

## LEGAL NOTICES, cont.

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 presented to the Court of Common Pleas of Franklin County, Pennsylvania, Orphans' Court Division for CONFIRMATION: May 3, 1984.

DEARDORFF First and final account, statement of proposed distribution and notice to the creditors of Nancy D. Hughes and Barbara D. Kelly, executors of the estate of Mildred S. Deardorff, late of Quincy Township, Franklin County, Pennsylvania, deceased.

PHENICIE First and final account, statement of proposed distribution and notice to the creditors of Lois J. Mouse Phenicie Stoshitch, Kay D. Mouse Phenicie, executors of the estate of Joseph G. Phenicie late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

SMITH Second and final account, statement of proposed distribution and notice to the creditors of Nancy A. Wagner and C. Richard Smith, executors of the estate of Clarence H. Smith late of the Borough of Chambersburg, Franklin County, Pa. deceased.

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

4-13, 4-20, 4-27, 5-4

power at any time after the filing of the complaint to enter judgment if the right of the plaintiff thereto is clear. Such judgment shall not be entered prior to notice to all parties unless the exigency of the case requires it. So we find that the defendant was properly brought before the court. There is no question that this matter had to be decided before the pleading stage could be completed.

This opinion is filed in support of our order dated November 2, 1983.

## ORDER OF COURT

November 2, 1983, the decision of the Court is that the Franklin County Election Board is not required to reprint the Democratic party ballots in the Franklin County election districts in the Fannett-Metal School District to include the name of Nicholas Zervos as a candidate for school director. A written opinion will be filed promptly.

The costs shall be paid by the plaintiff.

SHAW ESTATE V. SLAYTON, C.P. Franklin County Branch,  
No. A.D. 1983 - 172

*Declaratory Judgment - Defeasible life estate - Mortgage payments - Vested Interest - Joinder of Indispensable Party*

1. Unless otherwise provided by will, a life tenant of property subject to encumbrances must pay the interest accruing during the continuance of his estate.
2. A remainderman with a vested interest is an indispensable party to an action to determine whether the life tenant or remainderman is responsible for payment of principal on a mortgage.
3. The absence of an indispensable party goes to the courts jurisdiction and the question should be raised sua sponte by the court.

*David C. Cleaver, Esquire, Attorney for Plaintiff*

OPINION AND ORDER

EPPINGER, P.J., November 7, 1983:

This is an action for a declaratory judgment brought to determine who should pay the principal and interest on a mortgage on property of the decedent, James M. Shaw, Jr. The plaintiff is Maryann Strait, the executrix of decedent's will, and the defendant is Patricia A. Slayton, who has a defeasible life estate. The condition in the decedent's will is that the life tenant must reside in the house as a sole, single adult. The will provides:

I give, devise, and bequeath a conditional life estate in my residential property and my personal property contained therein to Patricia A. Slayton conditioned upon her residing in my house as a sole, single adult. Upon her leaving the house to reside elsewhere, cohabiting in my house with another adult, or her marriage, whichever comes sooner, then the remainder of my interest in my house and personal property shall pass into the rest, residue and remainder of my estate.

The remainder of decedent's estate is to be distributed to his heirs per stirpes.

The case was argued upon the complaint and facts stipulated between the parties. There was no answer filed.

The question of who should pay the interest can be disposed of easily. The law is clear that "Unless otherwise provided, as by will provision, a life tenant of property subject to encumbrances must pay the interest accruing during the continuance of his estate." 14 P.L.E. 75, Estates in Property, Sect. 69. The only remaining question is who has the obligation to reduce the principal debt. There has not been any distribution of the estate, so the executor contends the issue is between the executor and the life tenant. But a decision at this point would also have at the minimum a precedential effect upon the remaindermen. If for no other reason than for the sake of judicial economy, we find that the remaindermen should have been joined in the case. Should we decide that the life tenant is excused from paying any principal, the remaindermen may attempt to relitigate the matter, since they are not parties to this case.

It seems clear from the will that theirs is a vested interest. In *In re Thorne's Estate*, 344 Pa. 503, 25 A.2d 811 (1942), our Supreme

Court said "if there is a present right to a future possession, though that right may be defeated by some future event, contingent or certain, there is nevertheless a vested estate. An unpossessed estate is vested, if it is certain to take effect in possession, by enduring longer than the precedent estate." *Id.*, at 517, 818. And under *Mains v. Fulton*, 423 Pa. 520, 523, 224 A.2d 195, 196 (1966), any party with an interest in a dispute must be joined as a party to the case. See also *Mohney Estate*, 416 Pa. 107, 204 A.2d 916 (1964); *Carlson v. Pa. General Insurance Co.*, 417 Pa. 356, 207 A.2d 759 (1965); *Bracken v. Duquesne Electric & Mfg. Co.*, 419 Pa., 493, 215 A.2d 623 (1966).

Since the remaindermen are indispensable to this action and neither plaintiff nor defendant has joined them as a party, we conclude that plaintiff should move for the compulsory joinder, of the remaindermen, pursuant to Pa. R.C.P. 2227(b). This is necessary because "the absence of an indispensable party goes absolutely to the court's jurisdiction and the issue should be raised sua sponte." *Tigue v. Basalyga*, 451 Pa. 436, 304 A.2d 119, 120 (1973); *Patwardhan v. Brabant*, 294 Pa. Super. 129, 439 A.2d 784 (1982).

ORDER OF COURT

November 7, 1983, the action for a declaratory judgment is denied because parties having an interest in the issue are not joined as parties plaintiff.

The plaintiff is ordered to move for the compulsory joinder of the holders of the remainder interests within twenty (20) days from this date unless the persons holding such interests voluntarily join in these proceedings.

LERIE V. LERIE, C.P. Fulton County Branch, No. 31 of 1982 - C

*Divorce - Equitable Distribution - Remand to Master*

1. A remand to a Master to reopen the record is entirely appropriate when material new evidence has been discovered, which could not have been discovered with reasonable diligence prior to the hearing.