a case factually similar to ours, did not find anything special in the employment contract, which at the time of the sale was a general agency relationship. Here there is nothing in the complaint that leads us to conclude at this time that there was anything in the contract of employment to preclude the brokers' receiving their commission. The employment contract is to be distinguished from the agreement of sale, which was conditional. And, again considering the time frame, there may be a question whether the owners acted in good faith.

For these reasons we conclude that the demurrer must be overruled.

But we are overruling the demurrer while sustaining one of the motions for more specific pleading. Paragraph three simply alleges an oral contract in which it is said the owners secured the brokers to procure a purchaser for their real estate. This is not sufficiently specific. The oral contract must be set forth in full. *Plush v. Pennsylvania Power and Light Co.*, 33 North. 138, 142 (1952).

Paragraph seven of the complaint alleges the brokers assisted the buyers in arranging financing satisfactory to the purchasers and agreeable to the owners. In their second motion for more specific pleading the owners want to know the interest rate and the duration of the mortgage. We can't see how this is necessary and the owners don't explain why they need it.

We will make an order overruling the demurrer and sustaining the first motion for more specific pleading.

ORDER OF COURT

July 30, 1980, the demurrer is overruled and the first motion for more specific pleading is granted, and the plaintiffs are required to allege all the terms of the oral contract of employment between themselves and the defendants.

The plaintiffs are given twenty days from the date of this order to file an amended complaint or suffer non pros.

AIRD v. MOUSE, C.P. Franklin County Branch, A.D. 1979 - 1067

Assumpsit - Petition to Open Judgment by Confession - Pa. R.C.P. No. 2959(e)

1. A petition to open a judgment should be opened only if three conditions coincide: (1) the petition must have been promptly filed; (2) the default must be reasonably explained; and (3) a meritorious defense must be shown.

2. Each proceeding to open a judgment must be approached on an ad hoc basis with careful attention being given to the underlying facts, rather than to an arbitrary time interval.

3. Pa. R.C.P. No. 2959(e) requires the court to open a judgment if evidence is produced which in a jury trial would require the issues to be submitted to the jury.

4. It is not the function of the Court, upon considering a petition to open judgment, to make any determination concerning credibility of the witnesses.

David W. Rahauser, Esq., Counsel for Plaintiff

Frederic G. Antoun, Esq., Counsel for Plaintiff

Barbara B. Townsend, Esq., Counsel for Defendant

OPINION AND ORDER

KELLER, J., August 5, 1980:

On June 25, 1979 the plaintiff filed his confession of judgment pursuant to Pa. R.C.P. 2952. Attached to the complaint was a promissory note of the Chambersburg Trust Company dated December 17, 1976, and made payable to the order of E. W. Aird in the amount of $19,300.00 and signed by the defendant. The note was payable on demand and authorized confession of judgment and attorney's commission of 15%. On July 20, 1979 the plaintiff filed his praecipe for writ of execution.

On August 24, 1979 the defendant's petition to open judgment, stay execution and strike the judgment was presented to the Court, and an order entered the same date directing a rule to issue upon the plaintiff to show cause why the confession of judgment should not be opened. The petition and order were not filed in the Office of the Prothonotary until August 27, 1979, and a rule was issued on that date directing the plaintiff to show cause why the confession of judgment should not be opened. Counsel for the defendant served a true and attested copy of the rule and petition upon counsel for the plaintiff by mailing the same to him on August 29, 1979. An answer to the petition to open judgment was filed on September 14, 1979,

and served upon counsel for the defendant by mailing a true and attested copy to him on the same date. On October 17, 1979 plaintiff filed his motion for judgment on the pleadings. The matter was placed on the Argument List and on November 5, 1979 it was stricken from the list by court order directing the counsel for the parties to proceed pursuant to Pa. R.C.P. 209. Counsel for the plaintiff on November 29, 1979 presented his petition for rule to show cause why the defendant should not proceed as required by Pa. R.C.P. 209, and an order was entered the same date directing the issuance of the rule. An answer was filed by the defendant on January 8, 1980.

Depositions of the plaintiff and defendant were taken on January 31, 1980, and the deposition of Michael Mouse. was taken on February 8, 1980. The matter is now ripe for disposition on the petition to open judgment.

FINDINGS OF FACT

1. The plaintiff and defendant are both dealers in new and used cars.

2. The plaintiff and defendant had engaged in business transactions involving new and used cars for a period of six or seven years prior to the end of 1976.

3. During the years that the parties dealt with each other the plaintiff would place automobiles on the defendant's sales lot on a consignment basis, notifying the defendant of the amount of money he was willing to have the cars sold for and any amount over and above that represented the commission or profit of the defendant. The plaintiff would hold the certificates of title to the consigned vehicles and would only deliver the certificate of title to the defendant when the plaintiff's vehicle had been sold, and the defendant delivered to the plaintiff the sum of money which represented the amount the plaintiff had set for that vehicle.

4. The plaintiff would on occasion after consigning a vehicle to the defendant and placing it on his lot locate a buyer for that vehicle and sell it off the defendant's lot. In those instances the defendant received no payment from the plaintiff.

5. On occasion the plaintiff would sell vehicles belonging to the defendant during the years of their relationship.

6. Prior to December 17, 1976 the defendant apparently had sixteen used cars of the plaintiff on his sales lot on a con-

signment basis.

7. At a time at or about December 17, 1976 eleven used vehicles owned by the plaintiff were on the defendant's sales lot. Four of them (a 1976 Caprice, a 1975 Causwoeth, a 1971 Oldsmobile Wagon and a 1973 Nova) were vehicles that had previously been among the sixteen vehicles on consignment above referred to.

8. A 1977 Caprice valued by the plaintiff at $6,100.00 was included in the eleven vehicles above referred to, and it was sold by the plaintiff for his own account prior to December 17, 1976.

9. After the sale of the 1977 Caprice the ten vehicles of the plaintiff remaining on the defendant's sales lot and the plaintiff's valuation of them were:

1976 Caprice	$ 5,700.00
1975 El Camino	4,000.00
1970 LaMans	700.00
1970 Imperial	700.00
1972 V.W.	800.00
1969 V.W.	500.00
1971 Oldsmobile Wagon	1,400.00
1973 Nova	1,500.00
1972 Scout	3,000.00

10. The plaintiff testified that he desired to sell the ten vehicles before he left for vacation in Florida to the defenant; they agreed upon the price for each vehicle as set forth above and the defendant agreed to purchase the ten vehicles. He testified that he would provide 100% financing to the defendant without interest, and to fix the agreed upon purchase price. He presented the completed note herein issued to the defendant who signed it on December 17, 1976. He further testified that it was also agreed that the certificates of title for the vehicle would be held by the plaintiff or while he was away by his mother, as his attorney-in-fact; and when the defendant sold a vehicle the defendant would deliver the agreed upon sales price of that vehicle to the defendant or his mother, and would receive the certificate of title.

11. According to the testimony of the plaintiff the transaction between the plaintiff and the defendant on December 17, 1976 was a sale of the vehicles and was intended as such, and not as a consignment of the vehicles to the defendant to be sold for the plaintiff.

executor of the estate of Mary Elizabeth Hoke, a/k/a M. Elizabeth Hoke, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

LYTLE First and final account, statement of proposed distribution and notice to the creditors of the Valley Bank and Trust Company, executor of the last will and testament of Wilbur J. Lytle, late of Greene Township, Franklin County, Pennsylvania, deceased.

MEEHAN First and final account, statement of proposed distribution and notice to the creditors of John Carmel Meehan, executor of the estate of Mary M. Meehan, late of the Borough of Waynesboro, Franklin County, Pennsylvania, deceased.

ROSENBERRY First and final account, statement of proposed distribution and notice to the creditors of Robert Rosenberry and Glen I. Rosenberry, executors of the last will and testament of Cora M. Rosenberry, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

SARAKON First and final account, statement of proposted distribution and notice to the creditors of E. H. Bostwick, executor of the estate of Michael Sarakon, late of Washington Township, Franklin County, Pennsylvania, deceased.

SMITH First and final account, statement of proposed distribution and notice to the creditors of Blanch E. Smith, executrix of the estate of Merle B. Smith, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

WINES First and final account, statement of proposed distribution and notice to the creditors of E. Irving Wines and Vivia W. Martin, executors for the estate of Bertha H. Wines, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

GLENN E. SHADLE
Clerk of Orphans Court of
Franklin County, Pennsylvania

(11-7, 11-14, 11-21, 11-28)

12. The total purchase price agreed upon for the ten vehicles was $22,300.00.

13. The plaintiff testified an explanation of the difference between the total value of the ten vehicles and the face amount of the note, i.e., $19,300.00, was that the defendant sold the 1972 Scout between the time that the parties agreed upon the sale price for the vehicles, and the time of the signing of the note.

14. The defendant's receipt book indicates the 1972 Scout was sold on December 23, 1976.

15. The defendant testified that the ten vehicles were consigned to him by the plaintiff according to their established practice with the price that the plaintiff required, being as above set forth, and with the understanding that certificates of title for those vehicles would be held by the plaintiff or his attorney-in-fact to be delivered to the defendant upon the sale of the vehicle and the delivery to the plaintiff or his attorney-in-fact of the amount of money agreed upon. He testified that he had suffered a heart attack during 1976, but prior to December 1976, and the plaintiff requested the defendant sign the note in blank with the understanding that should the defendant die while the plaintiff was on vacation after having sold one or more of the vehicles and before the plaintiff had been paid, the plaintiff could then complete the note in the amount actually due him by reason of the sale or sales and could collect that amount from the defendant's estate without being involved in litigation or extensive delay. On this basis the defendant signed the note in blank. The defendant testified that he believed the note was signed in January 1977, but it was possible it was December 1976. According to the testimony of the defendant the parties intended to handle the vehicles on a consignment basis and there was no intent on the part of either party to affect a present sale of the vehicles, and the note was given by the defendant to the plaintiff in blank for the protection of the plaintiff in the event of the death of the defendant, and for no other reason.

16. The defendant testified that he signed the note in blank in the office of his place of business in the presence of his nephew and employee, Michael Mouse. Michael Mouse testified that he recalled the defendant signing a paper in blank for the plaintiff, but could not recall what the paper was.

17. The defendant testified that from time to time he had purchased vehicles from the plaintiff, and that during the years of their business relationship he had never received a certificate

of title from the plaintiff until the plaintiff was paid in full, and this was true whether it was on an outright sale basis or on consignment.

18. Apparently none of the nine vehicles remaining after the sale of the 1972 Scout were sold during the time the plaintiff was on vacation. All of the vehicles with the exception of the 1975 Causwoeth and the 1969 V.W. were sold during the years 1977, 1978, and 1979.

19. An examination of the judgment note which was confessed in favor of the plaintiff discloses that the date, amount and name of the payee were written with a different pen, and apparently by a different person than the individual who signed the note, who is identified as the defendant.

20. The confession of judgment complaint was filed on June 25, 1979, and entered as a judgment the same date by the Prothonotary to D.S.B. 1979-1067. A copy of the complaint and notice of the entry of judgment were served upon the defendant by ordinary mail in late June 1979.

21. At the time the defendant received the notice of the filing of the complaint and entry of judgment, he had on his sales lot the 1975 Causwoeth and the 1969 V.W. He returned the two vehicles to the plaintiff shortly after receiving the notice, but did not discuss the matter with the plaintiff. The return of the vehicles occurred prior to the levy being made upon the personal property of the defendant by the Sheriff or Deputy Sheriff of Franklin County.

22. Counsel for the plaintiff filed his praecipe for a writ of execution on July 20, 1979, and a levy was made pursuant to said writ subsequent to July 20, 1979.

23. The defendant did not seek the advice of counsel until after the Sheriff's levy had been made.

24. Subsequent to the Sheriff's levy and defendant's retention of counsel, counsel for the parties engaged in negotiations looking to the settlement of the controversy. The settlement negotiations were not fruitful.

25. A petition to open judgment was presented to the Court by counsel for the defendant on August 24, 1979, and an order entered the same date directing a rule be issued upon the plaintiff to show cause why the confession of judgment should not be opened. The petition and order were filed in the office of the Prothonotary on August 27, 1979, and a rule issued on

the same date. Copies of the petition and rule were mailed to counsel for the plaintiff by counsel for the defendant on August 29, 1979.

26. The plaintiff's answer to the petition to open the judgment was filed September 14, 1979, and mailed to counsel for the defendant on the same date.

27. The procedure for the transfer of ownership of a vehicle in Pennsylvania, without applying for a certificate of title when the purchaser or transferee is a manufacturer or registered dealer who holds the vehicle for resale, is governed by Section 1113 of The Motor Vehicle Code, 75 Pa. C.S.A. 1113, which inter alia provides that the transferor shall execute an assignment and warranty of title to the transferee who shall complete the purchaser's certification and forward the notification to the Department of Transportation within seven days of assignment. Violation of the section is a summary offense with a prescribed fine of $50.00.

28. Form MV-27 (6-75) "Notification of Dealer Assignment Covering Vehicles Acquired and Held for Resale" is the official form designed and provided by the department for use under Section 1113, supra. A fee of $2.00 per notification is charged by the department.

29. There is no evidence that the plaintiff ever executed an assignment and warranty of title ("Certification of Seller" on Form MV-27) for any of the vehicles plaintiff testified he sold to defendant, and there is no evidence that the defendant completed and forwarded any notification for any of the vehicles to the department.

DISCUSSION

In determining whether to grant a petition to open judgment the Appellate Courts of Pennsylvania have established as the bright line test the rule that, "The petition to open should be granted only if three conditions coincide: (1) the petition must have been promptly filed; (2) the default must be reasonably explained; and (3) a meritorious defense must be shown." *Kennedy v. Frank L. Black, Jr., Inc., et al.*, Pa. Super. , 413 A. 2d 1104, 1106 (1979); *Ruczynski v. Jesray Construction Corp.*, 457 Pa. 510, 512, 336 A. 2d 326 (1974); *Balk v. Ford Motor Co.*, 140, 285 A. 2d 128 (1971).

Pa. R.C.P. 2959(e) provides:

"The court shall dispose of the rule on petition and answer, and on any testimony, depositions, admissions and other evidence. The court for cause shown may stay proceedings on the petition insofar as it seeks to open the judgment pending disposition of the application to strike off the judgment. *If evidence is produced which in a jury trial would require the issues to be submitted to the jury the court shall open the judgment* (underlining ours)."

In *Reliance Insurance Company v. Liberati*, Pa. , 414 A. 2d 1049 (1980), a judgment was entered by confession against husband and wife who allegedly signed an agreement of indemnity. Thirty-five days after the confession of judgment the wife petitioned to strike or open the judgment alleging that she had not signed the indemnity agreement nor authorized that it be signed on her behalf. The trial court denied the petition and the Superior Court affirmed per curiam. The Supreme Court reversed holding:

"In a proceeding to open a confessed judgment 'if evidence is produced which in a jury trial would require the issues to be submitted to the jury the court shall open the judgment.' Pa. R.C.P. No. 2959(e). Appellant testified that she did not sign the indemnity; that is was not her signature on the document; that she did not authorize anyone to sign for her; and that she did not appear before any notary. The notary testified that he had notarized the document; that he knew Joseph Liberati; but that he did not remember seeing the appellant before the present hearing.

"Since there was evidence presented which would require the matter to go to the jury (the trier of fact) the judgment should have been opened pursuant to Pa. R.C.P. Rule 2959(e), supra. The lower court erred when it, instead, performed a function of determining the credibility of the witnesses and hence prematurely resolved the ultimate issues which have to be submitted to a trier of fact in a subsequent proceeding."

The plaintiff contends that the judgment should not be opened on the grounds that the defendant did not petition to open promptly, and failed to reasonably explain the delay between the time of the notice of judgment and the filing of the petition and because the defendant failed to establish the existence of a meritorious defense.

In support of the first contention the plaintiff points to the fact that twenty-five days elapsed from the date of the confession of judgment to the date of the filing of the praecipe for a writ of execution, and thirty-five days elapsed from the

date of the filing of the praecipe for the writ to the date of the presentation of the petition to open judgment to the court for a total of sixty days, which he contends this Court should conclude as a matter of law cannot be considered a "prompt" effort to seek relief. In support of the contention the plaintiff cites *Hatgimisios vx. Dave's N.E. Mint, Inc.*, 251 Pa. Super. 275, 380 A. 2d 485 (1977); *Pappas vs. Stefan*, 451 Pa. 354 (1973); *Texas and BH Fish Club vs. Bonnell Corp.*, 388 Pa. 198 (1957).

An analysis of the cases cited by the plaintiff reveals that in each case the defendant had sought to open a default judgment (as distinguished from a judgment by confession in the case at bar), and:

In *Hatgimisios*, supra., counsel for the plaintiff notified counsel for the defendant of the entry of the default judgment on the day after it was entered and thirty-seven days after entry of the judgment the petition to open was filed. The petition did not aver a prompt filing and failed to aver any reason why it had not been filed for thirty-seven days. The Superior Court held, "Thirty-seven days is not a very long delay, and might not be hard to explain; but unexplained it is too long." and also observed that under the Local Rule of Court authorizing the default judgment the defendant, "...had at least forty days notice of appellant's intention to take the default judgment."

In *Pappas*, supra., the complaint was served on September 14, 1971; counsel for the defendant wrote to counsel for the plaintiff on September 27, 1971 advising that he would be on vacation until October 4, 1971, and requesting an extension of time and he would upon his return file an answer; on November 9, 1971 the default judgment was entered; and on January 11, 1972 the petition to open was filed. The Supreme Court reversed the trial court's granting of the petition observing that there can be no justification for the unexplained thirty-eight day delay between the date of defense counsel's return from vacation and his belated filing of an answer on November 11, 1971. The court also concluded that the defendant had not "acted promptly" in filing his petition to open where fifty-five days elapsed from the date of notice of the default judgment until the filing of the petition to open, and no satisfactory explanation was given for that delay.

In *Texas and BH Fish Club*, supra., the complaint for specific performance of a contract was served on November 29, 1954; on December 22, 1954 (23 days later) judgment by default was entered on praecipe; on January 12, 1955 (44 days after service of the complaint) the plaintiff petitioned for a final decree; and on June 2, 1955 (5 months 10 days subsequent to

the entry of judgment) the defendant petitioned to open the judgment. The Supreme Court affirmed the trial court's refusal to grant the petition and noted that the entire factual background of the litigation revealed dilatory tactics on the part of the defendant, and an unreasonable delay in protecting its interests.

To the contrary, the defendant cites the case of *Lamborn vs. Lescarboura Mushroom Company*, 7 Chest. 34 (1955) for the rule that there is no time limit on the exercise of the power of a court to open a judgment by confession, and *Nealon v. Reilly*, 64 Lackawanna Journal 217 (1964), where the court found the defendant not guilty of laches in delaying twenty-two months before petitioning to open a judgment. (Negotiations were being conducted by counsel during that time.)

In addition, the defendant argues that the amount allegedly owed was not the subject of litigation; there were no findings of fact; no failure on the part of the defendant to respond and no notice given him that an immediate response was required. With regard to these contentions, we find no merit, for Pa. R.C.P. 2952 prescribes what a complaint for confession of judgment shall contain, and at subsection (j) specifically states,

> "The complaint shall neither contain a notice to defend nor be endorsed with a notice to plead, and no responsive pleading shall be required whether or not the complaint contains a notice to defend or is endorsed with a notice to plead."

The *Lamborn and Nealon* cases appear to support that argument of the defendant. We are aware of the fact that in proceedings to open judgment there are a multiude of cases covering a veritable plethora of time spans in which the Courts of Common Pleas and the Appellate Courts have found, under the facts of the various cases, that the petitioner has acted promptly or failed to act promptly. This situation has led us to conclude that each proceeding to open a judgment must be approached on an ad hoc basis with careful attention being given to the underlying facts, rather than to an arbitrary time interval.

Parenthetically, we note that Pa. R.C.P. 237.1 was promulgated by order of The Chief Justice of the Supreme Court of Pennsylvania on December 14, 1979. This rule prohibits the entry of a judgment by default unless the praecipe for entry includes a certification that a written notice of intention to file the praecipe was mailed or delivered to the party against whom the judgment is to be entered, and to his attorney of record, if any, after the default occurred and at least ten days prior to the

date of the filing of the praecipe. In the explanatory comment attached to that Rule, the Chairman of the Civil Procedural Rules Committee preliminarily noted,

> "The increasing number of petitions being filed in the Common Pleas Court throughout the Commonwealth to open default judgments and the ensuing appeals have become a matter of concern to the courts."

In the case at bar, in addition to the findings of fact above set forth, we observe:

1. The D.S.B. Docket lodged in the Prothonotary's Office discloses a notation that the Prothonotary or a member of his staff mailed a notice pursuant to Pa. R.C.P. 236 to the defendant on June 25, 1979 at 3:15 p.m. This notice is on a 9-1/2 inch by 4 inch slip of paper and only informs the defendant of the amount of the judgment entered, the docket number, the identity of the plaintiff and defendant, and the date and time of entry of the judgment.

2. The Prothonotary's Docket does not disclose any filing by the plaintiff of an affidavit of mailing to the defendant of a written notice of the entry of judgment setting forth the date, the court, term and number, and the amount of the judgment as mandated by Pa. R.C.P. 2958. (Therefore, under Pa. R.C.P. 2958(c) no writ of execution should have been issued on the plaintiff's praecipe, and the execution made was ineffective.)

3. The Sheriff's Docket fails to disclose the date a levy was made on the personal property of the defendant on the improvidently issued writ. Therefore, it can only be definitely determined that the levy was made sometime after July 20, 1979.

A petition to open a judgment has often been described as an appeal to the court's equitable powers or to the conscience of the chancellor. In the case at bar, we are persuaded that the defendant did act promptly and the delay between the time he first became aware of the entry of the judgment against him, and the filing of the petition to open the judgment was reasonably explained for the following reasons:

1. There is no evidence that the plaintiff at any time prior to June 25, 1979 had made any demand upon the defendant for the payment of any sum claimed due under the note upon which judgment was confessed, so the defendant had no warning of the action contemplated, and permitted as a matter of law by the plaintiff.

2. At an unspecified date, but subsequent to the receipt of notice of the entry of the judgment (June 25, 1979), and before the levy on the defendant's personal property (after July 20, 1979) the defendant returned the two vehicles whose value represented the principal amount claimed by the plaintiff to the plaintiff presumably believing that this discharged any obligation he might have to the plaintiff. (While one learned in the law would know that this was an ineffective procedure to discharge an obligation and the defendant, as a businessman, could be charged with such knowledge; nevertheless, considering the defendant's version of the underlying transaction, i.e., a consignment, we are not prepared to say there was not some logic and reason in his action.)

3. After the Sheriff's levy on the defendant's personal property (sometime after July 20, 1979) the defendant must have realized he still had a legal problem and for the first time retained counsel.

4. Counsel for the defendant and for the plaintiff then engaged in negotiations looking to the settlement of the controversy during the month of July, but the negotiations failed to produce a settlement. (It is difficult for the Court to understand why no evidence was introduced as to the duration of the negotiations by counsel other than the cryptic pleading "during the month of July" in paragraph eighteen of defendant's petition.)

5. After the termination of negotiations the petition was prepared by counsel for the defendant and presented on August 24, 1979.

In our judgment an analysis of all of the facts and the applicable law leads us to the conclusion that there was no unreasonable delay on the part of the defendant in seeking relief from the Court.

As heretofore noted the second position of the plaintiff is that the defendant has failed to allege in his petition a meritorious defense and this is primarily predicated upon the defense argument that the Parol Evidence Rule will preclude the admission of oral testimony attacking the validity of the judgment note admittedly signed by the defendant.

An examination of the defendant's petition discloses allegation of payment in full of the note, that the underlying transaction between plaintiff and defendant was a consignment of vehicles, and defendant was induced to sign the note in blank solely for the purpose of securing the plaintiff's position in the

event of the defendant's death after a motor vehicle sale and before plaintiff had been paid, and that the death of the defendant was a condition precedent to the plaintiff confessing judgment on the note. It is the opinion of this Court that the Parol Evidence Rule would not preclude the testimony of the plaintiff, for evidence of payment of a written obligation is always admissible, and the allegations appear to sufficiently allege fraud or mistake to constitute an exception to the rule.

It is not the function of this Court at this time to make any determination concerning the credibility of the witnesses. We have read all of the depositions filed in the matter. We are persuaded that in a jury trial such evidence, if produced, would require the issues to be submitted to the jury. Therefore, under Pa. R.C.P. No. 2959(e) and *Reliance Insurance Company v. Liberati*, supra., we conclude the judgment should be opened.

ORDER OF COURT

NOW, this 5th day of August, 1980, the judgment in the above-captioned matter will be opened and the defendant is granted premission to enter a defense.

Exceptions are granted the plaintiff.

HERSHBERGER CHEVROLET, INC. v. ROMALA CORP., C.P. Franklin County Branch, A.D. 1979 - 229 In Trespass

Trespass - Malicious Use of Civil Process - Attorney Fees - Ad Damnum Clause - More Specific Pleading

1. Generally, attorney's fees are not recoverable in litigation in Pennsylvania; however an exception to this rule is the right of a verdict winning plaintiff in a trespass action for malicious use of civil process.

2. Where a plaintiff's ad damnum clause requests judgment in the amount of $128,926.77, it offends Pa. R.C.P. 1044(b) which requires a statement whether the amount requested is or is not in excess of $10,000.00 and the ad damnum clause will be stricken.

3. In a trespass action for malicious use of civil process arising out of unalleged wrongful and malicious confession of judgment, the loss of profits from a sale of business assets where no levy has been alleged would not be a foreseeable consequence and would be special damages which should be specifically stated.

Michael E. Farr, Esq., Counsel for Plaintiff