAUGHERTY, MARY FRANCES DAUGHERTY**, late of North Union Township, Fayette County, PA <sup>(2)</sup>

*Executor:* Carlyle J. Engel  
c/o Proden & O'Brien  
99 East Main Street  
Uniontown, PA 15401  
*Attorney:* Wendy L. O'Brien

**JEROME L. GRIGLAK**, late of Uniontown Fayette County, PA <sup>(2)</sup>

*Administrator:* Michael J. Kosco  
5 Burlington Avenue  
Uniontown, PA 15401  
c/o 111 East Main Street  
Uniontown, PA 15401  
*Attorney:* Robert Harper, Jr.

**COURTNEY S. KNOPSNIDER**, late of  
Saltlick Township, Fayette County, PA (2)  
*Administratrix:* Heidi Knopsnider  
c/o Davis and Davis  
107 East Main Street  
Uniontown, PA 15401  
*Attorney:* James T. Davis

**VIOLA G. MCDONOUGH**, late of  
Uniontown, Fayette County, PA (2)  
*Executrix:* Katherine M. Ryan  
c/o 11 Pittsburgh Street  
Uniontown, PA 15401  
*Attorney:* Katherine M. Ryan

First Publication

**CHARLES CAMPBELL, a/k/a CHARLES B. CAMPBELL, JR.**, late of North Union  
Township, Fayette County, PA (1)  
*Executor:* Joshua T. Campbell  
c/o Higinbotham Law Offices  
45 East Main Street, Suite 500  
Uniontown, PA 15401  
*Attorney:* James Higinbotham

**GEORGE M. KRUCKVICH**, late of White  
Township, Fayette County, PA (1)  
*Personal Representative:* David J. Kruckvich  
c/o Watson Mundorff & Sepic, LLP  
720 Vanderbilt Road  
Connellsville, Pa 15425  
*Attorney:* Timothy J. Witt

**CATHERINE D. LIZZA**, late of Dunbar,  
Fayette County, PA (1)  
*Personal Representative:* Cathleen A. Muzika  
c/o Watson Mundorff & Sepic, LLP  
720 Vanderbilt Road  
Connellsville, PA 15425  
*Attorney:* Charles W. Watson

**CAROL L. MILBY, a/k/a CAROL LYNN MILBY**, late of South Connellsville Borough,  
Fayette County, PA (1)  
*Personal Representative:* Donald L. Mahokey  
c/o Watson Mundorff & Sepic, LLP  
720 Vanderbilt Road  
Connellsville, PA 15425  
*Attorney:* Timothy J. Witt

**ARNOLD C. PETERSON, JR., a/k/a ARNOLD C. PETERSON**, late of Bullskin  
Township, Fayette County, PA (1)  
*Personal Representative:* Jeffrey A. Peterson  
c/o Watson Mundorff & Sepic, LLP  
720 Vanderbilt Road  
Connellsville, PA 15425  
*Attorney:* Timothy J. Witt

**ALBERT M. RUSKO, a/k/a ALBERT M. RUSKO, JR.**, late of Uniontown, Fayette  
County, PA (1)  
*Executor:* Andrew C. Miller  
52 East Gay Street  
Columbus, OH 43216  
c/o Lovett, Bookman, Harmon and Marks, LLP  
Liberty Center, Suite 1150  
1001 Liberty Avenue  
Pittsburgh, PA 15222-3714  
*Attorney:* Andrew C. Miller

LEGAL NOTICES

NO LEGAL NOTICES

# SHERIFF'S SALE

Date of Sale: November 14, 2019

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, November 14, 2019, at 2:00 p.m. in Courtroom Number One 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

No. 2067 of 2018 GD  
No. 237 of 2019 ED

**Bank of America, N.A.,  
Plaintiff,  
Vs.**

**Calvin J. Brooks a/k/a Calvin James Brooks  
Susan Brooks  
The United States of America c/o the U.S.  
Attorney for the Western District of  
Pennsylvania,  
Defendants**

ALL THAT RIGHT, TITLE, INTEREST  
AND CLAIMS OF CALVIN J. BROOKS A/K/  
A CALVIN JAMES BROOKS, SUSAN  
BROOKS AND THE UNITED STATES OF  
AMERICA C/O THE U.S. ATTORNEY FOR  
THE WESTERN DISTRICT OF  
PENNSYLVANIA OF, IN AND TO THE  
FOLLOWING DESCRIBED PROPERTY:

ALL THAT CERTAIN LOT OR PARCEL  
OF LAND SITUATE IN BULLSKIN  
TOWNSHIP, COUNTY OF FAYETTE AND  
COMMONWEALTH OF PENNSYLVANIA,  
BEING MORE FULLY DESCRIBED AT DBV  
1197 PAGE 727

BEING KNOWN AS 206 REAR DRY  
HILL ROAD A/K/A 206 DRY HILL ROAD,  
CONNELLSVILLE, PA 15425

TAX MAP NO. 04-36-0004

Phelan Hallinan Diamond & Jones, LLP

No. 1136 of 2019 GD  
No. 251 of 2019 ED

**U.S. Bank National Association  
Plaintiff  
v.**

**Todd E. Conaway  
Jennifer L. Conaway  
Defendant(s)**

By virtue of a Writ of Execution No. 2019-01136, U.S. Bank National Association v. Todd E. Conaway, Jennifer L. Conaway, owner(s) of property situate in the SPRINGFIELD TOWNSHIP, Fayette County, Pennsylvania, being 460 Nilan Hill Road, Point Marion, PA 15474-1388

Parcel No.: 36-07-0199

Improvements thereon: RESIDENTIAL  
DWELLING

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No. 1710 of 2018 GD  
No. 250 of 2019 ED

**FIRST NATIONAL BANK OF  
PENNSYLVANIA,**  
**Plaintiff,**  
**vs.**  
**ANNA MARIE COOPER,**  
**Defendant.**

ALL THE RIGHT, TITLE, INTEREST  
AND CLAIM OF ANNA MARIE COOPER  
OF, IN AND TO THE FOLLOWING  
DESCRIBED PROPERTY:

ALL THE FOLLOWING DESCRIBED  
REAL ESTATE SITUATED IN THE  
TOWNSHIP OF NORTH UNION, FAYETTE  
COUNTY, PENNSYLVANIA. HAVING  
ERECTED THEREON A DWELLING BEING  
KNOWN AND NUMBERED AS 270  
STARLITE ROAD, LEMONT FURNACE, PA  
15456. DEED BOOK VOLUME 3166, PAGE  
678, AND PARCEL NUMBER 25-33-0003.

---

Lauren L. Schuler, Esquire  
Hladik, Onorato & Federman, LLP  
298 Wissahickon Avenue  
North Wales, PA 19454

No. 128 of 2019 GD  
No. 246 of 2019 ED

**U.S. Bank National Association, as indenture  
trustee, for the CIM Trust 2016-2, Mortgage-  
Backed Notes, Series 2016-2**  
**(Plaintiff)**  
**vs.**  
**Heather Duttry in her capacity as surviving  
heir of Beth Lisa Duttry a/k/a Beth Schaffer,  
Deceased, et al.**  
**(Defendant)**

By virtue of Writ of Execution No. 128  
of 2019 GD  
U.S. Bank National Association, as indenture  
trustee, for the CIM Trust 2016-2, Mortgage-  
Backed Notes, Series 2016-2 (Plaintiff) vs.  
Heather Duttry in her capacity as surviving heir  
of Beth Lisa Duttry a/k/a Beth Schaffer,  
Deceased, et al.

Property Address 301 Delmont Avenue,

Belle Vernon, PA 15012

Parcel I.D. No. 41-05-0229  
Improvements thereon consist of a  
residential dwelling.  
Judgment Amount: \$88,688.06

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McCABE, WEISBERG & CONWAY, LLC  
123 South Broad Street, Suite 1400  
Philadelphia, PA 19109  
(215) 790-1010

No. 1091 of 2019 GD  
No. 259 of 2019 ED

**American Advisors Group**  
**Plaintiff**  
**v.**

**Christopher Fitzgerald, Administrator of the  
Estate of Gail M. Fitzgerald**  
**Defendant**

All that certain piece or parcel or Tract of  
land situate in Bullskin Township, Fayette  
County, Pennsylvania, and being known as 228  
Rilla Drive, Connellsville, Pennsylvania 15425.

Being known as: 228 Rilla Drive,  
Connellsville, Pennsylvania 15425

Title vesting in Michael J. Fitzgerald and  
Gail M. Fitzgerald, husband and wife by deed  
from Joseph James Sages and Cecilia A. Sages,  
husband and wife, dated June 7, 1974 and  
recorded June 7, 1974 in Deed Book 1164, Page  
690. The said Michael J. Fitzgerald died on June  
10, 2018 thereby vesting title in his surviving  
spouse Gail M. Fitzgerald by operation of law.  
The said Gail M. Fitzgerald died on September  
25, 2018. On November 21, 2018, Letters of  
Administration were granted to Christopher  
Fitzgerald, nominating and appointing him as  
the Administrator of the Estate of Gail M.  
Fitzgerald.

Tax Parcel Number: 04 -37-0007

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No. 1299 of 2019 GD  
No. 249 of 2019 ED

**WEI Mortgage LLC**  
**PLAINTIFF**  
vs.  
**Robert L. Hixson, Jr.**  
**DEFENDANT**

ALL THAT CERTAIN piece or parcel of land situate in Georges Township, Fayette County, Pennsylvania, bounded and described as follows:

COMMONLY KNOWN AS: 105 Dry Knob Road, Smithfield, PA 15478  
TAX PARCEL NO. 14-25-0139

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BARLEY SNYDER  
Shawn M. Long, Esquire  
Court I.D. No. 83774  
126 E. King Street  
Lancaster, PA 17602  
717.299.5201

No. 2521 of 2018 GD  
No. 268 of 2019 ED

**MID PENN BANK, SUCCESSOR BY  
MERGER TO THE SCOTSDALE BANK  
& TRUST COMPANY,**  
**Plaintiff**  
v.  
**JON A. LAPE and**  
**SHANEA M. LAPE,**  
**Defendants**

Property Address: 386 Dawson Scottdale Road, Dawson, Fayette County, Pennsylvania  
Parcel ID Number: 18-08-0038  
Judgment Amount: \$43,301.66  
BEING the same premises which The Estate of Ruth Z. Luxner, by executor, Joseph A. Lape by deed dated August 26, 2011, recorded August 26, 2011 in the Office of the Recorder of Deeds in and for Fayette County, Pennsylvania in Record Book 3163, Page 77, granted and conveyed unto Jon A Lape and Shanea M. Lape.

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No. 1341 of 2019 GD  
No. 269 of 2019 ED

**Bridgeway Capital, Inc.**  
**Plaintiff,**  
vs.  
**David S. Lynn, Jr. and**  
**Jessica M. Lynn**  
**Defendant(s)**

ALL THE RIGHT, TITLE, INTEREST AND CLAIM OF DAVID S. LYNN AND JESSICA M. LYNN, OF, IN, AND TO THE FOLLOWING DESCRIBED PROPERTY:

ALL THE FOLLOWING DESCRIBED REAL ESTATE SITUATED IN THE COMMONWEALTH OF PENNSYLVANIA, COUNTY OF FAYETTE AND BOROUGH OF SOUTH CONNELLSVILLE:

HAVING ERECTED THEREON A DWELLING BEING KNOWN AND NUMBERED AS 423 VINE STREET. DEED BOOK 3223, PAGE 2362. TAX PARCEL ID NUMBER: 33-06-0078

---

PARKER McCAY P.A.  
By: Patrick J. Wesner, Esquire  
Attorney ID# 203145  
9000 Midlantic Drive, Suite 300  
P.O. Box 5054  
Mount Laure I, NJ 08054-1539  
(856) 810-5815

No. 31 of 2017 GD  
No. 258 of 2019 ED

**U.S Bank National Association, as Trustee,  
successor in interest to Wachovia Bank, N.A.,  
as Trustee for J.P. Morgan Mortgage Trust  
2005-A8**  
**Plaintiff,**  
v.  
**Mary Louise Mattei**  
**Defendants.**

By virtue of a Writ of Execution, No. 2017 -00031, U.S. Bank National Association, et al vs. Mary Louise Mattei, owner of property situate in the TOWNSHIP OF SALTICK, Fayette County, Pennsylvania  
118 Third Street, Champion, PA 15622  
Parcel No. 31-12-009001  
Improvements thereon: SINGLE FAMILY

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KML LAW GROUP, P.C.  
Suite 5000  
701 Market Street  
Philadelphia, PA 19106-1532  
(215) 627-1322  
Attorney for Plaintiff

No. 317 of 2018 GD  
No. 252 of 2019 ED

**M&T BANK**  
**1 Fountain Plaza**  
**Buffalo, NY 14203**  
**Plaintiff,**  
**vs.**

**HAROLD N. PENNINGTON III**  
**JULIE A PENNINGTON A/K/A JULIA A.**  
**PENNINGTON**  
**Mortgagor(s) and Record Owner(s)**  
**132 North 6th Street**  
**Connellsville, PA 15425**  
**Defendant(s)**

ALL THAT CERTAIN LOT OF LAND  
SITUATE IN CITY OF CONNELLSVILLE,  
COUNTY OF FAYETTE AND  
COMMONWEALTH OF PENNSYLVANIA.

BEING KNOWN AS: 132 NORTH 6TH  
STREET, CONNELLSVILLE, PA 15425

TAX PARCEL #05-06-0562 & 05-06-0563  
IMPROVEMENTS: A RESIDENTIAL  
DWELLING

SOLD AS THE PROPERTY OF:  
HAROLD N. PENNINGTON III AND JULIE A  
PENNINGTON A/K/A JULIA A.  
PENNINGTON

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No. 12 of 2019 GD  
No. 248 of 2019 ED

**Wells Fargo Bank, N.A.**  
**Plaintiff,**  
**vs.**  
**Barbara K. Phillabaum**  
**Defendant.**

ALL that certain parcel of land lying and  
being situate in the Borough of Brownsville,  
County of Fayette, and Commonwealth of  
Pennsylvania, known as 14 18th Street,  
Brownsville, PA 15417 having erected thereon a

dwelling house.

Being known and designated as Tax ID  
No.: 02020051

BEING the same premises which Anita E.  
Austin, Administratrix of the Estate of Matilda R.  
Davis, deceased, late of Brownsville, Fayette  
County, Pennsylvania, by her attorney-in-fact,  
Sanford S. Finder, Esquire, by Deed dated  
September 26, 1991 and recorded in and for  
Fayette County, Pennsylvania in Deed Book  
884, Page 360, granted and conveyed unto  
Marion E. Phillabaum and Barbara K.  
Phillabaum, his wife.

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GEORGE & GEORGE, LLP  
ATTORNEYS AT LAW

No. 1297 of 2019 GD  
No. 271 of 2019 ED

**JOHN R. OVER, JR. and MICHELE OVER,**  
**Plaintiffs**  
**vs.**

**Soom Realty, LLC, A Pennsylvania Limited**  
**Liability,**  
**Defendant**

All that certain lot of land Located in the  
City of Uniontown Fayette County,  
Pennsylvania, being identified as Assessment  
Map No. 38-11-0116 known locally as 312  
Morgantown Street, Uniontown PA 15401

See Record Book 2708, page 305.

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Richard M. Squire & Associates, LLC  
One Jenkintown Station, Suite 104  
115 West Avenue  
Jenkintown. PA 19046  
Telephone: 215-886-8790  
Fax: 215-886-8791

No. 336 of 2019 GD  
No. 256 of 2019 ED

**Carrington Mortgage Services. LLC**  
**PLAINTIFF**  
**v.**

**JOHN E. WILLIAMS;**  
**DEFENDANT(S).**

TAX PARCEL NO.: 04100018  
PROPERTY ADDRESS: 689 BEAR



ROCKS ROAD, ACME, PA 15610

IMPROVEMENTS: Single Family Dwelling

SEIZED AND TAKEN in execution as the property of JOHN E. WILLIAMS

ALL that certain tract of land situate in Bullskin Township, Fayette County, Pennsylvania, more particularly bounded and described as follows, to wit:

FIRST: BEGINNING at a point in the center of Pennsylvania State Route 1009 common to this land and land now or formerly of James R. Keslar; thence along the center line of said State roadway, South 20 degrees 38 minutes 04 seconds East, 280.65 feet to a point; thence along land now or formerly of Wendell Rupp, North 78 degrees 30 minutes West 322.21 feet to a point; thence along the dividing line between this tract and Parcel Second below, North 8 degrees 44 minutes 25 seconds East 297 feet to a point; thence along land now or formerly of James R. Keslar, South 61 degrees 35 minutes East, 196.30 feet to a point, the place of beginning.

CONTAINING an area of 1.51 acres according to survey or Cross Land Survey Co. dated June 26, 1996 and having thereon erected a two -story frame dwelling and a garage.

SECOND: BEGINNING at a concrete monument common to this tract, Parcel First, described above, and land now or formerly of Wendell Rupp and Ronald O. Morgan; thence along Parcel First, above described, and property now or formerly of James R. Keslar, North 8 degrees 44 minutes 25 seconds East 373.40 feet to a point; thence along land now or formerly of the said James R. Keslar and land now or formerly of Ronald D. Allen, North 60 degrees 51 minutes 25 seconds West, 241.63 feet to a point; thence along land now or formerly of Ronald O. Morgan, South 10 degrees 11 minutes 32 seconds West 446.32 feet to a point; thence along the same, South 78 degrees 30 seconds East, 238.05 feet to a point, the place of the beginning.

CONTAINING an area of 2.19 acres according to survey of Cross Land Survey Co. dated June 26, 1996 and having thereon erected three sheds.

BEING known as Tax Map# 04-10-0018

BEING the same premises which Kenneth W. Swink and Cheryl D. Swink, husband and wife, conveyed unto John E. Williams by deed dated July 24, 2015 and recorded with the

Fayette County Recorder on July 31, 2015 in Deed Book 3284, Page 155, Instrument No. 201500008095.

Lauren L. Schuler, Esquire  
Hladik, Onorato & Federman, LLP  
298 Wissahickon Avenue  
North Wales, PA 19454

No. 1551 of 2018 GD

No. 247 of 2019 ED

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

vs.

**Paul G. Wozniak and Laurie J. Wozniak (Defendants)**

By virtue of Writ of Execution No. 1551 of 2018 GD

U.S. Bank National Association, not in its individual capacity but solely as trustee for the RMAC Trust, Series 2016-CTT (Plaintiff) vs. Paul G. Wozniak and Laurie J. Wozniak (Defendants)

Property Address 108 Bailey Avenue, Uniontown, PA 15401

Parcel I.D. No. 38-04-0586

Improvements thereon consist of a residential dwelling.

Judgment Amount: \$86,777.39

\*\*\*END SHERIFF SALES\*\*\*

JUDICIAL OPINION

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

THE WILLIAM F. AIKEN JR. LIVING TRUST,	:	
Plaintiff,	:	
vs.	:	
	:	
SHAWN JOHNSON and HOLLY NICHOLSON,	:	
their Heirs, Successors, and Assigns,	:	No. 1012 of 2016, G.D.
Defendants.	:	Honorable Linda R. Cordaro

OPINION

CORDARO, J.

August 21, 2019

SUMMARY

Before the Court is Plaintiff’s Motion for Summary Judgment. For the following reasons, Plaintiff’s Motion is denied.

BACKGROUND

Plaintiff, the William F. Aiken Jr. Living Trust, owns a parcel of real property in Wharton Township, Fayette County. Defendants, Shawn Johnson and Holly Nicholson, own a parcel of real property adjacent to the Aiken Trust’s land. At issue is a 0.06-acre area, which both parties believe belongs to them.

Prior to this dispute, the land owned by the Defendants was owned by Samuel and Madaline Pearsall. Defendants bought the land from Madaline Pearsall on October 24, 1996.

Plaintiff filed a Complaint in Ejectment on May 19, 2016. {1} In its Complaint, Plaintiff alleges that the Defendants have been using the disputed area for parking, among other uses. Plaintiff alleges that it has repeatedly told the Defendants to stop using the land, and that Defendants have paved a portion of the land as well.

Plaintiff’s Exhibit 3, attached to its Complaint; is a land survey by K-2 Engineering dated July 21, 2015. That survey shows 0.05 acres titled "Disturbed Area (Cut Grass)." The survey also shows 0.01 acre titled "Disturbed Area (Driveway, Asphalt)." The "disturbed areas" of land about both the property owned by the Aiken Trust and the property owned by Mr. Johnson and Ms. Nicholson.

Defendants filed an Answer and New Matter on September 27, 2016, admitting to the use of the disputed land, but arguing that they have obtained rightful ownership by way of adverse possession and by the doctrine of consentable lines. {2} Defendants also claim that Plaintiff failed to take any action for over 21 years and is now estopped from doing so.

{1} Defendants owned their property for 19 years, 6 months, and 25 days before the Complaint was filed.

Defendants further argue in their Answer and New Matter that the K-2 Engineering Survey attached to Plaintiff's Complaint is deficient and does not reflect the correct property lines. Defendants then attached a Retracement Survey from Beaver Creek Land Services dated July 22, 2016, which purportedly shows a 0.01-acre as part of Defendants' tract of land. The attached Survey is a retracement of a 1957 survey.

On February 7, 2019, Plaintiff filed a Motion for Summary Judgment. In its Motion, Plaintiff argues that there are no material facts in dispute and that it is entitled to judgment as a matter of law. Defendants oppose the Motion for Summary Judgment, arguing that there are material facts in dispute.

Defendants filed a Supplemental Record in Opposition to Plaintiff's Motion for Summary Judgment on March 19, 2019. In their Supplemental Record, Defendants attached Exhibit 2, which purportedly shows Defendants' and Plaintiff's surveys overlaid on top of each other. The survey lines do not match. Defendants also attached Exhibit 1, which is the deposition of Daniel Fisher, a neighbor who was familiar with the properties at issue.

A Hearing on Plaintiff's Motion was held on April 29, 2019.

#### DISCUSSION

After the relevant pleadings are closed, any party may move for summary judgment when: 1) there is no genuine issue of any material fact as to a necessary element of the cause of action or defense, or 2) an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense that in a jury trial. Pa.R.C.P. 1035.2. A motion for summary judgment is based on an evidentiary record that entitles the moving party to judgment as a matter of law. Comment to Pa.R.C.P. 1035.2.

When determining whether to grant a motion for summary judgment in Pennsylvania, the following standards apply:

[S]ummary judgment may be granted only in those cases in which the record clearly shows that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law. The moving party has the burden of proving that no genuine issues of material fact exist. In determining whether to grant summary judgment, the trial court must view the record in the light most favorable to the non-moving party and must resolve all doubts as to the existence of a genuine issue of material fact against the moving party. Thus, summary judgment is proper only when the uncontroversial allegations in the pleadings, depositions, answers to interrogatories, admissions of record[,] and submitted affidavits demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. In sum, only when the facts are so clear that reasonable minds cannot differ, may a trial court properly enter summary judgment.

Barnish v. KWI Building Co., 916 A.2d 642, 645 (Pa. Super. Ct. 2007) (internal citation omitted).

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{2} Defendants conceded in their Answer to Plaintiff's Motion for Summary Judgment that they cannot sustain a defense for adverse possession, which they have withdrawn.

The first genuine issue of material fact in this case is that the land surveys attached as exhibits by Plaintiff and Defendants do not match.

The Aiken Trust argues in its Brief in Support of Motion for Summary Judgment that "[r]eferences to any differences between the parties' surveys do not create genuine issues of fact because the Johnsons agree that the area in dispute is just the portion of the driveway outside the deed as indicated on their expert's survey." Plaintiff's Brief in Support at 4, Footnote 1. However, one of the surveys appears to show that the Defendants own at least a portion of the disputed area, which would certainly create a genuine issue of fact. This Court could not award summary judgment to the Plaintiff if it is not even clear that Plaintiff owns the entire area in dispute.

Further, both surveys appear to have been completed by professional companies—one by K2 Engineering and the other by Beaver Creek Land Services. Both surveys portray a seal denoting that they were prepared by a registered professional land surveyor. And importantly, at least one survey—the Retracement of the 1974 Fayette Engineering Land Survey—shows that the Defendants actually own part of the disputed land. It is not for this Court to determine the accuracy, credibility, or reliability of the land surveys at this stage in the proceedings, and summary judgment would therefore be inappropriate.

The second genuine issue of material fact here is whether Defendants acquired any part of the disputed land by the Doctrine of Consentable Lines. The Doctrine of Consentable Lines is a rule whereby a party can prove the existence of boundary line, either by dispute and compromise or by recognition and acquiescence. *Moore v. Moore*, 921A.2d 1, 4 (Pa. Super. Ct. 2007). "A determination of consentable line by acquiescence requires a finding that each party has claimed the land on its side of the line as its own, and that it has occupied the land on its side of the line for a continuous period of 21 years." *Mt. Bethany Gun Club v. King*, 13 Pa. D. & C. 5th 571,575 (Centre County 2009) (citing *Moore* at 5).

Here, Defendants claim that a boundary was created by consent and acquiescence for over 21 years. Defendants argue that Madaline Pearsall, the owner who sold them the property, pointed out to them the area that was her property, which included the area now in dispute. Defendants also argue that their predecessor likewise used the property for parking.

Defendants also cite the testimony of Daniel Fisher, a neighbor who is familiar with the property, in order to establish a genuine issue of fact. Mr. Fisher states in his deposition testimony:

All I know is, the driveway was always there in the same place. Sam Pearsall parked his same car in that same area—he owned it before—and it had never changed. Even when it was paved, the amosite was broken up and they put new paving in, it wasn't changed.

Defendants Supplemental Record in Opposition to Plaintiff's Motion for Summary Judgment at Unnumbered 5 of 23. Daniel Fisher also stated that he was friends with the Pearsalls, who were the former owners of the property before Mr. Johnson and Ms. Nicholson. *Id.*

Plaintiff's argument that the testimony of Mr. Fisher is "misplaced" is unpersuasive for purposes of summary judgment. See, Plaintiff's Brief in Support of its Motion for Summary Judgment at 13. Notably, Plaintiff argues that "[t]he Johnson's survey establishes that the driveway in the deed provides sufficient space to do a 3-point turn without going on to [the] disputed property." *Id.* Plaintiff's argument here calls for the Court to make a subjective decision regarding whether, based on the surveys, Defendants and their predecessors-in-interest could have used less of the driveway in order to avoid going onto Plaintiff's land.

Rather, Mr. Fisher's testimony is relevant in that it is evidence that the Pearsalls used the disputed land, which goes towards Defendants' argument that there was a use of the disputed area by the previous owners before they purchased the property in 1996. If the prior owners had used the disputed area and the Defendants continued to use the disputed area after they purchased the property, such that there was over 21 years of combined use of the property, that would be evidence to show that there was acquiescence and consent by the Plaintiff and that a boundary could be created by consentable lines.

Likewise, the deposition testimony of the Defendants as well as Mr. Fisher could be used to establish the defense of equitable estoppel.

Equitable estoppel is a doctrine that prevents one from doing an act differently than the manner in which another was induced by word or deed to expect. A doctrine sounding in equity, equitable estoppel recognizes that an informal promise implied by one's words, deeds[,] or representations [that] leads another to rely justifiably thereon to [that person's] own injury or detriment may be enforced in equity.

*Kreutzer v. Monterey County Herald Co.*, 747 A.2d 358,361 (Pa. 2000). Here, if a factfinder determined that the Defendants' evidence is credible, Plaintiff's action in not disputing the property use for a considerable amount of time could have induced the Defendants to spend money in paving the driveway, and to believe that the area in dispute was theirs to use.

### CONCLUSION

For the foregoing reasons, this Court finds that Defendants have presented sufficient evidence to establish that there are genuine issues of material facts. Plaintiff's Motion for Summary Judgment is therefore denied.

### ORDER

AND NOW, this 21st day of August, 2019, in consideration of Plaintiff's Motion for Summary Judgment, it is hereby ORDERED and DIRECTED that said Motion is DENIED. The Court is satisfied that Defendants have presented sufficient evidence in the record to establish that there are genuine issues of material facts.

BY THE COURT:  
Linda R. Cordaro, Judge

ATTEST:  
Prothonotary

**REAL MEN WEAR PINK 5K RUN/WALK**

**Real Men Wear Pink 5K Run/Walk**  
**Saturday, October 5, 2019**  
Hutchison Park Sheepskin Trail  
9:00 AM

All proceeds benefit the American Cancer Society  
and the Real Men Wear Pink Campaign of Bobby Gordon

Registration: Eventbrite  
Facebook: Real Men Wear Pink 5K Run/Walk  
Email: [bgordon@gordon-legal.com](mailto:bgordon@gordon-legal.com)

Please join us for a family friendly 5K run/walk with prizes to the top runners and walkers. Please indicate your shirt size when registering.

Here in the Pittsburgh area, donating to the American Cancer Society is a great investment. The American Cancer Society in Pittsburgh actually spends more dollars in this community on research and programs than we raise. The American Cancer Society's mission is to save lives, celebrate lives, and lead the fight for a world without cancer.



## BENCH BAR CONFERENCE

Fayette County Bar Association  
Bench Bar Conference  
**Wednesday, October 16, 2019**  
The Historic Summit Inn

### Agenda

- 8:30 Meet the Sponsors & Breakfast Buffet
- 9:00 **Avoiding Legal Malpractice**  
Amy J. Coco, Esquire  
Pennsylvania Bar Association  
1.0 ethics credit
- 10:00 **A Call for Action - Impairment in the Legal Profession  
and What You Can do About it**  
Brian S. Quinn, Esquire  
Lawyers Concerned for Lawyers  
1.0 ethics credit
- 11:00 Break
- 11:15 **Working with Social Service Providers:  
What Attorneys Should Know**  
Stacey Papa, Esquire - Moderator  
1.0 substantive credit
- 12:30 Lunch

Cost to attend - \$75 members and \$125 non-members  
**RSVP due October 9th to Cindy** 724-437-7994 or [cindy@fcbar.org](mailto:cindy@fcbar.org)



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