

LEGAL NOTICES, cont.

HUBER First and final account, statement of proposed distribution and notice to the creditors of Dorothy Rock and Ronald Rock, executors of the estate of Ethel V. Huber, late of the Borough of Waynesboro, Franklin County, Pennsylvania, deceased.

JAMISON First and final account, statement of proposed distribution and notice to the creditors of John W. Jamison, Jr. and Howard D. Jamison, executors of the estate of John W. Jamison, late of Guilford Township, Franklin County, Pennsylvania, deceased.

KNEPPER First and final account, statement of proposed distribution and notice to the creditors of Grace Knepper and Virginia K. Shetron, executrices of the estate of A. A. Knepper, a/k/a Archie A. Knepper, late of the Borough of Waynesboro, Franklin County, Pennsylvania, deceased.

PHIPPS First and final account, statement of proposed distribution and notice to the creditors of John R. Walker, administrator of the estate of Clayton S. Phipps, late of the Borough of Greencastle, Franklin County, Pennsylvania, deceased.

PIPER First and final account, statement of proposed distribution and notice to the creditors of John R. Piper, Sr., administrator of the estate of Wayne L. Piper, late of the Borough of Waynesboro, Franklin County, Pennsylvania, deceased.

PEIFFER First and final account, statement of proposed distribution and notice to the creditors of the Farmers & Merchants Trust Company, administrator of the estate of Charles V. Peiffer, late of St. Thomas Township, Franklin County, Pennsylvania, deceased.

STOOPS First and final account, statement of proposed distribution and notice to the creditors of Nellie M. Hess, Charles F. Stoops, Mary Jane Cordell and John A. Stoops, Jr., executors of the estate of John Alfred Stoops, Sr., late of the Borough of Waynesboro, Franklin County, Pennsylvania, deceased.

GLENN E. SHADLE
Clerk of Orphans' Court
Franklin County, Pennsylvania

(10-10, 10-17, 10-24, 10-31)

Marshall C. Gearhart : In the Court of Com-
and **Mary K. Gearhart** : mon Pleas of the
: hart, his wife, : 39th Judicial District
: Plaintiffs : of Pennsylvania

vs.

James Poe McMullen, : Franklin County
his heirs and assigns, : Branch
Elliott T. Lane, his :
heirs and assigns, :
John Bup, his heirs :
and assigns and **John** : Civil Action - Law
Doe, his heirs and : A. D. 1980 - 289
assigns, : Action to Quiet
Defendants : Title

TO: James Poe McMullen, Elliott T. Lane,
John Bup and John Doe, their heirs,
executors, administrators and assigns,
Defendants:

LEGAL NOTICES, cont.

You are notified that the plaintiffs have commenced an Action to Quiet Title against you by a Complaint filed on October 6, 1980 in the Office of the Prothonotary in Franklin County, Pennsylvania, to the above number and term.

If you wish to defend against claims set forth in this Complaint you must take action within 20 days after service of the Complaint and notice has been completed by publication by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claims or relief requested by the plaintiffs. You may lose money or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Legal Reference Service
Franklin-Fulton Counties
Court House
Chambersburg, Pennsylvania 17201
Telephone No.: Chambersburg
1-717-264-4125, Ext. 13

The Action concerns land in Montgomery Township, Franklin County, Pennsylvania, described as follows:

BEGINNING at a corner of a garage on lands owned by the Plaintiffs, and running thence by lands of the Plaintiffs, north 43 degrees 4 minutes 26 seconds west 41.01 feet to a steel axle; thence still by lands of the Plaintiffs, north 70 degrees 57 minutes 32 seconds west 137.05 feet to an iron pin, a corner of lands of the heirs of James Reidout; thence following a stone wall and by lands of the heirs of James Reidout, north 10 degrees 34 minutes 55 seconds east 347.64 feet to an iron pin at lands of Koppers Company, Inc.; thence by lands of Koppers Company, Inc., south 59 degrees, 56 minutes 49 seconds east 252.15 feet to an iron pin at corner of lands formerly of the Plaintiffs now of James C. Gearhart and Anna G. Gearhart, his wife; thence by same, south 23 degrees 13 minutes 59 seconds west 315.72 feet to the corner of the garage, the place of beginning. **CONTAINING** 1.55 acres as shown on a plan by Melvin O. Gladhill, R.S., dated April 5, 1979.

By **Thomas B. Steiger, Jr.**,
Attorney for Plaintiffs
56 South Main Street
Mercersburg, PA 17236

(10-17, 10-24, 10-31)

commencement of school in January. In 1981, the sequence shall be reversed and alternating each year thereafter.

For the summer of 1981, the children shall be with Janice from the close of school until July 15th at 6:00 p.m. and with Jerry from July 15th at 6:00 p.m. until 6:00 p.m. the day before the opening of school. For the summer of 1982 the sequence shall be reversed and alternating each year thereafter.

The parties may make such other arrangements for the children to be together as may be agreeable to them, which should include some opportunities for the children to be together on other holidays.

If the parties cannot work out the arrangements for the children to be together at times contemplated by this order but not specifically scheduled, the Court will make an appropriate order.

It is the intention of the Court in placing the children in the joint custody of the parents that they shall confer and attempt to reach agreement in decisions that significantly affect the lives of the children. Both parents are responsible for knowing how each child is doing in school, and in formulating a significant program for the physical, moral and spiritual well being of the children by cooperating in seeing that the children are given opportunities to develop in these areas.

The parties shall each pay their own costs.

SMITH and MANNING v. GLAZER, C.P. Franklin County Branch, A.D. 1980 - 148

Assumpsit - Oral Contract - Brokers Commission - Break in Negotiations

1. If the actions of a real estate broker constitute the efficient cause of the production of a buyer, the broker is entitled to a commission even though the sale is finally concluded by the seller.

2. An exception to the general rule occurs when there is a break in negotiations between the parties.

3. A broker is entitled to his commission if he procured a person with whom a bargain is made upon any term unless there is something special in the contract of employment.

4. An allegation of an oral contract in which it is said the owners secured the brokers to procure a purchaser is not sufficiently specific in that an

oral contract must be set forth in full.

Robert E. Graham, Jr., Esq., Attorney for Plaintiffs

Joel R. Zullinger, Esq., Attorney for Defendants

OPINION AND ORDER

EPPINGER, P.J., July 30, 1980:

Joan Smith and Barbara Manning are insurance brokers. Robert and Paula Glazer owned a home and wanted to sell it. So they agreed, orally, that the brokers should secure a buyer for the home and would pay them a commission of 6% on the sale price.

The brokers obtained a buyer, the owners signed an agreement on September 9, 1979 to sell the property for \$44,000 to be settled October 26, 1979, contingent upon the buyers obtaining a 25 year conventional mortgage for \$39,000 at 11% interest. According to the complaint, the brokers assisted in obtaining a mortgage for \$32,000. The buyers then told the brokers they changed their mind regarding the financing and asked for their \$100 deposit which the brokers returned.

At some point the owners negotiated their own deal with the buyers, selling the house for \$41,500, settling on October 25, 1979 under terms including the \$32,000 first mortgage with the owners taking a second mortgage for the balance, a matter which came out at the argument. The brokers now ask for their commission of \$2,640 on the original purchase price, a sum only slightly more than the difference between the original and the discounted sale price finally accepted by the owners.

The owners have filed preliminary objections to the complaint, a demurrer and motions for more specific complaint. There is a basic flaw in the allegations supporting the demurrer, taken because the complaint is said to be insufficient in law to allege a cause of action. One of the supporting paragraphs says plaintiffs allege the purchasers did not complete the transaction due to the financing terms. That is not what the complaint says at all. Rather it states that the purchasers advised the broker-plaintiffs that they'd changed their minds regarding the financing terms as approved.

We think this is an important distinction. If the actions of a real estate broker constitute the efficient cause of the production of a buyer, the broker is entitled to a commission even though the sale is finally concluded by the seller. *Axil-*

bund v. McAllister, 407 Pa. 46, 180 A.2d 244 (1962). Stated another way:

“A broker becomes entitled to his commission whenever he procures for his principal a party with whom he is satisfied and who actually contracts for the purchase of the property at a price acceptable to the owner.” *Keys v. Johnson*, 68 Pa. 42, 43 (1871).

This is a general rule and may be inapplicable, for example if there is a break in the negotiations. A break in the negotiations occurs where the prospective purchaser and the owner fail to reach an agreement and their negotiations are ended. *Snowey v. Bair*, 269 Pa. 448, 450, 112 A. 530 (1921). A break in the negotiations was held not to have occurred where settlement was not made on time and two months later the seller and the buyer got together, *Reihart v. Fry*, 80 York L.R. 17 (1966) but was held to have occurred where a broker asked the seller to release the buyer because buyer couldn't sell her home and the property was put back on the market and later a second broker persuaded the seller to reduce the price and the property was sold to the original buyer, *Cherry v. Wolf*, 205 Pa. Super. 484, 210 A.2d 917 (1965).

In our case it is not clear that the negotiations had broker off between the owners and the buyers. Actually, considering the time frame, there is a strong suggestion that the negotiations had not broken off between the two. The forum may have changed from the brokers office to the owners home, but there is certainly a suggestion in the complaint that the parties kept negotiating until they reached accord. And this is a jury question. *Snowey, v. Bair*, supra.

Another exception is found in the *Axilbund* case, supra. There it was said,

“if a broker procured a person with whom a bargain is made upon any term he is entitled to his commission unless there is something special in the contract of employment or the circumstances of the case, to preclude him.” (Emphasis in original) 407 Pa. at 51, 180 A.2d at 248.

Axilbund involved a requirement that the broker obtain a certain price and he didn't and therefore was not entitled to the commission.

But the *Axilbund* rule depends on the employment contract expressly stating that the commission is conditional, and that the sellers always act in good faith. The *Reihart* court, in

a case factually similar to ours, did not find anything special in the employment contract, which at the time of the sale was a general agency relationship. Here there is nothing in the complaint that leads us to conclude at this time that there was anything in the contract of employment to preclude the brokers' receiving their commission. The employment contract is to be distinguished from the agreement of sale, which was conditional. And, again considering the time frame, there may be a question whether the owners acted in good faith.

For these reasons we conclude that the demurrer must be overruled.

But we are overruling the demurrer while sustaining one of the motions for more specific pleading. Paragraph three simply alleges an oral contract in which it is said the owners secured the brokers to procure a purchaser for their real estate. This is not sufficiently specific. The oral contract must be set forth in full. *Plush v. Pennsylvania Power and Light Co.*, 33 North. 138, 142 (1952).

Paragraph seven of the complaint alleges the brokers assisted the buyers in arranging financing satisfactory to the purchasers and agreeable to the owners. In their second motion for more specific pleading the owners want to know the interest rate and the duration of the mortgage. We can't see how this is necessary and the owners don't explain why they need it.

We will make an order overruling the demurrer and sustaining the first motion for more specific pleading.

ORDER OF COURT

July 30, 1980, the demurrer is overruled and the first motion for more specific pleading is granted, and the plaintiffs are required to allege all the terms of the oral contract of employment between themselves and the defendants.

The plaintiffs are given twenty days from the date of this order to file an amended complaint or suffer non pros.

AIRD v. MOUSE, C.P. Franklin County Branch, A.D. 1979 - 1067

Assumpsit - Petition to Open Judgment by Confession - Pa. R.C.P. No. 2959(e)

1. A petition to open a judgment should be opened only if three conditions coincide: (1) the petition must have been promptly filed; (2) the default must be reasonably explained; and (3) a meritorious defense must be shown.

2. Each proceeding to open a judgment must be approached on an ad hoc basis with careful attention being given to the underlying facts, rather than to an arbitrary time interval.

3. Pa. R.C.P. No. 2959(e) requires the court to open a judgment if evidence is produced which in a jury trial would require the issues to be submitted to the jury.

4. It is not the function of the Court, upon considering a petition to open judgment, to make any determination concerning credibility of the witnesses.

David W. Rahausser, Esq., Counsel for Plaintiff

Frederic G. Antoun, Esq., Counsel for Plaintiff

Barbara B. Townsend, Esq., Counsel for Defendant

OPINION AND ORDER

KELLER, J., August 5, 1980:

On June 25, 1979 the plaintiff filed his confession of judgment pursuant to Pa. R.C.P. 2952. Attached to the complaint was a promissory note of the Chambersburg Trust Company dated December 17, 1976, and made payable to the order of E. W. Aird in the amount of \$19,300.00 and signed by the defendant. The note was payable on demand and authorized confession of judgment and attorney's commission of 15%. On July 20, 1979 the plaintiff filed his praecipe for writ of execution.

On August 24, 1979 the defendant's petition to open judgment, stay execution and strike the judgment was presented to the Court, and an order entered the same date directing a rule to issue upon the plaintiff to show cause why the confession of judgment should not be opened. The petition and order were not filed in the Office of the Prothonotary until August 27, 1979, and a rule was issued on that date directing the plaintiff to show cause why the confession of judgment should not be opened. Counsel for the defendant served a true and attested copy of the rule and petition upon counsel for the plaintiff by mailing the same to him on August 29, 1979. An answer to the petition to open judgment was filed on September 14, 1979,