

reinstated.

SKILES v. SCHOEN AND NELSON, C.P. Fulton County Branch,
No. 143 of 1982-C

Judgment Note - Execution - Act 6 - Residential Real Property - Farm

1. Act 6 applies to a farm which contains a dwelling house and otherwise meets the definition of residential real property.
2. Where the residence located on a farm is destroyed by fire, in reconstruction is intended, Act 6 continues to apply.
3. Where a writ of execution on real estate subject to Act 6 does not comply with the Act 6 notice provisions, the writ will be set aside.

Stanley J. Kerlin, Esq., Attorney for Plaintiff
James M. Schall, Esq., Attorney for Defendant

OPINION AND ORDER

BEFORE, KAYE, J., September 11, 1987:

A. PROCEDURAL HISTORY OF THE CASE

On June 7, 1982, Dwight M. Skiles, plaintiff, confessed judgment against the defendants, Elton W. Schoen and Scott H. Nelson, on a Judgment Note dated August 10, 1981. On August 18, 1986, plaintiff caused a Writ of Execution to issue directing the Sheriff of Fulton County to levy on and sell the property of the defendants to satisfy the judgment against them. On September 26, 1986, defendants filed a Petition for Rule to Show Cause Why the Writ of Execution Should Not be Set Aside. By Order of Court dated September 30, 1986, a Rule was directed to be issued upon plaintiff, Dwight M. Skiles, to show cause why the Writ of Execution should not be set aside. The Rule was issued on October 1, 1986.

On November 14, 1986, plaintiff filed an Answer to the aforesaid Petition and Rule. On June 8, 1987, an Order was entered setting June 23, 1987, as the date for a hearing on defendants' Petition and Rule to Show Cause Why the Writ of Execution Should Not Be Set Aside. Pursuant to stipulation of counsel, an Order was entered on June 23, 1987, rescheduling this



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LEGAL NOTICES, cont.

IN RE: :IN THE COURT OF
Adoption of Jason L. :COMMON PLEAS
Kamprath :OF THE 39th JUDI-
:CIAL DISTRICT, PA
:
:ORPHANS COURT
:
:No. 3 of 1988

NOTICE

James Larry Kamprath
Last known address:
Central Avenue Apartments
Fort Myers, Florida

A Petition has been filed asking The Court of Common Pleas of Franklin County, Chambersburg, Franklin County, Pennsylvania, to put an end to all rights you have to your child, Jason Larry Kamprath. The court has set a Hearing to consider ending your rights to your child. The Hearing will be held in the Franklin County Courthouse, in Chambersburg, Franklin County, Pennsylvania, in Courtroom No. 2, on Thursday, April 21, 1988 at 10:30 o'clock AM. You are warned that even if you fail to appear at the scheduled Hearing, the Hearing will go on without you and your rights to your child may be ended by the court without your being present. You have a right to be represented at the Hearing by a lawyer.

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 to find out where you can get legal help.

Legal Reference Service of Franklin-
Fulton Counties
Franklin County Courthouse
Chambersburg, Pennsylvania 17201
Telephone Number: (717) 264-4125,
Ext. 213

MARTIN AND KORNFIELD
E. Franklin Martin
Attorney for Plaintiff

3/11, 3/18, 3/25/88

LEGAL NOTICES, cont.

ESTATE NOTICE

Letters have been granted on the estate of the following decedent to the personal representative named who requests all persons having claims against the estate of the decedent to make known the same in writing to him and all persons indebted to the decedent to make payment to him without delay:

BRAUN, Marie, deceased, of the township of Quincy, No., 45964 28-88-1290-14. Edward P. Carey, Esquire, Administrator; 1403 State Office Building, Pittsburgh, Pennsylvania 15222.

3/18, 3/25, 4/1/88

ARTICLES OF INCORPORATION

NOTICE IS HEREBY GIVEN that TITON TACKLE COMPANY, INC. has been organized under the provisions of the Pennsylvania Business Corporation Law, 1933, P.L. 364, as amended, and that Articles of Incorporation were filed with the Pennsylvania Department of State on November 27th, 1987.

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.

Steiger and Steiger
56 South Main Street
Mercersburg, PA 17236

3/18/88

hearing for July 7, 1987, and the hearing was held as scheduled. The matter is now before the Court for disposition.

B. FINDINGS OF FACT

1. Defendants, Elton W. Schoen and Scott H. Nelson, are the owners of one hundred thirty-seven (137) acres of land in Todd Township, Fulton County, Pennsylvania, conveyed to them by deed dated March 24, 1973, recorded in Deed Book 79, Page 21, and quit-claim deed dated September 19, 1978, recorded in Deed Book 91, page 264.
2. On August 10, 1981, defendants contracted with plaintiff, Dwight M. Skiles, to have vinyl siding installed on a farmhouse situate on the above described land.
3. The actual siding work was performed by Jerry Foster, an employee of Dwight M. Skiles.
4. To pay for the installation of this siding, defendants executed a judgment note to the plaintiff, dated August 10, 1981, in the amount of \$4,775.00, with interest of 14.5% per annum.
5. In February, 1982, defendant Elton Schoen executed a release discharging Dwight M. Skiles "... his employees and agents from and [sic] and all liability, claims, injuries, damages, expenses, causes of action, judgments, suits, whatsoever, in law or equity..." in connection with the work performed on the farmhouse.
6. In the late summer of 1982, payments on the note held by the plaintiff stopped.
7. Plaintiff's attorney wrote to defendant, Elton Schoen, by letter dated June 28, 1983. This letter referred to defendant's "... serious delinquen[cy] . . ." (Plaintiff's exhibit #2).
8. Elton Schoen sent a reply to the letter, which did not set forth "defectiveness of the work" as the reason for the delinquency on the note, but rather, alleged "... tremendous financial setbacks . . ." as the reason therefor. (Plaintiff's exhibit #3).
9. On May 13, 1986, the farmhouse owned by Elton Schoen and Scott Nelson was destroyed by fire.
10. Elton W. Schoen has expressed the intention to reconstruct the house and move back onto the property in question upon favorable settlement of a pending action against the insurance company which allegedly insured the destroyed farmhouse.
11. Because of the delinquency in payments, the plaintiff caused a

Writ of Execution on the property to be issued by the Prothonotary of Fulton County on August 18, 1986, which writ defendants now petition the Court to set aside.

C. DISCUSSION

Act 6 of 1974, known as the Loan Interest and Protection Law, 41, P.S. §101 et seq., provides at §407(a):

As to any residential real property, a plaintiff shall not have the right to levy, execute or garnish on the basis of any judgment note or decree on confession, whether by amicable action or otherwise, or on a note, bond or other instrument in writing, confessing judgment until plaintiff, utilizing such procedures as may be provided in the Pennsylvania Rules of Civil Procedure, files an appropriate action and proceeds by judgment or decree against defendants as in any original action. The judgment by confession may be changed as may be appropriate by a judgment, order or decree entered by the Court in the action. After the above mentioned original action has been prosecuted and a judgment obtained, the judgment shall merge with the confessed judgment and the confessed judgment shall be enforced as to amount and execution shall be had on the confessed judgment. The parties to the action shall have the same rights as parties to other proceedings . . . [Emphasis added].

Elsewhere in the Act, "residential real property" is defined as:

" . . . real property located within this Commonwealth containing not more than two residential units or on which not more than two residential units are to be constructed and includes a residential condominium unit." 41 P.S. §101.

Pursuant to the foregoing statutory provisions, the Supreme Court of Pennsylvania promulgated Pa. R.C.P. Nos. 2981-2986, setting forth the mandatory procedures for execution on a confessed judgment on property subject to protection under Act 6. Those rules provide, *inter al.*, for the commencement of the action by the filing of a complaint which must contain specific allegations in the Office of the Prothonotary, Pa. R.C.P. Nos. 2983-2984.

The threshold question, then, is whether the real estate in question falls within the definition of "residential real property" as set forth above. The resolution of this question depends on whether the law encompasses farm land which includes a residence and, if so, whether the destruction of the residence prior to execution removes the protection afforded by the Act.



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LEGAL NOTICES, cont.

RESERVING unto the Grantor, his heirs, assigns and successors in interest, the right and privilege to the use of the rear sixty feet of the tract herein conveyed for the parking of vehicles for the common benefit of the owners and occupants of 546 and 550 South Main Street, Chambersburg, Pennsylvania, provided, however, that no junk or derelict vehicles shall be permitted to remain in said area for more than thirty days.

TRACT NO. 2: All the following described real estate lying and being situate in Hamilton Township, Franklin County, Pennsylvania, bounded and limited as follows:

BEGINNING at an iron pin at corner common to lands now or formerly of Glenn D. Dice, Parcel "D" and the tract hereby conveyed, as shown on a plan of lots hereinafter referred to; thence along said lands now or formerly of Dice, North 48 degrees 59 minutes 30 seconds East, 420.26 feet to an existing iron pin; thence along same, North 46 degrees 42 minutes 52 seconds East, 846.14 feet to an existing post on line of lands now or formerly of Clyde Lehman; thence along same, South 39 degrees 09 minutes 15 seconds East, 619.31 feet to an existing iron pin at corner post at corner of lands now or formerly of John J. Bricker; thence along same, South 26 degrees 43 minutes 52 seconds West, 1,091.45 feet to an iron pin at corner of Parcel "D" on said plan; thence along same, North 71 degrees 02 minutes 50 seconds West, 240.02 feet to an iron pin; thence along same, North 76 degrees 23 minutes 11 seconds West, 318.18 feet to an iron pin; thence along same, South 61 degrees 42 minutes 56 seconds West, 50.00 feet to an iron pin; thence along same, North 28 degrees 17 minutes 04 seconds West, 533.71 feet to an iron pin at corner common to lands now or formerly of Glenn D. Dice, Parcel "D" and the tract hereby conveyed, being the place of beginning.

CONTAINING 23,973 acres, and **BEING** Parcel "C" as per survey of Dougal & McCans, Inc., Registered Surveyors, dated August 14, 1984, which, together with the necessary municipal approvals, is recorded in Franklin County Deed Book Volume 2987, Page 806.

BEING the same real estate which Katherine I. Williamson and Dominique M. Harris, by deed dated June 21, 1985, and recorded in Franklin County, Pennsylvania in Deed Book Volume 932, Page 245 conveyed to Dominique M. Harris and Roosevelt Harris, her husband.

UNDER AND SUBJECT to conditions, restrictions, reservations, rights of way and easements of prior record and as more particularly set forth in Franklin County Deed Book Volume 917, Page 180.

BEING sold as the properties of Roosevelt Harris and Dominique M. Harris, Writ No. AD 1987-255.

SALE NO. 11

Writ No. AD 1986-323 Civil 1988
Judg. No. AD 1986-323 Civil 1988
The Lomas and Nettleton Co.

—vs—

Ronald L. Paetow and Barbara A. Paetow
Atty: Leon P. Haller

ALL THAT CERTAIN following described real estate lying and being situate in Guilford Township, Franklin County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at an iron pin on the Eastern side of Harbo Road at corner common to this lot and Lot No. 3 in Section F, on plan of lots to which reference is hereinafter made; thence in the property line on the eastern side of said Harbo Road, north 0 degrees 21 minutes 35 seconds East 100 feet to an iron pin on the eastern side of said Harbo Road at a corner common to this lot and Lot No. 5 in Section E; thence by the line of Lot No. 5 in Section E, South 74 degrees 23 minutes 35 seconds west 100 feet to an iron pin at corner common to this lot and Lot No. 3 in said Section E; thence by the line of Lot No. 3 in Section E, North 74 degrees 37 minutes west 114.35 feet to the iron pin at the place of beginning; being and intended to be all of Lot No. 4 in Section E on a certain plan of lots of Guilford Hills East, subdivision, Guilford Township, Franklin County, Pennsylvania, surveyed for Harbo, Inc., January 7, 1959 by John H. Atherton, R.E., which plan is of record among the records of the Recorder of Deeds of Franklin County, Pennsylvania in Drawer 7, the courses of which have been redetermined by survey of William Lewis Arrowood, R.E., under date of March 14, 1962.

Being known as 40 Harbo Road, Chambersburg, PA 17201.
Being the same premises which Donald H. Long and D. Nadine Long, his wife, by their deed dated September 30, 1985, and recorded October 3, 1985 in the Recorder's Office of Franklin County, Pennsylvania in Record Book 940, Page 585, granted and conveyed unto Ronald L. Paetow and Barbara A. Paetow.

Seized in Execution as the property of Ronald L. Paetow and Barbara A. Paetow under Franklin County Judgement No. AD 1986-323.

TERMS

As soon as the property is knocked down to a pur-

LEGAL NOTICES, cont.

chaser, 10% of the purchase price plus 2% Transfer Tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, May 2, 1988 at 4:00 P.M., prevailing time. Otherwise all money previously paid will be forfeited and the property will be resold on May 6, 1988 at 1:00 P.M., prevailing time in the Franklin County Courthouse, 3rd Floor, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Raymond Z. Husack, Sheriff
Franklin County, Chambersburg, PA

3/25, 4/1, 4/8

It will be noted that defendants' real estate consisted of a farm which included their domicile at the time judgment was confessed on the note executed by defendants. The real estate was conveyed in a single deed, and the lien of the judgment affected the entire tract. The levy made by the Sheriff on the writ of execution issued from the Prothonotary's office included the entire farm, including that real estate which was the site of the owners' residence prior to its destruction by fire. Under these facts, the Court concludes that at least while the residence existed, the real estate clearly was "residential real property" as it was "real property located within this Commonwealth containing not more than two residential units . . ." 41 P.S. §101. Even if the foregoing definition is construed to provide protection to that part of realty having only a residential component, and excluding all other components, it is impossible for the Court to give effect to what appears to be the palpable *raison d'etre* for the Act, i.e. to the residential property owner, without extending it to individuals whose residence also happen to be on a farm. Thus, we conclude that the Act does apply to a farm which otherwise meets the definition.

The next question is whether the destruction of the residence alters this result, i.e. since the residence no longer exists, does the protection of the Act still apply? In this regard, plaintiff appears to suggest that the residential component of the property has been abandoned as defendants have not resumed residence on the real estate since the fire, nor has reconstruction commenced.

We do not find that such abandonment of the residential component was proven. Defendant, Elton W. Shoen, testified that she remains in Fulton County, that she resides in a motel, and that she is unable for financial reasons to begin reconstruction, but that she will do so upon a favorable result in a lawsuit against the company which she alleges provided fire insurance on the residence at the time of the fire.

We are loath to find that such abandonment of use as a residence has occurred under these circumstances, and do not do so.

For the foregoing reasons, the defendant-petitioner's first prayer for relief, i.e. to set aside the writ of execution, will be granted.

The second request for relief, is that the Court open the

judgment entered by confession. Such relief is one that calls upon the equitable powers of the Court, and is left to the sound discretion of the Court.

A judgment taken by confession will be opened in only a limited number of circumstances, and only when the person seeking to have it opened acts promptly, alleges a meritorious defense and presents sufficient evidence of that defense to require submission of that defense to the jury.

*First Seneca Bank and Trust Company
v. Laurel Mountain Development Corporation,*
306 Pa. 439, 443, 485 A.2d 1086, 1088 (1984).

The defendants in the case now before the court allege failure of consideration, and presented evidence that would require submission of that issue to the jury. However, we note that in this case, judgment was confessed on June 7, 1982, and defendants waited until September 26, 1986 to petition the Court to open the judgment. While the time period for filing the petition is not inflexible, the reasonableness of the explanation for the delay in proceeding must be considered. *First Seneca Bank, supra*, 506 Pa. at 443, 485 A.2d at 1088. The existence of negotiations may be considered in explaining a period of delay. *Jamestown Barking Company v. Conneaut Lake Dock and Dredge Company*, 339 Pa. 26, 32, 14 A.2d 325, 328 (1940).

In the instant case, the defendants received a letter from plaintiff's counsel dated June 28, 1983 regarding the delinquent status of the note, and the response indicated nothing regarding the lack of workmanship on the job, but merely requested an extension of the time in which to pay. (Pl. Exh. #2). An additional undated memorandum from defendant Schoen to plaintiff (Pl. Exh. #3) acknowledges the obligation, and simply pleads for more time to pay, to allow the farm to be sold. It was not until some time later that the defendants began to allege that the work had been improperly performed so clearly whatever "negotiations" existed in this case did not have anything to do with the defense now alleged by defendants until long after the judgment was entered. This hiatus is unexplained by defendants, and we conclude that the defendants have failed to act promptly to open the judgment. Accordingly, this relief will be denied.

ORDER OF COURT

Now, this 11th day of September, 1987, the Rule to show cause why the writ of execution issued in the above proceeding should



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LEGAL NOTICES, cont.

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an iron pin; thence along same, North 76 degrees 23 minutes 11 seconds West, 318.18 feet to an iron pin; thence along same, South 61 degrees 42 minutes 56 seconds West, 50.00 feet to an iron pin; thence along same, North 28 degrees 17 minutes 04 seconds West, 533.71 feet to an iron pin at corner common to lands now or formerly of Glenn D. Dice, Parcel "D" and the tract hereby conveyed, being the place of beginning.

CONTAINING 23,973 acres, and BEING Parcel "C" as per survey of Dougal & McCans, Inc., Registered Surveyors, dated August 14, 1984, which, together with the necessary municipal approvals, is recorded in Franklin County Deed Book Volume 288C, Page 806.

BEING the same real estate which Katherine L. Williamson and Dominique M. Harris, by deed dated June 21, 1985, and recorded in Franklin County, Pennsylvania in Deed Book Volume 912, Page 245 conveyed to Dominique M. Harris and Roosevelt Harris, her husband.

UNDER AND SUBJECT to conditions, restrictions, reservations, rights-of-way and easements of prior record and as more particularly set forth in Franklin County Deed Book Volume 917, Page 180.

BEING sold as the properties of Roosevelt Harris and Dominique M. Harris, Writ No. AD 1987-252.

SALE NO. 11

Writ No. AD 1986-323 Civil 1988

Judg. No. AD 1986-323 Civil 1988

The Lomas and Nettleton Co.

—VS—

Ronald L. Paelow and Barbara A. Paelow

Atty: Leon P. Haller

ALL THAT CERTAIN following described real estate lying and being situate in Guilford Township, Franklin County, Pennsylvania, bounded and described as follows, to wit:

BE GINNING at an iron pin on the Eastern side of Harbo Road at corner common to this lot and Lot No. 3 in Section E on plan of lots to which reference is hereinafter made; thence in the property line on the eastern side of said Harbo Road, north 0 degrees 21 minutes 35 seconds East 100 feet to an iron pin on the eastern side of said Harbo Road at a corner common to this lot and Lot No. 5 in Section E; thence by the line of Lot No. 5 in Section E, South 74 degrees 23 minutes 35 seconds west 100 feet to an iron pin at corner common to this lot and Lot No. 3 in said Section E; thence by the line of Lot No. 3 in Section E North 74 degrees 37 minutes west 114.35 feet to the iron pin at the place of beginning; being and intended to be all of Lot No. 4 in Section E on a certain plan of lots of Guilford Hills East, subdivision, Guilford Township, Franklin County, Pennsylvania, surveyed for Harbo, Inc., January 7-29, 1959 by John H. Atherton, R.E. which plan is of record among the records of the Recorder of Deeds of Franklin County, Pennsylvania in Drawer 7, the courses of which have been redetermined by survey of William Lewis Arrowood, R.E., under date of March 14, 1962.

Being known as 40 Harbo Road, Chambersburg, PA 17201.

Being the same premises which Donald H. Long and D. Nadine Long, his wife, by their deed dated September 30, 1985, and recorded October 3, 1985 in the Recorder's Office of Franklin County, Pennsylvania in Record Book 940, Page 585, granted and conveyed unto Ronald L. Paelow and Barbara A. Paelow.

Seized in Execution as the property of Ronald L. Paelow and Barbara A. Paelow under Franklin County Judgement No. AD 1986-323.

TERMS

As soon as the property is knocked down to a purchaser, 10% of the purchase price plus 2% Transfer Tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, May 2, 1988 at 4:00 P.M., prevailing time. Otherwise all money previously paid will be forfeited and the property will be resold on

LEGAL NOTICES, cont.

May 6, 1988 at 1:00 P.M., prevailing time in the Franklin County Courthouse, 3rd Floor, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Raymond Z. Hussack, Sheriff
Franklin County, Chambersburg, PA

3/25, 4/1, 4/8

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 29th day of February, 1988, for the purpose of obtaining a certificate of 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 EUBEK CORP., 15 Pen Mar Street, 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 East Main St.

Waynesboro, PA 17268

4/1/88

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 February 24, 1988, for the purpose of obtaining a certificate of incorporation. The name of the proposed corporation organized under the Commonwealth of Pennsylvania Business Corporation Law approved May 5, 1933, P.L. 364, as amended, is INDUSTRIAL AUTOMATION TECHNOLOGIES, INC. The purpose for which the corporation has been organized is to manufacture, distribute, and market automation products and any other lawful purpose for which corporations may be incorporated under the Business Corporation Law of the Commonwealth of Pennsylvania.

Martin and Kornfeld

17 North Church Street

Waynesboro, PA 17268

4/1/88

not be set aside is made absolute, and the writ of execution is set aside. Defendants' motion to open judgment is denied. Respondent-plaintiff is granted leave to proceed in accordance with Pa. R.C.P. Nos. 2981 et seq., if he elects to do so.

Exceptions granted to plaintiff and defendants.

ANCHOR MOTOR FREIGHT v. NATIONAL FREIGHT, INC.,
C.P. Fulton County Branch, No. 159 - 1985 - C

Vehicle Accident - Violation of Statute - Contributory Negligence

1. The violation of a statute may be prima facie evidence of negligence which may be accepted or rejected according to all of the evidence.
2. The burden of proving contributory negligence of the plaintiff is on the defendant.
3. The mere fact road conditions were poor due to a snow storm does not render plaintiff contributorily negligent by proceeding slowly using his four-way flashers.

William F. Douglas, Esquire, Counsel for Plaintiffs

Joseph P. Green, Esquire, Counsel for Defendants

WALKER, J., October 20, 1987:

This matter was heard by the court without a jury, and an award was entered for the plaintiff in the amount of \$15,201.38. The verdict was molded by the court pursuant to Pa. R.C.P. No. 238 to include delay damages. As allowed by Pa. R.C.P. No. 227.1 the defendant has filed a motion for post-trial relief. The motion requests that the award in favor of the plaintiff be reversed. The defendant contends that the record contains insufficient evidence to find the defendant negligent, or in the alternative, that the plaintiff's operator should be found contributorily negligent. This court does not agree with the defendant, and denies the defendant's motion for post-trial relief.

This lawsuit is the result of the collision of two tractor/trailer units on March 8, 1984. There had been a snow storm earlier in the day, and the driving conditions were less than ideal. The tractor/trailer owned by the plaintiff was cautiously proceeding at a slow speed up an incline in the eastern direction of Interstate 70 near