

# Adams County Legal Journal


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## ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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NOTICE BY THE ADAMS COUNTY  
CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statements of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County - Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Friday, December 4, 2015 8:30 am.

**PIATAK**—Orphans' Court Action Number - OC-108-2015. The First and Final Account of Ann T Piatak, Administrator of the Estate of Michael Piatak Jr, late of Hamiltonban Township, Adams County, Pennsylvania

**BRUNSON**—Orphans' Court Action Number - OC-122-2015. The First and Final Account of Wayne R Broccolina, Executor of the Estate of Ruth E Brunson, Deceased, late of Hamilton Township Adams County, Pennsylvania

**MCCLEAF**—Orphans' Court Action Number - OC-125-2015. The First and Final Account of Debra T. Little, Vice President and Trust Officer of ACNB Bank, Accountant in the Estate of Jacob D. McCleaf, Deceased, late of Franklin Township, Adams County, Pennsylvania

**GINGROW**—Orphans' Court Action Number - OC-126-2015. The First and Final Account of Alfred S Gingrow, Accountant in the Estate of Rhea H Gingrow, Deceased, late of the Borough of Littlestown, Adams County, Pennsylvania

**MCMASTER**—Orphans' Court Action Number - OC-131-2015. The First and Final Account of Anne C Emlet and Joyce E McMaster, Executrices of the Estate of Albert J McMaster, Deceased, late of Mt. Pleasant Township, Adams County, Pennsylvania.

Kelly A. Lawver

11/25

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NOTICE BY THE ADAMS COUNTY  
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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 - Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Friday, November 13, 2015 8:30 am.

**MILLER**—Orphans' Court Action Number - OC-116-2015. The First and Final Account of Audrey A. Sadler and Thresa M. Miller, Co-Executrixes of the Estate of Agnes E Miller, a/k/a, Deceased, late of Butler Township, Adams County, Pennsylvania

Kelly A. Lawver

11/25

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## HAMILTON TOWNSHIP V. DAVID R. LEASE

1. There is strong judicial policy in favor of voluntarily settling lawsuits because it expedites the resolution of cases and reduces the burden on and expense of maintaining courts.
2. Where the settlement agreement contains all the requisites for a valid contract, a court must enforce the terms of the contract. However, a court has neither the power nor the authority to modify or vary the decree unless there has been fraud, accident or mistake.
3. Mutual mistake exists only where both parties to a contract are mistaken as to existing facts at the time of execution. The party seeking reformation of a contract on the basis of mutual mistake must establish the existence of that mistake by clear, precise and convincing evidence.
4. Where, after a contract is made, a party's performance is made impracticable without his fault by the occurrence of an event, the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate to the contrary.
5. Legal impossibility is a defense that would relieve one from completing his performance under a contract. It is not to be used as a sword by a party entitled to the benefit of the unfulfilled performance.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA, CIVIL 2000-S-105, HAMILTON TOWNSHIP  
V. DAVID R. LEASE

Ronald Tomasko, Esq., Attorney for Plaintiff  
Farley Holt, Esq., Attorney for Defendant  
Kuhn, J., October 16, 2015

## MEMORANDUM OPINION

Before the Court for disposition is Plaintiff's Motion to Enforce and/or Amend the March 14, 2006 Court Order. For reasons set forth herein, the Motion is denied and dismissed.

In 2000, Plaintiff (Hamilton Township) initiated this equity action against Defendant (David R. Lease) to address Defendant's usage of a building located toward the rear of 160 Gun Club Road. Plaintiff was seeking an order that would require Defendant to evict all tenants from the building, to raze the upper floors of the building, and to pay appropriate fines and fees.

For various reasons, the non-jury trial was continued to March 14, 2006. Before any testimony was presented, the parties placed a settlement agreement on the record. The agreement provided that:

1. Defendant would only use the second floor of the rear building for storage purposes.
2. Plaintiff withdrew its request that the second floor of the rear building be razed.
3. The parties would conduct a walk-through of the front building on the property and identify any ordinance or code violations.
4. Defendant would pay Plaintiff "the sum of \$17,000.00 on account of legal fees incurred" in the litigation with that sum to be "paid from the settlement proceeds for the sale of real estate owned by [Defendant] known as the Spangler Road property."

When discussing the agreement as to payment of the fees, Defendant's counsel stated:

Mr. Holt: That's correct. They'll be paid at the time of the settlement. There is a subdivision plan that's currently sitting with the township waiting approval. It should happen hopefully soon.

The agreement was made part of an Order of Court with enforceability commensurate with the Court's contempt authority.

On August 10, 2015, Plaintiff filed the instant Motion to Enforce claiming that the Spangler Road property remains titled in Defendant's name and that it has not been paid the agreed upon fees despite demand. Plaintiff requests the Court to compel Defendant to pay those fees within a reasonable time. Defendant responded that because the property has not sold, he is not obligated to pay the fee, that action by Plaintiff delayed the sale of the property in 2006, and caused the loss of his potential buyer, and that he is willing to pay the fee as soon as the property sells. The Court scheduled the matter for hearing/argument on October 9, 2015.

There is strong judicial policy in favor of voluntarily settling lawsuits because it expedites the resolution of cases and reduces the burden on and expense of maintaining courts. *Mastroni-Mucker v. All State Insurance Co.*, 976 A.2d 510, 518 (Pa. Super. 2009); *Felix v. Guiseppe Kitchens & Baths, Inc.*, 848 A.2d 943, 946 (Pa. Super. 2004). Settlement agreements will be enforced according to principles of contract law. *Mellish v. Hurlock Duck Club, Inc.*, 886 A.2d 1151, 1158 (Pa. Comwlth. Ct. 2005). Where the settlement agreement contains all the requisites for a valid contract, a court must enforce the terms of the contract. *Mastroni-Mucker, supra.*, 976 A.2d at 518. However, a court has neither the power nor the authority to modify or vary the decree unless there has been fraud, accident or mistake.

The agreement at issue calls for payment of the fees from the settlement proceeds of the sale of property other than the one involved in the litigation. That property has not sold. Therefore, the Court does not have the power to force Defendant to pay the fees prior to that contingency unless the principles of contract law otherwise allow.

Here, Plaintiff does not contest the validity of the agreement nor does Plaintiff allege the existence of fraud or accident. Instead, Plaintiff contends that there was a mutual mistake. Specifically, Plaintiff argues that in 2006 both of the parties anticipated that a sale of the property to Fred Linkous was imminent and was the basis upon which payment of the fees was deferred. Mutual mistake exists only where both parties to a contract are mistaken as to existing facts at the time of execution. The party seeking reformation of a contract on the basis of mutual mistake must establish the existence of that mistake by clear, precise and convincing evidence. *Mellish, supra.*, 886 A.2d at 1159; *Felix, supra.*, 848 A.2d at 948.

In March 2006, the parties did not identify on the record that the payment was tied solely to a potential to Mr. Linkous nor did they include a contingency if a sale did not occur. Defendant asserts that the sale to Linkous was a possibility but not definite because Plaintiff was involved in litigation at the time opposing the subdivision plan related to the potential sale. Accordingly, neither party should have been mistaken that a sale date was set, that the sale was sure to occur, or that the buyer had financing available to complete the sale. Anticipation that a sale might occur in the near future is a hope, not an existing fact. I conclude that a mutual mistake of fact is not present in this case.

Even if the Court had determined the existence of a mutual mistake, the Court would then have to decide whether to reform the agreement or to rescind it. A mistake as to a basic assumption on which the parties entered into an agreement will make it voidable. *Mellish, supra.*, 886 A.2d at 1159. Thus, if as Plaintiff contends, imminent sale of the Spangler Road property was a basic assumption for the agreement, the Court could not reform the agreement by directing an alternative payment arrangement; instead, rescission of the agreement must follow. However, Plaintiff is not seeking that remedy.

Plaintiff also argues that this Court can enforce the agreement on slightly different terms than the parties originally agreed upon by directing Defendant to sell the Spangler Road property or alternatively to pay the obligation from other funds. Plaintiff relies on *Felix, supra.*, to support that position. In that case, the parties entered into a settlement agreement requiring Guiseppe Kitchens to replace kitchen cabinets not meeting certain criteria with new identical cabinets. Guiseppe was not able to obtain the replacements due to a dispute with its supplier. Guiseppe argued that it should be excused from furnishing the new cabinets under the doctrine of legal impossibility. The Restatement Second of Contracts, §261, provides that

Where, after a contract is made, a party's performance is made impracticable without his fault by the occurrence of an event, the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate to the contrary.

The court did not set aside the agreement in *Felix* as requested by Guiseppe because one's own business problems do not serve as a basis to void an agreement. The court found that Guiseppe defaulted on the agreement and directed the payment of a sum as damages for the undelivered cabinets instead of directing that substitute comparable cabinets be provided.

Legal impossibility is a defense that would relieve one from completing his performance under a contract. It is not to be used as a sword by a party entitled to the benefit of the unfulfilled performance. In other words, Plaintiff cannot raise the defense on Defendant's behalf and then seek a substitute remedy. Here, Defendant argues that the payment was contingent upon sale of the property, not necessarily a sale to Mr. Linkous. Therefore, he is not asserting that he cannot fulfill

the agreement. In fact, he indicates that as soon as the property sells, the obligation will be satisfied.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 16 day of October, 2015, Plaintiff's Motion to Enforce and/or Amend The March 14 2006 Court Order is denied and dismissed for the reasons set forth in the attached Memorandum Opinion.

## 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 JOHN D.L. BEEGLE, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Karen B. Arthur, 105 Hoke Drive, Gettysburg, PA 17325; Gregory A. Beegle, 123 East Broadway, Gettysburg, PA 17325

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

## ESTATE OF PATRICK J. DOHERTY, DEC'D

Late of Union Township, Adams County, Pennsylvania

Administrator: Brian P. Doherty, 5 Manor Circle, Littlestown, PA 17340

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

## ESTATE OF ANTHONY W. LENDO, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Tonice L. Price, 541 North St., McSherrystown, PA 17344

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

## ESTATE OF LORRAINE A. MILLER, DEC'D

Late of Mount Joy Township, Adams County, Pennsylvania

Executrix: Kathy Lee Miller, 1011 Heritage Drive, Gettysburg, PA 17325

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

## ESTATE OF E. JANE ZEPP, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executrix: Dorothy J. Trostle, 302 Main Street, York Springs, Pennsylvania 17372

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

## SECOND PUBLICATION

## ESTATE OF GEORGE E. GORMAN, DEC'D

Late of the Borough of Biglerville, Adams County, Pennsylvania

Executor: Steven J. Gorman, 282 Longstreet Drive, Gettysburg, PA 17325

Attorney: John J. Murphy III, Esq., Patrono & Murphy, LLC, 28 West Middle Street, Gettysburg, PA 17325

## ESTATE OF JOHN A. HALL

Late of Franklin Township, Adams County, Pennsylvania

Executors: Robert A. Hall, 3725 Concord Road, Doylestown, PA 18902; James E. Hall, 595 Old School House Road, Landenberg, PA 19250; Joseph P. Hall, 403 Fairfield Lane, Louisville, CO 80027

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

## ESTATE OF BARBARA T. MCDANNELL, DEC'D

Late of Highland Township, Adams County, Pennsylvania

Executors: A. Eva Luckenbaugh, Calvin R. McDannell, Adam T. McDannell, Mark K. McDannell, 1920 East Berlin Road, New Oxford, PA 17350

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

## ESTATE OF WALTER M. TROSTLE, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Personal Representative: Philip Trostle, 139 Baltimore Street, Gettysburg, PA 17325

## THIRD PUBLICATION

## ESTATE OF GILBERT L. ARVIN, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Administrator-Executor: Ricky L. Henry, c/o Donald B. Swope, Esq., 50 East Market Street, Hellam, PA 17406

Attorney: Donald B. Swope, Esq., 50 East Market Street, Hellam, PA 17406

## ESTATE OF HARRY W. FLETCHER, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executrix: Sandra L. Fletcher, 2280 Germany Road, East Berlin, PA 17316

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF RONALD L. HARBAUGH, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Co-Administrators: Ronald L. Harbaugh, 24 Main Street, Fairfield, PA 17320; Lisa M. Cathell, 1571 Deer Creek Road, New Freedom, PA 17349

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

## ESTATE OF EDWARD J. HETRICK, JR., DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrices: Dianne L. Croft, 2880 Black Rock Road, Hanover, Pennsylvania 17331; Helen L. Ports, 2870 Black Rock Road, Hanover, Pennsylvania 17331

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

## ESTATE OF ROBERT H. KELLEY, SR., DEC'D

Late of Germany Township, Adams County, Pennsylvania

Attorney: Thomas E. Miller, Esq., Law Office of Thomas E. Miller, ESQUIRE LLC, 249 York Street, Hanover, PA 17331

## ESTATE OF DOROTHY E. KIESSLING, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Joanne L. Schmick, 406 Mt. Allen Drive, Mechanicsburg, Pa. 17055

## ESTATE OF MAE E. LEGORE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Michael F. Robinson, 210 700 Road, New Oxford, Pennsylvania 17350; Carolyn R. Geiger, 1800 Heritage Avenue, Lancaster, Pennsylvania 17603

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

*Continued on pg. 4*



**THIRD PUBLICATION CONTINUED**

ESTATE OF HERBERT CHARLES  
McINTOSH, DEC'D

Late of Cumberland Township, Adams  
County, Pennsylvania

Personal Representative: Cornelia R.  
McIntosh, 1525 Naudain Street,  
Harrisburg, PA 17104

Attorney: Brian F. Levine, Esq., 22 E.  
Grant Street, New Castle, PA 16101

ESTATE OF ROBERT L. PAINTER,  
DEC'D

Late of Mt. Pleasant Township, Adams  
County, Pennsylvania

Co-Executors: Paul R. Painter, 3000  
Spout Run Parkway, Apt. A609,  
Arlington, VA 22201; Penny P.  
Hudson, 84 Jessica Drive,  
Gettysburg, PA 17325

Attorney: John A. Wolfe, Esq., Wolfe,  
Rice & Quinn, LLC, 47 West High  
Street, Gettysburg, PA 17325

ESTATE OF JAY L. SIXEAS, DEC'D

Late of Cumberland Township, Adams  
County, Pennsylvania

Executor: James W. Sixeas, c/o R.  
Thomas Murphy & Associates, P.C.,  
237 East Queen Street,  
Chambersburg, PA 17201

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

ESTATE OF LORRAINE MAE ZINN,  
DEC'D

Late of Franklin Township, Adams  
County, Pennsylvania

Executrix: Colleen Faye Zinn, 2400  
Tweed Trail, Hillsborough, NC 27278

