

PRICE, Larry L. & Rosalie A.	26 5C-6-27 416 Cleveland Ave.	749.07
REDMAN, Albert III	26 5C-7-91 314 Cleveland Ave.	433.85
REED, Wallace E. Jr. & Lisa A.	26 5A-63-41 28 Fairview Ave.	961.93
RUCKMAN, Barry R.	25 5A-54-14 26 Tritle Ave.	325.33
SHOCKEY, Joan K.	24 5D-10-12 60 N. Locust St.	502.73
COGWELL INDUSTRIES INC.	WEST END SHIPPENSBURG 27 6A-24-45	4,943.06
SNOWBERGER, Michael L. & Barbara STAKE, Gerald W. & Marie A.	ORRSTOWN 28 7A-14-3 118 Orrstown Rd. 28 7A-10-18 Orrstown	1,258.31 744.63

### BAR NEWS ITEM

FROM: Register and Recorders' Office, Franklin County

TO: All users of the Register and Recorders' Office.

THE FOLLOWING WILL BE PLACED INTO EFFECT BY THIS OFFICE STARTING SEPTEMBER 1, 1987:

1. The largest size plat plan that can be recorded with a deed is 18" x 24". Anything larger MUST be recorded within the Plat Plan Book.

2. Realty Transfer Tax Statement of Values' that accompany deeds where the consideration is not indicated on the deed, Block D., items 1 through 6 MUST be completed before the deed can be recorded. This is necessary to compute the proper tax due the State.

3. When the mortgagee of a mortgage is held by individuals and two or more parties are involved, ALL parties MUST sign the mortgage SIMULTANEOUSLY. NO EXCEPTIONS WILL BE MADE TO THIS POLICY. (SATISFACTIONS)

4. Because of the increased work load placed upon this office due to the large increase in the amount of recordings, recordings can no longer be left at the counter by individuals unattended and receipts given later. The individual bringing the instruments MUST BE PRESENT when the instruments are recorded. When instruments are left and are not proper for recording, such as money not being correct, etc., it places considerable delays on the recording procedures.

If you have any questions about any of these policies, please feel free to discuss it with me.

Sincerely,  
David W. Bowers  
Register & Recorder  
Franklin County

Defendant argues that discovery should not be permitted until a complaint has been filed and the nature of plaintiff's cause of action is known. Under Pennsylvania law, pre-complaint discovery is permitted if it is used to learn facts relating to a cause of action, but not to determine whether a cause of action exists. 5 Anderson, Pa. Civil Practice, §4001.131. See Pa. R.C.P. 4001 (written interrogatories may be used in preparation of pleadings). In the present case, plaintiff has filed an action against defendant for an alleged breach of the sales agreement. Now plaintiff needs to know facts relating to his cause of action, i.e., whether this alleged breach is related to a pending divorce action.

Having determined that the information may be requested at this stage of the proceedings, the court must decide whether, generally, it fits within the parameters of permissible discovery. For information to be discoverable, it must be relevant, not privileged and reasonably calculated to lead to admissible evidence. Pa. R.C.P. Rule 4003.1. Also, it must not be requested in bad faith, cause an unreasonable annoyance, embarrassment or burden to any person or party. *Id.* Rule 4011.

Here, defendant's inability to convey the property may be caused by a pending divorce and property dispute; as such it is reasonably calculated to lead to admissible evidence. Also, it is not an unreasonable annoyance or embarrassment for him to reveal this to plaintiff. Accordingly, defendant shall provide plaintiff with the answer to interrogatory number 5.

### ORDER OF COURT

June 29, 1987, the defendant is ordered to answer interrogatory number 5 within twenty (20) days of this order.

**DESHONG OIL AND GAS, INC., ETC. VS. MELLOTT AND WIFE, C.P. Fulton County Branch, No. 290 of 1980-C, Equity**

*Equity - Lease Agreement - Option to Purchase*

1. When the subject matter of a contract is real estate, an action for specific performance will lie.

2. Where an option to purchase can be exercised 'at any time after the end of the first 20 year term of this house', it is open-ended as to the time of exercise.

OPINION AND ORDER

KAYE, J., May 7, 1987:

On November 15, 1986, defendants entered into a written agreement with plaintiff, DeShong Oil and Gas, Inc. with respect to certain real estate in Brush Creek Township, Fulton County, Pennsylvania. Under that agreement, plaintiff leased some 2.28 acres of real estate from defendants for a term of twenty (20) years for a consideration set forth therein which varied with the passage of time, and with the quantity of gasoline sold in a service station that was contemplated would be built on the property. The lease provided for renewal by plaintiff for two additional twenty year periods if written notice of the intention to do so was given at least 60 days prior to the expiration of the term of the lease. In addition, the agreement contained the following provision:

"9. Any time after the end of the first 20 year term of this Lease, the Lessors [Defendants] do hereby covenant and agree to grant an option to the Lessee [Plaintiff] to purchase the leased premises only. Said option may be exercised only after the Lessee [Plaintiff] has given to the Lessors [Defendants] a 30 day notice of his intent to purchase. Settlement shall be held within 15 days after the purchase price been determined. The purchase price shall be determined in the following manner: Each party shall select an appraiser, and the two appraisers so selected shall select the third. The appraised value placed upon the premises shall be based upon the value of the real estate, less improvements. Said value so placed upon the real estate by the Appraisers shall be conclusively determined to be the purchase price."

Plaintiff alleges that it improved the real estate, established a business thereon, and created goodwill at this location in connection therewith which makes this real estate "unique to plaintiff's purposes". Plaintiff alleges that it designated an appraiser of the real estate [apparently - though this was not pleaded - pursuant to the section of the written agreement cited above] and so notified defendants in writing on November 20, 1986, and that defendants have refused to name an appraiser to complete the process for valuing the land under paragraph 9. of the agreement, thus precluding the plaintiff's apparent - though this was also unpleaded - desire to exercise the option granted under the written agreement.

As a consequence of defendants' inaction, plaintiff on December 29, 1986, filed a complaint in equity seeking to compel defendants to specifically perform the option contract pleaded.



13 West Main St.  
P.O. Drawer 391  
717-762-8161



**TRUST SERVICES**  
**COMPETENT AND COMPLETE**

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Potomac Shopping Center - Center Square - Waynesboro Mall  
24 Hour Banking Available at the Waynesboro Mall

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Interested in said business is Craig E. Koons, of 11833 Country Club Road, Waynesboro, PA, 17268.

BETH ANN C. GABLER, ESQUIRE  
BENEDICT & GABLER  
401 TRUST COMPANY BUILDING  
CHAMBERSBURG, PA 17201

8/21

## NOTICE

Notice is hereby given that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on the 13th day of May, 1987, for the purpose of obtaining a certificate on incorporation. The name of the corporation organized under the Commonwealth of Pennsylvania business Corporation Law approved May 5, 1933, P.L. 364 as amended, is D. R. PERRY ASSOCIATES, INC., 10923 Kipe Drive, Waynesboro, PA 17268.

The purpose for which the corporation has been organized is to engage in and to do any lawful acts concerning any or all lawful business for which corporations may be incorporated under the Business Corporation Law of the Commonwealth of Pennsylvania.

STEPHEN E. PATTERSON  
Patterson, Kaminski, Keller & Kiersz  
239 E. Main St.  
Waynesboro, PA 17268

8/21

## FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, of the filing, with the Department of State of the Commonwealth of Pennsylvania, on July 16, 1987, an application for a certificate for the conducting of a business under the assumed or fictitious name of FUR - FIN - FEATHER TAXIDERMY STUDIO, with its principal place of business at 8552 Tomstown Road, Waynesboro, PA 17268. The name and address of the person owning or interested in said business is Gary Smith, 8552 Tomstown Road, Waynesboro, PA 17268.

8/21

## FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, Act No. 1982-295, of the filing, with the Department of State of the Commonwealth of Pennsylvania, on July 17, 1987, an application for a certificate for the conducting of a business under the assumed or fictitious name of HAYS' SHOP WISE MARKET, with its principal place of business at 431 Loudon Road, Mercersburg, PA 17236. The names and addresses of the persons owning or interested in said business are Percy W. Hays, Box 87, Ft. Loudon, PA 17224, and Anna M. Hays, Box 87, Ft. Loudon, PA 17224.

Dennis A. Zeger, Esquire  
32 E. Seminary St.  
Mercersburg, PA 17236

8/21

On January 20, 1987, defendants filed preliminary objections in the nature of a demurrer and a motion to strike. These preliminary objections were briefed and argued before the Court on April 21, 1987, and are now in a posture for disposition.

In their demurrer, the defendants allege that no cause of action exists as "the lease terminated on November 15, 1986, and the contractual obligation to sell the premises ceased".

Initially, we are constrained to note that the Court has before it only the facts as alleged in the Complaint. We do not know if the lease was, or was not, renewed beyond the initial twenty year term, except through "facts" alleged in the demurrer. This is a speaking demurrer, and is improper practice. Goodrich-Amram 2d §1017(b):11.

However, even if defendants subsequently establish that the leasehold was not renewed, it does not follow that the option expired with it. By the terms of their agreement, the option was exercisable "[a]ny time after the end of the first 20 year term of this Lease. . ." Thus, it could not be exercised prior to November 15, 1986, and its apparent<sup>1</sup> exercise on November 20, 1986 clearly was within a reasonable time.

In a similar case, an option to purchase real estate ". . . upon the expiration of Five years of the term of this Lease. . ." was held to require exercise of the option had to be immediately following or very soon after the expiration of the five year period. *B-Automotive Company v. Harrison*, 443 Pa. 360, \_\_\_\_\_, 278 A.2d 890, 890-891 (1971). However, in the instant case the use of the expression "At any time after the end of the first 20 year term of this Lease. . ." on its face is open-ended as to the time of exercise of the option, and the time alleged for its exercise clearly is reasonable.

In the second claim that their demurrer should be granted, defendants state that no consideration for the option existed "after the termination of the lease on November 15, 1986." We noted previously that the only allegations of fact that the Court has before it are those contained in plaintiff's complaint. That Complaint is silent on whether the lease was extended beyond its initial term, and the court could rule on this demurrer only upon consideration of "facts" contained in the preliminary objection to the effect that it was not. This also is a "speaking demurrer", and cannot properly be ruled on by the Court.

<sup>1</sup>The Complaint does not plead that the option was exercised in the manner specified in ¶ 9 of the Agreement. However, defendants have not raised this issue.

The demurrer will be overruled.

In their motion to strike, defendants allege that plaintiff had a full, complete and adequate non-statutory remedy at law, and thus the complaint in equity should be stricken.

However, this position overlooks the prevailing view that when the subject matter of a contract is real estate, an action for specific performance will lie. *Billow v. Billow*, 96 Dauph. 448 (C.P. Dauphin Co., 1975); *Ecker v. Kurtz*, 119 P.L.J. 387 (C.P. Allegheny Co., 1971). See also P.L.E. Specific Performance §27.

The motion to strike is denied.

#### ORDER OF COURT

May 7, 1987, defendants' preliminary objections are dismissed.

Defendants are granted thirty (30) days from the date hereof to file an Answer to the Complaint.

Exceptions are granted to the defendants.

August 25, 1987

MEMORANDUM

TO: All Attorneys, Franklin County Bar  
FROM: William A. Sheaffer, C.A.  
RE: Local Orphan's Court Rule 39-15.4

Please find attached a copy of recently promulgated orphan's court rule 39-15.4 concerning involuntary termination of parental rights. The rule has been published in the Pennsylvania Bulletin in the August 22, 1987 issue, therefore, the rule becomes effective September 22, 1987.

IN THE COURT OF COMMON PLEAS OF THE 39TH  
JUDICIAL DISTRICT OF PENNSYLVANIA - FRANKLIN  
COUNTY BRANCH

IN RE: : ORPHANS' COURT DIVISION  
ADOPTION OF ORPHANS' :  
COURT RULE 39-15.4 :

ORDER OF COURT

NOW, this 3rd day of August, 1987, the following Orphans' Court Rule is adopted for the Court of Common Pleas of the 39th Judicial District of Pennsylvania - Franklin/Fulton County Branches to become effective thirty (30) days after publication in the Pennsylvania Bulletin.

BY THE COURT,  
JOHN W. KELLER  
P.J.

RULE 39-15.4 - Involuntary Termination of Parental Rights

39-15.4 (a). In any proceeding for the involuntary termination of parental rights, the parties shall prepare and deliver to the Court within ten (10) days of the hearing (or within such other time as directed by the Court) a proposed Decree Nisi incorporating Findings of Fact, Conclusions of Law and relief and disposition sought by each party, and further, a statement that a notice of the Decree Nisi together with a copy of the Decree Nisi shall be mailed by the Clerk of the Orphans' Court by first-class mail to all

parties, including any guardian or attorney appointed to represent the interest of any child in the proceeding, immediately upon entry of the Decree Nisi, and that the Decree Nisi shall become final unless written exceptions are filed with the Court within ten (10) days from the mailing of the notice.

39-15.4 (b) The notice of the entry of the Decree Nisi from the Clerk of the Orphans' Court will be substantially in the following form:

IMPORTANT NOTICE

TO ALL PARTIES:

Pursuant to Pennsylvania Rules of Civil Procedure Nos. 227.1 and 1517, you are hereby notified that a Decree Nisi has been entered in the above matter on \_\_\_\_\_, 19\_\_\_\_, and that said Decree Nisi shall become final within ten (10) days of the mailing of this notice unless written exceptions are filed with the Court.

A copy of the Decree Nisi is attached hereto.

\_\_\_\_\_  
Clerk of the Orphans' Court

\_\_\_\_\_  
Date of Mailing

August 7, 1987

MEMO

TO: MEMBERS FRANKLIN/FULTON COUNTY BAR  
FROM: HON. JOHN W. KELLER, P.J.

In medical malpractice cases at issue and ready to be listed for trial after August 21, 1987, the Court of Common Pleas of the 39th Judicial district will utilize the services of the Commonwealth of Pennsylvania, Health Care Conciliation Program. In this effort to ensure fair and prompt disposition of these cases, the cooperation of all parties will be expected.

The following procedures will apply:

- (1) When medical malpractice cases are at issue and ready for trial, they will be referred by the Court to the Office of Administrator of the Health Care Conciliation Program in Harrisburg.
- (2) Notice of the date, time and place of the conciliation conference will be given to counsel by the Administrator.

(3) Submission of pre-conference pre-trial statements and attendance at the conference will be mandatory. Counsel must be authorized to discuss and conclude settlement and their clients and/or insurance representatives must be available by telephone to answer questions, if necessary.

(4) The Administrator of the Program will submit a report of the conference to the Court, which if the case has not settled, will include the pre-conference statements.

(5) Cases that have settled will be removed from the trial list. Cases that have not settled will remain on the list and proceed to trial in the regular course.

The demurrer will be overruled.

In their motion to strike, defendants allege that plaintiff had a full, complete and adequate non-statutory remedy at law, and thus the complaint in equity should be stricken.

However, this position overlooks the prevailing view that when the subject matter of a contract is real estate, an action for specific performance will lie. *Billow v. Billow*, 96 Dauph. 448 (C.P. Dauphin Co., 1975); *Ecker v. Kurtz*, 119 P.L.J. 387 (C.P. Allegheny Co., 1971). See also P.L.E. Specific Performance §27.

The motion to strike is denied.

#### ORDER OF COURT

May 7, 1987, defendants' preliminary objections are dismissed.

Defendants are granted thirty (30) days from the date hereof to file an Answer to the Complaint.

Exceptions are granted to the defendants.

BLUE RIDGE ENERGY v. ESHLAND ENTERPRISES, INC.,  
C.P. Franklin County Branch, A.D. 1985-62  
*Breach of Contract - Loss of Commissions - Net Profits*

1. For a breach of contract resulting in a loss of commission, the injured party is limited to recovering net profits.

2. The calculation of net profit is an element of damages that plaintiff must prove by a fair degree of certainty.

*Jan. G. Sulcove, Esquire, Attorney for Plaintiff*

*Denis M. DiLoreto, Esquire, Attorney for Defendant*

#### PRE-TRIAL OPINION

WALKER, J.:\*

Plaintiff, Blue Ridge Energy, Inc., and defendant, Eshland Enterprises, Inc., entered into an agreement whereby plaintiff was to market defendant's heating system for a commission. Defendant terminated plaintiff and plaintiff is suing for, among other things, loss of commissions accrued from the date of termination to the date the contract would have expired. A pre-trial conference was

\*Editor's Note: Original bears no date, but the record in the Prothonotary's office states the opinion was filed on May 22, 1987.