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real estate REPORT

Pennsylvania Supreme Court Ups the Ante on Violators of Pennsylvania's UTPCPL

By Thomas O. Williams, Esquire



Back in 1968 the Pennsylvania legislature passed legislation with the title of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTPCPL). This law, like similar laws passed in other states, was part of a wave across the nation aimed at changing the relationship between vendors and consumers from one of caveat emptor to one of caveat vendor. Since then, our courts in Pennsylvania have vindicated consumers rights in moving beyond the days of the buyer beware marketplace. (The UTPCPL is found at 73 Pa. C.S.A. §201-2, et seq.)

The UTPCPL protects consumers from many specific types of unfair methods of competition and unfair or deceptive acts or practices which cause a likelihood of confusion or misunderstanding as to the characteristics, ingredients, uses, benefits or quantities created by those who communicate with the consumer. The statute applies to purchases that are primarily for personal, family or household use or purposes. Over the years the statute has been applied to purchasers of homes, investments, insurance and other personal services.

Within the statute, there is a section which is commonly referred to as the "catchall provision" which is often asserted by attorneys on behalf of their consumer clients when the alleged

(continued on page 3)

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In This Issue

- 1, 3-4.....Featured Article
- 2-7.....Featured Listings
- 8.....Recent Deals



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*Autumn Addley, front right, is not a licensed REALTOR.

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Industrial Listings



10,125 SF

Lease - 5610 Derry Street, Harrisburg

- Ideal industrial location in Harrisburg with accessibility to I-83 and other highly traveled corridors
- Warehouse space contains one dock, one drive-in, and 18'+ clear ceiling height
- Good space for contractors, small distribution and storage



Sale - 140 - 148 Ole Lane, Grantville

- This nearly 1,400 SF industrial building sits on over 2 acres of paved parking
- Perfect for a trucking company or industrial user needing quick access to I-81
- Parking availability for 60+/- cars and trailers

Commercial Listings



30,112 SF

Sale - 25 & 33 Carlisle Street, Hanover

- 30,112 SF stunning landmark in the Borough of Hanover
- This former bank building was beautifully constructed with great attention to detail and has been well-maintained
- The adjacent (and connecting) office building is also included in the sale



5,918 SF

Lease - 415 Market Street, Harrisburg

- First floor space available in the Harrisburg Transportation Center in downtown Harrisburg
- Within walking distance to all the downtown restaurants, amenities, and Riverfront Park



1,600 - 8,000 SF

Lease - 611 N. 12th Street, Lebanon

- Join Save-A-Lot grocery store in this newly constructed shopping center located in Lebanon City
- Tenants can acquire one suite (25' x 64') or all five up to 8,000+/- SF for retail or office use
- The vanilla shell is ready for your finishing touches

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(Featured article...Continued from page 1)

prohibited activity or communication does not fit precisely within one of the other enumerated prohibitions. It is this catchall provision (found at subsection 201-2(4) (xxi)), which was the subject of a recent decision by the Pennsylvania Supreme Court. When the statute was first enacted back in 1968, this so-called catchall provision made it unlawful to engage in "any other fraudulent conduct which creates a likelihood of confusion or of misunderstanding." The appellate Pennsylvania courts have interpreted this original language as requiring proof of common law fraud. Said another way, the courts required that in order to be actionable under the catchall provision, the "confusion" or "misunderstanding" created must be fraudulent. Under that interpretation, a plaintiff consumer was required to prove the elements of common law fraud in order to recover under the

When the statute was first enacted back in 1968, this so-called catchall provision made it unlawful to engage in "any other fraudulent conduct which creates a likelihood of confusion or of misunderstanding."

UTPCPL's catchall provision because, the courts said, that section prohibited only fraudulent conduct. Common law fraud required the plaintiff to prove the actor's state of mind and that the defendant acted intentionally.

Following many years of court decisions applying the fraud requirement for claims under the catchall provision of the UTPCPL, the Pennsylvania legislature, apparently not satisfied with a restrictive interpretation of the catchall provision, saw fit to amend the statute, and in particular the wording of the catchall provision. The amendment, enacted in 1996, fundamentally changed the language of the catchall provision which language now prohibits "engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding."

The Pennsylvania Supreme Court in the case of Gregg v. Ameriprise Financial, Inc. in its February 2021 decision opined that the legislature in inserting the word "deceptive" to describe the type of conduct prohibited by the catchall provision of the UTPCPL relieved a plaintiff consumer from proving fraudulent conduct, or even intent on the part of the defendant. In this case, the Plaintiffs brought suit against Ameriprise claiming that Ameriprise's representative's advice regarding the rolling over of their IRA's, liquidating current Life Insurance policies and the purchase of new Life Insurance policies from an affiliated company from which Ameriprise would receive commissions was deceptive. The Greggs had argued that they reasonably believed that they would not incur any additional expenses in following Ameriprise's representative's advice when ultimately they did.

The Pennsylvania Supreme Court in Gregg cited to a U.S. Supreme Court decision interpreting the similar use of the word "deceptive" in the Federal Trade Commission Act and the Lanham Act. The Pennsylvania Supreme Court, following the analysis of the United States Supreme Court in the case of FTC v. Algoma Lumber Company in deciding that "deceptive" conduct in the context of consumer protection is conduct that

(continued on page 4)

Office Listings



Sale - 28 E. Main Street, New Kingstown

- 11,505+/- SF of flex space in Silver Spring Township with General Industrial Zoning
- Property had many uses over the years - Harley Davidson bike shop, Tae Kwon Do school, offices and storage
- Many options on this 1.77+/- acre site
- Income producing tenant occupying 70% of the space



Lease - 156 Cumberland Parkway, Suite 200, Mechanicsburg

- First floor office space available in this Class A, high-profile building
- The location offers easy access to Route 15 and the PA Turnpike (I-76), plus great local amenities
- It is hereby disclosed that a partner in the ownership of this property is a licensed real estate salesperson in the Commonwealth of Pennsylvania



Lease - 30 E. Shady Lane, Enola

- Medical/professional office suite available at fiercely competitive rate in a convenient location
- Property has recently been renovated and is well-maintained
- Current tenant has out-grown the space and has vacated

(Continued from page 3)

has the "capacity to deceive." The Pennsylvania Supreme Court decided that it is the capacity to deceive, rather than the actor's state of mind, which renders conduct actionable under the amended catchall provision of the UTPCPL.

The Gregg decision represents a major shift in favor of consumers substantially lowering the burden of proof in an action brought under the catchall provision. The Pennsylvania Supreme Court stated that it is the vendor, not the consumer, who is charged with complying with the UTPCPL, as it is the vendor who is in a better position to determine whether the representations made might be deceptive.

This decision places vendors on notice that there will be a strict liability standard applied in cases alleging violations of the catchall provision and that no longer will consumers have to prove that a vendor had bad intent or a particular state of mind. In the wake of the Pennsylvania Supreme Court's decision in Gregg, vendors of every kind who market or sell products or services to consumers would be wise to revisit all marketing communication and to initiate training of new and existing employees to make certain that the communication they have with customers and potential customers is not potentially deceptive or confusing. ■

About the Author:

Tom Williams, a shareholder in Reager & Adler, is the longest-tenured attorney in the firm after the founders, Dave Reager and Ted Adler. Tom began his career with Reager & Adler in 1993 in the Litigation and Construction Law practice areas. Tom is the lead attorney in the Debt Recovery practice area.



Prior to embarking on his legal career with Reager & Adler, Tom served in the United States Army performing with the "President's Own" Old Guard Fife and Drum Corps.

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2,555 SF

Lease - 2008 - 2010 Market Street, Camp Hill

- Prime office/commercial space in the heart of Camp Hill Borough
- This updated, clean space has direct frontage on Market Street and is within walking distance to local restaurants and retail
- Renovations to the space included opening the floorplan, adding stylish lighting and kitchen appliances, updating the restroom fixtures, HVAC and roof

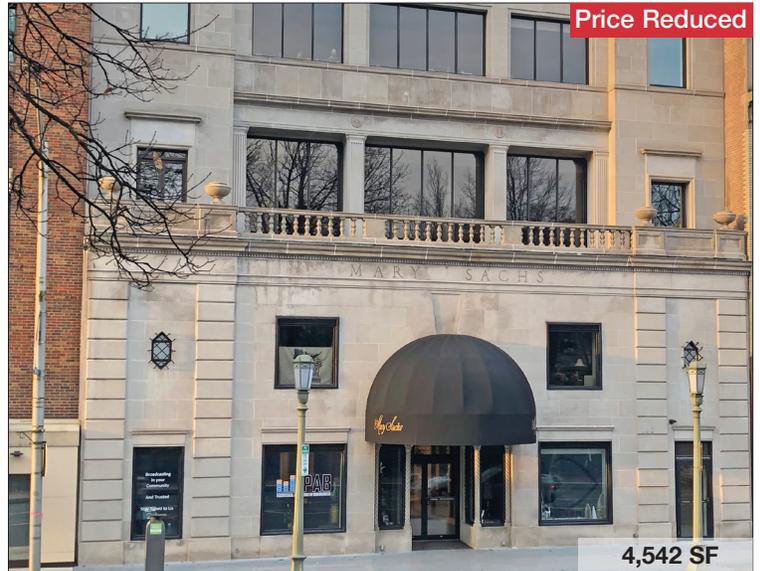
Office Listings



10,720 SF

Lease - 1801 Oberlin Road, Middletown

- Charming three-story stone structure with professional office tenants
- Convenient access to both Harrisburg and Lancaster
- Easy access to Harrisburg International Airport (HIA)



Price Reduced

4,542 SF

Lease - 208 N. Third Street, Harrisburg

- Office space in a prime central business district location
- Historic building faces the Capitol Complex with great window lines
- Downtown amenities are just a few steps away and parking is a block in every direction



4,320 SF

Sale - 235 N. Enola Road, Enola

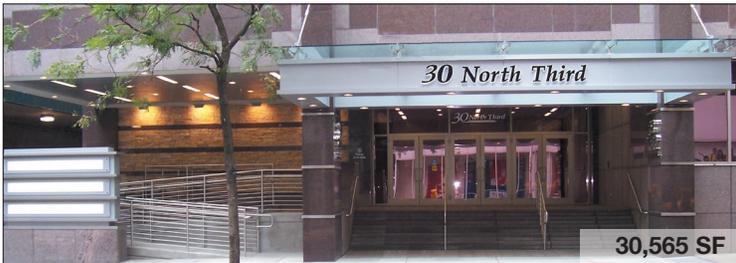
- Former branch bank on corner parcel along N. Enola Road
- Good parking, visibility and flexible floorplan allow for many redevelopment opportunities
- Two drive-thru lanes and one ATM lane with 980 SF canopy



4,186 SF

Sale - 2120 Fisher Road, Mechanicsburg

- Unique office building for sale with easy access to Route 15 & PA Turnpike
- Space is functional with many windows and skylights throughout so that every space gets natural light
- The large landscaped lot creates a nice setting
- Main floor has credit tenant until September 2023



30,565 SF

Lease - 30 N. Third Street, Harrisburg

- 1,449 - 19,665 SF contiguous available in Class A office building
- Skywalk to Strawberry Square, Walnut Street Garage, Harrisburg Hilton, Whitaker Center, etc.
- This building is Energy Star Certified and utilizes the latest energy management systems for optimal energy efficiency



3,500 SF

Lease - 930 Century Drive, Suite 102, Mechanicsburg

- Attractive office suite in recently renovated building
- The inside features carpet tiles, neutral colors and an open area allowing for various future configurations
- Good parking and easily accessible from Route 15



Price Reduced

1,500 SF

Lease - 3507 Market Street, Suite 102, Camp Hill

- Located within the heart of the West Shore, this aesthetically pleasing building has one suite available for lease
- The property is centralized on Camp Hill's main travel artery and is close to many restaurants and businesses
- 45 Parking spaces available



486 - 10,918 SF

Lease - 301 Chestnut Street, Harrisburg

- Located at Pennsylvania Place, this is a one-of-a-kind development for the Harrisburg market that includes over 50,000 SF of Class A office space in the City's thriving downtown district
- The building offers an ultimate level of visibility, functionality and sophistication
- On-site parking, workout facility, a swimming pool and high-end finishes embody the urban luxury of this high-rise mixed-use building
- Call for FREE RENT details!

Office Listings



18,617 SF

Lease - 1665 Roosevelt Avenue, York

- Join OSS Health at their brand new location on Roosevelt Avenue, just off Route 30 and moments from I-83
- Approximately 14,438 USF available on the second floor with stunning views of York County
- Excellent opportunity for tenant to help design and customize their new facility to meet their unique space needs



Price Reduced

1,330 SF

Lease - 300 N. 2nd Street, Suite 704, Harrisburg

- Seventh floor (sublease) office space available in this downtown high-rise with excellent access to Harrisburg amenities
- The building boasts a marble and glass entranceway
- The suite has a waiting area, large conference room, private office, a storage area, kitchenette, and all furniture is included in the rent



3,956 SF

Lease - 1029 Mumma Road, 2nd Floor, Lemoyne

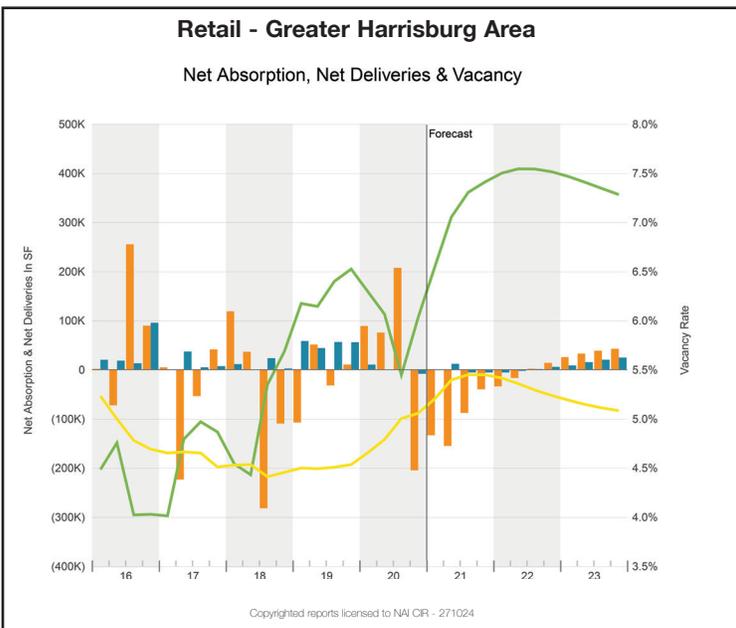
- Attractive office building with 2nd floor space available
- Property has been well-maintained, features modern upgrades and has ample on-site parking
- Convenient location along the West Shore business corridor with quick access to all major business hubs on both East and West Shores



2,875 SF

Sublease - 3 Kennedy Street, Lancaster

- This 2,875 SF former bank has modern features and an intelligent layout for a variety of users
- The design includes 3 drive-thru lanes (1 ATM), 4 private offices, conference room, and a break room
- Located just minutes from the Route 30 interchange at Greenfield and Old Philadelphia Pike and Route 222



2,600 SF

Lease - 4300 Devonshire Road, Harrisburg

- Great corner location at Devonshire and Colonial Roads
- The property is well-maintained
- The available space offers a reception/waiting area, offices, and an open area that can be utilized in many configurations and private restrooms

Featured Land



Lease - 940 E. Main Street, Palmyra

- A high profile and convenient location along E. Main Street (Route 422)
- Several opportunities for retail development
- Pad site is approved for a building size around 2,487+/- SF



Lease - 1700 Quentin Road, Lebanon

- Pad site for lease along Quentin Road in Lebanon next to Mavis Discount Tire
- Strong retail area with big box stores such as Lowe's Home Improvement, Staples, JOANN Fabrics and Crafts, Tractor Supply Company, Giant Food Stores, CVS and more
- Site is approved for a 5,952+/- SF building

Land Listings

Location	Acres (+/-)	Zoning	Type
940 E. Main Street, Palmyra, Lebanon County	TBD	Highway Commercial	Lease
1700 Quentin Road, Lebanon, Lebanon County	TBD	General Commercial	Lease
Kim Acres Drive & Aspen Drive, Mechanicsburg, Cumberland County	1.03	Highway Commercial	Sale
370 W. Main Street, Leola, Lancaster County	1.3 - 2.8	General Commercial	Sale/Lease
1301 Eisenhower Boulevard, Harrisburg, Dauphin County	1.77	ML-Light Industrial	Sale
453 Jonestown Road, Jonestown, Union Township	2.05	Commercial	Sale
Pending - 7700 Derry Street, Harrisburg, Dauphin County	2.12 (lot 4)	Commercial District General	Sale
I-81 and W. Trindle Road, Carlisle, Cumberland County	2.18 (2 parcels)	Commercial Highway	Sale
1345 Eisenhower Boulevard, Harrisburg, Dauphin County	4.46	ML-Light Industrial	Sale
Kriner Road, Chambersburg, Franklin County	4.64	Commercial Industrial	Sale
755-759 Kriner Road, Chambersburg, Franklin County	4.73 - 7.83	Commercial Industrial	Sale/Lease
W. Suncrest Drive and Spring Road, Carlisle, Cumberland County	4.87 (4 parcels)	Commercial/Light Industrial	Sale
Pending - Peters Mountain Road & River Road, Halifax, Dauphin County	5.1	None	Sale
700 S. Baltimore Street, Dillsburg, York County	5.23 - 57.5	Agricultural - Conservation	Sale
Cherry Street (Lot #9) & Walnut Street, Highspire, Dauphin County	7.77	Residential Low Density	Sale
Route 441 and Orchard Drive, Harrisburg, Dauphin County	8.34	Single Family Residential District	Sale
730 Limekiln Road, New Cumberland, York County	8.64	Commercial Business	Sale
Carlisle Pike (Route 11) Waterford Square, Mechanicsburg, Cumberland County	8.78 (8 lots)	Community Commercial	Sale
Hanshue Road, Tract 2, Hummelstown, Dauphin County	9.42	Residential Agriculture	Sale
Eisenhower Blvd & Highspire Road, Harrisburg, Dauphin County	10.0	Commercial District General	Sale
Allentown Boulevard, Harrisburg, Dauphin County	17.2	Commercial Highway	Sale

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Visit www.billgladstone.com to view listings and deals not included in this issue.



LEASED - 147 W. Airport Road, Lititz

Legacy Law PPLC leased 3,878 +/- SF of office space in Lititz. The space will be used for Legacy Law offices. The Bill Gladstone Group of NAI CIR handled the transaction. For more information about Legacy Law, visit their website www.legacylawadvisors.com.



SOLD - 325 W. Allen Street, Mechanicsburg

M and G LLC purchased a 11,658 +/- SF industrial building located in Mechanicsburg. This building will be used for storage and other as of yet undisclosed uses. The Bill Gladstone Group represented the Seller and Stephen Shemler of Coldwell Banker Residential Brokerage represented the Buyer.



SOLD - 1002 N. 7th Street, Harrisburg

The City of Harrisburg bought 8,286 +/- SF of office space in Harrisburg. 1002 N. 7th Street was formally a M&T branch banking facility with office space on the second floor. This space will be utilized by the City's Public Works Department. The Bill Gladstone Group of NAI CIR handled the transaction.