

# Adams County Legal Journal

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FICTITIOUS NAME NOTICE

NOTICE IS GIVEN that an Application for Registration of Fictitious Name was filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on June 15, 2012, pursuant to the Fictitious Name Act, setting forth that Cross Keys Fellowship, of 785 Berlin Road, New Oxford, PA 17350, is the only entity owning or interested in a business, the character of which is a community park, and that the name, style, and designation under which said business is and will be conducted is CROSS KEYS COMMUNITY PARK. The location where said business is and will be conducted is 785 Berlin Road, New Oxford, PA 17350.

Guthrie, Nonemaker, Yingst & Hart  
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FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, in compliance with the requirements of Section 311, of Act 1982 – 295 (54 Pa. C.S. 311), the undersigned entity(ies) announce their intention to file in the Office of the Secretary of the Commonwealth of Pennsylvania, on approximately June 28, 2012, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style, or designation of HENRY'S OUTFITTERS, with its principal place of business at 351 Crouse Road, Littlestown, PA 17340. The names and addresses of the persons owning or interested in said business are Arthur and Lori Stewart, residing at 351 Crouse Road, Littlestown, PA 17340. The character or nature of the business is marketing getaway travel packages.

Lori Stewart  
351 Crouse Road  
Littlestown, PA 17340  
717-357-3333

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INCORPORATION NOTICE

The incorporators of a nonprofit corporation named OUR FATHER'S HOUSE MINISTRY, INC., hereby give notice that Articles of Incorporation will be filed with the Department of State of the Commonwealth of Pennsylvania, under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, effective October 1, 1989, as amended. The purposes for which the corporation is to be organized are: to generally carry out humanitarian activities in the nation of Myanmar (Burma); to provide for the spiritual, physical, educational, and vocational needs of orphaned or homeless children in the nation of Myanmar (Burma); to establish and maintain an individual(s) as a resident(s) of the nation of Myanmar (Burma) to carry out the corporation's mission; to solicit financial and other support necessary to carry out the corporation's mission; to promote the corporation; and any other legal act reasonably necessary to carry out the foregoing purposes. The Articles of Incorporation will be filed on or before August 1, 2012.

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CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on the 31st day of January 2012, the Petition of Jason Francisco Juan, an adult individual, was filed in the Court of Common Pleas of Adams County, Pennsylvania, praying for a decree to change the name of the petitioner to Jason Francisco Tomas.

The court has affixed the third day of August 2012, at 8:30 a.m. in Courtroom No. 4 of the Adams County Courthouse as the time and place for the hearing of said petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of said petition should not be granted.

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## SITES VS. MORT

1. A petition to strike judgment and a petition to open judgment are two distinct forms of relief with separate remedies, and each is intended to relieve a different type of defect in the confession of judgment proceedings.

2. A petition to strike judgment may only be granted for a fatal defect or irregularity appearing on the face of the record.

3. A petition to open judgment offers to show that the defendant can prove a defense to all or part of the plaintiff's claim.

4. If the truth of the factual averments contained in the record is disputed, the proper remedy is to open judgment rather than to strike judgment.

5. A petition to open confessed judgment may be granted if the petitioner (1) acts promptly, (2) alleges a meritorious defense, and (3) can produce sufficient evidence to require submission of the case to a jury.

6. Pennsylvania courts have previously held that allegations of forgery of the signature of a judgment debtor have been grounds to open a confessed judgment.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 11-S-266, LEONARD M. SITES VS. DWAYNE E. MORT AND SHARON K. MORT.

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

Clinton T. Barkdoll, Esq., for Defendants

Campbell, J., January 20, 2012

### OPINION

Before this Court is Defendants' Petition to Strike and/or Open Judgment filed May 31, 2011. For the reasons stated herein, Defendants' Petition to Open and/or Strike Judgment is granted in part and denied in part. Defendants' Petition to Strike Confessed Judgment is denied. Defendants' Petition to Open Confessed Judgment is granted and judgment is hereby opened.

On February 18, 2011, Plaintiff initiated this cause of action against Defendants by filing a Complaint for Judgment by Confession. In his Complaint, Plaintiff alleged that on September 21, 2006, the parties executed a Construction Note for the principal sum of \$46,569.00. According to the language of the September 21, 2006 Construction Note, the purpose of the note was for Defendant, Dwayne Mort, to construct a residential dwelling on either Charnita Area Section RI Lot 178 or Section RD Lot 8, in the Borough of Carroll Valley, Pennsylvania. The September 21, 2006 Note also contained a Confession of Judgment clause. Plaintiff confessed judgment against Defendants in the amount of \$71,122.21, which included, in addition to the principal sum under the Note, interest,

attorney's fees, and sheriff service fees. Notice of Confession of Judgment also was filed against Defendants on February 18, 2011. As evidenced by the Sheriff's Service Process Receipt and Affidavit of Return, Defendants were served with Plaintiff's Complaint on March 3, 2011.

On March 31, 2011, Defendants filed their Petition to Strike and/or Open Judgment. On May 3, 2011, Defendants submitted their Brief in Support of their Petition to Strike and/or Open Judgment, and on May 5, 2011, Plaintiff submitted his brief in opposition.

Hearing occurred on January 10, 2012.<sup>1</sup> Defendant, Dwayne Mort, testified that he was previously in the construction business. According to Mr. Mort, he borrowed money from Plaintiff to build private residences. Plaintiff charged interest on the amount borrowed, and when the house was sold, Plaintiff was paid and the loan was satisfied from settlement proceeds.

On April 22, 2004, the parties executed a Construction Note, in the amount of \$161,000.00. That Note was secured by a mortgage also dated April 22, 2004. Both Defendants signed the April 22, 2004 Note and Mortgage, and Defendants do not dispute the validity of the April 22, 2004 Note. At some point, the \$161,000.00 was expended, and Defendants borrowed an additional \$64,000.00 from Plaintiff for completion of the home. As evidenced by a satisfaction piece dated September 29, 2006, the \$64,000.00 loan was secured by a Mortgage dated May 3, 2005. Defendants do not dispute the validity of the \$64,000.00 loan. Those funds were borrowed to finance the construction of a home located at 30 Diane Trail in Fairfield, Adams County, Pennsylvania.

On September 29, 2006, settlement on the Diane Trail home built by Mr. Mort occurred, and a HUD-1 settlement sheet was completed. The house sold for \$369,500.00. From the proceeds of the sale, Plaintiff received two (2) checks, one (1) check in the amount of \$160,000.00 representing a first mortgage payoff, and one (1) check in the amount of \$115,000.00 representing a second mortgage

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<sup>1</sup> From approximately May 2011 until hearing, the case was continued at the request of the parties as they attempted to reach an agreement. Ultimately, they were unable to do so.

payoff, for a total of \$275,000.00.<sup>2</sup> Also on September 29, 2006, both the \$161,000.00 Mortgage and the \$64,000.00 Mortgage were satisfied, as evidenced by two (2) separate satisfaction pieces signed by Plaintiff. After the two (2) mortgages were satisfied from the proceeds, Defendants received the remaining sum of \$69,965.15 at closing.

Plaintiff maintained that the total amount that he received from settlement did not represent the total amount that Defendants borrowed from him. Plaintiff testified that on September 21, 2006, eight (8) days prior to settlement, Defendants signed a third Construction Note in the amount of \$46,569.00 to finance Plaintiff's construction of another private residence on another lot. The September 21, 2006 Note contained a confession of judgment clause. Plaintiff testified that the total amount Defendants owed him at the time of settlement was \$321,569.00 representing the principal amount of the three loans plus interest on the first two notes. According to Plaintiff, the \$275,000.00 he received from settlement did not satisfy all loan obligations and left a \$46,569.00 shortfall.<sup>3</sup> Plaintiff alleges that the September 21, 2006 Note was never paid. On February 18, 2011, Plaintiff confessed judgment in the amount of \$71,122.21.

Defendants filed their instant Petition to Open and/or Strike Judgment alleging that the September 21, 2006 Note upon which judgment was confessed is a fabricated document. Specifically, Defendants maintained that the signature of Dwayne E. Mort is a forgery. In support of their defense, Defendants produced several driver's licenses as well as a license to carry a concealed weapon that were signed by Dwayne Mort. Defendants further alleged that Plaintiff has not produced the September 21, 2006 Note containing original signatures.

First, this Court must determine whether the proper relief is to strike or open the judgment. Pennsylvania Rule of Civil Procedure 2959 governs petitions to strike or open confessed judgment. See **Pa. R. Civ. P. 2959**. A petition to strike judgment and a petition to open

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<sup>2</sup> Defendants could not explain the discrepancies in the loan amounts and the amounts of the checks that Plaintiff received at settlement. Defendant, Dwayne Mort, testified that he did not know why one check was in the amount of \$160,000.00 rather than \$161,000.00. Moreover, Mr. Mort testified that he assumed that the \$115,000.00 check included interest on the \$64,000.00 loan and interest on both loans.

<sup>3</sup> Coincidentally, that is the exact amount of principal of the third note made just eight (8) days previously.

judgment are two distinct forms of relief with separate remedies, and each is intended to relieve a different type of defect in the confession of judgment proceedings. See *Id.*; see also *Manor Bldg. Corp. v. Manor Complex Assocs.*, 645 A.2d 843, 845 n.2 (Pa. Super. 1994). A petition to strike judgment may only be granted for a fatal defect or irregularity appearing on the face of the record. *Resolution Trust Corp. v. Copley Qu-Wayne Assocs.*, 683 A.2d 269, 273 (Pa. 1996). On the other hand, a petition to open judgment offers to show that the defendant can prove a defense to all or part of the plaintiff's claim. *Nixon v. Nixon*, 198 A. 154, 158-59 (Pa. 1938). If the truth of the factual averments contained in the record is disputed, the proper remedy is to open judgment rather than to strike judgment. *Resolution Trust*, 683 A.2d at 273.

Instantly, Defendants do not point to any defect or irregularity in the record. Rather, the facts averred in Plaintiff's Complaint are disputed by Defendants. Specifically, Defendants dispute the validity of the September 21, 2006 Construction Note by alleging that the September 21, 2006 Construction Note is a fraudulent document containing a forged signature of Defendant, Dwayne Mort. This is a defense to Plaintiff's claim. Therefore, because the facts in Plaintiff's Complaint are disputed by Defendants, this Court finds that the proper procedure is to open judgment rather than to strike judgment.

Next, this Court must determine if it is appropriate to open the confessed judgment. A petition to open confessed judgment is an appeal to the equitable powers of the court. *PNC Bank v. Kerr*, 802 A.2d 634, 638 (Pa. Super. 2002). As such, it is committed to the sound discretion of the trial court and will not be disturbed absent a manifest abuse of discretion. *Id.* A petition to open confessed judgment may be granted if the petitioner (1) acts promptly, 2) alleges a meritorious defense, and 3) can produce sufficient evidence to require submission of the case to a jury. *Hazer v. Zabala*, 26 A.3d 1166, 1169 (Pa. Super. 2011) (citations and quotations omitted). The parties do not dispute that Defendants' Petition to Open Confessed Judgment was promptly filed. Rather, the parties dispute whether Defendants have a meritorious defense and whether Defendants can produce sufficient evidence to require submission of the case to a jury.

Pennsylvania Rule of Civil Procedure 2959(e) sets forth the standard by which a court determines whether the moving party has

alleged a meritorious defense. See **Pa. R. Civ. P. 2959(e)**. Under Rule 2959(e), the moving party has alleged a meritorious defense “[i]f evidence is produced which in a jury trial would require the issues to be submitted to the jury[.]” **Pa. R. Civ. P. 2959(e)**; *Liazis v. Kosta, Inc.*, 618 A.2d 450, 453 (Pa. Super. 1992). Rule 2959 has been interpreted to require that the judgment debtor offer clear, direct, precise, and believable evidence of its meritorious defense. *Iron Worker’s Sav. & Loan Ass’n v. IWS, Inc.*, 622 A.2d 367, 370 (Pa. Super. 1993) (citations omitted). The court must view the evidence in the light most favorable to the moving party, while rejecting contrary evidence of the nonmoving party. *Liazis*, 618 A.2d at 453 (citation omitted). The petitioner need not present evidence proving that if the judgment is opened, the petitioner will prevail. *Id.* The Court must accept as true the petitioner’s evidence and all reasonable and proper inferences flowing therefrom. *Id.* Finally, Pennsylvania courts have previously held that allegations of forgery of the signature of a judgment debtor have been grounds to open a confessed judgment. See, e.g., *Reliance Ins. Co. v. Liberati*, 414 A.2d 1049, 1049-50 (Pa. 1980); *Citizens Nat’l Bank of Evans City v. E.H. Bilowich Constr. Corp.*, 449 A.2d 644, 647 (Pa. Super. 1982); *First Pennsylvania Bank, N.A. v. Lehr*, 438 A.2d 600, 606 (Pa. Super. 1980).

Instantly, Defendants have met their burden of presenting a meritorious defense by producing evidence that would require submission to a jury. Defendants allege that Dwayne Mort’s signature on the September 21, 2006 Note is a forgery. In support of their position, Defendants produced copies of Dwayne Mort’s past three (3) driver’s licenses containing his signature, as well as his license to carry a firearm containing his signature. All of Mr. Mort’s driver’s licenses and license to carry a firearm contain a consistent signature. When comparing Mr. Mort’s signature on the September 21, 2006 Note and the signatures contained on his driver’s licenses and license to carry a firearm, Mr. Mort’s signature on the September 21, 2006 Note appears to this Court’s untrained eye to differ from those contained on his driver’s licenses and license to carry a firearm. Mr. Mort also specifically testified about the manner in which he writes his middle initial “E” and how it has been a distinct characteristic of his signature. The “E” in Mr. Mort’s signature on the September 21, 2006 Note appears to differ from the licenses produced, as well as the April 22, 2004 Note and Mortgage.

Mr. Mort also testified that he did not sign the September 21, 2006 Note. Additionally, the parties disputed whether the September 21, 2006 Note contained original signatures. Finally, further suspicion is raised because unlike the Construction Note executed on April 22, 2004 by the parties, the September 21, 2006 Note was not secured by a mortgage. Defendants presented clear, direct, precise, and believable evidence of a meritorious defense. That evidence would require submission of the issue of whether the signature is a forgery, rendering the document fraudulent, to a jury. As this Court must accept as true Defendants' evidence and all reasonable inferences flowing therefrom, Defendants' Petition to Open Confessed Judgment is granted.<sup>4</sup>

For all the reasons stated herein, Defendants' Petition to Open and/or Strike Judgment is granted in part and denied in part. Defendants' Petition to Strike Judgment is denied. Defendants' Petition to Open Confessed Judgment is granted and judgment is hereby opened. Accordingly, the attached Order is entered.

#### ORDER

AND NOW, this 20th day of January 2012, for the reasons set forth in the attached Opinion, Defendants' Petition to Open and/or Strike Judgment is granted in part and denied in part. Defendants' Petition to Strike Confessed Judgment is denied. Defendants' Petition to Open Confessed Judgment is granted and judgment is hereby opened.

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<sup>4</sup> This Court declines to address in this Opinion Defendants' "counterclaim" raised in its Petition for attorney's fees and costs under 42 Pa. C.S.A. § 2503(9). In light of this Court's decision to open confessed judgment, Defendants may raise this claim in a proper pleading.



**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 LOUIS ENGELMANN a/k/a JOHN L. ENGELMANN, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Counsel Trust Company, 224 St. Charles Way, Suite 100, York, PA 17402

Attorney: Crabbs & Crabbs, 202 Broadway, Hanover, PA 17331

ESTATE OF PAUL H. SIPLING a/k/a PAUL H. SIPLING JR., DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania

Executrix: Paula L. King, c/o Douglas H. Gent, Esq., Law Offices of Douglas H. Gent, 1157 Eichelberger Street, Suite 4, Hanover, PA 17331

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

ESTATE OF RUTH J. SMITH, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Michael J. Smith, 156 Barnhart Road, Westminster, MD 21158

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

ESTATE OF DAVID W. YEALY, DEC'D

Late of the Borough of McSherrytown, Adams County, Pennsylvania

Executrix: Michele M. Pannell, c/o D. J. Hart, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

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

**SECOND PUBLICATION**

ESTATE OF MARY ELIZABETH FRAZER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Philip A. Frazer, 110 North Hickory Lane, New Oxford, PA 17350

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

ESTATE OF JAMES J. HYDOCK JR., DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Jeffery A. Hydock, 227 Ewell Avenue, Gettysburg, PA 17325

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

ESTATE OF FRANCIS W. KNOUSE, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Administratrix: Kim Harman, 2371 Coon Road, Aspers, PA 17304

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

ESTATE OF LOUIS SANFORD RICE II, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executrix: Julia Ann Rice, 1133 August Drive, Annapolis, MD 21403

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

ESTATE OF CONWAY T. SMITH a/k/a CONWAY THOMAS SMITH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Rose A. Smith, c/o Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

Attorney: Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

ESTATE OF RICHARD R. SNYDER, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executrix: Krista W. Snyder, c/o Robert G. Frey, Esq., Frey and Tiley, 5 South Hanover Street, Carlisle, PA 17013

Attorney: Robert G. Frey, Esq., Frey and Tiley, 5 South Hanover Street, Carlisle, PA 17013

ESTATE OF NELLIE G. STAMBAUGH, DEC'D

Late of the Borough of Abbottstown, Adams County, Pennsylvania

Executor: William F. Stambaugh, 16 Sunset Avenue, New Oxford, PA 17350

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

**THIRD PUBLICATION**

ESTATE OF SAMUEL JOSEPH BOWSER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Margaret L. Maietta, P.O. Box 454, State Line, PA 17263

ESTATE OF RUTH W. ELDER, DEC'D

Late of Union Township, Adams County, Pennsylvania

Executrix: Jacqueline E. Murren, 125 Wheaton Drive, Littlestown, PA 17340

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

ESTATE OF LOIS B. GANTZ, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Co-Executors: Wayne E. Gantz, 1479 Potato Road, Aspers, PA 17304; Larry S. Gantz, 1858 Old Carlisle Road, Aspers, PA 17304

