

Adams County Legal Journal

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MATA VS. DALTON ET AL

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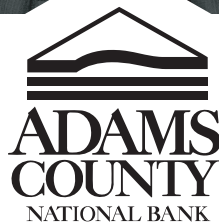
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SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 03-S-380 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of February, 2009, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL those described 4 tracts of land described lot of ground, with improvements thereon erected, situate in Franklin Township, Adams County, Pennsylvania, bounded and described as follows:

TRACT NO. 1: BEGINNING at a stone for a corner on the South side of a public road running from Route 234 to Cashtown near a pine tree; thence running on the south side of the said public road South 70 degrees West, 83 feet to a point on land now or formerly of Ernest Saum North 15-1/2 degrees West, 278.3 feet to a stone corner; thence running by land now or formerly of George McDannell North 82-1/2 degrees East, 140.5 feet to a stone corner; thence running by land now or formerly of Gilbert Bucher's heirs South 2-1/2 degrees East, 256.50 feet to a stone, the place of BEGINNING, CONTAINING 108 perches.

TRACT NO. 2: BEGINNING at a point in Township Road T-364 at other lands now or formerly of Ernest Saum; thence by lands now or formerly of Saum and passing through a reference iron pin set back 37 feet from the place of beginning North 07 degrees 18 minutes West, 271.50 feet to a steel pin at lands now or formerly of Paul McDannell; thence by lands now or formerly of Paul McDannell North 87 degrees 54 minutes East 90.87 feet to a steel pin at lands now or formerly of Donald Coldsmith; thence by lands now or formerly of Coldsmith and passing through a reference steel pin 26 feet from the terminus of their call South 07 degrees 30 minutes East, 265.65 feet to a point in Township Road T-364; thence in said Township Road South 84 degrees 12 minutes West, 91.45 feet to a point at the place of BEGINNING, CONTAINING 24,426 square feet, neat measure.

TRACT NO. 3: BEGINNING at a nail in the center of Township Road T-364 at corner of lands now or formerly of Robert

W. Prater; thence running in the center of said Township Road T-364, North 69 degrees 16 minutes 30 seconds West, 82.21 feet to a point in the center of said road; thence continuing in the center of said road, North 39 degrees 34 minutes 45 seconds West, 78.81 feet to a point in the center of said road; thence continuing in the center of said road, North 17 degrees 24 minutes 10 seconds West, 160.05 feet to a point in the center of said road at corner of lands now or formerly of Hazel C. McDannell; thence along said McDannell lands, North 80 degrees 57 minutes 25 seconds East, 108.67 feet to an iron pin at corner of lands now or formerly of Robert W. Prater; thence along said Prater lands, South 14 degrees 36 minutes 20 seconds East, through an iron pin set back 40.96 feet from the end of this course, 268.31 feet to a nail in the center of Township Road T-364, the point and place of BEGINNING, CONTAINING 0.543 acres.

The above description was taken from a draft of survey prepared by Richard W. Boyer, R.S. of Boyer Surveys, Biglerville, Adams County, Pennsylvania, dated 12/19/1978 the said draft of survey is recorded in the Office of the Recorder of Deeds of Adams County, Pennsylvania in Plat Book 27, Page 4, the above described tract being designated as Lot No. 1.

TRACT NO. 4: BEGINNING at a railroad spike in the center line of New Road T-364 at corner of Lot No. 1 on the draft of survey hereinafter referred to; thence along Lot No. 1, North 71 degrees 05 minutes 10 seconds East, passing through a reference pipe 25.00 feet from the beginning of this course, 642.47 feet to a pipe at land now or formerly of Thomas Reeve; thence by same South 32 degrees 30 minutes 50 seconds East, 136.21 feet to an existing pipe and stones at lands now or formerly of Elizabeth R. McClellan; thence by same South 60 degrees 32 minutes 24 seconds West, 355.00 feet to an existing iron pin at land now or formerly of Robert W. Prater; thence by same South 76 degrees 16 minutes 43 seconds West, 235.17 feet to an existing pin at land now or formerly of David Stewart; thence by same South 76 degrees 15 minutes 55 seconds West, 108.71 feet to an existing nail in the center line of New Road T-364 aforesaid; thence in the center line of

such road North 13 degrees 05 minutes 00 seconds West, 167.14 feet to a railroad spike, the place of BEGINNING, CONTAINING 2.670 acres. The above description was taken from a draft of survey prepared by Richard W. Boyer, Adams County Surveyor, dated March 5, 1980 recorded in Plat Book 34, at page 61, the above described tract being designated as Lot No. 2.

Being Known As: 788 New Road, Orttanna, PA 17353

Property ID No.: (12) C09-0032

TITLE TO SAID PREMISES IS VESTED IN Raymond B. Williams, Sr. and Candy S. Williams, husband and wife by Deed from Gerald H. Deighton, single person, by his attorney in fact, Edward G. Puhl and Harry J. Blaisdell, single person, by his attorney in fact, Edward G. Puhl dated 3/31/00 recorded 4/17/00 in Deed Book 2032 Page 136.

SEIZED and taken into execution as the property of **Raymond B. Williams, Sr. & Candy S. Williams** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 6, 2009, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

ALL claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

1/16, 23 & 30

MATA VS. DALTON ET AL

1. Judgment on the pleadings may be granted where no material facts are in dispute and the case is free from doubt.

2. To establish a claim for negligent misrepresentation, Plaintiffs must prove: 1) the misrepresentation of material facts; 2) made under circumstances in which the misrepresenter ought to have known of its falsity; 3) with an intent to induce a person to act on it; and 4) which results in an injury to a party acting in justifiable reliance on the misrepresentations.

3. Where the parties, without any fraud or mistake, have deliberately put their engagements in writing, the law declares the writing to be not only the best, but the only, evidence of their agreement. Unless fraud, accident or mistake be averred, the writing constitutes the agreement between the parties, and its terms and agreements cannot be added to nor subtracted from by parol evidence.

4. For the parol evidence rule to apply the contract must be fully integrated, representing the entire contract between the parties.

5. An integration clause is evidence that the contract is complete and the absence of one is persuasive evidence that it is not.

6. One exception to the general rule is that parol evidence may be introduced to vary a fully integrated writing where a party avers that a term was omitted because of fraud, accident, or mistake.

7. Our courts have not conclusively established whether parol evidence is admissible in a negligent misrepresentation matter.

8. When reformation is sought, oral testimony is permitted in misrepresentation cases and in breach of contract cases.

9. A party should not be permitted to escape the restrictions of the Parol Evidence rule by asserting a tort claim when in reality the party is seeking a breach of contract remedy.

10. The general rule is that where alleged oral representations concern a subject specifically addressed in the written contract, and the written contract covers or purports to cover the entire agreement, mere allegations of fraud will not make parol evidence admissible.

11. Pennsylvania case law makes a distinction between barring parol evidence to vary the terms of the agreement and admitting parol evidence to prove fraud in the inducement. Nevertheless, the case law clearly holds that a party cannot justifiably rely upon prior oral representations yet sign a contract denying the existence of those representations.

12. In a case of fraud in the inducement, parol evidence is inadmissible where the contract contains terms that deny the existence of misrepresentations regarding the subject matter of the alleged fraud. But when the contract contains no such term denying the existence of such misrepresentations, parol evidence is admissible to show fraud in the inducement.

13. Logic dictates that if the seller may enforce the integration clause, his agent should also be permitted to enforce the disclaimer. Pennsylvania courts have not determined whether this same standard applies when a buyer's agent is asserting the parol evidence rule defense to a misrepresentation claim brought by the buyer.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 06-S-1310, KELLY A. MATA AND SAMSON MATA VS.
CHARLES DALTON AND CENTURY 21 MOUNTAIN VIEW

REALTY; RICHARD OLDFIELD AND FRANCIS OLDFIELD, HIS WIFE; ALLEN W. BECKETT AND MIDDLE DEPARTMENT INSPECTION AGENCY.

Jason B. Duncan, Esq., for Plaintiffs

Allan J. Wertz, Esq., for Defendants

Kuhn, P. J., March 27, 2008

OPINION ON DEFENDANTS CHARLES DALTON AND
CENTURY 21 MOUNTAIN VIEW REALTY'S MOTION
FOR JUDGMENT ON THE PLEADINGS

Before the Court for disposition is a Motion for Judgment on the Pleadings filed by Defendants Charles Dalton and Century 21 Mountain View Realty.

PROCEDURAL HISTORY

Plaintiff, Kelly A. Mata, filed a pro-se complaint on November 14, 2006, against the six defendants named above, as well as Navy Federal Credit Union and John Ausherman. Plaintiff brought claims for damages she suffered when the kitchen floor of her residence partially collapsed on May 15, 2005. The Complaint was re-instated on May 7, 2007.

In response to preliminary objections filed by several of the defendants, Plaintiff, represented by counsel, filed an Amended Complaint on June 21, 2007. In the Amended Complaint, Plaintiff added her husband, Samson Mata, as a Plaintiff. The Amended Complaint included all of the original defendants except Navy Federal Credit Union and Ausherman.¹ Plaintiffs asserted claims for Breach of the Implied Warranty of Reasonable Workmanship and Habitability against Allen W. Beckett ("Beckett"), Negligent Misrepresentation against Charles Dalton ("Dalton") and Century 21 Mountain View Realty ("Century 21"), Breach of Contract against Middle Department Inspection Agency ("MDIA"),² Violation of the Pennsylvania Real Estate Seller Disclosure Law against Richard and Francis Oldfield ("Oldfields"), and Breach of the Pennsylvania Unfair Trade Practices and Consumer Protection Law against the Oldfields.

¹ By Order dated October 29, 2007, Defendant John Ausherman was removed as a party to this action.

² The claim against MDIA was dismissed by Order dated November 2, 2007.

In response to a second set of Preliminary Objections, Plaintiffs filed a Second Amended Complaint on July 31, 2007, repeating the same allegations against the same defendants as in the Amended Complaint.

Defendants Dalton and Century 21 (hereinafter referred to as “Defendants”) filed an Answer, New Matter, And New Matter Pursuant to Rule 2252(d) to the Second Amended Complaint on August 10, 2007. On December 4, 2007, Defendants filed a Motion for Judgment on the Pleadings and supporting memorandum. On December 19, 2007, Plaintiffs filed an Answer to the Motion for Judgment on the Pleadings and supporting brief.

FACTUAL BACKGROUND

The Plaintiffs, Kelly A. and Samson Mata, are husband and wife and currently co-owners of a parcel of property at 43 Eagles Trail, Fairfield, Adams County. The Oldfields are also husband and wife, who formerly resided at 43 Eagles Trail. Defendant, Dalton, is a licensed Pennsylvania real estate agent and was acting as an agent and representative for Defendant, Century 21. Defendant, Beckett, does business under the name Allen Beckett Construction and constructed the residence at 43 Eagles Trail. Defendant MDIA is a Pennsylvania corporation hired by the Borough of Carroll Valley to perform certain inspections.

Plaintiffs allege that on or about October 15, 2004, they, as buyers, and Oldfields, as sellers, entered an Agreement of Sale for the parcel of land located at 43 Eagles Trail (“Property”), and the residence erected thereupon (“Residence”). According to Plaintiffs, that agreement was prepared by Dalton, as their agent. Plaintiffs allege that Dalton warned them not to purchase any residence built by Beckett because of his poor reputation as a builder. Plaintiffs assert that Dalton assured them the residence on the Property was not constructed by Beckett, and they relied on that representation in purchasing the residence. Plaintiffs aver that the Property was, in fact, constructed by Beckett under Borough of Carroll Valley (“Borough”) Building Permit No. 102-2003, dated June 24, 2003. Plaintiffs aver a Certificate of Occupancy for the Residence was issued to Beckett on October 30, 2003.

Plaintiffs allege that on or about May 15, 2005, the kitchen floor of the residence partially collapsed. They claim post-collapse

inspections revealed that the two 18 foot floor beam joists supporting the residence were in a complete state of failure due to faulty construction by Beckett. Plaintiffs further allege that as a result of the failure of the floor joist beams, a substantial portion of the remainder of the residence was declared unsafe for occupancy. Because of that failure, Plaintiffs claim they have been unable to occupy the residence since January, 2006. They claim damages in the amount of \$200,000 in repair costs, \$2,000 per month since January, 2006 for replacement housing, and \$10,000 in legal fees and engineering expenses.

LEGAL THEORIES

In Count II of the Second Amended Complaint, Plaintiffs allege Negligent Misrepresentation against Dalton and Century 21 (hereinafter “Defendants”). Plaintiffs argue that the alleged representations by Dalton regarding who built the Residence were false and the identity of Beckett, as the contractor who built the Residence, was easily ascertainable by Defendants. Plaintiffs claim these representations were made by Dalton for the purpose of inducing Plaintiffs to enter the Agreement for Sale and complete the closing.

Defendants contend that they are entitled to judgment on the pleadings because there are no genuine issues of fact and they are therefore entitled to judgment as a matter of law. Defendants assert that all alleged misrepresentations made by Dalton are barred by the parol evidence rule. Defendants argue that because Plaintiffs acknowledge entering into the Agreement of Sale and do not plead fraud in the execution of the contract, the provisions of the Agreement of Sale, namely the release and integration clause set forth in Paragraph 20 of the contract, preclude Plaintiffs from relying upon those alleged prior representations. In summary, Defendants claim that because the Agreement of Sale contained an express disclaimer of reliance on any statements made prior to its execution, Plaintiffs’ claims are barred by the parol evidence rule and, consequently, the case should be dismissed with prejudice.

Plaintiffs argue that there is an exception to the parol evidence rule for residential real estate agreements. Plaintiffs contend that the Court must conduct a balancing test between the extent of their ability to uncover the information or conditions complained of against the extent of the coverage of the contract’s integration clause and

then determine whether Plaintiffs could have justifiably relied upon oral representations without insisting on further contractual protection or deletion of the purported overly broad integration clause.

Plaintiffs also assert that the “no representation” and release clauses are found at the end of three pages of small print and boilerplate language. Plaintiffs argue it strains the bounds of reason to suggest they understood that by executing the agreement they were releasing Dalton from his own misrepresentations, otherwise they would have insisted the Agreement’s boilerplate language be modified.

Plaintiffs also argue that Defendant Dalton was the buyers’ agent, not a party to the Agreement of Sale, and therefore not protected by the contract provisions. Plaintiffs contend that although Pennsylvania courts have found that a seller’s agent may raise an integration clause defense against a buyer’s claim of fraud in the inducement, they have not held that a buyer’s agent may raise the integration clause as a defense to a buyer’s claim against the agent. Plaintiffs also point to language in Defendants’ Answer where Dalton admits that he “advised Plaintiffs of past experiences with residences built by Alan W. Beckett.” (Dalton Answer ¶8). Plaintiffs argue, at the very least, this establishes that at some point prior to execution of the Agreement, Plaintiffs and Defendant Dalton discussed the identity of the builder with regard to any potential purchase. Furthermore, Plaintiffs argue that the listing broker for the property was Defendant Dalton’s own firm, Defendant Century 21. Defendant Dalton’s son, Kevin Dalton, was the real estate agent for the Oldfields. Plaintiffs suggest that the identity of a builder who constructed a residence is information a listing broker would have ready access to, and not something a purchaser would be expected to independently question or verify. Therefore, Plaintiffs claim that the alleged representations are admissible under the balancing test.

DISCUSSION

Our Superior Court has set forth the standard for ruling on a motion for judgment on the pleadings as follows:

Entry of judgment on the pleadings is permitted under Pa. R.C.P. 1034 which provides for such judgment after the pleadings are closed, but within such time as not to delay trial. A motion for judgment on the pleadings is similar

to a demurrer. It may be entered where there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law. In determining if there is a dispute as to facts, the court must confine its consideration to the pleadings and relevant documents.

Vetter v. Fun Footwear Co., 447 Pa. Super. 84, 87, 668 A.2d 529, 530-1 (1995); alloc. den. 676 A.2d 1199 (citations omitted).

Judgment on the pleadings may be granted where no material facts are in dispute and the case is free from doubt. *Keystone Automated Equip. Co., Inc. v. Reliance Ins. Co.*, 535 A.2d 648 (Pa. Super. 1988). Judgment should be granted when the Court accepts the non-movant's well pleaded facts as true, and determines without a doubt that under no circumstances could the non-moving party prevail at trial. *Lehman by Lehman v. County of Lebanon Trans. Auth.*, 599 A.2d 259 (Pa. Commw. 1991).

To establish a claim for negligent misrepresentation, Plaintiffs must prove: 1) the misrepresentation of material facts; 2) made under circumstances in which the misrepresenter ought to have known of its falsity; 3) with an intent to induce a person to act on it; and 4) which results in an injury to a party acting in justifiable reliance on the misrepresentations. *Bortz v. Noon*, 729 A.2d 555, 561. In addressing Defendants' motion the focus will be on the fourth element. Plaintiffs agree that in order to establish a claim for negligent misrepresentation they must establish that they justifiably relied upon statements or representations made by Defendants. Defendants assert that they are entitled to judgment on the pleadings because Plaintiffs' evidence establishing justifiable reliance is barred by the parol evidence rule.

At this juncture, the Court's purpose is not to determine the relative merits of the Plaintiffs' claim. Our initial focus is to determine whether the alleged statements made by Dalton, as agent for Century 21, and allegedly relied on by Plaintiffs, are inadmissible because of the parol evidence rule. Our Supreme Court has explained the parol evidence rule as follows:

Where the parties, without any fraud or mistake, have deliberately put their engagements in writing, the law declares the writing to be not only the best, but the only,

evidence of their agreement. All preliminary negotiations, conversations and verbal agreements are merged in and superseded by the subsequent written contract ... and unless fraud, accident or mistake be averred, the writing constitutes the agreement between the parties, and its terms and agreements cannot be added to nor subtracted from by parol evidence.

Yocca v. Pittsburgh Steelers Sports, Inc., 854 A.2d 425, 436 (Pa. 2004) (citations omitted). For the parol evidence rule to apply the contract must be fully integrated, representing the entire contract between the parties. *Id.*; *Gianni v. Russell & Co.*, 126 A. 794, 792 (Pa. 1924). To determine if a writing is the parties' entire contract the writing must be examined and "if it appears to be a contract complete within itself, couched in such terms as import a complete legal obligation without any uncertainty as to the object or extent of the [parties'] engagement, it is conclusively presumed that [the writing represents] the whole engagement of the parties..." *Id.* (citations omitted). An integration clause is evidence that the contract is complete and the absence of one is persuasive evidence that it is not. *Green Valley Dry Cleaners, Inc. v. Westmoreland County*, 832 A.2d 1143, 1155 (Pa. Commw. 2003). Our Supreme Court has further stated:

An integration clause which states that a writing is meant to represent the parties' entire agreement is also a clear sign that the writing is meant to be just that and thereby expresses all of the parties' negotiations, conversations and agreements made prior to its execution.

Yocca, 854 A.2d at 436.

Important to the determination of this matter is the relevant release and non-reliance clauses of the agreement entered between Plaintiffs and Oldfields. Relevant portions of the agreement provide,

20. REPRESENTATIONS: Seller represents that Seller has informed Buyer of any hidden or latent defects of which Seller has knowledge. It is understood that Buyer inspected the property and any personal property to be included in the sale or hereby waives the right to do so and has agreed to purchase it as a result of such inspection and not because of or in reliance upon any representations which were not included in this agreement

whether made by any broker, transactions licensee or any of their respective sales people, employees, officers and/or partners. Buyer agrees that any and all statements, claims, advertisements, marketing, promotional exhibits, building and subdivision plans made or presented by Seller, brokers, their licensees, employees, officers, or partners are not incorporated in this agreement of sale unless expressly so stated to be made a part thereof.

The buyer has agreed to purchase the property in its present condition unless otherwise specified herein. It is further understood that this Agreement contains the whole Agreement between the Seller and the Buyer and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise, of any kind whatsoever concerning this sale. Furthermore, this Agreement shall not be altered, amended, changed, or modified except in writing executed by the parties.

21. RELEASE: Buyer hereby releases, quit claims and forever discharges all real estate licensees, employees and any officer or partner of any one of them and any other person, firm or corporation who may be liable by or through them from any and all claims, losses or demands, in law or equity, including but not limited to personal injuries, property damage and any and all of the consequences thereof, whether now known or not, which may arise from the presence of mold, all wood-boring insects, radon, lead-based paint hazards, environmental hazards, any defects or deficiencies in the onlot sewage disposal system and/or on-site water service system, or any defects or conditions on the property. This release shall survive settlement.

(**Agreement of Sale, §§ 20 & 21** (Emphasis Added)). The Court must determine whether these clauses, as a matter of law, bar the entry of evidence of prior oral dealings between the parties, and if so, whether Defendants, who were not parties to the Agreement, can assert the defense.

Continued to next issue (1/30/2009)

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 08-S-1091 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of February, 2009, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL the following described tract of land situate, lying, and being in the Borough of Abbottstown, Adams County, Pennsylvania, further bounded and limited as follows, to wit:

BEGINNING for a corner at a point on the Northerly edge of Heights Court at the Southeastern most corner of Lot No. 17 as shown on the hereinafter referred to subdivision plan; thence along said Lot No. 17 and also along Lot No. 17-A, North 32 degrees, 24 minutes, 58 seconds West 153.88 feet to a point at lands now or formerly of Bernard J. Krichten as shown on the hereinafter referred to subdivision plan; thence along said last mentioned lands now or formerly of Bernard J. Krichten, North 88 degrees, 46 minutes, 13 seconds East, 202.28 feet to a point at Lot No. 10-A on the hereinafter referred to subdivision plan; thence along said Lot No. 10-A, South 11 degrees, 02 minutes, 07 seconds East 17.18 feet to a point at Lot No. 15 on the hereinafter referred to subdivision plan; thence along said Lot No. 15, South 31 degrees, 05 minutes, 24 seconds West, 136.36 feet to a point on the aforesaid Northerly edge of Heights Court; thence in and along the Northerly edge of Heights Court by a curve to the left having a radius of 50 feet, the long chord of which is South 89 degrees, 20 minutes, 13 seconds West, 52.63 feet for an arc distance of 55.42 feet to the point and place of BEGINNING, CONTAINING 17,329 square feet.

Being known and numbered as 21 Heights Court, Abbottstown, PA 17301.

BEING the same premises which Mark A. Wallen and Julie A. Wallen, husband and wife, by Deed dated April 27, 2005 and recorded April 29, 2005 in and for Adams County, Pennsylvania, in Deed Book Volume 3949, Page 239, granted and conveyed unto Kevin Black and Karen Black.

Parcel No # (01) 004-0113

SEIZED and taken into execution as the property of **Kevin Black & Karen Black** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 6, 2009, and

distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

ALL claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

1/16, 23 & 30

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 08-S-357 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of February, 2009, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain piece, parcel or tract of land, together with the improvements thereon erected, situate, lying and being in Union Township, Adams County, Pennsylvania, more particularly bounded, limited and described as follows, to wit:

BEGINNING for a point along the westerly right-of-way line of Meadowview Drive at Lot No. 42; thence along said Lot No. 42 and Lot No. 41 North 61 degrees 34 minutes 38 seconds West, 177.07 feet to a point at Lot No. 259; thence along said Lot No. 259 North 35 degrees 53 minutes 53 seconds East, 106.41 feet to a point along the southerly right-of-way line of the Ashfield Court cul-de-sac; thence along the southerly right-of-way line of the Ashfield Court cul-de-sac by a curve to the left which has a radius of 60.00 feet, an arc distance of 64.34 feet, the long chord of which is South 84 degrees 49 minutes 25 seconds East, 61.30 feet to a point; thence continuing along the southerly right-of-way line of Ashfield Court by a curve to the right which has a radius of 25.00 feet, an arc distance of 23.55 feet, the long chord of which is South 88 degrees 33 minutes 41 seconds East, 22.69 feet to a point; thence continuing along same South 61 degrees 34 minutes 38 seconds East, 78.68 feet to a point at the intersection of Ashfield Court and Meadowview Drive; thence along the intersection of Ashfield Court and Meadowview Drive by a curve to the right which has a radius of 8.00 feet, an arc distance of 12.57 feet the long chord of which is South 16 degrees 34 minutes 38 seconds East, 11.31 feet to a point along the westerly right-of-way line of Meadowview Drive; thence along the westerly right-of-way line of Meadowview

Drive South 28 degrees 25 minutes 22 seconds West, 132.00 feet to a point, the place of BEGINNING, CONTAINING 21,896 square feet and being identified as Lot No. 260 on the final subdivision plan of Phase VI, Meadowview Estates, which plan is recorded in the Adams County Recorder of Deeds Office in Plat Book 88, page 77.

IT BEING Tract No. 10 of those ten tracts of land which Lynn Lee Construction Co., Inc., a Maryland corporation, by deed dated August 1, 2005 and recorded August 8, 2005 in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Record Book 4075 at page 34, granted and conveyed unto J. A. Myers Building & Development, Inc., a Pennsylvania corporation, Grantor herein.

UNDER AND SUBJECT, NEVERTHELESS, to any restrictions, easements, building setback lines, notes, covenants and conditions as may be shown on subdivision plan recorded in Adams County Plat Book 88, page 77.

UNDER AND SUBJECT, ALSO to the Declaration of Restrictions recorded in the Adams County Recorder of Deeds Office in Record Book 4031 at page 137 (erroneously stated as Record Book 1661 at page 225 in prior deed of conveyance).

TITLE TO SAID PREMISES IS VESTED IN J. A. Myers Building & Development, Inc., a Pennsylvania Corporation, by Deed from Lynn Lee Construction Co., Inc., a Maryland Corporation, dated 08/01/2005, recorded 08/08/2005, in Deed Book 4075, page 34.

Tax Parcel: (41) 003-0179-000

Premises Being: 4 Ashfield Court, Littlestown, PA 17340

SEIZED and taken into execution as the property of **Rosemary A. Ashby** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 6, 2009, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

ALL claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

1/16, 23 & 30

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 08-S-1205 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of February, 2009, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL THAT LOT of ground situate, lying and being along the State Highway leading from Bonneauville to Two Taverns in Bonneauville Borough, Adams County, Pennsylvania, which is bounded and described as follows:

BEGINNING at a point in the center of the state highway aforesaid at lands of Harold Noble, said point is South thirty-two and one-fourth (32-1/4) degrees West one hundred eighty (180) feet from another point, which last mentioned point is in the center of the state highway aforesaid at land of Francis V. Staub; thence by lands of said Harold Noble through an iron pin on the East side of said state highway South fifty-seven and three-fourths (57-3/4) degrees East one hundred seventy-five (175) feet to an iron pin at other land of the grantor, thence by said lands South thirty-two and one-fourth (32-1/4) degrees West one hundred (100) feet to an iron pin at other land of the grantor thence by said lands North II fifty-seven and three-fourths (57-3/4) degrees West one hundred seventy-five (175) feet through an iron pin on the East side of the state highway to a point in the center of said state highway; thence by the center of said state highway North thirty-two and one-fourth (32-1/4) degrees East one hundred (100) feet to a point, the place of BEGINNING.

BEING THE SAME PREMISES which Martin David Seymore, also known as Martin David Seymore, Sr. and Hilda Marie Seymore, husband and wife, by Indenture (dated 06-01-92 and recorded 06-04-92 in the office of the Recorder of Deeds in and for the County of Adams in Deed Book 629. Page 508, granted and conveyed unto Marcia D. Seymore, single.

BEING KNOWN AS: 9 Locust Street, Gettysburg, PA 17325

PARCEL NO. (06) 008-0006

SEIZED and taken into execution as the property of **Marcia Seymore** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 6, 2009, and distribution will be made in accordance with said schedule, unless exceptions are

filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

ALL claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

1/16, 23 & 30

SHERIFF'S SALE

IN PURSUANCE of a Writ of Execution, Judgment No. 08-S-1226 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 13th day of February, 2009, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

ALL that certain piece, parcel or tract of land, together with the improvements thereon erected, situate, lying and being in the Borough of Bonneauville, Adams County, Pennsylvania more particularly bounded, limited and described as follows, to wit:

BEGINNING at a point along the right-of-way line of Bonnielfield Circle, a fifty (50) feet wide right-of-way, and corner of Lot No. 28 on the hereinafter referred to subdivision plan; thence along Lot No. 28, North forty-six (46) degrees thirteen (13) minutes thirty-one (31) seconds West, one hundred ten and zero hundredths (110.00) feet to a point along line of lands now or formerly of late of John E. and Reba F. Biemiller; thence along said lands now or formerly of late of John E. and Reba F. Biemiller, North forty-three (43) degrees forty-six (46) minutes twenty-nine (29) seconds East, seventy-five and zero hundredths (75.00) feet to a point at corner of Lot No. 30 of the hereinafter referred to subdivision plan; thence along Lot No. 30, South forty-six (46) degrees thirteen (13) minutes thirty-one (31) seconds East, one hundred ten and zero hundredths (110.00) feet to a point along the right-of-way line of Bonnielfield Circle aforesaid; thence along the right-of-way line of Bonnielfield Circle, South forty-three (43) degrees forty-six (46) minutes twenty-nine (29) seconds West, seventy-five and zero hundredths (75.00) feet to the point and place of BEGINNING. (CONTAINING 8,250.00 square feet and being Lot No. 29 on Final Plan of Bonnielfield, prepared by Edward H. Richardson Associated, Inc., dated February 26, 1976, File No. G-006, which said subdivision plan is recorded in the Office of the Recorder of Deeds in and for Adams County, Pennsylvania, in Plan Book 9, page 241.

UNDER AND SUBJECT, NEVERTHELESS, to all restrictions, easements, rights-of-way and covenants of record.

TAX PARCEL #: 6-9-43

Property Address: 20 Bonnielfield Circle, Gettysburg, PA 17325

SEIZED and taken into execution as the property of **Timothy M. Warthen** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on March 6, 2009, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

ALL claims to property must be filed with Sheriff before sale.

As soon as the property is declared sold to the highest bidder 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

1/16, 23 & 30

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—Orphan's Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Tuesday, February 3, 2009 at 9:00 a.m.

SCHWEIER—Orphan's Court Action Number OC-121-2008. The First and Final Account of Larry H. Eader, Executor of the Estate of Mae E. Schweier, late of the Borough of Littlestown, Adams County, Pennsylvania, deceased.

Kelly A. Lawver
Clerk of Courts

1/23 & 30

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 GUY A. BECHTEL, JR., DEC'D**

Late of the Borough of Abbottstown, Adams County, Pennsylvania

Executor: Guy A. Bechtel, Sr., c/o Thomas B. Sponaugle, Esq., 110 South Northern Way, York, PA 17402

Attorney: Thomas B. Sponaugle, Esq., 110 South Northern Way, York, PA 17402

ESTATE OF MARIANNE BUSHMAN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Nancy Spalding, 744 Sunset Avenue, Gettysburg, PA 17325

Attorney: John R. White, Esq., Campbell & White, P.C., 112 Baltimore St., Gettysburg, PA 17325

ESTATE OF WINNEMORE S. DUBS, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Gordon J. Dubs, 1658 Art Dr., Hanover, PA 17331

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

ESTATE OF DORIS E. FORD, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: Andrew C. Ford, 301 Church Road, Orttanna, PA 17353

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, Attorneys at Law, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ROBERT C. WEAVER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Rita C. Klunk, 1098 Kohler Mill Rd., New Oxford, PA 17350

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

ESTATE OF CATHERINE E. YANTIS, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executors: Elizabeth Y. Diehl, 134 Hahn Rd., Westminster, MD 21157; William C. Yantis, 520 Mt. Misery Rd., New Oxford, PA 17350

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

SECOND PUBLICATION**ESTATE OF RUTH E. ALDRICH, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Carole A. McCleery, 8 Sycamore Terrace, Palm Coast, FL 32137

Attorney: Thomas E. Miller, Esq., Miller & Shultis, P.C., 249 York Street, Hanover, PA 17331

ESTATE OF ANGELA C. ECKERT, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Richard Patrick Eckert, Lawrence H. Eckert III and Pamela A. Jones, c/o Fenstermacher and Associates, P.C., 5115 East Trindle Road, Mechanicsburg, PA 17050

Attorney: John R. Fenstermacher, Esq., Fenstermacher and Associates, P.C., 5115 East Trindle Road, Mechanicsburg, PA 17050

ESTATE OF JAMES HARTMAN a/k/a JAMES M. HARTMAN, JR., DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Executrix: Pamela Gomez, 2787 Heidlersburg Rd., Gettysburg, PA 17325

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

ESTATE OF ALBERT C. LONG, II a/k/a ALBERT C. LONG a/k/a ALBERT LONG, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Co-Executors: Albert C. Long, II and Linda McKain-Klocker, 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 JOHN DOUGLAS MILLER, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Charlene Levesque Miller, c/o Matthew R. Battersby, Esq., Battersby Law Office, P.O. Box 215, Fairfield, PA 17320

Attorney: Matthew R. Battersby, Esq., Battersby Law Office, P.O. Box 215, Fairfield, PA 17320

ESTATE OF MARY E. MILLER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Dale H. Miller, c/o Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

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

ESTATE OF NOVA R. ROHRBAUGH, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Machree M. Baumgardner, 3704 Baumgardner Road, Hanover, PA 17331; Mariet R. Rohrbaugh, 5659 Lischeys Church Road, Spring Grove, PA 17362

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

ESTATE OF JAMIE MATTHEW SMELTZER, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Administrator: Andrea L. Smeltzer, 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

THIRD PUBLICATION**ESTATE OF EDGAR LEE PORTER a/k/a E. LEE PORTER, DEC'D**

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executrix: Ann Pietrzak, c/o Jennifer A. Messa, Esq., 130 W. Lancaster Ave., Wayne, PA 19087-0191

Attorney: Jennifer A. Messa, Esq., Davis Bennett & Spiess LLC, 130 W. Lancaster Ave., P.O. Box 191, Wayne, PA 19087-0191

ESTATE OF BENJAMIN Z. SCHWARTZ, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Susan Rogers, 287 Table Rock Road, Gettysburg, PA 17325

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

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on or about January 9, 2009 for the incorporation of HOBBS TRUCKING, INC., under the Pennsylvania Corporation Law of 1988. The initial registered office of the corporation is 4410 Emmitsburg Road, Fairfield, PA 17320

Gary E. Hartman, Esq.
Hartman & Yannetti
Solicitors

1/23

LIMITED LIABILITY COMPANY
NOTICE

NOTICE IS HEREBY GIVEN THAT in compliance with the requirements of 15 Pa.C.S. § 8913, a Certificate of Registration – Domestic Limited Liability Company was filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg for the purpose of registering a limited liability company.

The name of the limited liability company is 1899 RED AND WHITE, LLC with the initial registered office at 63 West High Street, Gettysburg, PA.

The purpose for which the limited liability company was organized is: to engage in and do any lawful act concerning any and all lawful business for which limited liability companies may be formed in accordance with the laws of the Commonwealth of Pennsylvania.

Wendy Weikal-Beauchat, Esq.
Beauchat & Beauchat, LLC
63 W. High Street
Gettysburg, PA 17325

1/23
