

# FAYETTE LEGAL JOURNAL

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## FAYETTE LEGAL JOURNAL

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## 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

**MARK E. BROWN, a/k/a MARK BROWN,**  
late of Fayette City, Fayette County, PA

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136 Kuhns Lane  
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*Executor:* Christopher T. Smetts  
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## Second Publication

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## First Publication

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**ADELINE KIEC, a/k/a ADELINE ROSE KIEC**, late of North Union Township, Fayette County, PA (1)

*Co-Executrix:* Francene Weimer and  
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**LOREN W. MCFADDEN, a/k/a LOREN WAYNE MCFADDEN**, late of Bullskin Township, Fayette County, PA (1)

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**EDNA MYERS, a/k/a EDNA RUTH MYERS**, late of Markleysburg, Fayette County, PA (1)

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*Executrix:* Margaret L. Wheeler  
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*Attorney:* Jason Adams

**LEGAL NOTICES**

IN THE COURT OF COMMON PLEAS OF  
FAYETTE COUNTY, PENNSYLVANIA  
CIVIL DIVISION  
No. 1731 of 2022, G.D.  
COMPLAINT IN CIVIL ACTION

ANTHONY J. ZUZAK and CARLA J.  
VALENTE-ZUZAK, his wife,  
Plaintiffs,  
vs.  
WALLACE JOSEPH FERRY,  
Defendant.

TO: WALLACE JOSEPH FERRY:

You are hereby notified that Anthony J. Zuzak and Carla J. Valente-Zuzak, his wife have filed a complaint at the above number and term in the above mentioned court in civil action where it is alleged that the Plaintiffs sustained damages caused by your negligence from a motor vehicle accident that occurred on November 11, 2020.

Said complaint sets forth that plaintiffs sustained personal injuries as a result of your negligence while operating a Jeep Cherokee Station Wagon causing damages to said plaintiffs. The complaint was filed for the purpose of obtaining a judgment against you in a sum in excess of \$50,000.00.

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU

WITH INFORMATION ABOUT HIRING A LAWYER.

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## ANNUAL MEMBERSHIP MEETING

The Annual General Membership meeting of the Fayette County Bar Association shall be held on **Wednesday, November 30, 2022**, at 1:00 pm in Courtroom Two at the Fayette County Courthouse, 61 East Main Street, Uniontown, PA 15401. Members are invited to present topics of concern or interest to the Association.

# WARMAN ABSTRACT & RESEARCH LLC

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**JUDICIAL OPINION**

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA  
CIVIL DIVISION

DORIS I. HENSEL,	:
Plaintiff,	:
	:
vs.	:
	:
SAMUEL R. HUTCHINSON, JR. and	:
VERNON TODD STOUFFER,	: No. 1516 of 2020
Defendant.	: Honorable President Judge John F. Wagner, Jr.

**OPINION AND ORDER**

Wagner, P.J.

June 23, 2022

Before the Court for disposition are the Preliminary Objections filed by Defendant, Samuel R. Hutchinson, Jr., to the Plaintiffs Third Amended Complaint.

**BACKGROUND**

The Plaintiff filed this action after a dispute developed over the rights to an existing right- of-way on land owned by the Defendant (hereinafter "Hutchinson"). The right-of-way transverses Hutchinson's property and provides access to the rear of Plaintiffs property and to land owned by Defendant, Vernon Todd Stouffer (hereinafter "Stouffer").

Plaintiff and her now deceased husband acquired two parcels of land on April 20, 1975. A portion of Plaintiffs property abuts Hopewell Road in Melcroft, Pennsylvania. In 1995, the Plaintiff transferred ten acres of land to Jeffrey A. Hensel. In 2017, the Jeffrey A. Hensel's parcel of land was transferred to Defendant, Samuel R. Hutchinson (hereinafter Hutchinson Parcel). This parcel abuts Hopewell Road.

In 2003, the Plaintiff transferred twenty (20) acres of her property to Vernon Earl Stouffer and his wife (hereinafter "Stouffer Parcel"). Subsequently, this parcel was transferred to Vernon Todd Stouffer, defendant herein. The Stouffer parcel was land-locked. In 2003, Jeffrey Hensel and his wife granted the Stouffers a right-of way and easement over their property, known as Hutchinson's parcel. The right-of-way on the Hutchinson parcel goes from Hopewell Road across the Hutchinson Parcel, and continues across the Plaintiffs Parcel to the Stouffer Parcel. In 2009, the area of the right-of-way was changed

**DISCUSSION**

Preliminary objections can be filed to any pleading by any party. As the Rules of Civil Procedure are to be liberally construed to secure just, speedy and inexpensive de-

termination of every action, the courts may disregard any error or defect of procedure that does not impact the substantial rights of the parties. Pa.R.C.P. 126. In order for a court to sustain preliminary objection it must appear with certainty that the law will not permit recovery. Preliminary objections that will result in the dismissal or denial of a claim should be sustained only in cases that are clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief. *D'Elia v. Folino*, 933 A.2d 117 (Pa.Super. 2007). A preliminary objection may be sustained where the pleadings show on its face that the claim is devoid of merit or where no amendment of the complaint can cure the defects.

A demurrer is an assertion that a complaint does not set forth a cause of action upon which relief any be granted. It tests the legal sufficiency of the complaint. The questions presented by a demurrer is whether on the facts averred, the law states with certainty that recovery is not possible. *Soto v. Nabisco*, 32 a.3d 787 (Pa.Super. 2011). Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it. *Id.* A preliminary objection in the form of a demurrer admits as true all well pleaded, material relevant facts, and every inference fairly deductible from those facts. In determining whether to sustain a demurrer, the Court determines that the pleading requires the aid of facts not appearing within the pleading but which may be available, the preliminary objection should be sustained, however, if there is a possibility that legally sufficient facts may be added to establish the right to relief under that claim, then the preliminary objections may be sustained with the right to amend presented rather than dismissal of the claim.

The Defendant Hutchinson asserts that the Plaintiff, pursuant to Pa.R.C.P. 1028(a) (4), Plaintiffs count one which asserts a claim for irrevocable license fails to state a claim and should be dismissed. The Plaintiff asserts that she possessed an irrevocable license to use the right of way. In reliance on prior permissions, she asserts that she expended a significant amount of funds to make improvements over the years to the driveway, widening the driveway and adding significant quantities of stone and stone products.

A license is a mere personal or revocable privilege to perform a series of acts on the land or another, which conveys no interest in the property. It is simply permission by the occupant of land to do something that otherwise would be a trespass. *Morning Call, Inc. v. Bell Atlantic- Pennsylvania, Inc.*, 761 A.2d 139 (Pa. Super. 2000). A license is distinguishable from an easement because it is generally created orally, is revocable at the will of the property owner, and is automatically revoked by the sale of the burdened property. *Id.* However, the owner of the burdened land, with knowledge of its use, permits another to repeatedly do acts upon the land, a license may be implied from his failure to object. *Id.* The license may become irrevocable under the rules of estoppel and in those circumstances it is similar to an easement. *Id.* Equitable estoppel arises when one by his acts, representations, or by his silence when he ought to speak, intentionally or through culpable negligence induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the first party is permitted to deny the existence of facts. *Zivari v. Willis*, 611 A.2d 293 (Pa. Super. 1992).

Successors-in-title take subject to an irrevocable license if they are on notice of the

license before the purchase. *Morning Call, Inc, supra*. A revocable license to use property may become irrevocable once adjoining landowners expended money and treated their own property in a manner that they would not otherwise have treated it, except for the license. *Zivari supra*.

The Plaintiff asserts that her agent, acting on her behalf, utilized the right-of-way, expended funds to repair and widen it from the end of 2009 through December 2017 when the Defendant Hutchinson placed a locked gate across the right-of-way. (Paragraph 23 of Third Amended Complaint). The Plaintiff has presented facts sufficient to proceed on her claim.

Therefore, the Plaintiff having presented significant facts to proceed on her claim of irrevocable license, the preliminary objections to the Plaintiffs Third Amended Complaint are dismissed.

#### ORDER OF COURT

AND NOW, this 23rd day of June 2022, upon consideration of the Preliminary Objection to the Plaintiff's Third Amended Complaint, it is hereby ORDERED and DECREED that Defendant Hutchinson's Preliminary Objection to the Third Amended Complaint are DISMISSED. It is further ORDERED and DECREED that the Defendant shall serve upon the Plaintiff his response to the Third Amended Complaint within twenty (20) days of the date of this Order.

BY THE COURT:  
WAGNER, P.J.

ATTEST:  
Prothonotary

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