

00-1035-CD  
M. Plusquellec vs John Gallagher

80

00-1035-CD  
MERLE PLUSQUELLEC et ux -vs- JOHN E. GALLAGHER et al

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

(b) MERLE PLUSQUELLEC and (b) LOIS  
JEAN PLUSQUELLEC, husband and  
wife,  
Plaintiffs

CIVIL DIVISION

No. 00 - 1035 - CD

Vs.

(b) JOHN E. GALLAGHER and  
(b) GENEVIEVE M. GALLAGHER,  
Defendants

COMPLAINT IN ACTION TO QUIET  
TITLE

Filed on Behalf of:

Plaintiffs, MERLE PLUSQUELLEC  
and LOIS JEAN PLUSQUELLEC

Counsel of Record for This  
Party:

JOHN R. RYAN, ESQUIRE  
Pa. I.D. #38739

COLAVECCHI RYAN & COLAVECCHI  
221 East Market Street  
P. O. Box 131  
Clearfield, PA 16830

814/765-1566

**FILED**

AUG 23 2000

**William A. Shaw  
Prothonotary**

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

MERLE PLUSQUELLEC and LOIS JEAN :  
PLUSQUELLEC, husband and wife, : No. 00 - - CD  
Plaintiffs:  
:  
vs.  
:  
:  
JOHN E. GALLAGHER and GENEVIEVE M. :  
GALLAGHER, :  
Defendants:  
:

N O T I C E

You have been sued in Court. If you wish to defend against the claims set forth as above, you must take action within twenty (20) days after the Complaint has been filed and this Notice has been posted in the newspaper, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to all 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 Plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER OR A COPY OF THIS NOTICE 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.

LAW OFFICES OF  
COLAVECCHI  
RYAN & COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
2nd & Market Streets  
Clearfield, PA 16830

Phone (814) 765-2641 Ex. 5982

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

MERLE PLUSQUELLEC and LOIS JEAN :  
PLUSQUELLEC, husband and wife, : No. 00 - - CD  
Plaintiffs:  
vs. : ACTION TO QUIET TITLE  
: :  
JOHN E. GALLAGHER and GENEVIEVE M. :  
GALLAGHER, :  
Defendants:

COMPLAINT

1. Plaintiffs are Merle Plusquellec and Lois Jean Plusquellec, husband and wife, of 668 Sara Lane, Verona, Pennsylvania 15147-2635.

2. Defendants are John E. Gallagher and Genevieve M. Gallagher, adult individuals, residing at P.O. Box 126, Houtzdale, Clearfield County, Pennsylvania 16651.

3. The property involved in this action is described as follow:

ALL that certain piece or parcel of land situate in the Township of Woodward, the County of Clearfield, and the State of Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin located on the northern side of Second Avenue; said pin being the southwest corner of the property herein described; thence along the eastern side of Cypress Alley North fourteen (14) degrees fifty-nine (59) minutes zero (00) seconds East a distance of one hundred fifty and no hundredths

(150.00) feet to an iron pin; thence along the southern side of Rhodes Alley South seventy-five (75) degrees one (01) minute zero (00) seconds East a distance of one hundred fifty and no hundredths (150.00) feet to an iron pin; thence along Pennington Street, South fourteen (14) degrees fifty-nine (59) minutes zero (00) seconds West a distance of eleven and ninety-one-hundredths (11.91) feet to an iron pin; thence along the line of lands of the Federal Home Loan Mortgage Corporation South fifty-seven (57) degrees eighteen (18) minutes forty (40) seconds West a distance of one hundred eighty-six and seventy-nine one-hundredths (186.79) feet to an iron pin; thence along the northern side of Second Avenue North seventy-five (75) degrees one (01) minute zero (00) seconds West a distance of twenty-four and twenty-two one-hundredths (24.22) feet to an iron pin and point of beginning.

Containing 0.318 acres, more or less, shown as Parcel Number 3 on the survey plan prepared by George A. Cree, Registered Surveyor, dated August 15, 2000, attached hereto marked Exhibit "A".

Said property being part of the premises conveyed to E.J. Crosovolt and Joseph Lorbeicki by deed of Michael Yazwinski and Catherine Yazwinski, his wife, dated November 2, 1946, and recorded at Clearfield County in Deed Book 378, Page 596, and further being part of the same premises conveyed to Plaintiffs herein by deed of

E.J. Crosovolt dated October 5, 1965, and recorded at Clearfield County Deed Book 518, Page 217.

4. For more than 21 (Twenty-one) years, Plaintiffs and their predecessors in title have been in open, exclusive, hostile, adverse and actual possession under a claim of right to the real property described hereinabove located within the legal description of that real property reportedly granted to Defendants by deed of Eugene Yazwinski and Ellen S. Yazwinski dated July 3, 2000, and recorded at Clearfield County at Instrument No. 200009416.

5. Plaintiffs and informed and believe that the Defendants make claim to the premises adverse to Plaintiffs' title.

6. Defendants' claims are wholly without right and constitute clouds on Plaintiffs' title which Plaintiffs' desire to remove.

7. Plaintiffs, through their predecessors in title, made adverse entrance on the above described property commencing in 1946 and said adverse possession has continued through the present time.

8. Plaintiffs' adverse possession of this property, through their predecessors in title, have been adverse to all interest which the Defendants set forth herein, may have in the premises.

WHEREFORE, Plaintiffs pray as follows:

1. That Defendants and all persons claiming under them be required to set forth the nature of their claims to the real property described hereinabove;

LAW OFFICES OF  
COLAVECCHI  
RYAN & COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

2. For a Decree of this Court determining all adverse claims of Defendants and all persons claiming under them;
3. For said Decree to declare and adjudge that Plaintiffs own absolutely and are entitled to the quiet and peaceful possession of said property as against Defendants and all persons claiming under them, that Defendants and all persons claiming under them have no estate, right, title, lien or interest in or to said property or any part thereof, and that title to said property be quieted in Plaintiffs against all claims of Defendants and all persons claiming under them;
4. For said Decree to permanently enjoin Defendants and all persons claiming under them from asserting any right, title, lien or interest in or to said property or any part thereof adverse to Plaintiff;
5. For costs of this action as well as counsel fees for Defendants arbitrary, capricious, and bad faith refusal to recognize and acknowledge Plaintiffs' claims to ownership as set forth hereinabove;
6. For such other and further relief as the Court deems just and proper.



---

JOHN R. RYAN, ESQUIRE  
Attorney for Plaintiff

LAW OFFICES OF  
COLAVECCHI  
RYAN & COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

VERIFICATION

We verify that the statements made in this Complaint in Action to Quiet Title are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

  
MERLE PLUSQUELLEC

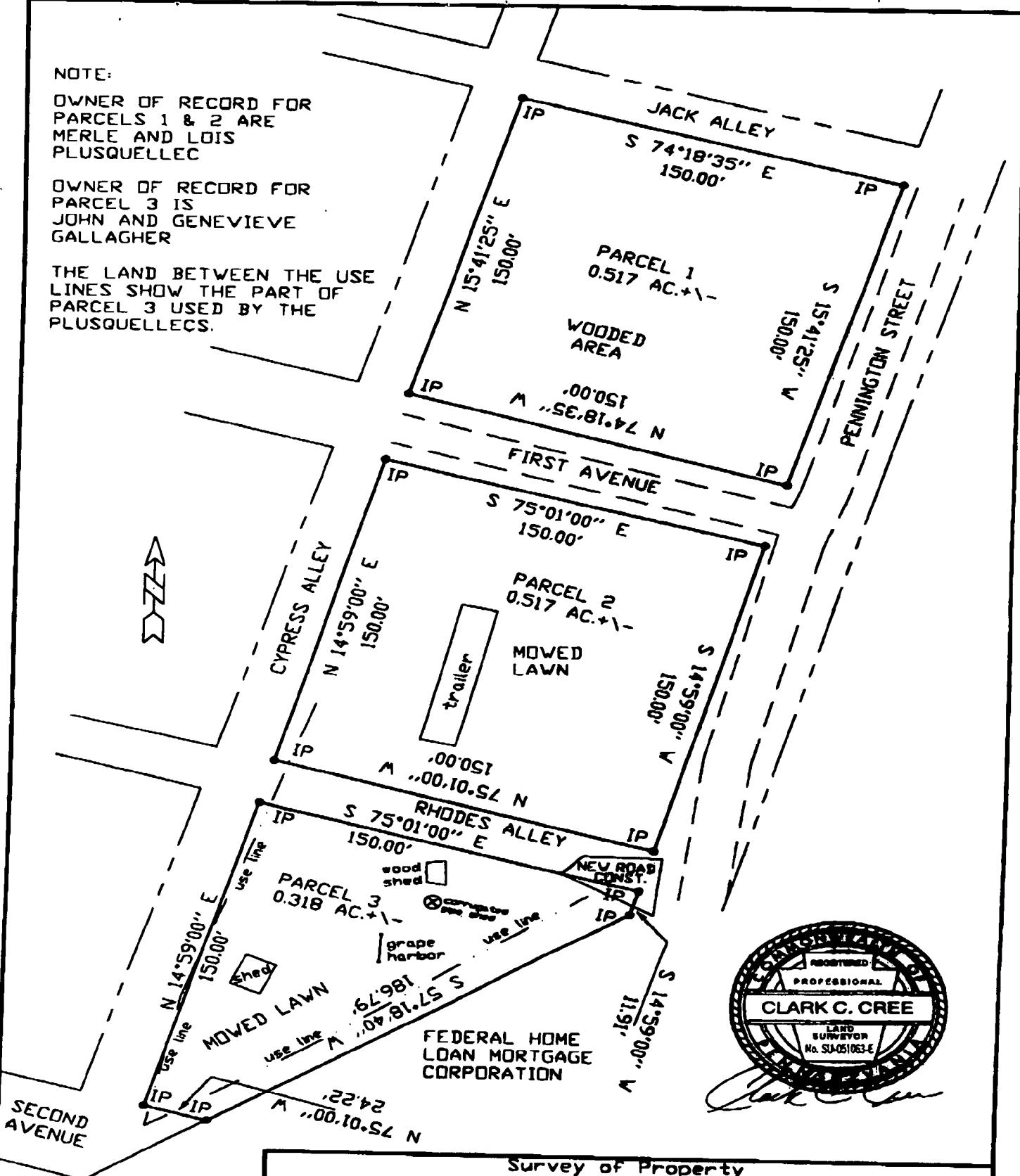
  
LOIS JEAN PLUSQUELLEC

NOTE:

OWNER OF RECORD FOR PARCELS 1 & 2 ARE MERLE AND LOIS PLUSQUELLEC

OWNER OF RECORD FOR PARCEL 3 IS JOHN AND GENEVIEVE GALLAGHER

THE LAND BETWEEN THE USE LINES SHOW THE PART OF PARCEL 3 USED BY THE PLUSQUELLECS.



Survey of Property for Merle & Lois Plusquellec		
Situate: Woodward Township Clearfield Co., Penna.	Scale: 1"=50'	Drawn by: CCH FB#289
Prepared by: GEORGE A. CREE, REGISTERED SURVEYOR 2417 SKYLINE DRIVE, FALLENTIMBER, PA 16639		
Date: 8/15/00	Exhibit	Job No. BD86200

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

No. 00- -CD

MERLE PLUSQUELLEC AND LOIS  
JEAN PLUSQUELLEC, HUSBAND AND  
WIFE,

PLAINTIFFS

vs.

JOHN E. GALLAGHER AND  
GENEVIEVE M. GALLAGHER,

DEFENDANTS

COMPLAINT IN ACTION TO QUIET  
TITLE

NOTICE TO DEFENDANTS:

YOU are hereby notified that  
you are required to file an  
Answer to the within Complaint  
within twenty (20) days after  
service on you or judgment may  
be entered against you.

*John R. Ryan*  
JOHN R. RYAN, ESQUIRE  
Attorney for Plaintiffs

COLAVECCHI  
RYAN & COLAVECCHI  
ATTORNEYS AT LAW  
221 EAST MARKET STREET  
(ACROSS FROM COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA 16830

*John R. Ryan*  
**FILED**  
AUG 23 2000  
at 90<sup>00</sup>  
by att. Colavecchi

William A. Shaw  
Prothonotary

Recd. Atc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MERLE PLUSQUELLEC and LOIS  
JEAN PLUSQUELLEC, husband and  
wife,

Plaintiffs

Vs.

JOHN E. GALLAGHER and  
GENEVIEVE M. GALLAGHER,

Defendants

CIVIL DIVISION

NO. 00 - 1035 - CD

ACCEPTANCE OF SERVICE

Filed on Behalf of:

Plaintiffs, JOHN E. GALLAGHER  
and GENEVIEVE M. GALLAGHER

Counsel of Record for This  
Party:

JOHN R. RYAN, ESQUIRE  
Pa. I.D. #38739

COLAVECCHI RYAN & COLAVECCHI  
221 East Market Street  
P. O. Box 131  
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF  
COLAVECCHI  
RYAN & COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

**FILED**

SEP 05 2000

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION  
No. 00-1035-CD

MERLE PLUSQUELLEC and LOIS JEAN  
PLUSQUELLEC, his wife,

**Plaintiffs**

SA

JOHN E. GALLAGHER and  
GENEVIEVE M. GALLAGHER,  
Defendants

## ACCEPTANCE OF SERVICE

**RYAN & COLAVECCHI**  
ATTORNEYS AT LAW  
221 EAST MARKET STREET  
(ACROSS FROM COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA 16830

**FILED**

(3)

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MERLE PLUSQUELLEC and LOIS ) CIVIL DIVISION  
JEAN PLUSQUELLEC, husband )  
and wife, ) No. 00-1035-CD  
Plaintiffs ) PRELIMINARY OBJECTIONS  
v. )  
JOHN E. GALLAGHER and ) Filed on behalf of Defendants  
GENEVIEVE M. GALLAGHER, )  
Defendants ) Counsel of record for this party  
 )  
 ) Lee G. Nollau  
 ) I.D. #24732  
 ) NOLLAU & YOUNG  
 ) 2153 East College Avenue  
 ) State College, PA 16801  
 ) (814) 235-1110

**FILED**

SEP 20 2000  
m/2:55/wm  
William A. Shaw  
Prothonotary  
no 9/c

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MERLE PLUSQUELLEC and LOIS )  
JEAN PLUSQUELLEC, husband )  
and wife, )  
Plaintiffs )  
v. ) No. 00-1035-CD  
)  
JOHN E. GALLAGHER and )  
GENEVIEVE M. GALLAGHER, )  
Defendants )

RULE

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2000, upon  
consideration of Defendants' Preliminary Objections and on motion  
of Lee G. Nollau, attorney for Defendants named above, JOHN E.  
GALLAGHER and GENEVIEVE M. GALLAGHER, a Rule is hereby entered upon  
Plaintiffs, MERLE PLUSQUELLEC and LOIS JEAN PLUSQUELLEC, to show  
cause, if any there be, why the relief requested should not be  
granted.

Rule returnable on the \_\_\_\_\_ day of \_\_\_\_\_, 2000,  
at \_\_\_\_\_ .m. in Courtroom No. \_\_\_\_\_ of the Clearfield County  
Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

---

J.

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MERLE PLUSQUELLEC and LOIS )  
JEAN PLUSQUELLEC, husband )  
and wife, )  
Plaintiffs )  
v. ) No. 00-1035-CD  
)  
JOHN E. GALLAGHER and )  
GENEVIEVE M. GALLAGHER, )  
Defendants )

PRELIMINARY OBJECTIONS

TO THE HONORABLE JUDGES OF THE COURT:

NOW COME Defendants named above, JOHN E. GALLAGHER and GENEVIEVE M. GALLAGHER, by and through their attorney, Lee G. Nollau, pursuant to Pennsylvania Rule of Civil Procedure 1028(a) upon preliminary objections to the Complaint of Plaintiffs named above whereof the following is a statement:

I. FAILURE TO CONFORM TO LAW OR RULE OF COURT  
PURSUANT TO Pa.R.C.P. 1028(a) (2)

1. Plaintiffs' Complaint at Paragraph 3 alleges that Plaintiffs' claim is based upon writings, to wit: a deed of Michael Yazwinski and Catherine Yazwinski, his wife, to E. J. Crosovolt and Joseph Lorbeicki dated November 2, 1946, and recorded at Clearfield County in Deed Book 378, Page 596, and a deed of E. J. Crosovolt to Plaintiffs dated October 5, 1965, and recorded at Clearfield County in Deed Book 518, Page 217.

2. Pennsylvania Rule of Civil Procedure 1019(h) states:

A pleading shall state specifically whether any claim or defense set forth therein is based upon a writing. If so, the pleader shall attach a copy of the writing, or the material part thereof, but if the writing or copy is not accessible to the pleader, it is sufficient so to state, together with the reason, and to set forth the substance in writing.

3. Plaintiffs' Complaint fails to conform to law or rule of court in that Plaintiffs failed to attach copies of the writings upon which their claim is based or to state the reason why copies are not accessible to Plaintiffs and to set forth the substance in writing.

WHEREFORE, Defendants request that this Honorable Court enter an Order striking the allegations of Plaintiffs' Complaint at Paragraph 3 alleging that their claim is based upon writings or, in the alternative, directing Plaintiffs' to file an amended pleading attaching copies of the writings on which their claim is based.

II. LEGAL INSUFFICIENCY PURSUANT TO Pa.R.C.P.  
1028 (a) (4)

4. Plaintiffs' Complaint demands entry of judgment against Defendants for, inter alia, counsel fees.

5. The allegations of Plaintiffs' Complaint fail to state a claim for counsel fees upon which relief can be granted in that the facts alleged failed to establish a basis for an award of counsel fees.

WHEREFORE, Defendants request that this Honorable Court enter an Order dismissing, with prejudice, the request that Defendants pay counsel fees.

Lee G. Nollau

Lee G. Nollau  
I.D. #24732  
2153 East College Avenue  
State College, PA 16801  
(814) 235-1110  
Attorney for Defendants,  
John E. Gallagher and  
Genevieve M. Gallagher

VERIFICATION OF SERVICE

Subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities, I verify that a true and correct copy of the foregoing Preliminary Objections was served by placing same in the United States mail at State College, Pennsylvania, first-class postage prepaid on September 18, 2000, addressed as follows:

John R. Ryan, Esquire  
Colavecchi, Ryan & Colavecchi  
221 East Market Street  
P.O. Box 231  
Clearfield, PA 16830

Lee G. Nollau  
Lee G. Nollau

*Law Offices*  
**COLAVECCHI RYAN & COLAVECCHI**  
221 East Market Street  
(across from Courthouse)  
P.O. Box 131  
Clearfield, Pennsylvania 16830  
(814) 765-1566

*FAX*  
(814) 765-4570

*Joseph Colavecchi*  
*John R. Ryan*  
*Paul Colavecchi*

September 27, 2000

Marcy Kelley  
Deputy Court Administrator  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830

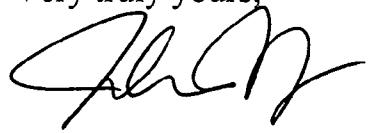
In Re: Plusquellec vs. Gallagher; No. 00-1035-CD

Dear Marcy:

Lee Nollau, counsel for the above named defendants, has filed Preliminary Objections to a Complaint which I filed on behalf of the plaintiffs.

I would ask that these be scheduled for argument at the Court's earliest convenience. If the Court wishes to issue a briefing schedule in advance of argument, that may be helpful.

Very truly yours,



John R. Ryan

JRR:llh

cc: Lee Nollau, Attorney at Law  
Mr. and Mrs. Merle Plusquellec

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

MERLE PLUSQUELLEC and LOIS  
JEAN PLUSQUELLEC, husband and:  
Wife, Plaintiff  
and wife, Plaintiff  
vs. Plaintiff  
vs. Plaintiff  
JOHN E. GALLAGHER and  
GENEVIEVE M. GALLAGHER,  
Defendants  
vs. Plaintiff  
GENEVIEVE M. GALLAGHER, Plaintiff  
Defendant

CIVIL DIVISION  
No. 00 - 1035 - CD  
NC. ANSWER TO PRELIMINARY  
OBJECTIONS

Filed on Behalf of:  
ANSWER TO PRELIMINARY OBJECTIONS

Plaintiffs, MERLE PLUSQUELLEC  
and LOIS JEAN PLUSQUELLEC  
and now, the wife Plaintiff and Lois Jean Plaintiff,  
husband and wife, Plaintiff above Party, and by their attorney,  
John R. Ryan, Esquire, make the following Objections  
to the Defendants as follows:

COLAVECCHI, RYAN & COLAVECCHI  
101 E. MARKET ST. SUITE 101  
CLEARFIELD, PA 16830  
Box 131  
Clearfield, PA 16830

1. Admit all. 814/765-1566  
2. Admitted the A.R.C.P. 1019(h) statute as averred.  
3. Denied. The law is clear that any party may inspect  
by minuscule any matter which is recorded or transcribed in  
Office of Prothonotary, lack of any court of record, record  
of deed, or Register of Wills of the county in which the suit is  
pending. Further the law is clear that where a record is not  
recorded in the county in which the suit is brought, referred to in  
the complaint, it is none a part thereof. SEP 27 2000

FILED

William A. Shaw  
Prothonotary

attach a copy. The Deeds referred to in the Plaintiffs' Complaint are clearly incorporated therein and are matters of record in the Office of the Recorder of Deeds of Clearfield County.

WHEREFORE, Defendants' Preliminary Objection has no merit whatsoever and should be promptly dismissed with the Defendants directed to file their answer forthwith.

II. LEGAL INSUFFICIENCY PURSUANT TO Pa.R.C.P.  
1028(a)(4)

4. Admitted.

5. Plaintiffs believe and therefore aver that the actions of the Defendants under the circumstances of this case represent bad faith and fall squarely within the statutory provisions allowing an award of counsel fees. Obviously, those acts will have to be proven at the time of trial. In the event the Court wishes to dismiss that portion of Plaintiffs' Complaint setting forth the claim for counsel fees, Plaintiffs are free to file an additional petition at the conclusion of the case seeking an award of counsel fees.

WHEREFORE, Plaintiffs request that the Preliminary Objections of the Defendants be dismissed and that Defendants be directed to file an answer forthwith.



JOHN R. RYAN, ESQUIRE  
Attorney for Plaintiffs

LAW OFFICES OF  
COLAVECCHI  
RYAN & COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
NO. 00-1035-CD

MERLE PLUSQUELLEC and LOIS JEAN  
PLUSQUELLEC, husband and wife,  
Plaintiffs

vs.

JOHN E. GALLAGHER and  
GENEVIEVE M. GALLAGHER,  
Defendants

ANSWER TO  
PRELIMINARY OBJECTIONS

3 CC  
O/10/08 Attn: J  
SEP 27 2008  
EAS

William A. Show  
Prothonotary

**COLAVECCHI**  
**RYAN & COLAVECCHI**

ATTORNEYS AT LAW  
221 EAST MARKET STREET  
(ACROSS FROM COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA 16830

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

MERLE PLUSQUELLEC and LOIS :  
JEAN PLUSQUELLEC, husband and wife :  
-vs- : No. 00-1035-CD  
JOHN E. GALLAGHER and :  
GENEVIEVE M. GALLAGHER :

**OPINION AND ORDER**

This matter comes before the Court on Preliminary Objections to Plaintiffs' Complaint alleging that the Complaint is insufficient in that it does not attach copies of the two deeds referenced therein and second, that the allegations seeking counsel fees and costs are insufficient.

With regards to the objection of failure to attach copies of the subject deeds, this Court notes that the Complaint sets forth the deed book and page numbers at which said deeds are recorded in Clearfield County and this Court is satisfied that such is sufficient and relieves the Plaintiffs from attaching copies of said deeds to their Complaint.

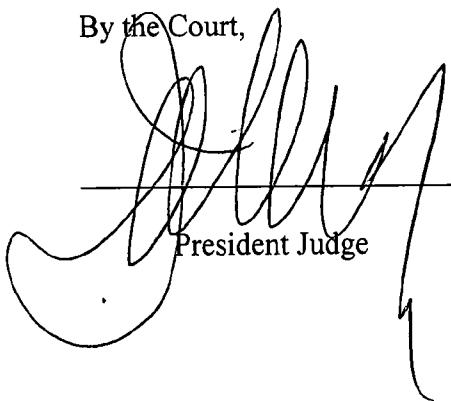
With regards to the objection to the claim for counsel fees, this Court is satisfied that the Complaint does not state sufficient facts upon which an award for counsel fees can be made and therefore does sustain Defendant's Preliminary Objections thereto and enters the following:

## ORDER

NOW, this 6<sup>th</sup> day of December, 2000, upon consideration of Preliminary Objections to Plaintiffs' Complaint, and briefs thereon, it is the ORDER of this Court that said

Objections be and are hereby sustained to the extent that Plaintiffs' claim for counsel fees in said Complaint shall be and are hereby stricken without prejudice and Plaintiffs permitted to raise said claim again upon completion of the trial on the merits. In all other respects said Preliminary Objections shall be and are hereby dismissed.

By the Court,



President Judge

**FILED**

DEC 07 2000

Off. of  
William A. Shaw  
Prothonotary

cc: Otto Rogen  
cc: Cathy Nollan

cc:

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MERLE PLUSQUELLEC and LOIS ) CIVIL DIVISION  
JEAN PLUSQUELLEC, husband )  
and wife, ) No. 00-1035-CD  
Plaintiffs )  
v. ) ANSWER AND NEW MATTER  
JOHN E. GALLAGHER and ) Filed on behalf of Defendants  
GENEVIEVE M. GALLAGHER, )  
Defendants ) Counsel of record for this party  
 )  
 ) Lee G. Nollau  
 ) I.D. #24732  
 ) NOLLAU & YOUNG  
 ) 2153 East College Avenue  
 ) State College, PA 16801  
 ) (814) 235-1110

**FILED**

JAN 15 2001

*William A. Shaw  
Prothonotary*

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MERLE PLUSQUELLEC and LOIS )  
JEAN PLUSQUELLEC, husband )  
and wife, )  
Plaintiffs )  
v. ) No. 00-1035-CD  
 )  
JOHN E. GALLAGHER and )  
GENEVIEVE M. GALLAGHER, )  
Defendants )

NOTICE

TO: Merle Plusquellec and Lois Jean Plusquellec  
c/o John R. Ryan, Esquire  
Colavecchi, Ryan & Colavecchi  
221 East Market Street  
P.O. Box 231  
Clearfield, PA 16830

You are hereby notified to file a written response to the enclosed New Matter within twenty (20) days from service hereof or a judgment may be entered against you.

Lee G. Nollau

Lee G. Nollau  
I.D. #24732  
2153 East College Avenue  
State College, PA 16801  
(814) 235-1110  
Attorney for Defendants,  
John E. Gallagher and  
Genevieve M. Gallagher

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MERLE PLUSQUELLEC and LOIS )  
JEAN PLUSQUELLEC, husband )  
and wife, )  
Plaintiffs )  
v. ) No. 00-1035-CD  
 )  
JOHN E. GALLAGHER and )  
GENEVIEVE M. GALLAGHER, )  
Defendants )

ANSWER

NOW COME Defendants named above, JOHN E. GALLAGHER and GENEVIEVE M. GALLAGHER, by and through their attorney, Lee G. Nollau, in answer to the Complaint of Plaintiffs named above whereof the following is a statement:

1. Admitted.

2. Admitted.

3. Admitted in part and denied in part. It is admitted that the property at issue is a piece or parcel of land situate in the Township of Woodward, the County of Clearfield, and the State of Pennsylvania ("the property"). It is specifically denied that the property is part of the same premises conveyed to Plaintiffs by deed of E. J. Crosovolt dated October 5, 1965, and recorded at Clearfield County Deed Book 518, Page 217. To the extent that the remaining allegations of Paragraph 3 constitute allegations of fact, after reasonable investigation Defendants are without knowledge or information sufficient to form a belief as to the truth thereof. To the extent that the allegations of Paragraph 3 constitute conclusions of law, no response is required.

4. Admitted in part and denied in part. It is admitted that the property was conveyed to Defendants by deed of Eugene Yazwinski and Ellen S. Yazwinski dated July 3, 2000. To the extent that the remaining allegations of Paragraph 4 constitute allegations of fact, it is specifically denied that Plaintiffs and their predecessors in title have been in open, exclusive, hostile, adverse and actual possession for more than 21 (twenty-one) years, and, after reasonable investigation Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 4. To the extent that the allegations of Paragraph 4 constitute conclusions of law, no response is required.

5. Admitted in part and denied in part. It is admitted that Defendants make claim to the property and that Defendants' claim is adverse to Plaintiffs' claim. To the extent that the remaining allegations of Paragraph 5 constitute allegations of fact, it is specifically denied that Plaintiffs hold title to the property, and, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 5. To the extent that the allegations of Paragraph 5 constitute conclusions of law, no response is required.

6. Denied. To the extent that the allegations of Paragraph 6 constitute allegations of fact, it is specifically denied that Defendants' claim is wholly without right, and, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth thereof. To the extent

that the allegations of Paragraph 6 constitute conclusions of law, no response is required.

7. Denied. To the extent that the allegations of Paragraph 7 constitute allegations of fact, it is specifically denied that Plaintiffs are or have been in adverse possession of the property through the present time, and, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 7. To the extent that the allegations of Paragraph 7 constitute conclusions of law, no response is required.

8. Denied. To the extent that the allegations of Paragraph 8 constitute allegations of fact, it is specifically denied that Plaintiffs are or have been in possession of the property adverse to all interest of Defendants therein, and, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 8. To the extent that the allegations of Paragraph 8 constitute conclusions of law, no response is required.

WHEREFORE, Defendants request that this Honorable Court enter a Decree:

a. declaring and adjudging that Defendants own absolutely and are entitled to the quiet and peaceful possession of the property as against Plaintiffs and all persons claiming under them,

b. declaring and adjudging that Plaintiffs and all persons claiming under them have no estate, right, title, lien or interest in or to the property or any part thereof and that title to the

property be quieted in Defendants against all claims of Plaintiffs and all persons claiming under them,

c. permanently enjoining Plaintiffs and all persons claiming under them from asserting any right, title, lien or interest in or the property or any part thereof adverse to Defendants,

d. imposing costs of suit upon Plaintiffs, and

e. granting such other and further relief as the Court deems just and appropriate.

NEW MATTER

9. The averments of Paragraphs 1 through 8, *supra*, are incorporated herein by reference as though set forth in full.

10. The property is part of the premises conveyed to Defendants by the deed of Eugene Yazwinski and Ellen S. Yazwinski dated July 3, 2000, aforesaid.

11. The property is unimproved woodland.

12. The use of the property by Plaintiffs and their predecessors in title consisted of temporary acts or sporadic usage.

13. Plaintiffs and their predecessors in title did not erect a residence upon or enclose or cultivate the property.

14. Prior to conveyance of the property to Defendants, Plaintiffs attempted to purchase the property from Defendants' predecessors in title.

WHEREFORE, Defendants request that this Honorable Court enter a Decree:

a. declaring and adjudging that Defendants own absolutely and are entitled to the quiet and peaceful possession of the property as against Plaintiffs and all persons claiming under them,

b. declaring and adjudging that Plaintiffs and all persons claiming under them have no estate, right, title, lien or interest in or to the property or any part thereof and that title to the property be quieted in Defendants against all claims of Plaintiffs and all persons claiming under them,

c. permanently enjoining Plaintiffs and all persons claiming under them from asserting any right, title, lien or interest in or the property or any part thereof adverse to Defendants,

d. imposing costs of suit upon Plaintiffs, and

e. granting such other and further relief as the Court deems just and appropriate.

Lee G. Nollau  
Lee G. Nollau

VERIFICATION

Subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities I, Lee G. Nollau, verify that I am attorney of record for Defendants named above, JOHN E. GALLAGHER and GENEVIEVE M. GALLAGHER, that Defendants are outside the jurisdiction of this Honorable Court and the Verification of Defendants cannot be obtained within the time allowed for filing the foregoing Answer and New Matter, that Defendants have provided to me sufficient information to allow my verification of the averments of fact set forth in the foregoing Answer and New Matter and that the averments of fact set forth in the foregoing Answer and New Matter are true and correct upon my personal knowledge or information and belief.

Lee G. Nollau  
Lee G. Nollau

VERIFICATION OF SERVICE

Subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities, I verify that a true and correct copy of the foregoing Answer and New Matter was served by delivery to the individual named below or by placing same in the United States mail at State College, Pennsylvania, first-class postage prepaid on January 14, 2001, addressed as follows:

John R. Ryan, Esquire  
Colavecchi, Ryan & Colavecchi  
221 East Market Street  
P.O. Box 231  
Clearfield, PA 16830

Lee G. Nollau  
Lee G. Nollau

FILED  
OCT 13 2001  
JAN 15 2001  
William A. Shaw  
Prothonotary

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

MERLE PLUSQUELLEC and LOIS : CIVIL DIVISION  
JEAN PLUSQUELLEC, husband and : No. 00 - 1035 - CD.  
a wife, :  
Plaintiffs  
vs. :  
NO. 00-1035-CD  
REPLY TO NEW MATTER  
JOHN P. GALLAGHER and :  
GENEVIEVE M. GALLAGHER, :  
Defendants Defendants Filed on Behalf of:

Plaintiffs, MERLE PLUSQUELLEC  
REPLY TO NEW and LOIS JEAN PLUSQUELLEC

NOW, comes Merle Plusquellec Counsel of Record for This  
Party:  
Plaintiffs above named, and by their attorney, John R. Ryan,  
JOHN R. RYAN, ESQUIRE  
Esquire, make their Reply to the Pa., I.M.D. #38739 Defendants as  
follows:

9. No response required.  
10. Admitted insofar as the Deed into the Defendants contains  
814/765-1566  
a description which would include the property which is the subject  
of this action. **FILED**, as set forth in Plaintiffs' Complaint,  
the Plaintiffs ~~JAN 25, 20~~ predecessors in title have acquired title  
to the property <sup>William A. Shaw</sup> <sub>of the property</sub> of adverse possession.

11. Denied. On the contrary, the property is cleared and has  
been maintained by the Plaintiffs since they acquired ownership in  
1965.

12. Denied. On the contrary, the Plaintiffs have since 1965  
performed the following maintenance and made the following  
improvements:

VERIFICATION

We, Plaintiffs, verify that the statements made in this Reply to New Matter are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Merle Plusquellec  
Merle Plusquellec

Lois Jean Plusquellec  
Lois Jean Plusquellec

01-19-01  
Date

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.

CIVIL DIVISION

No. 00 - 1035 - CD

MERLE PLUSQUELLEC and LOIS  
JEAN PLUSQUELLEC, husband and  
wife,

Plaintiffs

vs.

JOHN E. GALLAGHER and  
GENEVIEVE M. GALLAGHER,  
Defendants

REPLY TO NEW MATTER

**FILED**

*m/10:10*  
**JAN 25 2001**

*Ryan*  
William A. Shaw  
Prothonotary

*SP/135*

*6/25*

**COLAVECCHI**  
**RYAN & COLAVECCHI**

ATTORNEYS AT LAW  
221 EAST MARKET STREET  
(ACROSS FROM COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA 16830

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
CIVIL TRIAL LISTING

CERTIFICATE OF READINESS

TO THE PROTHONOTARY

CASE NUMBER	TYPE	TRIAL REQUESTED	DATE PRESENTED	ESTIMATED TRIAL TIME
00-1035-CD	( ) Jury (X) Non-Jury			
Date Complaint Filed:	( ) Arbitration		1	Days
8/23/00				
PLAINTIFF (S)				
MERLE PLUSQUELLEC and				
LOIS JEAN PLUSQUELLEC, husband and wife, ( )				
DEFENDANT (S)				
Check Block if JOHN E. GALLAGHER and GENEVIEVE M. GALLAGHER, ( ) a Minor is a ADDITIONAL DEFENDANT (S) Party to the Case ( )				

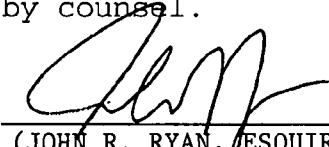
JURY DEMAND FILED BY: Plaintiffs, Merle Plusquellec Lois Jean Plusquellec	DATE JURY DEMAND FILED: 8/23/00
---	------------------------------------

AMOUNT AT ISSUE	CONSOLIDATION	DATE CONSOLIDATION ORDERED
more than \$ 25,000.00	( ) yes (X) no	

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.

**FILED**

  
(JOHN R. RYAN, ESQUIRE)

JUL 03 2001

William A. Shaw  
Prothonotary

FOR THE PLAINTIFF JOHN R. RYAN, ESQUIRE P.O. Box 131, Clearfield, PA 16830	TELEPHONE NUMBER 814/765-1566	
FOR THE DEFENDANT LEE G. NOLLAU, ESQUIRE 2153 East College Avenue, State College, PA	TELEPHONE NUMBER 814/235-1110	
FOR ADDITIONAL DEFENDANT	16801	TELEPHONE NUMBER

**FILED**

JUL 03 2001

7/1/01 no cc

William A. Shaw

Prothonotary

Copy to CA

Get

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MERLE PLUSQUELLEC and LOIS )  
JEAN PLUSQUELLEC, husband )  
and wife, )  
Plaintiffs )  
v. ) No. 00-1035-CD  
 )  
JOHN E. GALLAGHER and )  
GENEVIEVE M. GALLAGHER, )  
Defendants )

VERIFICATION OF SERVICE OF DEFENDANTS' PRE-TRIAL MEMORANDUM

Subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities, I verify that true and correct copies of Defendants' Pre-Trial Memorandum were served on August 8, 2001, by fax transmission to the individuals named below or by placing same in the United States mail at State College, Pennsylvania, first-class postage prepaid, addressed as follows:

The Honorable John K. Reilly, Jr.,  
President Judge  
Judge's Chambers  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830

John R. Ryan, Esquire  
Colavecchi, Ryan & Colavecchi  
221 East Market Street  
P.O. Box 231  
Clearfield, PA 16830

*Lee G. Nollau*  
Lee G. Nollau  
I.D. #24732  
NOLLAU & YOUNG  
2153 East College Avenue  
State College, PA 16801  
(814) 235-1110  
Attorney for Defendants

**FILED**

10 9 2001

**William A. Shaw  
Prothonotary**

**FILED**

08/01/01  
AUG 09 2001

William A. Shaw  
Prothonotary

*W.A.S.*  
no  
cc

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CA

MERLE PLUSQUELLEC and LOIS ) CIVIL DIVISION  
JEAN PLUSQUELLEC, husband )  
and wife, ) No. 00-1035-CD  
Plaintiffs )  
v. ) MOTION FOR SUMMARY JUDGMENT  
JOHN E. GALLAGHER and )  
GENEVIEVE M. GALLAGHER, ) Filed on behalf of Defendants  
Defendants ) Counsel of record for this party  
\* ) Lee G. Nollau  
 ) I.D. #24732  
 ) NOLLAU & YOUNG  
 ) 2153 East College Avenue  
 ) State College, PA 16801  
 ) (814) 235-1110

FILED

AUG 15 2001

William A. Shaw  
Prothonotary

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MERLE PLUSQUELLEC and LOIS )  
JEAN PLUSQUELLEC, husband )  
and wife, )  
Plaintiffs )  
v. ) No. 00-1035-CD  
 )  
JOHN E. GALLAGHER and )  
GENEVIEVE M. GALLAGHER, )  
Defendants )

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JOHN K. REILLY, JR., PRESIDENT JUDGE:

NOW COME Defendants named above, JOHN E. GALLAGHER AND GENEVIEVE M. GALLAGHER, by and through their attorney, Lee G. Nollau, who moves this Honorable Court for summary judgment pursuant to Pennsylvania Rules of Civil Procedure 1035.1 through 1035.5 and in support thereof avers as follows:

1. Pleadings in the above-captioned action are closed and discovery is complete.
2. The pleadings and any depositions, answers to interrogatories, admissions on file and supporting affidavits show that there is no genuine issue as to any material fact and that Defendants are entitled to a judgment as a matter of law in that:
  - a. Plaintiffs claim title to a parcel of land by adverse possession;
  - b. the parcel in question was conveyed to Defendants by deed of Eugene Yazwinski and Ellen S. Yazwinski dated July 3, 2000, a true and correct copy of which is attached hereto at Exhibit "A" and

incorporated herein by reference as though set forth in full;

- c. Plaintiffs attempted to purchase the tract in question from Eugene Yazwinski and Ellen S. Yazwinski prior to the conveyance to Defendants, as set forth more fully in the Affidavit of Eugene Yazwinski, attached hereto at Exhibit "B" and incorporated herein by reference as though set forth in full, and the Affidavit of Ronald E. Archer, Esquire, attached hereto at Exhibit "C" and incorporated herein by reference as though set forth in full;
- d. Plaintiffs' attempt to purchase the tract in question constitutes an acknowledgement of title in another and precludes proof of adverse and hostile possession, elements required to establish adverse possession;
- e. the tract in question is unimproved woodland;
- f. Plaintiffs did not erect a residence on or enclose or cultivate the tract in question; and
- g. failure to erect a residence on or enclose or cultivate unimproved woodland precludes proof of adverse possession.

WHEREFORE, Defendants pray that this Honorable Court enter a Decree:

a. declaring and adjudging that Defendants own absolutely and are entitled to the quiet and peaceful possession of the property as against Plaintiffs and all persons claiming under them,

b. declaring and adjudging that Plaintiffs and all persons claiming under them have no estate, right, title, lien or interest in or to the property or any part thereof and that title to the property be quieted in Defendants against all claims of Plaintiffs and all persons claiming under them,

c. permanently enjoining Plaintiffs and all persons claiming under them from asserting any right, title, lien or interest in or the property or any part thereof adverse to Defendants,

d. imposing costs of suit upon Plaintiffs, and

e. granting such other and further relief as the Court deems just and appropriate.

Respectfully submitted,

Lee G. Nollau

Lee G. Nollau  
I.D. No. 24732  
NOLLAU & YOUNG  
2153 East College Avenue  
State College, PA 16801  
(814) 235-1110  
Attorney for Defendants

County Parcel No. \_\_\_\_\_

## This Deed,

MADE the 3<sup>rd</sup> day of July

in the year Two Thousand (2000)

BETWEEN EUGENE YAZWINSKI and ELLEN S. YAZWINSKI, husband and wife, both of 332 Highland Parkway, Kenmore, New York 14223, Grantors and Parties of the First Part; \_\_\_\_\_

— AND —

JOHN E. GALLAGHER and GENEVIEVE M. GALLAGHER, both of P.O. Box 126, Houtzdale, Pennsylvania 16651, as tenants by the entireties, Grantees and Parties of the Second Part; \_\_\_\_\_

WITNESSETH, That in consideration of

\$1,00One and 00/100 Dollars

Dollars,

in hand paid, the receipt whereof is hereby acknowledged, the said grantors do hereby grant and convey to the said grantees, their heirs and assigns;

ALL that certain piece or parcel of ground situate in the Township of Woodward, County of Clearfield and Commonwealth of Pennsylvania, bounded and described as follows: \_\_\_\_\_

BEGINNING at the Southeast corner of Rhodes Alley and Cypress Alley; thence in a southern direction along the eastern side of Cypress Alley one hundred fifty (150) feet to the northern side of Second Avenue; thence along the northern side of Second Avenue twenty-three and eighty-hundredths (23.80) feet to a point; thence North fifty-three degrees fifty-three minutes fifty seconds East (N 53° 53' 50" E) two hundred ninety-three and sixty-nine hundredths (293.69) feet to a point; thence in a northern direction ten and twenty-five hundredths (10.25) feet to the southern side of Rhodes Alley; thence in a western direction along the southern side of Rhodes Alley one hundred fifty (150) feet to a point and the place of beginning. \_\_\_\_\_

This conveyance is made subject to all exceptions and reservations as are contained in prior deeds in the chain of title. \_\_\_\_\_

BEING a portion of the premises identified as The Third Thereof as was conveyed to Eugene Yazwinski by deed of Catherine Yazwinski dated June 26, 1999, and entered for record in Clearfield County Instrument File Number 199910847 on June 30, 1999, who together with the joinder of his wife, Ellen S. Yazwinski, are the Grantors herein. \_\_\_\_\_

EXHIBIT

"A"

KAREN L. STARCK  
REGISTER AND RECORDER  
CLEARFIELD COUNTY  
Pennsylvania

INSTRUMENT NUMBER

200009416

RECORDED ON

JUL 05, 2000  
2:28:29 PM

RECORDING FEES - \$17.00

RECORDER

COUNTY IMPROVEMENT \$1.00

FUND

RECORDER \$1.00

IMPROVEMENT FUND

STATE TRANSFER TAX \$10.00

STATE WIT TAX \$0.50

MOSHANHON VALLEY \$10.00

SCHOOLS

TOTAL \$39.50

## NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1966", I/we, the undersigned grantee/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:

*Terry Swanson*

..... John E. Gallagher

..... Genevieve M. Gallagher

This 3<sup>rd</sup> day of July 2000

THIS DOCUMENT MAY 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 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 pursuant to Act No. 255, approved September 10, 1965, as amended.)

AND the said grantor s will SPECIALLY WARRANT AND FOREVER DEFEND the property hereby conveyed.

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

Sealed and delivered in the presence of

Ronald E. Archer  
as a boy

Eugene Yazwinski..... [Seal]  
Eugene Yazwinski  
Ellen S. Yazwinski..... [Seal]  
Ellen S. Yazwinski..... [Seal]  
..... [Seal]  
..... [Seal]  
..... [Seal]

**CERTIFICATE OF RESIDENCE**

I hereby certify, that the precise residence of the grantee s herein is as follows:

PO Box 126  
Houtzdale, PA 16651

NTS Attorney or Agent for Grantee

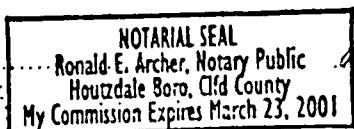
**Attorney or Agent for Grantee**

Commonwealth of Pennsylvania  
County of Clearfield } ss.

On this, the 3<sup>rd</sup> day of July, 2000, , before me a Notary Public,  
the undersigned officer, personally appeared EUGENE YAZWINSKI and ELLEN S. YAZWINSKI  
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 purpose therein  
contained.

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

## My Commission Expires



State of .....  
County of ..... } ss.

On this, the ..... day of ..... before me  
the undersigned officer, personally appeared  
known to me (or satisfactorily proven) to be the person ..... whose name .....  
instrument, and acknowledged that ..... subscribed to the within  
contained. ..... executed the same for the purpose therein

IN WITNESS WHEREOF, I have hereunto set my hand and

seal.

My Commission Expires .....

Commonwealth of Pennsylvania  
County of ..... } ss.

RECORDED in the Office for Recording of Deeds, etc., in and for the said  
County, in Deed Book No. , Page  
WITNESS my hand and official seal this ..... day of ,

..... Recorder of Deeds

Deed

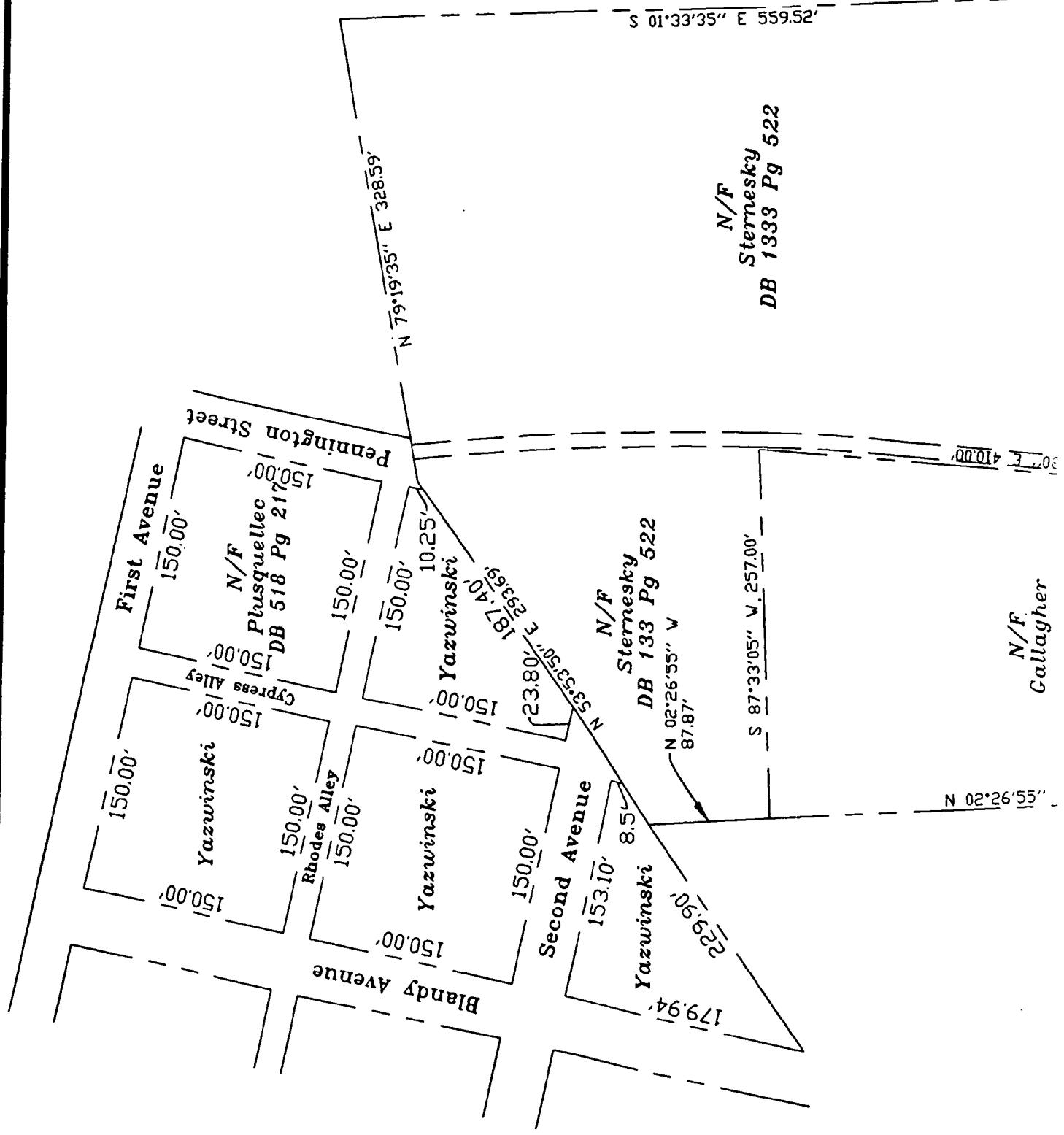
WARRANTY DEED  
The Plunkenhorn Co., Williamsport, Pa.

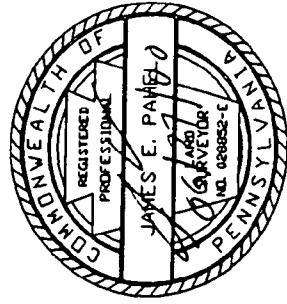
EUGENE YAZWINSKI, ET UX,  
Grantors  
and  
JOHN E. GALLAGHER, ET UX,  
Grantees

Dated .....  
For premises situate in Woodward  
Township, Clearfield County, Pa.,  
Pennsylvania. ....  
Consideration ... \$1.00  
Recorded .....  
Entered for Record in the Recorder's  
Office of .....  
County, the ..... day of Tax. \$ .....  
19..... Fees, \$ .....  
Recorder

RONALD E. ARCHER  
ATTORNEY AT LAW  
HOOTZDALE, PENNSYLVANIA

S 01°33'35" E 559.52'





I, hereby certify to the best of my knowledge and belief that on the 22 day of JUNE, 2000, this deed plot were performed under my supervision, in accordance with the 'Standards of Practice for Professional Land Surveyors in the Commonwealth of Pennsylvania', as adopted by the Pennsylvania Society of Land Surveyors.

James E. Parikh, OLS  
No. 0288852-E

Deed Plot  
of  
Yazwinski Property

**John E. Gallagher**

Woodward Township, Clearfield County  
Pennsylvania

## LAND & MAPPING SERVICES

Professional Land Surveyors  
Consulting Foresters  
Photogrammetrists

300 NORTH SECOND STREET CLEARFIELD, PA 16830  
1-888-LMS-0027  
E-MAIL (LANDMAP@CSRLINK.NET)  
WWW.LANDMAPPING.COM

DRAWN BY: Brian L. Imman  
DATE: 06/27/00  
SCALE: 1" = 100'  
REVISIONS DATE: \_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

200 17 55 W 5555

S 01°34'00" E 400.00'

S 88°14'00" W 210.00'

N 02°26'55" W 275.45'

17.60'

S 89°52'30" E 206.72'

Q N

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MERLE PLUSQUELLEC and LOIS )  
JEAN PLUSQUELLEC, husband )  
and wife, )  
Plaintiffs )  
v. ) No. 00-1035-CD  
)  
JOHN E. GALLAGHER and )  
GENEVIEVE M. GALLAGHER, )  
Defendants )

AFFIDAVIT OF EUGENE YAZWINSKI

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF CLEARFIELD ) SS: *066-32-8668*  
)

I, Eugene Yazwinski, being duly sworn according to law, depose and say that:

1. My wife, Ellen S. Yazwinski, and I are the owners of a house and the lot on which it is situate at the northwestern corner of Cypress Alley and First Avenue in Woodward Township, Clearfield County, Pennsylvania ("Yazwinski homestead").

2. The Yazwinski homestead was conveyed to me by my mother, the late Catherine Yazwinski.

3. I was born and raised at the Yazwinski homestead and am familiar with the properties in the area, including those owned by Merle and Lois Plusquellec ("Plusquellecs") and those owned by John E. Gallagher and Genevieve M. Gallagher ("Gallaghers").

4. Merle and Lois Plusquellec ("Plusquellecs") are the owners of the property which adjoins the Yazwinski homestead, to wit: a trailer and the lot on which it is situate at the northeastern corner of Cypress Alley and First Avenue in Woodward

EXHIBIT

"B"

Township, Clearfield County, Pennsylvania.

5. I have reviewed the Complaint in Action to Quiet Title filed by Plusquellecs and the survey map prepared by George A. Cree ("Cree survey") attached to the Complaint, true and correct copies of which are attached hereto.

6. In or about 1999, Plusquellecs had their property surveyed.

7. Following the survey, Merle Plusquellec approached me and said that he had put a shed on my property by mistake.

8. The property to which Merle Plusquellec referred is identified on the Cree survey as Parcel 3 ("Parcel 3").

9. Parcel 3 was conveyed to me by my mother, the late Catherine Yazwinski, by deed dated June 26, 1999, and entered for record in Clearfield County Instrument File Number 19910847 on June 30, 1999.

10. After Merle Plusquellec admitted to me that he had put a shed on my property by mistake, Plusquellecs asked to purchase Parcel 3.

11. In the alternative, Plusquellecs offered to trade another property they owned for Parcel 3.

12. In the course of negotiations with Plusquellecs for their purchase of Parcel 3, Plusquellecs were represented by Girard Kasubick, Esquire, and I was represented by Ronald E. Archer, Esquire.

13. An agreement was not reached with Plusquellecs for their purchase of Parcel 3.

14. By deed dated July 3, 2000, in which my wife, Ellen S. Yazwinski joined, entered for record in Clearfield County Instrument File 200009416 on July 5, 2000, a true and correct copy of which is attached, I sold Parcel 3 to Gallaghers.

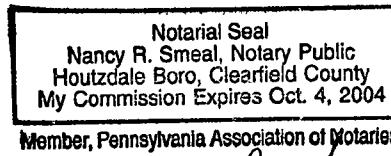
15. At no time did Plusquellecs indicate to me, to my wife, or to any other member of my family that Plusquellecs claimed ownership of Parcel 3.

16. At no time did Plusquellecs erect a residence upon or enclose or cultivate Parcel 3.

Eugene Yazwinski  
Eugene Yazwinski

Sworn to and subscribed

before me this 1st day  
of June, 2001.



Nancy R. Smeal  
Notary Public

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MERLE PLUSQUELLEC and LOIS  
JEAN PLUSQUELLEC, husband and  
wife,

Plaintiffs

Vs.

JOHN E. GALLAGHER and  
GENEVIEVE M. GALLAGHER,

Defendants

CIVIL DIVISION

No. 00 - 1035- CD

COMPLAINT IN ACTION TO QUIET  
TITLE

Filed on Behalf of:

Plaintiffs, MERLE PLUSQUELLEC  
and LOIS JEAN PLUSQUELLEC

Counsel of Record for This  
Party:

JOHN R. RYAN, ESQUIRE  
Pa. I.D. #38739

COLAVECCHI RYAN & COLAVECCHI  
221 East Market Street  
P. O. Box 131  
Clearfield, PA 16830

814/765-1566

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

AUG 25 2000

Attest:

William J. Siler  
Prothonotary

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

MERLE PLUSQUELLEC and LOIS JEAN :  
PLUSQUELLEC, husband and wife, : No. 00 - - CD  
Plaintiffs:  
:  
vs. :  
:  
JOHN E. GALLAGHER and GENEVIEVE M. :  
GALLAGHER, :  
Defendants:  
:

N O T I C E

You have been sued in Court. If you wish to defend against the claims set forth as above, you must take action within twenty (20) days after the Complaint has been filed and this Notice has been posted in the newspaper, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to all 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 Plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER OR A COPY OF THIS NOTICE 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

Phone (814) 765-2641 Ex. 5982

LAW OFFICES OF  
COLAVECCHI  
RYAN & COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

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

MERLE PLUSQUELLEC and LOIS JEAN :  
PLUSQUELLEC, husband and wife, : No. 00 - - CD  
Plaintiffs:  
: ACTION TO QUIET TITLE  
vs. :  
: JOHN E. GALLAGHER and GENEVIEVE M. :  
GALLAGHER, :  
Defendants:

COMPLAINT

1. Plaintiffs are Merle Plusquellec and Lois Jean Plusquellec, husband and wife, of 668 Sara Lane, Verona, Pennsylvania 15147-2635.

2. Defendants are John E. Gallagher and Genevieve M. Gallagher, adult individuals, residing at P.O. Box 126, Houtzdale, Clearfield County, Pennsylvania 16651.

3. The property involved in this action is described as follow:

ALL that certain piece or parcel of land situate in the Township of Woodward, the County of Clearfield, and the State of Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin located on the northern side of Second Avenue; said pin being the southwest corner of the property herein described; thence along the eastern side of Cypress Alley North fourteen (14) degrees fifty-nine (59) minutes zero (00) seconds East a distance of one hundred fifty and no hundredths

(150.00) feet to an iron pin; thence along the southern side of Rhodes Alley South seventy-five (75) degrees one (01) minute zero (00) seconds East a distance of one hundred fifty and no hundredths (150.00) feet to an iron pin; thence along Pennington Street, South fourteen (14) degrees fifty-nine (59) minutes zero (00) seconds West a distance of eleven and ninety-one-hundredths (11.91) feet to an iron pin; thence along the line of lands of the Federal Home Loan Mortgage Corporation South fifty-seven (57) degrees eighteen (18) minutes forty (40) seconds West a distance of one hundred eighty-six and seventy-nine one-hundredths (186.79) feet to an iron pin; thence along the northern side of Second Avenue North seventy-five (75) degrees one (01) minute zero (00) seconds West a distance of twenty-four and twenty-two one-hundredths (24.22) feet to an iron pin and point of beginning.

Containing 0.318 acres, more or less, shown as Parcel Number 3 on the survey plan prepared by George A. Cree, Registered Surveyor, dated August 15, 2000, attached hereto marked Exhibit "A".

Said property being part of the premises conveyed to E.J. Crosovolt and Joseph Lorbeicki by deed of Michael Yazwinski and Catherine Yazwinski, his wife, dated November 2, 1946, and recorded at Clearfield County in Deed Book 378, Page 596, and further being part of the same premises conveyed to Plaintiffs herein by deed of

E.J. Crosovolt dated October 5, 1965, and recorded at Clearfield County Deed Book 518, Page 217.

4. For more than 21 (Twenty-one) years, Plaintiffs and their predecessors in title have been in open, exclusive, hostile, adverse and actual possession under a claim of right to the real property described hereinabove located within the legal description of that real property reportedly granted to Defendants by deed of Eugene Yazwinski and Ellen S. Yazwinski dated July 3, 2000, and recorded at Clearfield County at Instrument No. 200009416.

5. Plaintiffs and informed and believe that the Defendants make claim to the premises adverse to Plaintiffs' title.

6. Defendants' claims are wholly without right and constitute clouds on Plaintiffs' title which Plaintiffs' desire to remove.

7. Plaintiffs, through their predecessors in title, made adverse entrance on the above described property commencing in 1946 and said adverse possession has continued through the present time.

8. Plaintiffs' adverse possession of this property, through their predecessors in title, have been adverse to all interest which the Defendants set forth herein, may have in the premises.

WHEREFORE, Plaintiffs pray as follows:

1. That Defendants and all persons claiming under them be required to set forth the nature of their claims to the real property described hereinabove;

LAW OFFICES OF  
COLAVECCHI  
RYAN & COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

2. For a Decree of this Court determining all adverse claims of Defendants and all persons claiming under them;
3. For said Decree to declare and adjudge that Plaintiffs own absolutely and are entitled to the quiet and peaceful possession of said property as against Defendants and all persons claiming under them, that Defendants and all persons claiming under them have no estate, right, title, lien or interest in or to said property or any part thereof, and that title to said property be quieted in Plaintiffs against all claims of Defendants and all persons claiming under them;
4. For said Decree to permanently enjoin Defendants and all persons claiming under them from asserting any right, title, lien or interest in or to said property or any part thereof adverse to Plaintiff;
5. For costs of this action as well as counsel fees for Defendants arbitrary, capricious, and bad faith refusal to recognize and acknowledge Plaintiffs' claims to ownership as set forth hereinabove;
6. For such other and further relief as the Court deems just and proper.



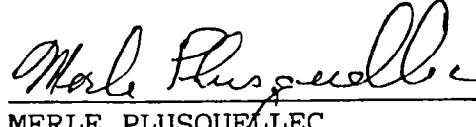
---

JOHN R. RYAN, ESQUIRE  
Attorney for Plaintiff

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RYAN & COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

VERIFICATION

We verify that the statements made in this Complaint in Action to Quiet Title are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

  
MERLE PLUSQUELLEC

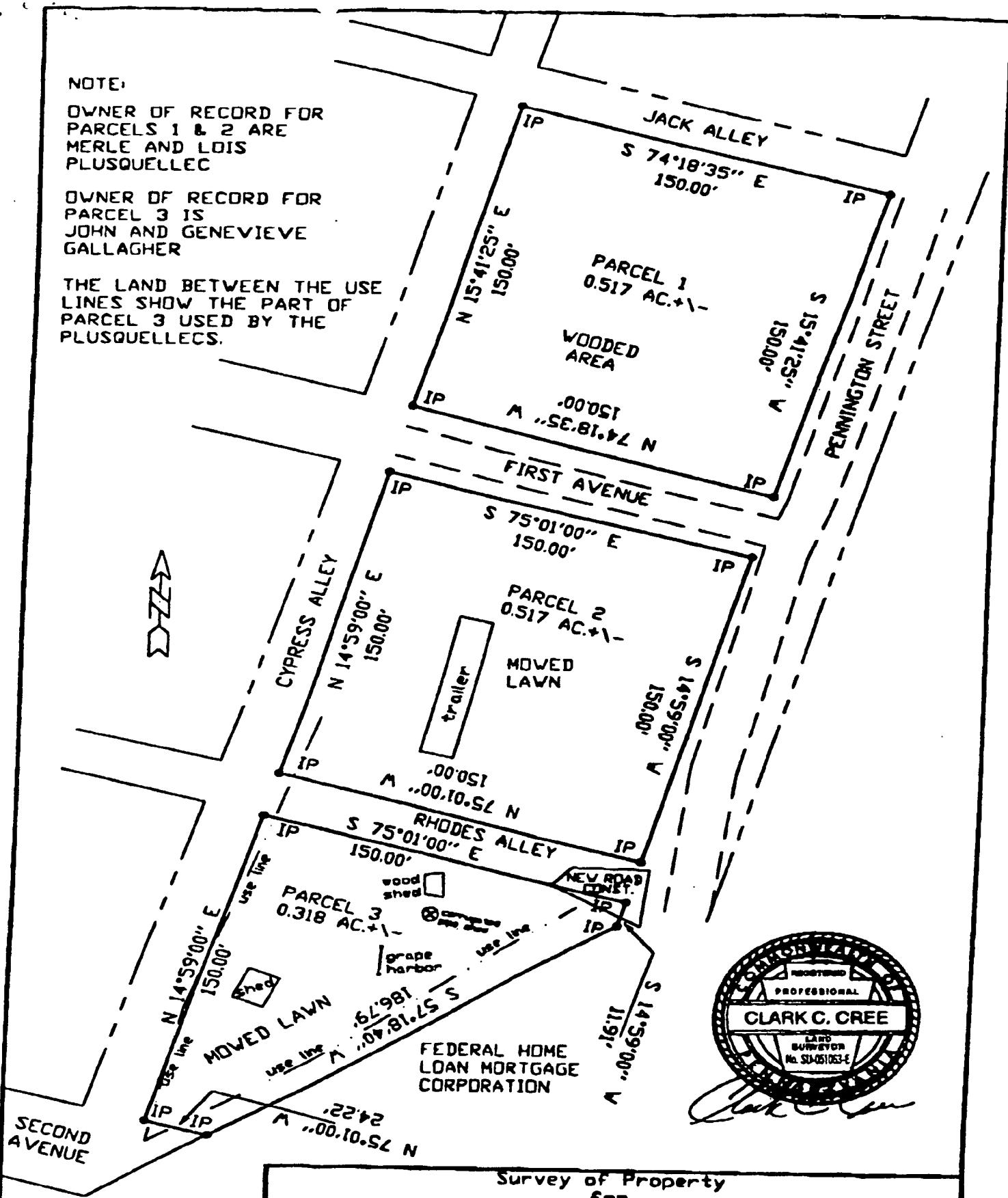
  
LOIS JEAN PLUSQUELLEC

NOTE:

OWNER OF RECORD FOR PARCELS 1 & 2 ARE MERLE AND LOIS PLUSQUELLEC

OWNER OF RECORD FOR PARCEL 3 IS JOHN AND GENEVIEVE GALLAGHER

THE LAND BETWEEN THE USE LINES SHOW THE PART OF PARCEL 3 USED BY THE PLUSQUELLECS.



Survey of Property  
for  
Merle & Lois Plusquellec

Situate: Woodward Township Clearfield Co., Penna.	Scale: 1"=50'	Drawn by: CCH FB#289
Prepared by: GEORGE A. CREE, REGISTERED SURVEYOR 2417 SKYLINE DRIVE, FALLENTIMBER, PA 16639		
Date: 8/15/00	Exhibit	Job No. BD86200

County Parcel No. \_\_\_\_\_

## This Deed,

MADE the 3<sup>rd</sup> day of Julyin the year Two Thousand (2000)BETWEEN EUGENE YAZWINSKI and ELLEN S. YAZWINSKI, husband and wife, both of 332 Highland Parkway, Kenmore, New York 14223, Grantors and Parties of the First Part; \_\_\_\_\_

AND \_\_\_\_\_

JOHN E. GALLAGHER and GENEVIEVE M. GALLAGHER, both of PO Box 126, Houtzdale, Pennsylvania 16651, as tenants by the entireties, Grantees and Parties of the Second Part; \_\_\_\_\_

WITNESSETH, That in consideration of

\$1,00One and 00/100 Dollars

Dollars,

in hand paid, the receipt whereof is hereby acknowledged, the said grantors do hereby grant and convey to the said grantees, their heirs and assigns;

ALL that certain piece or parcel of ground situate in the Township of Woodward, County of Clearfield and Commonwealth of Pennsylvania, bounded and described as follows: \_\_\_\_\_

BEGINNING at the Southeast corner of Rhodes Alley and Cypress Alley; thence in a southern direction along the eastern side of Cypress Alley one hundred fifty (150) feet to the northern side of Second Avenue; thence along the northern side of Second Avenue twenty-three and eighty-hundredths (23.80) feet to a point; thence North fifty-three degrees fifty-three minutes fifty seconds East (N 53° 53' 50" E) two hundred ninety-three and sixty-nine hundredths (293.69) feet to a point; thence in a northern direction ten and twenty-five hundredths (10.25) feet to the southern side of Rhodes Alley; thence in a western direction along the southern side of Rhodes Alley one hundred fifty (150) feet to a point and the place of beginning. \_\_\_\_\_

This conveyance is made subject to all exceptions and reservations as are contained in prior deeds in the chain of title. \_\_\_\_\_

BEING a portion of the premises identified as The Third Thereof as was conveyed to Eugene Yazwinski by deed of Catherine Yazwinski dated June 26, 1999, and entered for record in Clearfield County Instrument File Number 199910847 on June 30, 1999, who together with the joinder of his wife, Ellen S. Yazwinski, are the Grantors herein. \_\_\_\_\_

KAREN L. STARCK  
REGISTER AND RECORDER  
CLEARFIELD COUNTY  
Pennsylvania

INSTRUMENT NUMBER

200009416

RECORDED ON

Jul 05, 2000

2:28:29 PM

RECORDING FEES - \$17.00

RECORDER

COUNTY IMPROVEMENT \$1.00

FUND

RECORDER \$1.00

IMPROVEMENT FUND

STATE TRANSFER TAX \$10.00

STATE FRIT TAX \$0.50

MOSHANHON VALLEY \$10.00

SCHOOLS

TOTAL \$39.50

## NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1966", I/we, the undersigned grantee/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:

*John E. Gallagher* ..... John E. Gallagher

*Genevieve M. Gallagher* ..... Genevieve M. Gallagher

This 3rd day of July 2000

THIS DOCUMENT MAY 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 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 pursuant to Act No. 255, approved September 10, 1965, as amended.)

AND the said grantor **s** will **SPECIALLY** **WARRANT AND FOREVER DEFEND** the property  
hereby conveyed.

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

Sealed and delivered in the presence of

Ronald E. Archer  
as to both

Eugene Yazwinski ..... [Seal]  
Eugene Yazwinski  
Ellen S. Yazwinski ..... [Seal]  
Ellen S. Yazwinski ..... [Seal]  
..... [Seal]  
..... [Seal]  
..... [Seal]

## CERTIFICATE OF RESIDENCE

I hereby certify, that the precise residence of the grantee s herein is as follows:

PO Box 126  
Houtzdale, PA 16651

NTS Attorney or Agent for Grantee

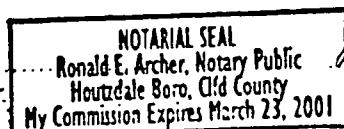
**Attorney or Agent for Grantee**

Commonwealth of Pennsylvania }  
County of Clearfield } ss.

On this, the 3<sup>rd</sup> day of July, 2000, , before me a Notary Public,  
the undersigned officer, personally appeared EUGENE YAZWINSKI and ELLEN S. YAZWINSKI  
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 purpose therein  
contained.

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

## My Commission Expires



Donald E. Arches

State of ..... }  
County of ..... } ss.

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

**My Commission Expires .....** .....

Commonwealth of Pennsylvania }  
County of ..... } ss.

RECORDED in the Office for Recording of Deeds, etc., in and for the said  
County, in Deed Book No. , Page  
WITNESS my hand and official seal this day of ,

**Recorder of Deeds**

四

**WARRANTY DEED**  
The Plankenhorn Co., Williamsport

**EUGENE YAZWINSKI, ET UX.,** **Grantors**

JOHN E. GALLAGHER, ET UX, Grantees

Dated .....

For premises situate in Woodward Township, Clearfield County,.....

Pennsylvania.

Consideration \$1.00

Entered for Record in the Recorder's  
Office of ..... )

County, Inc..... day of Tax. \$  
19..... Fees, \$  
Bounced

**RONALD E. ARCHER**  
ATTORNEY AT LAW  
HOOTZDALE, PENNSYLVANIA

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MERLE PLUSQUELLEC and LOIS )  
JEAN PLUSQUELLEC, husband )  
and wife, )  
Plaintiffs )  
v. ) No. 00-1035-CD  
)  
JOHN E. GALLAGHER and )  
GENEVIEVE M. GALLAGHER, )  
Defendants )

AFFIDAVIT OF RONALD E. ARCHER, ESQUIRE

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF CLEARFIELD )

I, Ronald E. Archer, being duly sworn according to law, depose and say that:

1. I am an attorney admitted to the bar of the Supreme Court of Pennsylvania, I am licensed to practice law in the Commonwealth of Pennsylvania and I maintain an office for the practice of law in Houtzdale, Pennsylvania.

2. I have reviewed the Complaint in Action to Quiet Title filed on August 25, 2000, by Merle Plusquellec and Lois Jean Plusquellec ("Plusquellecs") against John E. Gallagher and Genevieve M. Gallagher ("Gallaghers") and the survey map prepared by George A. Cree ("Cree survey") attached to the Complaint, true and correct copies of which are attached hereto.

3. The property identified on the Cree survey as Parcel 3 ("Parcel 3") was conveyed to Eugene Yazwinski by Catherine Yazwinski, by deed dated June 26, 1999, and entered for record in Clearfield County Instrument File Number 19910847 on June 30, 1999.

EXHIBIT

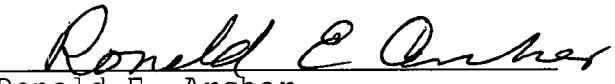
"C"

4. In 1999, Plusquellecs asked to purchase from Eugene Yazwinski and Ellen S. Yazwinski ("Yazwinskis"), or, in the alternative, to trade with Yazwinskis another property owned by Plusquellecs for, Parcel 3.

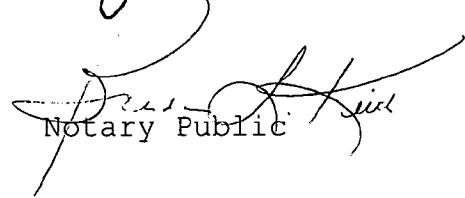
5. In the course of negotiations with Plusquellecs for their purchase of Parcel 3, I represented Yazwinskis and Plusquellecs were represented by Girard Kasubick, Esquire.

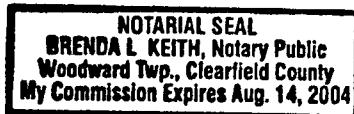
6. The negotiations between Yazwinskis and Plusquellecs did not produce an agreement for Plusquellecs to purchase Parcel 3.

7. By deed dated July 3, 2000, entered for record in Clearfield County Instrument File 200009416 on July 5, 2000, a true and correct copy of which is attached, Yazwinskis sold Parcel 3 to Gallaghers.

  
Ronald E. Archer

Sworn to and subscribed  
before me this 12<sup>th</sup> day  
of June, 2001.

  
Brenda L. Keith  
Notary Public



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MERLE PLUSQUELLEC and LOIS  
JEAN PLUSQUELLEC, husband and  
wife,

Plaintiffs

CIVIL DIVISION

No. 00 - 1035- CD

Vs.

JOHN E. GALLAGHER and  
GENEVIEVE M. GALLAGHER,

Defendants

COMPLAINT IN ACTION TO QUIET  
TITLE

Filed on Behalf of:

Plaintiffs, MERLE PLUSQUELLEC  
and LOIS JEAN PLUSQUELLEC

Counsel of Record for This  
Party:

JOHN R. RYAN, ESQUIRE  
Pa. I.D. #38739

COLAVECCHI RYAN & COLAVECCHI  
221 East Market Street  
P. O. Box 131  
Clearfield, PA 16830

814/765-1566

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

AUG 22 2000

Attest:

*John D. R.*  
Prothonotary

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

MERLE PLUSQUELLEC and LOIS JEAN :  
PLUSQUELLEC, husband and wife, : No. 00 - - CD  
Plaintiffs:  
:  
vs. :  
:  
JOHN E. GALLAGHER and GENEVIEVE M. :  
GALLAGHER, :  
Defendants:

N O T I C E

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

MERLE PLUSQUELLEC and LOIS JEAN :  
PLUSQUELLEC, husband and wife, : No. 00 - - CD  
Plaintiffs:  
: ACTION TO QUIET TITLE  
vs. :  
: JOHN E. GALLAGHER and GENEVIEVE M. :  
GALLAGHER, :  
Defendants:

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1. Plaintiffs are Merle Plusquellec and Lois Jean Plusquellec, husband and wife, of 668 Sara Lane, Verona, Pennsylvania 15147-2635.

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5. Plaintiffs and informed and believe that the Defendants make claim to the premises adverse to Plaintiffs' title.

6. Defendants' claims are wholly without right and constitute clouds on Plaintiffs' title which Plaintiffs' desire to remove.

7. Plaintiffs, through their predecessors in title, made adverse entrance on the above described property commencing in 1946 and said adverse possession has continued through the present time.

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WHEREFORE, Plaintiffs pray as follows:

1. That Defendants and all persons claiming under them be required to set forth the nature of their claims to the real property described hereinabove;

2. For a Decree of this Court determining all adverse claims of Defendants and all persons claiming under them;

3. For said Decree to declare and adjudge that Plaintiffs own absolutely and are entitled to the quiet and peaceful possession of said property as against Defendants and all persons claiming under them, that Defendants and all persons claiming under them have no estate, right, title, lien or interest in or to said property or any part thereof, and that title to said property be quieted in Plaintiffs against all claims of Defendants and all persons claiming under them;

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5. For costs of this action as well as counsel fees for Defendants arbitrary, capricious, and bad faith refusal to recognize and acknowledge Plaintiffs' claims to ownership as set forth hereinabove;

6. For such other and further relief as the Court deems just and proper.



---

JOHN R. RYAN, ESQUIRE  
Attorney for Plaintiff

LAW OFFICES OF  
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RYAN & COLAVECCHI  
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Merle Plusquellec  
MERLE PLUSQUELLEC

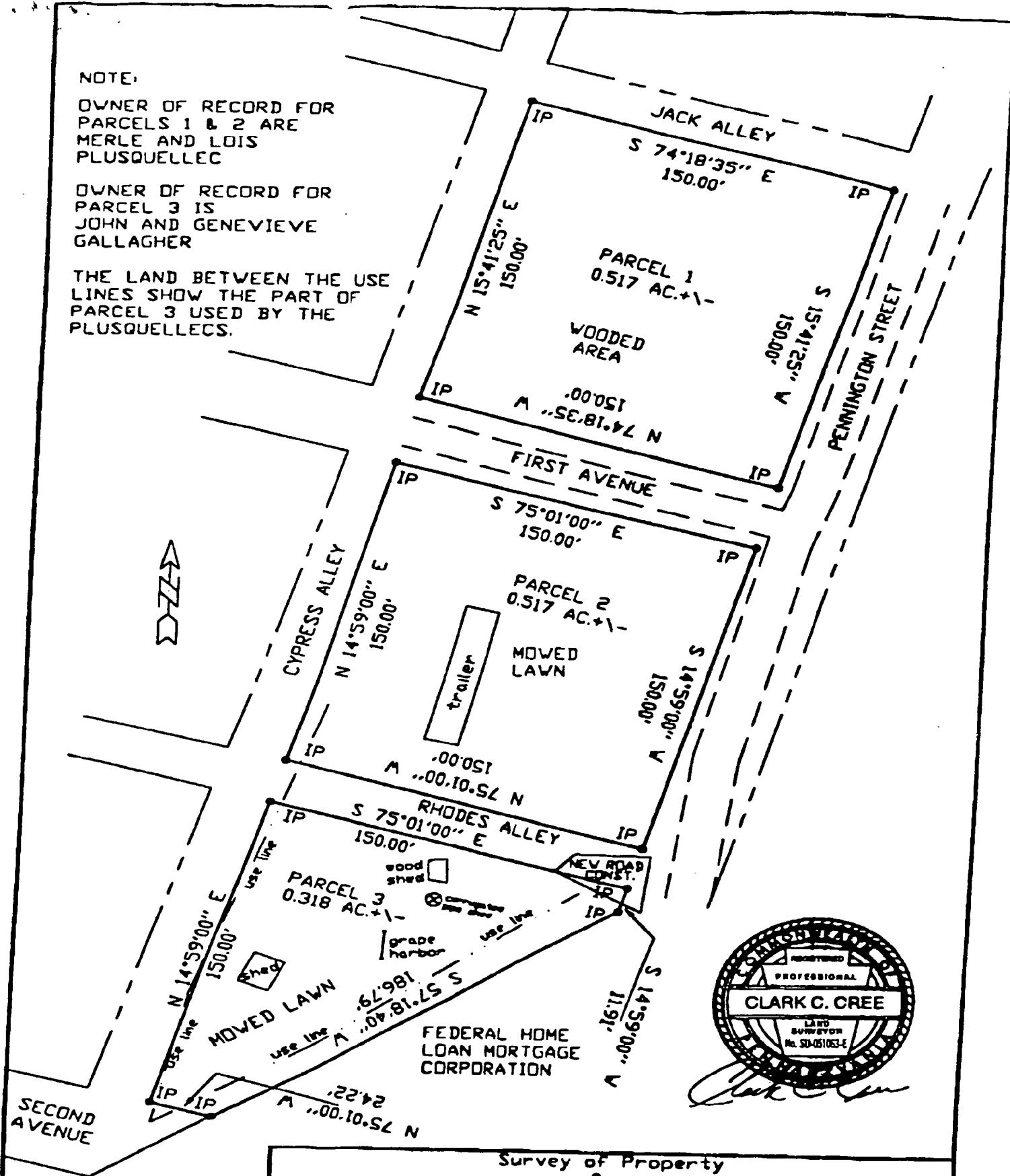
Lois Jean Plusquellec  
LOIS JEAN PLUSQUELLEC

**NOTE:**

OWNER OF RECORD FOR  
PARCELS 1 & 2 ARE  
MERLE AND LOIS  
PLUSQUELLEC

OWNER OF RECORD FOR  
PARCEL 3 IS  
JOHN AND GENEVIEVE  
GALLAGHER

THE LAND BETWEEN THE USE  
LINES SHOW THE PART OF  
PARCEL 3 USED BY THE  
PLUSQUELLECS.



Survey of Property  
for  
Merle & Lois Plusquellec

Situate, Woodward Township Clearfield Co., Penna.	Scale: 1"=50'	Drawn by: CCH FB#289
Prepared by: GEORGE A. CREE, REGISTERED SURVEYOR 2417 SKYLINE DRIVE, FALLENTIMBER, PA 16639		
Date: 8/15/00	Exhibit	Job No. BD06200

County Parcel No. \_\_\_\_\_

## This Deed,

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AND \_\_\_\_\_

JOHN E. GALLAGHER and GENEVIEVE M. GALLAGHER, both of PO Box 126, Houtzdale, Pennsylvania 16651, as tenants by the entireties, Grantees and Parties of the Second Part; \_\_\_\_\_

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\$1,00One and 00/100 Dollars

Dollars,

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AND the said grantor s will      SPECIALLY      WARRANT AND FOREVER DEFEND the property  
hereby conveyed.

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

Sealed and delivered in the presence of

Ronald E. Archer  
as to both

}

Eugene Yazwinski ..... [Seal]  
Eugene Yazwinski  
Ellen S. Yazwinski ..... [Seal]  
Ellen S. Yazwinski ..... [Seal]  
..... [Seal]  
..... [Seal]  
..... [Seal]

### CERTIFICATE OF RESIDENCE

I hereby certify, that the precise residence of the grantee s herein is as follows:

PO Box 126  
Houtzdale, PA 16651

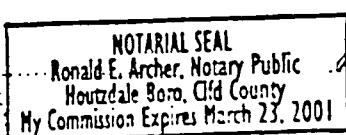
NTS      Attorney or Agent for Grantee

Commonwealth of Pennsylvania  
County of Clearfield } ss.

On this, the 3<sup>rd</sup> day of July, 2000, before me a Notary Public,  
the undersigned officer, personally appeared EUGENE YAZWINSKI and ELLEN S. YAZWINSKI  
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 purpose therein  
contained.

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

My Commission Expires



Ronald E. Archer

State of ..... }  
County of ..... } ss.

On this, the day of , before me  
the undersigned officer, personally appeared  
known to me (or satisfactorily proven) to be the person whose name       subscribed to the within  
instrument, and acknowledged that       executed the same for the purpose therein  
contained.

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

My Commission Expires .....

Commonwealth of Pennsylvania }  
County of ..... } ss.

RECORDED in the Office for Recording of Deeds, etc., in and for the said  
County, in Deed Book No. , Page  
WITNESS my hand and official seal this day of ,

Recorder of Deeds

Deed

WARRANTY DEED  
The Plantenhorn Co., Williamsport, Pa.

EUGENE YAZWINSKI, ET UX,  
Grantors  
and  
JOHN E. GALLAGHER, ET UX,  
Grantees

Dated.....

For premises situate in Woodward  
Township, Clearfield County, Pennsylvania.

Consideration \$1.00

Recorded .....

Entered for Record in the Recorder's

Office of ..... }  
County, the ..... }  
day of Tax. \$ ..... }  
19..... }  
Fees, \$ ..... }  
Recorder

RONALD E. ARCHER  
ATTORNEY AT LAW  
MOUTZDALE, PENNSYLVANIA

VERIFICATION OF SERVICE

Subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities, I verify that a true and correct copy of the foregoing Motion for Summary Judgment was served by delivery to or by placing same in the United States mail at State College, Pennsylvania, first-class postage prepaid, on August 15, 2001, addressed as follows:

John R. Ryan, Esquire  
Colavecchi, Ryan & Colavecchi  
221 East Market Street  
P.O. Box 231  
Clearfield, PA 16830

Lee G. Nollau  
Lee G. Nollau

FILE Doc  
4747  
Aug 5 2001

William A. Shaw  
Prothonotary

(C.W.S.)

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

MERLE PLUSQUELLEC and LOIS )  
JEAN PLUSQUELLEC, husband )  
and wife, )  
Plaintiffs )  
v. ) No. 00-1035-CD  
 )  
JOHN E. GALLAGHER and )  
GENEVIEVE M. GALLAGHER, )  
Defendants )

VERIFICATION OF SERVICE OF BRIEF IN SUPPORT  
OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities, I verify that true and correct copies of the Brief in Support of Defendants' Motion for Summary Judgment were served on August 15, 2001, by delivery to or by placing same in the United States mail at State College, Pennsylvania, first-class postage prepaid, addressed as follows:

The Honorable John K. Reilly, Jr.,  
President Judge  
Judge's Chambers  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830

John R. Ryan, Esquire  
Colavecchi, Ryan & Colavecchi  
221 East Market Street  
P.O. Box 231  
Clearfield, PA 16830

*Lee G. Nollau*  
Lee G. Nollau  
I.D. #24732  
NOLLAU & YOUNG  
2153 East College Avenue  
State College, PA 16801  
(814) 235-1110  
Attorney for Defendants

*FILED*

AUG 15 2001

William A. Shaw  
Prothonotary

**FILED**

NO  
cc

AUG 13 1976

1976

William A. Shaw  
Prothonotary  
728

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

MERLE PLUSQUELLEC and LOIS  
JEAN PLUSQUELLEC, husband  
and wife

-VS- : No. 00-1035-CD

JOHN E. GALLAGHER and  
GENEVIEVE M. GALLAGHER

**ORDER**

NOW, this 15<sup>th</sup> day of August, 2001, following pre-trial conference in the above-captioned matter, and upon consideration of Motion for Summary Judgment filed on behalf of Defendants, it is the ORDER of this Court that Plaintiffs shall file their response brief on or before September 14, 2001, and Defendants any reply brief they may wish to file within 10 days thereafter. It is the further ORDER of this Court that, if necessary, a hearing on the merits shall be held on Friday, November 9, 2001, at 9:00 a.m.

By the Court,

President Judge

**FILED**

AUG 15 2001

William A. Shaw  
Prothonotary

1 cc Atg Ryan  
1 cc Atg Mellon  
1 cc Atg Ryan  
1 cc Atg Mellon  
1 cc Atg Mellon  
1 cc Atg Mellon

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MERLE PLUSQUELLEC and LOIS  
JEAN PLUSQUELLEC, husband and  
wife,  
Plaintiffs

CIVIL DIVISION

No. 00-1-1035 - CD

vs.  
JOHN E. GALLAGHER and  
GENEVIEVE M. GALLAGHER,  
Defendants

ANSWER TO MOTION FOR SUMMARY  
JUDGMENT

Filed on Behalf of:

Plaintiffs, MERLE PLUSQUELLEC  
and LOIS JEAN PLUSQUELLEC

Counsel of Record for This  
Party:

JOHN R. RYAN, ESQUIRE  
Pa. I.D. #38739

Colavecchi, Ryan & Colavecchi  
221 East Market Street  
P. O. Box 131  
Clearfield, PA 16830

814/765-1566

**FILED**

AUG 28 2001

William A. Shaw  
Prothonotary

WHEREFORE, Plaintiffs' request that the Court deny the Defendants' Motion for Summary Judgment.

Respectfully submitted,



JOHN R. RYAN, ESQUIRE  
Attorney for Plaintiffs

LAW OFFICES OF  
COLAVECCHI  
RYAN & COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.

CIVIL DIVISION

No. 00 - 1035 - CD

MERLE PLUSQUELLEC and LOIS JEAN  
PLUSQUELLEC, husband and wife,  
Plaintiffs

vs.

JOHN E. GALLAGHER and  
GENEVIEVE M. GALLAGHER, Defendants

ANSWER TO MOTION FOR  
SUMMARY JUDGMENT

**FILED**

AUG 28 2001  
O 3/7/02 (CITY REC)  
John A. Shaw  
Notary  
SAC

**COLAVECCHI & RYAN**

ATTORNEYS AT LAW

221 E. MARKET STREET  
(ACROSS FROM COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MERLE PLUSQUELLEC and LOIS  
JEAN PLUSQUELLEC, husband and  
wife,  
Plaintiffs

CIVIL DIVISION  
No. 00 - 1035 - CD

vs.  
JOHN E. GALLAGHER and  
GENEVIEVE M. GALLAGHER,  
Defendants

AFFIDAVIT OF GIRARD KASUBICK

Filed on Behalf of:

Plaintiffs, MERLE PLUSQUELLEC  
and LOIS JEAN PLUSQUELLEC

Counsel of Record for This  
Party:

JOHN R. RYAN, ESQUIRE  
Pa. I. D. #38739

Colavecchi, Ryan & Colavecchi  
221 East Market Street  
P. O. Box 131  
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF  
COLAVECCHI  
RYAN & COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

FILED

SEP 1 9 2001

William A. Shaw  
Prothonotary

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

MERLE PLUSQUELLEC and LOIS JEAN :  
PLUSQUELLEC, husband and wife, : No. 00 - 1035 - CD  
Plaintiffs:  
:  
Vs. :  
:  
JOHN E. GALLAGHER and :  
GENEVIEVE M. GALLAGHER, :  
Defendants:  
:

**AFFIDAVIT OF GIRARD KASUBICK**

I, Girard Kasubick, being duly sworn according to law, deposes and say that:

1. I am an attorney admitted to the Bar of the Supreme Court of Pennsylvania, I am licensed to practice law in the Commonwealth of Pennsylvania, and I maintain an office for the practice of law in Clearfield County, Pennsylvania.

2. I previously represented Merle and Lois Jean Plusquellec with respect to a property which I now understand is the subject of an Action to Quiet Title filed by the Plusquellecs against John E. Gallagher and Genevieve M. Gallagher.

3. On September 22, 1999, I, on behalf of the Plusquellecs, wrote a letter to Eugene Yazwinski. A true and correct copy of that letter is attached to this Affidavit, marked Exhibit "A" and incorporated herein as if set forth at length.

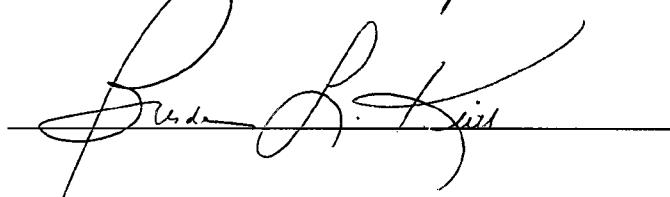
4. I never received a written response from the Yazwinskis or from Attorney Ronald Archer with respect to the content of the my letter dated September 22, 1999.



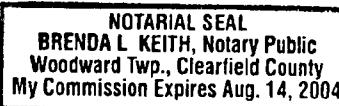
Girard Kasubick

GIRARD KASUBICK

Sworn to and subscribed before me  
this 7th day of September 2001.



Brenda L. Keith



LAW OFFICES OF  
COLAVECCHI  
RYAN & COLAVECCHI  
221 E. MARKET ST.  
(ACROSS FROM  
COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA

LAW OFFICES  
**LEHMAN & KASUBICK**

611 BRISBIN STREET, HOUTZDALE, PA 16651

Telephone (814) 378-7840  
Facsimile (814) 378-6231

September 22, 1999

Eugene Yawinski  
332 Highland Parkway  
Kenmore, NY 14223-1442

Re: Property located in Woodward  
Township, Clearfield County,  
Pennsylvania

Dear Mr. Yawinski:

Please be advised that I represent Merle S. Plusquellec and Lois Jean Plusquellec and on their behalf I am responding to your letter of September 8, 1999.

I have done a preliminary review of the deeds and records concerning the property in dispute in your letter. The deed from Michael and Catherine Yawinski to E. J. Crosovolt and Joseph Lorbiecki dated November 2, 1946 and recorded in Clearfield County Deed Book 378, page 596 does convey a tract of land along Blandy Street and South of Second Street. It is our position that the description in this deed was an error and that the property intended to be conveyed was the property South of Rhodes Alley and East of Cypress Alley which is the property where my clients' shed is located. Mr. Crosovolt and my clients have possessed the property South of Rhodes Alley and East of Cypress Alley since 1946 by placing a mine entrance and by occupying and using this property, including placing the shed and other items on the property.

I disagree with your attorney that my clients must reside on the premises to have a 21 year adverse possession claim. In speaking with my clients, it is my opinion, that they have possessed the disputed property and can clearly argue adverse possession against any claim of yours. You and your parents have seen and known of the possession by my clients for more than 21 years.

In conclusion, my clients will not remove the shed from the disputed property nor any other items they have placed on the property. If you or your agents attempt to remove any items of my clients, we will hold you responsible for those items to the full extent of the law. My clients have indicated that you intend to

Exhibit

"A"

Eugene Yazwinski

Page 2 of 2

September 22, 1999

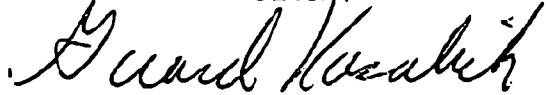
survey the property in dispute. By this letter, you have no permission from my clients to survey the disputed area.

My clients are willing to make this offer to amicably resolve this matter. My clients would be willing to transfer title by deed to you of the property described in Deed Book 378, page 596 which is along Brandy Street in return for a deed from you for the property South of Rhodes Alley and Cypress Alley. My clients would be willing to bear the costs of preparing and recording these deeds.

If this proposal is acceptable, you or your attorney can contact my office. Otherwise, you are to remain off the property of my clients South of Rhodes Alley and East of Cypress Alley.

Very truly yours,

LEHMAN & KASUBICK

  
Girard Kasubick

GK:sp

cc: Mr. and Mrs. Merle S. Plusquellec ✓

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.

CIVIL DIVISION

No. 00 - 1035 - CD

MERLE PLUSQUELLEC and LOIS JEAN  
PLUSQUELLEC, husband and wife,  
Plaintiffs

vs.

JOHN E. GALLAGHER and  
GENEVIEVE M. GALLAGHER, Defendants

AFFIDAVIT OF GIRARD KASUBICK

*CCd H.A. Ryan*  
*Colavecchi & Ryan*

William A. Shaw  
Prothonotary

**COLAVECCHI & RYAN**

ATTORNEYS AT LAW

221 E. MARKET STREET  
(ACROSS FROM COURTHOUSE)  
P. O. BOX 131  
CLEARFIELD, PA. 16830

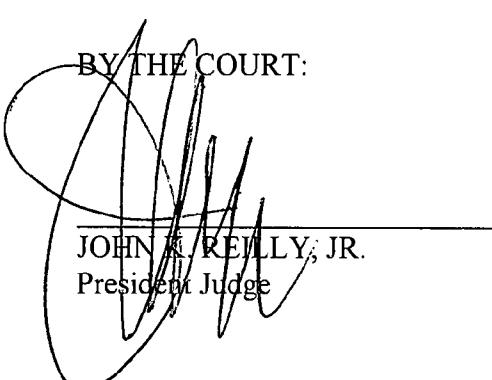
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

MERLE PLUSQUELLEC and LOIS :  
PLUSQUELLEC, husband and wife :  
:  
vs. : No. 00-1035-CD  
:  
JOHN E. GALLAGHER and :  
GEVEVIEVE :  
:

ORDER

AND NOW, this 26<sup>th</sup> day of September, 2001, it is the ORDER of  
the Court that Hearing on the Merits, if necessary, in the above-captioned matter has  
been rescheduled from November 9, 2001 to Thursday, November 15, 2001 at 9:00  
A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
JOHN E. REILLY, JR.  
President Judge

FILED

SEP 20 2001

John A. Shaw  
Prothonotary

FILED

SEP 28 2001  
SPO. 48 KC atty, nollan  
William A. Shaw  
prothonotary  
KC atty, Ryan

KEY

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

MERLE PLUSQUELLEC and LOIS :  
PLUSQUELLEC, husband and wife :  
vs. : No. 00-1035-CD  
: :  
JOHN E. GALLAGHER and :  
GEVEVIEVE :  
: :

**ORDER**

AND NOW, this 15<sup>th</sup> day of October, 2001, it is the ORDER of  
the Court that Hearing on the Merits, if necessary, in the above-captioned matter has  
been rescheduled from November 15, 2001 to **Thursday, December 6, 2001 at 9:00**  
**A.M.** in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

JOHN K. REILLY, JR.  
President Judge

**FILED**

OCT 15 2001

William A. Shaw  
Prothonotary

**FILED**

Oct 15 2001  
William A. Shaw  
Prothonotary

cc atty Ryan  
cc atty Neillan

**In The Court of Common Pleas of Clearfield County, Pennsylvania**

Sheriff Docket # 11754

PLUSQUELLEC, MERLE and LOIS JEAN

00-1035-CD

VS.

GALLAGHER, JOHN E. & GENEVIEVE M.

**SUBPOENA TO ATTEND & TESTIFY**

**SHERIFF RETURNS**

**NOW NOVEMBER 15, 2001 AT 3:58 PM EST SERVED THE WTIHIN SUBPOENA TO ATTEND & TESTIFY ON RICHARD KENNEY, DEFENDANT AT SHERIFF'S OFFICE, MARKET ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO RICHARD KENNEY A TRUE AND ATTESTED COPY OF THE ORIGINAL SUBPOENA TO ATTEND & TESTIFY AND MADE KNOWN TO HIM THE CONTENTS THEREOF.**

**SERVED BY: SHULTZ**

---

**Return Costs**

<b>Cost</b>	<b>Description</b>
19.34	<b>SHFF. HAWKINS PAID BY: ATTY.</b>

**Sworn to Before Me This**

21<sup>st</sup> Day Of Nov. 2001  
Erin

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

**So Answers,**

*Chester A. Hawkins  
by Marilyn Harry*  
Chester A. Hawkins  
Sheriff *EJH*

**FILED**

**NOV-21 2001**

William A. Shaw  
Prothonotary

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

MERLE PLUSQUELLEC and LOIS :

JEAN PLUSQUELLEC :

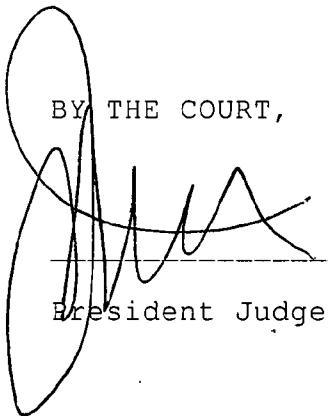
-vs- : No. 00-1035-CD

JOHN E. GALLAGHER and :

GENEVIEVE M. GALLAGHER :

O R D E R

NOW, this 6th day of December, 2001, this being the day and date set for Hearing on the Merits, it is the ORDER of this Court that counsel have no more than two (2) weeks following receipt of the transcript in which to supply the Court with appropriate brief.

BY THE COURT,  
  
President Judge

**FILED**

DEC 07 2001

William A. Shaw  
Prothonotary

2 CERT TO ATTY RYAN  
&  
NOLLAN



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

**FILED**

MAY 23 2002

MERLE PLUSQUELLEC and :  
LOIS PLUSQUELLEC, husband :  
and wife, :  
Plaintiffs :  
v. :  
No. 00-1035-C.D.  
JOHN E. GALLAGHER and :  
GENEVIEVE M. GALLAGHER, :  
husband and wife :  
Defendants :

William A. Shaw  
Prothonotary

OPINION AND ORDER

NOW, this 23<sup>rd</sup> day of May, 2002, upon consideration of the hearing on the merits held on December 6, 2001, as well as briefs submitted pursuant to this Court's Order, the Court makes the following Findings of Fact and Conclusions of Law:

***Findings of Fact***

1. Plaintiffs are Merle and Lois Plusquellec, husband and wife, residing at 668 Sara Lane, Verona, Pennsylvania.
2. Defendants are John E. and Genevieve Gallagher, husband and wife, residing at P.O. Box 126, Houtzdale, Pennsylvania.
3. On August 23, 2000, Plaintiffs filed a Complaint in Action to Quiet Title asserting a claim of title by adverse possession to property located in Woodward Township, Clearfield County, Pennsylvania.
4. In their Answer and New Matter, Defendants assert title to the aforementioned property by virtue of a deed from Eugene and Ellen Yazwinski dated July 3, 2000, and deny Plaintiffs' claim.
5. Prior to trial on this matter scheduled for November, 2001, Defendants' filed a Motion for Summary Judgment, asserting that Plaintiffs' failed to establish title by adverse possession. Defendants argued that Plaintiffs could not prove the essential element of hostility due to the

fact that Plaintiffs had offered to purchase said property or to exchange deeds with Defendants for an adjacent property in September of 2000. Defendants also argued that the property was unimproved woodland, and that Plaintiffs failed to prove the cultivation or enclosure of such property.

6. Pursuant to this Court's Order, both parties submitted briefs on the foregoing issues. This Court did not rule on the Motion for Summary Judgment and on December 6, 2001, the matter proceeded to trial without a jury.

7. Testimony presented at trial established the following facts:

a. By deed dated November 2, 1946, E.J. Crosovolt and Joseph Lorbiecki acquired several parcels of real estate located in Woodward Township from Michael and Catherine Yazwinski;

b. The description of one parcel as conveyed by such deed indicates that it is located at the intersection of Blandy Street and the Houtz Estate line;

c. In 1946, Mr. Crosovolt, the great-uncle of Plaintiff Merle Plusquellec, took possession of a parcel south of Rhodes Alley and east of Cypress Alley, adjacent to the Yazwinski homestead.

d. Mr. Crosovolt built an underground mine entrance somewhere near the center of this parcel. He also built a coal tipple on the lot to the north of such parcel.

e. In 1953, Mr. Lorbiecki conveyed his interest in the properties to Crosovolt. Thereafter, from 1946 until 1965, Mr. Crosovolt maintained exclusive possession of the property.

f. In 1965, Mr. Crosovolt conveyed three properties to Plaintiffs, including what was believed to be the property at issue herein.

g. Prior to making the conveyance, Mr. Crosovolt showed Plaintiffs the boundaries of the subject parcel ("Parcel #3").

h. Following the conveyance in 1965, Plaintiffs hired a bulldozer operator to close the mine entrance and to level the property. Michael Yazwinski was present when this entrance was closed with the bulldozer.

i. Upon Plaintiffs' acquisition of Parcel #3, such parcel was covered with brush and littered with garbage.

j. Subsequently, Plaintiffs planted evergreen trees along the western border of Parcel #3, which shares a common boundary with the Yazwinski property. Over the years, Plaintiffs also filled several holes left from the mining operation; planted apple trees and a grape arbor; erected two storage sheds in which they kept lawn mowers, the second of which

had a concrete foundation; and stored a vehicle on the property. In addition, Plaintiffs mowed the lawn and built an outhouse and outdoor shower facility, and permitted their children to ride their all terrain vehicles on Parcel #3.

k. Plaintiffs acquired record title to two adjacent lots from Mr. Crosovolt in 1965. Shortly thereafter, Plaintiffs placed a school bus on one of the lots and later replaced the bus with a mobile home.

l. Plaintiffs frequently and consistently spent time at the property over the years, often staying there every week and sometimes more frequently, as well as extended periods during the spring and summer months.

m. The subject property is immediately adjacent to the aforementioned lots on which Plaintiffs have stayed, and is separated by a road known as Rhodes Alley, which is a "paper alley" never opened or developed by Woodward Township.

n. Mr. Crosovolt was in exclusive possession of such property from 1953 to 1965. Plaintiffs have been in exclusive possession since that time.

o. Mr. Eugene Yazwinski, who resides in Buffalo, New York and owns property on First Avenue in Woodward Township, is the son of Michael and Catherine Yazwinski, both now deceased.

p. Mr. Yazwinski received the property by deed from his mother on June 26, 1999. Mr. Yazwinski frequently visited such property over the years.

q. In 1999, Mr. Richard Kenney, a long-time resident of the immediate area who came to know Plaintiffs from their frequent visits to the area, notified Plaintiffs that the subject property was not the property deeded to them by Mr. Crosovolt and that the deed description matched property located to the north at the intersection of Blandy Street and South of Second Street.

r. At that time, Plaintiffs had their property surveyed, and thereafter approached Mr. Yazwinski and advised him that they had placed a shed on subject property by mistake, and asked to either purchase such parcel for nominal consideration or to trade another property for such parcel.

s. By letter dated September 8, 1999, Mr. Yazwinski wrote to Plaintiff Merle Plusquellec and referenced their conversation of September 5, 1999 during which Mr. Plusquellec asserted a claim to the subject property. In the letter, Mr. Yazwinski stated that caring for the property did not amount to ownership and demanded that Plaintiffs remove their shed.

t. By deed dated July 5, 2000, Mr. and Mrs. Yazwinski sold the property to Defendants.

u. Mr. Yazwinski admitted at trial that he was aware that Plaintiffs claimed ownership of the subject property, and that his property in Woodward Township is adjacent to such property. In addition, Mr. Yazwinski testified that he had in fact seen Plaintiffs making use of the subject property over the years, and was aware that a shed had been placed on the property but was unable to recall with any precision the timing of such placement.

#### *Conclusions of Law*

Under Pennsylvania law, summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, admissions on file and affidavits demonstrate that there is no genuine issue of material fact. J.H. ex rel Hoffman v. Pellak, 764 A.2d 64, 66 (Pa. Super. 2000). The moving party bears the burden of proving that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. Buffalini by Buffalini v. Shrader, 535 A.2d 684 (Pa. Commw. 1987). All well-pleaded facts in the non-moving party's pleadings are accepted as true and the non-moving party is given the benefit of all inferences reasonably drawn therefrom. Spain v. Vicente, 461 A.2d 833 (Pa. Super. 1983). Any doubt must be resolved in favor of the non-moving party. French v. United Parcel Service, 547 A.2d 411 (Pa. Super. 1988). Pursuant to Pennsylvania Rule of Civil Procedure 1035, a non-moving party may not avoid summary judgment by resting on the mere allegations or denials of his pleadings. See Ertel v. Patriot News Co., 674 A.2d 1038, 1041 (Pa. 1996). The non-moving party's failure to produce evidence establishing a genuine issue of material fact will entitle the moving party to judgment as a matter of law. Id.

Plaintiffs' claim to the subject property is grounded in the doctrine of adverse possession. A party asserting title by adverse possession must prove actual, continuous, exclusive, visible, notorious, distinct and hostile possession of the subject property for a period of twenty –one (21) years. Myers v. Beam, 713 A.2d 61 (Pa. 1988); Conneaut Lake Park Inc. v. Klingensmith, 66 A.2d 828, 829 (Pa. 1949). The elements at issue in this case are actual

possession and hostility. Actual possession has been defined as the exercise of dominion over the disputed property. Brennan v. Manchester Crossings, Inc., 708 A.2d 815, 821 (Pa. Super. 1998). Hostility “implies an assertion of ownership rights which are adverse to those of the true owner and all others.” Id. at 822. The Pennsylvania Supreme Court has held that where the record owner has not ejected the adverse party within the limitations period and all other elements of adverse possession have been established, “hostility will be implied.” Tioga Coal Company v. Supermarkets General Corp., 546 A.2d 1, 5 (Pa. 1988). Nonetheless, the Superior Court has stated that the hostility element requires a showing of an intention to hold title against the record owner such that the record owner “would be placed on notice” that his legal title is being challenged, “awareness of which would be recognized by a reasonable person in like circumstances.” Klett v. Eboch, 633 A.2d 1204, 1208 (Pa. Super. 1993).

In the case at bar, Defendants argue that Plaintiffs’ attempt to purchase the tract in question from the Yazwinski’s constitutes an acknowledgement of the Yazwinski’s title, thereby defeating the hostility element of the adverse possession claim. Specifically, Defendants point to evidence indicating that following a survey commissioned by Plaintiffs in 1999, Plaintiffs approached Mr. Yazwinski to advise him that they had inadvertently placed a shed on the Yazwinski property. During that discussion, Plaintiff Merle Plusquellec allegedly asked to purchase said property, or in the alternative, to exchange another property that he owned for the subject parcel.

Citing to Myers v. Beam, 713 A.2d 61 (Pa. 1998) and Pistner Bros., Inc. v. Agheli, 518 A.2d 838 (Pa. Super 1986), Defendants assert that Plaintiffs’ request to purchase the subject parcel negates the necessary showing of adverse and hostile possession. In Myers, the plaintiffs requested a quitclaim deed from the record owner of the property in question some

eight years prior to the running of the statute of limitations for adverse possession. Plaintiffs in that case argued that pursuant to existing law as set forth in the case Burns v. Mitchell, 381 A.2d 487 (Pa. Super. 1977), the acquisition of title by quitclaim deed is consistent with a claim to title by adverse possession. The Supreme Court rejected plaintiffs' argument and noted that in Burns, the adverse possessor had acquired title prior to seeking a quitclaim deed to the property, and had "merely improved the marketability of her title after establishing ownership by adverse possession." Id. As such, the Supreme Court in Myers found that because plaintiffs had attempted to obtain the quitclaim deed from the record owner *prior* to the running of the statue of limitations, that the element of continuous hostility had been destroyed. Id. at 62. Similarly, in Pistner Bros., Inc. v. Agheli, 518 A.2d 838 (Pa. Super. 1986), the Superior Court found that a party's offer to purchase the property at issue some 11 years into a party's adverse possession "constituted an unequivocal recognition that his title was subservient," as well as an acknowledgement that title remained in the record owner.

The case at hand is clearly distinguishable from the foregoing case law. As established at trial, Plaintiffs acquired three properties in 1965, one of which they believed to be the subject property, and upon which they planted evergreens, apple trees and a grape arbor; filled sink holes; and erected two storage sheds, an outhouse and an outdoor shower. Mr. Plusquellec approached Mr. Yazwinski in 1999 after he discovered that Mr. Yazwinski was the record owner of the property he had believed to be his own for a period of approximately 34 years, a period well in excess of the 21-year statute of limitations applicable to adverse possession. As such, the Court finds the Myers and Pistner cases to be distinguishable, and holds that any attempt by Plaintiffs to purchase the subject property did not defeat the required element of

hostility. Rather, at the time Mr. Plusquellec approached Mr. Yazwinski, he had already acquired title by adverse possession.

Moreover, Plaintiffs' activities on the property for a period of 34 years are such that a reasonable person "would be placed on notice" that his legal title was being challenged. Klett, 633 A.2d at 1208. As indicated in the Findings of Fact, Plaintiffs have frequently spent time at the property over the course of the limitations period, often staying there every week and sometimes more frequently, as well as for extended periods during the spring and summer months. In addition, the subject property is adjacent to two other lots owned by Plaintiffs, and on which Plaintiffs placed a bus, and later a mobile home for recreation purposes, separated only by a "paper alley" never opened or developed by Woodward Township. Plaintiffs have improved and maintained the property by closing a mine entrance, filling sink holes, planting vegetation, mowing the grass, and building sheds, an outhouse and an outdoor shower on the premises. Based upon the foregoing, the Court finds that Plaintiffs have made the requisite showing of hostility with respect to their claim for adverse possession to the subject property.

Next, Defendants assert that Plaintiffs are precluded from claiming title by adverse possession because the subject property constitutes unimproved woodland and Plaintiffs have failed to prove the element of "actual possession" of such property. Defendants state that under Pennsylvania law as set forth in Niles v. Fall Creek Hunting Club, 545 A.2d 926 (Pa. Super. 1988), a party claiming adverse possession of unimproved woodland must establish "actual possession" by either erecting a residence on such property or enclosing or cultivating such property. In Niles, the plaintiff claimed that he had acquired title by adverse possession by virtue of hunting and timber removal, as well as partial enclosure by a single strand of wire.

In setting forth the standard applicable to the adverse possession of unimproved woodland, the Superior Court stated the following:

To maintain an actual possession to woodland as such, it is necessary that the person entering take actual possession by residence or cultivation, of a part of the tract to which the woodland belongs . . Actual possession may be taken by enclosing or cultivating, without residence or by residence without cultivation, under a bona fide claim where there is a designation of the boundaries with the ordinary use of the woodland. This possession accomplishes an ouster, and is entirely different from the occasional or temporary use of the land without an intention to permanently cultivate or reside thereon or use it in some other manner consistent with the condition of the property.

*Id.* at 929, quoting Hoover v. Jackson, 524 A.2d 1367, 1370, quoting Darrah v. Kadison, 55 Pa. Super. 335, 343 (1913).

Based upon the evidence presented in this case, the subject property does not appear to be unimproved woodland: Plaintiffs' evidence indicates that they have planted apple trees and a grape arbor, mowed the grass, built sheds, an outhouse and an outdoor shower on the premises, and have used the property for recreational purposes. Nonetheless, the Court finds that Plaintiffs' actions in planting, building and backfilling on the property serve to designate the boundaries of their claim to this property sufficiently to satisfy the standard set forth above. Such activities, as well as the consistent and frequent use of the property for recreational purposes, are sufficient to support a finding that Plaintiffs have exercised dominion over this property, thereby satisfying the element of "actual possession." Brennan, 708 A.2d at 821. As such, the Court finds that Plaintiffs have established title by adverse possession.

WHEREFORE, the Court enters the following Order:

ORDER

NOW, this 23<sup>rd</sup> day of May, 2002, following the hearing on the merits and upon consideration of the Motion for Summary Judgment filed by Defendants, it is the ORDER of this Court that the Motion for Summary Judgment filed on behalf of Defendants John E. Gallagher and Genevieve M. Gallagher, be and hereby is DISMISSED, and that judgment be entered in favor of Plaintiffs Merle and Lois Jean Plusquellec.

By the Court,  
President Judge

FILED

1cc Atty Ryan  
01335 ~~Ex~~ 1cc 44th Roll  
MAY 23 2002 44th Roll  
1cc S. myself

William A. Shaw  
Prothonotary

*Ex-21*

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MERLE PLUSQUELLEC and LOIS ) CIVIL DIVISION  
JEAN PLUSQUELLEC, husband )  
and wife, ) No. 00-1035-CD  
Plaintiffs )  
v. ) MOTION FOR LEAVE TO  
JOHN E. GALLAGHER and ) WITHDRAW  
GENEVIEVE M. GALLAGHER, )  
Defendants ) Filed on behalf of Defendants  
 ) Counsel of record for this party  
 )  
 ) LeDon Young  
 ) I.D. No. 30644  
 ) NOLLAU & YOUNG  
 ) 2153 East College Avenue  
 ) State College, PA 16801  
 ) (814) 235-1110

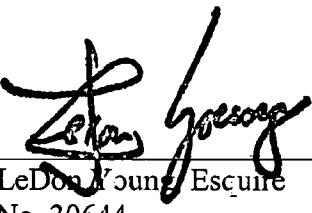
FILED 4CC  
m) 5901 Atty  
MAR 22 2006  
6x

William A. Shaw  
Prothonotary/Clerk of Courts

6. Neither Movant nor the law firm has no fee paid in advance that has not been earned.

7. John R. Ryan, Esquire, attorney for Plaintiffs Merle and Lois Plusquellec, does not object.

WHEREFORE, Movant prays this Honorable Court to issue an Order granting to Nollau and Young, leave to withdraw as counsel of record for Defendant in the above-captioned action.



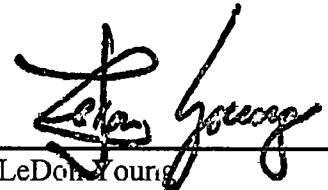
LeDon Young, Esquire  
No. 30644  
NOLLAU & YOUNG  
2153 East College Avenue  
State College, PA 16801  
(814) 235-1110  
Movant

VERIFICATION OF SERVICE

Subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities, I verify that true and correct copies of the Motion for Leave to Withdraw were served on March 20, 2006, by placing same in the United States mail at State College, Pennsylvania, first-class postage prepaid, addressed as follows:

John R. Ryan, Esquire  
Colavecchi, Ryan & Colavecchi  
221 East Market Street  
P.O. Box 231  
Clearfield, PA 16330

Mrs. John E. Gallagher  
P.O. Box 126  
Houtzdale, PA 16651



---

LeDon Young

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

MERLE PLUSQUELLEC and  
LOIS PLUSQUELLEC, husband and wife,

vs.

No. 00-1035-CD

JOHN E. GALLAGHER and  
GENEVIEVE M. GALLAGHER,  
husband and wife,

FILED *4cc*  
019:05 AM Young  
MAR 24 2006 (6K)

William A. Shaw  
Prothonotary/Clerk of Courts

NOW, this 23 *rc* day of March, 2006, upon consideration of the attached Motion of Counsel for Leave to Withdraw, a Rule is hereby issued upon the parties to Show Cause why the Petition should not be granted. Rule Returnable the 24th day of April, 2006, for filing written response.

NOTICE

A PETITION OR MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION OR MOTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY LOSE 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  
230 East Market Street, Suite 228  
Clearfield, PA 16830  
(814) 765-2641, Ext. 1300 or 1301

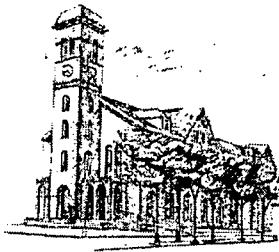
BY THE COURT:

*Judie J. Zimmerman*  
President Judge

FILED

MAR 24 1986

William A. <sup>51-74</sup>  
Prothonotary/Clerk



## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

DATE: 3/24/06

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

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

MERLE PLUSQUELLEC and LOIS )  
JEAN PLUSQUELLEC, husband )  
and wife, )  
Plaintiffs )  
v. ) ) No. 00-1035-CD  
JOHN E. GALLAGHER and )  
GENEVIEVE M. GALLAGHER, )  
Defendants )

VERIFICATION OF SERVICE

Subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities, I verify that true and correct copies of the Motion of Counsel for Leave to Withdraw were served by placing same in the United States mail at State College, Pennsylvania, first-class postage prepaid on April 6, 2006, addressed as follows:

John R. Ryan, Esquire  
Colavecchi, Ryan & Colavecchi  
221 East Market Street  
P.O. Box 2131  
Clearfield, PA 16830

Mrs. John E. Gallagher  
P.O. Box 126  
Houtzdale, PA 16651

Robert W. Gallagher  
P.O. Box 85  
Brisbin, PA 16620



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LeDon Young  
I.D. No. 30644  
NOLLAU & YOUNG  
2153 East College Avenue  
State College, PA 16801  
(814) 235-1110  
Attorney for Petitioner

FILED  
APR 11 2006  
APR 07 2006  
cc

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

**APR 07 2006**

**William A. Shaw  
Prothonotary/Clerk of Courts**