

**LEGAL NOTICES, cont.**

Kenneth R. Pugh, Executor of the Estate of Melvin A. Pugh, late of Peters Township, Franklin County, Pennsylvania, deceased.

SNIVELY: First and final account, statement of proposed distribution and notice to the creditors of Citizens National Bank of Southern Pennsylvania, Donna Bennett and Linda Thornton, Executors of the Last Will and Testament of Hazel E. Snively, late of Quincy Township, Franklin County, Pennsylvania, deceased.

Robert J. Woods  
Clerk of Orphan's Court  
Franklin County, Pennsylvania

5/5, 5/12, 5/19, 5/26/89

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, on March 24, 1989, for the purpose of incorporating a nonprofit corporation under the Pennsylvania Corporation Not for Profit Code. The name of the corporation is KENNETH C. RAKENTINE, MEMORIAL POST 53 OF THE VETERANS OF THE VIETNAM WAR, INC. The purpose for which it has been organized is for the improvement of social, charity and education programs and benefits for veterans and their dependents and for any other lawful purpose for which nonprofit corporations may be incorporated under the Pennsylvania Corporation Not for Profit Code.

Martin and Kornfield  
17 North Church Street  
Waynesboro, PA 17268

5/5/89

**LEGAL NOTICES, cont.**

GORDON AND WIFE v. GORDON, C.P. Franklin County Branch, Eq. Doc. Vol. 7, Page 461

*Equity - Injunctive Relief - License - Verbal Ageement*

1. A license is usually created orally and is ordinarily considered to be a personal or revocable privilege to perform an act on the land of another.
2. Where a party performs acts beyond his license and the licensing party makes no comment, the license is not enlarged.
3. A license in real estate is revocable unless equitable principles make the license irrevocable.

*James M. Schall, Esq., Attorney for Plaintiffs*  
*Donald L. Kornfield, Esq., Attorney for Defendant*

**ADJUDICATION**

KAYE, J., March 22, 1989:

**I. STATEMENT OF FACTS:**

This case is yet another instance - as if there needed to be another - which demonstrates the absolute necessity for even the closest of family members to reduce to writing their intentions regarding interests created in real estate. The genesis of the dispute lies in an informal arrangement between brothers which, through the dimming of memories over time and the death of one of the brothers, has led to the instant lawsuit by the surviving brother and his wife against the deceased brother's wife.

By deed dated April 26, 1967, Paul O. Gordon ("Paul") acquired two tracts of real estate in Montgomery Township, Franklin County, from Charles I. Sweeney. Thereafter, by deed dated August 28, 1971, Paul O. Gordon conveyed .646 acre of the aforesaid real estate to Calvin E. Gordon, ("Calvin"), his brother, and to Elsie M. Gordon, ("Elsie"), the latter's wife.

Some years prior to the August 28, 1971 conveyance, Paul and Calvin had a discussion regarding the real estate. It was apparently contemplated that Calvin would eventually acquire a portion of what was then Paul's real estate, and there was some discussion of providing a water source for the property. Paul was then living in a

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trailer on the property in question, and was estranged from his wife. Although we are not precisely clear on this, apparently some discussion occurred between Paul and Calvin regarding the construction by Calvin of a residence on Paul's real estate. There was also discussion about providing water service to the real estate, and it was agreed that a well would be drilled for this purpose. As Paul was in a better financial position than Calvin, it was agreed that Paul would advance the cost of drilling the well and Calvin, a plumber and pipe fitter by trade, would perform the labor necessary to install the pump, pump house and heater located therein, and complete the plumbing.

It further was agreed that the cost of any repairs on the system would be borne equally by the brothers, and the repairs would be completed by Calvin. Although there is some dispute in the testimony over the question of whether there was any agreement between Paul and Calvin whether there would be an extension of the use of the water from this source beyond Calvin's domestic needs, Paul said nothing to Calvin when he observed the extension of the waterline to a trailer placed on Calvin's lot in about 1977-78. Calvin concedes, however, that the rights to the well use were to expire if he ever sold the property subsequently acquired from Paul. While title to all the real estate was still held by Paul at the time, Calvin dug the foundation to what was to become his residence, and it is apparent that the location of the well was on that portion of the real estate which the brothers contemplated would be retained by Paul after a future conveyance of a portion of the property to Calvin.

The well was drilled in approximately 1967-68, and Calvin's residence was completed for his occupancy in June, 1969. He has continued to occupy the residence thereafter and up to the present time.

On December 31, 1971, Paul and Hazel were married. Thereafter, in about 1977-78, Calvin extended the water service from the initial residence to a trailer Calvin had placed on the property. Hazel testified that while Paul was unhappy about the extension of the water beyond Calvin's residence, he said nothing to Calvin about this.

Paul died in May, 1981, and Hazel succeeded to Paul's rights in the property, as well as to any burdens placed on the property by reason of the brothers' agreement. Two additional trailers appar-

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Robert J. Woods  
Clerk of Orphan's Court  
Franklin County, Pennsylvania

5/5, 5/12, 5/19, 5/26/89

### 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 17th day of March 1989, 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, TOTAL FACILITIES MANAGEMENT, INC., 1937 Lincoln Way West, Chambersburg, Franklin County, Pennsylvania 17201.

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.

John W. Frey  
PATTERSON, KAMINSKI,  
KELLER & KIERSZ  
239 East Main Street  
Waynesboro, PA 17268

5/12/89

## LEGAL NOTICES, cont.

ently were placed on Calvin's property prior to Paul's death, and the water line was extended to serve them. Once again, no objection was made to this further extension.

In July, 1987, a swimming pool was placed on Calvin's property. Although Hazel believed the water line was utilized to fill the pool, apparently an independent water service did so. Hazel experienced difficulty with her water supply during a long period of drought in the summer of 1987, and believed the situation was exacerbated by the swimming pool. As a consequence of these circumstances, in August, 1987, Hazel caused the water supply to Calvin's property to be terminated. Calvin and others who relied on the water service thereupon were required to carry water to their residences from various sources.

Thereupon, Calvin and Elsie commenced an action for a preliminary injunction and a hearing thereon was scheduled for September 4, 1987, on which date by agreement of the parties, an injunction was issued which barred Hazel from terminating the water supply, but limiting the use of the water to domestic household use pending a hearing on a permanent injunction. A hearing was held on the latter, at the conclusion of which counsel were directed to file memoranda setting forth their respective positions. As those memoranda are before the Court, the matter is now ripe for disposition.

### II. STATEMENT OF ISSUES INVOLVED:

1. What is the nature of the interest, if any, which plaintiffs have in the water supply on defendant's real estate?
2. Have plaintiffs set forth a cause of action entitling them to permanent injunctive relief?

### III. DISCUSSION OF THE ISSUES PRESENTED AND CONCLUSIONS OF LAW:

Initially, it is necessary to determine the nature of the interest, if any, which plaintiffs have in the water system providing service to their real estate from the real estate of defendant. Plaintiffs urge the Court to find that the interest is that of an easement or at least an irrevocable license, while defendant advances the theory that a revocable license accurately characterizes that interest.

To make this determination, it is necessary to review what the very informal arrangement was between Calvin and Paul. Paul

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agreed that a well on that portion of the real estate which he intended to retain could be utilized by Calvin as a source of water supply so long as Calvin retained ownership of the real estate to be served by it, and for such time as Calvin was unable to afford to install his own water supply system. Calvin supplied his own labor to install the system after the well was drilled, and further was to pay one-half the cost of repairs. It is apparent that much of this arrangement is illusory or ill defined at best (e.g. what standard applied to determine when Calvin could "afford" his own water supply system?), but the family relationship clearly accounts for the failure to clarify the arrangement.

A "license" is usually created orally, and is ordinarily considered to be a personal or revocable privilege to perform an act or series of acts on the land of another. *Hennebont Company v. Kroger Company*, 221 Pa. Super. 65, , 289 A.2d 229, 231 (1972). An "easement", on the other hand, is created by a grant, or by prescription, which presupposes a grant, or by operation of law, i.e. estoppel, condemnation, or decree of court. *Jones v. Durst*, 28 Som. 217 (C.P. Somerset Co., 1956). In the instant case, we have found none of these to have been proven, and therefore conclude that the interest is not that of an "easement", but rather that of a "license".

The rights actually granted depend on the intent of the parties creating them as determined by a fair interpretation of the language employed and consideration of all the attendant circumstances. *Maranatha Settlement Association v. Evans*, 385 Pa. 208, 122 A.2d 679, 680-681 (1956).

In the case *sub judice*, it is readily apparent that Paul intended to permit Calvin a license to use the water supply which was provided by the well on Paul's property which both expected the latter would retain after the contemplated conveyance to Calvin. This interest was intended to continue only while Calvin retained ownership of the property and only until such time as Calvin could afford to construct his own water supply system. While there was no direct proof as to the quantity of water Calvin was to be permitted to withdraw from the system, under the circumstances that existed at the time the license was created, it would appear that neither party contemplated usage beyond normal domestic, household use and, certainly, Paul would not have intended to jeopardize his own water supply. However, we note also that Paul observed while the system unilaterally was extended by Calvin to

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**LEGAL NOTICES, cont.**

**and Deborah K. Wolff  
Atty: William S. Dick**

ALL THAT CERTAIN following real estate lying and being situate in Quincy Township, Franklin County, Pennsylvania, as follows:

BEGINNING at a set spike in or near the centerline of Township Route 383 (also known as Orphanage Road) at lands of A. Gregory Henderson; thence with lands of A. Gregory Henderson north 09 degrees 04 minutes 42 seconds east 169.52 feet to a set iron pin; thence continuing with the same north 18 degrees 44 minutes 59 seconds west 94.09 feet to a set iron pin; thence with same north 30 degrees 43 minutes 14 seconds east 175.13 feet to a set iron pin; thence with same 89 degrees 34 minutes 04 seconds east 136.25 feet to a set iron pin at lands now or formerly of Waynesboro Area Softball League; thence by lands of Waynesboro Area Softball League south 13 degrees 46 minutes 32 seconds west 355.27 feet to an existing spike in or near the center line of Township Route 383 (also known as Orphanage Road); thence with Township Route 383 north 89 degrees 56 minutes 24 seconds west 125 feet to a set spike at the point of beginning.

Being the same real estate conveyed to Timothy M. Wolff and Jeffrey L. Wolff by deed of A. Gregory Henderson, dated November 18, 1985, and recorded in Franklin County Deed Book 944, Page 495.

BEING sold as the property of Timothy M. Wolff, Jeffrey L. Wolff and Deborah K. Wolff, Writ No. AD 1989-23.

**SALE NO. 6**

**Writ No. AD 1989-64**

**Judg. No. AD 1989-64**

**Federal National Mortgage Association**

**-vs-**

**Michael Kreitz and Kim Kreitz**

**Atty: Frank Federman**

ALL THAT CERTAIN following described real estate, lying and being situate along the northerly side of the public road leading from Blue Ridge Summit in Washington Township, Franklin County, Pennsylvania, together with the improvements thereon erected, bounded and described as follows:

BEGINNING at a set iron pin on the northern edge of Township Route 707, known as Dutrow Avenue, at lands now or formerly of Walter Duffield; thence with the northern edge of Dutrow Avenue, south 88 degrees 12 minutes east 49.50 feet to a set iron pin at lands now or formerly of William R. Newman; thence with same, north 4 degrees 48 minutes east 36.60 feet to a set iron pin; thence with same, north 49 degrees 13 minutes 30 seconds east 14.60 feet to an existing iron pin; thence with same, north 1 degree 31 minutes 30 seconds west 169.00 feet to a set iron pin at lands now or formerly of William R. Newman; thence with the same, north 89 degrees 31 minutes 30 seconds west 88.80 feet to an existing iron pin; thence with same, south 2 degrees 46 minutes west 33.20 feet to an existing iron pin at lands now or formerly of Walter Duffield; thence along same, north 88 degrees 30 minutes east 25.70 feet to an existing iron pin; thence with same along a hedge row, south 00 degrees 45 minutes 36 seconds east 181.66 feet to a set iron pin on the northern edge of Dutrow Avenue, the point and place of beginning.

CONTAINING 13,918.60 square feet according to a survey of John Rex Benchoff, P.E., dated July 1978 and recorded in Franklin County Deed Book Volume 766, Page 19.

Having erected thereon a dwelling house known as 15303 (T-707) Dutrow Ave., Blue Ridge Summit, PA.

Title of Record is vested in Michael S. Kreitz and Kim Kreitz, his wife, by Deed from Ollen R. Kerby and Amphana Kerby, his wife, dated March 26, 1986 and recorded in Franklin County Deed Book 953, Page 362.

TAX PARCEL NO. Q-20P-4.

BEING sold as the property of Michael Kreitz and Kim Kreitz, Writ No. AD 1989-64.

**LEGAL NOTICES, cont.**

**TERMS**

As soon as the property is knocked down to 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, June 19, 1989 at 4:00 P.M., prevailing time. Otherwise all money previously paid will be forfeited and the property will be resold on June 23, 1989 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

other dwellings on Calvin's property and, though he complained privately to his wife about this, said nothing to Calvin. Although the latter is true, we find this did nothing to confer rights to Calvin greater than that which previously existed, i.e. Calvin's *personal* license to receive a supply of water for his household's domestic use, during such time as he continues to own the real estate served by the water line and proof is offered that he could "afford" to install an independent source of water to serve the needs of that real estate. However, this water usage is limited to that which Calvin and Paul agreed to, i.e. ordinary domestic water service, and not to any use that would place an unusual burden on the water supply, such as filling the swimming pool located on plaintiffs' real estate.

The foregoing is based upon the general principle that a license in real estate is revocable at any time, unless equitable principles make the license irrevocable. 22 P.L.E. "Licenses" §26. In the instant case, Calvin expended substantial amounts of money, as well as his own personal labor, in the installation of the water system, which he did in reliance upon the parol agreement he arrived at with his brother, Paul. Accordingly, the license is irrevocable until the occurrence of the first of the conditions set forth above.

We next turn to the question of whether plaintiffs have stated a cause of action entitling them to the injunctive relief they seek. The nature of the injunction is the prohibition of defendant from unilaterally terminating the flow of water to plaintiffs' real estate.

We note that:

. . . an injunction is an extraordinary remedy which should be granted only with great caution. A court of equity will grant an injunction only where the rights and equity of the plaintiff are clear and free from doubt and the harm sought to be relieved is great and irreparable.

*Cannon Bros., Inc., v. D'Agostino,*  
356 Pa. Super. 286, \_\_\_\_\_, 514 A.2d  
614, 616-617 (1986) [Citations  
omitted].

If we were not to grant the relief sought, plaintiffs would be deprived of a supply of potable water in their residence for ordinary household use, and this interruption in service would

continue indefinitely so far as we can determine from the evidence adduced at the hearing.

We believe that such threatened interruption in service of such a basic commodity as water service does produce a basis for injunctive relief, and thus will make an award favorable to plaintiffs.

#### DECREE NISI

NOW, March 22, 1988, defendant, Hazel M. Gordon is enjoined from interfering with the free flow of water over the existing water line extending from defendant's property and providing service to plaintiffs' property provided, however, that plaintiffs' use of water from such line shall be limited to drinking, washing, and other necessary household uses, and shall exclude exterior watering or other discretionary uses, including any use connected to a swimming pool on plaintiffs' property.

This injunction shall remain in effect for such time as plaintiff Calvin Gordon continues to be an owner of the real estate described in the attached statement of facts, or until modified by subsequent decree of the Court.

This decree shall become final unless post-trial motions are filed within ten (10) days of the date hereof.

Costs to be paid by defendant.