CONCLUSIONS OF LAW

1. The plaintiff, Faye A. Brown, owned no legal or equitable interest in the real estate titled in the name of Gene E. Brown.

2. The plaintiff, Faye A. Brown, was entitled to no portion of the $13,566.80 of the Valley Mutual Insurance Company check allocated to the real estate loss.

3. Defendant, Gene E. Brown, was entitled to the $13,566.80 portion of the Valley Mutual Insurance Company check payable by reason of the real estate fire loss, less, however, the sum due the Fulton County National Bank as mortgagee.

4. The plaintiff, Faye A. Brown, solely owned personal property located in their former home to the value of $363.00.

5. The plaintiff, Faye A. Brown, was entitled to receive from the proceeds of the Valley Mutual Insurance Company check the sum of $363.00, representing her personal property.

6. The destruction on January 25, 1975 of the personal property owned by the plaintiff and her husband as tenants by the entireties created a tenancy by the entireties claim of the then husband and wife against the fire insurance carrier.

7. Under the Act of 1927, May 10 P.L. 884, Sect. 1, as amended; 68 P.S. 501, the divorce of the parties on February 10, 1975 altered their tenancy by the entirety claim to a tenancy in common with each having an equal one-half share.

8. The plaintiff, Faye A. Brown, was and is entitled to receive one-half of the $5,247.27 proceeds of the Valley Mutual Insurance Company check, or $2,623.64, as of the date of negotiation of the check on March 24, 1975.

9. By the conversion of the entire proceeds of the Valley Mutual Insurance Company check, less the sum due the mortgagee, Gene E. Brown, defendant, became indebted to the plaintiff, Faye A. Brown, in the total amount of $2,986.64 as of March 24, 1975.

DECISION

NOW, this 25th day of November, 1977, the Court finds for the plaintiff, Faye A. Brown, and against the defendant, Gene E. Brown, in the sum of $2,986.64 with interest from March 24, 1975.

BRICKER v. METAL TOWNSHIP SUPERVISORS, C. P. Franklin County Branch, No. A.D. 1977-46

Agency Regulations - DER - Sewage Facilities Act - Use of Holding Tanks

1. Under the Pennsylvania Sewage Facilities Act, Act of January 24, 1966, P.L. 1535 (1965), 35 P.S. Sect., 750.1, et seq., the Pennsylvania Department of Environmental Resources has no authority to prohibit the use of holding tanks merely because of the absence of an official plan for their replacement.

2. The Department of Environmental Resources is limited under the Pennsylvania Sewage Facilities Act, supra, to adopting standards only for the construction and installation of holding tanks.

3. An official plan which does not permit the installation of a particular type of sewage system and which leaves the property owner with no sewage permit and no opportunity to use his land in what is otherwise a completely lawful manner is confiscatory and tantamount to a taking without due process of law.

Robert D. Myers, Esquire, Attorney for Appellant

Jan G. Sulcove, Esquire, Attorney for Appellee

Eugene E. Dice, Esquire, Attorney for Commonwealth

OPINION AND ORDER

EPPINGER, P.J., November 22, 1971:

The Richmond Furnace area of Metal Township is sparsely populated, a section given over largely to vacation or recreation homes, occupied only on an intermittent basis. There is no commercial or industrial activity and only a limited amount of farming.

Eugene R. Bricker (Bricker) and his wife own a tract of land in the Richmond Furnace area. They have sold one of the lots, apparently contingent on whether a home can be built on it. This in turn depends on whether a sewage system can be placed on the lot.

Back in August of 1974, Bricker was given a permit to install an on-site sewage disposal system for this lot by the Metal Township (township) sewage enforcement officer. It is too bad he didn't go ahead and put it in because multiple barriers have been placed in the way of his use of the land for a residence site since the permit was revoked by the officer less

than a year later. He appealed the action of the sewage enforcement officer to the township supervisors but they sustained the revocation about a month later.

In August of 1975 his reapplication for a permit was denied and this was again affirmed by the township supervisors. Bricker was told that he would be permitted to install a holding tank when an ordinance permitting them had been adopted. This was done on July 2, 1976 and while this ordinance was in effect he applied for permission to put in a holding tank. His application was denied because the Township's Official Plan did not provide for holding tanks in the Richmond Furnace area. Pennsylvania Sewage Facilities Act, The Act of 1937, P.L. 1987, Sect. 7, 35 P.S. Sect. 750.7(b)(4).

An Official Plan for sewage disposal must be submitted to the Department of Environmental Resources (DER) by municipal subdivisions. 25 Pa. Code sections 71.11-71.17. Holding tanks are given special consideration in DER regulations, 25 Pa. Code section 71.51 (a) (1) and (2). According to those regulations they may be used only in lieu of treatment tanks in subsurface absorption areas when the official plan indicates the use of holding tanks for a particular lot and provides for replacement with a schedule approved by DER, the municipality has assumed responsibility for maintaining holding tanks by suitable ordinance, regulation or restrictions, and the proposed disposal site has been approved by DER. DER claims to have the authority to make these regulations under the provisions of the Pennsylvania Sewage Facilities Act, supra. 35 P.S. Sect. 750.1 et seq., and the Clean Streams Law, the Act of 1937, P.L. 1987, as amended 35 P.S. Sect. 691.1 et seq.

Section 7(a) of the Sewage Facilities Act, 35 P.S. Sect. 750.7(a) provides that no person may take any steps to install a sewage treatment system without first obtaining a permit indicating that system is in compliance with the provisions of the act *and the standards adopted pursuant ot this act.* (emphasis supplied)

Bricker has appealed from the action of the township supervisors in denying him the right to install a holding tank, and complains that other holding tanks have been approved in the township, which they have. The Environmental Quality Board has the power to adopt rules and regulations of DER, establishing standards for individual sewage treatment plants, Sewage Facilities Act, supra, Sect. 9, 35 P.S. Sect. 750.9. In the case of *Shell Oil Co. v. Bucks County Health Dept.*, 73 D. &

LEGAL NOTICES, cont.

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF PENNSYLVANIA

United States of America)
vs.) Civil No. 77-54
David D. Metz, Sr. and)
Catherine L. Metz)

Public notice is hereby given, that by virtue of a Writ of Execution (Mortgage Foreclosure) issued out of the United States District Court for the Middle District of Pennsylvania, to me directed, I will expose and offer for sale at public vendue to the highest bidder, terms of sale 20% down at the time of sale, balance due in thirty (30) days, on the premises of the real estate at R. D. #2, Fayetteville, Pennsylvania, in the Township of Greene, Franklin County, Pennsylvania, on February 28, 1978 at 1:00 P.M., all the right, title and interest of David D. Metz, Sr. and Catherine L. Metz, Defendant(s) and Mortgager(s), in and to the following described real estate and property, including improvements thereof.

DESCRIPTION OF PROPERTY
TO BE SOLD

ALL the following described real estate, lying and being situate in Greene Township, Franklin County, Pennsylvania, bounded and limited as follows:

TRACT NO. 1: BEGINNING at an iron pin on the northwest corner of lot No. 14; thence by Tract No. 2 herein, South 86¾ degrees East 164 feet, more or less, to a point in Stump Run; thence South 3½ degrees West 200 feet to a point on the Lincoln Highway in the middle of Stump Run Bridge; thence on Lincoln Highway, North 86¾ degrees West 164 feet to corner of Lot No. 13 on the hereinafter mentioned plan of lots; thence by Lot No. 13, lands of Cordelia B. Motz, North 3½ degrees East, 200 feet to an iron pin; the place of beginning. Being Lots Nos. 14, 15 and 16 on a plan of lots laid out by Robert R. Unger;

TRACT NO. 2: BEGINNING at the northwest corner of Tract No. 1; thence by land of Cordelia B. Motz, North 3½ degrees East 125 feet to a point; thence by land now or formerly of Oyler, South 86¾ degrees East 164 feet to a point; thence by same, South 3½ degrees West 125 feet to the northeast corner of Tract No. 1 herein; thence by same, North 86¾ degrees West 164 feet to place of beginning; containing 20,500 square feet, more or less.

Being the same real estate conveyed to the mortgagors herein by deed of Philip E. Haugh and Dorothy E. Haugh, his wife, dated March 23, 1974, and recorded in Franklin County Deed Book 333, page 89.

To all parties in interest and claimants: A Schedule of Distribution of Sale will be filed by the U. S. Marshal on March 10, 1978, with the Clerk of Court, Scranton, PA. Distribution will be made in accordance with said Schedule unless exceptions are filed thereto within ten (10) days thereafter with the Clerk.

JOHN L. BUCK
United States Marshal
Middle District of Pennsylvania
Scranton, Pennsylvania

(2-3, 2-10, 2-17)

SHERIFF'S SALES

Pursuant to Writ of Execution issued on Judgment Nos. 1975-297 & 1976-24 of the Court of Common Pleas of the Thirty-Ninth Judicial District, Franklin County Branch, I will sell at public auction sale in Court Room No. One of the Franklin County Court House, Memorial Square, Chambersburg, Pennsylvania, at One O'clock P.M. on Friday, February 24, 1978 the following real estate improved as indicated:

ALL the following described real estate, together with the improvements thereon erected, lying and being situate in Peters Township, Franklin County, Pennsylvania, bounded and limited as follows:

BEGINNING at an iron pin at lands now or formerly of Vance; thence by lands now or formerly of Vance, North 80 degrees 26 minutes East, 473.4 feet to an iron pin; thence by same, South 5 degrees 47 minutes East, 538.98 feet to a post; thence by lands now or formerly of Leab, South 3 degrees 40 minutes West, 113.37 feet to an iron pin; thence along the North side of the street, North 87 degrees 55 minutes West, 140.26 feet to a point; thence by same, South 54 degrees 50 minutes West, 310.69 feet to a point; thence by lands now or formerly of Vance and through an iron pin on line, North 35 degrees 53 minutes West, 355.52 feet to an iron pin; thence by same, North 11 degrees East, 465.01 feet to an iron pin at lands now or formerly of Vance, the place of beginning. CONTAINING 8.327 acres, more or less, as shown by draft and survey of William L. Arrowood, dated March 20, 1964, and revised April 3, 1964.

BEING THE SAME REAL ESTATE which Ronald D. Hess and Harue Hess, his wife, by Deed dated January 6, 1976, and recorded among the Deed Records of Franklin County, Pennsylvania, in Deed Book Volume 721, Page 478, conveyed to Donald D. Hess.

And having erected thereon a single family dwelling of conventional design having concrete block foundation with full basement area and cement floor. Exterior walls are of concrete or cinder block and asphalt shingle roof. Interior walls are plaster.

Seized and taken in Execution as the real estate of Ronald D. Hess, under Judgement Nos. 1975-297 and 1976-24.

TERMS: The successful bidder shall pay 20% of the purchase price immediately after the property is struck down, and shall pay the balance within ten days following the sale. If the bidder fails to do so, the real estate shall be re-sold at the next Sheriff's sale and the defaulting bidder shall be liable for any deficiency including additional costs. Any deposit made by the bidder shall be applied to the same. In addition the bidder shall pay $20.00 for preparation, acknowledgement and recording of the deed. A Return of Sale and Proposed Schedule of Distribution shall be filed in the Sheriff's Office on March 8, 1978, and when a lien creditor's receipt is given, the same shall be read in open court at 9:30 A.M. on said date. Unless objections be filed to such return and schedule on or before March 22, 1978, distribution will be made in accord therewith.

FRANK H. BENDER, Sheriff of
Franklin County, Pennsylvania

January 27, 1978
(2-3, 2-10, 2-17)

C. 2d 91 (1975) the Environmental Hearing Board held that DER may only adopt standards for holding tank construction and installation and concluded that there is no authority in the act to condition the granting of an individual sewage system upon compliance with the provisions of 25 Pa. Code 71.51 (a) (1) and (2), the section limiting the installation to properties where the Official Plan calls for them.

Both the township and the DER, the latter being permitted to file a brief in support of the refusal to grant a holding tank permit, contend that *Shell* is not precedent for this case because of factual differences. The oil company had developed the site, had spent substantial sums on a septic system, had its permit revoked and after revocation was informed that a holding tank was the only available system. Then the company was told it could not have a holding tank because there was no Official Plan provision for holding tanks at that site and no ordinance providing for their maintenance. Shell offered to post bond to assure proper maintenance of a holding tank. The Environmental Hearing Board concluded that it was unlikely that a holding tank at the station, with what to us seems to be a great potential for sewage accumulation, would result in any pollutional or health hazards.

The Board ordered a permit for a holding tank to be issued to Shell, required the company to post bond guaranteeing it would see the system was properly maintained, and requiring it to cease discharge into the holding tank when public sewer is installed or the ground becomes suitable for a septic tank. (There was evidence that the ground at this site might condition itself to become suitable for a septic tank.)

Obviously the factual situation is different. But the holding of the Hearing Board is that *DER has no authority to prohibit the use of holding tanks merely because of the absence of an Official Plan for their replacement.* (emphasis supplied). The order of the Board looks only to the future with expectation of a public sewage system of improved soil conditions. It does not put a time limit on the use of a holding tank at the Shell station. It could be there for a long time.

In *Shell*, the result was influenced greatly by the decision in *Commonwealth v. Trautner*, 19 Commonwealth Ct. 116, 338 A.2d 718 (1975). Trautner, the owner of the land, had applied for a permit to install an individual on-lot sewage treatment system. The township had filed an Official Plan and attempted to amend it to permit him to install his system. DER rejected Trautner's application charging the revision of the plan was inadequate and that the project was not located in an "isolated

area" as required by regulation 91.32, 25 Pa. Code Sect. 91.32. Trautner appealed to the Environmental Hearing Board which sustained his appeal and directed DER to issue a permit to Trautner for the construction and operation of an individual on-lot sewage system. On DER's appeal, the Commonwealth Court affirmed.

Both the Board and the Commonwealth Court found that Trautner's property was located in an isolated area and noted that future growth of the township might alter the present status of the area. The Court then considered DER's regulations regarding Official Plans, and concluded that if a plan does not permit the installation of a particular type of sewage system, ". . . the property owner is left with no sewage permit and no opportunity to use his land in what is otherwise a completely lawful manner. This situation is confiscatory and tantamount to a taking without due process of law." (citing cases)

Again, the township and the Commonwealth seek to distinguish the case on factual grounds. Trautner applied for a permit to install a self-contained unit, a chlorinator plant, that would discharge the effluent into a stream which went dry sometimes during the year; a stream that was located near a village and ran along houses and areas used for farming. There was testimony at the hearing that there should be a permanent system in the area; that there was a potential need for it.[1] The basic factual ground for authorizing the treatment plant, however, was that Trautner lived in an isolated area.

Bricker's land is in an isolated area and under the *Trautner* doctrine he cannot be ". . .denied his right to use his property until such time as *the municipality* (emphasis in the original) has satisfied DER that sewage disposal on the property is in conformity 'with a comprehensive program of water quality management'." He cannot be required to motivate the township to comply with DER regulations for the adoption of an amendment of an Official Plan and satisfy DER that his plan for sewage disposal is otherwise acceptable.

As Bricker's counsel argued, he is not asking for a license to pollute. He is requesting authority to install a pollution control device which has been granted to other township residents. The kind of use that is anticipated of any residence constructed on this lot would not generate an alarming amount of sewage. Bricker has presented a statement attesting that he has made arrangements for the holding tank to be

[1]See the record in the case before the Environmental Hearing Board.

pumped. The township has the authority to insist that the tank be emptied at regular intervals and for failure to do so to prohibit its further use and apply other sanctions. While in *Shell* the Environmental Hearing Board required a bond of the company to guarantee its compliance with these regulations, it did so only after the company volunteered to provide it--a bond apparently relying solely on the good faith and credit of the company, not a surety bond.

In its findings the Board of Supervisors did not state that holding tanks were unsafe and were not a proper alternative to an on-site disposal system. Actually 25 Pa. Code Sect. 73.81 makes provision for their use, notes the requirements for regular service and maintenance and then includes the prohibition of their installation except in an area approved for their use in the Official Plan. It is this regulation and the conclusions that the Board of Supervisors reached pursuant thereto that were found in *Trautner* to be confiscatory and tantamount to a taking without due process, and which the Board in *Shell* found to be unauthorized by the Sewage Facilities Act, supra.

For these reasons the adjudication of the Board of Supervisors of December 10, 1976, affirming the action of the Sewage Enforcement Officer in denying Bricker's application for a sewage disposal system (a holding tank) must be reversed.

ORDER OF COURT

NOW, November 22, 1977, the action of the Board of Supervisors of Metal Township in denying Eugene R. Bricker a permit to install a septic tank on his property is reversed and the Sewage Enforcement Officer of Metal Township is hereby ordered to issue a holding tank permit to Eugene R. Bricker for the property in Metal Township, Franklin County, Pennsylvania, as requested in Application No. 25002.

INVESTORS CONSUMER DISCOUNT COMPANY OF CHAMBERSBURG v. FAHNESTOCK, C.P. Franklin County Branch, A.D. 1977-366

Assumpsit - Pleading - More Specific Pleading - Citation of Statutes and Regulation Section - Concise and Summary Form

1. The material fact that the rate of interest charged is in excess of the legal rates may be pleaded with sufficient specificity by citation of the statute section on interest rates.