

SHERIFF'S SALES, cont.

**Jackalene E. Boswell,
husband and wife
Atty: Timothy W. Mlsner**

ALL THAT CERTAIN described real estate, situate in Washington Township, Franklin County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin in the center of the Rouzerville to Pen Mar Road; thence with the center of said road north 64 degrees 2 minutes west 111.4 feet to an iron pin in the center of said road; thence north 47 degrees 4 feet east 86 feet to an iron pin in the center of road leading to Old Route 16; thence with the center of road north 64 degrees 33 inches east 130 feet to an iron pin in the center of said road; thence south 61 degrees east 4.2 feet on the line of the southerly edge as projected of a 10 foot alley to an iron pin at lands now or formerly of George G. Motz and his daughter; thence with said Motz lands south 27 degrees 32 feet west 181.6 feet to the place of beginning. Being Tract No. 1 improved with a two story frame dwelling as per draft of Harry Knox, R.E., dated October 15, 1954.

IT BEING the same real estate conveyed by Frederica O. Humer, widow, to Kenneth M. Boswell, Jr. and Jackalene E. Boswell, husband and wife, mortgagors herein by deed dated August 11, 1978, and recorded in Franklin County Deed Book Volume 773, Page 241.

BEING sold as the property of Kenneth M. Boswell, Jr. and Jackalene E. Boswell, husband and wife, Writ No. A.D. 1980-234.

SALE NO. 5

**Writ No. DSB 1980-364 Civil 1982
Judg. No. DSB 1980-364 Civil 1982
Farmers and Merchants Trust
Company of Chambersburg**

— vs —

**Clarence A. Overcash, Jr.
Atty: Martha B. Walker**

ALL THAT CERTAIN following described real estate, together with the improvements thereon, lying and being situate at 271 East Liberty Street in the Borough of Chambersburg, Franklin County, Pennsylvania, bounded and limited as follows:

BEGINNING at a post at corner between this lot and lands of Quivers on the East; thence along the North side of East Liberty Street, North 79 degrees West 35 feet 4 inches to lot of Thelma Wells; thence with the latter lot, North 11 degrees East, 165 feet to a 12-foot alley; thence with said alley South 79 degrees East, 35 feet 4 inches to a point at lands of the Borough of Chambersburg; thence with the same and lands of Quivers, South 11 degrees West, 165 feet to a post, the place of beginning, being Lot No. 3 on the general plan of ten lots laid out by John Snyder on August 31, 1841.

BEING the same real estate which Victoria A. Compton, single, by her deed dated November 18, 1977, and recorded in Franklin County Deed Book Volume 751, Page 474, granted and conveyed to Elijah Roberts and Gayle J. Roberts, his wife, and BEING the same real estate conveyed by Elijah Roberts and Gayle J. Roberts, his wife, to C. A. Overcash, Jr., by Deed dated January 30, 1979, and recorded in Franklin County Deed Book Vol. 781, page 535.

BEING sold as the property of Clarence A. Overcash, Jr., Writ No. DSB 1980-364.

SALE NO. 6

**Writ No. AD 1980-386 Civil 1982
Judg. No. AD 1980-386 Civil 1982
First National Bank of Fairfield**

— vs —

**Fred and Sharon Rich
Atty: Jan G. Sulcove**

ALL THAT CERTAIN real estate lying and being situate in Guilford Township, Franklin County, Pennsylvania, more particularly bounded and described as follows:

BEGINNING at a point along the northerly edge of U.S. Route 30; thence by U.S. Route 30, North 68 degrees 32 minutes West, 100 feet, more or less, to a point; thence along Lot No. 2 on the plan of lots hereinafter referred to, North 21 degrees 28 minutes East, 256.3 feet, more or less, to a point; thence South 68 degrees 32 minutes East, 100 feet, more or less, to a point; thence by Lot No. 4 on the plan of lots hereinafter referred to, South 21 degrees 28 minutes West, 256.3 feet, more or less, to a point, the place of beginning.

BEING and Intended to be all of Lot No. 3 shown on a plan of lots prepared by John H. Atherton, P.E., for Ed Oylar, dated July 2, 1955, and recorded in Franklin County, Pennsylvania in Deed Book Volume 661, Page 325.

BEING sold as the property of Fred and Sharon Rich, Writ No. A.D. 1980-386.

TERMS

As soon as the property is knocked down to a 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, March 22, 1982 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**

COMMERCIAL UNION INSURANCE COMPANY v. CHRISTMAN AND HEGE, C.P. Franklin County Branch, No. A.D. 1981 - 83

Trespass/Assumpsit - Implied Warranty of Habitability - More specific Complaint - Oral Contract

1. A builder-vendor impliedly warrants that a home he has built and is selling is constructed in a reasonably workmanlike manner and that it is fit for the purpose intended.

2. A contractor is not subject to the implied warranty of habitability.

3. Proper pleading concerning oral agreements demands that the time, the parties, and the manner of entry into the oral agreement must be set forth.

4. While discovery rules have become very expansive and encompassing, this does not excuse plaintiff from failing to provide the information required to set forth a cause of action in its complaint.

Ronald B. Hamilton, Esq., Attorney for Plaintiff

Thomas B. Steiger, Esq., Attorney for Richard Hege

Daniel W. Long, Esq., Attorney for Plaintiff

Deborah K. Hoff, Esq., Attorney for Lee Christman

OPINION AND ORDER

KELLER, J., February 22, 1982:

Plaintiff commenced this action on March 10, 1981, by the filing of a summons in trespass and assumpsit. The complaint was filed on October 22, 1981. Preliminary objections in the nature of a motion for a more specific pleading and a motion to strike were filed on behalf of defendant Lee Christman on November 12, 1981. Similar preliminary objections were filed on behalf of defendant Richard Hege on December 15, 1981. Plaintiff filed its amended complaint on December 28, 1981, and the matter of defendants' preliminary objections was listed for argument. The Court heard argument by counsel for all parties involved on January 7, 1982, and the issues are now ripe for disposition.

Both defendants' motions to strike were based on the fact that plaintiff's original complaint was not verified as is required by Pa. R.C.P. No. 1024(c). No explanation was given by

plaintiff's counsel for the absence of verification. This defect was cured by plaintiff's filing of the amended complaint in which an authorized agent of plaintiff verified the facts stated in the complaint. Therefore, defendants' motions to strike are denied.

At oral argument, counsel for the plaintiff stated his intention to withdraw paragraphs 9(g) and 24(g) of the complaint as well as all claims for breaches of expressed or implied warranties other than a possible claim based on the breach of an implied warranty of habitability. As a result, paragraphs 5 and 7 of defendant Hege's preliminary objections and paragraph 4 of defendant Christman's preliminary objections are no longer at issue.

Counsel for plaintiff reserved the right to proceed with his claim based on a breach by defendants of the implied warranty of habitability. Although neither defendant specifically raised the issue of implied warranties in their preliminary objections, the issue was argued orally at argument court and the Court received supplemental written arguments from counsel for plaintiff and defendant Hege on this matter. Therefore, we will consider the applicability of the implied warranty of habitability to the factual situation as pled by plaintiff in its complaint.

Counsel for plaintiff bases the claim on the principles enunciated in *Elderkin v. Gaster*, 447 Pa. 118, 288 A. 2d 771 (1972). In that case, at page 128, the Pennsylvania Supreme Court held that a "builder-vendor impliedly warrants that the home he has built and is selling is constructed in a reasonably workmanlike manner and that it is fit for the purpose intended - habitation." Plaintiff has failed to plead facts sufficient to base a cause of action on the *Elderkin* case. We are unable to tell from the complaint what relationship exists between the parties. It is not clear whether defendant Hege stands as a builder-vendor or whether he is merely a contractor. This information is essential to a cause of action relying on an implied warranty of habitability. The complaint as presently pleaded fails to adequately allege material facts essential to a case based on implied warranty theories. Leave is granted plaintiff to amend its complaint to allege with specificity the facts sufficient for such a claim.

Paragraph 2 of defendant Hege's objections and paragraph 1 of defendant Christman's objections are concerned with the lack of specificity in plaintiff's complaint concerning alleged oral agreements. Proper pleading concerning oral agreements demands that the time, the parties, and the manner of entry

FIRST NATIONAL

bank and trust co.

13 West Main St.
WAYNESBORO, PA. 17268
717-762-3161



TRUST SERVICES
COMPETENT AND COMPLETE

CITIZENS *National Bank*
OF AND TRUST COMPANY

WAYNESBORO, PENNSYLVANIA
17268

Telephone (717) 762-3121

THREE CONVENIENT LOCATIONS
POTOMAC SHOPPING CENTER — CENTER SQUARE
WAYNESBORO MALL

LEGAL NOTICES, cont.

NOTICE OF FILING OF ARTICLES OF INCORPORATION

NOTICE IS HEREBY GIVEN, that Articles of Incorporation have been filed with the Commonwealth of Pennsylvania Department of State at Harrisburg, Pa. on February 19, 1982, for the purpose of obtaining a Certificate of Incorporation.

The name of the proposed corporation, organized under the Commonwealth of Pennsylvania Business Corporation Law, Act of May 5, 1933 (P. L. 364), as amended, is G.V.O. FASHIONS, INC.

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.

D.L. Reichard, II, Esq.
134 W. Main Street
Waynesboro, Pa. 17268

3-12-82

ARTICLES OF INCORPORATION

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 22nd day of February, 1982, for the purpose of obtaining a Certificate of Incorporation of a proposed business corporation to be organized under the Business Corporation Law of the Commonwealth of Pennsylvania, approved May 5, 1933 and its amendments and supplements. The name of the proposed organization is SHADOW CARRIERS, INC.

The purpose for which it was organized are: The corporation shall have unlimited power to engage in and to do any lawful act concerning any or all lawful business for which the corporation may be incorporated under the Business Corporation Law, Act of May 5, 1933, P.L. 364, as amended.

Ullman, Painter & Misner
10 East Main Street
Waynesboro, Pa. 17268

3-12-82

IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT OF FRANKLIN COUNTY, PENNSYLVANIA ORPHANS' COURT DIVISION

The following list of Executors, Administrators and Guardian Accounts, Proposed Schedules of Distribution and Notice to Creditors and Reasons Why Distribution cannot be Proposed will be

LEGAL NOTICES, cont.

presented to the Court of Common Pleas of Franklin County, Pennsylvania, Orphans' Court Division for CONFIRMATION: April 1, 1982.

BIETSCH First and final account, statement of proposed distribution and notice to the creditors of Jean L. Bietsch, executrix of the estate of Julian C. Bietsch late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

BRICKER First and final account, state of proposed distribution and notice to the creditors of Eugene R. Bricker, Administrator c.t.a. of the estate of Norman B. Bricker late of Metal Township, Franklin County, Pennsylvania, deceased.

DELLING First and final account, statement of proposed distribution and notice to the creditors of Jack C. Hamaker executor of the estate of Wilter C. Delling late of Greene Township, Franklin County, Pennsylvania, deceased.

DIEHL First and final account, statement of proposed distribution and notice to the creditors of Betty P. Wingert executrix of the estate of Jessie K. Diehl late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

EGOLF First and final account, statement of proposed distribution and notice to the creditors of the Farmers & Merchants Trust Company executor of the estate of Wilma D. Egolf late of Fannett Township, Franklin County, Pennsylvania, deceased.

LENHARR First and final account, statement of proposed distribution and notice to the creditors of Betty L. Scott and Horace R. Scott executors of the estate of Margaret V. Lenharr late of Washington Township, Franklin County, Pennsylvania, deceased.

SPANGLER First and final account, statement of proposed distribution and notice to the creditors of Donald H. Long, administrator of the estate of Ola Pearl Spangler late of Greene Township, Franklin County, Pennsylvania, deceased.

SWARTZ First and final account, statement of proposed distribution and notice to the creditors of Harold Musey executor of the estate of Kathleen Swartz, late of the Borough of Waynesboro, Franklin County, Pennsylvania, deceased.

Glenn E. Shadle
Clerk of Orphans' Court of
Franklin County, Pa.

3-5-82, 3-12-82, 3-19-82, 3-26-82

into the oral agreement must be set forth. *Goodrich Amram*, Section 1019(a):6. Plaintiff's complaint contains only a bare statement in paragraph 5 that "the agreements were oral." No mention is made of what agreements this statement refers to, who was involved, when they were made or where. Defendants have no way of ascertaining what claims may be made against them as a result of such obvious omissions pertaining to the alleged oral agreements. The defendants' motions for more specific pleadings concerning these oral agreements are sustained.

The remaining preliminary objections, paragraphs 2 and 3 for defendant Christman and paragraphs 1, 3, 4 and 6 for defendant Hege, are all concerned with the lack of specificity of plaintiff's complaint concerning (1) dates work was performed by defendants; (2) the origin, location and cause of the fire for which plaintiff is attempting to hold defendants responsible; and (3) the good and safe construction practices within the construction industry which defendants allegedly failed to heed.

In *Cappo v. Trusio*, 32 Fayette L.J. 120 (1969), the court held a more specific complaint will be ordered where the complaint does not adequately inform the defendant of the issues he must meet. The lack of specifics noted by defendants demonstrates that plaintiff has indeed failed to plead the material facts necessary to enable the defendants to prepare and plead their defenses. A more specific complaint is required, for the defendants have not been adequately informed of the issues they must be prepared to meet.

Plaintiff contends that defendants, while entitled to the information sought, should be limited to discovery procedures in obtaining these facts. While discovery rules have become very expansive and encompassing, this does not excuse plaintiff from failing to provide the information required to set forth a cause of action in its complaint.

As stated by the Pennsylvania Superior Court in *Laursen v. General Hospital of Monroe County*, Pa. Super., 393 A. 2d 761 (1978):

"While Pennsylvania pleadings are no longer controlled by formalistic rules, it is still important that the complaint appraise a defendant of the nature and extent of the plaintiff's claim. . . Pleadings serve the function of defining issues and giving notice to the opposing party of what the pleader intends to prove at trial so that the opposition may, in turn, prepare to meet such proof with its own evidence."

Paragraphs 1, 3, 4 and 6 of defendant Hege's preliminary objections, and paragraphs 2 and 3 of defendant Christman's preliminary objections are hereby sustained.

ORDER OF COURT

NOW, this 22nd day of February, 1982, defendant Hege's preliminary objections 1, 2, 3, 4 and 6, and defendant Christman's preliminary objections 1, 2 and 3 are sustained. Defendant Hege's preliminary objections 5 and 7, and defendant Christman's preliminary objection 4 are rendered moot by plaintiff's withdrawal of paragraphs 9(g), 24(g) and the implied warranty of habitability.

Defendant is granted twenty (20) days from date to file an amended complaint conforming to the above Opinion.

Exceptions are granted the plaintiff.

COMMONWEALTH v. RUNK, C.P. Franklin County Branch,
No. 59 of 1981

Criminal Law - Possession of controlled substance - Search and Seizure - Pa. Game Officer

1. A State Game Enforcement Officer had no authority to search a vehicle after observing some litter near the vehicle.

MEMORANDUM AND ORDER

EPPINGER, P.J., February 3, 1982:

James Dale Runk, Jr., the defendant, was charged with possession of a controlled substance, a roach of marijuana. He has moved to suppress the evidence that was seized.

Runk's vehicle was in a parking lot on State Game Lands. A State Game Officer in civilian clothes noticed some litter near the car. He approached the car, worked the flashlight through it and saw a cooler inside. He found some alcoholic beverages inside the car and called the State Police, staying with the defendant until the latter arrived.

The game officer's interest in defendant's car was the

result of a litter problem in the parking lot. There was nothing in his evidence to establish that the two beer cans he saw near the defendant's car were put there by the defendant or anyone associated with him. No litter or game law violations were charged against the defendant.

When the police arrived they went through the car more thoroughly, found no more alcoholic beverages, but did look in an open ash tray while inside the car using a flashlight and saw a marijuana roach. On further investigation they found a hash pipe. When the search was conducted all of the occupants were required to get out of the car and the officer was looking for whatever he could find.

Defendant, testifying on his own behalf, said that he officer had to open the ash tray to see whether there was a roach in it or not because he always keeps it closed.

It really doesn't make any difference whether the ash tray was open or closed because the officers had no right to search the defendant's vehicle. The facts do not even suggest that there was probable cause to believe that the automobile contained any contraband. But beyond that, the game law enforcement officer had no authority at all to search the car. *Commonwealth v. Mayhugh*, 75 D&C 2d 552 (Somerset Co., 1976), and there was no suggestion that a search was necessary for the protection of the officers.

We therefore find that the search was improper and that the evidence must be suppressed.

ORDER

February 3, 1982, the evidence seized by the officers from the defendant's automobile and testimony relating to its discovery and existence are suppressed.