

00-1032-CD  
Treasure Lake vs E. Zitzelberger



00-1032-CD  
TREASURE LAKE PROPERTY OWNERS -vs- EDMUND J. ZITZELBERGER et al  
ASSOCIATION, INC.

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

114 TREASURE LAKE PROPERTY OWNERS : NO. 00 - 1032- CD  
ASSOCIATION, INC., :  
Plaintiff : Type of Case: Assumpsit  
vs : Type of Pleading: Complaint  
23 EDMUND J. ZITZELBERGER and : Filed on Behalf of: Plaintiff  
25 EVELYN J. ZITZELBERGER, : Counsel of Record for this Party:  
Defendants : Michael P. Yeager, Esq.  
: Supreme Court No.: 15587  
: P.O. Box 752  
: 110 North Second Street  
: Clearfield, PA 16830  
: (814) 765-0011

**FILED**

AUG 22 2000

William A. Shaw  
Prothonotary

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

TREASURE LAKE PROPERTY OWNERS :	:	
ASSOCIATION, INC.,	:	
Plaintiff	:	
	:	No. 00 -           - CD
vs	:	
	:	
EDMUND J. ZITZELBERGER and	:	
EVELYN J. ZITZELBERGER,	:	
Defendants	:	

NOTICE

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 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.

COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
2nd & Market Streets  
Clearfield, PA 16830  
Telephone: 814-765-2641 Ex 5982

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

TREASURE LAKE PROPERTY OWNERS :  
ASSOCIATION, INC., :  
Plaintiff :  
: No. 00 - - CD  
vs :  
: EDMUND J. ZITZELBERGER and :  
EVELYN J. ZITZELBERGER, :  
Defendants :  
:

C O M P L A I N T

COMES NOW, the Plaintiff, by and through its attorney,  
Michael P. Yeager, Esquire and files the within Complaint based  
upon a cause of action whereof the following is a statement:

1. The Plaintiff is a Pennsylvania nonprofit corporation with its principal place of business located at 13 Treasure Lake, DuBois, Clearfield County, Pennsylvania.
2. The Defendants, Edmund J. Zitzelberger and Evelyn J. Zitzelberger, are adult individuals who are believed to reside at 215 Smith Street, P.O. Box 627, Clearfield, PA 16830.
3. By virtue of a Deed dated September 22, 1975 and recorded in Clearfield Deed Book 708 at page 82, Donald W. Rankin, et ux. conveyed Section 18, Lot 241 located within the Treasure Lake Subdivision, Sandy Township, Clearfield County, Pennsylvania (hereinafter "Lot 241") to Kenneth E. McMillen and Arlene A. McMillen (hereinafter "McMillens").
4. McMillens transferred the above-mentioned Lot 241 to the Defendants by virtue of an unrecorded Deed dated May 14, 1984. A

copy of said unrecorded Deed is unavailable.

5. However, Affidavits dated June 21, 2000 signed by Kenneth E. McMillen and Arlene A. McMillen, his wife and Richard A. Bell, Esquire both indicate that Lot 241 was in fact transferred to Defendants on May 14, 1984; and that the Deed to the same was delivered to said Defendants. Copies of said Affidavits are attached hereto, made part hereof and incorporated herein as "Exhibit A".

6. For reasons unknown to Plaintiff, Defendants chose never to record the Deed noting the transfer of Lot 241 to said Defendants in May of 1984.

7. However, Defendants nevertheless did instruct the Clearfield County Assessment Offices to note a change in the assessment for Lot 241 thereby transferring the assessment and resultant tax information to Defendants. This is evidenced by a copy of the Assessment Card for Lot 241, attached hereto, made part hereof and incorporated herein as "Exhibit B".

8. All Treasure Lake Deeds to single-family residential lots similar to Lot 241 and the Deed to Lot 241 indicate therein that the lot and owner thereof are otherwise subject to the Declaration of Restrictions, Treasure Lake, Inc., recorded in Clearfield County Misc. Book Volume 146, page 476; which further states that "...all of said Restrictions being covenants which run with the land".

9. Under and by virtue of Paragraph 12.D. of the aforesaid Declaration of Restrictions, Plaintiff has imposed annual charges

or assessments per single family lot within the Treasure Lake Subdivision as annually determined by the Board of Directors of the Plaintiff. A copy of Paragraph 12 in said Declaration of Restrictions is attached hereto, made part hereof and incorporated herein as "Exhibit C".

10. In view of the unrecorded nature of the Deed depicted in Exhibit A, Plaintiff continued to note McMillens as the owners of Lot 241. However, subsequent to the aforesaid transfer in 1984 and specifically at the request of Defendants, Plaintiff sent notices of assessment charges to McMillens but in care of and to Defendants at the address indicated above.

11. Plaintiff continued to forward invoices for assessments through calendar year 2000 to McMillens but in care of and to Defendants.

12. The amounts through the years for said invoices for Lot 241 are indicated on a listing thereof attached hereto, made part hereof and incorporated herein as "Exhibit D".

13. After receiving information from McMillens, including a copy of an Agreement of Sale dated April 3, 1984 noting the intended transfer of Lot 241 as a trade for other noted consideration and a copy of a replacement Deed dated May 18, 1984 recorded as Clearfield County Document No. 200008712 together with the Affidavits attached hereto as Exhibit A, Plaintiff was requested by McMillens that it somehow rectify a lien filed by Plaintiff as against McMillens at No. 89-2049-CD for the assessment years 1987 through 1989 and specifically related to

Lot 241. Copies of the Agreement of Sale, a replacement Deed and the Lien are attached hereto, made part hereof and incorporated herein as "Exhibits E, F & G".

14. In view of the documents as aforesaid, Plaintiff is required to note that the lien filed at No. 89-2049-CD should be noted on the records as "Settled, Discontinued and Ended" as to the McMillens.

15. However, Plaintiff must now seek recovery of the assessments for Lot 241 from its appropriate owners, the within Defendants, for the years and amounts described in Paragraph 12 and Exhibit D hereof.

16. The foregoing amounts were and are the fair, reasonable and actual annual assessment charges for the indicated years.

17. The Plaintiff also claims there is justly due and owing to it, in addition to the aforesaid assessment amounts, interest as provided by the aforesaid Declaration of Restrictions at six (6%) percent per annum or as otherwise provided by law.

18. Plaintiff further claims that the Declaration of Restrictions as aforesaid give Plaintiff the right to claim reasonable attorney's fees (Paragraph 12.D.b); and Plaintiff accordingly claims that reasonable attorney's fees and costs as determined by the Court are therefore also due and payable from the Defendants.

19. Although demand has been made, Defendants have failed to make payment of the total amount Plaintiff believes is due as above indicated and otherwise to be computed.

**COUNT I**

**BREACH OF CONTRACT**

20. Plaintiff incorporates previous Paragraphs 1 through 19 as though the same were more fully set forth at length herein.

21. As a result of the Defendants' failure to pay the amounts described in Exhibit D, Plaintiff has been damaged in the amount of Three Thousand Three Hundred Sixty-Five (\$3,365.00) Dollars, together with interest, costs and reasonable attorney's fees.

WHEREFORE, Plaintiff claims there is justly due and owing to it from the Defendants, the sum of Three Thousand Three Hundred Sixty-Five (\$3,365.00) Dollars, together with continuing interest, reasonable attorney's fees and additional costs of suit for which judgment is accordingly demanded against the Defendants, Edmund J. Zitzelberger and Evelyn J. Zitzelberger.

**COUNT II**

**QUASI CONTRACT**

22. Plaintiff incorporates previous Paragraph 1 through 21 as though the same were more fully set forth at length herein.

23. Plaintiff has imposed the aforesaid assessment charges as described in Exhibit D for reimbursement of its various responsibilities as set forth in the aforesaid Declaration of Restrictions.

24. Defendants have otherwise received and accepted the benefits of the various responsibilities undertaken by the

Plaintiff as aforesaid and as otherwise set forth in the aforesaid Declaration of Restrictions.

25. Defendants have accordingly been unjustly enriched in the amount of the assessment charges and interest as set forth in the attached Exhibit D.

WHEREFORE, Plaintiff claims there is justly due and owing to it from the Defendants, the sum of Three Thousand Three Hundred Sixty-Five (\$3,365.00) Dollars, together with continuing interest, reasonable attorney's fees and additional costs of suit for which judgment is accordingly demanded against the Defendants Edmund J. Zitzelberger and Evelyn J. Zitzelberger.

**COUNT III**

**CONTRACT IMPLIED IN FACT**

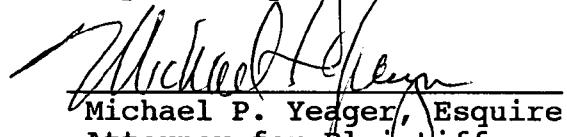
26. Plaintiff incorporates previous Paragraphs 1 through 25 as though the same were more fully set forth at length herein.

27. Plaintiff believes and therefore avers that a contract may be implied from the facts and circumstances surrounding the imposition of its annual assessment charges and interest as set forth on the attached Exhibit D; and the benefits conferred and received by the Defendants as aforesaid.

WHEREFORE, Plaintiff claims there is justly due and owing to it from the Defendants, the sum of Three Thousand Three Hundred Sixty-Five (\$3,365.00) Dollars, together with continuing interest, reasonable attorney's fees and additional costs of suit for which judgment is accordingly demanded against the Defendants

Edmund J. Zitzelberger and Evelyn J. Zitzelberger.

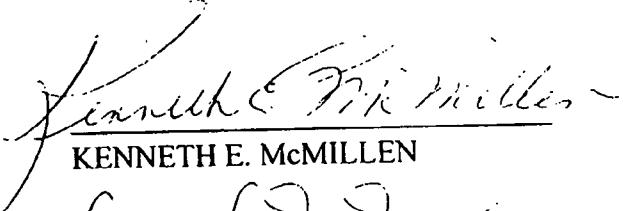
Respectfully submitted:

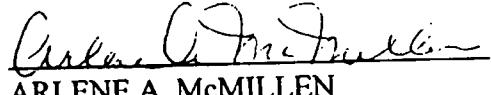
  
Michael P. Yeager, Esquire  
Attorney for Plaintiff

AFFIDAVIT

KENNETH E. McMILLEN and ARLENE A. McMILLEN, husband and wife, being duly sworn according to law depose and state that under date of April 3<sup>rd</sup>, 1984, they entered into an Agreement Of Sale with Edmund J. Zitzelberger and Evelyn J. Zitzelberger, husband and wife in which they agreed to purchase Lot 161, Section 1, Treasure Lake, Clearfield County, Pennsylvania, and as part payment for the same agreed to transfer to Zitzelbergers Lot 241. Section 18, of Treasure Lake, Clearfield County, Pennsylvania. Copy of the said Agreement Of Sale is attached to this Affidavit.

They further state that on May 14<sup>th</sup>, 1984, the terms of the agreement were carried out by Zitzelbergers delivering to McMillens an executed Deed properly signed and acknowledged for Lot 161, Section 1, Treasure Lake, Clearfield County, Pennsylvania, and likewise McMillens delivered to Zitzelbergers an executed Deed properly signed and acknowledged for Lot 241, Section 18, Treasure Lake, Clearfield County, Pennsylvania. Although it appears that the Deed for Lot 241, Section 18, Treasure Lake, Clearfield County, Pennsylvania, was never recorded in the office of the Recorder Of Deeds Of Clearfield County, Pennsylvania, nevertheless the Affiants state that they have not owned Lot 241, Section 18, Treasure Lake, Clearfield County, Pennsylvania since May 14<sup>th</sup>, 1984, having validly conveyed and transferred the same to Edmund J. Zitzelberger and Evelyn J. Zitzelberger.

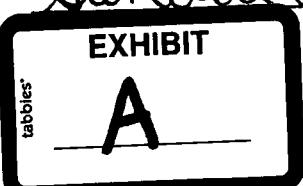
  
KENNETH E. McMILLEN

  
ARLENE A. McMILLEN

SWORN AND SUBSCRIBED BEFORE

ME THIS 21<sup>st</sup> DAY OF JUNE, 2000.

**NOTARIAL SEAL**  
SANDRA A. IRWIN, Notary Public  
Clearfield Boro, Clearfield County, PA  
My Commission Expires, June 3, 2001



AFFIDAVIT

RICHARD A. BELL, Esquire, being duly sworn according to law deposes and states that he is an attorney in the law firm of Bell, Silberblatt & Wood, and is presently representing Kenneth E. McMillen and Arlene A. McMillen. At the request of Mr. and Mrs. McMillen he has checked the office records of Bell, Silberblatt & Wood for information concerning a real estate transaction which took place in 1984 between the McMillens and Edmund J. Zitzelberger and Evelyn J. Zitzelberger.

He further states that the ledger sheet on which a record was kept of the services rendered indicate that his former partner Paul Silberblatt, now deceased, closed a real estate transaction between the McMillens and the Zitzelbergers on May 14, 1984. He also found a letter dictated by Paul Silberblatt dated June 13, 1984, outlining the fact that Zitzelbergers transferred Lot 161, Section 1 of Treasure Lake to McMillens and McMillens in turn transferred Lot 241, Section 18 of Treasure Lake to Zitzelbergers. The letter states that closing of these transactions was held on May 14, 1984.



Richard A. Bell, Esquire

SWORN AND SUBSCRIBED BEFORE  
ME THIS 20<sup>th</sup> DAY OF JUNE 2000.



WILLIAM J. KENNETH E. & SUELYN ZITZELBERGER  
C/O ED & SUELYN ZITZELBERGER, PA  
P.O. BOX 627, CLEARFIELD, 16830

DISTRICT	128 0	C01	018	00241	00	21	01	001	R	000	PRD	080	1000
MAP		SUB-MAP		PARCEL		SUB PCL I		SUB PCL II		CLAS	CARD NO.	CLASS	LAND UCC
CONTROL NUMBER	128082483												
LEGAL DESCRIPTION	L#241 SECTION 18												
STREET/IMP.	SETBACK TRAFFIC												
UTIL.	NONE LITE												

LOT REG	ACTUAL FRONTAGE	EFFECTIVE FRONTAGE	DEPTH	DEPTH	EFFECTIVE UNIT PRICE	FRONTAGE RATE	INFLUENCE FACTOR	LOT VALUE
LOT	65	177	107					2090
LOT								
LOT								
SF								
SF								
SF								
AC								
AC								
AC								
AC								
AC								
AC								
TOTAL ACRES								

2100  
TOTAL LAND VALUE

DWELLING DATA & COMPUTATIONS

STORY HEIGHT/ATTIC  
GROUND FLOOR AREA  
EXTERIOR WALLS  
ADJUSTED BASE  
BASEMENT  
HEAT & A/C  
PLUMBING  
REC ROOM  
FIN. BSMT LIVING AREA  
WBFP  
BASEMENT GARAGE  
HEATING AREA (-)

FIXTURES

PERCENT GOOD

TOTAL DWELLING VALUE

2100

EXHIBIT

W

TOTAL S.F. LIVING AREA

YEAR BUILT

REMODELED

PHYSICAL CONDITION

COU

INTERIOR CONDITION RELATIVE TO EXTR.

OTHER BUILDINGS & YARD

SN	TYPE	QTY YR	SIZE	AREA	GRD	RATE	COND MODEL	MOD CD	RCN

TOTAL DB&Y

2100

APPRAISAL

2100

CURRENT ASSTM

2100

VALUE

SFLA

VALUES	OLD	LAND	634	634	2100	CURRENT ASSMT	VALUE
		BLDG	0	0	0		SFLA
		TOTAL	634	634	2100		

## 12. TREASURE LAKE PROPERTY OWNERS ASSOCIATION, INC.

A. Every person before acquiring title, legal or equitable, to any lot in the Subdivisions must be a member of the Treasure Lake Property Owners Association, Inc., a Pennsylvania non-profit corporation, herein referred to as "Association", and no such person shall acquire such title until he has been approved for membership in the Association, nor shall the owner of a lot or lots in the Subdivisions convey title to said lot or lots to any person who has not been approved in writing for membership in the Association, provided, however, that such membership is not intended to apply to those persons who hold an interest in any such lot merely as security for the performance of an obligation to pay money, e.g., mortgages, deeds of trust, or real estate contract purchases. However, if such a person should realize upon his security and become the real owner of a lot, he will then be subject to all the requirements and limitations imposed in these Restrictions on owners of lots within the Subdivision and on members of the Association, including those provisions with respect to alienation and the payment of an annual charge.

B. The general purpose of the Association is to further and promote the community welfare of property owners in the Subdivisions.

C. The Association shall be responsible for the maintenance, repair and upkeep of the private streets and parks owned by it within the Subdivisions. The Association shall also promulgate and enforce all regulations necessary for the use and enjoyment of such streets and parks and such other properties as it may from time to time own.

D. The Association shall have all the powers that are set out in its Articles of Incorporation and all other powers that belong to it by operation of law, including (but not limited to) the power to levy against every member of the Association a uniform annual charge per single family residential

EXHIBIT

tabbed

C

lot within the Subdivisions, the amount of said charge to be determined by the Board of Directors of the Association after consideration of current maintenance needs and future needs of the Association, for the purposes set forth in its Articles of Incorporation; provided, however, that the uniform annual charge shall in no event be less than \$30.00 per year for road maintenance and after a clubhouse is built, \$7.50 per month for membership in the club. No such charge shall ever be made against, or be payable by, the Declarant, the Association itself, or any corporation or corporations that may be created to acquire title to, and operate, the water or sewer utilities serving the area, or any lakes, dams, beaches, lake access tracts, marinas, golf courses, tennis courts, swimming pools, clubhouse grounds, campgrounds, or other like recreational facilities.

(a) Every such charge so made shall be paid by the member to the Association or its designee on or before the first day of May of each year, for the ensuing year. The Board of Directors of the Association shall fix the amount of the annual charge per lot on or before the first day of April of each year, and written notice of the charge so fixed shall be sent to each member.

(b) If any such charge shall not be paid when due, it shall bear interest from the date of delinquency at the rate of six per cent (6%) per annum. The annual charge shall, if unpaid within 30 days of its due date, become a lien or encumbrance upon the land and acceptance of each deed, not including acceptance by a mortgagee, shall be construed to be a covenant to pay the charge. The

Association may publish the names of the delinquent members, and may record a lien to secure payment of the unpaid charge plus costs and reasonable attorneys' fees. Every such lien may be foreclosed at any time. In addition to the remedy of lien foreclosure, the Association shall have the right to sue for such unpaid charges, interest costs, and reasonable attorneys' fees, in any court of competent jurisdiction as for a debt owed by any delinquent member to the Association. Every person who shall become the owner of the title (legal or equitable) to any lot in the subdivisions by any means shall be conclusively held to have covenanted to pay the Association or its designee all charges that the Association shall make pursuant to any paragraph or subparagraph of these Restrictions or its By-laws. Any lot acquired is taken subject to the lien for any prior unpaid charges.

(c) The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association certifying that the charges on a specified lot have been paid or that certain charges against said lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any charges therein stated to have been paid.

E. The fund accumulated as the result of the charges levied by the Association shall be used exclusively to promote the recreational facilities of, and the health, safety and welfare of the members of the Association and in particular for the improvement and maintenance of the streets, those areas designated as parks, and other property within the Subdivisions which shall have been conveyed to or acquired by the Association.

F. The lien of a mortgage or deed of trust representing a first lien placed upon any lot for the purpose of permanent financing and/or constructing a residence or other improvement thereon recorded in accordance with the laws of Pennsylvania, shall be, from the date of recordation, superior to any and all such liens provided for herein.

G. The Board of Directors of the Association shall have the right to suspend the voting rights (if any) and the right to use of the recreational facilities of the Association or of Declarant of any member:

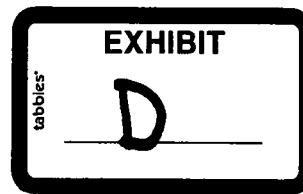
(a) For any period during which any Association charge (including the charges and the fines, if any, assessed under paragraphs 12-D, 13 and 14 of these Restrictions) owed by the member remains unpaid;

(b) During the period of any continuing violation of the restrictive covenants for the Subdivision, "after the existence of the violation shall have been declared by the Board of Directors of the Association;

(c) During the period that any utility bill for water or sewer service rendered to the member or associate member shall remain unpaid.

**SECTION 18, LOT NO. 241 DELINQUENT ASSESSMENTS**

<u>Year</u>	<u>Assessment Amount</u>
1987	138.00
1988	138.00
1989	138.00
1990	138.00
1991	138.00
1992	150.00
1993	150.00
1994	170.00
1995	180.00
1996	365.00
1997	365.00
1998	365.00
1999	465.00
2000	<u>465.00</u>
<b>TOTAL DELINQUENT ASSESSMENTS</b>	<b>\$ 3,365.00</b>



THESE ARE  
FOUR COPIES OF  
THIS AGREEMENT  
OF SALE  
1. White - Agent  
2. Green - Mortgagee  
3. Gold - Buyer  
4. Pink - Seller

# AGREEMENT OF SALE

ZITZELBERGER REALTORS



MAIN OFFICE  
201 NORTH SECOND ST.  
CLEARFIELD, PA. 16830  
PHONE: 814 765-7533

BRANCH OFFICE

1 Date of this Agreement ..... April 3, 1984  
 2 Name of Seller(s) ..... Edmund J. Zitzelberger & Evelyn J. Zitzelberger of 203 N. 2nd.  
 3 St., Clearfield, PA 16830  
 4 Name of Buyer(s) ..... Kenneth E. McMillen & Arlene A. McMillen, his wife, of 619  
 5 Indian Road, Clearfield, PA 16830.  
 6 WITNESSETH, that seller, for the consideration herein after mentioned, does covenant, promise, grant and  
 7 agree, to and with the said buyer, by these presents, that seller shall and will, on or before ..... 4/1/84  
 8 .....  
 9 or during reasonable time thereafter, at the proper cost and charges of the said seller, by deed of special or  
 10 general warranty, well and sufficiently grante, convey and assure unto the said buyer, in fee simple, clear of all  
 11 encumbrances, excepting coal, gas, oil and other mineral rights heretofore sold, reserved or leased, and exist-  
 12 ing building or use restrictions, if any, of record, the following described property, SUBJECT to prior grants  
 13 and reservations of coal, oil, gas, mining rights of way, to building lines, to easements for sewers and utilities  
 14 as the same are now or may be installed, all that certain piece or parcel of ground, located in the (Municipality)  
 15 Township of Sandy, County of Clearfield, and State of Pennsylvania, known as:  
 16 Lot 161, Section 1, Treasure Lake, R.D., Dubois, PA 15801, Part of the.....  
 17 consideration herein is for said seller (Edmund J. Zitzelberger a licensed  
 18 Pennsylvania Real Estate Broker) taking said McMillens herein lot 241, section  
 19 18 of Treasure Lake, Sandy Township, Dubois, PA 15801 in on trade for the  
 20 trade-in sum of Four Thousand (\$4,000) Dollars. Transfer taxes to be evenly  
 21 split between buyer & seller.  
 22 consisting of a parcel of ground measuring approximately 85' Av. x 200' + for lot 161, section 1.  
 23 Being the same property recorded in Deed Book Vol. 770, page 178, Deed Book Vol. ..... page .....  
 24 In consideration whereof buyer, doth covenant, promise and agree, to and with seller, by these presents; that  
 25 buyer, shall and will well and truly pay or cause to be paid unto said seller, the total sum of Sixteen Thous-  
 26 and and no/100----- and 00/100 dollars (\$16,000.00-----)  
 27 One----- and 00/100 dollars (\$1,00-----)  
 28 Cash (  ) Check (  ) Certified Funds (  ) Note (  ) Other (  )  
 29 upon the signing of this agreement; the additional sum of ..... none  
 30 ..... and 00/100 dollars (\$..... none  
 31 to be immediately due and payable, upon the owner's acceptance of this agreement which date is of the essence  
 32 of this agreement and the balance of Sixteen Thousand - \$1,00 and 00/100 dollars (\$15,999.00-----)  
 33 in cash, at or before the delivery of the deed. Deed Transfer Taxes will be paid by buyer and seller as follows:  
 34 evenly split between buyer & seller.  
 35 The earnest money paid under this contract is to be held in escrow by the Broker pending consummation or  
 36 termination of this agreement.  
 37 Taxes, interest, ..... and rents to be pro-rated as of day of sale completion.  
 38 Possession to be given immediately upon sale completion.  
 39 This agreement is made subject to the buyer securing a monthly amortizing conventional mortgage in the amount  
 40 of \$ not applicable at an interest rate not to exceed ..... % for a term not less than ..... years. The  
 41 Buyer agrees to apply for said mortgage on or before Not Applicable. In the event the Buyer is  
 42 unable to secure the above mortgage, then the Buyer shall have the option of cancelling this agreement by  
 43 written notice to Selling Realtor on or before Not Applicable. The Seller hereby agrees that the  
 44 Selling Realtor, after determining that the Buyer is unable to obtain said mortgage, shall have the right and  
 45 is hereby authorized to return all band monies to the Buyer upon receiving said written notice as stated above  
 46 and the buyer and seller shall then become null and void and shall be of no effect.  
 47 Seller, now, for services rendered, agrees to pay the said agent ..... of the sale price as agent's commission.  
 48 it is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser shall not be  
 49 obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of  
 50 earnest money deposits or otherwise unless the seller has delivered to the purchaser a written statement  
 51 issued by the Federal Housing Commissioner or Veterans Administration setting forth the appraised value of  
 52 the property for mortgage insurance purposes of not less than Not Applicable. which statement the seller  
 53 hereby agrees to deliver to the purchaser promptly after such appraised value statement is made available to  
 54 the seller. The buyer shall, however, have the privilege and option of proceeding with the consummation of  
 55 this contract without regard to the amount of the appraised valuation made by the Federal Housing Commis-  
 56 sioner. The FHA Clause is (  ) is not (  ) applicable. The VA Clause is (  ) is not (  ) applicable.  
 57 ASSUMPTION CLAUSE: It is understood and agreed between the parties hereto that as a part of the consider-  
 58 ation stated in this agreement, the seller(s) hereby agree(s) to permit the buyer(s) to assume their existing  
 59 mortgage debt, balance being approximately \$..... Not Applicable, more or less, paid current by seller(s) to date  
 60 of settlement. The buyer(s) hereby agree(s) to assume and promise(s) to pay said balance according to the  
 61 original terms of said mortgage. In the event that seller(s) mortgage is not assumable, then the buyer(s) agree(s)

COPY

EXHIBIT

E

62 to secure other claims and  
63 title, privileges and interest in a certain

account relate to it above mentioned  
64 THE ABOVE ASSUMPTION CLAUSE IS (  )  
S NOT (  ) APPLICABLE.

65 If the F.I.A. VA, or Lending Institution Appraisal is less than the sale price (Total Sum) in this contract, the  
66 Seller(s) have up to and including the tenth (10th) day after date of said Commitment for Insurance (F.I.A.),  
67 Certificate Of Reasonable Value (VA), or Lending Institution Appraisal, whichever, if any, is applicable, to  
68 accept the lower value as the Selling Price, thus making this contract enforceable and legally binding among  
69 or between all parties concerned, with the monetary amounts in this contract changing correspondingly.

70 The Seller warrants and represents that the title to the above premises is good and marketable. This contract

71 is signed in quadruplicate and each individual copy hereof shall constitute an original.

72 It is understood and agreed between the parties that the description of the property above, shall be sufficient

73 and it is intended to be legally binding, but it is agreed that at any time, a legal description of the property by

74 metes and bounds may be made a part hereof, by a separate sheet of paper attached to this form.

75 TOGETHER with all and singular the buildings, improvements, and other the premises hereby demised, with

76 the appurtenances, it being understood that gas and electric fixtures, heating and plumbing systems, and laun-

77 dry tubs installed in said buildings, together with screens, shades, awnings, and all trees, shrubbery and

78 plants, now in or on the premises herein intended to be conveyed are also included in the within sale. The

79 seller(s) further agree(s) to pay the mortgage placement fee (discount points) as specified on the estimated

80 closing cost sheet, the latter provided and acknowledged as having been received herewith.

81 ~~the buyer agrees to take out adequate insurance~~

82 ~~for the buildings and improvements~~

83 Should the buyer fail to make settlement, as herein provided, the sum or sums paid on account of the purchase

84 price, at the option of the seller, may be retained by the seller, either on account of the purchase money, or as

85 liquidated damages. In the latter case the contract shall become null and void. In the latter event, all monies

86 paid on account shall be divided equally between the seller and the broker, but in no event shall the sum paid

87 to the broker be in excess of the rate of commission due him.

88 It is understood between the parties that the property herein sold has been inspected by the buyer, or his or

89 their agent, and that the same is being purchased as a result of such inspection. It is understood that the Brok-

90 er above named, is acting as agent only in bringing the buyer and seller together and will in no case whatso-

91 ever be held liable to either party for the performance of any term or covenant of this agreement or for damages

92 for non-performance thereof. The buyer hereby acknowledges receipt of an estimated closing cost sheet.

93 This agreement shall extend to and be binding upon the heirs, executors, administrators, successors and as-

94 signs of the parties hereto. Whenever used in this agreement, the singular number shall include the plural, the

95 plural the singular, and the use of any gender shall be applicable to all genders.

96 NOTICE - THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO

97 THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO

98 HEREIN AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO

99 REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE

100 OF THE LAND AND ANY USE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. (This notice

101 is set forth in a manner provided in Section 1 of the Act of July 17, 1957, P.L. 984)

102 NOTICE - "BUYER ACKNOWLEDGES THAT HE MAY NOT BE OBTAINING THE RIGHT OF PROTECTION

103 AGAINST SUBSIDENCE RESULTING FROM COAL MINING OPERATIONS, AND THAT THE PROPERTY

104 DESCRIBED HEREIN MAY BE PROTECTED FROM DAMAGE DUE TO MINE SUBSIDENCE BY A PRIVATE

105 CONTRACT WITH THE OWNERS OF THE ECONOMIC INTERESTS IN THE COAL. THIS ACKNOWLEDGE-

106 MENT IS MADE FOR THE PURPOSE OF COMPLYING WITH THE PROVISIONS OF SECTION 14 OF THE

107 BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT OF APRIL 27, 1966." BUYER AGREES

108 TO SIGN THE DEED FROM SELLER IF SAID DEED CONTAINS THE AFORESAID PROVISION.

109 THE BUYER(S) AND SELLER(S) ACKNOWLEDGE RECEIPT OF A FULLY COMPLETED AND EXECUTED

110 COPY OF THIS AGREEMENT AND SAID COPY TRUTHFULLY, FAIRLY AND COMPLETELY CONSTITUTES

111 THE ENTIRE AGREEMENT OF THE PARTIES. NO ORAL PROMISES OR REPRESENTATIONS OF ANY

112 KIND HAVE BEEN MADE.

113 IN WITNESS WHEREOF, the said buyers have hereunto set their hands and seals the day and year first above

114 written and in a like manner the seller on the following stated date.

WITNESS:

*Shirley Please*

*Kenneth E. McMillen*

(SEAL)

*Arlene A. McMillen*

(SEAL)

*(Arlene A. McMillen)*

(SEAL)

WITNESS:

.....

*Edmund J. Zitzelberger*

(SEAL)

*(Edmund J. Zitzelberger)*

(SEAL)

*Evelyn J. Zitzelberger*

(SEAL)

*(Evelyn J. Zitzelberger)*

(SEAL)

April 3, 1984

Date ..... April 3, 1984

# DEED

MADE the 14th day of May, 1984 between KENNETH E. McMILLEN and ARLENE A. McMILLEN, his wife, of 2535 Meadow Road, Clearfield Clearfield County, Pennsylvania 16830, parties of the First Part, hereinafter called "GRANTORS".

A

N

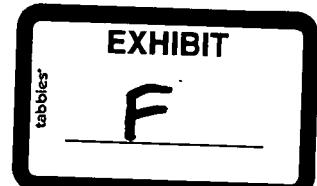
D

EDMUND J. ZITZELBERGER and EVELYN J. ZITZELBERGER, husband and wife, of 215 Smith Street, Clearfield, Clearfield County, Pennsylvania 16830 as Tenants By The Entireties parties of the Second Part, hereinafter called "GRANTEEES".

WITNESSETH, that in consideration of Four Thousand (\$4,000.00) Dollars in hand paid, the receipt whereof is hereby acknowledged, Grantors do hereby grant and convey to the Grantees as follows:

KAREN L. STARCK	REGISTER AND RECORDER	CLEARFIELD COUNTY	Pennsylvania
INSTRUMENT NUMBER	RECORDED ON	REC'D	
2000008712	Jun 21, 2000	11:14:27 AM	
RECORDING FEES -	\$13.00		
RECORDER	\$1.00		
COUNTY IMPROVEMENT FUND	\$1.00		
RECORDER	\$1.00		
IMPROVEMENT FUND			
STATE TRANSFER TAX	\$40.00		
STATE WRIT TAX	\$0.50		
SANDY TOWNSHIP	\$20.00		
DOBOIS AREA SCHOOLS	\$20.00		
TOTAL	\$95.50		

*Richard Bee*



tabbies

ALL that certain tract of land designated as Lot No 241, Section 18 Mayaguana in the Treasure Lake Sub-division in Sandy Township, Clearfield County, Pennsylvania recorded in the Recorder of Deeds Office in Miscellaneous Docket Map File No. 25.

Excepting and Reserving therefrom and subject to:

1. All easements, rights-of-way, reservations, restrictions and limitations shown or contained in prior instruments or recorded in the aforesaid recorded plan.
2. The Declaration or Restriction, Treasure Lake, Inc. recorded in Miscellaneous Book Volume 146 at Page 476; all of said restrictions being covenants which run with the land.
3. All minerals and mining liens of every kind and nature.
4. A lien for all unpaid charges or assessments as may be made by Grantor of Treasure Lake Property Owners Association, Inc; which lien shall run with the land and be an encumbrance against it.
5. The right of the owner or operator of the recreational facilities within the said Treasure Lake Subdivision to assess fees and charges against grantee for the use and/or maintenance of these facilities which if unpaid, shall become a lien upon the land and be an encumbrance against it.

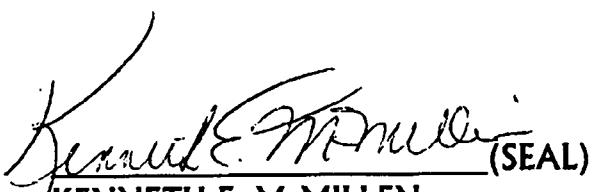
BEING the same premises which Donald W. Rankin and Ruth A. Rankin, his wife, conveyed to the Grantors herein by Deed dated the 22<sup>nd</sup> day of September 1975, said Deed being recorded in the office of the Recorder of Deeds in Deed Book 708 at Page 082.

This Deed is given to confirm a prior Deed for the same property between these parties which was dated May 14, 1984, but was never placed on record. The said Deed was given to carry out the terms of an Agreement Of Sale between the parties dated April 3<sup>rd</sup>, 1984 on which Zitzelbergers accepted this lot from McMillens as a trade-in and partial payment for another lot which Zitzelbergers sold to McMillens.

NOTICE--THIS DOCUMENT MAY NOT (DOES NOT) SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE (HAVE) THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND, THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE, CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. [This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P. L. 984, as amended]

IN WITNESS WHEREOF, said Grantors have hereunto set their hands and seals the day and year first above written.

SEALED AND DELIVERED  
THE PRESENCE OF

  
KENNETH E. McMILLEN (SEAL)

  
ARLENE A. McMILLEN (SEAL)

## NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1966" I/we, the undersigned grantees, hereby certify that I/we know and understand that I/we may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal. I/we further certify that this certification is in a color contrasting with that in the deed proper and is printed in twelve point type preceded by the word "notice" printed in twenty-four point type.

Witness: NTS

Edmund J. Zitzelberger

Evelyn J. Zitzelberger

This \_\_\_\_\_ day of \_\_\_\_\_

COMMONWEALTH OF PENNSYLVANIA:

:SS

COUNTY OF CLEARFIELD :

On this the 21st day of June, 2000, before me, the undersigned officer personally appeared KENNETH E. McMILLEN and ARLENE A. McMILLEN, his wife, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

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

Sandra A. Irwin

NOTARIAL SEAL  
SANDRA A. IRWIN, Notary Public  
Clearfield Boro, Clearfield County, PA  
Commission Expires, June 3, 2001

CERTIFICATE OF RESIDENCE

The undersigned hereby certifies that precise residence and complete post office address of the within Grantees is: 215 Smith Street, Clearfield, PA 16830.

Richard A. Bell  
Richard A. Bell, Esquire

## IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

## CIVIL DIVISION

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,  
a Pennsylvania corporation,  
13 Treasure Lake  
DuBois, Pa. 15801

Plaintiff

vs.

KENNETH E. McMILLEN

ARLENE A. McMILLEN

c/o EDMUND ZITZELBERGER

P. O. BOX 627

CLEARFIELD, PA 16830

Defendant

No. 89-2049- DSBLIEN

By virtue of the power and authority vested in the Treasure Lake Property Owners Association, Inc., by the Declaration of Restrictions dated May 28, 1968, and recorded in the Recorder of Deeds Office in and for Clearfield County in Miscellaneous Book 146, Page 476, which is incorporated herein by reference, and which run with the land binding all purchasers thereunder, and more particularly as authorized by Section 12-D-(b) thereof; a lien is hereby filed against the above named owner or reputed owner and the land hereinafter designated for the years and in the amounts as follows:

All that certain tract of land designated as Lot No. 241, Section No. 18 in the Treasure Lake Subdivision of Sandy Township, Clearfield County, Pennsylvania as recorded in Miscellaneous Docket Map File No. 25.

Assessment Years	Amounts Due
<u>1987</u>	\$ <u>138.00</u>
<u>1988</u>	\$ <u>138.00</u>
<u>1989</u>	\$ <u>138.00</u>
	Total Debt \$ <u>414.00</u>
	Attorneys Fees \$ <u>62.10</u>
	Costs \$ <u>15.00</u>

Together with interest from the 1st day of January following the year for which the assessment was made.

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.

By

Agent

NOTARIAL SEAL  
LINDA J. CRAWFORD, NOTARY PUBLIC  
SANDY TWP., CLEARFIELD COUNTY, PA  
MY COMMISSION EXPIRES NOVEMBER 12, 1989

## AFFIDAVIT AND CERTIFICATION OF ADDRESS

STATE OF PENNSYLVANIA :  
: SS:

COUNTY OF CLEARFIELD :

Before me, the undersigned authority, personally appeared the undersigned who having been authorized by the Board of Directors of the Treasure Lake Property Owners Association, Inc., to prepare and file liens against all delinquent property owners, after being sworn, does depose and say that the above named property owner or reputed owner is in default as above set forth and after demand has for thirty days failed to make payment; and that the above address is the last known address of the said Defendant.

Swear to and subscribed before me this 2nd day of  
November 1989

\_\_\_\_\_  
Linda J. Crawford

Notary Public

EXHIBIT

G

Tables

**VERIFICATION**

I, MATTHEW S. BEGLEY, General Manager of TREASURE LAKE PROPERTY OWNERS ASSOCIATION, INC., being duly authorized to make this Verification, have read the foregoing Complaint. The statements therein are true and correct to the best of my personal knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

  
\_\_\_\_\_  
Matthew S. Begley, General Manager  
Treasure Lake Property Owners  
Association, Inc.

FILED

AUG 22 2000  
238 Acty Dags  
William A. Shaw  
Prothonotary  
PD \$80.00  
JCE Sherry

(2)

MICHAEL P. YEAGER

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

TREASURE LAKE PROPERTY OWNERS  
VS  
ZITZELBERGER, EDMUND J.

00-1032-CD

COMPLAINT IN ASSUMPSIT

SHERIFF RETURNS

NOW AUGUST 29, 2000 AT 7:14 PM DST SERVED THE WITHIN  
COMPLAINT IN ASSUMPSIT ON EDMUND J. ZITZELBERGER, DEFENDANT  
AT RESIDENCE 215 SMITH ST., P.O. BOX 627, CLEARFIELD,  
CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO EDMUND J.  
ZITZELBERGER A TRUE AND ATTESTED COPY OF THE ORIGINAL  
COMPLAINT IN ASSUMPSIT AND MADE KNOWN TO HIM THE CONTENTS  
THEREOF.

SERVED BY: SNYDER

NOW AUGUST 29, 2000 AT 7:14 PM DST SERVED THE WITHIN  
COMPLAINT IN ASSUMPSIT ON EVELYN J. ZITZELBERGER, DEFENDANT  
AT RESIDENCE 215 SMITH ST., P.O. BOX 627, CLEARFIELD,  
CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO EDMUND J.  
ZITZELBERGER, HUSBAND A TRUE AND ATTESTED COPY OF THE  
ORIGINAL COMPLAINT IN ASSUMPSIT AND MADE KNOWN TO HIM THE  
CONTENTS THEREOF.

SERVED BY: SNYDER

26.33 SHFF. HAWKINS PAID BY: ATTY.  
20.00 SURCHARGE PAID BY: ATTY.

SWORN TO BEFORE ME THIS

6th DAY OF September 2000  
William A. Shaw

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

SO ANSWERS,

*Chester A. Hawkins  
by Marly Harry*

CHESTER A. HAWKINS  
SHERIFF

FILED

SEP 06 2000

01/04/01

William A. Shaw  
Prothonotary

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

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION, INC.,

Plaintiff,

vs.

EDMUND J. ZITZELBERGER, and  
EVELYN J. ZITZELBERGER,

Defendants.

Case No.: 2000-1032-CD

**FILED**

OCT 02 2000

01/02/01 W

William A. Shaw

Prothonotary

3 Cents to Offr.

EJL  
KJL

**ANSWER AND NEW MATTER**

COME NOW, Defendants, Edmund J. Zitzelberger and Evelyn J. Zitzelberger with their  
*Answer* and state:

1. Denied. After reasonable investigation, Defendants are without information sufficient to form a belief as to the truth of the averments set forth in Paragraph 1 of Plaintiff's *Complaint* and, therefore, deny the same.
2. Admitted in part and denied in part. Defendants admit the averments as set forth in Paragraph 2 of Plaintiff's *Complaint* excepting that the address of their residence no longer includes P.O. Box 627. All other averments of Paragraph 2 are admitted.
3. Admitted.
4. Admitted in part and denied in part. Defendants admit that Lot 241 was transferred to Defendants by virtue of a deed that was not recorded. Defendants deny all other averments of Paragraph 4 of Plaintiff's *Complaint* except as specifically admitted.
5. Admitted in part and denied in part. Defendants admit that Plaintiff has provided attachments denominated by Plaintiff as "Exhibit A" with its *Complaint* that purport to be Affidavits as set forth in Paragraph 5 of Plaintiff's *Complaint*. However, Defendants deny the truth of any and all factual statements Plaintiff offers in Exhibit A of its *Complaint*.
6. Admitted.
7. Denied.
8. Admitted in part and denied in part. Defendants admit that the deed evidencing their ownership of Lot 241 is subject to the Declaration of Restrictions, Treasure

Lake, Inc., as stated in Paragraph 8 of Plaintiff's *Complaint*. However, Defendants are without information sufficient to form a belief as to the truth of the averments set forth in Paragraph 8 of Plaintiff's *Complaint* regarding any other Treasure Lake deed, and, therefore, deny the same. Defendants deny all other averments of Paragraph 4 of Plaintiff's *Complaint* except as specifically admitted.

9. Admitted in part and denied in part. Defendants admit that a Declaration of Restrictions, Treasure Lake, Inc., is recorded with the Clearfield County Recorder's Office. However, Defendants aver that the document speaks for itself and, accordingly, deny any averments by Plaintiff that are inconsistent with written terms of the document.
10. Admitted in part and denied in part. Defendants admit that they received various notices from Plaintiff sent to the McMillens in care of Defendants to Defendants' address. Defendants deny all other averments of Paragraph 10 of Plaintiff's *Complaint*.
11. Admitted in part and denied in part. Defendants admit that they received various notices from Plaintiff sent to the McMillens in care of Defendants to Defendants' address. Defendants deny all other averments of Paragraph 11 of Plaintiff's *Complaint*.
12. Denied. After reasonable investigation, Defendants are without information sufficient to form a belief as to the truth of the averments set forth in Paragraph 12 of Plaintiff's *Complaint* and, therefore, deny the same.
13. Denied. After reasonable investigation, Defendants are without information sufficient to form a belief as to the truth of the averments set forth in Paragraph 13 of Plaintiff's *Complaint* and, therefore, deny the same.
14. Denied. After reasonable investigation, Defendants are without information sufficient to form a belief as to the truth of the averments set forth in Paragraph 14 of Plaintiff's *Complaint* and, therefore, deny the same.
15. Denied.
16. Denied.
17. Denied.
18. Admitted in part and denied in part. Defendants admit that a Declaration of Restrictions, Treasure Lake, Inc., is recorded with the Clearfield County Recorder's Office. However, Defendants aver that the document speaks for itself and, accordingly, deny any averments by Plaintiff that are inconsistent with written

terms of the document.

19. Admitted in part and denied in part. Defendants admit that they have not paid to Plaintiff the amounts Plaintiff believes it is owed. Defendants deny all other averments of Paragraph 19 of Plaintiff's *Complaint*.

**COUNT I**  
**BREACH OF CONTRACT**

20. No response is required by Paragraph 20 of Plaintiff's *Complaint*.
21. Denied.

**COUNT II**  
**QUASI CONTRACT**

22. No response is required by Paragraph 22 of Plaintiff's *Complaint*.
23. Denied. After reasonable investigation, Defendants are without information sufficient to form a belief as to the truth of the averments set forth in Paragraph 23 of Plaintiff's *Complaint* and, therefore, deny the same.
24. Denied.
25. Denied.

**COUNT III**  
**CONTRACT IMPLIED IN FACT**

26. No response is required by Paragraph 26 of Plaintiff's *Complaint*.
27. Denied.

**NEW MATTER**

*Statute of Limitations*

28. DEFENDANTS INCORPORATE PARAGRAPHS 1-27 AS IF SET OUT IN FULL.
29. Plaintiff's claims are barred by applicable statute of limitations.

WHEREFORE, Defendants request that Plaintiff's claims be denied and its *Complaint* be dismissed.

Respectfully submitted,

Edmund J. Zitzelberger

Edmund J. Zitzelberger  
215 Smith Street  
Clearfield, PA 16830  
(814) 765-5003

Evelyn J. Zitzelberger

Evelyn J. Zitzelberger  
215 Smith Street  
Clearfield, PA 16830  
(814) 765-5003

*Hand DELIVERED*  
*Certificate of Service by Mail*

I certify that on 10/2/00, 2000, a true and accurate copy of the foregoing was served pursuant to Pa.R.C.P. No. 440 by ~~delivery to the U.S. Mail, postage pre-paid; and~~ addressed to:

*Hand*

Michael P. Yeager, Esq.  
P.O. Box 752  
110 North Second Street  
Clearfield, PA 16830

*Edward J. Gilley, Jr.*

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

TREASURE LAKE PROPERTY OWNERS :  
ASSOCIATION, INC., :  
Plaintiff :  
: No. 00 - 1032 - CD  
vs :  
: EDMUND J. ZITZELBERGER and :  
EVELYN J. ZITZELBERGER, :  
Defendants :  
:

**MOTION FOR JUDGMENT ON THE PLEADINGS**

COMES NOW, the Plaintiff by and through its attorney, Michael P. Yeager, Esquire, and files the within Motion for Judgment on the Pleadings pursuant to Rule 1034 of the Pennsylvania Rules of Civil Procedure. In Support of its Motion, Plaintiff sets forth the following:

1. The pleadings indicate the following factual items that are either undisputed or have otherwise been admitted:

(a) A Deed to Section 18, Lot 241 located within the Treasure Lake Subdivision of Sandy Township, Clearfield County, Pennsylvania (hereinafter "Lot 241") was transferred to Defendants by virtue of an unrecorded Deed dated May 14, 1984. (See Plaintiff's Complaint and Defendants' Answer and particularly Paragraphs 4, 6 and 8).

(b) Lot 241 is otherwise subject to the Declaration of Restrictions, Treasure Lake, Inc., recorded in Clearfield County Misc. Book Vol. 146, page 476 (hereinafter "Restrictions"). (See Plaintiff's Complaint and Defendants'

Answer and particularly Paragraphs 8, 9 and 18).

(c) Pursuant to the Restrictions, Plaintiff forwarded notices as to annual charges authorized by the Restrictions which notices were, in fact, received by Defendants (see Plaintiff's Complaint and Defendants' Answer and particularly Paragraphs 10 and 11).

(d) Although Defendants deny the summary of the amounts due for yearly assessments through calendar year 2000 (in the form of a lack of information as to the truth or falsity of the same), Defendants did admit to receipt of the invoices for those yearly assessments through calendar year 2000 (See Plaintiff's Complaint and Defendants' Answer and particularly Paragraphs 10, 11 and 12).

(e) Plaintiff has averred in Paragraph 16 that the amounts due and as set forth in its Complaint for the assessment years are the fair, reasonable and actual annual assessment charges. Defendants' general denial to the same constitutes an admission as to the fair, reasonable and actual charges for the indicated years (see Plaintiff's Complaint and Defendants' Answer and particularly Paragraph 16 as well as Rule 1029(b) of the Pennsylvania Rules of Civil Procedure which specify that a general denial shall have the effect of an admission).

(f) In its Complaint, Plaintiff has claimed, in addition to the assessments, interest in the amount of six (6%) percent per annum as provided by the Restrictions.

Defendants' general denial in that regard also constitutes an admission as per Rule 1029(b) of the Rules of Civil Procedure. (See Plaintiff's Complaint and Defendants' Answer and particularly Paragraph 17).

(g) Plaintiff has also claimed the right to receive reasonable attorney's fees as provided by the Restrictions. Defendants' response does not specifically deny that Plaintiff has the right to claim reasonable attorney's fees as provided in the Restrictions and accordingly admits the same. (See Plaintiff's Complaint and Defendants' Answer and particularly Paragraph 18).

(h) Plaintiff's Complaint sets forth causes of action based in breach of contract, quasi-contract and contract implied in fact. Defendants' general denial of those allegations constitutes an admission as provided by Rule 1029(b) of the Pennsylvania Rules of Civil Procedure. (See Plaintiff's Complaint and Defendants' Answer and particularly Paragraphs 21, 24, 25 and 27).

2. Plaintiff has claimed assessments and interest for the years 1987 through 2000, inclusive. Defendants have indicated that "...Plaintiff's claims are barred by applicable statute of limitations". (See Defendants' New Matter Paragraph 29). However, Defendants have previously admitted to having failed to record the Deed given to them transferring ownership of Lot 241. Defendants' failure to record the Deed prevented Plaintiff from indicating the correct owner as Defendants. Finally, Defendants

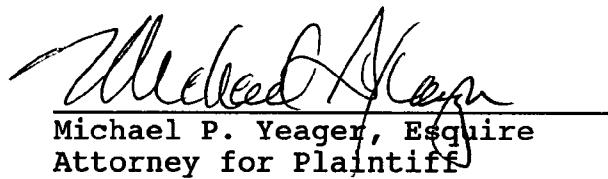
admit to having received the Notices as to the annual assessments in question. Therefore, Plaintiff's claims should not be barred by any applicable statute of limitations by virtue of Defendants' voluntary actions as set forth above.

3. Accordingly, there are no genuine issues of any material facts other than Plaintiff's claim for reasonable attorney's fees.

4. Furthermore, there is no additional information and no other element of any defense that can be developed that will otherwise contradict or impair the essentially admitted facts as set forth above.

WHEREFORE, Plaintiff prays that a judgment on the pleadings be entered in its favor and against Defendants in the amount of Three Thousand Three Hundred Sixty-Five (\$3,365.00) Dollars, together with continuing interest or in such other amount determined to be appropriate; and that this case otherwise be scheduled for a determination as to reasonable attorney's fees.

Respectfully submitted:



\_\_\_\_\_  
Michael P. Yeager, Esquire  
Attorney for Plaintiff

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

TREASURE LAKE PROPERTY OWNERS :  
ASSOCIATION, INC., :  
Plaintiff :  
: No. 00 - 1032 - CD  
vs :  
: EDMUND J. ZITZELBERGER and :  
EVELYN J. ZITZELBERGER, :  
Defendants :  
:

CERTIFICATE OF SERVICE

I, Michael P. Yeager, hereby certify that I served a true and correct copy of the foregoing Motion for Judgment on the Pleadings by First Class U.S. Mail, this 11<sup>th</sup> day of October, 2000, upon the Defendants as follows:

Edmund J. Zitzelberger  
Evelyn J. Zitzelberger  
215 Smith Street  
Clearfield, PA 16830

  
Michael P. Yeager, Esquire  
Attorney for Plaintiff

**FILED**

OCT 11 2000  
O/S/ *EW*  
William A. Shaw  
Prothonotary

*att  
Leay*

*Local Office*  
MICHAEL P. YEAGER  
P. O. BOX 752  
110 NORTH SECOND STREET  
CLEARFIELD, PENNSYLVANIA 16830  
(814) 765-9811

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

TREASURE LAKE PROPERTY OWNERS : NO. 00 - 1032 - CD  
ASSOCIATION, INC., :  
Plaintiff : Type of Case: Assumpsit  
vs : Type of Pleading: Reply to New  
Matter :  
EDMUND J. ZITZELBERGER and : Filed on Behalf of: Plaintiff  
EVELYN J. ZITZELBERGER, :  
Defendants : Counsel of Record for this Party:  
: Michael P. Yeager, Esq.  
: Supreme Court No.: 15587  
: P.O. Box 752  
: 110 North Second Street  
: Clearfield, PA 16830  
: : (814) 765-9611

**FILED**

OCT 11 2000

William A. Shaw  
Prothonotary

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

TREASURE LAKE PROPERTY OWNERS :  
ASSOCIATION, INC., :  
Plaintiff :  
: No. 00 - 1032 - CD  
vs :  
: EDMUND J. ZITZELBERGER and :  
EVELYN J. ZITZELBERGER, :  
Defendants :  
:

REPLY TO NEW MATTER

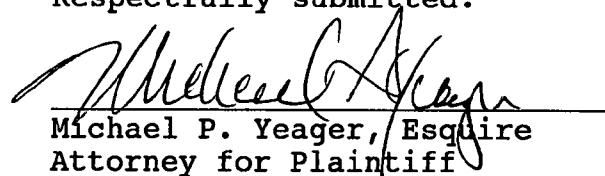
COMES NOW, the Plaintiff by and through its attorney,  
Michael P. Yeager, Esquire, and files the within Reply to New  
Matter whereof the following is a statement:

28. To the extent necessary, Plaintiff incorporates the  
facts and allegations contained in its Complaint as if set forth  
herein at length.

29. Paragraph 29 of Defendants' New Matter pleads a  
conclusion of law to which no response is required. However, to  
the extent that a response is required, Plaintiff avers that  
Defendants received Notices as to all bills claimed in  
Plaintiff's Complaint; and otherwise prevented the forwarding of  
bills to the correct owner by their voluntary failure to record  
the Deed as described in Plaintiff's Complaint and admitted in  
Defendants' Answer.

WHEREFORE, Plaintiff requests that judgment be entered it  
its favor as against Defendants in the amount or amounts  
described in its Complaint.

Respectfully submitted:

  
Michael P. Yeager, Esquire  
Attorney for Plaintiff

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

TREASURE LAKE PROPERTY OWNERS :  
ASSOCIATION, INC., :  
Plaintiff :  
: No. 00 - 1032 - CD  
vs :  
: EDMUND J. ZITZELBERGER and :  
EVELYN J. ZITZELBERGER, :  
Defendants :  
:

CERTIFICATE OF SERVICE

I, Michael P. Yeager, hereby certify that I served a true and correct copy of the foregoing Reply to New Matter in the above-captioned matter by First Class U.S. Mail, this 11<sup>th</sup> day of October, 2000, upon the Defendants as follows:

Edmund J. Zitzelberger  
Evelyn J. Zitzelberger  
215 Smith Street  
Clearfield, PA 16830



Michael P. Yeager, Esquire  
Attorney for Plaintiff

**FILED**

OCT 11 2000  
01/15/01 cc  
William A. Shaw  
Prothonotary

*cc  
Kao  
8*

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

TREASURE LAKE PROPERTY :  
OWNERS ASSOCIATION, INC. :  
: :  
-vs- : No. 00-1032-CD  
: :  
EDMUND J. ZITZELBERGER and :  
EVELYN J. ZITZELBERGER : :  
: :

**ORDER**

NOW, this 4<sup>th</sup> day of December, 2000, following argument in the above-captioned matter, it is the ORDER of this Court that a continuance shall be granted for 30 days at which time a status conference will be scheduled.

By the Court,  
\_\_\_\_\_  
President Judge

**FILED**

DEC 05 2000

William A. Shaw  
Prothonotary

FILED

DEC 05 2000

10/3/00  
William A. Shaff  
Prothonotary

lcc D. Zittelbauer

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

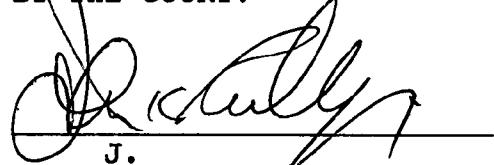
TREASURE LAKE PROPERTY OWNERS :  
ASSOCIATION, INC., :  
Plaintiff :  
: No. 00 - 1032 - CD  
vs :  
: EDMUND J. ZITZELBERGER and :  
: EVELYN J. ZITZELBERGER, :  
Defendants :  
:

ORDER OF COURT

AND NOW, this 8<sup>th</sup> day of January, 2001, after  
consideration of Plaintiff's Motion for Judgment on the  
Pleadings, its Brief as well as Defendants' Reply and Brief  
relative to that same Motion; and further upon Stipulation of the  
parties, it is hereby

ORDERED, ADJUDGED and DECREED that judgment shall be entered  
in the above-entitled matter (00-1032-CD) in favor of Plaintiff  
and as against Defendants in the amount of \$1,660.00 representing  
assessments due Plaintiff for the past four (4) years and namely  
for assessment years 1997 through the year 2000 inclusive. This  
delinquent amount shall bear interest at the rate of six (6%)  
percent per annum.

BY THE COURT:



FILED

JAN 08 2001

William A. Shaw  
Prothonotary

**FILED**

O/3/49 R/W  
JAN 08 2001

2CC

Atty Keager

William A. Shaw  
Prothonotary

Statement

*cc to Atty Keager*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY ,  
PENNSYLVANIA  
STATEMENT OF JUDGMENT

**COPY**

Treasure Lake Property Owners Assoc., Inc.  
Plaintiff(s)

No.: 2000-01032-CD

Real Debt: \$1,660.00

Atty's Comm:

Vs. Costs: \$

Int. From:

Edmund J. Zitzelberger  
Evelyn J. Zitzelberger  
Defendant(s)

Entry: \$

Instrument: Court Ordered Judgment

Date of Entry: January 8, 2001

Expires: January 8, 2006

Certified from the record this 8th of January, 2001

---

William A. Shaw, Prothonotary

\*\*\*\*\*

SIGN BELOW FOR SATISFACTION

Received on \_\_\_\_\_, \_\_\_\_\_, of defendant full satisfaction of this Judgment, Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

---

Plaintiff/Attorney