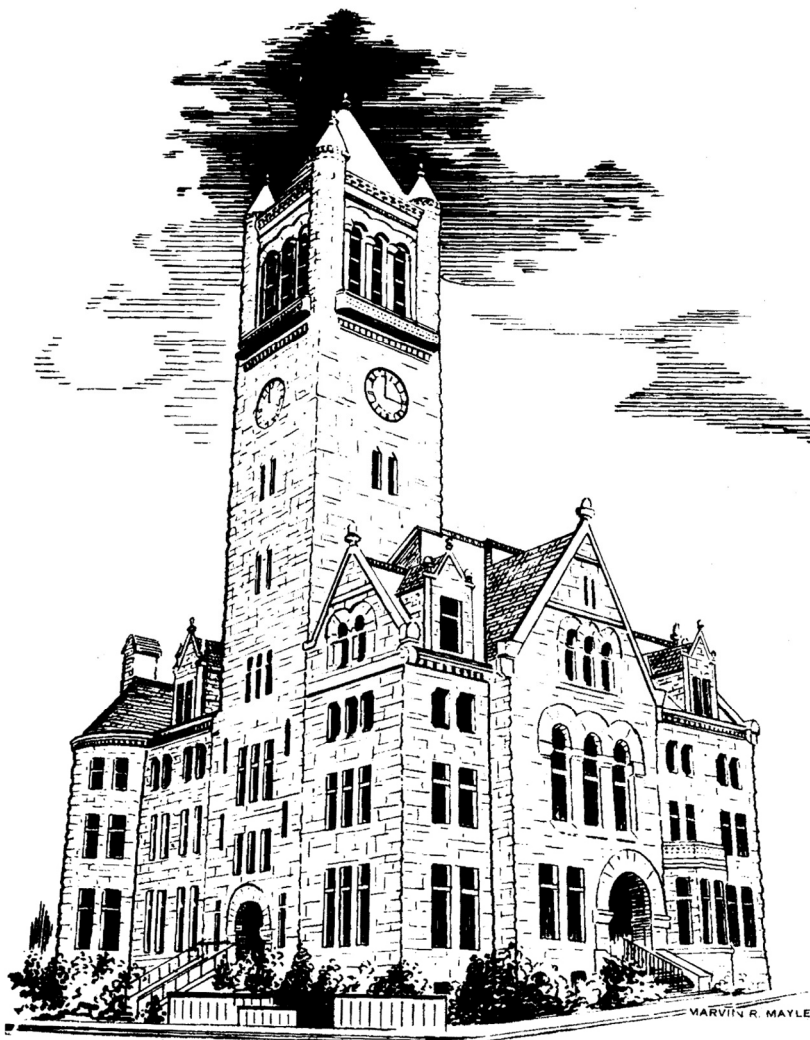


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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

RICKY LEE BALLONE, late of East Millsboro, Fayette County, PA (3)

Administratrix: Carla Ballone
c/o CELA and Julian Gray Associates
954 Greentree Road
Pittsburgh, PA 15220
Attorney: Karen S. Timko

EVELYN BARKLEY, a/k/a BESSIE E. BARKLEY, late of Saltlick Township, Fayette County, PA (3)

Personal Representative: Sherry L. Hess
c/o 208 South Arch Street, Suite 2
Connellsville, PA 15425
Attorney: Richard A. Husband

LULU B. GUTHRIE, a/k/a LULU BLANCHE GUTHRIE, late of Henry Clay Township, Fayette County, PA (3)

Executor: Kevin S. Guthrie
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James Higinbotham

JEFFERY ALLEN HARSHMAN, late of Lower Tyrone Township, Fayette County, PA

Personal Representative: (3)
Stephanie M. Harshman
c/o 208 South Arch Street, Suite 2
Connellsville, PA 15425
Attorney: Richard A. Husband

DOROTHY E. LINDSTROM, late of South Union Township, Fayette County, PA (3)

Executor: Steven H. Brose
c/o DeHaas Law, LLC
51 East South Street
Uniontown, PA 15401
Attorney: Ernest P. DeHaas, III

NELLIE IRENE LOWRY, late of Dunbar Township, Fayette County, PA (3)

Executor: Kimberly Gail Ritenour
c/o Adams Law Offices
55 East Church Street, Suite 101
Uniontown, PA 15401
Attorney: Jason Adams

Second Publication

SUSAN L. ATZENI, late of North Union Township, Fayette County, PA (2)

Personal Representative: Alice B. Atzeni
c/o Higinbotham Law Offices
68 South Beeson Boulevard
Uniontown, PA 15401
Attorney: James Higinbotham

MERYLELYNN EPPS, late of Wharton Township, Fayette County, PA (2)

Administrator: Darryl Smith
c/o 9 Court Street
Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

BETSY C. HAAS, late of Franklin Township, Fayette County, PA (2)

Personal Representative:
Eleanor R. Cochran
c/o 208 South Arch Street, Suite 2
Connellsville, PA 15425
Attorney: Richard Husband

PETER HEMINGTON KEMP, SR., a/k/a PETER H. KEMP, a/k/a PETER H. KEMP, SR., late of Saltlick Township, Fayette County, PA (2)

Co-Executors: Jane E. Dively,
Virginia E. Kemp and Peter H. Kemp, Jr.
191 Alpine Heights Road
Champion, PA 15622
c/o Kaminsky, Thomas, Wharton, Lovette & Vigna
360 Stonycreek Street

Johnstown, PA 15901
Attorney: Robert E. Thomas

JOHN D. MICK, SR., late of German Township, Fayette County, PA (2)
Personal Representative: John D. Mick, Jr.
 c/o Davis and Davis
 107 East Main Street
 Uniontown, PA 15401
Attorney: Gary J. Frankhouser

MAYNARD J. OGLETREE, late of Uniontown, Fayette County, PA (2)
Administratrix: Carla J. Turner
 c/o Proden & O'Brien
 99 East Main Street
 Uniontown, PA 15401
Attorney: Wendy L. O'Brien

JEREMIAH PLETCHER, JR., late of Vanderbilt, Fayette County, PA (2)
Administratrix: Tawnya Trainor and Jeremiah Pletcher, Sr.
 c/o Anderson & Labovitz, LLC
 429 Fourth Avenue, Suite 602
 Pittsburgh, PA 15219
Attorney: Esther Evans

IAN PRASTER, SR., late of Brownsville Township, Fayette County, PA (2)
Administratrix: Lisa Praster
 155 East Coffee Street
 Uniontown, PA 15401
 c/o DelVecchio & Miller, LLC
 428 Boulevard of the Allies 1st Floor
 Pittsburgh, PA 15219
Attorney: Shawn Kressley

JOHN E. WILTROUT, late of South Connellsville, Fayette County, PA (2)
Executor: Scott Dickert
 c/o Proden & O'Brien
 99 East Main Street
 Uniontown, PA 15401
Attorney: Sean M. Lementowski

VERNA V. WINWOOD, late of Brownsville Township, Fayette County, PA (2)
Executrix: Bonnie Neander
 c/o 51 East South Street
 Uniontown, PA 15401
Attorney: Anthony S. Dedola, Jr.

SHAWN M. WISNEWSKI, late of Everson, Fayette County, PA (2)
Executrix: Suzanne Ward
 250 Jacobs Way
 Greensburg, Pa 15601
 c/o Bumbaugh & Nicola
 10526 Old Trail Road
 North Huntingdon, PA 15642
Attorney: Mallard S. George

WILLIAM YAKSIC, late of Luzerne Township, Fayette County, PA (2)
Personal Representative: Scott K. Huhn
 451 Palmer Adah Road
 Adah, Pa 15410
 c/o Mitchell Law Office
 7 Court Street
 Uniontown, PA 15401
Attorney: Herbert G. Mitchell, III

First Publication

ELEANOR AVERY, late of Fairchance, Fayette County, PA (1)
Executor: Jerome W. Shell, Jr.
 c/o Higinbotham Law Offices
 68 South Beeson Boulevard
 Uniontown, PA 15401
Attorney: James Higinbotham

PAUL G. HAMILLA, SR., late of Perry Township, Fayette County, PA (1)
Personal Representative: Amy B. Hamilla
 c/o 208 South Arch Street, Suite 2
 P.O. Box 13
 Connellsville, PA 15425
Attorney: Richard A. Husband

JANICE HEINTZELMAN, late of Georges Township, Fayette County, PA (1)
Executrix: Elizabeth D. Hemingway, k/n/a Elizabeth D. Shapot
 c/o Higinbotham Law Offices
 68 South Beeson Boulevard
 Uniontown, PA 15401
Attorney: James Higinbotham

**JEANETTE M. KOFFLER, a/k/a
JEANETTE KOFFLER**, late of Smithfield,
Fayette County, PA (1)

Executor: Michael E. Koffler
c/o Donald J. McCue, J.D., P. E.
Donald McCue Law Firm P.C.
Colonial Law Building
813 Blackstone Road
Connellsville, PA 15425
Attorney: Donald J. McCue

**PATRICIA L. YAKUBEC, a/k/a PATRICIA
LOUISE YAKUBEC, a/k/a PATRICIA
YAKUBEC**, late of Masontown, Fayette
County, PA (1)

Executrix: Yvonne Rafter
c/o 9 Court Street
Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

LEGAL NOTICES

BARRY LEE LYNCH, late of Perryopolis
Borough, Fayette County, PA (1)

Executrix: Nancy Jane Lynch
P.O. Box 593
Perryopolis, PA 15012
c/o P.O. Box 718
Belle Vernon, PA 15012
Attorney: Brian Pirilla

IN THE COURT OF COMMON PLEAS
Fayette COUNTY
CIVIL ACTION - LAW
ACTION OF MORTGAGE FORECLOSURE
Term No. 2711 of 2019GD
NOTICE OF ACTION IN MORTGAGE
FORECLOSURE

**MARK A. NAUMAN, a/k/a MARK
NAUMAN**, late of German Township, Fayette
County, PA (1)

Executor: David R. Nauman
c/o 9 Court Street
Uniontown, PA 15401
Attorney: Vincent J. Roskovensky, II

NATIONSTAR MORTGAGE LLC D/B/A
CHAMPION MORTGAGE COMPANY

Plaintiff
vs.

FRANK FAUST Solely in His Capacity as Heir
of John G. Faust Deceased, JOHN FAUST
Solely in His Capacity as Heir of John G. Faust
Deceased, NANCY I. FAUST Solely in Her
Capacity as Heir of John G. Faust Deceased,
The Unknown Heirs of John G. Faust Deceased
& VICKI ROSENSTEEL Solely in Her
Capacity as Heir of John G. Faust Deceased
Mortgagor and Real Owner

Defendant

**RONALD OPEL, a/k/a RONALD RAY
OPEL, SR.**, late of German Township, Fayette
County, PA (1)

Administratrix: Jane Chisler
c/o Adams Law Offices, P.C.
55 East Church Street, Suite 101
Uniontown, Pa 15401
Attorney: Jason Adams

NOTICE TO: **JOHN FAUST Solely in His
Capacity as Heir of John G. Faust Deceased
or The Unknown Heirs of John G. Faust
Deceased**

ELIZABETH STOFFA, late of German
Township, Fayette County, PA (1)

Personal Representative: John M. Stoffa
c/o P.O. Box 622
Smithfield, PA 15478
Attorney: Charity Grimm Krupa

NOTICE OF SHERIFF'S SALE OF REAL PROPERTY

Your house at 1320 Hawthorne Street,
Connellsville, PA 15425 is scheduled to be sold
at Sheriff's Sale on Thursday, March 17, 2022, at
2:00 PM, in Sheriff's Office Courthouse
Uniontown PA to enforce the court judgment of
\$78,213.27 obtained by NATIONSTAR
MORTGAGE LLC D/B/A CHAMPION
MORTGAGE COMPANY against you.

**MARY ELLEN TROUT, a/k/a MARY E.
TROUT**, late of Bullskin Township, Fayette
County, PA (1)

Administrator: Harold D. Trout
c/o 17 North Diamond Street
Mt. Pleasant, PA 15666
Attorney: Marvin D. Snyder

NOTICE

If you wish to defend, you must take
action, by entering a written appearance

personally or by attorney and filing your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and you may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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800-692-7375

Michael T. McKeever
Attorney for Plaintiff
KML Law Group, P.C., PC
Suite 5000, BNY Independence Center
701 Market Street
Philadelphia, PA 19106-1532
215-627-1322

NOTICE

NOTICE is hereby given that a Certificate of Organization – Domestic Limited Liability Company has been filed with the Department of State of the Commonwealth of Pennsylvania on or about January 31, 2022, for a limited liability company established under the provisions of the Business Corporation Law of 1994, for VansByTy LLC. The proposed registered office in this Commonwealth is 754 Dipaola Lane, PO Box 326, Champion, PA 15622.

James W. Haines, Jr.
Attorney at Law
1202 West Main Street
Monongahela, PA 15063
724-258-3021

IN RE: Janet L. Lubish
Case No. 19-23168-CMB, Chapter 7

Real Estate Located at 1579 McClellandtown Road, McClellandtown, Fayette County, PA
Parcel No. 15-22-0271-01
Date of Sale 3/8/2022 at 10:00 a.m.
A Zoom Video Conference Hearing will be held on 3/8/2022 at 10:00 a.m.. via the Zoom Video Conference Application.
To participate in and join a Zoom Hearing, please initiate and use the following link at least 15 minutes prior to the scheduled Zoom Hearing time:

<https://www.zoomgov.com/j/16143800191>,
or alternatively, you may use the following:
Meeting ID: 161 4380 0191.

Objections due by: 2/18/2022

Initial Offer \$ 150,000.00)

Higher and better offers will be

considered at the hearing

Hand money required: \$1,000.00

(Cash or Certified Funds Only)

Contact: Robert H. Slone, Trustee

223 South Maple Avenue

Greensburg, PA 15601

Ph# (724) 834-2990

For more information:

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Registers' Notice

Notice by JEFFREY L. REDMAN, Register of Wills and
Ex-Officio Clerk of the Orphans' Court Division of the Court of Common Pleas

Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Monday, March 7, 2022, at 9:30 A.M.

| <u>Estate Number</u> | <u>Estate Name</u> | <u>Accountant</u> |
|----------------------|-----------------------|---------------------------------|
| 2621-0110 | CHARLES A. YARRIS SR. | Charles A. Yarris Jr., Executor |

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

Monday, March 21, 2022, at 9:30 A.M.

in Courtroom No. 5 of the **Honorable Joseph M. George, Jr.** or his chambers, 3rd Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

WARMAN ABSTRACT & RESEARCH LLC

JOHN F. WARMAN

518 Madison Drive

Smithfield, PA 15478

724-322-6529

johnfranciswarman@gmail.com

COMMERCIAL/RESIDENTIAL/CURRENT OWNER/MINERAL TITLE

A DECADE OF EXPERIENCE

E&O INSURED

WILL TRAVEL

ACCEPTING NEW CLIENTS

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA CIVIL DIVISION

SEVEN SPRINGS MOUNTAIN :
RESORT, INC. :
Plaintiff, :
v. :
GABRIEL HUDOCK, : No. 810 of 2021
Defendant. : Honorable Judge Steve P. Leskinen

OPINION AND ORDER

Leskinen, J.

December 27, 2022

Before the Court are the Defendant's PRELIMINARY OBJECTIONS to Plaintiff's AMENDED COMPLAINT. After a careful review of the record and applicable case law, the Court hereby issues the following Opinion and Order:

Factual Background

The relevant Factual Background is undisputed. The Court therefore reiterates it, in pertinent part, from the Plaintiffs AMENDED COMPLAINT:

Neals Run Road is a single lane road with a gravel and dirt surface that extends approximately three and one-half miles in Fayette County, from its western terminus at its intersection with Indian Head Road, to its eastern terminus near the western boundary of Seven Springs' property.

...
Before the Honorable Nancy D. Vernon of the Court of Common Pleas of Fayette County issued a final decree on February 15th, 2021 in the matter captioned Gabriel Hudock and Gloria Hudock v. Saltlick Township, Pennsylvania and Seven Springs Mountain Resort, Inc. formerly known as Seven Springs Farm, Inc. Civil Action 2212 - 2015, the eastern terminus of Neals Run Road was approximately 1/2 mile further east, at the boundary between Fayette County and Somerset County. However, the effect of Judge Vernon's February 15th, 2021 final decree was to approve a recommendation by a Board of Viewers that the easternmost 1/2 mile of Neals Run Road be vacated. As will be explained below, the portion of Neals Run Road that was vacated traverses what Seven Springs refers to as its "North Face" ski slopes.

...
Since the late 1960s or early 1970s, during the winter months, Saltlick Township has allowed Seven Springs to close the portion of Neals Run Road approximately 1/2 mile in length that traverses the middle of its North Face ski slopes, which portion of the road was vacated when Judge Vernon issued her February 16th, 2021 final decree.

...

In 2008, Hudock purchased the property located at 543 Neals Run Road, in Fayette County. Hudock's property is accessed via the western terminus of Neals Run Road where it intersects Indian Head Road. Prior to February 16th, 2021, Hudock could also access his property via the eastern terminus of Neals Run Road during those times when the portion of Neals Run Road that traverses Seven Springs' North Face slopes was not closed.

...

Hudock anticipated when he purchased his property that he would develop it. He subsequently subdivided a portion of his property into several lots and attempted to market and sell them as "ski in, ski out" properties.

...

In September 2014, Hudock presented Seven Springs with a letter dated September 8th, 2014 written by his counsel asserting that the seasonal closure of Neals Run Road where it traverses the North Face ski slopes was unlawful.

...

In the course of discussions that followed, Hudock attempted to persuade Seven Springs to permit him to build a private road from his property and the lots located at 543 Neals Run Road to Seven Springs, which would traverse Seven Springs' property at the top of the mountain near the ski lift unloading area. The route Hudock proposed for his private road was not the same as, or near, the route of the portion of Neals Run Road that traverses the North Face ski slopes. Hudock's proposed route would have crossed thousands of feet of Seven Springs' property in order to connect with a private road owned by Seven Springs called "Tahoe Drive" near the top of the mountain.

...

For a number of reasons, Seven Springs did not agree to permit Hudock to build a private road across thousands of feet of its property to connect with Tahoe drive.

...

On November 4th, 2015, Hudock filed and served a Complaint and a Petition for (a) Preliminary Injunction in Civil Action 2212 - 2015, seeking an injunction prohibiting the seasonal closure of Neals Run Road where it traverses Seven Springs' North Face ski slopes.

...

The Court did not grant Hudock's Petition for [a] Preliminary Injunction.

...

On September 6th, 2016, Hudock filed a Petition for Appointment of Viewers with this Court (see, Gabriel Hudock and Gloria Hudock v. Saltlick Township, Civil Action No. 750 at 2016 GD). In his Petition, Hudock requested that the portion of Neals Run Road that traverses Seven Springs' North Face ski slopes be vacated, and that he then be granted a private right-of-way where the vacated portion of the road lies.

...

Hudock's Petition for Appointment of Viewers was consolidated with his Civil Action seeking Preliminary Injunction under Civil Action 2212 - 2015. Seven Springs intervened and joined in Hudock's Petition insofar as it sought vacation of the portion of Neals Run Road that traverses Seven Springs' North Face ski slopes. However, Seven Springs opposed Hudock's requested relief of a private right-of-way.

...

Hudock also filed a Petition for Appointment of Viewers in Somerset County. That

Petition for Appointment of Viewers was also consolidated in Fayette County under Civil Action 2212 - 2015.

...

Judge Vernon appointed a Board of Viewers consisting of three members, and the Viewers then conducted a view.

...

Beginning on November 6th, 2019, and on three subsequent days, the Viewers conducted a Hearing on the issues of vacation of the portion of Neals Run Road that traverses Seven Springs' North Face ski slopes, and Hudock's request for a private right-of-way.

On November 6th, 2019, during the Board of Viewers Hearing, the following exchange took place between Attorney Merinar and the Defendant:

Mr. Merinar: What I'm asking, since you've Petitioned the Court and that Process has resulted in an Appointment Of Viewers and has brought us all here today, do you want for yourself and the adjoining landowners, who you may or may not control, to have a private right-of- way across North Face realizing that that could potentially mean the end of skiing on North Face? Is that what you want?

The Defendant: What I want is to revisit the ingress and egress to my property that we proposed. You can spin it however you want. We're here today because Seven Springs didn't grant me the ingress and egress that I asked for. You can remedy the problem today and give me that access.

Mr. Merinar: I just want to be clear. The Petition that you filed -- that's one in Somerset County and one in Fayette County -- to have this road vacated and to have a private right-of-way are really tools to your ultimate goal of having the access road you described provided for you; is that correct?

Mr. Krawec: Object to the characterization of "tools."

Mr. Merinar: A means.

Mr. Kopas: This is cross-examination. I think it's a fair question. If you don't understand the question, you can certainly indicate that.

The Defendant: I still maintain that it is an illegal road closure, and that's why I took those measures.

Mr. Merinar: Listen to my question.

The Defendant: That's why I'm here.

Mr. Merinar: Do you realize that if a private right-of-way is granted to you and to adjoining landowners as you have sought in your Petitions, that that means Seven Springs would have to keep Neals Run Road open across North Face during ski season? Do you realize that?

The Defendant: I do.

Mr. Merinar: Do you realize that if Seven Springs had to keep Neals Run Road open across North Face during ski season, that could be extremely detrimental to Seven Springs? It might even result in the end of Seven Springs?

The Defendant: You have an opportunity to remedy this if you want. You're spinning it.

Mr. Merinar: Do you realize that?

Mr. Krawec: I have redirect. I have redirect when he's done. Re-ask the question.

Mr. Merinar: Do you realize that if you or one of the adjoining landowners demands that Neals Run Road be kept open through ski season, that would be very detrimental to Seven Springs and might even result in the end of Seven Springs?

The Defendant: If it gets to that point, it would be of your own doing. We gave you -- we sat down and put together a remedy. You refused to grant it. So if you went our direction, you would not be faced with any of those issues if you made a business decision.

Mr. Merinar: So is the answer to my question, 'Yes, I realize that'?

The Defendant: That's a hypothetical. If you make a bad business decision, you're enjoying the closure of a private road for your own benefit and you won't grant a person a right-of-way, that's the way I see it.

Mr. Merinar: Is your answer then yes, you realize that Seven Springs faces that possibility?

The Defendant: That's what the law would dictate if you choose to do that and not cooperate.

Mr. Merinar: Now, is that what you want? Do you want to see Seven Springs shut down because there's no skiing on North Face?

The Defendant: Absolutely not.

Mr. Merinar: So the Petitions you have filed and the civil action that you have filed are a means to compel Seven Springs to grant you the right-of-way that you seek to your property; true?

The Defendant: The way you're phrasing the question, that is true. Again, of your own devices.

Legal Standard

Pennsylvania common law defines a cause of action for Abuse Of Process as follows:

The tort of "abuse of process" is defined as the use of legal process against another primarily to accomplish a purpose for which it is not designed. To establish a claim for abuse of process it must be shown that the defendant (1) used a legal process against the plaintiff, (2) primarily to accomplish a purpose for which the process was not designed; and (3) harm has been caused to the plaintiff. This tort differs from that of wrongful use of civil proceedings in that, in the former, the existence of probable cause to employ the particular process for its intended use is immaterial. The gravamen of abuse of process is the perversion of the particular legal process for a purpose of benefit to the defendant, which is not an authorized goal of the procedure. In support of this claim, the [plaintiff] must show some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process...; and there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions.

Shiner v. Moriarty, 706 A.2d 1228, 1236 (Pa.Super.1998), appeal denied, 556 Pa. 711, 729 A.2d 1130 (1998).

The gravamen of the misconduct for which the liability stated...is imposed is not the wrongful procurement of legal process or the wrongful initiation of criminal or civil proceedings; it is the misuse of process, no matter how properly obtained, for any purpose other than that which it was designed to accomplish. Therefore, it is immaterial that the process was properly issued, that it was obtained in the course of proceedings that were brought with probable cause and for a proper purpose, or even that the proceedings terminated in favor of the person instituting or initiating them. The subsequent misuse of the process, though properly obtained, constitutes the misconduct for which the liability is imposed.

Rosen v. American Bank of Rolla, 426 Pa.Super. 376, 627 A.2d 190, 192 (1993).

Lerner v. Lerner, 954 A.2d 1229, 1238-39 (Pa.Super.2008).

"The significance of [the word 'primarily'] is that there is no action for abuse of process when the process is used for the purpose for which it is intended, but there is an incidental motive of spite or an ulterior purpose of benefit to the defendant...

"...The usual case of abuse of process is one of some form of extortion, using the process to put pressure upon the other to compel him to pay a different debt or to take some other action or refrain from it."

Rosen v. American Bank of Rolla, 627 A.2d 190, 192 (1993) quoting Restatement (Second) of Torts, § 682, comment b.

Discussion

The three elements of Abuse Of Process are:

- (1) That the defendant used a legal Process against the plaintiff;
- (2) Primarily to accomplish a purpose for which the Process was not designed; and
- (3) That harm was caused to the plaintiff.

Shiner v. Moriarty, 706 A.2d 1228, 1236 (Pa.Super.1998).

The Plaintiff argues:

- (1) That the Defendant sought to enjoin the Plaintiff from closing Neals Run Road during ski season and grant him a private right-of-way on Neals Run Road;
- (2) Primarily to force the Plaintiff into agreeing to let the Defendant have the private road the Defendant had wanted in the first place; and
- (3) That harm was caused to the Plaintiff in the form of legal fees.

The Defendant argues that the statements made at the November 6th, 2019 Board of Viewers Hearing were merely settlement suggestions.

Conclusions of Law

The Court is unpersuaded. That the Defendant sought to develop the lots located at 543 Neals Run Road as ski-oriented properties is obvious; why, then, would he have initiated Process against the Plaintiff which (had he been successful) would have precluded skiing? The record here reflects more than an incidental motive of spite, more than an ulterior purpose of benefit to the Defendant, and more than bad intentions.

The Defendant's counsel argues that the requisite "definite act or threat" must take place "outside of the process" and cites Shaffer v. Stewartl. However, the articulation "outside of the process" is his own. The Shaffer v. Stewartl opinion does not contain the phrase, "outside of the process." 473 A.2d 1017 (1984). The Shaffer v. Stewartl opinion merely reiterates the above-cited language of Shiner v. Moriarty

A cause of action for abuse of process requires "(s)ome definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process ... [;] there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions." Di Sante v. Russ Financial Co., 380 A.2d 439, 441 (1977), quoting Prosser, Torts§ 100 at 669 (2d ed. 1955).

Shafferv. Stewart, 473 A.2d 1017, 1019 (1984).

The Court notes that Presser's phrase:

...some definitive act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process...

is inarticulate. A more deliberate articulation would have been:

...a definitive act or threat not authorized by the process or a definitive act or threat aimed at an objective not legitimate in the use of the process...

A yet more deliberate articulation would have been:

...a definitive act not authorized by the process, a definitive threat not authorized by the process, a definitive act aimed at an objective not legitimate in the use of the process, or a definitive threat aimed at an objective not legitimate in the use of the process...

However, even this lumbering construction leaves much to be desired. For instance: How could "definitive acts" or "threats" be "authorized" by a process in the first place? And why do we need the clumsy phrase, "not legitimate in the use of the process," when we already have the phrase, "a purpose for which it is not designed," from *Shiner v. Moriarty*? The most helpful articulation of the Abuse Of Process cause of action is the one found in *Rosen v. American Bank of Rolla* quoting the Restatement (Second) of Torts, § 682, comment b:

The usual case of abuse of process is one of some form of extortion, using the process to put pressure upon the other to compel him to pay a different debt or to take some other action or refrain from it.

627 A.2d 190, 192 (1993) quoting Restatement (Second) of Torts, § 682, comment b.

In this case, the Defendant admitted, under oath, that he was using the November 6th, 2019 Board of Viewers Hearing, not to obtain a private right-of-way on Neals Run Road, but rather, to use the threat of a private right-of-way on Neals Run Road (and the consequent ruination of Seven Springs' North Face Ski slopes), to put pressure on Seven Springs to compel Seven Springs to give him the private road he had wanted in the first place. There is no palatable interpretation of the existing case law to support the contention that the Abuse Of Process cause of action is unavailable against a party who testifies, under oath, that he is using the very process in which he is testifying to extort an extraneous remedy out of the party against whom he is testifying.

WHEREFORE, the Court issues the following Order:

ORDER

AND NOW, this 27th day of December, 2021, upon consideration of the Defendant's PRELIMINARY OBJECTIONS to the Plaintiff's AMENDED COMPLAINT, it is hereby ORDERED and DIRECTED that it is DENIED.

BY THE COURT:
STEVE P. LESKINEN, JUDGE

ATTEST:
PROTHONOTARY

LUNCH & LEARN SERIES

The Fayette County Bar Association's first 2022 presentation in its Lunch & Learn Series will be:

- Date: **Wednesday, March 2nd** from 12:00 p.m. to 1:30 p.m.
- Location: Courtroom No. 3 of the Fayette County Courthouse
- Discussion topics: **Children & Youth Services Mental Health Placements** - The difference between Residential Treatment Facilities, Community Residential Rehabilitation, and Inpatient hospitalization; and what is required of each level of care, along with an overview of Fayette services and access
- Presenter: **Michelle DeForrest**, M.S.Ed., NCC, LPC Fayette County Care Manager Supervisor
- Moderator: **Honorable Judge Linda R. Cordaro**, Fayette County Court of Common Pleas

Attorneys serving or interested in serving as Guardian Ad Litem or Parents' Counsel for CYs are encouraged to attend.

CLE Credit

1.5 hours of Substantive CLE credit for the program. The fees are as follows:

Members of the FCBA

- No charge for attendance without CLE Credit
- \$10 fee for attendance with CLE Credit

Attorneys admitted to practice in Pennsylvania after January 1, 2017

- No charge for attendance with CLE Credit

Non-members of the FCBA

- \$10 fee for attendance without CLE Credit
- \$40 fee for attendance with CLE Credit

**** All fees to be paid at the door ****
A light lunch will be provided.

RSVP

If interested in attending, please call Cindy at the Bar office at 724-437-7994 or by email to cindy@fcbar.org on or before Monday, February 28th.

BAR BANQUET SAVE-THE-DATE



Fayette County Bar Association
Bar Banquet

Friday, April 29th
Nemacolin Woodlands

Invitation to follow

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