

the complaint on this ground is sustained and the action against it dismissed. Laurels' remaining Preliminary Objections need not be discussed.

ORDER OF COURT

July 15, 1981, the demurrers of the defendants are sustained and the suits against the defendant Ellenville National Bank and the additional defendant Laurels Sullivan County Estates Corporation are dismissed and the costs are placed on the plaintiffs, Harold M. and Pearl A. Kagan.

SHEFFLER v. SHEFFLER, C.P. Franklin County Branch, F.R. 1978-216-S

Nonsupport - Petition to Modify - Prior Agreement Between Parties

1. Private support agreements must be enforced in assumpsit and not under the support laws.
2. A separation agreement dealing with support may have some evidentiary value as to what the parties feel the children require or the parent can pay but it does not oust the jurisdiction of the court nor preclude the court from entering an order differing in amount from that agreed upon.

Thomas M. Painter, Esq., Attorney for Barrie E. Sheffler

Thomas J. Finucane, Esq., Attorney for Marcella V. Sheffler

OPINION AND ORDER

EPPINGER, P.J., July 31, 1981:

Barrie and Marcella Sheffler were married. After they separated they entered into an agreement, one of the terms of which was that the husband would pay \$100 every two weeks to the wife for the support of each of their three children who were under 18 years old. It was said that this "basic obligation shall operate independent of any Support Order." The husband also agreed not to attempt to reduce any Support Order based on the wife's earnings or earning capacity or the remarriage of either party.

However, the husband did file a Petition for Modification of a support order made June 7, 1978 which was itself a modifi-

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LEGAL NOTICES, cont.

of 3-W Corporation, a Pennsylvania Business Corporation with its registered office at 140 North Antrim Way, Greencastle, Pennsylvania 17225, was filed with the Department of State of the Commonwealth of Pennsylvania on the 12th day of August, 1981, pursuant to the provisions of the Business Corporation Law, Act of May 5, 1933, P. L. 364 as amended. The nature of the proposed amendment was: The name of the Corporation shall be changed from 3-W CORPORATION to SUNNYWAY DINER, INC.

J. Edward Beck, Jr.
Beck, Patterson, Kaminski,
Keller & Kiersz
239 E. Main Street
Waynesboro, PA 17268

(9-25-81)

SHERIFF'S SALE

Friday, October 16, 1981

By virtue of a certain Writ of Execution issued out of the Court of Common Pleas of Franklin County, Pennsylvania, and to me directed, I will expose at public sale by public venue or outcry, in the Franklin County Courthouse, Courtroom #3 in the Borough of Chambersburg, Pennsylvania, at 1:00 o'clock P.M. on Friday, October 16, 1981, the hereinafter mentioned real estate.

All parties in interest and claimants are hereby notified that a schedule of distribution will be filed by the Sheriff on November 16, 1981 and that distribution will be made in accordance with said schedule unless exceptions are filed thereto within ten (10) days thereafter.

Sale No. 1

Writ No. A.D. 1981-202 Civil 1980
Judg. No. A.D. 1981-202 Civil 1980

THE PEOPLES NATIONAL BANK OF
SHIPPENSBURG (plaintiff)

— vs —

HARLEY W. SEFERT & SUE ELLEN
SEFERT, his wife (defendant(s))

Jerry A. Weigle, Esquire (atty. for plaintiff)

ALL THAT CERTAIN tract of ground, with improvements erected thereon, situate in Guilford Township, Franklin County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin on the easterly edge of Dymond Avenue at lands of James Wagoner; thence by said lands of James Wagoner, south 68 degrees 32 minutes East 138.9 feet to an iron pin at the lands of Cycles Unlimited of Chambersburg; thence by the said lands of Cycles Unlimited of Chambersburg South 21 degrees 28 minutes West 120 feet to an iron pin at the lands of Ruth A. Crane; thence by the lands of Ruth A. Crane North 70 degrees 34 minutes West 121.7 feet to an iron pin on the easterly edge of Dymond Avenue; thence by the easterly edge of Dymond Avenue North 13 degrees 30 minutes East 125.3 feet to an iron pin, the place of beginning, as recorded in Volume 518, Page 537.

SHERIFF'S SALES, cont.

BEING sold as the property of Harley W. Sefert and Sue Ellen Sefert, his shown by the survey and draft of John Atherton, C.S., dated May 16, 1959, and recorded in Volume 518, Page 537.

TERMS

As soon as the property is knocked down to the 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, October 26, 1981 at 4:00 P.M., E.S.T. Otherwise, all money previously paid will be forfeited and the property will be resold at the hour 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.

(9-18-81, 9-25-81, 10-2-81)

cation of an order made February 16, 1977 which antedated the agreement made between the parties on November 25, 1977. He alleged changed circumstances including: (1) that he had remarried and has a child to this marriage, and (2) that his former wife is now employed. The June 1978 order showed the husband's earnings to be \$250 net per week and the wife to have no earnings.

The sole argument presented to the court by the wife in defense was that the court should refuse to modify and defer to the terms of the agreement. Support agreements, such as the one here must be enforced in *assumpsit* and may not be enforced under the support laws. *Commonwealth ex rel. Bonicker v. Bonicker*, 205 Pa. Super. 191, 208 A.2d 14 (1965); *Commonwealth ex rel. Jones v. Jones*, 216 Pa. Super. 1, 260 A.2d 809 (1969).

The separation agreement may have some evidentiary value as an indication of what the parties considered the children required or the husband could pay, but it is not binding on the court. 24 Am Jur 2d, Divorce & Separation, Sec. 841; 61 ALR 3d 657, 661, 671. Its existence neither ousts the jurisdiction of the court nor precludes the court from making an order differing in amount from that agreed upon. See *Commonwealth ex rel. Kremer v. Haaz*, 85 Dauphin 53 (1966) and *Bria v. Bria*, 95 Dauphin 358 (1973) (court entered support orders of amounts less than parties agreed to previously), citing *Commonwealth ex rel. Snively v. Snively*, 206 Pa. Super. 278, 212 A.2d 905 (1965). The Court's privilege to disregard the agreement of the parties remains even if an order has been entered pursuant to it. *Commonwealth ex rel. Balph v. Balph*, 210 Pa. Super. 244, 232 A.2d 76 (1967); *Bria, supra*.

On consideration of the facts in the case, that the defendant has an income of \$337 weekly, that his wife's earning capacity is \$165 weekly and there are three members of the family, and that plaintiff has an income of \$240 per week and there are four members of that unit, an order requiring the defendant to pay \$150 a week to the plaintiff would leave his unit with \$352 a week or \$117 per person, and give her unit \$390, or 97.50 per person. We think the order as it now stands is fair and should not be amended.

ORDER OF COURT

July 31, 1981, the petition to modify the support order is denied. Costs shall be paid by the defendant.