

The
York Legal Record

A Record of Cases Decided in the Courts of York County, Pa.

CAROLYN J. PUGH, EDITOR

Volume CXXII

YORK LEGAL RECORD PRINT
YORK , PENNSYLVANIA

2013

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SUBJECT MATTER INDEX

OF CASES REPORTED IN THIS VOLUME

BOARD OF VIEW

SHAFFEELI v. ZELLER, et al

Private Road Act – Board of View - Exceptions

No 2003 SU 024505-08

1. Petitioner filed exceptions to the report of a board of view convened pursuant to the Private Road Act. Following a site view and a hearing, the board assessed damages to be paid by Petitioner to Respondents for a private road. The Court reviewed the exceptions and the procedural process for a party appealing a decision by a board of review under the Act. A trial was scheduled to determine “just compensation.”

CONTRACT

WOLF ORGANIZATION D/B/A FLOWCARD D/B/A
THE LUMBERYARD V. ALAN POLLARD,
INDIVIDUALLY AND T/D/B/A
POLLARD & COMPANY, INC.

Contract – Default Judgment

No. 2007-SU-3701-Y09

1. Plaintiff brought a contract action against Defendant alleging that it delivered goods to Pollard for which it was not reimbursed. Plaintiff filed a Complaint and took a Default Judgment on February 28, 2008, when Pollard failed to file and Answer. On July 12, 2008, Defendant filed a Motion to Strike/Open the Judgment contending that the Sheriff did not serve the Complaint, that Plaintiff mailed the Complaint to an inactive address, that Pollard expected his attorney to file a response, and that he had a meritorious defense. Wolf argued that Sheriff service was not required because the matter had been initiated at the District Magistrate's office and that no attorney had entered their appearance. After oral argument, the Court held that service had been proper and since no attorney had entered an appearance, it was not defective. Therefore, the Court denied Defendant's Motion to Strike. The Court, however, concluded that Pollard's denial of nonpayment was a meritorious defense justifying the opening of the judgment.

DAMAGES

LAWRENCE T. CHRISTIAN AND
DEBRA E. CHRISTIAN, HUSBAND AND WIFE V.
JOHN YANOVIK, INDIVIDUALLY AND T/D/B/A
CUMBERLAND MASONRY, INC.

Civil Action – Damages – Conversion of Timber

No. 2005-SU-001398-Y01

1. Defendant owned lots bordering Plaintiffs' property and mistakenly cut down trees which were located on Plaintiffs' property. Liability was admitted and the question before the Court was the proper measure of damages. Plaintiffs argued that the tree removal decreased the fair market value of their property because the trees acted as a sound and visual barrier from the Pennsylvania Turnpike. Defendant asserts that the measure of damages should be the value of the cut timber. The Court held that the loss of privacy, not just the value of the wood, was a recoverable measure of damages and it was for the fact finder to determine whether the damages were repairable or irreparable.

DISCOVERY

SPADAFORA v. HATZINIKOLAS

Discovery – Motion to Quash Subpoena – Public Interest Privilege

No. 2003 SU 1163-01

1. Defendants owned and operated a bar in York known as the End Zone. In 2002, Plaintiff's daughter was shot and killed outside of the bar and Plaintiff brought this action against the Defendants pursuant to the Pennsylvania Wrongful Death and Survival Acts. The shooter was arrested and prosecuted. The Defendants, in this action, served a subpoena upon the District Attorney's office requesting investigative materials relating to the criminal docket. The District Attorney's office filed a Motion to Quash. In granting the Motion, the Court held that most of the information could be obtained from original sources and a public interest privilege exists to encourage individuals to make disclosures to the public prosecutor.

DRAM SHOP ACT

SUSAN BILBO, PERSONAL REPRESENTATIVE
OF THE ESTATE OF AMY GEBHARDT,
DECEASED V.
BAIR'S DEN RESTAURANT AND LOUNGE, INC.
AND HANOVER BOWLING CENTER

Motion for Summary Judgment – Dram Shop Act

No. 2006-SU-716-01

1. Decedent's estate brought a Dram Shop Action against Defendant. Defendant moved for Summary Judgment on the basis that there was no factual evidence that Defendant's employees served decedent alcoholic beverages while she had been at Defendant's establishment or that she had been visibly intoxicated while on the premises. Defendant further argued that no one could place Decedent at the bar after 11 p.m. At 1:30 a.m., she had been stopped by a police officer and had told

him that she had been drinking at a friend's house. After viewing the record in the light most favorable to the Estate, the Court held that the Plaintiff had failed to meet her burden of proof under the Dram Shop Act. Summary judgment was granted.

EQUITABLE ESTOPPEL

CARROLL SIGN COMPANY, INC. t/d/b/a TRONE
OUTDOOR ADVERTISING v. STERNER

Mandamus – Property Location - Equitable
Estoppel

No. 2006 – SU – 02638 – Y08

1. Plaintiff leased the property in question to place a billboard advertising sign along Route 30. Plaintiff then requested that Jackson Township grant a permit. Using a tax map, Jackson Township concluded that the parcel was in West Manchester Township and did nothing further. Plaintiff filed an action in Mandamus against Defendant, the Jackson Township Zoning Officer. Testimony was taken in which it was demonstrated that Jackson Township had dealt with the parcel in question in the past. The Doctrine of Equitable Estoppel applied. The Court granted the Complaint in Mandamus.

FORCIBLE COMPULSION

COMMONWEALTH OF PENNSYLVANIA V.
SCOTTO

Criminal procedure – Post-sentencing Relief -
Forcible Compulsion

No. CP – CR – 0004390-2004

1. Defendant had been charged with and convicted of rape, aggravated indecent assault, involuntary deviate sexual intercourse, indecent assault and sexual assault. Following his conviction, but prior to sentencing, he was released on his own recognizance whereupon he fled the United States for Italy. He was later arrested in the United Kingdom and returned to the United States on February 15, 2008. On June 16, 2008, Defendant was sentenced. On June 16, 2008, Defendant filed a Motion for Post-Sentencing Relief Pursuant to Criminal Rule of Procedure 720 arguing prosecutorial errors and ineffective assistance of counsel. He requested a judgment of acquittal on the charges which required a showing of forcible compulsion. The Court found that the allegation of Defendant putting his hands on the victim's shoulders, with no other evidence of force, was insufficient to satisfy the requirements of "forcible compulsion." The Court granted the judgment of acquittal on the rape and involuntary deviate sexual intercourse charges and granted a new trial on the remaining charges.

INFAMOUS CRIME

COMMONWEALTH OF PENNSYLVANIA ex. rel.
REBERT V. STEPHEN D. RAMBLER

Quo Warranto – Laches – Infamous Crime –
Judgment on the Pleadings

No. 2006-SU-1028-Y08

1. The York County DA filed quo warranto action on behalf of the Commonwealth of Pennsylvania to remove Defendant from office of Mayor alleging that Defendant Rambler was unfit to hold office having pled guilty to federal felony charges. Defendant Rambler argues that the doctrine of laches should bar the action as Plaintiff waited until three months into his term to bring the action. Defendant further argues that his conviction does not involve crimen falsi and should not be characterized as "infamous". Before the Court is Plaintiff's Motion for Summary Judgment. The Court held that three months did not constitute a "gross and unreasonable delay". The Court further concluded that the conduct in question would tend to undermine the public's confidence in the office of mayor.

JUDGMENT NON PROS

YORK NEWSPAPER COMPANY v.
BEST AUTOMOTIVE

Judgment Non Pros – Inactivity - Prejudice

2001 – SU – 02959 – 01

1. Plaintiff brought action for non-payment of advertising fees in 2001. In its Answer, Defendant contended that Plaintiff did not fulfill advertising requirements. After seven years, Defendant filed a Motion for Judgment Non Pros. The Court held that there had not been due diligence, that the delay was not the fault of the Defendant, and that, in light of the sale of the business and the death or absence of defense witnesses, there was actual prejudice. Judgment of Non Pros granted.

LAND USE

EAGAN v. ZONING HEARING BOARD OF
SHREWSBURY BOROUGH, et al

Zoning Hearing Board Appeal – Special Exception
or Variance – Non conforming Use

No. 06-SU-3394-Y08

1. Eagan appeals Zoning Hearing Board's decision to deny Appellant's request for a special exception or variance by estoppel for his property. Appellant purchased a property which had a preexisting nonconforming use for an Agway farmstore. The prior owner of the property, in violation of the zoning ordinances, operated a truck and tractor trailer repair shop out of the facility. The violation

was not acted upon. After purchasing the property, Appellant filed an application to operate an auto sale and repair shop, with possible future bicycle shop. The application was denied. The Court in reviewing the appeal held that Appellant's request did not fit within the parameters of the valid preexisting nonconforming use of a farm store and that the Board's decision to deny the application was neither an error of law nor an abuse of discretion. The Court further held that Appellant should have made a reasonable attempt to ascertain the status of the property under the zoning regulations prior to purchasing the land.

**SHAFFER (FRANK N.) FAMILY LIMITED
PARTNERSHIP AND KEVIN AND
KENDRA SHAFFER V. ZONING HEARING
BOARD OF CHANCEFORD TOWNSHIP**

Zoning Hearing Board Appeal – Planned
Community – Use of Property

No. 2007-SU-1898-Y01

1. Appellant obtained approval for single-family home. After construction was complete, Appellant submitted the Tract for a planned community form of ownership, and the Plat showed that the Tract had been split into three pieces. Appellee sent notice to Appellants that they were in violation of the Township Subdivision and Land Development Ordinance for creating the planned community and for transferring title of Unit 1, which constitutes subdivision without approval. Appellants argue that the Board is attempting to regulate the form of ownership instead of the nature of the use of the property. The Court held that it was not the creation of the planned community under the UPCA that constituted the land development, but the actual dividing of the land inside the planned community. The Court held that the Zoning Hearing Board had not abused its discretion or committed an error of law.

LEGAL MALPRACTICE

**BROTHERS AND BROTHERS V.
BAKER LAW FIRM**

Malpractice – Attorney Client Relationship –
Summary Judgment

No. 2005-SU-2353-Y01

1. Defendants represented Plaintiffs in a company bankruptcy. Plaintiffs alleged that Defendants negligently advised them to put personal assets into their trucking company. Defendants filed a summary judgment motion arguing that they represented the company in bankruptcy and recommended that the Plaintiffs seek other legal counsel on the personal matters. Plaintiffs argued there was an implied attorney client relationship. Reviewing the fee agreement, the billing statements, the communications between the parties, the sophistication of the putative clients, and the use of other attor-

neys, the Court held that no personal attorney client relationship existed and granted Defendants' Motion for Summary Judgment.

LICENSE SUSPENSION

COMMONWEALTH OF PENNSYLVANIA V. BOLL

Criminal Law – 1925(a) – License Suspension

No. SA46 2007

1. Appellant appealed his conviction for the offense of driving while operating privileges were suspended. Appellant contends that the Commonwealth failed to prove notice of the suspension and that his sentence was improper due to his allegedly injured leg. The Court found that Appellant's claims of lack of notice were not credible and that the sentence imposed was within the statutory limits for the offense.

Editor's Note: On May 23, 2008, the Pennsylvania Superior Court affirmed this decision of the York County Court of Common Pleas.

MATERIAL FACT

BEAVERSON V. LUCA

Summary Judgment – Material Facts
– PA Dog Law

No. 2006 - SU - 959

1. Plaintiff brought this action to recover for injuries she allegedly sustained by Defendants' dog when she entered the property for purposes of reading the gas meter. Plaintiffs allege that Defendants knew of their dog's vicious propensity following a prior biting incident. Before the Court was Defendants' Motion for Summary Judgment. Defendants argue that the "Beware of Dog" sign was sufficient warning to a licensee and that the prior biting incident was one in which the dog had been provoked. The Court found that a material fact exists as to whether or not the Defendants knew of the dog's vicious propensities and whether or not they exercised reasonable care. Motion was denied.

MECHANICS' LIEN

**THOMAS & DOHERTY PLUMBING v.
CLARK, et al**

Mechanics' Lien – Notice - Statute of Limitations

No. 2008 – ML – 0047 – Y50

1. Respondents purchased a home from a general contractor. Claimant installed the air conditioning system pursuant to a contract with the general contractor but only received partial pay-

ment. Claimant filed a Mechanic's Lien. Respondents filed Preliminary Objections, arguing that they did not receive proper notice before the filing of the lien and that the statute of limitations had expired. The Court held that the Claimant was not required to provide notice and that a hearing was required to resolve factual disputes regarding the statute of limitations.

MOTION FOR JUDGMENT ON THE PLEADINGS

PENN WASTE INC. V. EDWARD T. O'TOOLE

Motion for Judgment on the Pleadings – General Denials

No. 2007-SU-3062-Y09

1. Plaintiff brought action against Defendant to recover for semi-annual fees for refuse collection as required by Shrewsbury Township Ordinance. Defendant, whose property is land-locked and who has no ability to have his refuse collected because he has no private driveway, refused to pay for the refuse collection. Defendant argues that he did not contract for refuse collection. The Court held that refuse collection is mandated by Ordinance and Defendant's legal recourse, if any, was with a party other than Plaintiff. The Court found that there were no factual allegations in dispute and granted Plaintiff's Motion for Judgment on the Pleadings.

US HOME CORPORATION D/B/A
PATRIOT HOMES V. MARK O. HAGENBUCH,
LINDA F. HAGENBUCH, SOYOUNG SO
AND TROY SO

Motion for Judgment on the Pleadings

No. 2007-SU-3410-Y08

1. Plaintiff Developer owns land with an easement that allows Defendants access to their otherwise landlocked properties. Plaintiff files this action for Declaratory Judgment requesting the Court extinguish the easement so Plaintiff can build a residential neighborhood with an internal street system. Plaintiff moved for Judgment on the Pleadings arguing that the language in the deed unambiguously requires extinguishment of the easement with land development with a new street system. Finding that the language did not unambiguously require extinguishment of the easement, the Court denied the Motion for Judgment on the Pleadings.

MOTION IN LIMINE

NOEL v. CLEA

Motion in Limine

No. 2008-SU-3758-Y07

1. Defendant and Plaintiff purchased a home together in 2006. Defendant alleges that Plaintiff promised to marry her and induced her into selling her home. In October of 2007, Plaintiff vacated the house and left Defendant in possession. Plaintiff paid mortgage and taxes on property. In July of 2008, Plaintiff filed this action for partition. Defendant asserted the defense of unclean hands and the Court instructed Defendant to file a Motion in Limine regarding her defense. The parties briefed the matter, and the Court held that Defendant had resided in the home, at Plaintiff's expense, for many months, and that partition was appropriate.

MOTION FOR RECONSIDERATION

BECKER V. FRANKOVICH AND SHAUCK

Motion for Reconsideration – Motions in Limine

No. 2000 SU – 2062-Y01

1. Plaintiff, who had limited tort insurance coverage, was injured when Defendants' vehicle struck Plaintiff's vehicle, causing injuries. Evidence of drug and alcohol usage by the Defendants was an issue before the Court. The Court had previously ruled that Plaintiff had not suffered a serious bodily injury. In a subsequent ruling, the Court held that Plaintiff could offer evidence of Defendants' intoxication and drug use on the morning of the accident. The Court also held that Plaintiff could offer evidence of future medical expenses. However, Plaintiff was precluded from recovering evidence of past medical expenses which had been paid by a self-funded ERISA plan. Before the Court were the Plaintiff and Defendants' Motions for Reconsideration or, in the alternative for Certification for Interlocutory Appeal, on the issue of the ERISA ruling and the evidence of intoxication. The Court denied the Motions for reconsideration and Certification for Interlocutory Appeal.

PENDENCY OF PRIOR ACTION

HIGGS EQUIPMENT COMPANY, INC. V.
REGCO CORPORATION

Preliminary Objection – Pendency of Prior Action

No. 2007-SU-1540-Y09

1. Plaintiff filed a Magisterial District Court Complaint against Defendant on January 30, 2007. A Default Judgment was filed on March 29, 2007, and Defendant filed a Notice of Appeal and Praceipe to Enter Rule to File Complaint on April 27, 2007. The Complaint was filed May 17, 2007. Defendant filed Preliminary Objections arguing that a Complaint had been filed in Massachusetts on April 17, 2007 constituted the pendency of a prior action. The Court held that the act of filing a Magisterial District Court Complaint initiated the legal process for an action; therefore, Defendant's Preliminary Objections pursuant to Pa.R.C.P. 1028(a)(6) were dismissed.

PETITION TO OPEN JUDGMENT

MATTHEWS v. BALDWIN, et al

Petition to Open Judgment – Local Procedure

No. 2007-SU-4787-08

1. Plaintiff confessed judgment pursuant to a complaint. Defendant filed Petition to strike or open confess judgment, but did nothing procedurally to bring the matter to the Court's attention. The parties then explored settlement options. Eleven months later, the matter was raised in Motions Court. The Court concluded that the petition had not been timely filed because no Rule to Show Cause had been issued. The Court further found that settlement negotiation, while commendable, was not a compelling reason for the delay. Petition to Open was denied.

Editor's Note: Please be advised that this decision was dictated from the bench and was not submitted by the Court. However, the procedural explanation by the Court is helpful in understanding the relationship between Pa. Rule 2959 and local practice.

POST CONVICTION RELIEF ACT

COMMONWEALTH V. HUMMERT

PCRA

CP-67-CR0006140-2004

1. At trial, Defendant Brian Hummert was found guilty of first degree murder. Pursuant to the Post Conviction relief Act, Defendant filed a petition requesting a new trial. The Court, in ruling on the PCRA Petition, concluded that the prosecution had suppressed material evidence favorable to the accused and awarded Defendant a new trial. The Commonwealth filed an appeal arguing that the Trial Court erred in granting Defendant a new trial. The Commonwealth argued that the alleged errors cited by the Court could not be said to have so undermined the truth-determining process that no reliable adjudication of the facts could have taken place. The Court filed an opinion pursuant to Rule 1925(a) of the Pennsylvania Rules of Appellate Procedure in which it characterized the case against Mr. Hummert as largely circumstantial. Therefore, the testimony of the jailhouse informant that Hummert had confessed to killing his wife became more significant.

COMMONWEALTH OF PENNSYLVANIA V.
DOUGLAS WRIGHT

PCRA – Ineffective Assistance of Counsel – Non-disclosure of accident report

No. 4732 CA 1997

1. Following a jury trial, Defendant was found

guilty of third degree murder and other underlying offenses regarding the death of his infant son. Defendant filed this second Petition for Post Conviction Relief contending ineffective assistance of trial and appellate counsel, imposition of an illegal sentence, and newly discovered evidence. Most of Defendant's arguments surround the failure of him to have been provided with an accident report of a motor vehicle accident in which his infant was a passenger. Defendant contended that the failure to have this report prevented him from arguing that the baby's multiple bone fractures and cerebral hemorrhages came from the accident and not the shaken baby syndrome. The Court reviewed the testimony and evidence in great detail and determined that Wright failed to sustain his burden of proof that the non-disclosure of the accident report would have affected the outcome of the trial. Defendant's Petition for Post-Conviction Relief was denied.

COMMONWEALTH OF PENNSYLVANIA V.
BURKHOLDER

Criminal Law – PCRA – Ineffective Assistance of Counsel

CP – 67 – CR – 638 - 1997

1. Defendant pled nolo contendere to two counts of Third Degree Murder together with underlying charges in 1997. Appellant filed three Motions for Post Conviction Relief which the Court denied. Appellant's fourth Motion for Post Conviction Relief, filed pro se, contends that Appellant did not consciously disregard the threat to human life, did not possess the mens rea due to intoxication, and did not act in a manner to support a finding of malice. The Court found that Appellant's Motion was filed well beyond the one year filing period and that no exceptions to this rule applied. The Court further found that the assertions of Appellant were not credible, that evidence of voluntary intoxication cannot reduce murder of the third degree to manslaughter, and that Appellant's outrageous conduct the night of the accident satisfied the malice element.

PRELIMINARY OBJECTIONS

SMITH V. KENT

Preliminary Objections – Punitive Damages – Intentional Infliction of Emotional Distress

No. 2008-SU-2524-Y01

1. Plaintiffs were lawfully operating a van with disabled passengers. Defendant was traveling at a high rate of speed, ignoring traffic signals, and fleeing the City police. In an effort to evade the police, Defendant ran a red light and collided with Plaintiff's van. The police arrived and the officers drew their weapons upon Plaintiff and her passengers. Plaintiff brought this action for compensatory and punitive damages. Defendant filed a Demurrer, to

among other matters, the claim for punitive damages and Intentional Infliction of Emotional Distress. The Court held that the Defendants actions justified the claim for punitive damages and the pleadings were sufficient to make out a claim for Intentional Infliction of Emotional Distress.

STANDING

CARROLL CITIZENS FOR
SENSIBLE GROWTH, et al v.
CARROLL TOWNSHIP
BOARD OF SUPERVISORS

Appeal – Standing - Subdivision Approval – Abuse
of Discretion

No. 2007 – SU – 1590 – Y08

1. Appellants own property near the proposed subdivision site in Carroll Township. Appellants expressed their concerns in writing and attended and testified at multiple municipal meetings regarding their objections. The Appellee conditionally approved the subdivision plan and this appeal followed. The questions before the Court were whether Appellants had standing to appeal the Board's decision and whether the Board of Supervisors had abused their discretion or made an error of law in conditionally approving the subdivision. The Court held that Appellants in the extent of their participation in the process and with their ownership of nearby property gave them standing. The Court further concluded that Appellee abused their discretion in portions of the approval process and remanded the matter for further proceedings.

SUMMARY JUDGMENT

CHASE HOME FINANCIAL, LLC v. SNIER, et al

Summary Judgment – Breach of Contract –
Mistaken Satisfaction of Mortgage

No. 2006 – SU – 1492 – Y01

1. In 2003, Defendants executed a promissory note and a mortgage with Plaintiff Mortgage Company. After Defendants made only thirteen payments on a thirty year mortgage, the Payoff Department for Plaintiff applied the payoff proceeds from a third party to Defendants' account and filed a mortgage satisfaction. Defendants continued to make some payments and then stopped. Plaintiff Mortgage Company brought this action against Defendants for breach of contract and filed a Motion for Summary Judgment. The Court held that the mortgage and note are two separate distinct legal agreements and satisfaction of a mortgage did not extinguish the contractual obligations under the promissory note. Therefore summary judgment was granted under the breach of contract under the promissory note. The Court further held that Plaintiff was entitled to reinstatement of the mortgage as an equitable remedy as mistake was the only feasible explanation for the mortgage satisfaction.

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

Motion for Summary Judgment

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 Counterclaim contending that it settled the claim for less than the full value through a collection agency. Defendant filed a Motion for Summary Judgment. The Court found that the collection agency did not have the expressed authority to settle the claim in full for a partial payment. The Motion for Summary Judgment was denied.

KRIENER V. PULLEY

Summary Judgment – Breach of Contract

No. 2007 – SU – 1468 – Y01

1. Plaintiff loaned Defendant money and brought this action against Defendant for failure to make timely payments pursuant to their agreement. At the Pre-trial conference, the parties agreed that the amount owed was \$15,537.00. Defendant agreed that there had been an agreement and that he had stopped making payments in April of 2007. The Court granted Plaintiff's Motion for Summary Judgment and awarded counsel fees pursuant to one of the agreements between the parties.

McCLARIN PLASTICS v. PA MANUFACTURERS
ASSOCIATION INSURANCE CO.

Motion for Summary Judgment – Duty to Defend –
Pollution Exclusion – Superfund Site

No. 2006 – SU- 275 – Y01

1. Plaintiff filed a Motion for Summary Judgment contending that Defendant violated the Duty to Defend when a contribution suit was initiated for the cost of clean-up of a Superfund Site. Defendant filed a counter-Motion for Summary Judgment alleging, among other matters, that a pollution exclusion would have applied to the coverage. Neither party could produce the policy. The Court held that the Defendant had a Duty to Defend until a pollution exclusion could be proven. Motion for Summary Judgment for the Plaintiff was granted.

SHEFFER V.
RITTER, STEVENS, and SHIFFLETT

Partial Summary Judgment – Limited Tort –
Absence of Signed Waiver

No. 2005-SU-1534-Y01

1. Plaintiff Sheffer was a passenger in a vehicle driven by Defendant Ritter which collided with a vehicle driven by Defendant Shifflett. Plaintiff allegedly suffered a knee derangement, requiring surgical intervention. Defendant Ritter raised the Limited Tort Defense and filed a Motion for Partial Summary Judgment. The insurance agent could not produce the signed waiver of the Full Tort Option; however, the evidence demonstrated that Plaintiff received the benefit of the lower Limited Tort premium and the policy notices clearly indicated that Plaintiff had elected Limited Tort coverage. Partial Summary Judgment for the Defendant was granted.

SHUMAR v. FAIRVIEW TOWNSHIP, et al

Summary Judgment – Immunity

No. 2006 – SU – 3932 – 01

1. Plaintiff brought suit against Fairview Township for personal injuries, allegedly, sustained because of Defendant's negligent failure to remove excess water from the roadway. Defendant filed a Motion for Summary Judgment arguing that Plaintiff failed to establish a prima facie case and failed to demonstrate an exception to governmental immunity. The Court held that there is no common law duty to remove the "natural accumulation" of rain on roadways. Moreover, Plaintiff failed to establish that her injuries were foreseeable or that the Township had written notice of the risk. Summary Judgment was granted.

WFS, FINANCIAL CORP v. DETTINGER

Summary Judgment – Installment Contracts -
Mergers

No. 2006 – SU – 748 – Y01

1. Defendant purchased a motor vehicle under an installment plan. The seller, which had recently merged with another entity, assigned the rights to the contract to Plaintiff, which is a finance company. Defendant defaulted on the payment. Plaintiff sold the vehicle and brought an action to recover the difference between the resale price and the unpaid balance. Both parties filed Motions for Summary Judgment. Defendant argued that the contract was illegal because the seller was not licensed by the Commonwealth of Pennsylvania. The Court held that the contract was unenforceable because an entity must have a license to sell vehicles under an installment plan and a license issued by the state does not automatically transfer with a merger of businesses. Furthermore, since the Defendant no longer had possession of the vehicle, he could not be liable for the principal. The Court granted Defendant's Motion for Summary Judgment.

TRANSFER TO JUVENILE COURT

COMMONWEALTH OF PENNSYLVANIA V.
WHARTON

Criminal Law – Transfer to Juvenile Court –
1925(a) Statement

CP – 67 – MD – 0001359 – 2007

1. The Court granted Defendant's Petition to transfer jurisdiction to Juvenile Court pursuant to Section 6322 of the Juvenile Act. In the Court's 1925(a) Memorandum Opinion, supporting that ruling, the initial decision of the Commonwealth to bring adult charges against Wharton is addressed. The Court questioned the decision to bring charges of murder and aggravated assault under the factual circumstances and expressed its desire for an expeditious resolution of the appeal.

UNAUTHORIZED PRACTICE OF LAW

YORK COUNTY CITIZENS FOR SMARTER
GROWTH v. BESS SIMONS

Petition to enforce and quash Subpoena –
Unauthorized Practice of Law – Jurisdiction

2008-MI-000338-55

1. York County Citizens for Smarter Growth is a citizen's organization which requested that the York Township Board of Commissioners issue a subpoena to Respondent to compel her to attend and testify at a hearing regarding her written Review of the Conditional Use Application. The Board complied with the request. Respondent refused to attend, and Petitioner filed a Petition to Compel in Motions Court in the York County Common Pleas. Petitioner was not represented by an attorney, but rather by one of its members acting pro se for the group. The Court ruled that non-attorneys may not appear in Court on behalf of an association. The Court held that the Court was without jurisdiction to consider a proceeding initiated by persons unauthorized to practice law.

VENUE

SENATE GLASS & ALUMINUM vs.
SENECA STEEL ERECTORS, INC.

Preliminary Objections – Venue- Breach of
Contract

No. 2008 – SU – 1034 – Y01

1. Plaintiff is a glass and glazing subcontractor located in Etters, PA. Defendant is a New York Corporation located in Springville, NY. Defendant hired Plaintiff to perform work in Buffalo, NY. Plaintiff alleges that all work was completed in a timely and workmanlike manner, but \$38,812.61

remained outstanding. Plaintiff brought this breach of contract action. Defendant filed Preliminary Objections arguing that the Venue was improper in Pennsylvania because the contract language states that the laws of New York will apply and that venue for disputes shall be in New York. Plaintiff argues that the Court has subject matter over contract disputes and has personal jurisdiction because Defendant trades and does business in Pennsylvania. Plaintiff argues that the clauses pertaining to NY laws and NY venue relate to performance matters, not collection matters. Plaintiff further argues that venue in York County is proper because the transaction or occurrence (failure to make payment) took place out of which the cause of action arose. The Court found subject matter jurisdiction, but failed to find personal jurisdiction. The Court held that the clause stating venue would be in NY was not exclusive to performance issues, but the contract as a whole.

WORKERS' COMPENSATION

MCLAUGHLIN V.
GRAHAM ENGINEERING, ET AL

Summary Judgment – Temporary Worker –
Workers' Compensation – Tort Immunity

NO. 2005 – SU – 1952 – Y01

1. Plaintiff brought this action Graham Engineering to recover for injuries he sustained while working at Defendants' manufacturing facility. At the time, Plaintiff had been placed at the facility by a temporary staffing agency. Defendant Graham Engineering brought Graham Packaging in as an Additional Defendant. Following discovery, Graham Packaging filed a Motion for Summary Judgment arguing that the Pennsylvania Workers' Compensation Act gave them immunity. The Court held that the "Borrowed Servant Doctrine" applied to the factual circumstances and concluded that Graham Packaging was the statutory employer under the Act. The Court granted the Motion for Summary Judgment.

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.

