

FEDERMAN AND PHELAN
By: FRANK FEDERMAN, ESQUIRE
IDENTIFICATION NO. 12248
TWO PENN CENTER PLAZA, SUITE 900
PHILADELPHIA, PA 19102
(215) 563-7000

ATTORNEY FOR PLAINTIFF

COURT OF COMMON PLEAS
CIVIL DIVISION

KEYSTONE FINANCIAL
MORTGAGE CORPORATION
2270 ERIN COURT
P.O. BOX 7748
LANCASTER, PA 17604-7748

Plaintiff

v.

TERM

NO. 00-615-CO

ROBERT NESMITH, JR.
HEIR OF ROBERT L. NESMITH, DECEASED
421 PARK ROAD
HOWARD, PA 16841

CLEARFIELD COUNTY

KATHY NESMITH,
HEIR OF ROBERT L. NESMITH, DECEASED
1515 FORREST NELSON, #103
PORT CHARLOTTE, FL 33952

FILED

MAY 24 2000

Defendant(s)

William A. Shaw
Prothonotary

CIVIL ACTION - LAW
MORTGAGE FORECLOSURE

NOTICE

**THIS FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU HAVE PREVIOUSLY RECEIVED A DISCHARGE IN BANKRUPTCY AND THIS DEBT WAS NOT REAFFIRMED, THIS CORRESPONDENCE IS NOT AND SHOULD NOT BE CONSTRUED TO BE AN ATTEMPT TO COLLECT A DEBT, BUT ONLY ENFORCEMENT OF A LIEN AGAINST PROPERTY. **

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

CLEARFIELD COUNTY
DAVID S. MEHOLICK, COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PA 16830
(814) 765-2641

1. Plaintiff is

KEYSTONE FINANCIAL
MORTGAGE CORPORATION
2270 ERIN COURT
P.O. BOX 7748
LANCASTER, PA 17604-7748

2. The name(s) and last known address(es) of the Defendant(s) are:

ROBERT NESMITH, JR.,
HEIR OF ROBERT L. NESMITH, DECEASED
421 PARK ROAD
HOWARD, PA 16841

KATHY NESMITH,
HEIR OF ROBERT L. NESMITH, DECEASED
1515 FORREST NELSON, #103
PORT CHARLOTTE, FL 33952

who is/are the real owner(s) of the property hereinafter described.

3. On 5/13/99 mortgagor(s) made, executed and delivered a mortgage upon the premises hereinafter described to PLAINTIFF which mortgage is recorded in the Office of the Recorder of CLEARFIELD County, in Mortgage Instrument No. 199907639.
4. The premises subject to said mortgage is described as attached.
5. The mortgage is in default because monthly payments of principal and interest upon said mortgage due 1/13/00 and each month thereafter are due and unpaid, and by the terms of said mortgage, upon failure of mortgagor to make such payments after a date specified by written notice sent to Mortgagor, the entire principal balance and all interest due thereon are collectible forthwith.

6. The following amounts are due on the mortgage:

Principal Balance	\$31,490.84
Interest	966.00
12/13/99 through 5/1/00	
(Per Diem \$6.90)	
Attorney's Fees	800.00
Cumulative Late Charges	0.00
5/13/99 to 5/1/00	
Cost of Suit and Title Search	550.00
Subtotal	<u>33,806.84</u>
Escrow	
Credit	330.22
Deficit	0.00
Subtotal	<u>330.22</u>
TOTAL	\$33,476.62

7. The attorney's fees set forth above are in conformity with the Mortgage documents and Pennsylvania Law, and will be collected in the event of a third party purchaser at Sheriff's Sale. If the Mortgage is reinstated prior to the Sale, reasonable attorney's fees will be charged.

8. Notice of Intention to Foreclose pursuant to Act 6 of 1974 is not required because the defendant(s) are not a "Residential Mortgage Debtor" as defined by the Act, having failed to provide Plaintiff notice of its acquisition of title.

9. This action does not come under Act 91 of 1983 because the mortgaged premises is not owner occupied.

10. Mortgagor, Robert L. Nesmith, died on 12/8/99, and upon information and belief, his surviving heir(s) are Robert Nesmith, Jr. and Kathy Nesmith.

11. After diligent investigation, Plaintiff was unable to determine whether an Estate has been raised on behalf of the decedent mortgagor.

12. Plaintiff hereby releases Robert L. Nesmith, his unknown heirs, successors, assigns and all persons, firms, or associations claiming right, title or interest from or under the decedent mortgagor from liability for the debt secured by the mortgage.

WHEREFORE, PLAINTIFF demands an in rem Judgment against the Defendant(s) in the sum of \$33,476.62, together with interest from 5/1/00 at the rate of \$6.90 per diem to the date of Judgment, and other costs and charges collectible under the mortgage and for the foreclosure and sale of the mortgaged property.



s/ Frank Federman
FRANK FEDERMAN, ESQUIRE
Attorney for Plaintiff

LEGAL DESCRIPTION - EXHIBIT 'A'

ALL that certain piece or parcel of real estate situate in Penn Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a 3/4 inch rebar set on the westerly line of Sunny Construction Inc. With said 3/4 inch rebar being the northeastern corner of the parcel herein conveyed; thence along the westerly line of Sunny Construction, Inc., South 25 degrees 29 minutes 43 seconds West 100.68 feet to a 3/4 inch rebar set; thence through lands now or formerly of Nicholson North 64 degrees 30 minutes 17 seconds West 196.53 feet to a 3/4 inch rebar set in the centerline of an old railroad grade, with said line passing through a 3/4 inch rebar set 15.50 feet back from said centerline; thence continuing through lands now or formerly of Nicholson by an arc of a circle curving to the right 484.27 feet in radius, an arc distance of 110.00 feet, the chord being North 2 degrees 01 minutes 24 seconds East 109.76 feet to a 3/4 inch rebar set; thence continuing through lands now or formerly of Nicholson South 64 degrees 30 minutes 17 seconds East 240.25 feet to a 3/4 inch rebar set and place of beginning with said line passing through a 3/4 inch rebar set 26.92 feet from the centerline of the old railroad grade. *CONTAINING 0.505 acres.*

BEING the same premises as was conveyed to Robert Nesmith by Deed of Sharon Fiegel and Robert J. Fiegel, her husband, dated May 8, 1999 and entered for record in the Recorder's Office of Clearfield County, Pennsylvania to Instrument No. 199901632.

Document
Plaintiff's Exhibit or Settlement Agreement
for Defense.

Default Verification

VERIFICATION

Rebecca Boston hereby states that she is a Default Officer of Keystone Financial Mortgage Corporation mortgage servicing agent for Plaintiff in this matter, that he/she is authorized to take this Verification, and that the statements made in the foregoing Civil Action in Mortgage Foreclosure are true and correct to the best of his/her knowledge, information and belief. The undersigned understands that this statement is made subject to the penalties of 18 Pa. C.S. Sec. 4904 relating to unsworn falsification to authorities.

Rebecca Boston

DATE: 5/17/00

RECEIVED
5/17/00
SHERIFF
STATE OF PENNSYLVANIA
DEPARTMENT OF STATE
RECEIVED
5/17/00
SHERIFF
STATE OF PENNSYLVANIA
DEPARTMENT OF STATE

07 Aug. 00 Document
Reinstated/Reinstated to Sheriff/Attorney
for service.

Deputy Probationary Officer

FILED

5/2/2000

Attn: Faderman PD \$80.00

William A. Shaw

Probationary

3cc Sheriff

FRANK FEDERMAN

(2)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KEYSTONE FINANCIAL MORTGAGE
VS
NESMITH, ROBERT JR.

00-615-CD

COMPLAINT IN MORTGAGE FORECLOSURE
SHERIFF RETURNS

NOW JUNE 12, 2000 DENNY NAU, SHERIFF OF CENTRE COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE ON ROBERT NESMITH JR., DEFENDANT.

NOW JUNE 20, 2000 SERVED THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE ON ROBERT NESMITH JR., DEFENDANT BY DEPUTIZING THE SHERIFF OF CENTRE COUNTY. THE RETURN OF SHERIFF NAU IS HERETO ATTACHED AND MADE A PART OF THIS RETURN.

NOW JUNE 28, 2000 AFTER DILIGENT SEARCH IN MY BAILIWICK I RETURN THE WITHIN COMPLAINT IN MORTGAGE FORECLOSURE "NOT FOUND" AS TO ROBERT NESMITH, JR., AND KATHY NESMITH, HEIRS OF ROBERT L. NESMITH, DECEASED. ACCORDING TO POST OFFICE MOVED AND LEFT NO FORWARDING ADDRESS.

44.12 SHFF. HAWKINS PAID BY: ATTY.
35.50 SHFF. NAU PAID BY: ATTY.
30.00 SURCHARGE PAID BY: ATTY.

SWORN TO BEFORE ME THIS

30th / June 2000


WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co., Clearfield, PA.

SO ANSWERS,
Chester A. Hawkins
by Marilyn Harr
CHESTER A. HAWKINS
SHERIFF

FILED

JUN 30 2000
O/ 2:30 PM
William A. Shaw
Prothonotary *Free*

SHERIFF'S OFFICE

CENTRE COUNTY

Rm 101 Court House, Bellefonte, Pennsylvania, 16823 (814) 355-6803

SHERIFF SERVICE PROCESS RECEIPT, AND AFFIDAVIT OF RETURN

INSTRUCTIONS FOR SERVICE OF PROCESS: You must file one instruction sheet for each defendant. Please type or print legibly. Do not detach any copies.

1. Plaintiff(s)

Keystone Financial Mortgage Corp.

2. Case Number

00-615-CD

3. Defendant(s)

Robert Nesmith Jr.

4. Type of Writ or Complaint:

Complaint Mort. Foreclosure

SERVE

→
AT

5. Name of Individual, Company, Corporation, Etc., to Serve or Description of Property to be Levied, Attached or Sold.

Robert Nesmith Jr.

6. Address (Street or RFD, Apartment No., City, Boro, Twp., State and Zip Code)

421 Park Rd Howard, PA

7. Indicate unusual service: Reg Mail Certified Mail Deputize Post Other

Now, 20 I SHERIFF OF CENTRE COUNTY, PA., do hereby depose the Sheriff of Centre County to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff.

Sheriff of Centre County

8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE

NOTE ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN – Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomsoever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction or removal of any such property before sheriff's sale thereof.

9. Print/Type Name and Address of Attorney/Originator

10. Telephone Number

11. Date

12. Signature

SPACE BELOW FOR USE OF SHERIFF ONLY - DO NOT WRITE BELOW THIS LINE

13. I acknowledge receipt of the writ or complaint as indicated above. } SIGNATURE of Authorized CCSD Deputy of Clerk and Title } 14. Date Filed } 15. Expiration/Hearing Date }

TO BE COMPLETED BY SHERIFF

16. Served and made known to Robert Nesmith Jr., on the 20 day of June,

20 00, at 1215 o'clock, P m., at Centre Co. Courthouse, County of Centre Bellefonte

Commonwealth of Pennsylvania, in the manner described below:

Defendant(s) personally served.

- Adult family member with whom said Defendant(s) resides(s). Relationship is _____
- Adult in charge of Defendant's residence.
- Manager/Clerk of place of lodging in which Defendant(s) resides(s).
- Agent or person in charge of Defendant's office or usual place of business.
- _____ and officer of said Defendant company.
- Other _____

On the _____ day of _____, 20____, at _____ o'clock, _____ M.

Defendant not found because:

- Moved
- Unknown
- No Answer
- Vacant
- Other _____

Remarks:

Advance Costs	Docket	Service	Sur Charge	Affidavit	Mileage	Postage	Misc.	Total Costs	Costs Due or Refund
<u>75.00</u>	<u>900</u>	<u>900</u>	<u>—</u>	<u>250</u>	<u>1200</u>	<u>100</u>	<u>200</u>	<u>35.50</u>	<u>3.950</u>

17. AFFIRMED and subscribed to before me this 23

20 day of June 2000

23 Carenne Peters

Notary Public
Notarial Seal
Corinne Peters, Notary Public
Bellefonte Boro, Centre County
My Commission Expires Aug. 28, 2001

So Answer. Eric B. Aebi-15/bt

18. Signature of Dep. Sheriff

19. Date

21. Signature of Sheriff

22. Date

SHERIFF OF CENTRE COUNTY

Amount Pd. _____

Page _____

24. I ACKNOWLEDGE RECEIPT AS THE SHERIFF'S RETURN SIGNATURE
OF AUTHORIZED AUTHORITY AND TITLE.

25. Date Received

SHERIFF'S OFFICE WORK SHEET

Deputy assigned - E.A. Date Assigned 4-14-00 Last Day to serve JUNE 22ND

Complaint

DEFENDANT (S) - Robert Nesmith Sr. Type Writ - Mort. ForeclosureAddress 421 Park Road Order # - 00-615-CD

228 E High St. Blff Howard
355 4902 6/99 Lakewood Dr. and

PLAINTIFF Keystane Financial Mortgage Corp.

Action Taken

date/time/deputy

Left card6/18/00 @ 1513

~~Left~~ rec'd call from Nesmith will pick-up on 6/20
works at Centre Crest.

served Robert personally @ sheriff office 6/20/00 @ 1215

Miscellaneous Information

Date Served - _____ Not Served Date _____ Supervisor/date _____

1280.00
75.00



Sheriff's Office Clearfield County

OFFICE (814) 765-2641
AFTER 4:00 P.M. (814) 765-1533

CLEARFIELD COUNTY FAX
(814) 765-6089

CHESTER A. HAWKINS
SHERIFF

SUITE 116
1 NORTH SECOND STREET - COURTHOUSE
CLEARFIELD, PENNSYLVANIA 16830

DARLENE SHULTZ

CHIEF DEPUTY

MARILYN HAMM

DEPT. CLERK

MARGARET PUTT

OFFICE MANAGER

PETER F. SMITH

SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KEYSTONE FINANCIAL MORTGAGE CORP.

NO. 00-615-CD

VS

ACTION: COMPLAINT IN MORTGAGE FORECLOSURE

ROBERT NESMITH JR.

SERVE BY: 6/23/00

or

HEARING DATE:

SERVE: ROBERT NESMITH, Jr. Heir of Robert L. Nesmith, Deceased

ADDRESS: 421 Park Road, Howard, Pa. 16841

Know all men by these presents, that I, CHESTER A. HAWKINS,
HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby
deputize the SHERIFF of CENTRE County to execute this writ.

This deputation being made at the request and risk of the plaintiff
this 12th day of June 2000.

Respectfully,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY

6-24
PG 1208 AM
PL 750 A
MAKE REFUND PAYABLE TO:

FEDERMAN & PHELAN, Attorneys

FEDERMAN AND PHELAN
By: FRANK FEDERMAN, ESQUIRE
IDENTIFICATION NO. 12248
TWO PENN CENTER PLAZA, SUITE 900
PHILADELPHIA, PA 19102
(215) 563-7000

ATTORNEY FOR PLAINTIFF

COURT OF COMMON PLEAS
CIVIL DIVISION

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MORTGAGE CORPORATION
2270 ERIN COURT
P.O. BOX 7748
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TERM

Plaintiff
v.

NO. 00-615-CO

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HOWARD, PA 16841

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HEIR OF ROBERT L. NESMITH, DECEASED
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PORT CHARLOTTE, FL 33952

Defendant(s)

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MORTGAGE FORECLOSURE

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CLEARFIELD COUNTY

DAVID S. MEHOLICK, COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PA 16830
(814) 765-2641

My attorney certifies the
within and
correct copy of the
original filed of record
FEDERMAN AND PHELAN

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

MAY 24 2000

Loan #: 702555

Attest:

William L. Shan
Prothonotary

1. Plaintiff is

**KEYSTONE FINANCIAL
MORTGAGE CORPORATION
2270 ERIN COURT
P.O. BOX 7748
LANCASTER, PA 17604-7748**

2. The name(s) and last known address(es) of the Defendant(s) are:

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421 PARK ROAD
HOWARD, PA 16841**

**KATHY NESMITH,
HEIR OF ROBERT L. NESMITH, DECEASED
1515 FORREST NELSON, #103
PORT CHARLOTTE, FL 33952**

who is/are the real owner(s) of the property hereinafter described.

3. On 5/13/99 mortgagor(s) made, executed and delivered a mortgage upon the premises hereinafter described to PLAINTIFF which mortgage is recorded in the Office of the Recorder of CLEARFIELD County, in Mortgage Instrument No. 199907639.
4. The premises subject to said mortgage is described as attached.
5. The mortgage is in default because monthly payments of principal and interest upon said mortgage due 1/13/00 and each month thereafter are due and unpaid, and by the terms of said mortgage, upon failure of mortgagor to make such payments after a date specified by written notice sent to Mortgagor, the entire principal balance and all interest due thereon are collectible forthwith.

6. The following amounts are due on the mortgage:

Principal Balance	\$31,490.84
Interest	966.00
12/13/99 through 5/1/00	
(Per Diem \$6.90)	
Attorney's Fees	800.00
Cumulative Late Charges	0.00
5/13/99 to 5/1/00	
Cost of Suit and Title Search	<u>550.00</u>
Subtotal	33,806.84
Escrow	
Credit	330.22
Deficit	0.00
Subtotal	<u>330.22</u>
TOTAL	\$33,476.62

7. The attorney's fees set forth above are in conformity with the Mortgage documents and Pennsylvania Law, and will be collected in the event of a third party purchaser at Sheriff's Sale. If the Mortgage is reinstated prior to the Sale, reasonable attorney's fees will be charged.

8. Notice of Intention to Foreclose pursuant to Act 6 of 1974 is not required because the defendant(s) are not a "Residential Mortgage Debtor" as defined by the Act, having failed to provide Plaintiff notice of its acquisition of title.

9. This action does not come under Act 91 of 1983 because the mortgaged premises is not owner occupied.

10. Mortgagor, Robert L. Nesmith, died on 12/8/99, and upon information and belief, his surviving heir(s) are Robert Nesmith, Jr. and Kathy Nesmith.

11. After diligent investigation, Plaintiff was unable to determine whether an Estate has been raised on behalf of the decedent mortgagor.

12. Plaintiff hereby releases Robert L. Nesmith, his unknown heirs, successors, assigns and all persons, firms, or associations claiming right, title or interest from or under the decedent mortgagor from liability for the debt secured by the mortgage.

WHEREFORE, PLAINTIFF demands an in rem Judgment against the Defendant(s) in the sum of \$33,476.62, together with interest from 5/1/00 at the rate of \$6.90 per diem to the date of Judgment, and other costs and charges collectible under the mortgage and for the foreclosure and sale of the mortgaged property.


/s/ Frank Federman
FRANK FEDERMAN, ESQUIRE
Attorney for Plaintiff

LEGAL DESCRIPTION - EXHIBIT 'A'

ALL that certain piece or parcel of real estate situate in Penn Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a 3/4 inch rebar set on the westerly line of Sunny Construction Inc. With said 3/4 inch rebar being the northeastern corner of the parcel herein conveyed; thence along the westerly line of Sunny Construction, Inc., South 25 degrees 29 minutes 43 seconds West 100.68 feet to a 3/4 inch rebar set; thence through lands now or formerly of Nicholson North 64 degrees 30 minutes 17 seconds West 196.53 feet to a 3/4 inch rebar set in the centerline of an old railroad grade, with said line passing through a 3/4 inch rebar set 15.50 feet back from said centerline; thence continuing through lands now or formerly of Nicholson by an arc of a circle curving to the right 484.27 feet in radius, an arc distance of 110.00 feet, the chord being North 2 degrees 01 minutes 24 seconds East 109.76 feet to a 3/4 inch rebar set; thence continuing through lands now or formerly of Nicholson South 64 degrees 30 minutes 17 seconds East 240.25 feet to a 3/4 inch rebar set and place of beginning with said line passing through a 3/4 inch rebar set 26.92 feet from the centerline of the old railroad grade. *CONTAINING 0.505 acres.*

BEING the same premises as was conveyed to Robert Nesmith by Deed of Sharon Fiegel and Robert J. Fiegel, her husband, dated May 8, 1999 and entered for record in the Recorder's Office of Clearfield County, Pennsylvania to Instrument No. 1949016363.

VERIFICATION

Rebecca Boston hereby states that she is a Default Officer of Keystone Financial Mortgage Corporation mortgage servicing agent for Plaintiff in this matter, that he/she is authorized to take this Verification, and that the statements made in the foregoing Civil Action in Mortgage Foreclosure are true and correct to the best of his/her knowledge, information and belief. The undersigned understands that this statement is made subject to the penalties of 18 Pa. C.S. Sec. 4904 relating to unsworn falsification to authorities.



DATE: 5/17/00

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By: FRANK FEDERMAN, ESQUIRE
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CLEARFIELD COUNTY COURTHOUSE
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(814) 765-2641

We hereby certify the
within to be a true and
correct copy of the
original filed of record
FEDERMAN AND PHELAN

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

MAY 24 2000

Loan #: 702555

Attest:


William L. Shum
Prothonotary

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11. After diligent investigation, Plaintiff was unable to determine whether an Estate has been raised on behalf of the decedent mortgagor.

12. Plaintiff hereby releases Robert L. Nesmith, his unknown heirs, successors, assigns and all persons, firms, or associations claiming right, title or interest from or under the decedent mortgagor from liability for the debt secured by the mortgage.

WHEREFORE, PLAINTIFF demands an in rem Judgment against the Defendant(s) in the sum of \$33,476.62, together with interest from 5/1/00 at the rate of \$6.90 per diem to the date of Judgment, and other costs and charges collectible under the mortgage and for the foreclosure and sale of the mortgaged property.


/s/ Frank Federman
FRANK FEDERMAN, ESQUIRE
Attorney for Plaintiff

LEGAL DESCRIPTION - EXHIBIT 'A'

ALL that certain piece or parcel of real estate situate in Penn Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a 3/4 inch rebar set on the westerly line of Sunny Construction Inc. With said 3/4 inch rebar being the northeastern corner of the parcel herein conveyed; thence along the westerly line of Sunny Construction, Inc., South 25 degrees 29 minutes 43 seconds West 100.68 feet to a 3/4 inch rebar set; thence through lands now or formerly of Nicholson North 64 degrees 30 minutes 17 seconds West 196.53 feet to a 3/4 inch rebar set in the centerline of an old railroad grade, with said line passing through a 3/4 inch rebar set 15.50 feet back from said centerline; thence continuing through lands now or formerly of Nicholson by an arc of a circle curving to the right 484.27 feet in radius, an arc distance of 110.00 feet, the chord being North 2 degrees 01 minutes 24 seconds East 109.76 feet to a 3/4 inch rebar set; thence continuing through lands now or formerly of Nicholson South 64 degrees 30 minutes 17 seconds East 240.25 feet to a 3/4 inch rebar set and place of beginning with said line passing through a 3/4 inch rebar set 26.92 feet from the centerline of the old railroad grade. *CONTAINING 0.505 acres.*

BEING the same premises as was conveyed to Robert Nesmith by Deed of Sharon Fiegel and Robert J. Fiegel, her husband, dated May 8, 1999 and entered for record in the Recorder's Office of Clearfield County, Pennsylvania to Instrument No. 1949076383.

VERIFICATION

Rebecca Boston hereby states that she is a Default Officer of Keystone Financial Mortgage Corporation mortgage servicing agent for Plaintiff in this matter, that he/she is authorized to take this Verification, and that the statements made in the foregoing Civil Action in Mortgage Foreclosure are true and correct to the best of his/her knowledge, information and belief. The undersigned understands that this statement is made subject to the penalties of 18 Pa. C.S. Sec. 4904 relating to unsworn falsification to authorities.



DATE: 5/17/00

FEDERMAN AND PHELAN
BY: FRANK FEDERMAN, ESQUIRE
Identification No. 12248
Two Penn Center Plaza, Suite 900
Philadelphia, PA 19102
(215) 563-7000

Attorney for Plaintiff
Document
Reinstated/Reinstated to Plaintiff's
for Service
Docket/Plaintiff's

(3)

KEYSTONE FINANCIAL MORTGAGE
CORPORATION

: COURT OF COMMON PLEAS

Plaintiff

: CIVIL DIVISION

vs.

: Clearfield County

ROBERT NESMITH, JR, HEIR OF
ROBERT L. NESMITH, DECEASED
KATHY NESMITH, HEIR OF ROBERT
L. NESMITH, DECEASED

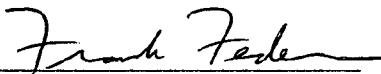
: No. 00-615-CD

Defendants

PRAECIPE TO REINSTATE CIVIL ACTION/MORTGAGE FORECLOSURE

TO THE PROTHONOTARY:

Kindly reinstate the Civil Action in Mortgage Foreclosure
with reference to the above captioned matter.


FRANK FEDERMAN, ESQUIRE
Attorney for Plaintiff

Date: August 2, 2000

FILED

AUG 07 2000

William A. Shaw
Prothonotary

8-7-00 Document
Reinstated/Rescued to Sheriff Attorney
for service.
William A. Shaw
Deputy Prothonotary

FILED

AUG 07 2000
M. A. Shaw, Prothonotary
William A. Shaw
Prothonotary
pd \$7.00

Complaint reinstated

to attorney
Rey

AFFIDAVIT OF SERVICE - CLEARFIELD **NO RII**

PLAINTIFF: KEYSTONE FINANCIAL
MORTGAGE CORPORATION **NO.** 00-615-CD

DEFENDANT: ROBERT NESMITH, JR.,
HEIR OF ROBERT L. NESMITH,
DECEASED

A-204 **KATHY NESMITH, HEIR OF ROBERT L. NESMITH, DECEASED** **TYPE OF ACTION**
 Mortgage Foreclosure
 Civil Action

SERVE AT: 1201 SOUTHEAST PALM BEACH,
ROAD, #~~207~~
STUART, FL 34994

SERVED

Served and made known to KATHY NESMITH
Defendant on the 29 day of AUG., 2000, at 7:30PM
o'clock, __. M., at 1201 SE PALM BEACH RD, #~~207~~ A204
STUART, FL., City in the manner described below:

XXXXXX Defendant personally served.

Adult family member with whom Defendant(s) reside(s).

Relationship is _____.

Adult in charge of Defendant's residence who refused to give
name/relationship.

Manager/Clerk of place of lodging in which Defendant(s) reside(s)
Agent or person in charge of Defendant's office or usual place of
business.

and officer of said defendant
company.

Other: _____

I, ARTHUR GOCKELER a competent adult, being duly sworn according to
law, depose and state that I personally handed to KATHY NESMITH
a true and correct copy of the MORTGAGE FORECLOSURE
issued in the captioned case on the date and at the address indicated
above.

Sworn to and subscribed
Before me this 30 day
Of AUGUST 2000
Notary: Jeffrey W. Bouley By: Arthur Gockeler ARTHUR GOCKELER
PS 92-1
NOT SERVED
On the _____ day of ____, 2000, at _____ o'clock
M. Defendant NOT FOUND because:
Moved _____ Unknown _____ No Answer _____ Vacant
Other: _____

Sworn to and subscribed
Before me the _____ day
Of ____, 2000.
Notary: _____

By: _____
ATTORNEY OF PLAINTIFF
FRANK FEDERMAN, ESQUIRE - I.D.#12248
Two Penn Center Plaza - Suite 900
Philadelphia, PA 19102
(215) 563-7000

FILED

SEP 18 2000

11/4/00/bs
William A. Shaw
Prothonotary
1 cert to Atty
9/28

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

KEYSTONE FINANCIAL :
MORTGAGE CORPORATION, :
Plaintiff :
: :
vs. : No. 00-615-CD
: :
ROBERT NESMITH, JR., HEIR OF :
ROBERT L. NESMITH, DECEASED, :
AND KATHY NESMITH, HEIR OF :
ROBERT L. NESMITH, DECEASED, :
Defendants :
:

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter my appearance on behalf of the Defendants, Robert Nesmith, Jr. and Kathy Nesmith.

All papers may be served on the undersigned at the office of Mazza, Schneider, Arbuckle & Bascom, 1315 South Allen Street, State College, Pennsylvania 16801.

Respectfully submitted,
Mazza, Schneider, Arbuckle & Bascom

9/28/00
Date



Charles A. Schneider
Attorney Registration No.: 6780
Attorney for Defendants
1315 South Allen Street
State College, PA 16801
(814) 237-6255

FILED

SEP 29 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

KEYSTONE FINANCIAL :
MORTGAGE CORPORATION, :
Plaintiff :
: :
vs. : No. 00-615-CD
: :
ROBERT NESMITH, JR., HEIR OF :
ROBERT L. NESMITH, DECEASED, :
AND KATHY NESMITH, HEIR OF :
ROBERT L. NESMITH, DECEASED, :
Defendants :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Entry of Appearance was served on all parties of record, in the above entitled matter, by depositing the same within the custody of the United States Postal Service, first class postage prepaid, on
9/28/00 addressed as follows:

Counsel for Plaintiff:
Frank Federman, Esquire
Federman and Phelan, LLP
Two Penn Center Plaza, Suite 900
Philadelphia, PA 19102-1799

Dated: 9/28/00


Charles A. Schneider
Attorney Registration No. 6780
Mazza, Schneider, Arbuckle & Bascom
1315 S. Allen Street, Suite 302
State College, PA 16801
Telephone (814) 237-6255

FILED
OCT 2 2000
SEP 29 2000
William A. Shaw
Prothonotary
EAB
KAB

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

KEYSTONE FINANCIAL :
MORTGAGE CORPORATION, :
Plaintiff :
vs. : No. 00-615-CD
: :
ROBERT NESMITH, JR., HEIR OF :
ROBERT L. NESMITH, DECEASED, :
AND KATHY NESMITH, HEIR OF :
ROBERT L. NESMITH, DECEASED, :
Defendants :
:

ANSWER TO COMPLAINT

AND NOW come Defendants Robert Nesmith, Jr. and Kathy Nesmith, through their attorneys, Mazza, Schneider, Arbuckle & Bascom and make answer to the Plaintiff's Complaint as follows:

1. Admitted.
2. Admitted.
3. After reasonable investigation, the Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment of Paragraph 3 and the same is therefore denied and strict proof is demanded at the time of trial.
4. Admitted.
5. After reasonable investigation, the Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 5 and the same is therefore denied and strict proof is demanded at the time of trial.

FILED

SEP 29 2000

William A. Shaw
Prothonotary

6. After reasonable investigation, the Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 6 and the same is therefore denied and strict proof is demanded at the time of trial.
7. The averments of Paragraph 7 are conclusions of law for which no response is required.
8. The averments of Paragraph 8 are conclusions of law for which no response is required.
9. The averments of Paragraph 9 are conclusions of law for which no response is required.
10. Admitted.
11. An estate has been raised for the decedent mortgagor at Clearfield County Register of Wills File No. 2000-412.
12. No answer required.

WHEREFORE, Defendants request your Honorable Court to dismiss the Plaintiff's Complaint with costs on the Plaintiff.

Respectfully submitted,

Dated: 9/28/00



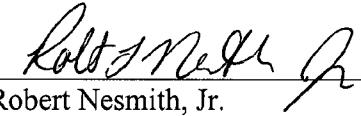
Charles A. Schneider
Attorney Registration No. 6780
Mazza, Schneider, Arbuckle & Bascom
1315 S. Allen Street, Suite 302
State College, PA 16801
Telephone (814) 237-6255

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

KEYSTONE FINANCIAL :
MORTGAGE CORPORATION, :
Plaintiff :
: :
vs. : No. 00-615-CD
: :
ROBERT NESMITH, JR., HEIR OF :
ROBERT L. NESMITH, DECEASED, :
AND KATHY NESMITH, HEIR OF :
ROBERT L. NESMITH, DECEASED, :
Defendants :
:

VERIFICATION

Robert Nesmith, Jr., hereby states that he is a party in this action and verifies that the statements made in the foregoing pleading are true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements herein are made subject to penalties of 18 Pa C.S. §4904 relating to unsworn falsification to authorities.



Robert Nesmith, Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

KEYSTONE FINANCIAL :
MORTGAGE CORPORATION, :
Plaintiff :
: :
vs. : No. 00-615-CD
: :
ROBERT NESMITH, JR., HEIR OF :
ROBERT L. NESMITH, DECEASED, :
AND KATHY NESMITH, HEIR OF :
ROBERT L. NESMITH, DECEASED, :
Defendants :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer to Complaint was served on all parties of record, in the above entitled matter, by depositing the same within the custody of the United States Postal Service, first class postage prepaid, on
1/28/00 addressed as follows:

Counsel for Plaintiff:
Frank Federman, Esquire
Federman and Phelan, LLP
Two Penn Center Plaza, Suite 900
Philadelphia, PA 19102-1799

Dated:


Charles A. Schneider
Attorney Registration No. 6780
Mazza, Schneider, Arbuckle & Bascom
1315 S. Allen Street, Suite 302
State College, PA 16801
Telephone (814) 237-6255

FILED
CC
A/HY
SEP 10 18 2000
SEP 29 2000
William A. Shaw
Prothonotary

FEDERMAN AND PHELAN
By: JOSHUA B. SEARS, ESQUIRE
Identification No. 83419
Two Penn Center Plaza, Suite 900
Philadelphia, PA 19102
(215) 563-7000

Attorney for Plaintiff

Keystone Financial
Mortgage Corporation
2270 Erin Court P.O. Box 7748
Lancaster, PA 17604-7748

: Court of Common Pleas

Plaintiff

: Civil Division
: Clearfield County

vs.

: No. 00-615-CD

Robert Nesmith, Jr.,
Heir of Robert L. Nesmith, Deceased
421 Park Road
Howard, PA 16841

Kathy Nesmith,
Heir of Robert L. Nesmith, Deceased
1515 Forrest Nelson, #103
Port Charlotte, FL 33952

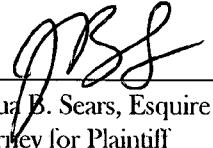
Defendants

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the foregoing Plaintiff's Motion for Summary Judgment and Brief in Support thereof, were served on Defendants' counsel via first class mail on the date listed below:

Charles A. Schneider
Mazza, Schneider, Arbuckle and Bascom
1315 South Allen Street
Suite 302
State College, PA 16801

1/5/01
Date



Joshua B. Sears, Esquire
Attorney for Plaintiff

FILED

JAN 29 2001

William A. Shaw
Prothonotary

FILED

JAN 29 2001
SAC/DOCC
William A. Shaw
Prothonotary

SA

bzc/msj/ncsmith

FEDERMAN AND PHELAN
By: JOSHUA B. SEARS, ESQUIRE
Identification No. 83419
Two Penn Center Plaza, Suite 900
Philadelphia, PA 19102
(215) 563-7000

Attorney for Plaintiff

**Keystone Financial
Mortgage Corporation
2270 Erin Court P.O. Box 7748
Lancaster, PA 17604-7748**

: Court of Common Pleas

Plaintiff

: Civil Division
: Clearfield County

VS.

: No. 00-615-CD

Robert Nesmith, Jr.,
Heir of Robert L. Nesmith, Deceased
421 Park Road
Howard, PA 16841

Kathy Nesmith,
Heir of Robert L. Nesmith, Deceased
1515 Forrest Nelson, #103
Port Charlotte, FL 33952
Defendants

ORDER

AND NOW, this day of , 2000, upon consideration of

Plaintiff's Motion for Summary Judgment and Brief in Support thereof, and upon consideration of the Response, if any, filed by Defendants, the Court determines that Plaintiff is entitled to Summary Judgment as a matter of law, and it is hereby:

ORDERED and DECREED that an *in rem* judgment is entered in favor of Plaintiff and against Defendants, Robert Nesmith, Jr., Administrator of the Estate of Robert L. Nesmith, and Heir of Robert L. Nesmith, Deceased and Kathy Nesmith, Heir of Robert L. Nesmith, Deceased, for \$33,476.62 plus interest from December 13, 1999 at the rate of \$6.90 per diem and other costs and charges collectible under the mortgage, for foreclosure and sale of the mortgaged property.

BY THE COURT;

J.

FEDERMAN AND PHELAN
By: JOSHUA B. SEARS, ESQUIRE
Identification No. 83419
Two Penn Center Plaza, Suite 900
Philadelphia, PA 19102
(215) 563-7000

Attorney for Plaintiff

Keystone Financial
Mortgage Corporation
2270 Erin Court P.O. Box 7748
Lancaster, PA 17604-7748

: Court of Common Pleas

Plaintiff

: Civil Division
: Clearfield County

vs.

: No. 00-615-CD

Robert Nesmith, Jr.,
Heir of Robert L. Nesmith, Deceased
421 Park Road
Howard, PA 16841

Kathy Nesmith,
Heir of Robert L. Nesmith, Deceased
1515 Forrest Nelson, #103
Port Charlotte, FL 33952

Defendants

FILED

JAN 29 2001

THIS FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT.
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.
IF YOU HAVE PREVIOUSLY RECEIVED A DISCHARGE IN BANKRUPTCY
AND THIS DEBT WAS NOT REAFFIRMED, THIS CORRESPONDENCE IS
NOT AND SHOULD NOT BE CONSTRUED TO BE AN ATTEMPT TO
COLLECT A DEBT, BUT ONLY ENFORCEMENT OF A LIEN AGAINST
PROPERTY.

William A. Shaw
Prothonotary

MOTION FOR SUMMARY JUDGMENT

Plaintiff respectfully requests that the Court enter an Order granting summary judgment in its favor in the above-captioned matter and in support thereof avers as follows:

1. There are no material issues of fact.
2. Plaintiff is seeking only an in rem judgment in this mortgage foreclosure action.

PROCEDURAL HISTORY

3. Defendants, Robert Nesmith, Jr., Heir of Robert L. Nesmith, Deceased and Kathy Nesmith, Heir of Robert L. Nesmith, Deceased, have filed an Answer to the Complaint in which they have effectively admitted all of the allegations of the Complaint, as is further addressed in Plaintiff's attached Brief.

4. In their Answer, Defendants improperly deny paragraphs five and six of the Complaint,

which aver the default and the amounts due on the Mortgage. True and correct copies of Plaintiff's Mortgage Foreclosure Complaint, and Defendants' Answer are attached hereto, incorporated herein by reference, and marked as Exhibits C, and D, respectively.

5. Defendants have failed to sustain their burden of presenting facts, which contradict the averments of Plaintiff's Complaint.

PLAINTIFF IS THE HOLDER OF THE MORTGAGE

6. On May 13, 1999, Robert L. Nesmith, mortgagor, executed the Mortgage promising to repay the loan on a bi-weekly basis. A true and correct copy of the Mortgage, which is recorded in the Office of the Recorder of Clearfield County in Mortgage Instrument No. 199907639 is attached hereto, made part hereof, and marked Exhibit A. A true and correct copy of the Note is also attached hereto, made part hereof, and marked Exhibit A1.

DEFENDANTS ROBERT NESMITH, JR. AND KATHY NESMITH, HAVE BEEN PROPERLY NAMED AS DEFENDANTS

7. Mortgagor, Robert L. Nesmith, died on December 8, 1999, and upon information and belief, his surviving heirs are Robert Nesmith, Jr. and Kathy Nesmith.

8. Plaintiff initiated its decedent's investigation for May 10, 2000. At this time, no estate had been raised for the decedent mortgagor, as Letters of Administration were not granted until July 25, 2000.

9. The named Defendants in Plaintiff's Complaint are the heirs of Robert L. Nesmith, the deceased mortgagor. Robert Nesmith, Jr., however, is also the Administrator of the Estate of Robert L. Nesmith. A true and correct copy of "Petition for Grant of Letters" is attached hereto, made part hereof, and marked as Exhibit E. Thus, pursuant to Pa. R.C.P. 1144, Plaintiff has properly named Robert Nesmith, Jr. and Kathy Nesmith as Defendants in the instant action.

THE LOAN IS IN DEFAULT

10. The Mortgage is due for the January 13, 2000 payment, a period in excess of twelve months. An Affidavit confirming the default and the amount of the debt is attached hereto, incorporated herein by reference, and marked as Exhibit B.

11. As payments were made on the loan for only six months, no equity has been built up in the mortgaged property.

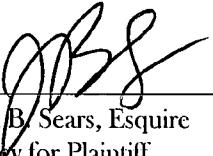
12. The notice provisions of Act 6 of 1974 do not apply to this action because the defendants are not “Residential Mortgage Debtors” as defined by the Act. Defendants are “successor record owners of the property” who have failed to give notice thereof to Plaintiff. 41 P.S. §101(l).

13. This action does not come under Act 91 of 1983 because the Defendants, as admitted in their Answer, do not reside at the mortgaged premises.

14. Defendants have the right to reinstate the loan up until one hour before a scheduled Sheriff's Sale.

WHEREFORE, Plaintiff respectfully requests that an *in rem* judgment be entered in its favor for the amount due plus interest and costs as prayed for in the Complaint, for foreclosure and sale of the mortgaged property.

Respectfully submitted,



Joshua B. Sears, Esquire
Attorney for Plaintiff

FEDERMAN AND PHELAN
By: JOSHUA B. SEARS, ESQUIRE
Identification No. 83419
Two Penn Center Plaza, Suite 900
Philadelphia, PA 19102
(215) 563-7000

Attorney for Plaintiff

Keystone Financial
Mortgage Corporation
2270 Erin Court P.O. Box 7748
Lancaster, PA 17604-7748

: Court of Common Pleas

Plaintiff

: Civil Division
: Clearfield County

vs.

: No. 00-615-CD

Robert Nesmith, Jr.,
Heir of Robert L. Nesmith, Deceased
421 Park Road
Howard, PA 16841

RECEIVED

JAN 29 2001

COURT ADMINISTRATOR'S
OFFICE

Kathy Nesmith,
Heir of Robert L. Nesmith, Deceased
1515 Forrest Nelson, #103
Port Charlotte, FL 33952
Defendants

PLAINTIFF'S BRIEF IN SUPPORT
OF ITS MOTION FOR SUMMARY JUDGMENT

I. DEFENDANTS' DEFAULT UNDER THE MORTGAGE

On May 13, 1999, Robert L. Nesmith, Deceased executed a Promissory Note in favor of Plaintiff, in the principal sum of \$32,000.00, said sum being payable in equal, consecutive, bi-weekly installments of principal and interest of approximately \$133.84. On the same date, Robert L. Nesmith, Deceased made, executed and delivered a Mortgage on the property at RR 1, Grampian, PA 16838 (hereinafter the "Property"), as collateral for the Promissory Note.

Defendants defaulted under the Mortgage and Note by failing to make payments due January 13, 2000 and each month thereafter. By the express terms of the Mortgage, upon default in such payments for a period of one month, the entire debt is immediately collectible.

Because Defendants failed to take the necessary affirmative steps to cure the delinquency, Plaintiff was

left with no alternative but to foreclose in order to recover its unjust financial losses. Accordingly, the present action was filed on May 24, 2000. To date, Defendants have not brought the account current.

II. PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW

Summary judgment is a means to "eliminate the waste of time and resources of both litigants and the courts in cases where a trial would be a useless formality." Liles v. Balmer, 389 Pa.Super. 451, 567 A.2d 691 (1989); First v. Zem Zem Temple, 454 Pa.Super. 548, 551, 686 A.2d 18, 20 (1996). A Motion for Summary Judgment shall be granted if the documents of record show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Pa.R.C.P. 1035.2(I); Allen v. Merriweather, 413 Pa.Super. 410, 411, 605 A.2d 424 (1992); Beasel v. New Blvd. Baking Co. Inc., 410 Pa.Super. 591, 593, 600 A.2d 610 (1991).

The moving party bears the burden of demonstrating clearly that there is no genuine issue of triable fact. Driscoll v. Carpenters District Council of Western Pennsylvania, 370 Pa.Super. 295, 536 A.2d 412 (1988); affirmed, 525 Pa. 205, 579 A.2d 863 (1990); Allen, 413 Pa.Super. at 411; Beasel, 410 Pa.Super. at 594; Hower v. Whitmark Assoc., 371 Pa.Super. 443, 381 A.2d 524 (1988); Romah v. Hygienic Sanitation Co., 705 A.2d 841, 848 (Pa.Super. 1997). In response, the nonmoving party may not rest upon the pleadings, but must set forth specific facts demonstrating a genuine issue for trial. Phaff v. Gerner, 451 Pa. 146, 303 A.2d 826 (1973); Dujai v. Dennis, 431 Pa.Super. 366, 370, 636 A.2d 1130, 1132.

Rule 1029(b) of the Pennsylvania Rules of Civil Procedure specifically provides:

Averments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication. A general denial or a demand for proof, except as provided by subdivision (c) and (e) of this rule, shall have the effect of an admission.

It is well settled that a general denial is unacceptable and deemed an admission where it is clear that the defendant has adequate knowledge and that the means of information are within the control of the defendant. Elia v. Olszewski, 368 Pa. 578, 84 A.2d 188 (1951). Cercone v. Cercone, 254 Pa. Super. 381, 386 A.2d 1 (1978); City of Philadelphia v. Hertler, 114 Pa.Cmwlth. 475, 482, 539 A.2d 468, 472 (1988). Goodrich-Amram 2d §1029(c)(1), p. 280. A general denial effectively manifests an admission to the facts averred in the

complaint. Swift v. Milner, 371 Pa. Super. 302, 308, 538 A.2d 28, 31 (1988); Michner v. Montgomery County Tax Claim Bureau, 671 A.2d 285, 288 (Pa. Cmwlth. 1996). One purpose in demanding a specific denial is to enable the parties to focus upon the disputed facts and to assist the Court in defining the issues for trial.

Bogley, Harting & Reese v. Stuart, 11 D&C 3d 303, 310 (Chester Co. 1979).

Plaintiff submits that, in the Answer, Defendants have effectively admitted every allegation of the Complaint. Although Defendants purport to deny paragraphs five and six of the Complaint, which aver the default and the amounts due on the Mortgage, respectively, Defendants' averments amount to nothing more than general denials and demand for proof. Defendants generally deny the amount due under the Mortgage without reference to what they believe to be the correct amount due, or reference to any good reason to believe that the amount sought is erroneous.

Unquestionably, Defendants know specifically what payments they made on the Mortgage. Accordingly, because Defendants are charged with having sufficient knowledge upon which to base a specific denial with respect to the averments contained in paragraphs five and six of the Complaint, a general denial is insufficient to raise a genuine issue of fact. Cercone v. Cercone, *supra*; City of Philadelphia v. Hertler, *supra*. The Pennsylvania Superior Court has held that, in order to raise a genuine issue of fact, defendants may not rest on the pleadings, but must sustain the burden of presenting facts to counter Plaintiff's averments. New York Guardian Mortgage v. Dietzel, 524 A.2d 951 (Pa. Super. 1987). Washington Federal Savings and Loan Association v. Stein, 515 A.2d 980 (Pa. Super. 1986). A party will not be able to rely on 1029(c) and be excused from answering averments based on a lack of information where that party has sufficient information at its disposal to answer such allegations. Commw. by Preate v. Rainbow Associates, 138 Pa. Commw. 56, 587 A.2d 357, 358 (1991).

The Pennsylvania Superior Court recently reiterated this principle in another mortgage foreclosure case. The Court held that the mortgagors' general denials in their answers to the Complaint must be considered admissions. First Wisconsin Trust Co. v. Strausser, 439 Pa. Super. 192, 653 A.2d 688 (1995). The Court reasoned that the only persons with knowledge of the amount due, besides the mortgage company,

would be the mortgagors. Therefore, if defendant mortgagors do not plead specific facts in response to the allegations in the Complaint regarding the default and the amount due, the defendants are deemed to have admitted the allegations, and summary judgment for the mortgage company is proper. First Wisconsin Trust Co. v. Strausser, *supra*.

In determining if an answer is a general denial, the Court must examine the pleadings as a whole. Commonwealth v. Preate, *supra*. at 61, 587 A.2d 357, 360 (1991). A review of the pleadings as a whole in the instant case reveals that Defendants have failed to sustain their burden of presenting facts, which contradict the elements of Plaintiff's claim. Defendants' general denial of the amounts due and the default should be viewed as admissions by this Honorable Court.

III. ATTORNEY FEES AND COSTS ARE REASONABLE

As to the attorney fees recited in paragraph six of the Complaint, it should be noted that paragraph twenty-one of the Mortgage clearly indicates that Defendants are liable for a five percent attorney commission, costs of suit, and costs of title evidence if Defendants default on the loan. The attorney fee claimed in Plaintiff's complaint is less than five percent of the principal balance due on the loan. When Plaintiff was preparing its foreclosure Complaint, it could not know how much the attorney fees and costs would be upon completion of the foreclosure action. Plaintiff could not know whether the Defendants would contest the case and, if so, how extensively. Accordingly, Plaintiff used Pennsylvania case law as a guide. Plaintiff estimated an attorney fee of less than five percent of the principal balance.

Attorney fees are enforced in order to compensate the Plaintiff for the reasonable and necessary expenses of collection. The Superior Court has held that it is inequitable for a mortgagee to expend sums of money for attorney fees in order to collect sums owed to him. Eastgate Enterprises, Inc. v. Bank and Trust Company of Old York Road, 236 Pa.Super. 503, 345 A.2d 279 (1975).

As a general rule, attorney fees, which are reasonable, will be permitted by the Court. A requested fee of five percent of the outstanding principal balance has been granted by the Court. Pennsylvania Courts have long and repeatedly concluded that such a 5% provision is reasonable and enforceable. Robinson v. Loomis,

51 Pa. 78 (1865); First Federal Savings and Loan Association v. Street Road Shopping Center, 68 D&C 2d 751, 755 (1974).

It is important to note that the attorney fees called for in the Mortgage are owned by the mortgagee, not the attorney. They are not limited to the actual attorney fees but cover also the extra charges made necessary because the mortgagor failed to meet his obligation. Foulke v. Hatfield Fair Grounds Bazaar, Inc., 196 Pa.Super. 155, 173 A.2d 703 (1961); Harper v. Consolidated Rubber Co., 284 Pa. 444, 131 A. 356 (1925).

In Federal Land Bank of Baltimore v. Fetner, the Superior Court held that an attorney fee of 10% of the original loan amount was not unconscionable. 410 A.2d 344 (Pa.Super. 1979). Recently, the Superior Court cited Fetner in confirming that an attorney fee of ten percent included in the judgment in a mortgage foreclosure action was reasonable. Citicorp v. Morrisville Hampton Realty, 662 A.2d 1120 (Pa.Super. 1995).

Importantly, Plaintiff clearly outlined how Defendants could avoid paying Plaintiff's attorney fees in the Notice of Intention to Foreclose Mortgage, which was mailed to Defendants. Defendants, however, failed to take the necessary affirmative steps to cure the delinquency, but rather have opted to litigate, which has resulted in more attorney fees. Additionally, Plaintiff submits that the amount demanded for costs of suit and title search in Plaintiff's Complaint is neither excessive nor unreasonable.

Moreover, the reasonableness of attorney fees does not create a genuine issue of material fact, which precludes the entry of summary judgment. First National Bank and Trust Co. of Newton v. Enrico, 40 D&C 3d 228 (1985). Importantly, Plaintiff recognizes this Honorable Court's equitable authority to set attorney fees and costs as it deems reasonable. Therefore, there is no issue of material fact regarding attorney fees.

IV. CONCLUSION

The purpose of the summary judgment procedure is to prevent vexation and delay, improve the machinery of justice, promote the expeditious disposition of cases and avoid unnecessary trials when no genuine issue of material fact is raised.

In making its determination, the Court must accept as true all properly pleaded facts, as well as all

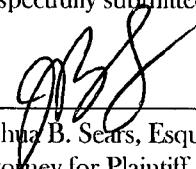
reasonable inferences, which might be drawn therefrom. Thompson v. Nason, 379 Pa.Super. 115, 535 A.2d 1177 (1988), affirmed, 527 Pa.330, 591 A.2d 703 (1991). The Court must restrict its review to material filed in support of and in opposition to the Motion for Summary Judgment, and to uncontested allegations in the pleadings. Pa.R.C.P.1035. Overly v. Kass, 382 Pa.Super. 108, 545 A.2d 970 (1989).

Plaintiff submits that it has demonstrated sufficient facts to warrant summary judgment in its favor. Plaintiff has provided an affidavit that Defendants are in default and set forth the amount owed by Defendants. Therefore, Plaintiff maintains that it has produced sufficient evidence to establish a prima facie case for mortgage foreclosure. Once Plaintiff has satisfied its burden, Defendants have a responsibility to demonstrate facts, which would create a genuine issue for trial. Phaff, supra. Defendants have failed to sustain their burden of presenting facts, which would contradict the elements of Plaintiff's claim.

Plaintiff respectfully submits that the allegations of the Complaint are, in fact, uncontested. Defendants have had use of the Property rent-free at Plaintiff's expense long enough. Defendants' Answer has been interposed for the purpose of delay only. Plaintiff requests that its Motion be granted so that it can recover the unjust financial losses it has incurred to date.

WHEREFORE, Plaintiff respectfully requests that an in rem judgment be entered in its favor for the amount due with interest and costs as prayed for in the Complaint, for foreclosure and sale of the mortgaged property.

Respectfully submitted,



Joshua B. Sears, Esquire
Attorney for Plaintiff

EXHIBIT A

KAREN L. STACK
REGISTER AND RECORDER
CLEARFIELD COUNTY, PA
Pennsylvania

19907639
RECORDED ON
May 13, 1999
10:48:14 AM

J. Burkhardt

[Space Above This Line For Recording Data]

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on **MAY 13th 1999**. The mortgagor is **ROBERT NESMITH, Adult Individual**

("Borrower"). This Security Instrument is given to **KEYSTONE FINANCIAL BANK, N.A. DOING BUSINESS AS KEYSTONE FINANCIAL MORTGAGE**, which is organized and existing under the laws of **UNITED STATES OF AMERICA**, and whose address is **2270 ERIN COURT P.O. BOX 7628, LANCASTER, PA 17604-7628** ("Lender"). Borrower owes Lender the principal sum of **THIRTY-TWO THOUSAND AND NO/100**

Dollars (U.S. \$ **32,000.00**). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on **DECEMBER 21st, 2015**. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note*; For this purpose, Borrower does hereby mortgage, grant and convey to Lender the following described property located in **CLEARFIELD** County, Pennsylvania:

' SEE ATTACHED LEGAL DESCRIPTION'

which has the address of **RR 1**

[Street]

GRAMPIAN

[City]

Pennsylvania 16838-9801
[Zip Code]

("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. § 2601 *et seq.* ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

Loan ID: 00070255

Form 3039 9/90 (page 1 of 5 pages)

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If, under paragraph 21, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to any prepayment charges due under the Note; second, to amounts payable under paragraph 2; third, to interest due; fourth, to principal due; and last, to any late charges due under the Note.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. Hazard or Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 7.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 21 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

7. Protection of Lender's Rights in the Property. If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

8. Mortgage Insurance. If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the mortgage insurance in effect. If, for any reason, the mortgage insurance coverage required by Lender lapses or ceases to be in effect, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the mortgage insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the mortgage insurance previously in effect, from an alternate mortgage insurer approved by Lender. If substantially equivalent mortgage insurance coverage is not available, Borrower shall pay to Lender each month a sum equal to one-twelfth of the yearly mortgage insurance premium being paid by Borrower when the insurance coverage lapsed or ceased to be in effect. Lender will accept, use and retain these payments as a loss reserve in lieu of mortgage insurance. Loss reserve payments may no longer be required, at the option of Lender, if mortgage insurance coverage (in the amount and for the period that Lender requires) provided by an insurer approved by Lender again becomes available and is obtained. Borrower shall pay the premiums required to maintain mortgage insurance in effect, or to provide a loss reserve, until the requirement for mortgage insurance ends in accordance with any written agreement between Borrower and Lender or applicable law.

9. Inspection. Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

10. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

11. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

13. Loan Charges. If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

14. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

15. Governing Law; Severability. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

16. Borrower's Copy. Borrower shall be given one conformed copy of the Note and of this Security Instrument.

17. Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

18. Borrower's Right to Reinstate. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of : (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 17.

19. Sale of Note; Change of Loan Servicer. The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with paragraph 14 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

20. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 20, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

21. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under paragraph 17 unless applicable law provides otherwise). Lender shall notify Borrower of, among other things: (a) the default; (b) the action required to cure the default; (c) when the default must be cured; and (d) that failure to cure the default as specified may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. Lender shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured as specified, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, attorneys' fees and costs of title evidence to the extent permitted by applicable law.

22. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument and the estate conveyed shall terminate and become void. After such occurrence, Lender shall discharge and satisfy this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

23. Waivers. Borrower, to the extent permitted by applicable law, waives and releases any error or defects in proceedings to enforce this Security Instrument, and hereby waives the benefit of any present or future laws providing for stay of execution, extension of time, exemption from attachment, levy and sale, and homestead exemption.

24. Reinstatement Period. Borrower's time to reinstate provided in paragraph 18 shall extend to one hour prior to the commencement of bidding at a sheriff's sale or other sale pursuant to this Security Instrument.

25. Purchase Money Mortgage. If any of the debt secured by this Security Instrument is lent to Borrower to acquire title to the Property, this Security Instrument shall be a purchase money mortgage.

26. **Interest Rate After Judgment.** Borrower agrees that the interest rate payable after a judgment is entered on the Note or in an action of mortgage foreclosure shall be the rate payable from time to time under the Note.

27. **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)]

Adjustable Rate Rider

Condominium Rider

1-4 Family Rider

Graduated Payment Rider

Planned Unit Development Rider

Biweekly Payment Rider

Balloon Rider

Rate Improvement Rider

Second Home Rider

Other(s) [specify]

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:


ROBERT NESMITH

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Space Below This Line For Acknowledgment]

COMMONWEALTH OF PENNSYLVANIA,

CLEARFIELD

County ss:

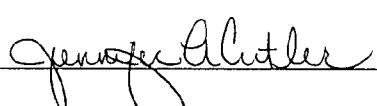
On this, the 13th day of May, 1999 before me, a Notary Public
the undersigned officer, personally appeared
ROBERT NESMITH

known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument
and acknowledged that he/she/they executed the same for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires:

NOTARIAL SEAL
JENNIFER A. CUTLER, Notary Public
Clearfield Borough, Clearfield County
My Commission Expires June 17, 1999


Notary Public

Title of Officer

EXHIBIT A1

NOTE

(Biweekly Payments - Fixed Rate - Without Conversion)

MAY 13

, 1999

CLEARFIELD
[City]

PENNSYLVANIA
[State]

RR 1 GRAMPIAN, PA 16838-9801
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 32,000.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is

KEYSTONE FINANCIAL BANK, N.A. DOING BUSINESS AS KEYSTONE FINANCIAL MORTGAGE

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 8.000 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every fourteen days (the "biweekly payments"), beginning on JUNE 14, 1999. I will make the biweekly payments every fourteen days until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My biweekly payments will be applied to interest before principal. If, on DECEMBER 21, 2015, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "maturity date."

I will make my biweekly payments at 2270 ERIN COURT P.O. BOX 7628

LANCASTER, PA 17604-7628 or at a different place if required by the Note Holder.

(B) Amount of Biweekly Payments

My biweekly payment will be in the amount of U.S. \$ 133.84

(C) Manner of Payment

My biweekly payments will be made by an automatic deduction from an account I will maintain with the Note Holder, or with a different entity specified by the Note Holder. I will keep sufficient funds in the account to pay the full amount of each biweekly payment on the date it is due.

I understand that the Note Holder, or an entity acting for the Note Holder, may deduct the amount of my biweekly payment from the account to pay the Note Holder for each biweekly payment on the date it is due until I have paid all amounts owed under this Note.

4. BORROWER'S RIGHT TO REPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due date or in the amount of my biweekly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any biweekly payment by the end of 0 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each biweekly payment on the date it is due, I will be in default. I also will be in default if I do not maintain the account I am required to maintain under Section 3(C) above.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not cure the default by a certain date, the Note Holder may require me to pay immediately the full amount of principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is delivered or mailed to me.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

LOAN ID: 00070255

Form 3265 2/88

MULTISTATE BIWEEKLY FIXED RATE NOTE - Single Family - Fannie Mae Uniform Instrument

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

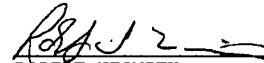
10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.


ROBERT NESMITH _____ (Seal)
-Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

[Sign Original Only]

EXHIBIT B

PLAINTIFF'S AFFIDAVIT IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
COUNTY OF ERIE)
ss.)

DENNIS GAWL being duly sworn according to law, deposes and says:

1. I am employed in the capacity of BANKING OFFICER of M&T Mortgage Corporation, Plaintiff in the within matter.
2. In said capacity, I am familiar with the account that forms the basis of the instant foreclosure action and am authorized to give this Affidavit.
3. I am the custodian of records for the within matter.
4. All proper payments made by Defendants have been credited to Defendants' accounts.
5. Defendants' mortgage payments due 1/13/00 and each month thereafter are due and unpaid.
6. The amounts due on the mortgage were correctly stated in the Complaint as follows:

Principal Balance	\$31,490.84
Interest	\$966.00
12/13/99 through 5/1/00	
(Per Diem \$6.90)	
Attorney's Fees	\$800.00
Cumulative Late Charges	\$0.00
5/13/99 to 5/1/00	
Cost of Suit and Title Search	<u>\$550.00</u>
Subtotal	\$33,806.84
Escrow Credit	\$330.22
Escrow Deficit	\$0.00
TOTAL	\$33,476.62

7. Mortgagors **have** failed to reinstate the account or offer any reasonable solution to cure the arrears on the past due mortgage payments.
8. Plaintiff provided mortgagors with a Notice of Intention to Foreclose Mortgage, but Defendants did not take the necessary affirmative steps to avoid foreclosure.
9. Plaintiff continues to suffer unjust financial losses as it pays the taxes and insurance on the property as they become due to avoid a tax upset sale and/or loss to its

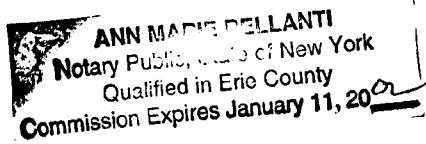
collateral, all of which accrues to the benefit of Defendants and to the severe detriment of Plaintiff.

10. Plaintiff properly accelerated its mortgage to protect its interests.

Dennis Gawron
DENNIS GAWRON
Banking Officer
M&T Mortgage Corp.

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 6th DAY
OF November, 2000.

Ann Marie Bellanti
NOTARY PUBLIC



File Name and Number: Robert Nesmith, Jr. and Kath Nesmith, Account No.: 702555

EXHIBIT C

FEDERMAN AND PHELAN
By: FRANK FEDERMAN, ESQUIRE
IDENTIFICATION NO. 12248
TWO PENN CENTER PLAZA, SUITE 900
PHILADELPHIA, PA 19102
(215) 563-7000

ATTORNEY FOR PLAINTIFF

COURT OF COMMON PLEAS
CIVIL DIVISION

KEYSTONE FINANCIAL
MORTGAGE CORPORATION
2270 ERIN COURT
P.O. BOX 7748
LANCASTER, PA 17604-7748

v.

Plaintiff

TERM

NO. 00-615-60

CLEARFIELD COUNTY

ROBERT NESMITH, JR.,
HEIR OF ROBERT L. NESMITH, DECEASED
421 PARK ROAD
HOWARD, PA 16841

KATHY NESMITH,
HEIR OF ROBERT L. NESMITH, DECEASED
1515 FORREST NELSON, #103
PORT CHARLOTTE, FL 33952

Defendant(s)

FILED
MAY 24 2000
AM 11:58 AM
William A. Shaw
Prothonotary

CIVIL ACTION - LAW
MORTGAGE FORECLOSURE

NOTICE

**THIS FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU HAVE PREVIOUSLY RECEIVED A DISCHARGE IN BANKRUPTCY AND THIS DEBT WAS NOT REAFFIRMED, THIS CORRESPONDENCE IS NOT AND SHOULD NOT BE CONSTRUED TO BE AN ATTEMPT TO COLLECT A DEBT, BUT ONLY ENFORCEMENT OF A LIEN AGAINST PROPERTY. **

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

CLEARFIELD COUNTY

DAVID S. MEHOLICK, COURT ADMINISTRATOR

CLEARFIELD COUNTY COURTHOUSE

CLEARFIELD, PA 16830

(814) 765-2641

We hereby certify the
within to be a true and
correct copy of the
original filed of record
FEDERMAN AND PHELAN

FEDERMAN AND PHELAN
ATTORNEY FILE COPY
PLEASE RETURN

FEDERMAN AND PHELAN
By: FRANK FEDERMAN, ESQUIRE
IDENTIFICATION NO. 12248
TWO PENN CENTER PLAZA, SUITE 900
PHILADELPHIA, PA 19102
(215) 563-7000

ATTORNEY FOR PLAINTIFF

KEYSTONE FINANCIAL
MORTGAGE CORPORATION
2270 ERIN COURT
P.O. BOX 7748
LANCASTER, PA 17604-7748

COURT OF COMMON PLEAS
CIVIL DIVISION

TERM

Plaintiff

v.

NO.

CLEARFIELD COUNTY

ROBERT NESMITH, JR.,
HEIR OF ROBERT L. NESMITH, DECEASED
421 PARK ROAD
HOWARD, PA 16841

KATHY NESMITH,
HEIR OF ROBERT L. NESMITH, DECEASED
1515 FORREST NELSON, #103
PORT CHARLOTTE, FL 33952

Defendant(s)

CIVIL ACTION - LAW
MORTGAGE FORECLOSURE

NOTICE

**THIS FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU HAVE PREVIOUSLY RECEIVED A DISCHARGE IN BANKRUPTCY AND THIS DEBT WAS NOT REAFFIRMED, THIS CORRESPONDENCE IS NOT AND SHOULD NOT BE CONSTRUED TO BE AN ATTEMPT TO COLLECT A DEBT, BUT ONLY ENFORCEMENT OF A LIEN AGAINST PROPERTY. **

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

CLEARFIELD COUNTY

DAVID S. MEHOLICK, COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PA 16830
(814) 765-2641

We hereby certify the
copy to be a true and
correct copy of the
original record
FEDERMAN AND PHELAN.

1. Plaintiff is

**KEYSTONE FINANCIAL
MORTGAGE CORPORATION
2270 ERIN COURT
P.O. BOX 7748
LANCASTER, PA 17604-7748**

2. The name(s) and last known address(es) of the Defendant(s) are:

**ROBERT NESMITH, JR.,
HEIR OF ROBERT L. NESMITH, DECEASED
421 PARK ROAD
HOWARD, PA 16841**

**KATHY NESMITH,
HEIR OF ROBERT L. NESMITH, DECEASED
1515 FORREST NELSON, #103
PORT CHARLOTTE, FL 33952**

who is/are the real owner(s) of the property hereinafter described.

3. On 5/13/99 mortgagor(s) made, executed and delivered a mortgage upon the premises hereinafter described to PLAINTIFF which mortgage is recorded in the Office of the Recorder of CLEARFIELD County, in Mortgage Instrument No. 199907639.
4. The premises subject to said mortgage is described as attached.
5. The mortgage is in default because monthly payments of principal and interest upon said mortgage due 1/13/00 and each month thereafter are due and unpaid, and by the terms of said mortgage, upon failure of mortgagor to make such payments after a date specified by written notice sent to Mortgagor, the entire principal balance and all interest due thereon are collectible forthwith.

6. The following amounts are due on the mortgage:

Principal Balance	\$31,490.84
Interest	966.00
12/13/99 through 5/1/00	
(Per Diem \$6.90)	
Attorney's Fees	800.00
Cumulative Late Charges	0.00
5/13/99 to 5/1/00	
Cost of Suit and Title Search	550.00
Subtotal	33,806.84
Escrow	
Credit	330.22
Deficit	0.00
Subtotal	<u>330.22</u>
TOTAL	\$33,476.62

7. The attorney's fees set forth above are in conformity with the Mortgage documents and Pennsylvania Law, and will be collected in the event of a third party purchaser at Sheriff's Sale. If the Mortgage is reinstated prior to the Sale, reasonable attorney's fees will be charged.

8. Notice of Intention to Foreclose pursuant to Act 6 of 1974 is not required because the defendant(s) are not a "Residential Mortgage Debtor" as defined by the Act, having failed to provide Plaintiff notice of its acquisition of title.

9. This action does not come under Act 91 of 1983 because the mortgaged premises is not owner occupied.

10. Mortgagor, Robert L. Nesmith, died on 12/8/99, and upon information and belief, his surviving heir(s) are Robert Nesmith, Jr. and Kathy Nesmith.

11. After diligent investigation, Plaintiff was unable to determine whether an Estate has been raised on behalf of the decedent mortgagor.

12. Plaintiff hereby releases Robert L. Nesmith, his unknown heirs, successors, assigns and all persons, firms, or associations claiming right, title or interest from or under the decedent mortgagor from liability for the debt secured by the mortgage.

WHEREFORE, PLAINTIFF demands an in rem Judgment against the Defendant(s) in the sum of \$33,476.62, together with interest from 5/1/00 at the rate of \$6.90 per diem to the date of Judgment, and other costs and charges collectible under the mortgage and for the foreclosure and sale of the mortgaged property.


s/ Frank Federman
FRANK FEDERMAN, ESQUIRE
Attorney for Plaintiff

LEGAL DESCRIPTION - EXHIBIT 'A'

ALL that certain piece or parcel of real estate situate in Penn Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a 3/4 inch rebar set on the westerly line of Sunny Construction Inc. With said 3/4 inch rebar being the northeastern corner of the parcel herein conveyed; thence along the westerly line of Sunny Construction, Inc., South 25 degrees 29 minutes 43 seconds West 100.68 feet to a 3/4 inch rebar set; thence through lands now or formerly of Nicholson North 64 degrees 30 minutes 17 seconds West 196.53 feet to a 3/4 inch rebar set in the centerline of an old railroad grade, with said line passing through a 3/4 inch rebar set 15.50 feet back from said centerline; thence continuing through lands now or formerly of Nicholson by an arc of a circle curving to the right 484.27 feet in radius, an arc distance of 110.00 feet, the chord being North 2 degrees 01 minutes 24 seconds East 109.76 feet to a 3/4 inch rebar set; thence continuing through lands now or formerly of Nicholson South 64 degrees 30 minutes 17 seconds East 240.25 feet to a 3/4 inch rebar set and place of beginning with said line passing through a 3/4 inch rebar set 26.92 feet from the centerline of the old railroad grade. *CONTAINING 0.505 acres.*

BEING the same premises as was conveyed to Robert Nesmith by Deed of Sharon Fiegel and Robert J. Fiegel, her husband, dated May 8, 1999 and entered for record in the Recorder's Office of Clearfield County, Pennsylvania to Instrument No. 1949016343.

VERIFICATION

Rebecca Boston hereby states that she is a Default Officer of Keystone Financial Mortgage Corporation mortgage servicing agent for Plaintiff in this matter, that he/she is authorized to take this Verification, and that the statements made in the foregoing Civil Action in Mortgage Foreclosure are true and correct to the best of his/her knowledge, information and belief. The undersigned understands that this statement is made subject to the penalties of 18 Pa. C.S. Sec. 4904 relating to unsworn falsification to authorities.

Rebecca Boston

DATE: 5/17/00

EXHIBIT D

MAZZA, SCHNEIDER, ARBUCKLE & BASCOM

ATTORNEYS AT LAW

S. PAUL MAZZA
CHARLES A. SCHNEIDER
WILLIAM I. ARBUCKLE, III
ROBERT H. BASCOM, JR.

1315 SOUTH ALLEN STREET
SUITE 302
STATE COLLEGE, PA 16801
(814) 237-6255
(814) 237-5752 FAX

September 28, 2000

OCT 8 2000

Frank Federman, Esquire
Federman and Phelan, LLP
Two Penn Center Plaza, Suite 900
Philadelphia, PA 19102-1799

Re: Keystone Financial Mortgage Corp. v.
Robert Nesmith Jr. and Kathy Nesmith
Clearfield County Case No. 00-615-CD

Dear Attorney Federman:

Enclosed you will find a copy of my Entry of Appearance and Answer to Complaint that will be filed in the above-referenced matter.

Please feel free to contact me if you have any questions.

Very truly yours,
Mazza, Schneider, Arbuckle & Bascom



Charles A. Schneider

CAS/ljg
Enclosures
cc/enc: Robert L. Nesmith, Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

KEYSTONE FINANCIAL
MORTGAGE CORPORATION, :
Plaintiff :
vs. :
No. 00-615-CD
ROBERT NESMITH, JR., HEIR OF :
ROBERT L. NESMITH, DECEASED, :
AND KATHY NESMITH, HEIR OF :
ROBERT L. NESMITH, DECEASED, :
Defendants :
:

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter my appearance on behalf of the Defendants, Robert Nesmith, Jr. and Kathy Nesmith.

All papers may be served on the undersigned at the office of Mazza, Schneider, Arbuckle & Bascom, 1315 South Allen Street, State College, Pennsylvania 16801.

Respectfully submitted,
Mazza, Schneider, Arbuckle & Bascom

9/28/00
Date



Charles A. Schneider
Attorney Registration No.: 6780
Attorney for Defendants
1315 South Allen Street
State College, PA 16801
(814) 237-6255

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

KEYSTONE FINANCIAL
MORTGAGE CORPORATION, :
Plaintiff :
vs. : No. 00-615-CD
ROBERT NESMITH, JR., HEIR OF :
ROBERT L. NESMITH, DECEASED, :
AND KATHY NESMITH, HEIR OF :
ROBERT L. NESMITH, DECEASED, :
Defendants :
.....

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Entry of Appearance was served on all parties of record, in the above entitled matter, by depositing the same within the custody of the United States Postal Service, first class postage prepaid, on

9/28/00

addressed as follows:

Counsel for Plaintiff:
Frank Federman, Esquire
Federman and Phelan, LLP
Two Penn Center Plaza, Suite 900
Philadelphia, PA 19102-1799

Dated: 9/28/00



Charles A. Schneider
Attorney Registration No. 6780
Mazza, Schneider, Arbuckle & Bascom
1315 S. Allen Street, Suite 302
State College, PA 16801
Telephone (814) 237-6255

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

KEYSTONE FINANCIAL :
MORTGAGE CORPORATION, :
Plaintiff :
vs. : No. 00-615-CD
ROBERT NESMITH, JR., HEIR OF :
ROBERT L. NESMITH, DECEASED, :
AND KATHY NESMITH, HEIR OF :
ROBERT L. NESMITH, DECEASED, :
Defendants :
:

ANSWER TO COMPLAINT

AND NOW come Defendants Robert Nesmith, Jr. and Kathy Nesmith, through their attorneys, Mazza, Schneider, Arbuckle & Bascom and make answer to the Plaintiff's Complaint as follows:

1. Admitted.
2. Admitted.
3. After reasonable investigation, the Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment of Paragraph 3 and the same is therefore denied and strict proof is demanded at the time of trial.
4. Admitted.
5. After reasonable investigation, the Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 5 and the same is therefore denied and strict proof is demanded at the time of trial.

6. After reasonable investigation, the Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 6 and the same is therefore denied and strict proof is demanded at the time of trial.
7. The averments of Paragraph 7 are conclusions of law for which no response is required.
8. The averments of Paragraph 8 are conclusions of law for which no response is required.
9. The averments of Paragraph 9 are conclusions of law for which no response is required.
10. Admitted.
11. An estate has been raised for the decedent mortgagor at Clearfield County Register of Wills File No. 2000-412.
12. No answer required.

WHEREFORE, Defendants request your Honorable Court to dismiss the Plaintiff's Complaint with costs on the Plaintiff.

Respectfully submitted,

Dated: 9/28/00



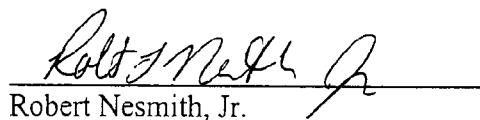
Charles A. Schneider
Attorney Registration No. 6780
Mazza, Schneider, Arbuckle & Bascom
1315 S. Allen Street, Suite 302
State College, PA 16801
Telephone (814) 237-6255

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

KEYSTONE FINANCIAL :
MORTGAGE CORPORATION, :
Plaintiff :
vs. : No. 00-615-CD
ROBERT NESMITH, JR., HEIR OF :
ROBERT L. NESMITH, DECEASED, :
AND KATHY NESMITH, HEIR OF :
ROBERT L. NESMITH, DECEASED, :
Defendants :

VERIFICATION

Robert Nesmith, Jr., hereby states that he is a party in this action and verifies that the statements made in the foregoing pleading are true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements herein are made subject to penalties of 18 Pa C.S. §4904 relating to unsworn falsification to authorities.



Robert Nesmith, Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

KEYSTONE FINANCIAL :
MORTGAGE CORPORATION, :
Plaintiff :
vs. : No. 00-615-CD
ROBERT NESMITH, JR., HEIR OF :
ROBERT L. NESMITH, DECEASED, :
AND KATHY NESMITH, HEIR OF :
ROBERT L. NESMITH, DECEASED, :
Defendants :

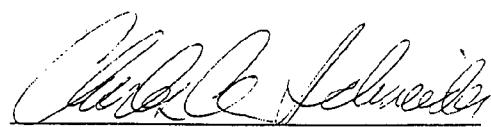
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer to Complaint was served on all parties of record, in the above entitled matter, by depositing the same within the custody of the United States Postal Service, first class postage prepaid, on

9/28/00 addressed as follows:

Counsel for Plaintiff:
Frank Federman, Esquire
Federman and Phelan, LLP
Two Penn Center Plaza, Suite 900
Philadelphia, PA 19102-1799

Dated:



Charles A. Schneider
Attorney Registration No. 6780
Mazza, Schneider, Arbuckle & Bascom
1315 S. Allen Street, Suite 302
State College, PA 16801
Telephone (814) 237-6255

EXHIBIT E

REGISTER OF WILLS OF CLEARFIELD COUNTY, PENNSYLVANIA

PETITION FOR GRANT OF LETTERS

Estate of Robert L. Nesmith

No. 2990-412

also known as

, Deceased

Social Security No. 160428675

Robert Nesmith, Jr.

Petitioner(s), who is/are 18 years of age or older, applies for:

(COMPLETE "A" OR "B" BELOW)

A. Probate and Grant of Letters and aver that Petitioner(s) is/are the execut _____ named in the Last Will of the Decedent, dated _____ and codicil(s) dated _____

State relevant circumstances, e.g., renunciation, death of executor, etc
Except as follows, Decedent did not marry, was not divorced and did not have a child born or adopted after execution of the documents offered for probate: was not the victim of a killing and was never adjudicated incapacitated.

B. Grant of Letters of Administration

(c.t.a., d.b.n.c.t.a.; pendente lite, durante absentia; durante minoritate)

Petitioner(s) after a proper search has/have ascertained the Decedent left no Will and was survived by the following spouse (if any) and heirs:

Name	Relationship	Residence
Robert Nesmith, Jr.	Son	421 Park Rd., Howard, PA 16841
Kathy Nesmith	Daughter	1201 S.E. Palm Beach Rd., Apt. 204A
		Stuart, FL 34994

(COMPLETE IN ALL CASES:) Attach additional sheets if necessary.

Decedent was domiciled at death in Clearfield County, Pennsylvania, with his/her last family or principal residence at P.O. Box 167, Grampian, PA 16838 Grampian Borough
(list street, number and municipality)

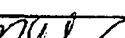
Decedent, then 50 years of age, died December 8, 1999, at Indiana Hospital, Indiana, PA

Decedent at death owned property with estimated values as follows:

(if domiciled in PA	All personal property	\$ 1,000.00
(if not domiciled in PA	Personal property in Pennsylvania	\$ 0.00
(if not domiciled in PA	Personal property in County	\$ 0.00
Value of real estate in Pennsylvania	\$ 35,000.00	
Total	\$ 36,000.00	

Real Estate situated as follows: .5 acres located in Penn Township, Clearfield County, Pennsylvania.

Wherefore, Petitioner(s) respectfully request(s) the probate of the Last Will and Codicil(s) presented with this Petition and the grant of letters in the appropriate form to the undersigned:

Signature	Typed or printed name and residence
	Robert L. Nesmith, Jr. 421 Park Road Howard, PA 16841
	OFFICE OF THE REGISTER OF WILLS OF CLEARFIELD COUNTY
	JUL 25 2000
	KAREN L STAROK Register

Oath of Personal Representative

Commonwealth of Pennsylvania
County of CLEARFIELD

The Petitioner(s) above-named swear(s) and affirm(s) that the statements in the foregoing Petition are true and correct to the best of the knowledge and belief of Petitioner(s) and that, as personal representative(s) of the Decedent, Petitioner(s) will well and truly administer the estate according to law.

Sworn to and affirmed and subscribed

before me this 25 day of

July, 2000

Robert L. Nesmith, Jr.

Karen L. Starck

My Commission Expires

First Monday in January, 2004

DECREE OF REGISTER OF WILLS OF CLEARFIELD COUNTY, PENNSYLVANIA

Estate of Robert L. Nesmith Deceased No. 2000-412

also known as _____

Social Security No: 160428675

Date of Death: December 8, 1999

AND NOW, July 25, 2000, in consideration of the Petition on the reverse side hereon, satisfactory proof having been presented before me,

IT IS DECREED that Letters Testamentary of Administration _____

((c.t.a., d.b.n.c.t.; pendente lite; durante absentia; durante minorate))

are hereby granted to Robert Nesmith, Jr.

in the above estate and that the instrument(s), if any, dated _____
described in the Petition be admitted to probate and filed of record as the Last Will of Decedent.

FEES

Letters	KAREN L. STARCK REGISTER AND RECORDER CLEARFIELD COUNTY Pennsylvania
Short Certificates(s)	\$ <u>10.00</u> INSTRUMENT NUMBER <u>2000010412</u>
Renunciation	RECORDED ON <u>JUL 25, 2000</u>
Extra Pages ()	\$ <u>08:51 AM</u> FILE NUMBER <u>2000-412</u>
I.T.R.	
JCP Fee	INQUIRY FEES - \$10.00
Inventory	LETTERS \$ <u>45.00</u> JCP FEES - LETTERS \$ <u>45.00</u>
Other	RENUCATION FEES - \$3.00 LETTERS \$ <u>3.00</u>
	WILLS ASSETS FEE - \$50.00 LETTERS \$ <u>50.00</u>
TOTAL	TOTAL \$ <u>\$68.00</u>

Karen L. Starck

Register of Wills

My Commission Expires
First Monday in January, 2004

FILED
OFFICE OF THE REGISTER OF
WILLS OF CLEARFIELD COUNTY

JUL 25 2000

Signature

KAREN L. STARCK
Register

Attorney: Charles A. Schneider, Esquire

I.D. No: 6780

Address: 1315 South Allen Street

State College

PA 16801

Telephone: 814-237-6255

DATE FILED: _____

REGISTER OF WILLS OF CLEARFIELD COUNTY, PENNSYLVANIA

RENUNCIATION

Estate of Robert L. Nesmith No. 2000-412
also known as _____
_____, Deceased

The undersigned, Kathy Nesmith, daughter _____ of
(Relationship) (Capacity)

the above Decedent, hereby renounce(s) the right to administer the estate and respectfully request(s) that
Letters of Administration be issued to Robert Nesmith, Jr.

Witness my hand this 20 day of July, 2000.

Kathy Nesmith _____
(Signature)
Kathy Nesmith
1201 S.E. Palm Beach Rd., Apt. 204A, Stuart FL 34994
(Address)

(Signature)

(Address)

(Signature)

(Address)

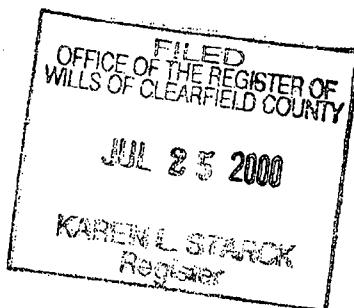
Sworn to or affirmed and subscribed

before me this 20th day of

July, 2000

Notary Public
My Commission Expires:

JONATHAN A. BERRY
My Commission Expires April 13, 2010



(Signature and seal of Notary or other
official qualified to administer oaths. Show
date of expiration of Notary's commission.)

NOTE: Renunciations executed outside the Office of Register of Wills are
required in some counties to be notarized.



CERTIFICATION OF NOTICE UNDER RULE 5.6

Name of Decedent: Robert L. Nesmith

Date of Death: December 8, 1999

Estate No.: 17-00-412

To the Register:

I certify that notice to beneficiaries and heirs required by Rule 5.6 of the Orphan's Court Rules, in the form prescribed by Rule 5.7, was served on or mailed to the following beneficiaries of the above-captioned estate on 8/22/00:

Name

Address

Robert L. Nesmith, Jr.

421 Park Road
Howard, PA 16841

Kathy Nesmith

1201 S.E. Palm Beach Rd., Apt. 204A
Stuart, FL 34994

Notice has now been given to all persons entitled thereto under Rules 5.6 and 5.7, except: None

Date: 8/22/00

Charles A. Schneider
Signature

Name: Charles A. Schneider, Esquire

Address: 1315 South Allen Street
State College, PA 16801

Telephone: (814)237-6255

Capacity: Personal Representative

X Counsel for Personal
Representative

KAREN L. STARCK
REGISTER AND RECORDER
CLEARFIELD COUNTY
Pennsylvania

INSTRUMENT NUMBER
200012353

RECORDED ON
Aug 23, 2000

2:05:38 PM

FILE NUMBER
2000-412

TOTAL \$0.00

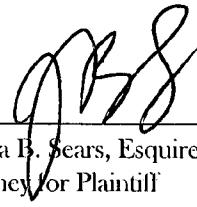
VERIFICATION

Joshua B. Sears, Esquire, hereby states that he is the attorney for Plaintiff in this action, that he is authorized to make this verification, and that the statements made in the foregoing Motion for Summary Judgment and Brief are true and correct to the best of his knowledge, information, and belief. The undersigned understands that this statement herein is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Date

11/5/01

Joshua B. Sears, Esquire
Attorney for Plaintiff



FILE
1001
MAY 29 2001
PROBLEMS
RED

FEDERMAN AND PHELAN
By: JOSHUA B. SEARS, ESQUIRE
Identification No. 83419
Two Penn Center Plaza, Suite 900
Philadelphia, PA 19102
(215) 563-7000

Attorney for Plaintiff

Keystone Financial
Mortgage Corporation
2270 Erin Court P.O. Box 7748
Lancaster, PA 17604-7748

: Court of Common Pleas

Plaintiff

: Civil Division
: Clearfield County

vs.

: No. 00-615-CD

Robert Nesmith, Jr.,
Heir of Robert L. Nesmith, Deceased
421 Park Road
Howard, PA 16841

Kathy Nesmith,
Heir of Robert L. Nesmith, Deceased
1515 Forrest Nelson, #103
Port Charlotte, FL 33952
Defendants

PRAECIPE TO WITHDRAW MOTION FOR SUMMARY JUDGMENT

TO THE PROTHONOTARY:

Plaintiff hereby withdraws its Motion for Summary Judgment, which it filed on January 29, 2001 in the above captioned matter.

3.20.01
Date



Joshua B. Sears, Esquire
Attorney for Plaintiff

FILED

MAR 23 2001

William A. Shaw
Prothonotary

FILED

MAR 23 2001
R711471160
William A. Shaw
Prothonotary

ES

FEDERMAN AND PHELAN, LLP
By: FRANK FEDERMAN, ESQUIRE
IDENTIFICATION NO. 12248
ONE PENN CENTER AT SUBURBAN STATION
SUITE 1400
PHILADELPHIA, PA 19103-1814
(215) 563-7000

Keystone Financial
Mortgage Corporation
2270 Erin Court P.O. Box 7748
Lancaster, PA 17604-7748

Plaintiff
vs.

Robert Nesmith, Jr.,
Heir of Robert L. Nesmith, Deceased
421 Park Road
Howard, PA 16841

Kathy Nesmith,
Heir of Robert L. Nesmith, Deceased
1515 Forrest Nelson, #103
Port Charlotte, FL 33952
Defendants

ATTORNEY FOR PLAINTIFF

: Court of Common Pleas
: Civil Division
: Clearfield County
: No. 00-615-CD

PRAECIPE TO DISCONTINUE FORECLOSURE ACTION

TO THE PROTHONOTARY:

Please mark the above referenced case Discontinued without prejudice.

Date: 3/20/01

Frank Federman
Frank Federman/jbs
Attorney for Plaintiff

FILED

MAR 23 2001

William A. Shaw
Prothonotary

FILED

MAR 23 2001

William A. Shaw
Prothonotary
Court Do. to

Miss Abby Edelman
Copy to C

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Keystone Financial Mortgage Corp.

Vs.

No. 2000-00615-CD

Robert L. Nesmith

Kathy Nesmith

Robert Nesmith Jr.

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA

County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on March 23, 2001 marked:

Discontinued without prejudice.

Record costs in the sum of \$196.62 have been paid in full by Frank Federman, Esquire.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 23rd day of March A.D. 2001.



William A. Shaw, Prothonotary