The above facts have been stipulated by both parties, and the matter is before the court on plaintiffs' motion for judgment on the pleadings.

The issue is whether, as a matter of law, the defendant may maintain a mailbox on plaintiffs' land, designated as a right of way, as a "public use" easement for the purposes of depositing and receiving their mail. For the reasons discussed below, the court answers this question in the negative.

There appear to be no Pennsylvania cases on point, with regard to this issue. Whether this is, or is not, due to the seemingly de minimus quality of this type of dispute (i.e. 16 square inches of land) is a matter of conjecture. In any case, the controversy is now properly before the court.

The defendants state that the private ownership of the fee underlying the right of way is subject to a "public use" easement. The delivery of mail, they argue, is such a "public use" as to justify placing a mailbox on the right of way without consent from, or compensation to, the landowner.

The defendants offer a correct, general statement of the law. However, when applied to the facts of this case, the court is compelled to reach a different conclusion.

First, the scope of a public use easement for country roads is narrower than that which the defendants propound. Specifically, a public use easement for country roads is that of passage only. *46 South 52nd Street Corp. v. Manlin,* 398 Pa. 304, 157 A.2d 381 (1960). Plaintiffs' land is used as a right of way; that is, the general public may traverse across the land as a means of access to and from various destinations. Even under a most expansive interpretation, the court is unwilling to hold that the erection of a mailbox somehow falls within this function. This is particularly so because easements are to be interpreted narrowly and confined to the use for which they are granted. *Taylor v. Heffner*, 359 Pa. 155, 58 A.2d 450 (1948). *Dillon v. Klamut*, 278 Pa. Super. 126, 420 A.2d 462 (1980).

Secondly, a private mailbox is not an instrument of "public use" for the purposes of a public use easement. Public use easements, acquired through eminent domain, may provide

incidental benefits to private parties, but the public must be the primary and paramount beneficiary. *Price v. Philadelphia Parking Authority*, 422 Pa. 317, 221 A.2d 138 (1966). Clearly, the primary beneficiaries of the placement of the defendants' mailbox are the defendants themselves.

One attribute of instruments that are designated for public use and public good is, of course, that the benefit of the instrument somehow inures to the good of the community in general. Defendants cite *Manlin*, supra, as providing examples of such instruments: parking meters, telephone booths, wastepaper receptacles, and utility poles. All of these are available for use by the general public. In contrast, federal regulations provide stiff penalties for anyone, other than a postman or the addressee, who tampers with or uses a private mailbox. The placement of defendants' mailbox on plaintiffs' land does not benefit the public in general.

Finally, defendants argue that chaos would result if landowners could eject mailboxes from their properties. It would be no less chaotic if the court should hold that any number of mailboxes could be forced upon any landowner's property that is situated in a right of way.

The defendants are not totally without recourse, however. They are still free to contract with other landowners in order to secure a proper place along the delivery route for their mailbox. Failing that, they may rent a local post office box.

Plaintiffs' motion for judgment on the pleadings is hereby granted.

ORDER OF COURT

February 12, 1986, plaintiffs' motion for judgment on the pleadings is hereby granted.

GROSH v. REEDER, Franklin County Branch, Vol. 7, Page 338

Equity - Partition - Unmarried Couple - Interrogatories

1. One who objects to a discovery order has the burden of establishing its non-discoverability.

2. In considering a claim of implied contract, a will executed by one of the parties may be relevant.

3. Subjective feelings of discomfort and embarrassment brought on by some elements of discovery do not rise to the level of "unreasonable," as required by Pa. R.C.P. 4011.

WALKER, J., January 22, 1986:

Lucille J. Grosh and John E. Reeder, an unmarried couple, lived together for a period of approximately eleven years. During this period of cohabitation, three tracts of land were purchased, two of which are now at issue.

Depending on which averments are to be taken as true, either Reeder alone, or Reeder and Grosh together, built a house on each of the two properties. Also, during their cohabitation, Grosh purchased a truck, placing the title in Reeder's name. Whether or not Reeder repaid Grosh is, as yet, unresolved.

In August of 1983, Grosh moved out of their residence and subsequently brought an action in equity to partition the properties. Grosh also wishes to recover the money she allegedly loaned to Reeder to buy the truck. The theory that Grosh relies on is that she and Reeder had an oral agreement to share evenly in the assets and funds that they accumulated while they were cohabiting. Alternatively, Grosh asserts that their arrangement gave rise to an implied agreement to share the assets and funds.

Pursuant to Pa.R.C.P. 4005, Grosh served interrogatories on Reeder and requested, inter alia, the production of all wills that Reeder had from 1972 to the present. Citing Pa.R.C.P. 4011, Reeder filed an objection to these interrogatories on the basis that producing the wills would be irrelevant, and would cause him unreasonable annoyance and embarrassment. Grosh filed a motion to dismiss the objection to the interrogatory and counsel for the parties filed briefs and argued the matter before the court.

The question that this court must decide is whether, under Pa.R.C.P. 4011, Reeder may limit the plaintiff's discovery and

from accepting divorce cases under the system currently being considered by the Committee. It has been proposed that these Masters be compensated at the rate of sixty ($60.00) dollars per hour and that they be paid from a fund that would be created by adding an additional filing fee of twenty-five to fifty ($25.00 - $50.00) dollars on *all* divorce actions.

The next Committee meeting is set for Friday, October 3, at which time the Committee will likely take formal action in proposing these new rules to the Court. The Committee invites any comments or suggestions concerning these proposed changes. These comments can be made either verbally or in writing to any member of the Committee listed below. The Committee also intends to recommend to the Court the names of five local attorneys who would comprise the Master's list. If any attorney is interested in serving as a Master in divorce actions, please submit your name and qualifications to the Chairman of the Committee before the meeting date. You will not be considered for the list of Masters that will be recommended to the Court unless you express your interest to the Committee.

Family Law Rules Committee

Robert C. Schollaert, Chairman
William S. Dick
Barbara B. Townsend
James M. Schall
William F. Kaminski
Carol E. Van Horn
Rebecca S. Dempsey
William H. Kaye

PA BAR ASSOCIATION NEWS RELEASE

The Federal Judicial Nominating Commission will conduct interviews in Philadelphia October 20 and 21 with candidates for a vacancy on the U.S. District Court for the Eastern District of Pennsylvania, Herbert Barness, nominating commission chairman, has announced.

Those wishing to be considered for the vacancy should contact Barness or his assistant, Mrs. Terri Brodheim, at 1352 Easton Rd., Warrington, PA 18976. Candidates must complete a Federal Judicial Nominating Commission questionnaire prior to interviews.

The vacancy on the court was created by the death of Chief Judge Alfred L. Luongo.

refuse to answer plaintiff's interrogatory, "Attach copies of all wills you have had prepared from 1972 until present, in particular any wills prepared by Lawrence C. Zeger, Esquire," on the basis of Pa.R.C.P. 4011.

The relevant portion of Pa.R.C.P. 4011 provides,

> "No discovery or deposition shall be permitted which (a) is sought in bad faith; (b) would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent or any person or party."

It must be noted initially that the court has wide discretion in determining the extent which discovery will be allowed by ordering the production of an opposing party's records. *People's City Bank v. John Hancock Mutual Life Insurance Co.,* 353 Pa. 123 (1945). Also, one who objects to a discovery order has the burden of establishing its non-discoverability. *Winck v. Daley Mack Sales, Inc.*, 21 D.&C.3d 399 (1980).

Applied to the facts of the present case. Reeder claims that since the original will was destroyed, that its production would constitute an unreasonable burden. If Grosh had only requested production of the original will, then this would not only be an unreasonable burden, it would be a physical impossibility. However, this ignores the fact that the scope of the interrogatories encompasses the production of *copies* of the will as well. Reeder failed to offer any explanation as to why the procurement of such copies would be an unreasonable burden.

Defendant also asserts that producing the will would be an unreasonable annoyance and embarrassment because it would cause him unhappy memories of his relationship with Grosh. Any litigation involving the severance of an emotional relationship necessitates that both parties will suffer some degree of discomfort and embarrassment. However, the existence of "some" annoyance or embarrassment is not ground to forbid discovery. *Gelato v. Gillespie*, 70 D.&C.2d 15 (1975). These subjective feelings of discomfort and embarrassment, whether brought on by some elements of discovery or by the trial process itself, do not rise to the level of "unreasonable", as required by Pa.R.C.P. 4011.

Lastly, defendant has refused to produce the will on the grounds that it would be irrelevant to the case. Under Pennsylvania law, it is well established that if there is any conceivable basis for relevancy, then doubts are to be resolved toward relevancy and discovery should be permitted. *Yoffee v. Golin*, 45 D.&C.2d 318 (1968).

In his brief, counsel for Reeder states that a will signifies nothing more than the state of mind of the testator. As such, he argues, the will cannot rise to the level of an implied contract, and is therefore irrelevant. This ignores the fact that Grosh has not asserted that the will is, in itself, absolute proof of an implied contract. Rather, counsel for Grosh points out that the will may be one piece of evidence signaling Reeder's state of mind at the time that it was written. As such, it may be relevant to substantiate Grosh's claims as to Reeder's intent to share the properties in return for services provided.

If there is any doubt as to the will's potential relevance, we need only look to *Knauer v. Knauer,* 323 Pa. Super. 206, 470 A.2d 553 (1983), a case that counsel for Reeder insists is controlling on the issue. Like the facts before us, *Knauer* involved an unmarried couple who cohabited for eight years, with the woman performing a number of household and professional services for her partner. When they separated, she successfully brought an action to recover the value of her services. It is important to note that, in considering her claim of an implied contract, the court looked at the terms of the will that her partner had executed.

The relevancy of the will in the present case cannot be fully determined until it is produced and examined. Production of the will does not constitute an unreasonable embarrassment or annoyance to defendant, and ther is a conceivable basis for relevancy. Defendant's objection to the interrogatory is dismissed and defendant is ordered to comply with the request to produce the copies of the will.

ORDER OF COURT

January 22, 1986, defendant's objection to the interrogatory is dismissed and the defendant is ordered to comply with the request to produce the copies of the will.

UPPERMAN v. HAYS, C.P. Franklin County Branch, No. 77 of 1985-C

Equity - Antenuptual Agreement - Life Tenant - Trustee

1. Where an antenuptual agreement sets forth a complete plan to dispose of the parties estates, including a life estate for the survivor, the life tenant who sells real estate covered by the agreement is a trustee.

2. Generally, a court will not interfere with the life tenant's control of property unless the remainderman makes a strong case for interference.

3. Where life tenant may consume income and necessary principal for her support and maintenance, she is restricted in the consumption of principal.

Joel R. Zullinger, Esquire, Counsel for Plaintiff

M. David Halpern, Esquire, Counsel for Defendant

OPINION AND ORDER

EPPINGER, S. J., January 8, 1986:

About to be married, Ralph H. Maun (Ralph) and Cora Maun Hays (Cora), entered into an antenuptual agreement, joining their real estate and personal property to be held by them as tenants by the entireties under the terms of the agreement.

Paragraph 6 of the agreement provided that if Ralph died first, the sum of $10,000 was to be paid to his daughter, Lorraine Upperman (Lorraine). Cora was to have the right to use what was left of their jointly held estate at Ralph's death for her support and maintenance, "including the income therefrom and as much of the principal as may be necessary for this purpose." At Cora's death, Lorraine receives twenty percent of what is left and the rest is divided between Lorraine and three of Cora's children.

Ralph died, Lorraine got her $10,000, and now she is concerned about what is left. In a complaint which she filed she asks Cora for an accounting, alleging among other things that Cora sold two tracts of real estate and won't say what she did with the proceeds. Under the agreement Cora is permitted to sell real estate but only