

# Adams County Legal Journal


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ORNDORFF AND MILLER & ASSOCIATES  
REAL ESTATE, LLC



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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, April 21, 2017 at 8:30 am.

**SCHULTZ**—Orphans' Court Action Number OC-38-2017. The First and Final Account of Leigh A. Braden, Executrix of the Estate of Richard E. Schultz, Deceased, late of Oxford Township, Adams County, Pennsylvania.

Kelly A. Lawver  
Clerk of Courts

4/7 & 4/14

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NOTICE

NOTICE IS HEREBY GIVEN THAT Paul B. Royer, Esq., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 19th day of May, 2017, and that he intends to practice law in the Law Office of Mooney & Associates, 18 E. Middle Street, Gettysburg, Adams County, Pennsylvania 17325.

4/14, 4/21, 4/28

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M. CHRIS TAYLOR AND ROBIN TAYLOR V. DOUGLAS  
ORNDORFF AND MILLER & ASSOCIATES  
REAL ESTATE, LLC

1. In considering the propriety of a demurrer, the question presented is whether, on the facts alleged in the complaint, the law provides with certainty that no recovery is possible.

2. The plain language of the subsection of the UTCPL upon which Taylor bases the cause of action requires that Taylor, in order to succeed, establish a misrepresentation on the part of Miller in regard to the quality of the home which they subsequently purchased.

3. More specifically, the Seller's Property Disclosure Statement, which is exclusively relied upon to establish the element of misrepresentation, is neither signed by Miller nor references Miller as the source of the representations contained therein. To the contrary, the document specifically provides that it is not a warranty or representation by any listing real estate broker, any selling real estate broker, or their licensees.

4. Of equal importance is the clear language of the RESDL which provides that a real estate agent of a seller shall not be liable for any violation of the RESDL unless the agent had actual knowledge of a material defect not disclosed or of a misrepresentation made by seller relating to a material defect.

5. Negligent misrepresentation requires proof of (1) a misrepresentation of a material fact; (2) made under circumstances in which the misrepresenter ought to have known its falsity; (3) with an intent to induce another to act on it; and (4) which results in injury to a party acting in justifiable reliance on the misrepresentation.

6. Moreover, even should the disclosure statement somehow be linked to a representation by Miller, Taylor has failed to allege any circumstance that Miller knew, or should have known, that the representations made therein were false. Just as critically, Taylor fails to identify any duty owed to them by Miller.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA, CIVIL 16-S-843, M. CHRIS TAYLOR AND  
ROBIN TAYLOR V. DOUGLAS ORNDORFF AND MILLER &  
ASSOCIATES REAL ESTATE, LLC.

John J. Mooney, III, Esq., Attorney for Plaintiffs  
Adam C. Zei, Esq., Attorney for Defendant Orndorff  
Christopher J. Conrad, Esq., Attorney for Defendant Miller  
George, J., March 30, 2017

## OPINION

In this litigation, Plaintiffs, M. Chris Taylor and Robin Taylor (collectively “Taylor”), seek damages for alleged undisclosed material defects in the home which they purchased from Defendant, Douglas Orndorff, and listed for sale through Defendant, Miller & Associates Real Estate, LLC (“Miller”). Taylor seeks recovery against Miller under a general theory of negligence and also pursuant to statutory provisions of Pennsylvania’s Unfair Trade Practice and Consumer Protection Law (“UTPCPL”), 73 P.S. § 201-1 et seq., and Real Estate Sellers Disclosure Law (“RESDL”), 68 Pa. C.S. § 7301 et seq. Currently before the Court are Miller’s Preliminary Objections in the nature of a demurrer to each of the separate theories raised in Taylor’s Complaint.

In considering the propriety of a demurrer, the question presented is whether, on the facts alleged in the complaint, the law provides with certainty that no recovery is possible. **Commonwealth v. Locust Twp.**, 968 A.2d 1263, 1269 (Pa. 2009). In deciding the demurrer, a court must consider every well-pleaded material fact in the complaint and all inferences reasonably deducible from those facts as being true. **Id.** A preliminary objection in the nature of a demurrer should only be sustained where it is clear that the pleadings are insufficient to establish a plaintiff’s right to recovery. **Altoona Housing Authority v. City of Altoona**, 785 A.2d 1047, 1050 (Pa. Cmwlth. 2001). With this guidance in mind, the viability of each of Taylor’s separate causes of action will be considered.

Taylor first seeks recovery from Miller under the UTPCPL claiming Miller represented the property to be “of a particular standard, quality, or grade,” which the property did not meet. See 73 P.S. § 201-2(4)(vii).<sup>1</sup> As support of this claim, Taylor identifies representations made in the written standardized “Seller’s Property Disclosure Statement.” The Complaint references no other misrepresentations allegedly made by Miller.

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<sup>1</sup> In the Complaint, Taylor also cites to 73 P.S. § 201-2(4)(v) which identifies as a violation of the UTPCPL a representation “that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have.” As the underlying factual basis for this theory is identical to the theory raised under subsection 201-2(4)(vii), the applicability of this subsection will not be separately discussed.

The plain language of the subsection of the UTPCPL upon which Taylor bases the cause of action requires that Taylor, in order to succeed, establish a misrepresentation on the part of Miller in regard to the quality of the home which they subsequently purchased. See 73 P.S. § 201-2(4)(vii). The weak link in Taylor's otherwise sound pleading is their failure to adequately allege a misrepresentation on the part of Miller. More specifically, the "Seller's Property Disclosure Statement" which is exclusively relied upon to establish the element of misrepresentation is neither signed by Miller nor references Miller as the source of the representations contained therein. To the contrary, the document specifically provides that it is not "a warranty or representation by any listing real estate broker, any selling real estate broker, or their licensees." The document later cautions in bold print that "SELLER ALONE IS RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION CONTAINED IN THIS [disclosure statement]." As the Complaint fails to identify any misrepresentation made by Miller, demurrer will be granted to this cause of action.

Similarly, Taylor's cause of action under the RESDL suffers from the same defect. In furtherance of this cause of action, Taylor relies exclusively on the "Seller's Property Disclosure Statement" which, on its face, fails to contain any disclosure on the part of Miller. Of equal importance is the clear language of the RESDL which provides that a real estate agent of a seller shall not be liable for any violation of the RESDL unless the agent had actual knowledge of a material defect not disclosed or of a misrepresentation made by seller relating to a material defect. 68 Pa. C.S.A. § 7310. A meticulous review of Taylor's Complaint fails to allege any actual knowledge of such a defect or misrepresentation on the part of Miller. Accordingly, demurrer to this cause of action will also be granted.

In their last claim against Miller, Taylor alleges negligent misrepresentation. Negligent misrepresentation requires proof of "(1) a misrepresentation of a material fact; (2) made under circumstances in which the misrepresenter ought to have known its falsity; (3) with an intent to induce another to act on it; and (4) which results in injury to a party acting in justifiable reliance on the misrepresentation." **Bortz v. Noon**, 729 A.2d 555, 561 (Pa. 1999). Additionally, consistent with any negligence action, there must be an existence of a duty owed by one party to another. **Id.**

Once again, in support of their theory, Taylor relies exclusively on the “Seller’s Property Disclosure Statement.” Once again, this cause of action fails for lack of an identified misrepresentation on the part of Miller. Moreover, even should the disclosure statement somehow be linked to a representation by Miller, Taylor has failed to allege any circumstance that Miller knew, or should have known, that the representations made therein were false. Just as critically, Taylor fails to identify any duty owed to them by Miller. To the contrary, the Agreement of Sale attached to the Complaint clearly identifies Miller as the seller’s agent and an unrelated realtor as buyer’s agent. As such, this cause of action suffers the fatal defects of failing to establish both a negligent act on the part of Miller and a duty on the part of Miller to Taylor. Accordingly, demurrer on this cause of action will also be granted.<sup>2</sup>

For the foregoing reasons, the attached Order is entered.

### ORDER

AND NOW, this 30th day of March, 2017, Defendant’s, Miller & Associates Real Estate, LLC, demurrers are granted in their entirety. As Plaintiffs have previously been provided opportunity to specifically allege claims against Miller and have failed to do so, further opportunity to amend will not be granted. Accordingly, the Adams County Prothonotary’s Office is directed to enter judgment in favor of Defendant, Miller & Associates Real Estate, LLC, and against Plaintiffs.

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<sup>2</sup> Taylor cited that the Supreme Court’s Opinion in **Bilt-Rite Contractors, Inc. v. The Architectural Studio**, 866 A.2d 270 (Pa. 2005), for the supposition that it is not necessary for them to establish a duty on the part of Miller. In **Bilt-Rite**, the Supreme Court adopted Section 552 of the Restatement (Second) of Torts holding that where information is negligently supplied by one in the business of supplying information, and where it is foreseeable that the information will be used and relied upon by third persons, even if the third party has no direct contractual relationship with the supplier of the information, liability may exist. **Id.** at 287. I am unwilling to extend **Bilt-Rite** to the current circumstances absent specific appellate direction as the representations referenced in the Complaint specifically disclaim reliance **and** the recipient of the representations has retained an independent agent to protect their interests.

## 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 M. BLANCHE, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Co-Executors: Clifford Blanche and Alan Blanche, c/o Suzanne H. Griest, Esq., 129 East Market Street, York, Pennsylvania 17401

Attorney: Suzanne H. Griest, Esq., 129 East Market Street, York, Pennsylvania 17401

## ESTATE OF JOAN M. CRUSHONG, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Charles A. Ginter, II, 1979 Hanover Road, Gettysburg, PA 17325; Gloria J. Davidson, 400 Cockeys Mill Road, Reisterstown, MD 21136

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

## ESTATE OF CHLOE K. CURRIE, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: ACNB Bank, Attn: Christine R. Settle, Trust Officer, P.O. Box 4566, Gettysburg, PA 17325

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

## ESTATE OF BARBARA A. HARTLEY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Susan E. McDannell, 2025 York Road, Gettysburg, PA 17325

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

## ESTATE OF STEPHEN W. KRICHTEN, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executrix: Alice K. Huff, 515 Cedar Ridge Road, New Oxford, PA 17350

Attorney: Phillips & Phillips, 101 West Middle Street, Gettysburg, PA 17325

## SECOND PUBLICATION

## ESTATE OF ELAINE L. BITTINGER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Monica Lavin, 306 Woods Road, Glenside, PA 19038

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF JAY P. BROWN, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Co-Executors: Daniel W. Brown, 205 Forest Knoll Court, Weaverville, NC 28787; Rebecca A. Brown, 54 Wabank, Millersville, PA 17551

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

## ESTATE OF HELEN R. CHUBB a/k/a HELEN RUTH CHUBB a/k/a HELEN CHUBB, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executor: Gary L. Landis, 960 Westminster Avenue, Hanover, PA 17331

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

## ESTATE OF JANET PAULINE FORD, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Patricia F. Smith and Clayton W. Ford Jr., 404 Monocacy Trail, Spring Grove, PA 17362

## ESTATE OF AGNES ROMAINE GLADFELTER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Co-Executors: David R. Gladfelter, 384 Honda Road, Littlestown, PA 17340; Alice F. Stauffer, 37 Radio Road, Hanover, PA 17331

Attorney: George W. Swartz, II, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

## ESTATE OF JAMES MICHAEL GROFT a/k/a JAMES M. GROFT a/k/a JIM GROFT, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Ms. Anne E. Groft, 151 Groft Drive, New Oxford, Pennsylvania 17350

Attorney: Scott J. Strausbaugh, Esq., Becker & Strausbaugh, P.C., 544 Carlisle Street, Hanover, PA 17331

## ESTATE OF TERENCE J. HAVEL, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Personal Representative: James T. Havel, 823 Troon Trail, Worthington, OH 43085

Attorney: G. Steven McKonly, Esq., 119 Baltimore Street, Hanover, PA 17331

## ESTATE OF SOPHIE E. JUPIN, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Administrator: Louis R. Jupin, 46 N. Allwood Drive, Hanover, PA 17331

Attorney: George W. Swartz, II, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

## ESTATE OF LUETTA S. KRESS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Donald G. Fuhrman, c/o Linda S. Siegle, Esq., Siegle Law, 1010 Eichelberger Street, Suite 3, Hanover, PA 17331

Attorney: Linda S. Siegle, Esq., Siegle Law, 1010 Eichelberger Street, Suite 3, Hanover, PA 17331

## ESTATE OF FRED M. WARREN a/k/a MYRLE F. WARREN, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Executrix: Joyce D. Warren, 745 Reservoir Road, Gardners, PA 17324

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

## ESTATE OF LEROY M. WETZEL, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administrators: Leroy M. Wetzel, Jr., 112 Fifth Street, Hanover, PA 17331; Jeannette Plank, 2495 Mummasburg Road, Gettysburg, PA 17325

Attorney: Phillips & Phillips, 101 West Middle Street, Gettysburg, PA 17325

**THIRD PUBLICATION****ESTATE OF MICHAEL G. BOSLETT,  
DEC'D**

Late of Mt. Joy Township, Adams  
County, Pennsylvania

Administrator: Betty J. Barger, c/o  
Craig A. Hatch, Esq., Halbruner,  
Hatch & Guise, LLP, 2109 Market  
Street, Camp Hill, PA 17011

Attorney: Craig A. Hatch, Esq.,  
Halbruner, Hatch & Guise, LLP, 2109  
Market Street, Camp Hill, PA 17011

**ESTATE OF OLIVETTE J. BUSBEY,  
DEC'D**

Late of the Borough of McSherrystown,  
Adams County, Pennsylvania

Executrix: Rebecca B. Mondorff, 395  
Beaver Creek Rd., Hanover, PA  
17331

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

**ESTATE OF EUGENE B. JOHNSON,  
SR., DEC'D**

Late of Quincy Township, Franklin  
County, Pennsylvania

Peggy Ann Herring, 1498 Biglerville  
Road, Gettysburg, PA 17325;  
Eugene B. Johnson, Jr., 135 Punch  
Road, Biglerville, PA 17307

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

**ESTATE OF MARY JOAN McHUGH,  
DEC'D**

Late of Conewago, Township, Adams  
County, Pennsylvania

Thoams W. Frederick, Jr. and Angela  
M. Kurtz c/o Gary J. Imblum, Esq.,  
Imblum Law Offices, PC, 4615 Derry  
Street, Harrisburg, PA 17111

Attorney: Gary J. Imblum, Esq.,  
Imblum Law Offices, PC, 4615 Derry  
Street, Harrisburg, PA 17111

**ESTATE OF BETTY D. MICHAEL, DEC'D**

Late of Straban Township, Adams  
County, Pennsylvania

Executrix: Brenda M. Herring, c/o  
Stonesifer and Kelley, P.C., 209  
Broadway, Hanover, Pennsylvania  
17331

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

**ESTATE OF MARY E. NOBLE, DEC'D**

Late of Oxford Township, Adams  
County, Pennsylvania

Executor: Lauren B. Brown, c/o  
Stonesifer and Kelley, P.C., 209  
Broadway, Hanover, Pennsylvania  
17331

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

**ESTATE OF BETTY L. WISEMAN, DEC'D**

Late of the Borough of Littlestown,  
Adams County, Pennsylvania

Executor: Jill A. Baird, 682 St. Johns  
Road, Littlestown, PA 17340; Judy  
K. Spielman, 5067 A Baltimore Pike,  
Littlestown, PA 17340

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