

Adams County Legal Journal

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IN THIS ISSUE

MARSH'S CONSTRUCTION VS. VARISH CONSTRUCTION

Our Trust department
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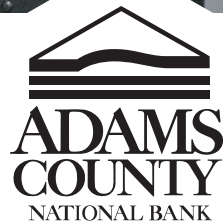
Karen Arthur
Trust Officer



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INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Commonwealth of Pennsylvania, Department of State, at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Incorporation.

The name of the proposed corporation which has been organized under the Business Corporation Law of 1988 adopted December 21, 1988, P.L. 1444, No. 177, §103, as amended, is HEALTH TECH CLEANING SYSTEMS, INC.

G. Steven McKonley
Solicitor

7/2

CERTIFICATE OF AUTHORITY

NOTICE IS HEREBY GIVEN that an application has been made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania on May 7, 2010. CUSTOM LAWN SERVICES, INC., a foreign corporation formed under the laws of the State of Delaware where its principal office is located at 4001 Kennett Pike, Suite 134-258, Greenville, DE 19807, New Castle County, for a Certificate of Authority to do business as in PA under the provisions of the Pennsylvania Business Corporation Law of 1988. The Registered Office in Pennsylvania shall be deemed for venue and official publication purposes to be located in Adams County.

Tressa M. Catalina, Esq.
Zimny & Associates, P.A.
64 Reads Way
New Castle, DE 19720

7/2

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 Thursday, July 8th, 2010 at 8:30 a.m.

KEMPTON—Orphan's Court Action Number – OC-57-2009. The First and Final Account of Pamela Anne Kempton, Administratrix of the Estate of Alan Richard Kempton, late of the Borough of Bonneauville, Adams County, Pennsylvania, deceased.

ORNER—Orphan's Court Action Number – OC-53-2010. The First and Final Account of Dean R. Hoffman, Accountant and Executor of the Estate of Sara J. Orner, late of Cumberland Township, Adams County, Pennsylvania, deceased.

WEIGANDT—Orphan's Court Action Number – OC-62-2010. The First and Final Account of Benny M. Akers, Executor of the Estate of Irvin W. Weigandt, late of Hamiltonban Township, Adams County, Pennsylvania, deceased.

Kelly A. Lawver
Clerk of Courts

6/25 & 7/2

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL DIVISION
NO. 09-SU-1654

DISCOVER BANK, Plaintiff

vs.

BRIAN WILLI ECKENRODE

ORDER OF COURT

AND NOW, to-wit, this 18th day of May, 2010, upon consideration of the foregoing Motion for Service of the Complaint Pursuant to Special Order of Court and attached supporting affidavit, it is hereby ORDERED, ADJUDGED AND DECREED, that the service of the Complaint in Civil Action may be made on Defendant, Brian Willi Eckenrode, by permitting the Plaintiff to mail a copy of the Complaint to the Defendant the last known address being 84 Hill Road, Hanover, PA 17331 by Certified Mail and by Certificate of Mailing Postal Form 3817, postage prepaid. Service to be completed upon mailing. Service shall also be made by publication pursuant to Pa.R.CP 430(b)(1).

BY THE COURT:
/s/Thomas R. Campbell, J.

7/2

MARSH'S CONSTRUCTION VS. VARISH CONSTRUCTION

1. Pennsylvania law is clear that a new trial should not be granted on the basis of a weight of the evidence claim unless the evidence supporting the verdict is so inherently improbable or at variance with submitted or proven facts or with ordinary experience as to render the verdict shocking to the court's sense of justice.

2. Where the record adequately supports the trial court's reasons, the trial court did not abuse the discretion. It is not the role of an appellate court to re-weigh the evidence on appeal.

3. The appellate court should defer to the trial court's discretion unless the trial court has grossly abused its discretion or committed an error of law that controlled the outcome of the case.

4. Pennsylvania courts have long recognized that the trial court, sitting as fact-finder, is free to believe all, part, or none of the evidence presented.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil No. 07-S-1362, MARSH'S CONSTRUCTION, LLC, VS. VARISH CONSTRUCTION, INC.

Arthur J. Becker, Jr., Esq., for Plaintiff

Bernard A. Yannetti, Jr., Esq., for Defendant

George, J., December 9, 2009

OPINION PURSUANT TO PA. R.A.P. 1925(A)

The Appellant, Varish Construction, Inc. ("Varish"), appeals this Court's entry of judgment, following non-jury trial, against Varish and in favor of Marsh's Construction, LLC ("Marsh") in the amount of \$24,382.00 plus costs and interest. Although the factual background is adequately set forth in this Court's Findings of Fact dated May 19, 2009, it will be briefly summarized.

In 2006, Varish entered into a contractual agreement to serve as general contractor for construction of a hotel project known as the "Towne Place Suites." Thereafter, on October 5, 2006, Varish entered a written subcontract with Marsh for the framing and roofing for the project. The contract called for Marsh to construct and install pre-built framing and roofing for a four-story hotel for the price of \$245,000. A draw schedule was entered between the parties and construction on the project commenced. During the course of the construction, Varish paid Marsh \$105,600 pursuant to the draw schedule. However, prior to completion of the work, a dispute arose between the parties concerning Marsh's performance at the job site and Marsh's payment of subcontractors. Ultimately, the relationship between the parties deteriorated and they terminated their relationship. At that

time, the third floor to the hotel had not yet been installed although pre-built third floor walls had been constructed and delivered to the job site. Additionally, some fourth floor walls had been pre-built that were delivered to the job site; however, not all fourth floor walls were completed. Varish subsequently contracted with several other entities to complete Marsh's work.

Marsh instituted litigation against Varish seeking reimbursement for labor performed pursuant to the contract as well as "down-time" resulting from the contract's termination. Varish responded with a Counterclaim seeking damages related to Marsh's alleged breach of the contractual obligations. Following the non-jury trial, this Court entered judgment in favor of Marsh on the Complaint in the amount of \$24,557 and further entered judgment against Varish on the Counterclaim. Varish timely filed Post Trial Motions which were denied by this Court. Currently, Varish appeals alleging that the Court abused its discretion in failing to offset the amount of judgment for wages Varish claims to have been paid to complete the work not performed by Marsh. Varish further claims that the Court improperly failed to offset the judgment for materials supplied by Varish which Marsh was contractually obligated to provide. For the reasons set forth below, it is respectfully requested that judgment be affirmed.

Pennsylvania law is clear that a new trial should not be granted on the basis of a weight of the evidence claim unless the evidence supporting the verdict is so inherently improbable or at variance with submitted or proven facts or with ordinary experience as to render the verdict shocking to the court's sense of justice. *King v. Stefenelli*, 862 A.2d 666 (Pa. Super. 2004). In reviewing a trial court's decision to deny a request for a new trial, the decision should only be reversed if the trial court has abused its discretion. *Divilly v. Port Authority of Allegheny County*, 810 A.2d 755 (Pa. Cmwlth. 2002), *appeal denied* 829 A.2d 1158. Where the record adequately supports the trial court's reasons, the trial court did not abuse its discretion. *Id.* It is not the role of an appellate court to re-weigh the evidence on appeal. *Morin v. Brassington*, 871 A.2d 844 (Pa. Super. 2005). Rather, the appellate court should defer to the trial court's discretion unless the trial court has grossly abused its discretion or committed an error of law that controlled the outcome of the case. *Colville v. Crown Equipment Corp.*, 809 A.2d 916 (Pa. Super. 2002).

In entering judgment in this matter, the Court considered the conflicting testimony of the various witnesses. Some of that testimony was considered credible and worthy of belief while other testimony was discounted as self-serving and unsupported by other evidence in the trial. As a result of this determination, the Court offset Marsh's claim in excess of \$110,000 for work which Marsh failed to complete despite a contractual obligation to do so. Varish currently takes exception with this Court's refusal to accept all of Varish's claims for offset. Although not specifically identified in his Concise Statement, it is this Court's belief that Varish takes exception with the Court's failure to grant offset for the items contained in Defense Exhibit No. 4 which total \$44,644 allegedly paid to four different entities. Additionally, Varish challenges the Court's failure to provide offset for approximately \$18,783 in materials.

Initially, I note that Pennsylvania courts have long recognized that the trial court, sitting as fact-finder, is free to believe all, part, or none of the evidence presented. *Stokes v. Gary Barbera Enterprises, Inc.*, 783 A.2d 296, 297 (Pa. Super. 2001), *appeal denied* 797 A.2d 915 (2002). This deference recognizes that the trial court is in the best position to observe the demeanor of the witnesses from the witness stand and weigh their credibility appropriately. Although this Court found Varish's testimony, on occasion, to be credible and supported by other evidence, Varish was found to be incredible on other issues.

The testimony rejected by the Court was unconvincing, lacked corroboration, and was contradicted by other evidence in the case. For instance, testimony on the items which this Court did not credit was extremely sparse and significantly lacked in detail. See generally Trial Transcript, pgs. 115-117. No corroborating invoices were provided. Rather, the only supporting evidence was check statements for fees paid to the respective entities without any indication as to why the payment was made. In fact, there is no corroboration for the conclusion that the labor was even related to the subject job site. Moreover, the dates reflected on the checks were not consistent with other testimony generally describing the timeframe with the project. Finally, although it is relatively uncontested that, prior to termination of the contractual relationship, the project had progressed to the third floor construction with materials through and including a portion of the fourth floor having been provided by Marsh. Clearly, more than 50 percent of the project had been performed. Yet, Varish sought

offsets equivalent to approximately 73 percent of the original contract price. Importantly, there was no claim of deficient workmanship in the work completed by Marsh. Varish's testimony that all of the items he claimed as offset were related to the completion of items which were Marsh's contractual responsibility was neither persuasive nor accepted by this Court. As this Court has no obligation to accept as true even the uncontested testimony of a witness, *Stokes v. Gary Barbera Enterprises, Inc.*, *supra*, it is respectfully requested that judgment be affirmed.

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 ROBERT A. BRODBECK, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Executor: Robert A. Brodbeck, 482 Providence Drive, McSherrystown, PA 17344

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

ESTATE OF JAMES ROBERT HAHN, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Patsy Brown, 1970 Taneytown Rd., Gettysburg, PA 17325

Attorney: Barbara Jo Entwistle, Esq., Entwistle & Roberts, 66 West Middle Street, Gettysburg, PA 17325

ESTATE OF ANNA S. KLUNK a/k/a ANNA L. KLUNK, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executors: Stephen J. Klunk, 50 Shady Lane, Hanover, PA 17331; Gary F. Klunk, 227 Vincent Drive, McSherrystown, PA 17344

Attorney: David C. Smith, Esq., 754 Edgegrove Rd., Hanover, PA 17331

ESTATE OF HOWARD O. MYERS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Louise E. Myers, c/o Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

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

ESTATE OF ROSELLA T. PLUNKERT a/k/a ROSELLA M. PLUNKERT, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executrix: Bobbye Kay Dillman, 700 Littlestown Road, Littlestown, PA 17340

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

ESTATE OF IRENE C. SHRADER, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executors: Bruce E. Shrader, 3916 York Road, New Oxford, PA 17350; Deborah A. Bell, 237 Hanover Street, New Oxford, PA 17350

Attorney: David C. Smith, Esq., 754 Edgegrove Rd., Hanover, PA 17331

ESTATE OF MARY I. WETZEL, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Jane M. Wetzel, 996 Old Route 30, Orrtanna, PA 17353

Attorney: Phillips & Phillips, 101 W. Middle St., Gettysburg, PA 17325

SECOND PUBLICATION**ESTATE OF ROBERT M. KENNEDY, JR., DEC'D**

Late of Tyrone Township, Adams County, Pennsylvania

Co-Executors: Michael K. Kennedy, 1025 Waynesboro Pike, Fairfield, PA 17320; Eileen M. Stough, 345 Bermudian Creek Road, East Berlin, PA 17316

Attorney: John R. White, Esq., Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JOHN E. MATTHEWS, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executors: Janet L. Thomas, 60 E. King Street, Littlestown, PA 17340; David N. Matthews, 1858 Fish & Game Road, Littlestown, PA 17340

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

ESTATE OF HELEN A. WIRTH, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Herbert F. Wirth, Jr., 1789 Mummasburg Rd., Gettysburg, PA 17325; William F. Wirth, 30 Park Ave., Gettysburg, PA 17325

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

THIRD PUBLICATION**ESTATE OF ETHEL K. BOUCHARD, DEC'D**

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Dale Kepner, 354 South Riverside Drive, Crownsville, MD 21032

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

ESTATE OF JAMES V. CRISFULLI, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executors: Mark Gary Crisfulli and Thomas Gordon Crisfulli

Attorney: Douglas H. Gent, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger St., Suite 4, Hanover, PA 17331

ESTATE OF LILLIAN A. GROFT, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrices: Donna L. Rudisill and Kay F. Logue, c/o James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart, 40 York St., Hanover, PA 17331

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

ESTATE OF JAMES WILLIAM HALE, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Administrator: James C. Hale, 116 Seminary Ave., Gettysburg, PA 17325

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

ESTATE OF JOAN B. MALONEY, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executors: John Mark Maloney, 2475 Mummasburg Road, Gettysburg, PA 17325; Kristen F. (Smith) Maloney, 614 Boulevard, Westfield, NJ 07090; Erin B. Maloney, 1203 Prospect St., Westfield, NJ 07090

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

ESTATE OF VICTORIA LEE MILLER a/k/a VICTORIA MILLER a/k/a VICKY MILLER a/k/a VICTORIA L. MILLER, DEC'D

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

Co-Administrators: Brenda L. Gross, Richard E. Crone, c/o Terence J. Barna, Esq., Benn Law Firm, 103 E. Market Street, P.O. Box 5185, York, PA 17405-5185

Attorney: Terence J. Barna, Esq., Benn Law Firm, 103 E. Market Street, P.O. Box 5185, York, PA 17405-5185

THIRD PUBLICATION (CONTINUED)

ESTATE OF JAMES R. SHETTER, DEC'D

Late of the Borough of Gettysburg,
Adams County, Pennsylvania

Victoria A. Biesecker, 440 Queen
Street, Gettysburg, PA 17325;
Teresa M. Myers, 725 Old Route 30,
Ortanna, PA 17353

Attorney: David K. James, III, Esq.,
234 Baltimore St., Gettysburg, PA
17325

ESTATE OF BARRY L. STEVENS, DEC'D

Late of Reading Township, Adams
County, Pennsylvania

Administrator: Bart A. Stevens, c/o
James T. Yingst, Esq., Guthrie,
Nonemaker, Yingst & Hart, LLP, 40
York Street, Hanover, PA 17331

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

IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION-DIVORCE
AND RELATED CLAIM
NO. 09-S-1746

REYNA SALDIVAR ARIZMENDI, Plaintiff
vs.

ARTURO RUIZ MUNIZ, Defendant

ORDER OF COURT

You, Arturo Ruiz Muniz, Defendant,
have been sued in court to obtain cus-
tody of the children: Kassandra Ruiz
Saldivar (DOB: 8-10-95), Kevin Arturo
Ruiz-Saldivar (DOB: 11-19-02), and
Brandon Ruiz Saldivar (DOB: 1-3-07).

You are ordered to appear in person at
the Adams County Courthouse
Courtroom No. 3, 2nd Floor, Gettysburg,
PA, on Tuesday July 6, 2010, at 9:30
o'clock A.M. for:

- X a conciliation or mediation con-
ference.
- X a pretrial conference.
- a hearing before the Court.
- X The presence of the children is
not required.
- The presence of the children is
required.

If you fail to appear as provided by this
Order or to bring the children, if so
ordered, an Order for custody, partial
custody or visitation may be entered
against you or the court may issue a war-
rant for your arrest. YOU SHOULD TAKE
THIS PAPER TO YOUR LAWYER AT
ONCE. IF YOU DO NOT HAVE A
LAWYER, GO TO OR TELEPHONE
THE OFFICE SET FORTH BELOW.

THIS OFFICE CAN PROVIDE YOU
WITH INFORMATION ABOUT HIRING A
LAWYER. IF YOU CANNOT AFFORD
TO HIRE A LAWYER, THIS OFFICE
MAY BE ABLE TO PROVIDE YOU WITH
INFORMATION ABOUT AGENCIES
THAT MAY OFFER LEGAL SERVICES
TO ELIGIBLE PERSONS AT A
REDUCED FEE OR NO FEE.

Court Administrator
Adams County Courthouse
Gettysburg, PA 17325
Phone: (717) 337-9846
FAX: 334-8817

**AMERICAN WITH DISABILITIES
ACT OF 1990**

The Court of Common Pleas of Adams
County is required by law to comply with
the Americans with Disabilities Act of
1990. For information about accessible
facilities and reasonable accommoda-
tions available to disabled individuals
having business before the court, please
contact our office. All arrangements must
be made at least 72 hours prior to any
hearing or business before the court.
You must attend the scheduled confer-
ence or hearing.

BY THE COURT,

Date: June 2, 2010

/s/Robert G. Bigham, J.

COURT ADMINISTRATOR'S NOTICE:
Attention is directed to Local Rule 1915.1
which requires submittal of a memoran-
dum at the time of the conference or
hearing. NOTE: Bring calendar - hear-
ing, if needed, will be scheduled at con-
ference.

7/2

**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-451

CITIMORTGAGE, INC. S/B/M TO CITI-
FINANCIAL MORTGAGE COMPANY,
INC. F/K/A ASSOCIATES HOME EQUITY
CONSUMER DISCOUNT COMPA-
NY, INC.

vs.

JOHN L. BECKER
DONNA L. BECKER

NOTICE

TO DONNA L. BECKER :

You are hereby notified that on
MARCH 18, 2010, Plaintiff, CITIMORT-
GAGE, INC. S/B/M TO CITIFINANCIAL

MORTGAGE COMPANY, INC. F/K/A
ASSOCIATES HOME EQUITY CON-
SUMER DISCOUNT COMPANY, INC.,
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-451. Wherein
Plaintiff seeks to foreclose on the mort-
gage secured on your property located at
67 SUSAN DRIVE, NEW OXFORD, PA
17350-9682 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 pub-
lication 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 INFOR-
MATION ABOUT AGENCIES THAT MAY
OFFER LEGAL SERVICES TO ELIGI-
BLE PERSONS AT A REDUCED FEE
OR NO FEE.

ADAMS COUNTY
COURT ADMINISTRATOR
ADAMS COUNTY COURTHOUSE
GETTYSBURG, PA 17325
(717) 334-6781, EXT. 213
LAWYER REFERRAL SERVICE
MIDPENN LEGAL SERVICES
128 BRECKENRIDGE STREET
GETTYSBURG, PA 17325
(717)334-7624

7/2