

LEGAL NOTICES, cont.

distribution and notice to the creditors of Valley Bank and Trust Company, Executor under the Will of John A. Eckenrode, late of Guilford Township, Franklin County, Pennsylvania, deceased.

TROSTLE: First and final account, statement of proposed distribution and notice to the creditors of Citizens National Bank of Southern Pennsylvania, Co-Executor of the last will and testament of Anna Larue Trostle a/k/a A. Larue Trostle, late of Waynesboro, Franklin County, Pennsylvania, deceased.

Rhonda R. King
Deputy Clerk of Orphan's Court
Franklin County, Pennsylvania

8/11, 8/18, 8/25, 9/1/89

NOTICE IS HEREBY GIVEN That The Mayor and Town Council of the Borough of Greencastle, Franklin County, Pennsylvania, adopted an ordinance at its regularly scheduled public meeting on August 7, 1989 adopting a resolution of the Greencastle, Franklin County, Authority, amending the Articles of Incorporation of said Authority extending its term of existence for a period of fifty (50) years from the date of approval of this amendment by the Secretary of the Commonwealth, pursuant to 53 P.S. Section 305 A(2).

Further, the registered office of the Greencastle, Pennsylvania 17225. The Articles of Amendment described above shall be filed with the Secretary of the Commonwealth of August 21, 1989, pursuant to the Pennsylvania Municipality Authorities Act of 1945, 53 P.S. Section 301, et seq., as amended.

KENNETH E. MYERS
Secretary, Borough of Greencastle,
Franklin County, Pennsylvania

8/18/89

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on September 13, 1984, for the purpose of obtaining a certificate of incorporation. The

LEGAL NOTICES, cont.

name of the proposed corporation organized under the Commonwealth of Pennsylvania Business Corporation Law approved May 5, 1933, P.L. 364, as amended, is Hamner, Inc., with its principal place of business at 6557 Buchanan Trail East, Waynesboro, Pennsylvania 17268. The purpose for which the corporation has been organized is for the maintenance of small and heavy equipment, to buy and sell trucks and equipment and any other lawful purpose for which corporations may be incorporated under the Business Corporation Law of the Commonwealth of Pennsylvania.

Martin and Kornfield
17 North Church Street
Waynesboro, PA 17268

8/18/89

NOTICE is hereby given that MIKLARPET BROADCASTING, INC., has filed its Articles of Incorporation with the Department of State of the Commonwealth of Pennsylvania on the 6th day of July, 1989 under the provisions of the Business Corporation Law, approved on the 5th day of May, A.D., 1933, P.L. 364. Its registered office in the State of Pennsylvania is located at c/o 8737 Kuhn Bridge Road, Greencastle, Pennsylvania 17225. The Character and nature of the business it proposes to do within the Commonwealth is: To engage in any lawful act an activity permitted by the laws of the Commonwealth of Pennsylvania.

8/18/89

NOTICE OF WINDING-UP PROCEEDING PVI, INC.

NOTICE IS HEREBY GIVEN that PVI, Inc., a Pennsylvania corporation with principal offices located at 11057 Creek Road, Fannettsburg, Pennsylvania 17221, has filed a Certificate of Election to Dissolve and is winding-up its business. All communications or inquiry should be submitted to: Edward I. Steckel, Esquire, 412 Chambersburg Trust Building, Chambersburg, Pennsylvania 17201.

8/18, 8/25/89

However, we are now at the pleading stage, and we do not think that plaintiff's complaint properly establishes that a common law marital relationship came into existence. However, although Pennsylvania is a fact-pleading jurisdiction, we note that under Pa. R.C.P. No. 1920.72 (a), the only compulsory allegation of the creation of the marital relationship is the somewhat conclusory statement that "[t]he plaintiff and defendant were married on [date] at [City], [State/County]", and an allegation in this language by plaintiff would be sufficient to comply with the pleading requirement. While it may appear somewhat paradoxical, it appears that plaintiff has pleaded both too little and too much: too little in failing to plead that the parties expressed in words or in language in the present tense that they intended to be married, and too much in pleading evidence that purportedly supports an intention to be married. Accordingly, we will grant defendant's demurrer, and will allow plaintiff to amend her complaint, if she is able to do so.

In view of this disposition, it is unnecessary to determine the motion for a more specific complaint.

ORDER OF COURT

NOW, February 16, 1988, defendant's demurrer is sustained. Plaintiff is granted thirty (30) days from this date to file an amended complaint.

**SNYDER VS. DONEGAL MUTUAL INSURANCE COMPANY
ET AL., C.P., Franklin County Branch, Eq. Doc. Vol. 7, Page
496**

*Equity - Homeowners Insurance - Fire Loss - Business Property - Joinder of
Necessary Party - Mortgagee*

1. A mortgagee claiming under an insurance policy must, in order to commence an action, be able to show his security has been impaired and that it has not been restored.
2. The joinder of a mortgage depends on the present status of its security interest.

John N. Keller, Esq., Counsel for Plaintiff

Roger T. Shoop, Esq., Counsel for Defendant, Donegal Mutual Insurance Company

Denis M. DiLoreto, Esq., Counsel for Defendant, McDowell Insurance, Inc.

Walker, J., December 5, 1988:

On April 27, 1988, plaintiff Donald Snyder commenced this action by filing for writ of summons. He thereafter filed a complaint in equity and law on August 5, 1988. On August 23, 1988, defendant McDowell Insurance, Inc. (hereinafter "McDowell") filed preliminary objections to the complaint in the nature of a demurrer and a petition raising the nonjoinder of a necessary party. Argument was held on the preliminary objections on October 6, 1988.

Plaintiff and his wife are owners of a tract of real estate in Antrim Township upon which was built a residence and a concrete building. Plaintiff is also the owner of a carnival business known as Snyder's Amusements. McDowell is an authorized insurance agent of defendant Donegal Mutual Insurance Company (hereinafter "Donegal") with a business office in Greencastle, Pennsylvania.

According to the complaint, plaintiff met with Dorothy V. Everetts, an employee of McDowell, at its Greencastle office on June 12, 1987. At this time, plaintiff informed Everetts that he wanted homeowner's insurance coverage for the structures and personal property located on his real estate.

When Everetts asked plaintiff whether he would be conducting business on the property, plaintiff allegedly responded that he would not be conducting business but that he would be storing and working on his business equipment in the said real estate. (Paragraph 12 of plaintiff's complaint). Everetts then allegedly told plaintiff that she would obtain homeowner's coverage for him and presented him with an application for homeowner's coverage with Donegal which Everetts and plaintiff signed. Shortly thereafter, Donegal issued the homeowner's policy in question to plaintiff.

Plaintiff's counsel has since advised McDowell's counsel, by letter dated August 17, 1988, that plaintiff did not have an opportunity to verify the accuracy of the allegations in the

complaint prior to it being filed. Plaintiff, however, has subsequently reviewed the complaint and confirms its accuracy in all respects, except that he now recalls telling Everetts that he intended to work on some business property inside the block building and expected coverage on this business property.

On November 4, 1987, a fire destroyed the block building and its contents. Plaintiff filed a timely loss claim to both defendants, but Donegal denied plaintiff's claim for damage to the block building and the items of business property located therein. Donegal relied on clauses in the homeowner's policy which excluded coverage for structures or business property used for business purposes.

Plaintiff brings two causes of action against McDowell. Count II of the complaint is a common law action for fraud and misrepresentation in selling insurance to plaintiff without adequately explaining what "conducting business on the property" meant or advising him of the business exclusions in the policy. Count IV alleges a violation of Section 201-2(4) of Pennsylvania's Unfair Trade Practices and Consumer Protection Law which prohibits unfair methods of competition. 73 Pa.C.S. § 201-1 et seq.

McDowell, by its demurrer, argues that Counts II and IV fail to set forth a cause of action upon which relief can be granted and therefore should be dismissed. The court believes, however, that a material dispute of fact exists in this cause as to what plaintiff and Everetts represented or failed to represent to each other at the June 12, 1987 meeting. For instance, a factual dispute arises as to whether plaintiff informed Everetts that he wanted coverage on his business property, and, if so, whether Everetts adequately explained to him what "conducting business on the property" meant or notified him of the business exclusions in the policy. The court therefore denies McDowell's demurrer to Counts II and IV and grants plaintiff twenty (20) days from the date of this order in which to file and amended complaint in accordance with plaintiff's recollection of his meeting with Everetts.

McDowell also raises the issue of whether plaintiff's wife and the mortgagee named in the policy are necessary parties who must be joined to Counts II and IV. McDowell argues that Mrs. Snyder and the mortgagee have present interests in plaintiff's claim and that to proceed without their joinder would subject McDowell to multiple liability under the policy.

It has been held that:

A mortgagee, claiming under a standard mortgagee clause of an insurance policy, must, in order to commence an action and prosecute it to judgment, be able to show that his security has been impaired or damaged, and that it has not been restored or replaced.

Anch v. New Hampshire Fire Insurance Co., 65 Dauph. 335 (1953). In essence, the joinder of the mortgagee herein depends on the present status of its security interest.

The court determines that if the mortgagee's security has not been restored or replaced, then it has a real interest in the outcome of this matter and must be joined as a party plaintiff to Counts II and IV unless plaintiff secures an assignment of rights under the policy from the mortgagee. If, however, the mortgagee's security has already been restored or replaced, then it need not be joined to the present action.

Finally, the court determines that Mrs. Snyder must be joined as a party plaintiff to Counts II and IV. Although she is not the named insured under the policy, Mrs. Snyder is insured by the terms of the policy and does have certain rights therein. In the interests of fairness to McDowell and judicial efficiency, the court determines that all such persons with a present interest in the outcome of this matter must be joined at this early stage of the proceedings. It is therefore ordered that Mrs. Snyder must be joined as a party plaintiff to Counts II and IV of this action.

ORDER OF COURT

December 5, 1988, McDowell's demurrer to Counts II and IV of the complaint is denied. Plaintiff is granted twenty (20) days from the date of this order in which to file an amended complaint to include all of his recollections of his meeting with Mrs. Everetts.

It is further ordered that the mortgagee must be joined as a party plaintiff to Counts II and IV unless the mortgagee's security has been restored or replaced, or plaintiff secures an assignment of rights under the policy from the mortgagee. The court orders that Mrs. Snyder must be joined as a party plaintiff to Counts II and IV.

FIRST NATIONAL BANK AND TRUST CO.



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