

# *Adams County* **Legal Journal**

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## ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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IN THE COURT OF  
COMMON PLEAS OF  
ADAMS COUNTY, PENNSYLVANIA

CIVIL  
NO. 11-S-576

In Re: Adams County Tax Claim Bureau  
Tax Sale No. 113

NOTICE OF PRIVATE SALE PURSUANT  
TO 72 P.S. 5860.613

NOTICE IS HEREBY GIVEN that the Adams County Tax Claim Bureau filed a Motion to sell property owned by John Coyle, located in Franklin Township, Adams County, Pennsylvania, pursuant to 72 P.S. 5860.613 at a private sale to David E. McCartney, Jr. and Jacqueline D. McCartney in the amount of \$7,128.43. The subject property is identified as Adams County Tax Map A09 at parcel 67A.

The sale will be conducted at the Office of the Adams County Tax Claim Bureau on the 23rd day of May, at 10:00 a.m., the price being \$7,128.43 in the form of U.S. currency to be paid by David E. McCartney, Jr. and Jacqueline D. McCartney, the proposed purchaser, and that the subject property will be sold free and clear of all tax claims and tax judgments.

Pursuant to 72 P.S. 5860.613, the corporate authorities of any taxing district having any tax claims or tax judgments against the subject property which is to be sold, the owner(s), any interested party(ies) or any person(s) interested in purchasing the subject property may, if not satisfied that the above-referenced sale price approved by the Adams County Tax Claim Bureau is sufficient, shall, within 45 days after notice of the proposed sale, petition the Court of Common Pleas of Adams County to disapprove said sale. If no Petitions are filed requesting disapproval of the sale on the terms and conditions set forth herein, upon Motion by the Adams County Tax Claim Bureau, the private sale as above-defined shall be confirmed absolute.

Danielle Helwig - Director  
Adams County Tax Claim Bureau  
117 Baltimore Street  
Gettysburg, PA 17325  
(717) 337-9831

## INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation-Nonprofit were filed on February 27, 2012, with the Department of State of the Commonwealth of Pennsylvania, for the purposes of obtaining a Certificate of Incorporation of a proposed nonprofit business corporation to be organized under the provisions of the Pennsylvania Nonprofit Corporation Law statutes at 15 Pa. C.S. § 5301 et seq., as amended.

The name of the nonprofit corporation is OXFORD COMMONS CONDOMINIUM ASSOCIATION, INC., with its principal office or place of business at 51 South Richard Avenue, York, PA 17404. The name and address of all person(s)/entity(ies) owning or interested in said business is Frank Storm of 51 South Richard Avenue, York, PA 17404.

Alan Kim Patrono, Esq.  
Patrono & Associates, LLC

3/30

## CHANGE OF NAME NOTICE

CHANGE OF NAME NOTICE IS HEREBY GIVEN that on the 15th day of March 2012, the Petition of Tyler John Landsman, an adult individual, was filed in the Court of Common Pleas of Adams County, Pennsylvania, praying for a decree to change the name of petitioner to Tyler John Hursh.

The court has affixed the 1st day of June 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.

Gary E. Hartman, Esq.  
Hartman & Yannetti  
126 Baltimore Street  
Gettysburg, PA 17325  
Attorney for Petitioner

3/30

## HARRIS VS. McCAUSLIN

1. The general rule is well established that a quo warranto action constitutes the proper method to challenge title or right to public office.

2. Municipal authority boards are subject to quo warranto actions. A quo warranto action is commenced to prevent continued exercise of authority unlawfully asserted, rather than to correct what has already been done under that authority.

3. Where a motion for summary judgment has been supported with depositions, answers to interrogatories, or affidavits, the nonmoving party may not rest on the mere allegations or denials in its pleadings. Rather, the nonmoving party must by affidavit, or in some other way provided for within the Rules of Civil Procedure, set forth specific acts showing that a genuine issue of material fact exists.

4. Courts will generally not decide moot questions. Mootness arises when changes in the facts or law occur, after the litigation has been initiated, which deprive the litigant of the necessary stake in the outcome of the dispute. Thus, an actual case or controversy must exist throughout all stages of the proceeding, not merely when the complaint is filed.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 2011-S-201, PHILLIP B. HARRIS VS. GERALD McCAUSLIN.

Phillip B. Harris - *Pro se*

Gerald McCauslin - *Pro se*

Kuhn, P.J., September 30, 2011

### OPINION ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Before the Court for disposition is Defendant's Motion for Summary Judgment filed August 9, 2011. For the reasons set forth below, said Motion is granted.

### BACKGROUND

On February 8, 2011, Plaintiff, Phillip B. Harris (hereinafter "Harris") filed a Complaint in "Quo Warrantor" wherein he claimed that on January 6, 2009, York Springs Borough Council (hereinafter "Borough") appointed him to serve a five-year term as a board member of the York Springs Municipal Authority (hereinafter "YSMA") with his term to expire on or about January 6, 2014. At the YSMA reorganizational meeting held January 11, 2011, Harris avers Chairman Williams reported that Harris' term had expired and his seat had been filled by Leonard Mortoff. Harris suggests that Mortoff was appointed by the Borough on January 3, 2011 to fill a vacancy purportedly created by the expiration of a five-year term

served by Defendant, Gerald McCauslin (hereafter “McCauslin”). Nevertheless, according to Harris, he took his seat and voted on matters presented to the YSMA Board. Harris alleged that Mortoff was seated, that McCauslin refused to vacate his seat, and that both persons voted on matters before the Board.

Harris requested the Court to direct McCauslin’s removal from the Board, affirm Harris’ seat on the Board, reverse all actions of the Board in which McCauslin participated, and direct McCauslin to pay “damages and costs incurred by [Harris] associated with this Complaint.”

On February 28, 2011, McCauslin filed Preliminary Objections which were granted in part and denied in part by Order and Opinion dated May 5, 2011. Therein the undersigned noted that,

The general rule is well established that a quo warranto action constitutes the proper method to challenge title or right to public office...***One Hundred Or More Qualified Electors of the Municipality of Clairton***, 683 A.2d 283, 286 (Pa. 1996).

Municipal authority boards are subject to quo warranto actions. *Mahanoy Township Authority v. Draper*, 52 A.2d 653 (Pa. 1947). Because a quo warranto action is commenced to prevent continued exercise of authority unlawfully asserted rather than to correct what has already been done under that authority, *Spykerman v. Levy*, 421 A.2d 641, 648 (Pa. 1980), objection to Harris’ efforts to set aside all actions taken by YSMA in which McCauslin participated was sustained. Objection to Harris’ recovery of damages and costs was initially denied despite the fact that quo warranto actions are not to be used to recover damages, *Dixon v. Cameron County School District*, 802 A.2d 696, 700 (Pa. Comwlth. Ct. 2002), because a successful litigant might be entitled to recover certain costs. See Pa. Standard Practice, 25 A § 127 et seq. However, Harris had not yet identified what damages or costs he was seeking.

On June 16, 2011, McCauslin filed an Answer to Complaint With New Matter. The pleading included a notice to respond to the New Matter within 20 days, but Harris failed to do so. Subsequently, on August 9, 2011, McCauslin filed the instant Motion for Summary Judgment accompanied by his legal brief. The Court directed a response within 30 days which Harris filed on September 9, 2011.

The Motion averred that on July 19, 2011, the Borough accepted Mortoff's<sup>1</sup> resignation from the YSMA Board and, in turn, adopted Resolution No. 2011-5 wherein the Borough expressed its intent to "confirm and reaffirm the appointments of those persons appointed to" the YSMA.<sup>2</sup> Harris was identified as having been appointed to serve a term ending December 31, 2013. In addition, the resolution recognized the appointment of McCauslin to serve a term ending December 31, 2015.<sup>3</sup> Harris did not deny the existence of the resolution but instead challenged McCauslin's right to a seat on the YSMA Board.<sup>4</sup>

### DISCUSSION

Under the Pennsylvania Rules of Civil Procedure, a court may enter summary judgment when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Pa. R. Civ. P. 1035.2*; *Strine v. Commonwealth*, 894 A.2d 733, 737 (Pa. 2006). Summary judgment is only appropriate where the pleadings, depositions, answers to interrogatories, omissions and affidavits, and other materials demonstrate that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Roche v. Ugly Duckling Car Sales, Inc.*, 879 A.2d 785, 789 (Pa. Super. 2005) (quotations and citations omitted). The burden of demonstrating the lack of any genuine issue of material fact falls upon the moving party, and, in ruling on the motion, the court must consider the record in the light most favorable to the nonmoving party. *Id.* However, where a motion for summary judgment has been supported with depositions, answers to interrogatories, or affidavits, the nonmoving party may not rest on the mere allegations or denials in its pleadings. *Accu-Weather, Inc. v. Prospect Commc'ns Inc.*, 644 A.2d 1251, 1254 (Pa. Super. 1994). Rather, the nonmoving party must by affidavit, or in some other way provided for within the Rules of Civil Procedure, set forth specific acts showing that a genuine

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<sup>1</sup> McCauslin identified the individual as "Mortenoﬀ." I assume this is one and the same person as Mortoff.

<sup>2</sup> The Resolution named five persons with individual terms ending on the last day of the calendar years 2011-2015, respectively.

<sup>3</sup> Assuming that all terms on the Board are for a period of five years, the Borough's action seems to suggest that it was confirming an appointment for McCauslin that began on or about January 1, 2011.

<sup>4</sup> Harris did not file a brief as required by Local Civil Rule 1035.2.E.

issue of material fact exists. *Id.* Summary judgment is only appropriate in those cases which are free and clear from doubt. *McCannaughey v. Bldg. Components, Inc.*, 637 A.2d 1331, 1333 (Pa. 1994).

McCauslin requests this Court to terminate the instant litigation because the issues Harris seeks to resolve have been rendered moot by the intervening action of the Borough. That position is well taken. Courts will generally not decide moot questions. Mootness arises when changes in the facts or law occur, after the litigation has been initiated, which deprive the litigant of the necessary stake in the outcome of the dispute. Thus, an actual case or controversy must exist throughout all stages of the proceeding, not merely when the complaint is filed. Otherwise, the matter will be dismissed prior to a decision on the merits. *Public Defender's Office of Venango County v. Venango County Court of Common Pleas*, 893 A.2d 1275, 1279 (Pa. 2006); *In Re: Gross*, 382 A.2d 116, 119 (Pa. 1978). Although I believe there are facts missing from the record which could help clarify the several appointments made by the Borough and the events which transpired at the YSMA meetings, there are sufficient undisputed facts to conclude this matter.

To the extent that Harris desires to assure his appointment to a five-year term ending December 31, 2013 on the YSMA Board, that position has been confirmed by Borough Resolution No. 2011-5.<sup>5</sup> There is no reason to believe Harris has not been serving continuously since January of this year or that he will be denied the opportunity to serve the balance of his term. To the extent that Harris wishes to have McCauslin removed from the YSMA Board, that goal could only be achieved prospectively if this litigation concluded in Harris' favor. However, by enacting Resolution No. 2011-5, the Borough has confirmed the appointment of McCauslin to serve a term ending December 31, 2015. Whether Mortoff was to replace McCauslin, as Harris originally alleged, is of no import now that Mortoff has resigned and the Borough has confirmed McCauslin's appointment. Removal of McCauslin as requested by Harris would be a fruitless exercise and a waste of judicial economy. Furthermore, I have previously ruled that Harris is not entitled to have any action taken by YSMA in which McCauslin participated set aside.

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<sup>5</sup> The municipal body, here the Borough, has the statutory right to appoint members to the municipal authority for a term of five years. See 53 Pa. C.S.A. § 5610(a)(1).

The only remaining issue is whether Harris is entitled to recover damages or costs. As noted above, Harris is not entitled to “damages” in a quo-warranto action. Harris has proceeded *pro se* so he is not entitled to recover attorney fees (even in the unlikely event he could support such a claim if represented.) At most, he might be entitled to recovery of court costs. Normally, a plaintiff would be entitled to recover court costs as the verdict winner. However, because the motion for summary judgment is being decided against Harris, he cannot prevail under that theory.

There no longer appears to be any issue in controversy in this quo warranto action that would warrant further Court intervention. Accordingly, the attached Order is entered.





**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 KAY I. CRAIG-McGIRR, DEC'D**

Late of Hamiltonban Township, Adams County, Pennsylvania

Executor: Thomas A. Brown, 215 Water Street, Fairfield, PA 17320

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

**ESTATE OF THELMA MARY IRWIN, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Co-Executors: Carol Ann Welte and Robert E. Irwin, Jr., c/o Craig A. Diehl, Esq., Law Offices of Craig A. Diehl, 119A West Hanover Street, Spring Grove, PA 17362

Attorney: Craig A. Diehl, Esq., Law Offices of Craig A. Diehl, 119A West Hanover Street, Spring Grove, PA 17362

**ESTATE OF BARBARA JEAN LAFFER PLATT, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executor: John A. Latschar, 815 Taneytown Road, Gettysburg, PA 17325

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

**ESTATE OF RICHARD H. SULLIVAN, DEC'D**

Late of Menallen Township, Adams County, Pennsylvania

Executrices: Shirley J. Daron, 1694 Coon Rd., Aspers, PA 17304; Sharon K. Weidner, 1790 Coon Rd., Aspers, PA 17304

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

**ESTATE OF KATHLEEN M. ZEIGLER, DEC'D**

Late of Hamilton Township, Adams County, Pennsylvania

Executor: Kermit P. Zeigler, 128 Possum Hollow Road, East Berlin, PA 17316

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

**SECOND PUBLICATION****ESTATE OF DORIS NICHOLAS a/k/a DORIS B. NICHOLAS, DEC'D**

Late of Hamilton Township, Adams County, Pennsylvania

Executor: Martin A. Nicholas, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

**THIRD PUBLICATION****ESTATE OF CARMENITTA N. CULLERS, DEC'D**

Late of Mount Joy Township, Adams County, Pennsylvania

Executrix: Kathy Bowman, 17 Parkland Court, Gettysburg, PA 17325

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

**ESTATE OF WILLIAM ALBERT LAUR, DEC'D**

Late of Butler Township, Adams County, Pennsylvania

Co-Executors: Gregory W. Laur, 5406 Talltree Way, West Chester, OH 45069; Katherine A. Laur Bushey, 3220 Harbor Drive, St. Augustine, FL 32084

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

**ESTATE OF RICHARD J. LAWRENCE, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Executors: Robert E. Lawrence, 342 Iron Street, Bloomsburg, PA 17815; Daniel E. Lawrence, 23 Franklin Drive, McSherrystown, PA 17344

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

**ESTATE OF INEZ G. LONG, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Kathryn L. Missildine, c/o James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

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

**ESTATE OF RANDY A. MARKLE, DEC'D**

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Administrator: Barry E. Markle, 285 Irishtown Road, Hanover, PA 17331

Attorney: Todd A. King, Esq., Campbell & White, P.C., 112 Baltimore Street, Suite 1, Gettysburg, PA 17325

**ESTATE OF DOROTHY M. MOOSE, DEC'D**

Late of Tyrone Township, Adams County, Pennsylvania

Co-Executrices: Pamela R. Hewitt, 306 Gardners Station Rd., Gardners, PA 17324; Donna M. Kuhn, 1991 Heidlersburg Rd., Aspers, PA 17304

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

**ESTATE OF JOHN D. MOOSE, DEC'D**

Late of Tyrone Township, Adams County, Pennsylvania

Co-Executrices: Pamela R. Hewitt, 306 Gardners Station Rd., Gardners, PA 17324; Donna M. Kuhn, 1991 Heidlersburg Rd., Aspers, PA 17304

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

**ESTATE OF MARY C. MURPHY, DEC'D**

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Co-Executors: Joseph Alan Murphy, Lisa Marie Wolf and Thomas George Murphy, c/o Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

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

**ESTATE OF DELORES B. TINCHER, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Personal Representative: Dawn R. Paschall, 257 Jefferson St., Hanover, PA 17331

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

**ESTATE OF BRENDA JANE TITMAN-SCHULTZ, a/k/a BRENDA J. SCHULTZ, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Administrator: John P. Buffington, 944 Edgegrove Road, Hanover, PA 17331

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

