held and the court requested that the parties provide briefs on two issues: (1) whether plaintiff may recover gross or net commissions for the relevant period and (2) whether plaintiff was defendant's exclusive agent under the contract. Both parties briefed the issues and the matter is now properly before the court.

Under Pennsylvania law, it is clear that, for a breach of contract resulting in a loss of commissions, the injured party is limited to recovering net profits. *Massachusetts Bonding & Ins. Co., v. Johnson & Harder,* 348 Pa. 512 (1943). The measure of damages is compensation for the loss sustained; plaintiff is to be put, as nearly as possible, in the same position he or she would have occupied if there had been no breach. *William B. Tanner Co. v. W100,* 528 F.2d 262 (3d Cir. 1975) (citing Pennsylvania precedent). To allow plaintiff recovery for gross commmissions, without taking into account expenses defendant would have incurred in earning the commissions, would be to violate the above maxims.

Plaintiff urges this court to adopt the reasoning of *The Pittsburgh Gauge Co., v. Ashton Valve Co.,* 184 Pa. 36 (1898) in their plea for gross commissions. The Pennsylvania Supreme Court in *Mass. Bonding,* supra, cited *Pittsburgh Gauge* yet stil concluded that the proper measure of damages for lost commissions is net profit. *See also, Hahn v. Andrews,* 182 Pa. 338 (1956) (plaintiff limited to recovering loss of value of bargain).

Next, plaintiff contends that it would be speculative to credit defendant for plaintiff's costs of doing business after termination of the agreement. Whatever difficulty this calculation entails, it is an element of damages that plaintiff must prove by a fair degree of certainty. *Aikens Indus., Inc. v. Estate of Wilson,* 477 Pa. 34 (1978). Accordingly, plaintiff shall be limited to recovering the loss of their net commissions, if any, that they suffered as a result of defendant's alleged breach.

The second issue to be addressed is whether, under the terms of their contract, plaintiff was to be defendant's exclusive agent. The relevant language of the agreement provided that plaintiff was to be defendant's exclusive agent. The relevant language of the agreement provided that plaintiff was to "handle the total solid fuel heating equipment marketing program" for defendant within "all states of the United States, except Virginia; Canada and the United Kingdom."

When there is no wording in the agreement capable of being construed to indicate the existence of an exclusive agency, then such a relationship will not be inferred. *Daharth Elec. Co. v. Suburgan Elec. Dev. Co.,* 332 Pa. 129 (1938). However, even if the agreement does not specify that there is a "sole and exclusive agency", such a relationship may exist if the effect of the contract is to put the responsibility of all of a party's sales into another's

hands. *Albright v. Kalbitzer,* 62 F.Supp. 815 (ED PA 1945). Though the wording "handle the total" marketing program is somewhat unclear, it could be construed as creating an exclusive agency. Because of this ambiguity, it cannot be said unequivocally that the parties did not contemplate the creation of an exclusive agency. agency.

When a material term of an agreement is ambiguous, parol evidence may be used to explain the ambiguity. That is, the surrounding circumstances and the course of dealing between the parties may be considered in establishing the terms of the agreement. *Keystone Floor Prod. Co. v. Beattie Mfg. Co.,* 432 F.Supp. 869 (ND I11 1977) (applying Pennsylvania law). As such, the parties may, at trial, introduce parol evidence to clarify the ambiguity as to whether plaintiff was granted an exclusive agency under its contract with defendant.

COMMONWEALTH v. BARRON, C.P. Franklin County Branch, No. 694 of 1986

Search and Seizure - Stop of Vehicle - Consent to Search

1. Where police stop a vehicle for speeding with the intent to issue defendant a warning, the stop is not impermissible.
2. A defendant need not be advised of his right to refuse to consent to a search of his vehicle.
3. Where the defendant orally and in writing agreed to let police look into his trunk, the search is legal.

Bradley R. Bolinger, Esquire, Attorney for Commonwealth
David S. Keller, Esquire, Counsel for the Defendant

OPINION AND ORDER

WALKER, J., May 5, 1987:

On November 23, 1986, Pennsylvania State Policeman Spataccino was on duty, patrolling Interstate 81. At about 11:30 a.m., Spataccino was parked in the median strip of I-81, using radar to check for speeding violations. When defendant, George Barron, came within radar range, he was clocked at 60 miles per hour in a

55 mile per hour zone. Spataccino pulled out onto the highway behind defendant, intending to issue defendant a warning notice.

After pulling defendant over, Spataccino checked defendant's Massachusetts driver's license and Florida Avis rental agreement for the car. The trooper spoke with defendant about defendant's business in Florida before asking if he could look in the trunk of defendant's car. Defendant said that he "didn't mind." Trooper Spataccino then asked defendant to sign a consent to search form which the defendant did.

When Spataccino opened the trunk of the car, he smelled marijuana and saw six duffel bags with marijuana seeds and residue on the floor of the trunk. The bags were taken to the police barracks where they tested positive for marijuana. Defendant was arrested for possession with intent to deliver a controlled substance. He now moves to suppress the evidence on the basis that it was the product of an illegal search.

A hearing was held in March of 1987, and testimony was taken. This court must now decide if Trooper Spataccino's actions constituted an unreasonable search.

Defendant first argues that the trooper performed an impermissible stop. The trooper observed defendant travelling 60 m.p.h. in a 55 m.p.h. zone, and he stopped defendant to issue him a warning, a practice that was upheld by the Superior Court in *Commonwealth v. Fisher,* 294 Pa.S. 486 (1982). Nonetheless, defendant insists that, under the facts, the stop was selective, random and discriminatory. There is nothing on the record to indicate that Trooper Spataccino singled out defendant for harassment, nor is there evidence that he had any conceivable reason for doing so. As such, the court refects defendant's boilerplate arguments of due process and equal protection.

Next, defendant claims that the trooper had no reason to ask defendant's consent to search the trunk of the car. Defendant cites no authority for the novel proposition that an officer must have some level of suspicion to ask for consent to search. Simply put, defendant orally, and in writing, agreed to let the trooper look in the trunk. Furthermore, a defendant need not be advised *of his right to refuse to consent to a search. United States ex rel. v. Hendricks,* 423 F.2d 1096 (CA PA 1970).

This court finds that the Commonwealth has proven that the search of the trunk of defendant's car was, in every respect, legal.

LEGAL NOTICES

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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: October 1, 1987.

BRICKER: First and final account, statement of proposed distribution and notice to the creditors of Helen M. Gearhart, Executrix of the Estate of Clarence E. Bricker, late of Montgomery Township, Franklin County, Pennsylvania, deceased.

CARL: First and final account, statement of proposed distribution and notice to the creditors of Mark P. Carl and Janet Carl Ritter, Executors under the Last Will and Testament of Hobert M. Carl, a/k/a H. M. Carl, late of Guilford Township, Franklin County, Pennsylvania, deceased.

KANE: First and final account, statement of proposed distribution and notice to the creditors of Harry B. Stouffer, Sr., Executor of the Estate of Levi L. Kane, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

MCLAUGHLIN: First and final account, statement of proposed distribution and notice to the creditors of Susan F. Peiffer and Millard A. Ullman, Executors of the Estate of Thelma E. McLaughlin, late of Washington Township, Franklin County, Pennsylvania, deceased.

MORROW: First and final account, statement of proposed distribution and notice to the creditors of I. Jean Welliver, Executrix under the Will of the Estate of Reba S. Morrow, late of Lurgan Township, Franklin County, Pennsylvania, deceased.

SHADE: First and final account, statement of proposed distribution and notice to the creditors of Unitas National Bank, Guardian of Denise Snow Shade, a Minor.

STEVENS: First and final account, statement of proposed distribution and notice to the creditors of Harry E. Smith, III, Executor of the Estate of Alverna M. Stevens, late of Quincy Township, Franklin County, Pennsylvania, deceased.

TOLBERT: First and final account, statement of proposed distribution and notice to the creditors of Dick Tolbert and Kenneth Tolbert, Surviving Executors of the Estate of Clarence J. Tolbert, late of Fayetteville, Pennsylvania, deceased.

Robert J. Woods
Clerk, Orhpans' Court

9/4, 9/11, 9/18, 9/25

LEGAL NOTICES, cont.

used the driveway as access to the back of what is now plaintiffs' land. Plaintiffs' deed does not include the whole driveway in its description. For the past couple of decades, defendant has made very little use of the driveway; a fire truck had parked in the driveway a few times to pump out her basement; a fuel truck parks in the driveway every couple of weeks during the winter months to deliver fuel; and defendant occasionally walks along the edge of the driveway.

Plaintiffs now assert that they have acquired ownership of the entire driveway through adverse possession. Both sides filed cross-motions for summary judgment and submitted briefs support thereof. The matter is now properly before this court.

In order to claim title by adverse possession, one must have had actual, continuous, exclusive, notorious, distinct and hostile use of the property for a period of twenty-one years. *Schogel v. Lombardi,* 337 Pa. Super. 83 (1984). Here, plaintiffs themselves have only had use of the land for one year. As such, they can only satisfy the twenty-one year prescriptive period if they can "tack" the periods of their predecessors' use.

Tacking to the possession of predecessors is permitted when the possessions are continuous, each predecessor has claimed title to the property and the transfer to his or her successor purports to include the disputed property. *Inn Le'Daerda, Inc. v. Davis,* 241 Pa. Super. 150 (1976). Also, when a grantor has claimed adverse possession to a tract of land and a subsequent deed to a grantee specifically excludes that tract, the grantee is precluded from asserting a continuing claim of adverse possession since the grantee is not in privity with the grantor. *Steese v. Bettleyon,* 32 D & C3d 630 (1984). Here, plaintiffs' deed specifically excludes the tract in question, therefore, they cannot tack their predecessors' use. Since plaintiffs have not fulfilled the twenty-one year period for adverse possession, their claim must fail.

Both parties have conceded, however, that the property constitutes a common driveway. The court shall enter an order incorporating stipulation by counsel that the property is a common driveway and that neither party may block its use as such.

ORDER OF COURT

May 15, 1987, the plaintiffs' claim for adverse possession of the driveway is denied.

The court finds from a review of the evidence that the land in question is, in fact, a common driveway. The court grants both parties the right to use the driveway and prohibits either party from closing or blocking the other party's use of the driveway.

STOUFFER v. STOUFFER, C.P. Franklin County Branch, F.R. 1986-832S

Support - Spouse - Grandchild - In Loco Parentis

1. When a wife voluntarily leaves her husband the burden is upon her to establish justification for leaving or that the husband consented to the separation.
2. Following a nonconsensual, voluntary withdrawal of wife from the marital home it is not necessary for the wife to present grounds for leaving her husband which would entitle her to divorce, only that she had reasonable cause.
3. The status of "in loco parentis" embodies the assumption of parental status and the discharge of parental duties.
4. Where defendant stepped into the position of primary caretaker immediately following the birth of a child and entered into a custody agreement with the natural parents, the defendant is liable for support.

Sally J. Winder, Esquire, Counsel for Plaintiff
Bradley R. Bolinger, Esquire, Counsel for Defendant

OPINION AND ORDER

KELLER, P.J. May 28, 1987:

Helen E. Stouffer filed a complaint for support against Donald E. Stouffer for the support of herself and the child, Amy L. Stouffer. An order of court was entered on November 26, 1986 ordering the parties to appear for a conference before a Domestic Relations Hearing Officer on December 23, 1986. On December 29, 1986, the hearing officer entered an order continuing the case because it appeared that the parties resided in the same household and the defendant was providing adequate support and maintenance. On January 21, 1987 an order of court was entered rescheduled the office conference on February 11, 1987. An order following the office conference was entered on February 17, 1987 requiring the defendant to pay support in the amount of $116.00.