

Adams County **Legal Journal**

Vol. 53

May 11, 2012

No. 52, pp. 373-377

IN THIS ISSUE

STAMBAUGH VS. POIST ET AL

**Helping families achieve
their long-range financial
goals is our business.**

*Christine Settle
Trust Officer*



**Trust and investment services from
a bank with a long history of trust.**

For more information or a free
consultation, please call 717.339.5058.

Member FDIC



ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly by Adams County Bar Association, John W. Phillips, Esq., Editor and Business Manager.

Business Office – 117 BALTIMORE ST RM 305 GETTYSBURG PA 17325-2313. Telephone: (717) 334-1553

Copyright© 1959 by Wm. W. Gaunt & Sons, Inc., for Adams County Bar Association, Gettysburg, PA 17325.

All rights reserved.

IN THE COURT OF COMMON PLEAS
OF ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO. 2012-TL-164

GETTYSBURG MUNICIPAL AUTHORITY,
Plaintiff

vs.

STEVEN A. MATTHEWS and LYNNELL
S. MATTHEWS, Defendants

ORDER

AND NOW, this 30th day of April 2012,
upon consideration of the within Motion,
it is hereby ORDERED and DECREED
that Plaintiff may serve the Municipal
Claim, filed to this number, on
Defendants, Steven A. Matthews and
Lynnell S. Matthews, by publication pur-
suant to Pa. R.C.P. 430(b). Publication
will be in the Adams County Legal
Journal and one newspaper of general
circulation.

BY THE COURT:
John D. Kuhn
J.

IN THE COURT OF COMMON PLEAS
OF ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
NO. 2012-TL-164

GETTYSBURG MUNICIPAL AUTHORITY,
Claimant

vs.

STEVEN A. MATTHEWS and LYNNELL
S. MATTHEWS, Owners

MUNICIPAL CLAIM

AND NOW, this 29th day of March
2012, the **Gettysburg Municipal
Authority**, a duly organized and operat-
ing Municipal Authority of the
Commonwealth of Pennsylvania, pursu-
ant to the “Municipality Authorities Act,”
53 Pa. C.S.A. §§5607, *et seq.*, as
amended, by and through **Bernard A.
Yannetti Jr., Esq., of Hartman &
Yannetti**, Gettysburg Municipal
Authority Solicitor, hereby files its
Municipal Claim for public water rentals
due and owing, including penalty and
interest, in the amount of Three Hundred
Forty-Two Dollars and Sixty-Four Cents
(\$342.64), plus costs, including filing,
service and attorney’s fees of Three
Hundred Fifty-Four Dollars and Zero
Cents (\$354.00), for a total initial amount
due of Six Hundred Ninety-Six Dollars

and Sixty-Four Cents (\$696.64), and
sets forth the following:

1. Claimant is the Gettysburg
Municipal Authority, with a busi-
ness address of P.O. Box 3307,
Gettysburg, Adams County,
Pennsylvania 17325.
2. The Owners of the subject
improved real property against
which the present Municipal Claim
is filed are Steven A. Matthews and
Lynnell S. Matthews, 4000
Windsor Heights Pl., White Plains,
MD 20695.
3. The improved real property against
which the present Municipal Claim
is filed is located at and known as
85 Skyline Drive, Gettysburg,
Adams County, Pennsylvania
17325, also known as Adams
County Parcel (Cumberland
Township) No. 09E13-0308---000,
and is more particularly bounded
and described in that certain deed,
dated June 30, 2005, and record-
ed in the Office of the Recorder of
Deeds of Adams County,
Pennsylvania, in Record Book
4036 at Page 295 (which deed is
attached hereto, incorporated
herein, and marked as Exhibit “A”).
4. The authority under which the
present Municipal Claim is filed is
the “Municipal Claims and Tax
Liens Act,” Act of May 16, 1923,
P.L. 207, as amended (53 P.S.
§7101, *et seq.*). The authority for
the assessment and collection of
costs and fees is Section 7106(a)
of said Act (53 P.S. §7106(a)), as
well as Resolution No. 1 of 2005,
as amended, of the Board of
Directors of the Gettysburg
Municipal Authority.

5. This Municipal Claim is filed for
public water rentals levied,
assessed or established as of the
below-mentioned dates, and for
the following unpaid amounts,
including mandated penalties and
interest:

Delinquent Water Rentals (06/01/11 to 11/30/2011):	
\$204.58	
Penalties on Delinquent	
Water Rents:	\$ 30.69
Interest on Delinquent	
Water Rents:	\$ 5.08
TOTAL	\$240.35

6. The subject sewer rentals were
duly established, levied or
assessed by the Board of Directors
of the Gettysburg Municipal
Authority, by virtue of its adoption
of Resolution No. 1 of 2003, duly
adopted on December 16, 2002,
effective as of January 1, 2003; the
subject sewer rentals were duly
established, levied or assessed by
the Board of Directors of the
Gettysburg Municipal Authority, by
virtue of its adoption of Resolution
No. 1 of 2003, duly adopted on
December 16, 2002, effective as of
January 1, 2003.

7. Statement of Claim:
Water rents owing, plus
penalty and interest \$240.35
costs, including filing,
service and
attorney’s fees \$391.50
TOTAL MUNICIPAL LIEN \$631.85
8. Plus interest at the legal rate there-
of from the date of filing of the
present Municipal Claim, plus
additional water and sewer rentals,
and penalties and interest thereon,
if any, incurred for water and sewer
services furnished and/or unbilled
as of, or subsequent to, the date of
filing of the present Municipal
Claim, plus additional filing, ser-
vice and/or attorney’s fees, if any.

Gettysburg Municipal Authority
By: Bernard A. Yannetti Jr., Esq.
Hartman & Yannetti
I.D. No. 58137
126 Baltimore Street
Gettysburg, PA 17325
Gettysburg Municipal Authority Solicitor
Attorney for Claimant

5/11

STAMBAUGH VS. POIST ET AL

1. Lis pendens is the jurisdiction, power, or control that courts acquire over property involved in a suit, pending the continuance of the action and until its final judgment thereon.

2. The existence of a lis pendens merely notifies third parties that an interest that may be acquired in the res pending the litigation may be subject to the result of the action and, therefore, is not an actual lien on the property.

3. Lis pendens is based in common law and equity jurisprudence, rather than in statute, and is only subject to equitable principles.

4. Previously, this Court has indicated that a lis pendens may only be indexed when title to real estate itself is involved in a suit. A party is not entitled to have his case indexed as a lis pendens unless title to real estate is involved in litigation and that lis pendens may not be predicated upon an action seeking to recover a personal demand.

In the Court of Common Pleas of Adams County, Pennsylvania, Civil, No. 10-S-1682, DOYLE RAY STAMBAUGH AND E. DIANA STAMBAUGH VS. JOSEPH R. POIST, DEFENDANT, AND MATTHEW E. STAMBAUGH AND WAYDE A. STAMBAUGH, ADDITIONAL DEFENDANTS.

John J. Mooney III, Esq., for Plaintiffs

John M. Crabbs, Esq., for Defendant

Matthew E. Stambaugh, Additional Defendant, *pro se*

Wayde A. Stambaugh, Additional Defendant, *pro se*

Campbell, J., November 7, 2011

OPINION ON DEFENDANT'S MOTION TO STRIKE LIS PENDENS

Presently before the Court is Defendant Joseph R. Poist's Motion to Strike Lis Pendens. For the reasons set forth herein, said Motion is granted.

From the Pleadings, Defendant's Motion and Plaintiffs' Answer thereto the relevant facts are as follows. On October 1, 2010, Plaintiffs filed a Complaint in a civil action against Defendant. On that same date, Plaintiffs filed a "Praecipe for Lis Pendens" directing the Prothonotary to index the action as a lis pendens against certain real property owned by Defendant. Then, on April 15, 2011, Plaintiffs filed an Amended Complaint against the Defendant. Plaintiffs' Complaint sets forth eight counts including two counts for breach of oral contract, three counts for fraud, and three counts for unjust enrichment. On Counts I, III, and VI, Plaintiffs have demanded judgment

against Defendant in the sum of \$41,837.00. On Counts II, IV, and VII, Plaintiffs have demanded judgment against Defendant in the monetary sum of \$4,501.64. On Counts V and VIII, Plaintiffs have demanded judgment against Defendant of an undisclosed amount of monies allegedly paid by Plaintiffs to the Department of Revenue for Inheritance Taxes related to the real estate, from which Defendant allegedly benefitted. Plaintiffs have admitted that on each of the eight counts set forth in their Amended Complaint the relief Plaintiffs are seeking is a monetary judgment. In addition, Plaintiffs have admitted that they are not claiming any title to the real property owned by Defendant.

The factual basis for Plaintiffs' claims, as set forth in their Amended Complaint, arises out of payments made by Plaintiffs following the untimely death of Plaintiffs' daughter and Defendant's girlfriend, Michelle D. Stambaugh. Allegedly, Plaintiffs made mortgage payments, paid real estate taxes, and paid inheritance taxes for real estate which had been acquired by Michelle D. Stambaugh and Defendant Joseph R. Poist as joint tenants with the right of survivorship some nine years prior to Michelle D. Stambaugh's death. Plaintiffs allege that during the probate process they mistakenly believed and were led by Defendant to believe that they were going to receive their daughter's one-half interest in the real estate she jointly owned with Defendant. By virtue of executed disclaimers, Plaintiffs claim that they then believed Michelle D. Stambaugh's ownership interest in the subject property passed to Plaintiffs' sons, Additional Defendants, Matthew E. Stambaugh and Wayde A. Stambaugh. According to Plaintiffs, Defendant knew throughout the probate process that he had become the sole owner of the real estate, in fee simple, immediately upon Michelle D. Stambaugh's death. Nonetheless, according to Plaintiffs, sometime in 2008 the Plaintiffs paid the remaining balance of \$41,837.07 on the mortgage encumbering the property and paid real estate taxes associated with the property totaling \$4,501.64, all to the benefit of the Defendant. Finally, Plaintiffs allege that Defendant made various statements which induced Plaintiffs to pay inheritance tax from their daughter's estate to allow Defendant to avoid paying a 15 percent tax on his own increase in his ownership interest in the property. Plaintiffs claim they have been damaged in an amount equal to the payments made for the mortgage, real estate taxes, and inheritance taxes.

At no time have Plaintiffs made a claim for any title, ownership, or equitable interest in the real estate. Plaintiffs have not claimed to hold any equitable interest in Defendant's real estate pursuant to contract of sale, mortgage, constructive trust, or otherwise. Plaintiffs' only demand, and the only relief that would be afforded to Plaintiffs in the event they prevail on the merits of their causes of action, is the award of monetary judgments in their favor and against Defendant.

In opposing Defendant's Motion to Strike Lis Pendens, Plaintiffs essentially claim that because the payments they made were related to obligations associated with Defendant's real estate, such a connection is sufficient to create an "interest" on behalf of the Plaintiffs in the subject real estate. Plaintiffs argue that "a lis pendens is appropriate in all cases arising from equity where the plaintiff has brought a claim in good faith but would not be able to execute on the judgment if defendant were allowed to sell the property while litigation was still pending." Plaintiffs in this regard are essentially asking for a freeze of Defendant's assets before judgment is rendered on the merits to avoid the frustration they may later realize in the collection process if they are successful in obtaining the relief sought.

Simply stated, lis pendens is the jurisdiction, power, or control that courts acquire **over property involved in a suit**, pending the continuance of the action and until its final judgment thereon. *United States Nat'l Bank in Johnstown v. Johnson*, 487 A.2d 809, 812 (Pa. 1985) (emphasis added). Further, the existence of a lis pendens merely notifies third parties that an interest that may be acquired in the res pending the litigation may be subject to the result of the action and, therefore, is not an actual lien on the property. *Id.* Lis pendens is based in common law and equity jurisprudence, rather than in statute, and is only subject to equitable principles. *Dorsch v. Jenkins*, 365 A.2d 861, 863-64 (Pa. 1976). Previously, this Court has indicated that a lis pendens may only be indexed when title to real estate itself is involved in a suit. *Cullison v. Gettysburg Econ. Dev. Corp.*, 731-S-2010, at *3 (Adams County Court of Common Pleas, June 3, 2010 citing *Daystar, Inc. v. Phillips*, 5 Pa. D & C 4th 543 [Lehigh Co. 1990] stating that a party is not entitled to have his case indexed as a lis pendens unless title to real estate is involved in litigation and that lis pendens may not be predicated upon an action seeking to recover a personal demand).

Indeed, Pennsylvania appellate authority suggests that title to realty or something akin thereto must be at issue before a lis pendens is appropriate. Statutes dealing with lis pendens did not create the right of lis pendens, and such right existed long before the enactment of the statutes. *Dice v. Bender*, 117 A.2d 725, 727 (Pa. 1955). The mere pendency of a suit in equity affecting title to realty was held, both at common law and inequity, to constitute constructive notice thereof to all the world. *Id.* Presently, the Judicial Code provides that “every document affecting title to or any other interest in real property which is filed and indexed in the office of the clerk of the court of common pleas of the county where the real property is situated ... shall be constructive notice to all persons of the filing and full contents of such document.” **42 Pa. C.S. § 4302(a)**. As this Court held in *Cullison*, the codification of the notice provisions contained in the Pennsylvania Judicial Code as cited hereinabove does not change the fundamental notion that title to real property must be involved for a lis pendens to be properly indexed. *Cullison*, 731-S-2010, at *4.

Instantly, a review of Plaintiffs’ Amended Complaint reveals that Plaintiffs are not seeking any defined interest in Defendant’s real estate. Plaintiffs admit that they have no claim to title in the real estate. Likewise, they are not asserting a quiet title action, a constructive trust, an action on a real estate contract, an action to conform a mortgage, any action on an alleged unrecorded mortgage, an action in foreclosure, or any other similar cause of action that might entitle Plaintiffs to an “interest in real property” of Defendant. The fact that the monies expended by Plaintiffs on Defendant’s behalf were allegedly related to debts or bills affecting Defendant’s real estate, such as mortgage payments and taxes, while perhaps giving Plaintiffs a right to pursue a cause of action for recovery of those monies from Defendant, do not give Plaintiffs any interest in the real estate itself.

Further, the fact that Plaintiffs view Defendant’s property as an asset, perhaps Defendant’s only meaningful asset upon which to execute in the event Plaintiffs prevail on the merits of their underlying causes of action, does not qualify as an “interest in real property” for purposes of lis pendens statutes. If Plaintiffs prevail on the merits of their causes of action, then all that would be awarded is a

monetary judgment in their favor. Plaintiffs would then be left to execute on that monetary judgment as would any other judgment creditor. To adopt Plaintiffs' view that a plaintiff is entitled to a lis pendens against a defendant's real estate in cases where a monetary award is being pursued, when taken to the extreme, would suggest that a lis pendens is appropriate in any and all civil actions seeking monetary relief where a defendant owns real estate.

The purpose and intent of the indexing statutes and the doctrine of lis pendens is to give purchasers of real estate reasonable notice that another party is claiming some right, title, or interest in and to that real estate and that the purchaser of the property may not be taking it free and clear of those claims. As noted by the Pennsylvania Supreme Court, to view the purpose of lis pendens any other way, "it would mean that if one had a claim of merely a trifling sum, he could, pending litigation for its recovery in an equity proceeding, prevent his alleged debtor from conveying away property even though, perhaps, of a fabulous value, on an unjustified assumption that the working of the doctrine of lis pendens is wholly inexorable and uncontrollable." *Dice*, 117 A.2d at 727.

Accordingly, because Plaintiffs' causes of action against Defendant as set forth in Plaintiffs' Amended Complaint do not claim any title or interest in Defendant's real property, but rather merely demand monetary judgment against Defendant, it is apparent that Plaintiffs are not entitled to index a lis pendens against Defendant's property. Accordingly, the attached Order is entered granting Defendant's Motion to Strike.

ORDER

AND NOW, this 7th day of November 2011, Defendant's Motion to Strike Lis Pendens is granted. The Adams County Prothonotary is directed to strike the Lis Pendens from the record in this matter.

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 WILLIAM J. BROWNE, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executrix: Patricia E. Gabaree, 1021 Jackson Square Road, Spring Grove, PA 17362

Attorney: John J. Mooney III, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF ROBERT EUGENE PRICE a/k/a ROBERT E. PRICE, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: Jody K. Price, 342 Heritage Drive, Gettysburg, PA 17325

Attorney: Wendy Weikal-Beauchat, Esq., 63 West High St., Gettysburg, PA 17325

ESTATE OF BERNADETTE M. WEAVER, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Administratrix c.t.a.: Joyce A. Jarosick, 109 Elk Drive, Hanover, PA 17331

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

ESTATE OF DONALD F. WOOD, DEC'D

Late of the Borough of Carroll Valley, Adams County, Pennsylvania

Executor: ACNB Bank, Attn: Christine Settle, 16 Lincoln Square, P.O. Box 4566, Gettysburg, PA 17325

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

SECOND PUBLICATION

ESTATE OF KATHRYN J. GROOT, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Raymond J. Sheedy III, 1019 Crouse Mill Road, Keymar, MD 21557

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

ESTATE OF CHRISTIANA A. LEONARD, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Robbin A. Leonard, 125 North Second St., McSherrystown, PA 17344

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

ESTATE OF ALBERT F. RITTER a/k/a ALBERT FRANKLIN RITTER, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: Kent L. Sauers, 2 Butternut Lane, Hanover, PA 17331

Attorney: Timothy J. Shultis, Esq., Shultis Law, LLC, 1147 Eichelberger Street, Suite F, Hanover, PA 17331

ESTATE OF JAMES D. ROSENBERY, DEC'D

Late of the Borough of Abbottstown, Adams County, Pennsylvania

Executrix: Laura Miller, 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 RALPH E. WOODWARD JR., DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: ACNB Bank, P.O. Box 4566, Gettysburg, PA 17325

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

THIRD PUBLICATION

ESTATE OF MYRTLE R. HEINDEL a/k/a MYRTLE RUTH HEINDEL, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: Lee E. Heindel, 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 LORRAINE A. MELLOTT, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Co-Administrators: Ruth Anne Karshner, 1565 New Valley Road, Marysville, PA 17053; Larry L. Mellott, 250 Fall Foliage Lane, Howard, PA 16841

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

ESTATE OF MALCOLM NORMAN STEWART, DEC'D

Late of the Borough of Carroll Valley, Adams County, Pennsylvania

Executrix: Elizabeth E. Stewart, c/o Kevin G. Robinson, Esq., Gates & Gates, P.C., 60 E. Middle Street, Gettysburg, PA 17325

Attorney: Kevin G. Robinson, Esq., Gates & Gates, P.C., 60 E. Middle Street, Gettysburg, PA 17325

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that a business corporation known as BERWICK FOODS II, INC. has been incorporated under the provisions of The Pennsylvania Business Corporation Law of 1988.

Frank H. Countess, Esq.
CGA Law Firm
135 North George Street
York, PA 17401

5/11

NOTICE

NOTICE IS HEREBY GIVEN that JASON G. PUDLEINER, ESQ., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 3rd day of August 2012, and that he intends to practice law as an Assistant Public Defender in the Office of the Public Defender, County of Adams, 23 Baltimore Street, Gettysburg, Pennsylvania.

5/11, 18 & 25

NOTICE

NOTICE IS HEREBY GIVEN that SEAN A. MOTT, ESQ., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 3rd day of August 2012, and that he intends to practice law as an Assistant Public Defender in the Office of the Public Defender, County of Adams, 23 Baltimore Street, Gettysburg, Pennsylvania.

5/11, 18 & 25

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation for NEW ERA TRANSPORTATION, INC. were filed with the Department of State of the Commonwealth of Pennsylvania on April 9, 2012, under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

Guthrie, Nonemaker, Yingst & Hart
Solicitor

5/11
