

FAYETTE LEGAL JOURNAL

VOL. 85

OCTOBER 1, 2022

NO. 40



FAYETTE LEGAL JOURNAL

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

Co-Editors: Garnet L. Gordon and Melinda Deal Dellarose

Cover Design by Marvin R. Mayle, 207 Lick Hollow Road, Hopwood, PA

FAYETTE COUNTY BAR ASSOCIATION Board of Directors

President: Mark D. Brooks

President Elect: John A. Kopas, III

Vice-President: Gretchen A. Mundorff

Secretary: Anne N. John

Treasurer: Louise D. Monaghan

Past President: Charles O. Zebley, Jr.

Executive Director: Garnet L. Gordon

Directors

Jennifer M. Casini

Rachel A. Clark

Jeremy J. Davis

Robert A. Gordon

Sheryl R. Heid

James E. Higinbotham, Jr.

Margaret Zylka House

Douglas S. Sholtis

ETHICS HOTLINE

The Ethics Hotline provides free advisory opinions to PBA members based upon review of a member's prospective conduct by members of the PBA Committee on Legal Ethics and Professional Responsibility. The committee responds to requests regarding the impact of the provisions of the Rules of Professional Conduct or the Code of Judicial Conduct upon the inquiring member's proposed activity. All inquiries are confidential.

Call (800) 932-0311, ext. 2214.

LAWYERS CONCERNED FOR LAWYERS

Our assistance is confidential,
non-judgmental, safe, and effective

To talk to a lawyer today, call:

1-888-999-1941

717-541-4360

ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

DEBORAH ANN CHURILLA, late of North Union Township, Fayette County, PA ⁽³⁾

Personal Representative:
William Glenn Churilla
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Jeremy J. Davis

WILLIAM SAYRE a/k/a JOHN SAYRE, JR., a/k/a JOHN W. SAYRE, JR., late of Perryopolis Borough, Fayette County, PA ⁽³⁾

Co-Executrix: Amy Margaret Stillwagon and Karen Ohler
240 Porter Road
Rostraver Township, PA 15012
c/o 823 Broad Avenue
Belle Vernon, PA 15012
Attorney: Mark E. Ramsier

Second Publication

ADAM S. DERR, late of Dawson, Fayette County, PA ⁽²⁾

Executor: Adam S. Derr, Jr.
609 Dawson Scottdale Road
Dawson, PA 15428
c/o Brenlove & Fuller, LLC
401 Washington Avenue
Bridgeville, PA 15017
Attorney: Todd A. Fuller

JAMES E. DILLON, late of Wharton Township, Fayette County, PA ⁽²⁾

Executrix: Michelle M. Dillon
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

FRANCES A. DUPONT, late of Redstone Township, Fayette County, PA ⁽²⁾

Personal Representative:
Charles E. Dupont, III
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15041
Attorney: Jeremy J. Davis

LAWRENCE E. FILIAGGI, late of Menallen Township, Fayette County, PA ⁽²⁾

Executor: Richard P. Filiaggi
c/o Radcliffe Law, LLC
648 Morgantown Road, Suite B
Uniontown, PA 15401
Attorney: William M. Radcliffe

JOSEPH F. MARUSZEWSKI, late of Menallen Township, Fayette County, PA ⁽²⁾

Executrix: Bonnie J. Maruszewski
c/o Radcliffe Law, LLC
648 Morgantown Road, Suite B
Uniontown, PA 15401
Attorney: Robert R. Harper, Jr.

MARGARET RUTH MCCANN, late of Redstone Township, Fayette County, PA ⁽²⁾

Personal Representative: Paul McCann
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

JOHN C. MCGILL, a/k/a JOHN MCGILL, a/k/a JOHN CHARLES MCGILL, late of Connellsville, Fayette County, PA ⁽²⁾

Administratrix: Bobbie Lynn Siranni
c/o 9 Court Street
Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

JERRY TYRONE MCKINNEY, late of
German Township, Fayette County, PA (2)
Administrator: Benjamin F. Goodwin
108 North Beeson Boulevard, Suite 400
Uniontown, PA 15401

First Publication

ISABELLE A. BATEMAN, late of Jefferson
Township, Fayette County, PA (1)
Personal Representative:
Lynnanne Bateman
165 Hetherington Road
Grindstone, PA 15442
c/o P.O. Box 488
California, PA 15419
Attorney: Lisa J. Buday

MADelyn L. CINDRIC, late of South Union
Township, Fayette County, PA (1)
Executor: John E. Cindric
c/o Davis and Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

ADAM S. DERR, a/k/a ADAM S. DERR, SR.,
late of Dawson, Fayette County, PA (1)
Executor: Adam S. Derr, Jr.
609 Dawson Scottdale Road
Dawson, PA 15428
c/o Brenlove & Fuller, LLC
401 Washington Avenue
Bridgeville, PA 15017
Attorney: Todd A. Fuller

PAUL J. GRATA, late of Washington
Township, Fayette County, PA (1)
Executrix: Anne Sweany
237 Marine Avenue
Belle Vernon, PA 15012
c/o 823 Broad Avenue
Belle Vernon, PA 15012
Attorney: Mark E. Ramsier

THELMA CHARLOTTE HENSON, late of
Georges Township, Fayette County, PA (1)
Personal Representative:
Barry Reed Henson
c/o Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Robert A. Gordon

VELMA PAULL, a/k/a VELMA J. PAULL,
late of Menallen Township, Fayette County, PA
Personal Representative:
Kathleen M. Serra
c/o Watson Mundorff, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Timothy J. Witt

PATRICIA A. TRAMBKO, late of North
Union Township, Fayette County, PA (1)
Personal Representative: Christina Smiell
c/o George & George
92 East Main Street
Uniontown, PA 15401
Attorney: Joseph M. George

**MARY ELIZABETH ZUZAK, a/k/a MARY
E. ZUZAK**, late of Menallen Township, Fayette
County, PA (1)
Executrix: Mary Ann Hovanic
c/o Adams Law Offices, PC
55 East Church Street, Suite 101
Uniontown, PA 15401
Attorney: Jason Adams

LEGAL NOTICES

Reverse Mortgage Funding, LLC PLAINTIFF
VS. Brenda Sinsley, known Heir of Anna Marie Farquhar, deceased and George Farquhar, Jr., known Heir of Anna Marie Farquhar, deceased and Unknown Heirs, Successors, Assigns and All Persons, Firms or Associations Claiming Right, Title or Interest from or under Anna Marie Farquhar, deceased DEFENDANTS
COURT OF COMMON PLEAS CIVIL DIVISION FAYETTE COUNTY NO: 2022-00560 NOTICE OF SHERIFF'S SALE OF REAL PROPERTY TO: Unknown Heirs, Successors, Assigns and All Persons, Firms or Associations Claiming Right, Title or Interest from or under Anna Marie Farquhar, deceased 476 Cook Street Fayette City, PA 15438 Your house (real estate) at: 476 Cook Street, Fayette City, PA 15438 Parcel ID: 1203019601 is scheduled to be sold at Sheriff's Sale at <https://fayette.pa.realforeclose.com> on January 19, 2023 at 2:00PM to enforce the court judgment of \$65,470.89 obtained by Reverse Mortgage Funding, LLC against you. NOTICE OF OWNER'S RIGHTS YOU MAY BE ABLE TO PREVENT THIS SHERIFF'S SALE To prevent this Sheriff's Sale you must take immediate action: The sale will be cancelled if you pay back to Reverse Mortgage Funding, LLC the amount of the judgment plus costs or the back payments, late charges, costs, and reasonable attorneys fees due. To find out how much you must pay, you may call: LOGS Legal Group, LLC. (610) 278-6800. PLEASE NOTE a Schedule of Distribution will be filed by the Sheriff on a date specified by the Sheriff not later than thirty (30) days after sale. Distribution will be made in accordance with the schedule unless exceptions are filed thereto within 20 days after the filing of the schedule.

WARMAN ABSTRACT & RESEARCH LLC

JOHN F. WARMAN

518 Madison Drive

Smithfield, PA 15478

724-322-6529

johnfranciswarman@gmail.com

COMMERCIAL/RESIDENTIAL/CURRENT OWNER/MINERAL TITLE

A DECADE OF EXPERIENCE E&O INSURED WILL TRAVEL ACCEPTING NEW CLIENTS



STABILITY

Janney has more than 185 years of experience and traces its roots back to 1832.

- Privately held by our parent company, The Penn Mutual Life Insurance Company, for 35+ years
- 850+ Financial Advisors
- \$135.1 billion assets under advisement
- \$160.1 million average assets under advisement per Financial Advisor
- 400,000 individual and 160,000 household accounts



Fayette Legacy Partners of Janney Montgomery Scott LLC

We are a multi-disciplined team, comprised of members with diverse, knowledgeable and extensive areas of experience. Our clients are long-term investors who value the breadth of our investment experience and unwavering focus on goal-oriented results.

43 S. Beeson Boulevard, Uniontown, PA 15401
www.FayetteLegacy-Janney.com | 724.425.1018

WWW.JANNEY.COM • © JANNEY MONTGOMERY SCOTT LLC
MEMBER: NYSE, FINRA, SIPC • REF. 787801-0822



JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY
CIVIL DIVISION

JOHN J. TABAJ and RUTH A. TABAJ,	:	
Husband and Wife,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
NEISWONGER CONSTRUCTION, INC.,	:	
A Pennsylvania Corporation.	:	No. 290 of 2013 G.D.
Defendant.	:	Honorable President Judge John F. Wagner, Jr.

OPINION AND ORDER

Wagner, P.J.

September 12, 2022

Before the Court is the Defendant's Motion for Summary Judgment in which the Defendant asserts that the Plaintiffs failed to comply with Pa. R.C.P. 1035.3, that the claim for waste is precluded as a matter of law pursuant to the gist of the action doctrine, and the breach of contract claim fails as a matter of law as the Plaintiffs failed to avail themselves of their statutory remedy.

FACTUAL BACKGROUND

On March 1, 2006, the Plaintiffs entered into an agreement with Purco Coal, Inc., by which the Plaintiffs agreed to lease any and all surface and coal mining rights in their 155 acres of property located in Dunbar Township to Purco. The term of the Agreement was for a three year period with a year-to-year extension of the Agreement so long as the coal was being continuously mined. On January 13, 2009, Purco assigned the Agreement to Defendant, Neiswonger. Prior to mining the property the Defendant was required to complete a permit application and obtain a permit from the Department of Environmental Protection (hereinafter "DEP") prior to commencing their mining operations on the property. The lease agreement required that the Defendant was required to reclaim and restore the surface of the property as required by state, federal or local law or agency: including restoring the original contour of the property, removing debris, replanting ground cover and constructing water drainage ditches. In early 2010, the Defendant began mined the property and continuously mined it until the end of 2012. On October 30, 2013, the Defendant terminated the Agreement by executing a surrender of the lease.

Plaintiffs allege that the Defendant failed to properly back-fill the property, failed to properly regrade the property to its original contours, failed to preserve and restore topsoil, altered the topography of the land, failed to install drainage controls, removed timber, damaged pasture land, and altered the condition of the soil so that it cannot be used to harvest crops previously grown on the property.

DISCUSSION

Initially this case was presided over by Senior Judge Gerald R. Solomon. The case eventually proceeded to a non-jury trial. However, at the time of trial, the Defendant presented a Motion In Limine to preclude the breach of contract count based on an alleged settlement agreement between the Plaintiffs and Defendant in which the parties agreed that the claim that the Defendant breached the contractual provision of the lease agreement would be withdrawn. As Plaintiff coun-

sel who had negotiated this agreement was no longer with the firm representing the Plaintiffs, the trial was postponed and a hearing was scheduled on the Motion In Limine to take the testimony of Plaintiffs' prior counsel. At the hearing, the Defendant submitted correspondence between the parties related to the development of the agreement that the Defendant asserts culminated in the execution of a Surrender of the Lease and the amendment of the Complaint with the withdrawal of the breach of contract claim from the original Complaint.

The issues raised at that time are the ones before the Court in the current motion. On December 31, 2020, Senior Judge Solomon denied the Defendant's Motion for Summary Judgment and the Motion In Limine to preclude the breach of contract claim. When Senior Judge Solomon retired from the bench, the case was then transferred to this Court.

At the time of argument on the motions and prior to the view of the property, the parties admitted that the issues raised in the Motion for Summary Judgment were previously raised and decided by Senior Judge Solomon. At that time, this Court raised the coordinate jurisdiction rule. Under the coordinate jurisdiction rule, judges of coordinate jurisdiction sitting in the same case should not overrule each others' decisions. *Rellick-Smith v. Rellick*, 261 A.3d 506 (Pa. 2021).

Beyond promoting the goal of judicial economy, the coordinate jurisdiction rule serves to protect the settled expectations of the parties; to insure uniformity of decisions; to maintain consistency during the course of a single case; to effectuate the proper and streamlined administration of justice; and to bring the litigation to an end. *Ryan v. Berman*, 813 A.2d 792 (Pa.Super. 2002).

Departure from the coordinate jurisdiction rule is allowed only in exceptional circumstances such as where there has been an intervening change in the controlling law; a substantial change in the facts or evidence giving rise to the dispute in the matter, or where the prior holding was clearly erroneous and would create a manifest injustice if followed. *Id.*

As the previous ruling by Senior Judge Solomon was not erroneous, and, as there was no intervening change in the controlling law or substantive change in the facts or evidence, the Court therefore declines to overrule the prior ruling and issues the following Order:

ORDER

AND NOW, this 12th day of September 2022, upon consideration of the issues raised in the Motion for Summary Judgment, the prior ruling in this case, and for the reasons stated, it is hereby ORDERED and DECREED that the Motion for Summary Judgment is hereby DENIED.

BY THE COURT:
WAGNER, P.J.

ATTEST:
Prothonotary

BENCH BAR CONFERENCE

Fayette County Bar Association Bench Bar Conference
Wednesday, October 12, 2022
The Historic Summit Inn

AGENDA

- 8:30 **Meet the Sponsors & Breakfast Buffet**
- 9:00 **Getting Paid – Financial Management & Marketing Tips**
Ellen Freedman, CLM - Law Practice Management Coordinator
1.5 Ethics and 0.5 Substantive CLE Credits
- 11:00 **Break**
- 11:15 **Practice and Procedure Panel Discussion with the Judges of the Fayette County Court of Common Pleas**
President Judge John F. Wagner, Jr., Judge Steve P. Leskinen, Judge Nancy D. Vernon, Judge Linda R. Cordaro, and Judge Joseph M. George, Jr.
1.0 Substantive CLE Credit
- 12:15 **Remarks by Special Guests**
Justice Debra Todd, Pennsylvania Supreme Court
Pennsylvania Bar Association President Jay N. Silberblatt
- 12:30 **Lunch Buffet**

BENCH BAR CONFERENCE

Fayette County Bar Association Bench Bar Conference
Wednesday, October 12, 2022
The Historic Summit Inn

Panel Discussion/Questions & Answers

The Judges of the Fayette Court of Common Pleas are accepting questions for the panel Q&A discussion. Questions may cover trial tactics, local practice and procedure, or general legal questions, but should not inquire about cases pending or adjudicated before the Court. Questions are due by Wednesday, October 5th. To submit a question for consideration, please follow the link in your email invitation or email to cindy@fcbar.org.

Fees to Attend

FCBA members - \$75
Non-members of the FCBA - \$125
Attorneys admitted to practice in Pennsylvania
after January 1, 2017 - \$50
All fees to be paid at the door.

RSVP due Wednesday, October 5th to
Cindy 724-437-7994 or cindy@fcbar.org

MANY THANKS TO OUR SPONSORS:



UNITY PRINTING

STATE FARM® INSURANCE AGENT

Lauren Yohman



*Quality... Experience... Results...
It's what your clients deserve.*

Medical Malpractice • Auto Accidents • Personal Injury



GISMONDI

& ASSOCIATES

412-281-2200

www.gislaw.com

700 Grant Bldg., 310 Grant St., Pgh., PA 15219