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CAROLYN J. PUGH, EDITOR

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CONTRACT

MELVIN HIGH, JR. D/B/A HIGH QUALITY
EXCAVATING V. SUMMIT GROVE CHRISTIAN
CONFERENCE CENTER

Breach of Contract

No. 2007-SU-2500-Y01

1. Plaintiff performed construction work for Defendant. A subsequent verbal agreement was entered into to perform additional work. Plaintiff filed a Complaint for Breach of Contract and Defendant filed a New Matter and Counterclaim. Before the Court are Plaintiff's Preliminary Objections to Defendant's pleading for lack of specificity, for failing to attach a writing, and for claiming punitive damages in a contract case. The Court denied the first two objections, finding that the pleading was sufficient and that attaching the writing was unnecessary. The Court, however, granted the Preliminary Objection with respect to the claim for punitive damages.

MICHAEL L. MILLER V. DIEHL MOTOR CO. T/A
DIEHL SUZUKI

Breach of Contract – Promotional Contest

No. 2001-SU-05578-01

1. Miller received a promotional mailing from Diehl Motor in which Miller alleges that he was the scratch-off winner of \$25,000.00. Diehl Motor advised him that the advertisement contained an error and he was not the winner. Miller brought a breach of contract action against Diehl Motor. Both parties filed Motions for Summary Judgment. The Court held that all terms of a promotional offer must be performed in order to create a valid contract. One of the terms in the advertisement was that the insurance company needed to verify that Plaintiff was the winner. That term had not been met, therefore no contract had been created. Summary Judgment was entered in favor of Defendant.

CONTEMPT PETITION

PICKARD V. STAMBAUGH

Contempt Petition – Violation of Conciliator's dictated Order

No. 2005 – FC – 02375 – Y03

1. Following a conciliation conference, the conciliator dictated order, in the presence of both parents, granting physical custody of the minor on Tuesdays to the father. Father filed petition for contempt following the mother's refusal to provide access to the child on the next Tuesday. Court held

that the mother had actual notice of the conciliator's order; however, a proposed order by a conciliator was not an order of court and mother could not be held in contempt.

GEORGE W. SIPE. JR. V. MARY K. SIPE

Custody – Contempt

No. 2003-CU-001312-Y03

1. Under Custody Order, father was obliged to provide transportation for child to and from school. In an argument, child had told father she did not need her father. In response, father gave child money for transportation. Mother filed Petition for Contempt for father's failure to provide transportation for child to and from school. Contempt hearing was held and Mother called the child as witness to testify against father. Court found father in contempt not for failing to provide transportation, but rather for failing to advise mother of change in arrangements. Court limited the award of feed and costs so as not to reward mother for adding to the already present divisive situation.

CUSTODY

CHRISTOPHER C. HUNG V. JACQULYN HERSH

Joint Legal Custody – Dispute over School
Districts – Local Procedure

No. 2002-US-04784-Y03

1. Parents share joint legal custody of five year old child and are unable to decide which public school the child will attend for kindergarten. A Petition for Special Relief was filed in August, immediately before the school year. Every year the Court is inundated with last minute petitions when the parents are unable to agree on school district. In the future, the matter will be considered in the duly filed custody action in conciliation, or by way of a Petition for Special Relief pursuant to Rule 1915.13. The parties are afforded ten minutes to each explain to the Court why their districts is in the best interests of the child.

SEITZ V. RUNKLE

Petition for Enforcement – Custody - Contempt

No. 2006-FC-309-Y03

1. Paternal grandparents have Court Order granting uninterrupted week of partial custody during the summer. Grandparents contend they provided adequate notice for a vacation and the mother has indicated that she will refuse to make the child available during that week. Grandparents

filed a Petition for Enforcement and request that mother be held in contempt. Court ruled that Petition for Enforcement and Contempt was premature as there had been no actual violation of the existing Court Order. Petition for Enforcement was denied.

STAUB v. STAUB

Custody - Petition for Special Relief - Home
Schooling

No. 2006-CU-02123-Y03

1. Father filed a Petition for Special Relief asking the Court to direct that the children be sent to public school. Presently the children, ages 10 and 13, are home schooled. The Court held that, while traditionally, public school is favored when the parents cannot agree, extraordinary circumstances in this case warrant a different result. The children have been home schooled for an extended period of time and are doing extremely well. While the mother has only a high school education, she has sought outside resources to supplement the home education, and the father has had little involvement in the children's education to date. Petition for Special Relief Denied.

DECLARATORY JUDGMENT

**DORIE E. HEYER v.
JACOB T. HOLLERBUSH**

Declaratory Judgment – Marriage Validity – On-
line Ordination

No. 2007-SU-002132-Y08

1. Plaintiff brought this action to ascertain whether her marriage to Defendant was valid. The person performing the ceremony had no congregation, had no place of worship, and had attended no meetings with anyone in the Universal Life Church. He received his ordination from the Universal Life Church via the internet within five to ten minutes of application. The Court held that this person did not meet the qualifications of a minister, priest, or rabbi under Section 1503 of the Domestic Relations Code. The marriage of Plaintiff and Defendant was declared void ab initio.

**WTS PROPERTIES, LLC v.
NEWBERRY TOWNSHIP
MUNICIPAL AUTHORITY**

Declaratory Judgment – Accord and Satisfaction –
Advisory Opinion Improper

No. 2006 – SU – 2869 – Y08

1. Plaintiff failed to timely pay a sewer bill to Defendant, which, in turn, imposed a standard ten percent late fee. The parties negotiated an agreement which brought the account current. Plaintiff

brought a Declaratory Judgment action contesting the Defendant's penalty structure. The Court granted Defendant's Motion for Judgment on the Pleadings finding that the accord and satisfaction eliminated the existing controversy and, therefore, barred the declaratory action.

**EXCEPTIONS TO DIVORCE
MASTER'S REPORT**

**ROBERT N. CROUSE v.
SUSAN MARIE CROUSE**

Exceptions to Divorce Master's Report –
Contentious Proceedings

No. 2001-SE-5282-Y15

1. Husband filed for Divorce. Several unsuccessful Settlement Conferences and the Discovery Process were very contentious. The Divorce Master heard five days of testimony and filed his Report and Recommendations. The Wife filed four exceptions for which the Court concluded that no abuse of discretion or error of law had been made. The Husband filed one hundred and ninety exceptions which the Court refused to consider because of their voluminous nature. Husband and Wife's Exceptions to the Divorce Master's Report and Recommendation were denied.

**INEFFECTIVE ASSISTANCE OF
COUNSEL**

**COMMONWEALTH OF PENNSYLVANIA v.
ANTONIO MICHAEL STAUFFER**

Criminal Law – 1925(a) – Ineffective Assistance of
Counsel

No. 5545 CA 2002

1. Appellant filed for Post Conviction Collateral Relief contending ineffective assistance of counsel at his retrial. Appellant argued that his attorney failed to object when the Court appointed lead counsel at his retrial, failed to file a motion to sever his case from his co-defendants, improperly advised him not to testify at his retrial, and failed to advocate that his testimony from the first trial be admissible. On the first issue, the Court explained that Appellant's attorney had been ineffective at his first trial, that Defendant had agreed to the appointment of more experienced counsel prior to his retrial, and that the state's interest in effectively administering justice overrode Appellant's interest in retaining the counsel of his choice. The Court found that the Appellant's other three arguments lacked merit.

**COMMONWEALTH OF PENNSYLVANIA v.
GREGORY H. NEFF**

PCRA – Ineffective Assistance of Counsel – Jury
Instructions – Failure to Call Witnesses – Plea
Agreement Nondisclosure During Voir Dire

CP-67-CR-3314-2001

1. Defendant filed Petition for Post Conviction Relief. Petitioner contends ineffective assistance of counsel in that counsel failed to object to the improper jury instructions on voluntary manslaughter and accomplice liability, failed to call three fact witnesses, failed to appeal the Court's refusal to enforce plea agreement, and failed to explain a written plea agreement. Petitioner also contends that he should be granted a new trial because the jury foreman had concealed in voir dire that he was an acquaintance of a defense witness. The Court held that the jury instruction had not been improper; the failure to call three witnesses was a trial strategy due to the witnesses poor recollection; there had been no plea agreement to enforce; and the record did not support the claim that defense counsel; had not explained the executed plea agreement. Finally, the Court held that Defendant could not establish that he was prejudiced by the nondisclosure by the jury foreman during voir dire as Petitioner would likely have benefited from the favorable relationship between the foreman and the defense witness. Post Conviction Relief was denied.

COMMONWEALTH OF PENNSYLVANIA V.
ZACHARY WITMAN

PCRA – Ineffective Assistance of Counsel –
Stipulation to Admission of Previously Suppressed
Evidence

CP-67-CR-5411-1998

1. Defendant filed Petition for Post Conviction Relief. Petitioner contended ineffective assistance of counsel in that Defense Counsel stipulated to the admission of Defendant's socks. Socks had been suppressed by Trial Court and this decision had not been overturned on appeal by the Superior Court. At trial, the Commonwealth presented evidence and testimony demonstrating that the dirt on Defendant's sock matched the dirt near the hole where the murder weapon had been found, that the foot prints between the house and where the murder weapon had been found, had been made by someone who had not been wearing shoes, and that the socks had "dripped" blood on them which was consistent with someone standing when the blood fell onto the socks. The Court found that the admission of the socks was prejudicial to Defendant, that Defense Counsel had not used the socks to exculpate the Defendant, and that there was no reasonable basis for stipulating to the admission of the previously excluded socks. Post Conviction Relief Petition was granted. Defendant was awarded a new trial.

INJUNCTION

LECKRONE v.
STEWARTSTOWN BOROUGH AUTHORITY

Competitive Bidding Laws – Material
Discrepancies in Bid Specifications –
Equity Action - Permanent Injunction

No. 2007 – SU – 945-Y08

1. The Stewartstown Borough Authority solicited bids for an expansion and upgrade to its Wastewater Treatment Plant. Six bidders submitted bids on the electrical construction contract. IETC submitted the lowest bid, but its bid came with a list of "Electrical Clarifications." The Authority awarded the contract to IETC. Plaintiff taxpayer brought this Equity Action for Special or Permanent Injunction against the Authority arguing that the "Electrical Clarifications" constituted material discrepancies, rendering IETC's bid defective. Following a hearing, the Court found that IETC materially changed the bid specifications by excluding the excavation and removal of rock, modifying the time period for payment, and decreasing the time period for which the bid must remain open. This placed other bidders at a financial disadvantage. While finding that the Authority had not acted in bad faith, the Court granted a permanent injunction and voided the agreement.

INSURANCE

TERRA NOVA INSURANCE CO. V.
KINARD ENTERTAINMENT, INC. T/A
CHEERS BAR AND VALERIE SCOTT

Insurance – Obligation to Defend – Underlying
Action – Negligent Acts Exclusion

No. 2004-SU-1607-Y08

1. Plaintiff brought this action to ascertain its obligation to defend and indemnify Defendant Kinard Entertainment t/a Cheers Bar, against a personal injury action filed by Valerie Scott. In the underlying action, Scott alleges that she was knocked to the floor and injured when a bouncer, who was employed by Kinard, pushed his way through a crowd at Cheers Bar to get to an altercation. The insurance policy contained an Assault and/or Battery Exclusion which excluded insurance coverage for any act of assault and/or battery as well as certain acts of negligence. The Court granted Plaintiff's Motion for Summary Judgment finding that the exclusionary language was comprehensive and included acts of negligence as had been alleged by Scott.

LANDLORD TENANT

SHARON K. GOTT v.
SHERILYN KANYUCK

Landlord Tenant – Security Deposit

No. 2004-SU-003264-Y01

1. Before the expiration of her lease, Plaintiff-tenant sent a non-renewal letter to Defendant-landlord. Tenant provided her new address, requested a final walk-through to assess any damages, and asked for the balance of her security deposit within 45 days. No walk-through occurred. Landlord sent list of damages 33 days after the lease expired. Plaintiff filed a Complaint to recover double her security deposit. Defendant counter-claimed for damages exceeding the security deposit. A bench trial followed. The Court held that the Landlord Tenant Act requires a landlord to return the security deposit or provide a list of damages within 30 days. By statute, the 30 day provision cannot be waived. Judgment was entered in favor of the Plaintiff.

GREGORY SIMPSON v.
TAKIYAH SANTIAGO

Landlord Tenant – Petition to Strike Default
Judgment –

Petition to Open Judgment

No. 2007 – SU – 4845 – Y09

1. This landlord – tenant case was appealed from the District Magistrate's Office to the Court of Common Pleas. Defendant remains in possession of the property. Following the entry of a Default Judgment, Defendant filed a Petition for Relief from Default Judgment and, thereafter, Plaintiff filed a Motion to Release Escrowed Funds. The Court read Defendant's Petition for Relief as being both a Petition to Strike Judgment and a Petition to Open Judgment. Concluding that there were no fatal defects on the face of the record, the Court denied Defendant's Petition to Strike the Judgment. However, presuming a reasonable excuse and finding a meritorious defense had been alleged, the Court granted the Petition to Open the Judgment. The Court also granted Plaintiff's Motion to Release Escrowed Funds.

MORTGAGE FORECLOSURE

WELLS FARGO BANK, N.A. v.
BARSHINGER

Mortgage Foreclosure - Demurrer – Timeliness

No. 2006 – SU – 3553-Y06

1. Plaintiff Wells Fargo initiated a mortgage foreclosure proceeding. Defendants counter-claimed that the Wells Fargo could not commence a mortgage foreclosure without first making a demand for payment and could not seek the entire indebtedness without first accelerating the obligation. More than sixty (60) days after the filing of the counterclaim, Plaintiff Wells Fargo Bank filed

Preliminary Objections in the form of a Demurrer. Pursuant to Pa.R.C.P. 1026, the Court denied Plaintiff's Demurrer as being untimely. The Court further stated that the objections, if timely filed, would have been denied because the issues raised in the counterclaim were related to the mortgage instrument and Plaintiff's foreclosure action.

PRELIMINARY OBJECTIONS

CITIBANK (SOUTH DAKOTA) N.A. v.
ROGER W. SPRAGUE

Preliminary Objections – Request for Admissions –
Summary Judgment

No. SU-04346-Y01

1. Plaintiff brought this action alleging that Defendant had several outstanding balances on credit cards. Plaintiff sent Request for Admissions, covering all material factual allegations in the Plaintiff's action. The Pro Se Defendant did not respond. Plaintiff moved for Summary Judgment. The Court granted the Plaintiff's Motion for Summary Judgment noting that Defendant's Pro Se status does not afford him extra protection with respect to the rules of court.

KAREN B. EUCULANO, INDIVIDUALLY
AND AS THE EXECUTRIX OF THE ESTATE OF
MICHAEL S. EUCULANO, DECEASED V.
CHRISTOPHER A. KOLB AND YORK SERVICES,
INCORPORATED, T/B/D/A QUICK-TRIP AND
PENSKE TRUCK LEASING CORPORATION

Preliminary Objections – Demurrer

No. 2007-SU-002085-Y01

1. Plaintiff brought this action to recover, individually and as Executor of the Estate, for damages as a result of a motor vehicle accident involving a truck driven by Defendant Kolb. The vehicle had been owned by Penske Truck Leasing Co. L.P. and leased to Defendant York Services, Inc. Defendants filed Preliminary Objections to the Complaint and Oral Argument was heard by the Court. Defendant Penske argued that it could not be liable because it only leased the vehicle and had no knowledge that the lessee was incompetent. Accepting the averments in the Complaint as true, the Court concluded that the Complaint did not allege that the lessor knew that the lessee was incompetent, and the averments were insufficient to overcome a Demurrer.

KREPPS v.
SNYDER, D.P.M

Preliminary Objections – Connor Objections

No. 2007 – SU – 788-Y01

1. Plaintiffs filed medical malpractice action against Defendant Podiatrist. Defendant filed objections to Plaintiffs' Complaint arguing that the damage paragraph was boilerplate. Court held that injuries were continuing and that the paragraph was designed to cover unknown injuries which might still occur. It was not a catch-all allegation of negligence. Preliminary Objections were denied.

**YORK CITY REDEVELOPMENT AUTHORITY v.
OHIO BLENDERS, INC.**

**Eminent Domain – Preliminary Objections –
Amended Declaration of Taking**

No. 2006 – SU – 1582 – Y01

1. York City Redevelopment Authority initiated Eminent Domain proceedings to appropriate the lands of Ohio Blenders, Inc. The Authority filed an Amended Declaration of Taking to cure a technical defect. Ohio Blenders filed Preliminary Objections arguing that the Authority could not Amend the Declaration without leave of Court. The Court held that amendments are permitted without leave of Court if it is to cure a technical defect. Preliminary Objections were overruled.

SUPPRESSION

**COMMONWEALTH OF PENNSYLVANIA v.
NAM VAN TRAN**

**Criminal Law – Suppression – Emergency Service
Responder**

1. Defendant filed a Motion to Suppress Evidence, including failed sobriety tests, obtained in what he argued was an unlawful stop in violation of his Fourth Amendment rights. The evidence demonstrated that a member of a local Fire Company attempted to divert the Defendant driver away from a fatal crash scene and onto an alternate route. Defendant did not comply and entered the blocked off road, knocking over a Road Closed sign and several orange cones. Defendant was subsequently arrested for driving under the influence. The Court held that the fireman was acting as an agent of the State and had the authority, as an emergency service responder, to activate his lights and stop Defendant's vehicle. Defendant's Motion to Suppress was denied.

SUPPORT

**NANCY S. GRUBB v.
THOMAS J. GRUBB**

Support Action – Calculation of Earnings

No. 01492-SA-2007

1. Defendant Husband is the sole owner of "True Colors" a car painting and detailing business operated out of his home. Plaintiff Wife filed a

Petition for Alimony Pendente Lite. A conference officer calculated incomes for Alimony purposes. Presently, before the Court is Plaintiff's appeal which the Court treated as a demand for De Novo Hearing. Plaintiff Wife contends voluntary retirement contributions, Internal Revenue Code Section 179 deductions, and business prerequisites were improperly excluded from Husband's earnings. The Court held that the voluntary retirement contributions and business prerequisites should have been included in the earnings calculation. However, the Section 179 deductions, which were retained earnings that had been put back into the business should have been excluded from the calculation because they were necessary to preserve the seasonal business. Support Order was modified accordingly.

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCE- MENT ACT

**KEVIN FRIEND v.
ANGIE ROWLAND**

**Domestic Relations – Uniform Child Custody
Jurisdiction and Enforcement Act**

No. 2007-FC-00631-Y03

1. Plaintiff filed a Petition to Modify the Custody Order and to Enjoin Defendant from continuing a Custody Order Enforcement Proceeding filed in Maryland. Plaintiff argued that the Uniform Child Custody Jurisdiction and Enforcement Act gives Pennsylvania courts jurisdiction to Modify pre-existing Custody Orders when there are simultaneous interstate proceedings pending. The Court agreed that it had jurisdiction, but concluded that section 5426 of the Act contemplates that the Petition to Modify be filed prior to the out of state Petition to Enforce. The Court held that granting the relief would undermine the scheme of the interstate enforcement of custody orders and denied Plaintiff's Petition.

