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IN THIS ISSUE

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MICHELLE PRIN AND JOANNE BAST PARTNERS, LLC, MICHELLE PRIN, JOANNE S. BAST AND WILLIAM PRIN V. BOB'S BEER & SODA, INC. AND ROBERT E. SHAFFER

1. If the contract shows an intent to bind a party individually, the mere signature followed by a designation as a corporate agent is not conclusive that the party was acting solely in a representative capacity.

2. The purchase agreement contains an express statement that the parties intended to be legally bound. Pennsylvania case law has explained that, generally speaking, a written agreement which contains such an express statement will not be deemed void on the basis of lack of consideration.

3. Pennsylvania courts have found that the enforcement of any non-competition agreement must be reasonably related to the protection of legitimate business interest in order to be enforceable.

4. The *Bayliss* Court further enunciated that the type of business interests intended to be protected by such a clause may include, among other interests, customer good will.

5. The burden of proving that a no-competition clause is unreasonable falls on the party seeking to void the clause. In determining whether a no-competition covenant's restraints are reasonable, courts have evaluated three aspects of the covenant:

   i. the type of activities embraced;
   ii. the geographical area; and
   iii. the span of time.

6. A ten mile radius in a rural market does not stand out as being unreasonable as it is limited to the area of potential competition with the purchaser. Similarly, the ten year period is not an unreasonable amount to time to permit Defendants to establish their own customer following and recoup a return on their investment.

7. Grounds for an injunction are established where the plaintiff's proof of injury, although small in monetary terms, foreshadows the disruption of established business relations which would result in incalculable damage should the competition continue in violation of the covenant.

8. The power to grant or refuse an injunction rests in the sound discretion of the court under the circumstances and facts of the particular case. Moreover, prior decisions of our appellate courts support the fair modification of restrictive covenants.

9. It is well established that three elements are necessary to plead a cause of action for a breach of contract: (1) the existence of a contract, including its essential terms; (2) a breach of the contract; and (3) resultant damages. It is axiomatic therefore that the plaintiff in an action for breach of contract has the burden of proving damages resulting from the breach to a reasonable certainty.

10. In order to recover under a theory of civil conspiracy, a party must prove that two or more persons combined or agreed with intent to do an otherwise lawful act by unlawful means. Additionally, proof of malice is essential to establish a conspiracy.

11. In considering the assessment of attorney fees, the Court took into account the reasoning of the Third Circuit applying Pennsylvania law in *PPG Indus., Inc. v. Zurawin*. In *PPG*, the Court applied a common sense comparison between relief sought in various causes of action against numerous parties and the relief actually obtained.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA, CIVIL 12-S-1176, MICHELLE PRIN AND JOANNE BAST PARTNERS, LLC, MICHELLE PRIN, JOANNE S. BAST AND WILLIAM PRIN V. BOB'S BEER & SODA, INC. AND ROBERT E. SHAFFER.

Anthony T. Bowser, Esq., Attorney for Plaintiffs
Larry C. Heim, Esq., Attorney for Defendants
George, J., October 30, 2017

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

Before the Court is the cross-appeal of a judgment entered on January 4, 2017 after non-jury trial. This litigation was commenced by Complaint seeking declaratory judgment defining the obligations of the several Plaintiffs to the Defendants resulting from the Defendants' purchase of a beer distributorship from Yingling's Thrifty Beverage, Inc. ("Thrifty"). The sole stockholders of Thrifty at the time of sale were Patricia Prin and Plaintiff, Joanne Bast. At the center of the dispute is a no-competition clause contained in the purchase agreement for the sale of the property. Subsequent to the sale of Thrifty, Plaintiffs, Michelle Prin and Joanne Bast Partners, LLC ("Partnership"), purchased a beer distributorship located approximately 3.6 miles from the former Thrifty distributorship. The declaratory action was filed in response to threats by the Defendants to enforce the no-competition clause contained in the purchase agreement against all Plaintiffs. In bringing the action, Plaintiffs sought the Court to declare the clause unenforceable against them.

The Defendants responded to the Complaint with an Answer and Counterclaim seeking injunctive relief enforcing the terms of the no-competition clause and seeking damages including reasonable attorney fees resulting from the alleged breach of the clause by Plaintiffs. Defendants claim that despite Joanne Bast being the only Plaintiff who is signatory to the purchase agreement, all other Plaintiffs participated in a conspiracy with Bast to violate the covenant not to compete. In support of their theory, Defendants directed the Court to the various relationships among the parties.

As mentioned, Joanne Bast and Patricia Prin were the sole stockholders of Thrifty. Patricia Prin is the former wife of William Prin who were divorced in 2005. Pursuant to the terms of the divorce settlement between William and Patricia Prin, William Prin was entitled to share in the proceeds from sale of Thrifty. On September 15, 2007, William Prin married Michelle Prin. In May of 2008, the purchase agreement for the sale of the property was signed solely by Joanne Bast as agent for Thrifty. On March 13, 2012, Partnership purchased Beer Express. The sole stockholders of Partnership are Michelle Prin and Joanne Bast.

After non-jury trial, the Court granted the Complaint for Declaratory Judgment in part and denied it in part. More specifically, the Court granted declaratory relief for all Plaintiffs with the exception of Joanne Bast whose request for declaratory relief from the no-competition clause was denied. Similarly, the Court denied the Counterclaim for injunctive relief against all parties with the exception of Joanne Bast. Injunctive relief enforcing the terms of the no-competition clause was granted against Bast and legal fees were assessed against her in the amount of $16,853.90. In doing so, the Court concluded the Defendant had failed to establish any other tangible damages. Both Joanne Bast and Defendants currently appeal this Court's verdict.

On appeal, Joanne Bast argues the evidence was insufficient as the Court erred in determining she was bound as a party to the terms of the purchase agreement; erred in finding the no-competition clause enforceable as consideration was not exchanged; and erred in finding the no-competition clause enforceable as it fails to protect legitimate business interest and, in the alternative, is punitive due to being overly broad. Finally, Bast claims the Court erred in granting injunctive relief and awarding attorney fees against her. Before turning to claims of the Defendant, the Court will address Plaintiff's issues.

Plaintiff's first claim that Joanne Bast is not a party to the no-competition agreement is meritless. The agreement identifies both Joanne Bast individually and Yingling's as a "Seller" of the property. The no-competition clause prohibits "Seller" from competing directly or indirectly in a similar business within ten miles of the existing business for a period of ten years. At the bottom of each of the seven pages of the agreement are the signed initials of Joanne Bast with the

last page also containing her signature and the date of her written acceptance of the purchase agreement. While it is true that her signature at the end of the document does not identify her individually but rather solely as a stockholder of Thrifty, that distinction has little import.

The principles which guide the inquiry concerning the validity of a written contract are well settled.

> The fundamental rule in contract interpretation is to ascertain the intent of the contracting parties. In cases of a written contract, the intent of the parties is the writing itself…. When the terms of a contract are clear and unambiguous, the intent of the parties is to be ascertained from the document itself. When, however, an ambiguity exists, parol evidence is admissible to explain or clarify or resolve the ambiguity, irrespective of whether the ambiguity is patent, created by the language of the instrument, or latent, created by extrinsic or collateral circumstances.

Ins. Adjustment Bureau, Inc. v. Allstate Ins. Co., 905 A.2d 462, 468-69 (Pa. 2006)(citations omitted). If the contract shows an intent to bind a party individually, the mere signature followed by a designation as a corporate agent is not conclusive that the party was acting solely in a representative capacity. ***Viso v. Werner***, 369 A.2d 1185, 1188 (Pa. 1977).

Instantly, the contract preamble identifies the intended parties by designating Joanne Bast individually as "Seller." In addition to her signature at the end of the contract, each page, including the page containing the no-competition clause, evidenced her signed initials without any distinction as to whether she was acting in an individual or corporate capacity. The no-competition clause itself prohibits both "direct and indirect" competition evidencing its inclusive intent and arguably in and of itself prohibits the corporate stockholders from future individual competition. Collectively, these items reflect a true and actual meeting of the minds concerning the parties' intent to preclude future competition by Joanne Bast individually. Bast's self-serving testimony to the contrary was found to be insufficiently credible in order to overcome the otherwise clear evidence of intent.

Defendant's second issue questioning the existence of consideration exchanged for the purchase agreement is similarly meritless.

Thrifty agreed to sell the business and real property of the distributorship to the Defendants in exchange for an agreed upon purchase price. Joanne Bast individually agreed not to compete in exchange for the Defendants' purchase of the business and property from Thrifty. As 50 percent stockholder of Thrifty, she personally benefited from the increase in value of stock derived from the settlement proceeds of the sale as evidenced by the settlement sheet introduced at trial.[1] This record certainly evidences the receipt of consideration in exchange for the agreement.

Moreover, the purchase agreement contains an express statement that the parties intended to be legally bound. Pennsylvania case law has explained that, generally speaking, a written agreement which contains such an express statement will not be deemed void on the basis of lack of consideration. ***Yocca v. Pittsburgh Steelers Sports, Inc***., 854 A.2d 425, 433 (Pa. 2004). A party challenging the validity of a contract containing an express intent to be legally bound will not be entitled to relief from the agreement on the basis the promises made therein lack consideration. ***Socko v. Mid-Atlantic Sys. of CPA, Inc***., 126 A.3d 1266, 1276-77 (Pa. 2015).

In her third issue, Bast argues that the no-competition clause is unenforceable as it fails to protect the legitimate business interest. Indeed, Pennsylvania courts have found that the enforcement of any non-competition agreement must be "reasonably related to the protection of legitimate business interest" in order to be enforceable. ***WellSpan Health v. Bayliss***, 869 A.2d 990, 996 (Pa. Super. 2005). The ***Bayliss*** Court further enunciated that the type of business interests intended to be protected by such a clause may include, among other interests, customer good will. The Pennsylvania Supreme Court expressed the rationale protecting good will as follows:

> General covenants not to compete which are ancillary to the sale of a business serve a useful economic function; they protect the asset known as "good will" which the purchaser has bought. Indeed, in many businesses it is the name, reputation for service, reliability, and the trade secrets of the seller rather than the physical assets which constitute the inducements for a sale. Were the seller free

[1] Defendants' Exhibit 8

to re-enter the market, the buyer would be left holding the proverbial empty poke.

Morgan's Home Equip. Corp. v. Martucci, 136 A.2d 838, 846 (Pa. 1957). That same rationale applies instantly.

The sale did not consist of corporate stock but rather was limited to real estate, equipment, good will, and license. Under these circumstances, the purchasers had an interest in precluding both the corporation and its stockholders, either directly or indirectly, from re-entering the market. The heightened value the parties placed on this interest is evidenced by the settlement sheet which allocates the sum of $774,600 to "good will and license." The importance sought to be protected by the no-competition clause is evident in Defendant's trial testimony when he credibly testified he would not have purchased the distributorship absent the inclusion of such a clause. Any other conclusion as to the existence of a legitimate business interest would essentially render the intentions of both parties to be meaningless.

Joanne Bast also argues that the no-competition covenant is unnecessarily broad and unreasonable in its application. The burden of proving that a no-competition clause is unreasonable falls on the party seeking to void the clause. ***John G. Bryant Co., Inc. v. Sling Testing and Repair, Inc***., 369 A.2d 1164, 1169 (Pa. 1977). In determining whether a no-competition covenant's restraints are reasonable, courts have evaluated three aspects of the covenant:

i. the type of activities embraced;
ii. the geographical area; and
iii. the span of time.

Piercing Pagoda, Inc. v. Hoffner, 351 A.2d 207, 210 (Pa. 1976).

Applying this guidance, there is nothing which is patently unreasonable about the geographic area or lifespan of the no-competition clause as Bast has failed to establish any basis to conclude the clause to be unreasonable under the particular circumstances of this case.

The business purchased is located in Hanover Borough which is a much smaller market than larger urban markets. The items sold at the distributorship are consumable goods generally purchased by a user within a limited geographic area. At the time of sale, two similar businesses shared the market. The addition of a fourth business into

the market is of obvious concern to a prospective buyer. The concern is amplified where a proprietor generally known in the community over numerous years of operation opens the competing business in the same proximity of the area where previously loyal customers reside. A ten mile radius in a rural market does not stand out as being unreasonable as it is "limited to the area of potential competition with the purchaser." See ***Morgan's Home Equip. Corp.***, 136 A.2d at 846.

Similarly, the ten year period is not an unreasonable amount of time to permit Defendants to establish their own customer following and recoup a return on their investment. Absent a showing of unreasonableness by Bast, there is no reason to disturb the parties' arm-length negotiation of the reasonableness of the clause at issue.

Bast finally argues that Defendants have not satisfied the test for grant of injunctive relief. Pennsylvania case law teaches that the required elements for injunctive relief are: a clear right to relief; an urgent necessity to avoid an injury that cannot be compensated in damages; and a finding that greater injury will result from refusing, rather than granting, the relief requested. ***Big Bass Lake Cmty. Ass'n. v. Warren***, 950 A.2d 1137, 1144 (Pa. Commw. Ct. 2008). Defendants have met these standards.

The first prerequisite concerns whether the right to relief is clear. Instantly, for significant consideration, Bast executed a written agreement that she would not compete, either directly or indirectly, with a business being sold by her. As a 50 percent stockholder of the business being sold, she profited by the transaction: a transaction which would not have occurred absent her agreement not to compete. To permit Bast to walk away from the contract would essentially vitiate the purpose of written agreements.

The second prerequisite to the issuance of the injunction is the requirement that injunction is necessary to avoid an injury which cannot be compensated by damages. Very recently, the Pennsylvania Superior Court discussed the meaning of this element in ***The York Group, Inc. v. Yorktowne Caskets, Inc***., 924 A.2d 1234 (Pa. Super. 2007), as follows:

> An injury is regarded as "irreparable" if it will cause damage which can be estimated only by conjecture and

> not by an accurate pecuniary standard. Our courts have held, accordingly, that it is not the initial breach of the covenant which necessarily establishes the existence of irreparable harm but rather the unbridled threat of the continuation of the violation, and incumbent disruption of the employer's customer relationships.
>
> Thus, grounds for an injunction are established where the plaintiff's proof of injury, although small in monetary terms, foreshadows the disruption of established business relations which would result in incalculable damage should the competition continue in violation of the covenant. The effect of such disruption may manifest itself in a loss of new business not subject to documentation, the quantity and quality of which are inherently unascertainable….Consequently, the impending loss of a business opportunity or market advantage also may be aptly characterized as an "irreparable injury" for purposes of equitable relief.

Id. at 1242 (citing ***West Penn Specialty MSO, Inc. v. Nolan***, 737 A.2d 295, 299 (Pa. Super. 1999)). This reasoning is instructive currently.

Although too many factors in market fluctuation handicapped the Defendants in proving actual damages, the testimony fairly established that Bast's violation of the no-competition clause directly correlated with a decreased market activity for Defendants. The inability to itemize such loss through a causal connection between the breach and the damage is obvious in the trial testimony. Nevertheless, the nature of the impending loss of business opportunity and market advantage resulting from Bast establishing a competing business within a limited market area is self-evident by the parties' inclusion of the no-competition clause as a critical term of the transaction. As such, the loss of market advantage due to Bast's breach is sufficient to establish this prerequisite.

The final prerequisite is a showing that greater injury will result if the Court does not grant the injunction than if it does. This requirement was satisfied as well. As previously discussed, the Defendants established the loss of market advantage. Bast on the other hand has

failed to demonstrate any substantial harm which would result from the issuance of an injunction. The ten mile radius established by the no-competition clause does not span a great geographic area precluding Bast from otherwise operating a beer distributorship. There is no indication that the Hanover area has any unique qualities which make it especially profitable or having any significant relationship to Bast. It is unfathomable to this Court how Bast is harmed by requiring her to honor the terms an agreement for which she received significant consideration. Thus, this prerequisite has also been established.

The next challenge raised by Bast challenges the portion of the Court's Order which required her to comply with the terms of her agreement for ten years from the date of the Order granting relief. Bast, however, offers no support for her position. Indeed, neither Plaintiff nor Defendant devoted any effort to this claim during post sentence proceedings. As such, the claim is waived on appeal. **Pa. R. A. P. 302(a).**

Nevertheless, Pennsylvania courts have recognized that an injunction is a court order capable of prohibiting or commanding virtually any type of action. ***Big Bass Lake Cmty. Ass'n***., 950 A.2d at 1144. The power to grant or refuse an injunction "rests in the sound discretion of the court under the circumstances and facts of the particular case." ***Rick v. Cramp***, 53 A.2d 84, 88 (Pa. 1947). Moreover, prior decisions of our appellate courts support the fair modification of restrictive covenants. ***Barb-Lee Mobile Frame Co. v. Hoot***, 206 A.2d 59, 61 (Pa. 1965).

Instantly, the parties consummated settlement on the sale of the business on July 22, 2008. Less than four years later, she entered into a partnership and purchased a liquor license to directly compete with Defendants. Since that time, the partnership has continuously operated a distribution business contrary to the terms of the no-competition clause. This Court's extension of the no-competition clause from the date of judgment essentially bound Bast to the terms of her original agreement.

In their Statement of Matters Complained of on Appeal, Defendants essentially raise three issues:

1. Trial court error in dismissing Defendants' claim for economic damages;
2. Trial court error in failing to enforce restrictive covenant against Plaintiffs, William Prin and Michelle Prin; and
3. Trial court error in failing to award counsel fees in the amount requested by Defendants.

As the issue of attorney fees is raised by both parties, that issue will be more thoroughly discussed later in this Opinion. Before doing so, however, the other issues raised by Defendants will be briefly discussed.

Defendants initially challenge this Court's failure to award any economic damages as a result of the breach of the no-competition clause. In addressing this issue, it is noteworthy that the Counterclaim filed by Defendants was one for injunctive relief. As discussed previously, a prerequisite to the grant of injunctive relief is the establishment of a need to avoid an injury which cannot be compensated in damages. ***Big Bass Lake Cmty. Ass'n. v. Warren***, supra. Indeed, Defendants' Counterclaim generally alleges, without any itemization of economic damages, that an adequate remedy at law for damages does not exist. Trial testimony supported this conclusion. Although Defendants made a noble effort at proving actual damages, the testimony consisted of anecdotal information of ebbs and flows in the marketplace without any causal connection to the contractual term breached. At best, the limited testimony on the issue of damages was speculative based on unestablished factual assumptions. There was absolutely no testimony as to the cause, or lack of cause, for the decreased sales other than the testimony that Beer Express opened in December of 2012. During this time period, Defendants claimed to have lost approximately $74,000 in lost profit yet tax returns filed by the business for the years 2009 and 2010 also showed losses. The same tax returns showed a profit of approximately $23,000 in 2011, and a profit of approximately $28,000 in 2012.

"It is well-established that three elements are necessary to plead a cause of action for a breach of contract: (1) the existence of a contract, including its essential terms; (2) a breach of the contract; and (3) resultant damages. ***Meyer, Darragh v. Malone Middleman, P.C.,*** 137

A.3d 1247, 1258 (Pa. 2016). It is axiomatic therefore that the plaintiff in an action for breach of contract has the burden of proving damages resulting from the breach to a reasonable certainty. ***Helpin v. Trustees of Univ. of Pennsylvania***, 10 A.3d 267, 270 (Pa. 2010). Therefore, "[a]s a general rule, damages are not recoverable if they are too speculative, vague or contingent and are not recoverable for loss beyond an amount that the evidence permits to be established with reasonable certainty." ***Spang & Co. v. U.S. Steel Corp.***, 545 A.2d 861, 866 (Pa. 1988).

> Damages for lost profits, like other contract damages, may not be awarded when the evidence leaves the trier of fact without any guideposts except his or her own speculation. Sufficient evidence must be introduced to permit a reasonably certain estimate of the amount of anticipated profits lost due to the breach.

Merion Spring Co. v. Muelles Hnos. Garcia Torres, S.A., 462 A.2d 686, 695 (Pa. Super. 1983).

Instantly, Defendants' sole witness in regard to damages was the Defendant himself. He calculated his loss by claiming a decrease in sales for a twelve month period around the approximate time that Bast opened Beer Express: September 2012 through August 2013. However, the record is absolutely void of any discussion of any causal relationship between the opening of Beer Express and Defendants' claimed loss other than proximity of time during which Beer Express opened in December 2012. The evidence lacked any parameters or discussion of market conditions permitting the fact-finder to draw some nexus. Defendant failed to produce sales records for his earlier years in business in order to assist the fact-finder in identifying a pattern in market fluctuations. Interestingly, Defendant did not introduce sales records for the two years subsequent to the initial twelve month period even though, presumably, the decreased sales should have continued over that period of time as Beer Express remained in business. Indeed, the testimony reflected a contrary result as Thrifty's business increased subsequent to August 2013 despite Beer Express remaining in business as a competitor. As mentioned, the limited snapshot of information presented by Defendant is curious in light of his testimony that his tax returns for 2008 through 2010 claimed losses with profits being claimed in 2011 and increasing

in 2012; the year Beer Express opened. Absent expert testimony or some other means to place Defendant's testimony in context, this Court rejected it as speculative and lacking any credible means to determine causation. As the fact-finder is free to accept or reject all, part, or none of the testimony of any witness, Defendants' challenge on this basis lacks merit. ***Haan v. Wells***, 103 A.3d 60, 70 (Pa. Super. 2014).

Defendants next challenge this Court's entry of judgment on the claim for injunctive relief in favor of Michelle Prin and William Prin individually and Joanne Bast Partners, LLC. Essentially, Defendants disagree with the Court's finding that Defendants failed to prove any basis for relief.

In discussing this issue, it is necessary to first examine the cause of action filed by Defendants. In their Counterclaim, the sole claim raised by Defendants was one for injunctive relief enforcing the terms of the purchase agreement. It is uncontradicted, however, that neither Michelle Prin nor William Prin individually were signatories to the agreement sought to be enforced. The sole signatory to the purchase agreement in addition to Bast is William Prin's former wife, Patricia Prin. Neither Michelle Prin nor Patricia Prin are related by blood or marriage. It is similarly uncontested that William Prin has no relationship to Partnership other than being married to Michelle Prin. Nevertheless, at trial, Defendants attempted to bring Michelle Prin and William Prin within the sphere of the injunction by claiming some sort of conspiracy. As proof, it was claimed, on one occasion, Michelle and William Prin attended a meeting with the parties and, on other occasions, William Prin was active in discussions concerning the property transfer.

Initially, I note that had Defendants desired William and Michelle Prin be prohibited from conducting competing beer distributorships, they could have easily done so through the purchase documents. Apparently, this negotiation was never undertaken nor did Michelle or William Prin relinquish any commercial rights in exchange for consideration. The absence of William and Michelle Prin as signatories to the no-competition provisions is noteworthy as trial evidence established Defendants were aware of their relationship to the Thrifty stockholders and involved in sale negotiations at the time the purchase agreement was signed.

Moreover, Defendants' claim of civil conspiracy was not only factually unproven but is also legally untenable. In order to recover under a theory of civil conspiracy, a party must prove "that two or more persons combined or agreed with intent to do an unlawful act or to do an otherwise lawful act by unlawful means." ***Thompson Coal Co. v. Pike Coal Co.***, 412 A.2d 466, 472 (Pa. 1979). Additionally, proof of malice is essential to establish a conspiracy. ***Id.***

There is a complete paucity of evidence establishing either William Prin or Michelle Prin committing an unlawful act. Additionally, there is an absence of any evidence of a lawful act being accomplished by an unlawful means. The relationship between William Prin and Patricia Prin was known to all at the time of entry into the purchase agreement. All parties were aware that William and Patricia Prin were divorced and there was no secret as to his interest in Thrifty through a marriage settlement agreement which entitled him to proceeds from the sale of the business. Evidence at trial reflects this information was not withheld from the parties but rather brought to their attention as he attempted to protect his financial interest in the proceeds of the sale. Even assuming at the time the sale occurred that he or his wife Michelle intended to participate in a competing business, he had no duty to disclose the same as neither he nor Michelle Prin were requested to participate in a no-competition clause nor offered consideration for doing so. Defendants' failure to consider all business ramifications before purchasing the distributorship does not equate to civil conspiracy. The bottom line is Defendants simply failed to carry their burden of proof justifying relief.

The final issue raised by all parties relates to the assessment of attorney fees. In granting injunctive relief against Joanne Bast solely, attorney fees were awarded against her in favor of Defendants in an amount of $16,853.90. In reaching the amount of attorney fees, the Court took into account that the litigation was initiated by four separate Plaintiffs as a cause of action for declaratory relief. Thereafter, Defendants counterclaimed against the four original Plaintiffs seeking injunctive relief. Also considered was the total amount of legal fees which, after taking into account Bast's objections as to reasonableness and relationship to the litigation, was calculated at

$26,966.24. Half of that amount was attributed to Defendants' defense of the litigation. The Court concluded that fees incurred by Defendants related to defense of the unsuccessful litigation would have been incurred regardless of whether the claim was brought by one plaintiff or four plaintiffs. Accordingly, half of the total legal fees was assigned against Bast in the amount of $13,483.12. Thereafter, the remaining half of the legal fees incurred by Defendants was attributed to the cost of litigating Defendants' Counterclaim. As Defendants were only successful on the Counterclaim against one of the original Plaintiffs, Joanne Bast, the amount assessed to the Counterclaim was divided by the number of parties sued ($13,483.12 divided by 4 equals $3,370.78). As Defendants' Counterclaim was only successful against one party, one-quarter of the total fees related to the Counterclaim was assessed against the sole responsible Counterclaim Defendant. This amount was added to the one-half of legal fees incurred to defend the action for legal fees totaling $16,853.90 ($13,483.12 plus $3,370.78).

In considering the assessment of attorney fees, the Court took into account the reasoning of the Third Circuit applying Pennsylvania law in ***PPG Indus., Inc. v. Zurawin***, 52 F. App'x 570 (3d Cir. 2002). In ***PPG***, the Court applied a common sense comparison between relief sought in various causes of action against numerous parties and the relief actually obtained. ***Id.*** Applying that standard instantly, this Court found in favor of Bob's Beer and Soda, Inc. in their defense of the action brought by Joanne Bast seeking declaratory relief. Additionally, although compensatory damages were not awarded, the Court found in favor of Counterclaim Plaintiffs, Bob's Beer and Robert Shaffer, and against Counterclaim Defendant, Joanne Bast, on the claim for injunctive relief thereby resulting in Counterclaim Plaintiffs being the prevailing party. It is the undersigned's belief that this common sense and reasonable approach to the various claims against several parties which were successful for some and unsuccessful for others.

For the foregoing reasons, it is respectfully requested that this Court's 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 of or 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 JUDITH A HONEYCUTT, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Barbara J Ogburn, 20 W. Locust Lane, New Oxford, PA 17350

ESTATE OF LYLE M. KENNEY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Joanne Tipton a/k/a Joann Tipton, P.O. Box 423, Bendersville, PA 17306

Attorney: Robert L. McQuaide, Esq., Suite 204, 18 Carlisle Street, Gettysburg, PA 17325

ESTATE OF ALMA M. STRALEY, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executor: Glenn W. Phillips, c/o Stonesifer and Kelley a division of Barley Snyder, 14 Center Square, Hanover, Pennsylvania 17331

Attorney: Stonesifer and Kelley a division of Barley Snyder, 14 Center Square, Hanover, Pennsylvania 17331

SECOND PUBLICATION

ESTATE OF ROBERT M. BOCH, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executrix: Jennifer L. Bogdany, 315 Sechrist Flat Road, Felton, PA 17322

ESTATE OF LINDA S. BONILLA, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Co-Executors: Teresa Carson, P.O. Box 734, Charles Town, WV 25414; Melody A. Heller, P.O. Box 267, Summerdale, PA 17093

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

ESTATE OF SOPHEY M. CONSTANTINO, a/k/a SOPHEY MARIE CONSTANTINO, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executrix: Laura C. Wailes, c/o Bruce C. Bankenstein, Esq., Manifold & Bankenstein, 48 South Duke Street, York, PA 17401-1454

Attorney: Bruce C. Bankenstein, Esq., Manifold & Bankenstein, 48 South Duke Street, York, PA 17401-1454

ESTATE OF BETTY VIRGINIA LITTLE., DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Lester Crist Kellison, III, 160 Clapsaddle Road, Gettysburg, PA 17325

Attorney: Jeffery M. Cook, Esq., 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF DOYLE A. SHANK, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Jeffrey Brent Shank, 155 Margate Road, York, PA 17408

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

ESTATE OF GERTRUDE M. SIMMONS, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executor: Edward F. Stephens, 614 East Middle Street, Hanover, PA 17331

ESTATE OF JEAN MARIE SMALLWOOD, DEC'D

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

Executor: Alan E. Smallwood, c/o Matthew R. Battersby, Esq., Battersby Law Office, P.O. Box 215, Fairfield, PA 17320

Attorney: Matthew R. Battersby, Esq., Battersby Law Office, P.O. Box 215, Fairfield, PA 17320

ESTATE OF SHERRIL A. SMITH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Carla A. Brenneman, c/o John D. Miller, Jr., Esq., MPL Law Firm, LLP, 137 East Philadelphia Street, York, PA 17401-2424

Attorney: John D. Miller, Jr., Esq., MPL Law Firm, LLP, 137 East Philadelphia Street, York, PA 17401-2424

THIRD PUBLICATION

ESTATE OF MICHAEL L. ALDINGER, DEC'D

Late of Redding Township, Adams County, Pennsylvania

Executrix: Cynthia J. Aldinger, 28 Bragg Drive, East Berlin, PA 17316

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

ESTATE OF JOSEPH H. DERSE, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Claudia Derse-Anthony, 2644 Marston Road, New Windsor, MD 21776

ESTATE OF DOROTHY B. ERNST, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Kay E. Hollabaugh, 481 Carlisle Road, Biglerville, PA 17307

Attorney: Robert L. McQuaide, Esq., Suite 204, 18 Carlisle Street, Gettysburg, PA 17325

ESTATE OF JEWELL O. GOOD a/k/a JEWELL OUTLAW GOOD, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Janet A. Good, c/o Eveler & DeArment LLP, 2997 Cape Horn Rd., Suite A-6, Red Lion, PA 17356

Attorney: Eveler & DeArment LLP, 2997 Cape Horn Rd., Suite A-6, Red Lion, PA 17356

ESTATE OF EDGAR S. KUHN, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Mark Joseph Kuhn, c/o Michael A. Scherer, Esq., Barie Scherer LLC, 19 West South Street, Carlisle, PA 17013

Attorney: Michael A. Scherer, Esq., Barie Scherer LLC, 19 West South Street, Carlisle, PA 17013