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IN THIS ISSUE

CULLISON ET AL VS. GEDC ET AL

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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 10-S-981 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of January, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution
No. 10-S-981

LYNN G. PETERSON , EXECUTOR
AND PERSONAL REPRESENTATIVE
OF THE ESTATE OF ELIZABETH
LITTLE

vs.

GARY P. KOONTZ

5063 BALTIMORE PIKE
LITTLESTOWN, PA 17340
GERMANY TOWNSHIP

Parcel No.: 15-17-0011A-000
(Acreage or street address)

IMPROVEMENTS THEREON:
RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$90,181.19

Attorneys for Plaintiff

PETERSON & PETERSON

SEIZED and taken into execution as
the property of **Gary P. Koontz** and to be
sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND
CLAIMANTS: You are notified that a
schedule of distribution will be filed by the
Sheriff in his office on February 4, 2011,
and distribution will be made in accordance
with said schedule, unless exceptions
are filed thereto within 20 days after
the filing thereof. Purchaser must settle
for property on or before filing date.

ALL claims to property must be filed
with Sheriff before sale date.

As soon as the property is declared
sold to the highest bidder, 20% of the
purchase price or all of the cost, which-
ever may be the higher, shall be paid
forthwith to the Sheriff.

11/19, 24 & 12/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 09-S-1975 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of January, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution
No. 09-S-1975

ONEWEST BANK FSB

MARK T. JENDRO &
KRISTAL JENDRO

53 HEMLOCK DRIVE
HANOVER, PA 17331
CONEWAGO TOWNSHIP

Parcel No.: 08-021-0054-000
(Acreage or street address)

IMPROVEMENTS THEREON:
RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$163,496.40

Attorneys for Plaintiff

UDREN LAW OFFICES, P.C.

SEIZED and taken into execution as
the property of **Mark T. Jendro & Kristal
Jendro** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND
CLAIMANTS: You are notified that a
schedule of distribution will be filed by the
Sheriff in his office on February 4, 2011,
and distribution will be made in accordance
with said schedule, unless exceptions
are filed thereto within 20 days after
the filing thereof. Purchaser must settle
for property on or before filing date.

ALL claims to property must be filed
with Sheriff before sale date.

As soon as the property is declared
sold to the highest bidder, 20% of the
purchase price or all of the cost, which-
ever may be the higher, shall be paid
forthwith to the Sheriff.

11/19, 24 & 12/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 10-S-1217 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of January, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution
No. 10-S-1217

OCWEN LOAN SERVICING LLC

vs.

TONI L. KEARNS

7 ELM LANE
NEW OXFORD, PA 17350
OXFORD TOWNSHIP

Parcel No.: 35-009-0032-000
(Acreage or street address)

IMPROVEMENTS THEREON:
RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$129,257.03

Attorneys for Plaintiff

UDREN LAW OFFICES, P.C.

SEIZED and taken into execution as
the property of **Toni L. Kearns** and to be
sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND
CLAIMANTS: You are notified that a
schedule of distribution will be filed by the
Sheriff in his office on February 4, 2011,
and distribution will be made in accordance
with said schedule, unless exceptions
are filed thereto within 20 days after
the filing thereof. Purchaser must settle
for property on or before filing date.

ALL claims to property must be filed
with Sheriff before sale date.

As soon as the property is declared
sold to the highest bidder, 20% of the
purchase price or all of the cost, which-
ever may be the higher, shall be paid
forthwith to the Sheriff.

11/19, 24 & 12/3

CULLISON ET AL VS. GEDC ET AL

1. A *lis pendens* may only be indexed when title to real estate itself is involved in a suit.

2. Being a creature not of statute but of common law and equity jurisprudence, the doctrine of *lis pendens* is wholly subject to equitable principles. Thus, if a plaintiff were to delay unreasonably in the prosecution of his claim, or if the operation of the doctrine should prove to be harsh or arbitrary in particular instances, equity can and should refuse to give it effect, and under its power to remove a cloud on title, can and should cancel a notice of *lis pendens* which might otherwise exist.

3. Once a Sheriff's Sale related to the first mortgage is completed, the buyer acquires a vested interest and the second mortgagee is divested of all interest in the property.

4. Two types of covenants may be used in a real estate transaction to restrict the owner's use and enjoyment of his property: a personal covenant and a real covenant. A personal covenant is enforceable only between the parties involved; a real covenant runs with the land.

5. Covenants in *deeds* so closely connected with the realty that their benefits or burdens pass with it to subsequent purchasers are real covenants. But covenants in a mortgage are intended to bind the covenantor only and terminate on satisfaction or *discharge* of the mortgage. Such covenants cannot become a charge on the realty in perpetuity.

6. An express covenant in a mortgage is merely ancillary to and in support of that primary obligation and its function is to furnish collateral security for the performance of the terms of that obligation.

7. The restriction in a mortgage is divested and extinguished upon foreclosure sale on the first, more senior mortgage.

8. Accordingly, because the mortgage restriction gives Plaintiffs no claim to title in the real estate, a *lis pendens* is not appropriate.

9. An easement in gross is entirely personal and is not attached to the property. Therefore, a *lis pendens* is not appropriate on this ground and the demolition restriction would not bind a subsequent owner purchasing at a Sheriff's Sale in a foreclosure action.

10. An equitable servitude, i.e., easement by implication, is acquired where the intent of the parties is clearly demonstrated by the terms of the grant, the surroundings of the property and other *res gestae* of the transaction.

11. Plaintiffs have no claim to title in the land. Therefore, an equitable servitude is not a proper ground supporting entry of *lis pendens*.

12. The *lis pendens* is also blocked by the doctrine of laches. A *lis pendens* may not be entered merely as a tool to leverage a party's position. To establish laches, a defendant must show a delay arising from the complaining party's failure to exercise due diligence, and prejudice to the defendant resulting from delay.

13. An ejectment action seeks possession, not title, to the real estate. Therefore, a *lis pendens* is not supported by Plaintiff's fraud based ejectment action.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 2010-S-731, MARINA CULLISON, SHELLY VERBER,
& PARKSVILLE PROPERTIES VS. GETTYSBURG ECONOMIC
DEVELOPMENT CORPORATION AND ADAMS COUNTY
NATIONAL BANK

Christopher S. Lucas, Esq., for Plaintiff
Defendant GEDC
Reese Griffiths, Esq., and Edward G. Puhl, Esq., for Defendant
Adams County National Bank
Campbell, J., June 3, 2010

OPINION ON DEFENDANT'S PETITION TO
STRIKE LIS PENDENS

Presently before the Court is Defendant Adams County National Bank's Petition To Strike Lis Pendens. For the reasons set forth herein, said Petition is granted

PARTIES

1. Plaintiff Parksville Properties is/was a partnership with a place of business at 5 Tiffany Lane, Gettysburg, Pennsylvania.
2. Plaintiffs Marina Cullison and Shelly Verber are natural persons and partners in Parksville Properties.
3. Defendant Gettysburg Economic Development Corporation (GEDC) is a corporation formed by the Borough of Gettysburg with a place of business at 59 High Street, Gettysburg, Pennsylvania.
4. Defendant Adams County National Bank (ACNB) is a corporation with a business address of P.O. Box 3129, Gettysburg, Pennsylvania.

BACKGROUND

On January 25, 1989, Plaintiffs purchased the property at issue in this matter for \$775,000.00. **(Defendant's Ex. B)**. Plaintiffs conveyed the property to GEDC under a special warranty deed for a price of \$1.8 million dated September 21, 2007. **(Plaintiffs' Ex. 2)**. The deed was recorded on September 27, 2007, at 2:36 P.M. All the parties involved expected the property to be re-developed with funding from a Regional Economic Development District Initiative of South Central Pennsylvania (REDDI) grant through the Pennsylvania Redevelopment Assistance Capital Project (RACP).¹ To finance part of the purchase price, and other expenses, GEDC sought a \$2.1 million loan from ACNB. As a condition of the loan, ACNB required that GEDC have good and marketable title, free of liens and encumbrances, and provide a first priority purchase money mortgage.

¹ A grant program for economic development.

(Defendant's Ex. D). GEDC agreed, and ACNB recorded its mortgage on September 27, 2007, at 2:39 p.m. **(Defendant's Ex. E).** GEDC then paid Plaintiffs \$1.3 million up front and granted a mortgage for the remaining \$500,000 of the purchase price. Paragraph 8 of the agreement stated, "[i]t is the intention of the Mortgagor and Mortgagee that this Mortgage shall be second in lien priority and subordinate to the first mortgage lien of Adams County National Bank of even date herewith." **(Defendant's Ex. E).** Plaintiffs recorded their mortgage on September 27, 2007, at 2:40 P.M. **(Plaintiffs' Ex. 1).**

To further secure Plaintiffs' interest, their second mortgage contained a demolition restriction, providing that "Mortgagor will not permit the demolition of any improvements on the property during the term of this mortgage." **(Plaintiffs' Ex. 1).** This language did not appear in the September 21st deed conveying the property to GEDC. **(Plaintiffs' Ex. 2).** The only restriction in the deed provided that it was subject to all easements of record. *Id.*

The expected grant from RACP was never forthcoming, and GEDC has defaulted on both mortgages. On November 18, 2009, ACNB initiated an action in mortgage foreclosure against GEDC. On January 8, 2010, ACNB was awarded a judgment by default. On January 20, 2010, ACNB entered judgment against GEDC. The property was set for Sheriff's Sale on May 21, 2010.

On April 28, 2010, Plaintiffs filed a Complaint seeking a declaratory judgment that title to the subject property is burdened with the demolition restriction until the second mortgage is paid in full, and that GEDC should be ejected on grounds that it obtained title through false pretenses. The Complaint contains six counts. Counts 1-3 allege that the deed between Plaintiffs and GEDC contained a covenant that attached and ran with the land, namely that GEDC and its successors were bound by the demolition restriction contained in the second mortgage. The first count alleges the mortgage restriction created a fee simple subject to a condition subsequent. Counts 2 and 3 allege a negative easement in gross and an equitable servitude, respectively. Count 4 alleges the demolition restriction cannot be discharged via the Sheriff's Sale and any purchaser is bound by it. Count 5 seeks Reformation of the deed to add the demolition restriction, and Count 6 seeks Ejectment, alleging fraud.

On May 11, 2010 Plaintiffs filed a Lis Pendens. On May 19, 2010, at the Plaintiffs' request in the foreclosure action, the Court entered an Order postponing the sale until June 4, 2010, in order to ensure Plaintiff Verber had sufficient notice of the sale as required by applicable rules of court. ACNB filed a Motion to Strike Lis Pendens on May 25, 2010. The Complaint in this case was also served on Defendants on May 25, 2010. No other pleadings have been filed in this case. Hearing was held on the Motion To Strike Lis Pendens on June 1, 2010.

DISCUSSION

A lis pendens may only be indexed when title to real estate itself is involved in a suit. *Daystar, Inc. v. Philips*, 5 Pa. D & C.4th 543 (Lehigh Co. 1990).

Its purpose is merely to give notice to third persons that the real estate is subject to litigation and that any interest which they may acquire in the real estate will be subject to the results of the action. (citations omitted). Lis pendens has no application except in cases involving the adjudication of rights in specific property (citations omitted). Thus, a party is not entitled to have his case indexed as lis pendens unless title to real estate is involved in litigation. Lis pendens may not be predicated upon an action seeking to recover a personal demand (citations omitted).

Id. The Supreme Court has held that

being a creature not of statute but of common law and equity jurisprudence, the doctrine of lis pendens is wholly subject to equitable principles. Thus, if a plaintiff were to delay unreasonably in the prosecution of his claim, or if the operation of the doctrine should prove to be harsh or arbitrary in particular instances, equity can and should refuse to give it effect, and, under its power to remove a cloud on title, can and should cancel a notice of lis pendens which might otherwise exist.

Dice v. Bender, 117 A.2d 725, 727 (Pa. 1955).

Plaintiffs have argued that Section 4302 of the Judicial Code allows a lis pendens to be indexed so long as any interest in real

property is claimed during litigation. Section 4302 provides, “every document effecting title to or any other interest in real property which is filed and indexed in the office of the clerk of the court of common pleas of the county where the real property is situated... shall be constructive notice to all persons of the filing and full contents of such document.” **42 Pa.C.S. § 4302(a)**. Contrary to Plaintiffs’ assertion, Section 4302 merely states that documents properly filed with the relevant filing office serve as notice to all others. It does not change the fundamental notion that title to property must be involved for a lis pendens to be properly indexed.

As an initial matter, Plaintiffs do not dispute that ACNB’s mortgage was first in priority. ACNB’s mortgage is a purchase money mortgage and was recorded prior to the mortgage held by Plaintiffs. Purchase money mortgages have priority over all others. **42 Pa.C.S. § 8141**. Furthermore, the mortgage in favor of Plaintiffs states in pertinent part, “it is the intention of the Mortgagor and Mortgagee that this Mortgage shall be second in lien priority and subordinate to a first mortgage lien of Adams County National Bank of even date herewith.” (**Defendant’s Ex. F**). The property is scheduled for a Sheriff’s Sale on June 4, 2010, on the foreclosure action of the ACNB mortgage which will divest all junior liens on the property. **42 Pa.C.S. § 8152(c)**; *William I. Mirkil Co. v. Gaylon*, 285 A.2d 181, 183 (Pa. 1971) . Once a Sheriff’s Sale related to the first mortgage is completed, the buyer acquires a vested interest and the second mortgagee is divested of all interest in the property. *The Reliance Corp. v. Rapp’s Dam Bridge, Inc.*, 43 Pa. D. & C.3d 425, 428 (Chester Co. 1987). Therefore, in order for the demolition restriction contained in the second mortgage to bind subsequent purchasers, the restriction must run with the land. Plaintiffs argue that it does.

Two types of covenants may be used in a real estate transaction to restrict the owner’s use and enjoyment of his property: a personal covenant and a real covenant. *Mock v. Hoffman*, 27 Pa. D. & C.3d 169, 170 (Somerset Co. 1980). A personal covenant is enforceable only between the parties involved; a real covenant runs with the land. *Id.* Because a lis pendens cannot be entered based upon an action to recover on a personal demand, a personal covenant will not support it. “The test in determining whether a particular covenant runs with the land is the intention of the parties; and to ascertain the intent,

resort may be had to the words of the covenant in light of the surrounding circumstances and the subject of the grant.” *Id.* Restrictive covenants, although not favored, are legally enforceable. *Logston v. Pennndale, Inc.*, 576 A.2d 59, 62 (Pa. Super. 1990). They are to be strictly construed against persons seeking to enforce them and in favor of free, unrestricted use of property. *Id.*

Covenants in *deeds* “so closely connected with the realty that their benefits or burdens pass with it to subsequent purchasers are real covenants.” But covenants in a mortgage are intended to bind the covenantor only and terminate on satisfaction or *discharge* of the mortgage. Such covenants cannot become a charge on the realty in perpetuity. *DeSanno v. Earle*, 117 A. 200, 202 (Pa. 1922).

In this instance, the presence of the restrictive covenant in the second mortgage, but not in the deed, is significant. The covenant clearly states that it exists during “the term of this Mortgage.” A mortgage is merely collateral for the payment of some primary obligation. *Raneri v. Inn America of Pennsylvania, Inc.*, 29 Pa. D. & C.3d 239, 240 (Westmoreland Co. 1984). An express covenant in a mortgage is merely ancillary to and in support of that primary obligation and its function is to furnish collateral security for the performance of the terms of that obligation. *Id.* Plaintiffs’ own complaint states that the purpose of the covenant was to provide additional security to Plaintiffs. (**Complaint, ¶¶ 14 & 15**). Therefore, unless this covenant can be interpreted as also being a part of the deed, it cannot run with the land. To the contrary, the restriction in a mortgage is divested and extinguished upon foreclosure sale on the first, more senior mortgage. Plaintiffs are then left with a personal demand for payment of the balances due on the note. Accordingly, because the mortgage restriction gives Plaintiffs no claim to title in the real estate, a *lis pendens* is not appropriate.

Plaintiffs first argue that the demolition restriction created a fee simple subject to a condition subsequent. This property interest is created when a *deed* provides that upon the happening of some specified event, the grantor has the power to terminate the estate. *Emrick v. Bethlehem Township*, 485 A.2d 736, 739 (Pa. 1984). In interpreting a deed, the following guidelines apply:

- (1) (T)he nature and quantity of the interest conveyed must be ascertained from the instrument itself and cannot

be orally shown in the absence of fraud, accident or mistake and we seek to ascertain not what the parties may have intended by the language but what is the meaning of the words ...; (2) effect must be given to all the language of the instrument and no part shall be rejected if it can be given a meaning ...; (3) if a doubt arises concerning the interpretation of the instrument it will be resolved against the party who prepared it ...; (4) unless contrary to the plain meaning of the instrument, an interpretation given it by the parties themselves will be favored ...; (5) to ascertain the intention of the parties, the language of a deed should be interpreted in the light of the subject matter, the apparent object or purpose of the parties and the conditions existing when it was executed.

Higbee Corp. v. Kennedy, 428 A.2d 592, 595 (Pa. Super. 1981).

It is quite clear that there is absolutely no restriction contained in the deed and neither the second mortgage nor the deed has language suggesting that title would revert to Plaintiffs upon default in payment of the second mortgage. The only restriction contained in the deed is standard language providing that title was subject to easements of record. However, the second mortgage was not of record at the time the deed was executed.

Likewise, Plaintiffs' arguments that the demolition restriction created a negative easement in gross and/or an equitable servitude also fail. First, an easement cannot be an estate or interest in land, or a right to any part of it. *Assalita v. Chestnut Ridge Homeowners Ass'n*, 866 A.2d 1214, 1218 n. 3 (Pa. Commw. 2005). An easement in gross is entirely personal and is not attached to the property. *Hassler v. Mummert*, 364 A.2d 402, 405 (Pa. Super. 1976). An easement in gross does not create a right to vesting of title to the real estate. Therefore, a *lis pendens* is not appropriate on this ground and the demolition restriction would not bind a subsequent owner purchasing at a Sheriff's Sale in a foreclosure action.

An equitable servitude, i.e. easement by implication, is acquired where the intent of the parties is clearly demonstrated 'by the terms of the grant, the surroundings of the property and other *res gestae* of the transaction.'" *Purdy v. Zaver*, 580 A.2d 1127, 1132 (Pa. Super. 1990) (citations omitted). On the face of the documents presented to

the Court it is clear that the demolition restriction itself indicated it was to continue only during the term of the second mortgage (which term ends when it is divested), that Plaintiffs stated in their own Complaint that its purpose was to secure the second mortgage, that ACNB would only grant a mortgage if GEDC owned the property free of any encumbrances, and there is no language in any document presented to the Court granting Plaintiffs a reversionary interest. Plaintiffs have no claim to the title in the land. Therefore, an equitable servitude is not a proper ground supporting entry of *lis pendens*.

In addition, the Plaintiffs' claims to a reversionary interest or the right to an ownership interest or title to the property runs afoul of the Statute of Frauds. **33 P.S. § 1**. The Statute of Frauds provides that no agreement for the sale of real estate will be enforceable unless it is in writing and signed by the party to be charged. *Fannin v. Cratty*, 480 A.2d 1056, 1058 (Pa. Super. 1984). The purpose of the Statute is to prevent assertions of verbal understandings to obviate the opportunity for fraud and perjury. *Id.* The Statute of Frauds is applicable to alleged building and use restrictions. Plaintiffs have failed to produce any writings suggesting they have some interest involving title. The plain language of the documents presently before the Court simply does not warrant such an interpretation. Accordingly, their *lis pendens* is inappropriate.

Importantly, in seeking to assert an ownership interest in this property, Plaintiffs are ignoring their own assurances made in the deed. The deed stated that “[g]rantors hereby covenant and agree that they will warrant specially the property hereby conveyed.”

A covenant or agreement by the grantor or grantors in any deed or instrument in writing for conveying or releasing land that, he, they, or it “will warrant specially the property hereby conveyed,” shall have the same effect as if the grantor or grantors had covenanted that he or they, his or their heirs and personal representatives or successors, will forever warrant and defend the said property, and every part thereof, unto the said grantee, his heirs, personal representatives and assigns, against the lawful claims and demands of the grantor or grantors, and all persons claiming or to claim by, through, or under him or them.

21 Pa.C.S. § 6. This warranty provides that the grantor will defend the grantee from all lawful claims against the property, *including those held by the grantor*. Under a special warranty deed, the grantor agrees to defend the title to the property against an adverse claimant with a superior interest in the land claiming through the grantor. *Leh v. Burke*, 331 A.2d 755, 762 (Pa. Super. 1974). By bringing this action claiming an interest in title to the conveyed real estate, whether it is a legitimate action or not, Plaintiffs are violating the very terms of their own warranty. By agreeing to defend the grantees against any claim made against the property, Plaintiffs cannot turn around and assert an ownership interest in the property.

The lis pendens is also blocked by the doctrine of laches. A lis pendens may not be entered merely as a tool to leverage a party's position. *Dice*, 117 A.2d at 727; *Century 21 Daystar*, 5 Pa. D. & C.4th at 544. "Laches is an equitable doctrine that bars relief when a complaining party is guilty of want of due diligence in failing to promptly institute an action to the prejudice of another." *White v. Tship of Upper St. Clair*, 968 A.2d 806, 810-11 (Pa. Commw. 2009). To establish laches, a defendant must show a delay arising from the complaining party's failure to exercise due diligence, and prejudice to the defendant resulting from delay. *Id.* The test for due diligence is not what a party knows, but what he might have known by the use of available information. *Id.* In this matter, ACNB initiated the foreclosure action on November 18, 2009. Judgment by default was granted on January 8, 2010. The property was set for a Sheriff's Sale on May 21, 2010. It was not until April 28, 2010, that Plaintiffs filed their Complaint, more than five months after the bank instituted foreclosure proceedings and less than one month before the scheduled Sheriff's Sale. Plaintiffs' actions have already resulted in pushing the Sheriff's Sale back to June 4, 2010. The basis of essentially all claims in Plaintiffs Complaint occurred in the months leading up to the September, 2007, conveyance of the property. Plaintiffs attempts to further hinder ACNB's efforts to enforce its rights in execution upon its first mortgage is prejudicial to ACNB and unreasonable especially considering the lack of any meritorious claims by Plaintiff against ACNB. This is unreasonable delay in light of the information that Plaintiffs knew or could have discovered. ACNB has been prejudiced by the delay due to the postponed Sheriff's Sale.

Therefore, the doctrine of laches (an equitable doctrine) precludes the *lis pendens* filed at a last minute in an effort to leverage Plaintiff's position and delay further ACNB's pursuit of its lawful rights.

The Complaint also seeks Reformation of the deed to include the demolition restriction and Ejectment of GEDC from the property. To reform the deed to include the demolition restriction, Plaintiffs would have to show that the terms of the deed do not reflect the intent of the parties, as the result of fraud, accident, or mistake. *McNaughton Properties, LP v. Barr*, 981 A.2d 222, 229 (Pa. Super. 2009). As discussed above, to do this the Plaintiffs would need the Court to look beyond the plain terms of the writings available. Once again, this would raise a Statute of Frauds issue that Plaintiffs cannot overcome. The plain language of the documents shows the restriction was placed in Plaintiffs' junior mortgage only. Plaintiffs were paid fair consideration (in the form of \$1.3 million cash and a \$500,000 note) for the conveyance of all title they had in the property. Plaintiffs have the ability to pursue personal demands for payment of the balance due on the note. If Plaintiffs have valid claims for fraud they can pursue these claims via an action for damages. Equity interests preclude the filing of a *lis pendens* to further delay proceedings.

Finally, Plaintiffs' Ejectment action also does not support their claim that title is at issue. In support of their Ejectment action, Plaintiffs have pled numerous allegations of fraud against GEDC and the Borough of Gettysburg.² Other than a blanket claim that ACNB was a part of this alleged fraud, a claim not supported in the pleadings, this allegation relates solely to GEDC. Plaintiffs counsel conceded that they do have an action for damages against GEDC and the Borough, but it is not an attractive alternative.³ Ejectment is an action filed by a plaintiff who does not have possession of land, but has the right to possess it. *Siskos v. Britz*, 790 A.2d 1000, 1006 (Pa. 2002). The action can only proceed if the plaintiff is presently out of possession and has a present right to immediate possession. *Id.* at 1008. The plaintiff vendor cannot dispossess the defendant vendee until the vendor has refunded the purchase money that he has

² Plaintiffs have not made the Borough of Gettysburg a party in this case.

³ The Court need not address herein the merit, or lack thereof, of any action for fraud. While GEDC may or may not be insolvent, it is noted that many of the averments of Fraud in the Complaint involve the Borough of Gettysburg, which is not a party to this action.

received or compensated the vendor for any improvements made to the property. *Walker v. France*, 5 A. 208, 210 (Pa. 1886). Plaintiffs sold the land to GEDC, do not have a present right to immediate possession, have not refunded the \$1.3 million paid to them by ACNB at the time of the sale, and indicated an unwillingness to do so. Therefore, Ejectment would not be possible at this time. In any event, an ejectment action seeks possession, not title, to the real estate. Therefore, a lis pendens is not supported by Plaintiff's fraud based ejectment action.

Finally, Plaintiffs' reliance on *Powell v. Emigrant Mortg. Co.*, 988 A.2d 1288 (Pa. 2010) is misplaced. *Powell* is a case on allocatur to the Supreme Court. The Court was unable to locate a copy of the decision being addressed by the Supreme Court. However, this Court will not make a decision based on what the Supreme Court may or may not do. This Court is bound by the decisions presently in existence. Furthermore, based on the briefs of the parties, it is apparent that *Powell* involves a lis pendens filed before the mortgage was recorded, and therefore, not on point with this case.

CONCLUSION

The plain language of the second mortgage and deed plainly show that the demolition restriction was not intended to run with the land and bind subsequent purchasers or grant Plaintiffs a reversionary interest. The second mortgage is junior to ACNB's purchase money mortgage; it will be divested at Sheriff's Sale. Plaintiffs are unable to show any modification to those agreements by any valid writings which would satisfy the Statute of Frauds. Additionally, operation of the doctrine of lis pendens is arbitrary in this instance based on the documents of record, the nature of the averments in Plaintiffs' Complaint, and Plaintiffs' acknowledgment that it has an appropriate action for damages, whether or not it is an attractive one. Because none of Plaintiffs' claims would entitle them to title, a lis pendens is inappropriate. Accordingly, ACNB's Petition To Strike Lis Pendens is granted and the attached Order is entered.

ORDER

AND NOW, this 3rd day of June, 2010, the Petition To Strike Lis Pendens filed by Defendant Adams County National Bank on May 18, 2010, is granted. The Adams County Prothonotary is directed to strike the lis pendens.

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 10-S-915 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of January, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution
No. 10-S-915

FLAGSTAR BANK FSF
vs.

JOSEPH MATTESON a/k/a JOSEPH F.
MATTESON & NOLA A. MATTESON

155 READING LANE
GETTYSBURG, PA 17325
CUMBERLAND TOWNSHIP

Parcel No.: 09-W03-0015A-000
(Acreage or street address)

IMPROVEMENTS THEREON:
RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$313,863.11

Attorneys for Plaintiff
RICHARD M. SQUIRE & ASSOCIATES
LLC

SEIZED and taken into execution as
the property of **Joseph Matteson a/k/a
Joseph F. Matteson & Nola A.
Matteson** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND
CLAIMANTS: You are notified that a
schedule of distribution will be filed by the
Sheriff in his office on February 4, 2011,
and distribution will be made in accor-
dance with said schedule, unless excep-
tions are filed thereto within 20 days after
the filing thereof. Purchaser must settle
for property on or before filing date.

ALL claims to property must be filed
with Sheriff before sale date.

As soon as the property is declared
sold to the highest bidder, 20% of the
purchase price or all of the cost, which-
ever may be the higher, shall be paid
forthwith to the Sheriff.

11/19, 24 & 12/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 09-S-1015 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of January, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution
No. 09-S-1015

US BANK NATIONAL ASSOCIATION
vs.

TINA L. MCCAUSLIN
3 SCHOFIELD DRIVE
EAST BERLIN, PA 17316
READING TOWNSHIP

Parcel No.: 36-108-0041-000
(Acreage or street address)

IMPROVEMENTS THEREON:
RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$190,290.51

Attorneys for Plaintiff
MCCABE, WEISBERG AND CONWAY,
P.C.

SEIZED and taken into execution as
the property of **Tina L. McCauslin** and to
be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND
CLAIMANTS: You are notified that a
schedule of distribution will be filed by the
Sheriff in his office on February 4, 2011,
and distribution will be made in accor-
dance with said schedule, unless excep-
tions are filed thereto within 20 days after
the filing thereof. Purchaser must settle
for property on or before filing date.

ALL claims to property must be filed
with Sheriff before sale date.

As soon as the property is declared
sold to the highest bidder, 20% of the
purchase price or all of the cost, which-
ever may be the higher, shall be paid
forthwith to the Sheriff.

11/19, 24 & 12/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 10-S-1058 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of January, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution
No. 10-S-1058

PNC MORTGAGE
vs.

JAMES R. ORTMAN &
KATHI D. ORTMAN
306 PINE TREE ROAD
NEW OXFORD, PA 17350
STRABAN TOWNSHIP

Parcel No.: 38-H10-0001C-000
(Acreage or street address)

IMPROVEMENTS THEREON:
RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$198,899.58

Attorneys for Plaintiff
UDREN LAW OFFICES, P.C.

SEIZED and taken into execution as
the property of **James R. Ortman &
Kathi D. Ortman** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND
CLAIMANTS: You are notified that a
schedule of distribution will be filed by the
Sheriff in his office on February 4, 2011,
and distribution will be made in accor-
dance with said schedule, unless excep-
tions are filed thereto within 20 days after
the filing thereof. Purchaser must settle
for property on or before filing date.

ALL claims to property must be filed
with Sheriff before sale date.

As soon as the property is declared
sold to the highest bidder, 20% of the
purchase price or all of the cost, which-
ever may be the higher, shall be paid
forthwith to the Sheriff.

11/19, 24 & 12/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 10-S-673 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of January, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution
No. 10-S-673

WELLSFARGO BANK NA
vs.

DENISE M. SCHEUER &
DANIEL J. SCHEUER

165 HUNTERS CIRCLE a/k/a
165 HUNTERS CIRCLE, LOT 28
ABBOTTSTOWN, PA 17301-9558
HAMILTON TOWNSHIP

Parcel No.: 19-L09-0141-000
(Acreage or street address)

IMPROVEMENTS THEREON:
RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$144,841.50

Attorneys for Plaintiff

PHELAN HALLINAN & SCHMIEG, LLP

SEIZED and taken into execution as the property of **Denise M. Scheuer & Daniel J. Scheuer** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 4, 2011, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

ALL claims to property must be filed with Sheriff before sale date.

As soon as the property is declared sold to the highest bidder, 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

11/19, 24 & 12/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 10-S-696 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of January, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution
No. 10-S-696

WELLSFARGO BANK NA
vs.

KEITH A. RAUP & KELLY L. RAUP
3628 CARLISLE ROAD
GARDNERS, PA 17324
HUNTINGTON TOWNSHIP

Parcel No.: 22-G03-0052-000
(Acreage or street address)

IMPROVEMENTS THEREON:
RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$145,322.11

Attorneys for Plaintiff

PHELAN HALLINAN & SCHMIEG LLP

SEIZED and taken into execution as the property of **Keith A. Raup & Kelly L. Raup** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 4, 2011, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

ALL claims to property must be filed with Sheriff before sale date.

As soon as the property is declared sold to the highest bidder, 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

11/19, 24 & 12/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 10-S-878 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of January, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution
No. 10-S-878

GMAC MORTGAGE LLC
vs.

IAN ROUP
241 MAPLE DRIVE
HANOVER, PA 17331
CONEWAGO TOWNSHIP

Parcel No.: 08-024-0004-000
(Acreage or street address)

IMPROVEMENTS THEREON:
RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$174,806.58

Attorneys for Plaintiff

PHELAN HALLINAN & SCHMIEG LLP

SEIZED and taken into execution as the property of **Ian Roup** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 4, 2011, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

ALL claims to property must be filed with Sheriff before sale date.

As soon as the property is declared sold to the highest bidder, 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

11/19, 24 & 12/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 07-S-1511 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of January, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution
No. 07-S-1511

WELLSFARGO BANK NA
vs.

KELLY S. SLATE

444 BENDERSVILLE-WENKSVILLE
ROAD
ASPERS, PA 17304
MENALLEN TOWNSHIP

Parcel No.: 29-E05-0046-000
(Acreage or street address)

IMPROVEMENTS THEREON:
RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$179,091.36

Attorneys for Plaintiff
GOLDBECK MCCAFFERTY &
MCKEEVER

SEIZED and taken into execution as
the property of **Kelly S. Slate** and to be
sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND
CLAIMANTS: You are notified that a
schedule of distribution will be filed by the
Sheriff in his office on February 4, 2011,
and distribution will be made in accor-
dance with said schedule, unless excep-
tions are filed thereto within 20 days after
the filing thereof. Purchaser must settle
for property on or before filing date.

ALL claims to property must be filed
with Sheriff before sale date.

As soon as the property is declared
sold to the highest bidder, 20% of the
purchase price or all of the cost, which-
ever may be the higher, shall be paid
forthwith to the Sheriff.

11/19, 24 & 12/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 10-S-64 issu-
ing out of Court of Common Pleas
Adams County, and to me directed, will
be exposed to Public Sale on Friday, the
14th day of January, 2011, at 10:00
o'clock in the forenoon at the Sheriff's
Office located in the Courthouse,
Borough of Gettysburg, Adams County,
PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution
No. 10-S-64

CHASE HOME FINANCE LLC
vs.

KENNETH R. SMITH &
LORI ANN SMITH

49 FIDDLER DRIVE
NEW OXFORD, PA 17350
OXFORD TOWNSHIP

Parcel No.: 35-001-0052-000
(Acreage or street address)

IMPROVEMENTS THEREON:
RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$84,993.72

Attorneys for Plaintiff
PHELAN HALLINAN & SCHMIEG, LLP

SEIZED and taken into execution as
the property of **Kenneth R. Smith & Lori
Ann Smith** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND
CLAIMANTS: You are notified that a
schedule of distribution will be filed by the
Sheriff in his office on February 4, 2011,
and distribution will be made in accor-
dance with said schedule, unless excep-
tions are filed thereto within 20 days after
the filing thereof. Purchaser must settle
for property on or before filing date.

ALL claims to property must be filed
with Sheriff before sale date.

As soon as the property is declared
sold to the highest bidder, 20% of the
purchase price or all of the cost, which-
ever may be the higher, shall be paid
forthwith to the Sheriff.

11/19, 24 & 12/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 10-S-146 issu-
ing out of Court of Common Pleas
Adams County, and to me directed, will
be exposed to Public Sale on Friday, the
14th day of January, 2011, at 10:00
o'clock in the forenoon at the Sheriff's
Office located in the Courthouse,
Borough of Gettysburg, Adams County,
PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution
No. 10-S-146

GMAC MORTGAGE LLC
vs.

JOYCE A. TRACY

15 STARLITE DRIVE
LITTLESTOWN, PA 17340
LITTLESTOWN BOROUGH

Parcel No.: 27-012-0083-000
(Acreage or street address)

IMPROVEMENTS THEREON:
RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$131,793.08

Attorneys for Plaintiff
PHELAN HALLINAN & SCHMIEG LLP

SEIZED and taken into execution as
the property of **Joyce A. Tracy** and to be
sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND
CLAIMANTS: You are notified that a
schedule of distribution will be filed by the
Sheriff in his office on February 4, 2011,
and distribution will be made in accor-
dance with said schedule, unless excep-
tions are filed thereto within 20 days after
the filing thereof. Purchaser must settle
for property on or before filing date.

ALL claims to property must be filed
with Sheriff before sale date.

As soon as the property is declared
sold to the highest bidder, 20% of the
purchase price or all of the cost, which-
ever may be the higher, shall be paid
forthwith to the Sheriff.

11/19, 24 & 12/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 10-S-707 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of January, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution
No. 10-S-707

WELLSFARGO FINANCIAL
PENNSYLVANIA INC.

vs.

DAVID J. STANSBURY &
BONNIE STANSBURY

832 ORRTANNA ROAD
ORRTANNA, PA 17353
FRANKLIN TOWNSHIP

Parcel No.: 12-C11-0072-000
(Acreage or street address)

IMPROVEMENTS THEREON:
RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$249,429.96

Attorneys for Plaintiff

PHELAN HALLINAN & SCHMIEG, LLP

SEIZED and taken into execution as the property of **David J. Stansbury & Bonnie Stansbury** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 4, 2011, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

ALL claims to property must be filed with Sheriff before sale date.

As soon as the property is declared sold to the highest bidder, 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

11/19, 24 & 12/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 08-S-320 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of January, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution
No. 08-S-320

DEUTSCHE BANK NATIONAL TRUST
COMPANY AS TRUSTEE

vs.

DAVID L. SNYDER &
CATHERINE J. SNYDER

19 CARLY DRIVE
NEW OXFORD, PA 17350
OXFORD TOWNSHIP

Parcel No.: 35-010-0050-000

IMPROVEMENTS THEREON:

RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$146,749.33

Attorneys for Plaintiff

DANIEL MANCINI & ASSOCIATES

SEIZED and taken into execution as the property of **David L. Snyder & Catherine J. Snyder** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 4, 2011, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

ALL claims to property must be filed with Sheriff before sale date.

As soon as the property is declared sold to the highest bidder, 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

11/19, 24 & 12/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 09-S-1631 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of January, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution
No. 09-S-1631

SUSQUEHANNA BANK
vs.

BARRY STEVENS

356 CONEWAGO DRIVE
EAST BERLIN, PA 17316
READING TOWNSHIP

Parcel No.: 36-L08-0039-000
(Acreage or street address)

IMPROVEMENTS THEREON:

RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$106,574.74

Attorneys for Plaintiff

CGA LAW FIRM, P.C.

SEIZED and taken into execution as the property of **Barry Stevens** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 4, 2011, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

ALL claims to property must be filed with Sheriff before sale date.

As soon as the property is declared sold to the highest bidder, 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

11/19, 24 & 12/3

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, December 10, 2010 at 8:30 a.m.

YEALY—Orphan's Court Action Number OC-150-2010. The First and Final Account of R. Thomas Yealy a/k/a Robert Thomas Yealey and Pamela J. Lawyer, Co-Executors for the Estate of Margaret Loretta Yealy a/k/a Margaret Loretta Yealey, late of Conewago Township, Adams County, Pennsylvania, deceased.

HOOVER—Orphan's Court Action Number OC-151-2010. The First and Final Account of David N. Hoover and Tammy Jean Hoover, Co-Executors for the Estate of Dorothy M. Hoover, late of Oxford Township, Adams County, Pennsylvania, deceased.

TIMMINS—Orphan's Court Action Number OC-152-2010. The First and Final Account of Trudy A. Wishard, William T. Timmins, III, and Holly Fox, Co-Executors of the Last Will and Testament of Betty M. Timmins, late of the Borough of Gettysburg, Adams County, Pennsylvania, deceased.

Kelly A. Lawyer
Clerk of Courts

11/24 & 12/3

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN, that Articles of Incorporation were filed with the Pennsylvania Department of State on November 8, 2010 to incorporate ONE STOP MOTORS, INC., a Pennsylvania business corporation incorporated under the provisions of Business Corporation Law of 1988.

Teeter, Teeter & Teeter
108 West Middle Street
Gettysburg, PA 17325

12/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 10-S-511 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of January, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution
No. 10-S-511

WELLSFARGO BANK NA
vs.

JOHN R. WELD a/k/a JOHN
RAYMOND WELD & LORI B. WELD
a/k/a LORI BETH WELD

135 TIMBER LANE a/k/a 8 TIMBER
LANE

ASPERS, PA 17304
MENALLEN TOWNSHIP

Parcel No.: 29-E06-0001T-000
(Acreage or street address)

IMPROVEMENTS THEREON:
RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$124,425.60

Attorneys for Plaintiff

PHELAN HALLINAN & SCHMIEG, LLP

SEIZED and taken into execution as the property of **John R. Weld a/k/a John Raymond Weld & Lori B. Weld a/k/a Lori Beth Weld** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 4, 2011, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

ALL claims to property must be filed with Sheriff before sale date.

As soon as the property is declared sold to the highest bidder, 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

11/19, 24 & 12/3

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 10-S-759 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 14th day of January, 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution
No. 10-S-759

BAC HOME LOANS SERVICING LP
vs.

JASON YEINGST & SUSAN YEINGST
3710 CARLISLE ROAD
GARDNERS, PA 17324

HUNTINGTON TOWNSHIP
Parcel No.: 22-G03-0043-000

(Acreage or street address)

IMPROVEMENTS THEREON:

RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$160,488.34

Attorneys for Plaintiff

PHELAN HALLINAN & SCHMIEG, LLP

SEIZED and taken into execution as the property of **Jason Yeingst & Susan Yeingst** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on February 4, 2011, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

ALL claims to property must be filed with Sheriff before sale date.

As soon as the property is declared sold to the highest bidder, 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

11/24, 12/3 & 10

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 LOUISE A. McATEE, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executor: Kathleen M. Knapp, 451 Deerfield Drive, Hanover, PA 17331

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

ESTATE OF EARL W. ZUMBRUM, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executors: Sharon L. Eckenrode and Kevin E. Zumbrum, 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

SECOND PUBLICATION**ESTATE OF CHARLES A. HOLLAND, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Roger L. Holland, c/o Edward J. O'Donnell IV, Esq., 141 Broadway, Suite 230, Hanover, PA 17331

Attorney: Edward J. O'Donnell IV, Esq., 141 Broadway, Suite 230, Hanover, PA 17331

ESTATE OF RITA E. LITTLE, DEC'D

Late of Mount Pleasant Township, Adams County, Pennsylvania

Executors: William F. Little, 2130 Centennial Road, Hanover, PA 17331; Wayne R. Little, 1510 Honda Road, Hanover, PA 17331

Attorney: Alex E. Snyder, Esq., Barley Snyder LLC, 14 Center Square, Hanover, PA 17331

ESTATE OF MILDRED S. MATTHIAS a/k/a MILDRED E. MATTHIAS, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Personal Representative: Donald R. Hull, 526 Baltimore Boulevard, Westminster, MD 21157

ESTATE OF LARRY W. SHOWERS, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executor: Alan C. Showers, 2606 Coon Road, Aspers, PA 17304

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

THIRD PUBLICATION**ESTATE OF CRAIG R. CHADDON, DEC'D**

Late of the Borough of Littlestown, Adams County, Pennsylvania

Administrator: Joanne M. Gove, 12 Blossom Lane, Littlestown, PA 17340

ESTATE OF NADINE R. NULL, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Patricia N. Bush, 301 West Elm Avenue, Hanover, PA 17331

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

ESTATE OF ELIZABETH R. SULLIVAN a/k/a ELIZABETH MAY SULLIVAN a/k/a BETTY R. SULLIVAN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Robert B. Sullivan, 6077 Old Hanover Rd., Spring Grove, PA 17362

ESTATE OF CECELIA M. WEN-SCHHOF, DEC'D

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

Executors: Theresa W. Chapman, 631 Delaware Ave., Norfolk, VA 23508; David E. Wenschhof, 1378 State Rt. 444, Victor, NY 14564

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

NOTICE OF ACTION IN
MORTGAGE FORECLOSURE

IN THE COURT OF COMMON PLEAS
OF ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
COURT OF COMMON PLEAS
CIVIL DIVISION
ADAMS COUNTY
NO. 10-S-1476

THE BANK OF NEW YORK MELLON
TRUST COMPANY, NATIONAL
ASSOCIATION F/K/A THE BANK OF
NEW YORK TRUST COMPANY, N.A. AS
SUCCESSOR TO JPMORGAN CHASE
BANK N.A. AS TRUSTEE FOR RAMP
2003RS3

vs.

ROBERT SIMON a/k/a ROBERT T.
SIMON, JR.

SUSANN SIMON a/k/a SUSANN M.
SIMON

NOTICE

TO ROBERT SIMON A/K/A ROBERT T.
SIMON, JR and SUSANN SIMON A/K/A
SUSANN M. SIMON:

You are hereby notified that on
SEPTEMBER 1, 2010, Plaintiff, THE
BANK OF NEW YORK MELLON TRUST
COMPANY, NATIONAL ASSOCIATION
F/K/A THE BANK OF NEW YORK
TRUST COMPANY, N.A. AS
SUCCESSOR TO JPMORGAN CHASE
BANK N.A. AS TRUSTEE FOR RAMP
2003RS3, filed a Mortgage Foreclosure
Complaint endorsed with a Notice to
Defend, against you in the Court of
Common Pleas of ADAMS County
Pennsylvania, docketed to No. 10-S-
1476. Wherein Plaintiff seeks to fore-
close on the mortgage secured on your
property located at 105 CIDER DRIVE,
YORK SPRINGS, PA 17372-9400
whereupon your property would be sold
by the Sheriff of ADAMS County.

You are hereby notified to plead to the
above referenced Complaint on or
before 20 days from the date of this
publication or a Judgment will be entered
against you.

NOTICE

If you wish to defend, you must enter a
written appearance personally or by
attorney and file your defenses or objec-
tions in writing with the court. You are
warned that if you fail to do so the case
may proceed without you and a judg-
ment may be entered against you with-
out further notice for the relief requested
by the plaintiff. You may lose money or
property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE
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.

ADAMS COUNTY
COURT ADMINISTRATOR
ADAMS COUNTY COURTHOUSE
GETTYSBURG, PA 17325
(717) 334-6781, EXT. 213

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INCORPORATION NOTICE

WESNER & GRAHAM WEB
SERVICES, INC. has been incorporated
under the provisions of the Business
Corporation Law of 1988.

VanOrmer & Associates
Attorneys
344 South Market Street
Elizabethtown, PA 17022

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