The second problem is whether Affiliated Industries' private parking lot is a "highway or trafficway".

Driving under the influence of alcohol is defined as a "serious traffice offense", which must be committed on a highway or a trafficway.

A highway is defined as:

> The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. The term includes a roadway open to the use of the public for vehicular travel on grounds of a college or university or public or private school or public or historical park. 75 Pa. C.S.A. §102 (Purdon 1977).

A trafficway is defined as:

> The entire width between property lines or other boundary lines of every way or place of which any part is open to the public for purposes of vehicular travel as a matter of right or custom: 75 Pa. C.S.A. §102 (Purdon 1977).

Common Pleas Courts have generally held that a party may be convicted of driving while under the influence while in a parking lot. If a parking lot is open to the public and vehicular traffic does occur on it, it then falls within the definition of trafficway. *Commonwealth vs. Wilson,* Pa. Super. , 553 A.2d 452 (1989). The rationale is, of course, to afford protection to the public from serious traffic offenses.

In *Commonwealth Department of Transportation vs. Bendik,* 112 Pa. Commw. Ct. 591, 535 A.2d 1249 (1988), the Commonwealth Court determined a motel parking lot was a trafficway. The Legislature obviously intended parking lots to be included in the definition of trafficway. A statutory construction that parking lots, in which vehicular traffic is encouraged and occurs, are "DWI-free-zones", in which drunk driving is tolerated from entrance to exit, would seriously undermine the effectiveness of any drunk driving prohibitions. *Id.*

If a parking lot is open to the public, even if restricted by signs

marked private, if it is used by members of the public, it is a trafficway for purposes of drunk driving. *Wilson* at 452

The parking lof of Affiliated Industries is a private parking lot not open to the public, but there is public access to the lot from the street. People do use this parking lot as a means of approaching their houses. The parking lot is used for vehicular traffic by the public. Therefore, we find it is a trafficway within the definition as stated in 75 Pa. C.S.A. §102.

ORDER

NOW, this 9th day of November, 1989, the Omnibus Pre-Trial Motion to Suppress is denied.

Exceptions are granted the defendant.

MYERS V. MYERS, C.P. Franklin County Branch, Eq. Doc. Vol. 7 Page 510

Equity - Jurisdiction - Arbitration Clause

1. The Court does not have jurisdiction in a case requesting a partnership accounting where the partnership agreement provides for arbitration to resolve any controversy or claim arising out of or relating to the agreement.

William S. Dick, Esquire, Attorney for Plaintiff
J. McDowell Sharpe, Esquire Attorney for Defendant

OPINION AND ORDER

WALKER, J., October 13, 1989:

STATEMENT OF FACTS

Defendant, John Richard Myers, and plaintiff's husband, Eugene G. Myers, were partners engaging in the business of the Lehmaster Elevator Company, under and pursuant to the written agreement

of partnership dated January 1, 1971. Eugene G. Myers died on March 2, 1982. After the death of Eugene G. Myers, his wife, Martha M. Myers, entered into an oral agreement with the defendant concerning the continued operation of the business.

The business was sold in 1986. On September 14, 1988, plaintiff filed this equity action for partnership accounting. On September 5, 1989, defendant filed preliminary objections in the nature of a petition raising the question of jurisdiction and alleging that the plaintiff failed to submit this matter to arbitration as required by the January 1, 1971 partnership agreement. The court heard argument on this issue on October 5, 1989. This issue is now ripe for determination.

DISCUSSION

Defendant claims that:

> Plaintiff failed to submit this matter to arbitration as required under the agreement.

The January 1, 1971 agreement states in pertinent part that:

> In the event of a dispute between the partners during or at termination of the partnership, it is agreed that said dispute shall be settled by three arbitrators, one of whom shall be chosen by Eugene G. Myers or his heirs, one by J. Richard Myers or his heirs, and the third to be hired and reimbursed by funds of the Lehmaster Elevator Company from the officers of Valley Bank and Trust Company, Chambersburg, Pennsylvania, by agreement between the two aforesaid arbitrators. The decision of any two of said arbitrators shall be final unless there shall be involved therein a question of law rather than a question of fact.
>
> This agreement shall be binding upon the heirs and executors of the parties hereto.

The Pennsylvania Supreme Court in *Flightways Corp. v. Keystone Helicopter Corp.*, 459 Pa. 661, 331 A.2d 184 (1975), concluded that arbitration agreements were no longer contrary to public policy, but were encouraged by the courts to expedite justice in the face of crowded court dockets. The court further held that the language of the arbitration clause in the agreement was controlling

and could not have been any broader. The agreement provided for arbitration of, "[a]ny controversy or claim arising out of or relating to this Agreement, or the alleged breach thereof." The court affirmed the decree of the lower court in deciding that the matter was properly before a panel of arbitrators.

In the case at bar, the language of the arbitration clause in the agreement, as quoted above, is also broad. Furthermore, the agreement specifically states that it will be binding on the heirs or executors of the parties; therefore, the arbitration clause of the agreement is binding on the plaintiff.

Based on the above, the court finds that it does not have jurisdiction in this matter and orders that the case be submitted for arbitration. Accordingly, the defendant's preliminary objection is sustained.

ORDER OF COURT

October 13, 1989, the court sustains defendant's preliminary objection. This dispute should be submitted to arbitration pursuant to the written partnership agreement.

WOLFINGER V. MOATS, C.P. Franklin County Branch, Eq. Doc. Vol. 7, Page 550

Equity - Boundary line - Trees - Injunction

1. The owners of adjacent tracts of real estate own all trees growing on their common boundary line as tenants in common.

2. Tenants in common are prohibited from unilaterally cutting down commonly owned live trees.

3. The fact that the bark of a tree touches the line is insufficient to create a tenancy in common.

Eileen F. Schoenhofen, Esq., Attorney for Plaintiffs
Michael B. Finucane, Esq., Counsel for Plaintiffs
John W. Frey, Esq., Counsel for Defendants

OPINION AND DECREE

KELLER, P.J., January 30, 1990:

This action in equity seeking to permanently enjoin the defendants from removing certain trees on the boundary line between the real estate of the plaintiffs and the defendants was commenced by the filing of a complaint on January 19, 1990. The complaint inter alia alleged that despite plaintiffs' requests the defendants began cutting the trees on January 18, 1990 and continued that activity on January 19, 1990. The plaintiffs on the same date presented their petition for a temporary injunction alleging their fear that four trees have been removed; that the damages to the plaintiffs is immediate and irreparable; that granting the injunction will maintain the status quo and will cause less harm to the defendants than not granting it will cause the plaintiffs. The Honorable John R. Walker issued a decree granting the temporary injunction prayed for on the condition a bond in the amount of $1,000 be posted by the plaintiffs. The decree also ordered the defendants to show cause on January 23, 1990 at 10:30 a.m. why a preliminary injunction should not issue during the pendency of the action.

The hearing was held as scheduled. The matter is ripe for disposition.

FINDINGS OF FACT

1. The plaintiffs' real estate is located on the north side of U.S. Route 30 in Guilford Township, Franklin County, Pennsylvania.

2. The real estate of the defendants is also located on the north side of U.S. Route 30 and is immediately to the east of plaintiffs' real estate.

3. The two tracts of real estate share a common boundary line.

4. After the defendants purchased their real estate, they advised the plaintiffs they desired to remove the thirteen trees located near or on the common boundary line.