

60-1525-67  
DENNIS L. MERREY et al -vs- STANLEY B. OWENS et al

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1654 WDA 2004

Page 1 of 3

September 28, 2004



Dennis L Merrey And Elmo L. Braid

v.

Stanley B. Owens And Marie C. Owens

Appeal Of :Marie C. Owens

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: September 27, 2004

Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType:

Other

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Case Initiation

Next Event Due Date: September 27, 2004

Next Event Type: Docketing Statement Received

Next Event Due Date: October 12, 2004

Next Event Type: Original Record Received

Next Event Due Date: November 8, 2004

1654 WDA 2004

Rec'd  
1 Transcript



FILED

SEP 30 2004

William A. Shaw  
Prothonotary

418

## Appeal Docket Sheet

Docket Number: 1654 WDA 2004

Page 2 of 3

September 28, 2004

Superior Court of Pennsylvania



## COUNSEL INFORMATION

**Appellant** Owens, Marie C.  
**Pro Se:** Appoint Counsel Status:  
**IFP Status:** No

**Appellant Attorney Information:**

**Attorney:** Colavecchi, Joseph  
**Bar No.:** 6810 **Law Firm:**  
**Address:** Colavecchi & Colavecchi  
 221 E Market St PO Box 131  
 Clearfield, PA 16830-0131  
**Phone No.:** (814)765-1566 **Fax No.:** (814)765-4570  
**Receive Mail:** Yes  
**E-Mail Address:**  
**Receive E-Mail:** No

**Appellee** Merrey, Dennis L.  
**Pro Se:** Appoint Counsel Status:  
**IFP Status:**

**Appellee Attorney Information:**

**Attorney:** Smith, Peter Fortune  
**Bar No.:** 34291 **Law Firm:**  
**Address:** 30 S 2nd Street  
 PO Box 130  
 Clearfield, PA 16830  
**Phone No.:** (814)765-5595 **Fax No.:** (814)765-6662  
**Receive Mail:** Yes  
**E-Mail Address:**  
**Receive E-Mail:** No

**Appellee** Braid, Elmo L.  
**Pro Se:** Appoint Counsel Status:  
**IFP Status:**

**Appellee Attorney Information:**

**Attorney:** Smith, Peter Fortune  
**Bar No.:** 34291 **Law Firm:**  
**Address:** 30 S 2nd Street  
 PO Box 130  
 Clearfield, PA 16830  
**Phone No.:** (814)765-5595 **Fax No.:** (814)765-6662  
**Receive Mail:** No  
**E-Mail Address:**  
**Receive E-Mail:** No

**Appellee** Owens, Stanley B.  
**Pro Se:** Appoint Counsel Status:  
**IFP Status:**

## Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1654 WDA 2004

Page 3 of 3

September 28, 2004

**Appellee Attorney Information:**

Attorney: Mikesell II, Warren B.  
 Bar No.: 63717 Law Firm: Mikesell & Mikesell  
 Address: 115 E Locust Street  
 Clearfield, PA 16830  
 Phone No.: (814)765-6605 Fax No.:  
 Receive Mail: Yes  
 E-Mail Address:  
 Receive E-Mail: No

**FEE INFORMATION**

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
9/27/04	Notice of Appeal	60.00	60.00	2004SPRWD001256

**TRIAL COURT/AGENCY INFORMATION**

Court Below: Clearfield County Court of Common Pleas  
 County: Clearfield Division: Civil  
 Date of Order Appealed From: September 9, 2004 Judicial District: 46  
 Date Documents Received: September 27, 2004 Date Notice of Appeal Filed: September 21, 2004  
 Order Type: Judgment Entered OTN:  
 Judge: Reilly, Jr., John K. Lower Court Docket No.: No. 00-1525-CD  
 Senior Judge

**ORIGINAL RECORD CONTENTS**

Original Record Item	Filed Date	Content/Description
----------------------	------------	---------------------

Date of Remand of Record:

**BRIEFS****DOCKET ENTRIES**

Filed Date	Docket Entry/Document Name	Party Type	Filed By
September 27, 2004	Notice of Appeal Filed	Appellant	Owens, Marie C.
September 28, 2004	Docketing Statement Exited (Civil)		Western District Filing Office

**FILED**

SEP 30 2004

**William A. Shaw**  
Prothonotary

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA  
RULE OF APPELLATE PROCEDURE 1931(C)

---

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

**00-1525-CD**

**Dennis L. Merrey and Elmo L. Braid**  
**VS.**  
**Stanley B. Owens and Marie C. Owens**

In compliance with Pa. R.A.P. 1931 (c).

The documents comprising the record have been numbered from **No. 1 to No. 48**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is November 2, 2004.

  
\_\_\_\_\_  
Prothonotary/Clerk of Courts

(seal)

## Civil Other

Date		Judge
12/08/2000	Filing: Complaint for Partition Paid by: Smith, Peter F. (attorney for Merrey, Dennis L.) Receipt number: 0052591 Dated: 12/08/2000 Amount: \$80.00 (Check) Eight Certified Copies to Attorney Smith	No Judge
12/28/2000	Answer to Complaint for Partition , filed by s/DALE R. OWENS 2 cc D. Owens	No Judge
12/29/2000	Answer to Complaint for Partition, filed by s/Warren B. Mikesell, II, Esq. 3 cc atty Mikesell	No Judge
01/10/2001	Sheriff Return, Complaint in Partition and Interrogatories upon Dale R. Owens and Stanley B. Owens. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
01/24/2001	Motion to Compel Discovery, Filed by s/Peter F. Smith, Esq. 3 cc atty Smith	No Judge
01/31/2001	Rule Returnable upon Dale R. Owens, Written Response due by Feb. 20, 2001, Rule Returnable March 5, 2001. By the Court, s/JKR,JR,PJ. 31 Jan 2001. 4 cc atty Smith	John K. Reilly Jr.
02/02/2001	Certificate of Service, Motion to Compel Discovery upon Dale R. Owens. Filed by s/Peter F. Smith, Esq.	John K. Reilly Jr.
03/05/2001	ORDER, AND NOW, this 5th day of March, 2001, Rule issued against Dale R. Owens, shall serve true, correct and complete answers to the Interrogatories served upon him by Plaintiff within 15 days of the date of this Order. By the Court, s/JKR,JR.,PJ 3 cc atty Neiswender	John K. Reilly Jr.
04/26/2001	Motion to Discontinue as to the Heirs of Robert Owens. filed by s/Peter F. Smith, Esq. 2 cc atty Smith	John K. Reilly Jr.
	SCHEDULING ORDER, AND NOW THIS 26th day of April, 2001, upon Stanley B. Owens, to show cause, Written Response to Motion due by the 16th day of May, 2001. This Order shall be heard in Court on the 18th day of June, 2001, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 2 cc atty Smith	John K. Reilly Jr.
04/27/2001	Certificate of Service, Motion to Discontinue upon Warren B. Mikesell, II, Esq. s/Peter F. Smith, Esq.	John K. Reilly Jr.
05/16/2001	Answers To Discontinue As To The Heirs of Robert Owens, Filed by Warren Mikesell, II.	John K. Reilly Jr.
06/18/2001	ORDER, AND NOW, this 18th day of June, 2001, re: Action is DISCONTINUED as to the Heirs of Robert Owens, to wit: Dale R. Owens, Dolores Eunice Doyle, Josephine E. Bartley and Brent Charles Owen. by the Court, s/JKR,JR., P.J.	John K. Reilly Jr.
06/19/2001	Certificate of Service, Order of June 18, 2001, upon Warren B. Mikesell, Esq. s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
10/18/2001	Motion for Order Directing Partition and Scheduling of Preliminary Conference. Filed by s/Peter F. Smith, Esq. 2 cc Atty Smith	John K. Reilly Jr.
10/19/2001	Rule Returnable, AND NOW THIS 19th day of October, 2001, Written response to this Motion due by the 8th day of November, 2001. Order shall be heard in Court on the 19th day of November, 2001, at 2:30 p.m. BY THE COURT: /s/John K. Reilly, Jr., P.J. Two CC Atty	John K. Reilly Jr.
10/30/2001	RULE RETURNABLE, AND NOW THIS 30th day of Oct. 2001, issued upon Stanley B. Owens, written response to this motion is due by the 8th day of Nov., 2001. This Order shall be heard in Court on the 7th day of Dec. 2001, at 9:30 a.m. by the Court, s/JKR,JR.,P.J. 1 cc Atty Smith	John K. Reilly Jr.
11/06/2001	Certificate of Service, Defendants Motion For Order Directing Partition and Scheduling of Preliminary Conference and Rule Returnable upon Warren B. Mikesell, Esq. s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
11/08/2001	Petition for Extension of Time to file and Change of Preliminary Conference, filed by s/Warren B. Mikesell, II Four CC Attorney Mikesell	John K. Reilly Jr.

## Civil Other

Date		Judge
11/13/2001	RULE RETURNABLE, NOW, this 13th day of November, 2001, entered upon Stanley B. Owens, Defendant. Written Response due by 3rd day of Dec., 2001. Order shall be heard in Court on the 18th day of Dec. 2001, at 9:00 a.m. by the Court, s/JKR, JR., P.J. 4 cc Atty Mikesell	John K. Reilly Jr.
12/07/2001	Response to Motion for Order Directing Partition and Scheduling of Preliminary Conference. Filed by s/Warren B. Mikesell, II, Esq. 4 cc to Atty	John K. Reilly Jr.
12/18/2001	ORDER, AND NOW, this 18th day of December, 2001, re: Hearing on Plaintiff's Motion for an Order Directing Partition and Answer Having been filed, J. Richard Mattern, Esq. is appointed Master. by the Court, s/JKR, JR., P.J. 1 cc Atty Mikesell, Smith, and Mattern	John K. Reilly Jr.
04/16/2002	Petition For Intervention by Marie C. Owens, wife of Stanley B. Owens. Filed by s/Joseph Colavecchi, Esq. 5 cc Atty Colavecchi	John K. Reilly Jr.
04/19/2002	RULE, AND NOW, this 19th day of April, 2002, Issued upon ALL PARTIES, returnable for Argument On the 8th day of May, 2002. by the Court, s/JKR, JR., P.J. 5 cc Atty Colavecchi	John K. Reilly Jr.
04/26/2002	Petition to Enter Order of Partition. Filed by s/Joseph Colavecchi, Esq. 4 cc Atty Colavecchi	John K. Reilly Jr.
04/29/2002	ORDER, AND NOW, this 29th day of April, 2002, re: Rule issued and directed to Peter F. Smith, Esq. Atty for Plaintiffs, Warren B. Mikesell, II, Esq. Atty for Stanley B. Owens and J. Richard Mattern, III, Esq. Master in Partition. Rule returnable for Argument the 8th day of May, 2002, at 10:30 a.m. by the Court, s/JKR, JR., P.J. 4 cc Atty Colavecchi	John K. Reilly Jr.
05/08/2002	ORDER, NOW, this 8th day of May, 2002, re: Petition to Intervene filed on behalf of Marie C. Owens shall be and is hereby granted and she be permitted to be added as a party defendant. By the Court, s/JKR, JR., P.J. 1 cc Atty Colavecchi, Smith, and Mikesell	John K. Reilly Jr.
05/15/2002	ORDER DIRECTING PARTITION UNDER PENNSYLVANIA R.C.P. 1557, AND NOW, this 15th day of May, 2002, re: Owens 37.50%, Merrey and Braid 62.50%. by the Court, s/JKR, JR, P.J. 1 cc Atty Colavecchi	John K. Reilly Jr.
12/23/2002	Proposed Findings Of Fact and Conclusions Of Law. filed by s/Warren B. Mikesell, II, Esquire 4 cc to Atty Mikesell	John K. Reilly Jr.
02/25/2003	Exceptions To Master's Report By Marie C. Owens. s/Joseph Colavecchi, Esquire 5 cc J. Colavecchi	John K. Reilly Jr.
02/27/2003	Certificate of Service, Exceptions to Master's Report by Marie C. Owens upon: J. Richard Mattern II, Esq., Peter F. Smith, Esq. and Warren Mikesell, Esq. filed by s/Joseph Colavecchi, Esq. no cc	John K. Reilly Jr.
02/27/2003	Master's Preliminary Notice and Master's Report. no cc	John K. Reilly Jr.
02/27/2003	Transcript Of Hearing Held July 25, 2003. filed.	John K. Reilly Jr.
02/27/2003	Exceptions To Master's Report By Stanley B. Owens. filed by s/Warren B. Mikesell, II, Esquire 4 cc to Atty	John K. Reilly Jr.
02/28/2003	DECREE NISI, AND NOW, this 28th day of Feb., 2003 by the Court, s/JKR, JR., P.J. 2 cc Atty Mattern	John K. Reilly Jr.
05/19/2003	ORDER, NOW, this 16th day of May, 2003, re: Disposition of the Objections filed on behalf of Defendants above-named shall be and is hereby continued pending results of the private sale. by the Court, s/JKR, JR., P.J. 1 cc Atty Smith, Mikesell	John K. Reilly Jr.
06/03/2003	Filing: Objections pursuant to PA. R.C., P. 1563(b) filed by Atty. Smith. No cc.	John K. Reilly Jr.
06/03/2003	Certificate of Service of Objections Pursuant to PA R.C. P.1563(b). filed by Atty. Smith No cc.	John K. Reilly Jr.

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

NOV 01 2004

Civil Other

Attest.

*William L. Shaw*  
Prothonotary/  
Clerk of Courts

Date		Judge
06/05/2003	Defendant's Motion For Continuance. filed by s/Joseph Colavecchi, Esquire 1 cc Atty Colavecchi	John K. Reilly Jr.
	ORDER, NOW, this 5th day of June, 2003, re: Motion For Continuance is GRANTED and Argument is hereby rescheduled for the 26th day of June, 2003, at 2:00 p.m. by the Court, s/JKR, JR., P.J. 3 cc Atty Colavecchi for Service	John K. Reilly Jr.
06/06/2003	CORRECTED OBJECTIONS PURSUANT TO PA. R.C.P. 1563(b) filed by s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
06/18/2003	Answer To Objections Pursuant To Pa. R.C.P. 1563(b) filed by s/Warren B. Mikesell, II, Esquire 5 cc Atty Mikesell	John K. Reilly Jr.
	Answer To Objections Pursuant To Pa. R.C.P. 1563(b). filed by s/Joseph Colavecchi, Esquire no cc	John K. Reilly Jr.
06/26/2003	Order: Now, this 26th day of June, 2003, the date set for argument into Objections and Amended Objections to Private sale filed on behalf of Plaintiffs. Proceedings will be referred to the Master, J. Richard Mattern, Esq. for conducting a private sale confined to the parties. s/JKR 2 CC Atty. Mikesell, 2 CC Atty. Smith, 1 CC Atty. Colavecchi	John K. Reilly Jr.
10/07/2003	Exceptions and Objections to Master's Report and Return of Sale filed by Atty. Colavecchi. 6 CC to Atty.	John K. Reilly Jr.
10/09/2003	Execeptions and Objections to Master's Report and Return of Sale, Schedule of Distribution and Proposed Decree under PA. R. C.P. 1569 (c), filed by Atty. Mikesell 6 Cert. to Atty.	John K. Reilly Jr.
10/14/2003	Master's Return of Sale, Schedule of Distribution, Proposed Decree, Revised Schedule of Master's Costs and Fees and Order For Payment Of Master. filed by s/J. Richard Mattern, II, Esquire Certificate of Service no cc	John K. Reilly Jr.
09/07/2004	Order. This matter comes before the Court on exceptions and objections to the Master's report in the above-captioned action in partition. In examining the Master's conclusions of Law, this Court finds that the Master committed no error and, therefore, enters the following Order. NOW this 3rd day of Sept. 2004 upon consideration of objections and exceptions filed to the Master's report by the above-named Defendants and argument and briefs thereon, it is the ORDER of this Court that said objections and exceptions shall be and are hereby dismissed and the Master's reprt confirmed. s/JKR 2 CC to Atty. Smith 1 CC Atty. Mikesell 1 CC Dale Owens, 14207 Lakeview Dr. Gainesville VA 22065. 5 CC to Atty. Colavecchi	John K. Reilly Jr.
09/09/2004	Certificate of Service of Praecepte to enter judgment filed by Atty. Smith No cc.	John K. Reilly Jr.
	Praecepte to Enter Judgment in favor of the Plffs. pursuant to Court Order filed by Atty. Smith. No cc.	John K. Reilly Jr.
09/21/2004	Filing: Appeal to High Court Superior Court Paid by: Colavecchi, Joseph (attorney for Owens, Marie C.) Receipt number: 1886946 Dated: 09/21/2004 Amount: \$45.00 (Check) 1 Cert. to Atty. 1 Cert. with check for \$60.00 to Superior.	John K. Reilly Jr.
	Order for Transcript, filed by Atty. Colavecchi 2 Cert. to Atty.	John K. Reilly Jr.
09/30/2004	Appeal Docket Sheet, filed. # 1654 WDA 2004	John K. Reilly Jr.

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

**No. 00-1525-CD  
Dennis L. Merrey and Elmo L. Braid  
VS.  
Stanley B. Owens and Marie C. Owens**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
01	12/08/00	Complaint in Partition	10
02	12/28/00	Answer to Complaint for Partition	05
03	12/29/00	Answer to Complaint for Partition	05
04	01/10/01	Sheriff Return	01
05	01/24/01	Motion to Compel Discovery with Rule Returnable filed January 31, 2001	07
06	02/02/01	Certificate of Service, Motion to Compel Discovery	01
07	03/05/01	Order, Rule issued re: answering Interrogatories	01
08	04/26/01	Motion to Discontinue as to the Heirs of Robert Owens and Scheduling Order	05
09	04/27/01	Certificate of Service, Motion to Discontinue	01
10	05/16/01	Answers to Discontinue as to the Heirs of Robert Owens	04
11	06/18/01	Order, Re: action is discontinued as to the Heirs of Robert Owens	01
12	06/19/01	Certificate of Service, Re: Order of June 18, 2001	01
13	10/18/01	Motion for Order Directing Partition and Scheduling of Preliminary Conference with Rule Returnable filed October 19, 2001	05
14	10/30/01	Rule Returnable, Re: written response due	01
15	11/06/01	Certificate of Service, Defendants' Motion for Order Directing Partition and Scheduling of Preliminary Conference and Rule Returnable	01
16	11/08/01	Petition for Extension of Time to File and Change of Preliminary Conference with Rule Returnable	06
17	12/07/01	Response to Motion for Order Directing Partition and Scheduling of Preliminary Conference	03
18	12/18/01	Order, Re: Hearing on Plaintiffs' Motion for an Order Directing Partition	02
19	04/16/02	Petition for Intervention, Re: Marie Owens	04
20	04/19/02	Rule Returnable, Re: argument scheduled	02
21	04/26/02	Petition to Enter Order of Partition	03
22	04/29/02	Order, Re: Rule issued	02
23	05/08/02	Order, Re: Petition to Intervene granted	01
24	05/15/02	Order Directing Partition Under Pennsylvania R.C.P. 1557	02
25	12/23/02	Proposed Findings of Fact and Conclusions of Law	14
26	02/25/03	Exceptions to Master's Report, Re: Marie C. Owens	05
27	02/25/03	Certificate of Service, Exceptions to Master's Report, Re: Marie Owens	01
28	02/27/03	Master's Preliminary Notice and Master's Report with Decree Nisi filed February 28, 2003	49
29	02/27/03	Transcript of Hearing held July 25, 2003	Separate Cover
30	02/27/03	Exceptions to Master's Report by Stanley B. Owens	09
31	05/19/03	Order, Re: Disposition of the Objections filed on behalf of Defendants continued pending results of private sale	01
32	06/03/03	Objections Pursuant to Pa.R.C.P. 1563 (b)	01
33	06/03/03	Certificate of Service, Objections Pursuant to Pa.R.C.P. 1563 (b)	01
34	06/05/03	Defendant's Motion for Continuance	04
35	06/05/03	Order, Re: Motion for Continuance Granted	01
36	06/06/03	Corrected Objections Pursuant to Pa.R.C.P. 1563 (b)	01
37	06/18/03	Answer to Objections Pursuant to Pa.R.C.P. 1563 (b)	04
38	06/18/03	Answer to Objections Pursuant to Pa.R.C.P. 1563 (b)	04
39	06/26/03	Order, Re: proceedings referred to the master	02
40	10/07/03	Exceptions and Objections to Master's Report and Return of Sale	05

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 00-1525-CD

Dennis L. Merrey and Elmo L. Braid

VS.

Stanley B. Owens and Marie C. Owens

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
41	10/09/03	Exceptions and Objections to Master's Report and Return of Sale, Schedule of Distribution and Proposed Decree under Pa.R.C.P. 1569 (c)	10
42	10/14/03	Master's Return of Sale, Schedule of Distribution, Proposed Decree, Revised Schedule of Master's Costs and Fees and Order for Payment of Master	16
43	09/07/04	Order, Re: Master's Report confirmed	04
44	09/09/04	Certificate of Service, Praeipce to Enter Judgment	01
45	09/09/04	Praeipce to Enter Judgment	01
46	09/21/04	Appeal to High Court	08
47	09/21/04	Order for Transcript	02
48	09/30/04	Appeal Docket Sheet, Superior Court Number 1654 WDA 2004	03

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

I, **William A. Shaw**, Prothonotary/Clerk of Courts of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein

**Dennis L. Merrey and Elmo L. Braid**

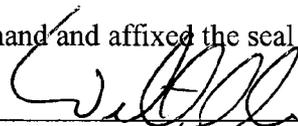
VS.

**Stanley B. Owens and Marie C. Owens**

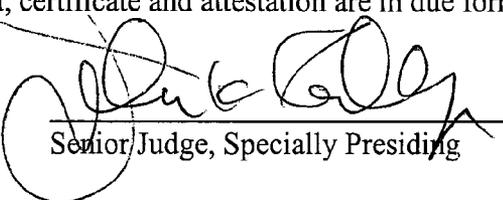
**00-1525-CD**

So full and entire as the same remains of record before the said Court, at No. **00-1525-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 1<sup>st</sup> Day of November, 2004.

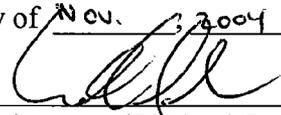
  
\_\_\_\_\_  
Prothonotary/Clerk of Courts

I, **John K. Reilly, Jr.**, Senior Judge, Specially Presiding, in the Forty-sixth Judicial District, do certify that **William A. Shaw** by whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary/Clerk of Courts in and for said County of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere, and that the said record, certificate and attestation are in due form of law and made by the proper officer.

  
\_\_\_\_\_  
Senior Judge, Specially Presiding

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **John K. Reilly, Jr.**, Senior Judge, Specially Presiding, by whom the foregoing attestation was made and who has thereunto subscribed his name was at the time of making thereof and still is Senior Judge, Specially Presiding, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 1<sup>st</sup> day of Nov., 2004

  
\_\_\_\_\_  
Prothonotary/Clerk of Courts

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1654 WDA 2004

Page 1 of 3

September 28, 2004



Dennis L Merrey And Elmo L. Braid

v.

Stanley B. Owens And Marie C. Owens

Appeal Of :Marie C. Owens

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: September 27, 2004

Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType: Other

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Case Initiation

Next Event Due Date: September 27, 2004

Next Event Type: Docketing Statement Received

Next Event Due Date: October 12, 2004

Next Event Type: Original Record Received

Next Event Due Date: November 8, 2004

FILED  
SEP 30 2004  
William A. Shaw  
Prothonotary

418

Appeal Docket Sheet

Docket Number: 1654 WDA 2004

Page 2 of 3

September 28, 2004



COUNSEL INFORMATION

Appellant Owens, Marie C.
Pro Se: Appoint Counsel Status:
IFP Status: No

Appellant Attorney Information:

Attorney: Colavecchi, Joseph
Bar No.: 6810 Law Firm:
Address: Colavecchi & Colavecchi
221 E Market St PO Box 131
Clearfield, PA 16830-0131
Phone No.: (814)765-1566 Fax No.: (814)765-4570
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellee Merrey, Dennis L.
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Attorney: Smith, Peter Fortune
Bar No.: 34291 Law Firm:
Address: 30 S 2nd Street
PO Box 130
Clearfield, PA 16830
Phone No.: (814)765-5595 Fax No.: (814)765-6662
Receive Mail: Yes
E-Mail Address:
Receive E-Mail: No

Appellee Braid, Elmo L.
Pro Se: Appoint Counsel Status:
IFP Status:

Appellee Attorney Information:

Attorney: Smith, Peter Fortune
Bar No.: 34291 Law Firm:
Address: 30 S 2nd Street
PO Box 130
Clearfield, PA 16830
Phone No.: (814)765-5595 Fax No.: (814)765-6662
Receive Mail: No
E-Mail Address:
Receive E-Mail: No

Appellee Owens, Stanley B.
Pro Se: Appoint Counsel Status:

IFP Status:
9/28/2004

## Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1654 WDA 2004

Page 3 of 3

September 28, 2004

**Appellee Attorney Information:**

Attorney: Mikesell II, Warren B.  
 Bar No.: 63717 Law Firm: Mikesell & Mikesell  
 Address: 115 E Locust Street  
 Clearfield, PA 16830  
 Phone No.: (814)765-6605 Fax No.:  
 Receive Mail: Yes  
 E-Mail Address:  
 Receive E-Mail: No

**FEE INFORMATION**

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
9/27/04	Notice of Appeal	60.00	60.00	2004SPRWD001256

**TRIAL COURT/AGENCY INFORMATION**

Court Below: Clearfield County Court of Common Pleas  
 County: Clearfield Division: Civil  
 Date of Order Appealed From: September 9, 2004 Judicial District: 46  
 Date Documents Received: September 27, 2004 Date Notice of Appeal Filed: September 21, 2004  
 Order Type: Judgment Entered OTN:  
 Judge: Reilly, Jr., John K. Lower Court Docket No.: No. 00-1525-CD  
 Senior Judge

**ORIGINAL RECORD CONTENTS**

Original Record Item	Filed Date	Content/Description
----------------------	------------	---------------------

Date of Remand of Record:

**BRIEFS****DOCKET ENTRIES**

Filed Date	Docket Entry/Document Name	Party Type	Filed By
September 27, 2004	Notice of Appeal Filed	Appellant	Owens, Marie C.
September 28, 2004	Docketing Statement Exited (Civil)		Western District Filing Office

<p>IN THE COURT OF COMMON PLEAS OF  CLEARFIELD COUNTY, PENNSYLVANIA  CIVIL ACTION  No. 00 - 1525 - CD</p>	<p>DENNIS L. MERREY and ELMO L.  BRAID,  Plaintiffs</p>	<p>vs.</p>	<p>STANLEY B. OWENS and  MARIE C. OWENS,  Defendants</p>	<p>ORDER FOR TRANSCRIPT</p>	<p><b>COLAVECCHI &amp; COLAVECCHI</b>  ATTORNEYS AT LAW  221 EAST MARKET STREET  (CROSS FROM COURTHOUSE)  P. O. BOX 131  CLEARFIELD, PA 16830</p>
---	---	------------	--	-----------------------------	---

FILED

SEP 21 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DENNIS L. MERREY and  
ELMO L. BRAID,

Plaintiffs

vs.

STANLEY B. OWENS and  
MARIE C. OWENS,

Defendants

CIVIL ACTION

No. 00 - 1525 - CD

ORDER FOR TRANSCRIPT

Filed on behalf of:

Defendant, MARIE C. OWENS

Counsel of Record for this  
Party:

JOSEPH COLAVECCHI, ESQUIRE  
PA I.D. 06810

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

814/765-1566

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

FILED

SEP 21 2004

William A. Shaw

Prothonotary/Clerk of Courts

2 CENT 10/1/04

47

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

DENNIS L. MERREY and ELMO :  
L. BRAID :  
Plaintiffs :  
vs. : No. 00 - 1525 - CD  
STANLEY B. OWENS and :  
MARIE C. OWENS :  
Defendants :

**ORDER FOR TRANSCRIPT**

A Notice of Appeal having been filed in this matter, the official court reporter is hereby Ordered to produce, certify and file the transcript in this matter in conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.

  
\_\_\_\_\_  
JOSEPH COLAVECCHI, ESQUIRE  
Attorney for Marie C. Owens

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

No. 00 - 1525 - CD

DENNIS L. MERREY and ELMO L.  
BRAID,  
Plaintiffs

vs.

STANLEY B. OWENS and  
MARIE C. OWENS,  
Defendants

NOTICE OF APPEAL

**COLAVECCHI & COLAVECCHI**

ATTORNEYS AT LAW

221 EAST MARKET STREET  
(ACROSS FROM COURTHOUSE)

P. O. BOX 131

CLEARFIELD, PA 16830

FILED

SEP 21 2004

William A Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DENNIS L. MERREY and  
ELMO L. BRAID,

Plaintiffs

vs.

STANLEY B. OWENS and  
MARIE C. OWENS,

Defendants

CIVIL ACTION

No. 00 - 1525 - CD

NOTICE OF APPEAL

Filed on behalf of:

Defendant, MARIE C. OWENS

Counsel of Record for this  
Party:

JOSEPH COLAVECCHI, ESQUIRE  
PA I.D. 06810

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

814/765-1566

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

FILED

SEP 21 2004

0/10:40/1  
William A. Shaw

Prothonotary/Clerk of Courts

1 CENT ATT

1 CENT of CHECK

to Sup. Court

#416



## Civil Other

Date		Judge
12/08/2000	Filing: Complaint for Partition Paid by: Smith, Peter F. (attorney for Merrey, Dennis L.) Receipt number: 0052591 Dated: 12/08/2000 Amount: \$80.00 (Check) Eight Certified Copies to Attorney Smith	No Judge
12/28/2000	Answer to Complaint for Partition , filed by s/DALE R. OWENS 2 cc D. Owens	No Judge
12/29/2000	Answer to Complaint for Partition, filed by s/Warren B. Mikesell, II, Esq. 3 cc atty Mikesell	No Judge
01/10/2001	Sheriff Return, Complaint in Partition and Interrogatories upon Dale R. Owens and Stanley B. Owens. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
01/24/2001	Motion to Compel Discovery, Filed by s/Peter F. Smith, Esq. 3 cc atty Smith	No Judge
01/31/2001	Rule Returnable upon Dale R. Owens, Written Response due by Feb. 20, 2001, Rule Returnable March 5, 2001. By the Court, s/JKR,JR,PJ. 31 Jan 2001. 4 cc atty Smith	John K. Reilly Jr.
02/02/2001	Certificate of Service, Motion to Compel Discovery upon Dale R. Owens. Filed by s/Peter F. Smith, Esq.	John K. Reilly Jr.
03/05/2001	ORDER, AND NOW, this 5th day of March, 2001, Rule issued against Dale R. Owens, shall serve true, correct and complete answers to the Interrogatories served upon him by Plaintiff within 15 days of the date of this Order. By the Court, s/JKR,JR.,PJ 3 cc atty Neiswender	John K. Reilly Jr.
04/26/2001	Motion to Discontinue as to the Heirs of Robert Owens. filed by s/Peter F. Smith, Esq. 2 cc atty Smith	John K. Reilly Jr.
	SCHEDULING ORDER, AND NOW THIS 26th day of April, 2001, upon Stanley B. Owens, to show cause, Written Response to Motion due by the 16th day of May, 2001. This Order shall be heard in Court on the 18th day of June, 2001, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 2 cc atty Smith	John K. Reilly Jr.
04/27/2001	Certificate of Service, Motion to Discontinue upon Warren B. Mikesell, II, Esq. s/Peter F. Smith, Esq.	John K. Reilly Jr.
05/16/2001	Answers To Discontinue As To The Heirs of Robert Owens, Filed by Warren Mikesell, II.	John K. Reilly Jr.
06/18/2001	ORDER, AND NOW, this 18th day of June, 2001, re: Action is DISCONTINUED as to the Heirs of Robert Owens, to wit: Dale R. Owens, Dolores Eunice Doyle, Josephine E. Bartley and Brent Charles Owen. by the Court, s/JKR,JR., P.J.	John K. Reilly Jr.
06/19/2001	Certificate of Service, Order of June 18, 2001, upon Warren B. Mikesell, Esq. s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
10/18/2001	Motion for Order Directing Partition and Scheduling of Preliminary Conference. Filed by s/Peter F. Smith, Esq. 2 cc Atty Smith	John K. Reilly Jr.
10/19/2001	Rule Returnable, AND NOW THIS 19th day of October, 2001, Written response to this Motion due by the 8th day of November, 2001. Order shall be heard in Court on the 19th day of November, 2001, at 2:30 p.m. BY THE COURT: /s/John K. Reilly, Jr., P.J. Two CC Atty	John K. Reilly Jr.

## Civil Other

Date		Judge
10/30/2001	RULE RETURNABLE, AND NOW THIS 30th day of Oct. 2001, issued upon Stanley B. Owens, written response to this motion is due by the 8th day of Nov., 2001. This Order shall be heard in Court on the 7th day of Dec. 2001, at 9:30 a.m. by the Court, s/JKR, JR., P.J. 1 cc Atty Smith	John K. Reilly Jr.
11/06/2001	Certificate of Service, Defendants Motion For Order Directing Partition and Scheduling of Preliminary Conference and Rule Returnable upon Warren B. Mikesell, Esq. s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
11/08/2001	Petition for Extension of Time to file and Change of Preliminary Conference, filed by s/Warren B. Mikesell, II Four CC Attorney Mikesell	John K. Reilly Jr.
11/13/2001	RULE RETURNABLE, NOW, this 13th day of November, 2001, entered upon Stanley B. Owens, Defendant. Written Response due by 3rd day of Dec., 2001. Order shall be heard in Court on the 18th day of Dec. 2001, at 9:00 a.m. by the Court, s/JKR, JR., P.J. 4 cc Atty Mikesell	John K. Reilly Jr.
12/07/2001	Response to Motion for Order Directing Partition and Scheduling of Preliminary Conference. Filed by s/Warren B. Mikesell, II, Esq. 4 cc to Atty	John K. Reilly Jr.
12/18/2001	ORDER, AND NOW, this 18th day of December, 2001, re: Hearing on Plaintiff's Motion for an Order Directing Partition and Answer Having been filed, J. Richard Mattern, Esq. is appointed Master. by the Court, s/JKR, JR., P.J. 1 cc Atty Mikesell, Smith, and Mattern	John K. Reilly Jr.
04/16/2002	Filing: Subpoena Paid by: Smith, Peter F. (attorney for Braid, Elmo L.) Receipt number: 1841248 Dated: 04/16/2002 Amount: \$3.00 (Check)	John K. Reilly Jr.
	Petition For Intervention by Marie C. Owens, wife of Stanley B. Owens. Filed by s/Joseph Colavecchi, Esq. 5 cc Atty Colavecchi	John K. Reilly Jr.
04/19/2002	RULE, AND NOW, this 19th day of April, 2002, Issued upon ALL PARTIES, returnable for Argument On the 8th day of May, 2002. by the Court, s/JKR, JR., P.J. 5 cc Atty Colavecchi	John K. Reilly Jr.
04/26/2002	Petition to Enter Order of Partition. Filed by s/Joseph Colavecchi, Esq. 4 cc Atty Colavecchi	John K. Reilly Jr.
04/29/2002	ORDER, AND NOW, this 29th day of April, 2002, re: Rule issued and directed to Peter F. Smith, Esq. Atty for Plaintiffs, Warren B. Mikesell, II, Esq. Atty for Stanley B. Owens and J. Richard Mattern, III, Esq. Master in Partition. Rule returnable for Argument the 8th day of May, 2002, at 10:30 a.m. by the Court, s/JKR, JR., P.J. 4 cc Atty Colavecchi	John K. Reilly Jr.
05/08/2002	ORDER, NOW, this 8th day of May, 2002, re: Petition to Intervene filed on behalf of Marie C. Owens shall be and is hereby granted and shee be permitted to be added as a party defendant. By the Court, s/JKR, JR., P.J. 1 cc Atty colavecchi. Smith, and Mikesell	John K. Reilly Jr.
05/15/2002	ORDER DIRECTING PARTITION UNDER PENNSYLVANIA R.C.P. 1557, AND NOW, this 15th day of May, 2002, re: Owens 37.50%, Merrey and Braid 62.50%. by the Court, s/JKR, JR, P.J. 1 cc Atty Colavecchi	John K. Reilly Jr.
12/23/2002	Proposed Findings Of Fact and Conclusions Of Law. filed by s/Warren B. Mikesell, II, Esquire 4 cc to Atty Mikesell	John K. Reilly Jr.
02/25/2003	Exceptions To Master's Report By Marie C. Owens. s/Joseph Colavecchi, Esquire 5 cc J. Colavecchi	John K. Reilly Jr.

## Civil Other

Date		Judge
02/25/2003	Certificate of Service, Exceptions to Master's Report by Marie C. Owens upon: J. Richard Mattern II, Esq., Peter F. Smith, Esq. and Warren Mikesell, Esq. filed by s/Joseph Colavecchi, Esq. no cc	John K. Reilly Jr.
02/27/2003	Master's Preliminary Notice and Master's Report. no cc Transcript Of Hearing Held July 25, 2003. filed.	John K. Reilly Jr. John K. Reilly Jr.
	Exceptions To Master's Report By Stanley B. Owens. filed by s/Warren B. Mikesell, II, Esquire 4 cc to Atty	John K. Reilly Jr.
02/28/2003	DECREE NISI, AND NOW, this 28th day of Feb., 2003 by the Court, s/JKR,JR.,P.J. 2 cc Atty Mattern	John K. Reilly Jr.
05/19/2003	ORDER, NOW, this 16th day of May, 2003, re: Disposition of the Objections filed on behalf of Defendants above-named shall be and is hereby continued pending results of the private sale. by the Court, s/JKR,JR.,P.J. 1 cc Atty Smith, Mikesell	John K. Reilly Jr.
06/03/2003	Filing: Objections pursuant to PA. R.C., P. 1563(b) filed by Atty. Smith. No cc.	John K. Reilly Jr.
	Certificate of Service of Objections Pursuant to PA R.C. P.1563(b). filed by Atty. Smith No cc.	John K. Reilly Jr.
06/05/2003	Defendant's Motion For Continuance. filed by s/Joseph Colavecchi, Esquire 1 cc Atty Colavecchi	John K. Reilly Jr.
	ORDER, NOW, this 5th day of June, 2003, re: Motion For Continuance is GRANTED and Argument is hereby rescheduled for the 26th day of June, 2003, at 2:00 p.m. by the Court, s/JKR,JR.,P.J. 3 cc Atty Colavecchi for Service	John K. Reilly Jr.
06/06/2003	CORRECTED OBJECTIONS PURSUANT TO PA. R.C.P. 1563(b) filed by s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
06/18/2003	Answer To Objections Pursuant To Pa. R.C.P. 1563(b) filed by s/Warren B. Mikesell, II, Esquire 5 cc Atty Mikesell	John K. Reilly Jr.
	Answer To Objections Pursuant To Pa. R.C.P. 1563(b). filed by s/Joseph Colavecchi, Esquire no cc	John K. Reilly Jr.
06/26/2003	Order: Now, this 26th day of June, 2003, the date set for argument into Objections and Amended Objections to Private sale filed on behalf of Plaintiffs. Proceedings will be referred to the Master, J. Richard Mattern, Esq. for conducting a private sale confined to the parties. s/JKR 2 CC Atty. Mikesell, 2 CC Atty. Smith, 1 CC Atty. Colavecchi	John K. Reilly Jr.
10/07/2003	Exceptions and Objections to Master's Report and Return of Sale filed by Atty. Colavecchi. 6 CC to Atty.	John K. Reilly Jr.
	Execeptions and Objections to Master's Report and Return of Sale, Schedule of Distribution and Proposed Decree under PA. R. C.P. 1569 (c), filed by Atty. Mikesell 6 Cert. to Atty.	John K. Reilly Jr.
10/14/2003	Master's Return of Sale, Schedule of Distribution, Proposed Decree, Revised Schedule of Master's Costs and Fees and Order For Payment Of Master. filed by s/J. Richard Mattern, II, Esquire Certificate of Service no cc	John K. Reilly Jr.

Civil Other

Date		Judge
09/07/2004	Order. This matter comes before the Court on exceptions and objections to the Master's report in the above-captioned action in partition. In examining the Master's conclusions of Law, this Court finds that the Master committed no error and, therefore, enters the following Order. NOW this 3rd day of Sept. 2004 upon consideration of objections and exceptions filed to the Master's report by the above-named Defendants and argument and briefs thereon, it is the ORDER of this Court that said objections and exceptions shall be and are hereby dismissed and the Master's rept confirmed. s/JKR 2 CC to Atty. Smith 1 CC Atty. Mikesell 1 CC Dale Owens, 14207 Lakeview Dr. Gainsville VA 22065. 5 CC to Atty. Colavecchi	John K. Reilly Jr.
09/09/2004	Certificate of Service of Praecipe to enter judgment filed by Atty. Smith No cc.  Praecipe to Enter Judgment in favor of the Plffs. pursuant to Court Order filed by Atty. Smith. No cc.	John K. Reilly Jr.  John K. Reilly Jr.



Clearfield County Court Reporter  
Office of the Court Reporter  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830

The Honorable John K. Reilly, Jr.  
Clearfield County Courthouse  
230 East Market Street  
Clearfield, PA 16830



---

JOSEPH COLAVECCHI, ESQUIRE  
Attorney for Marie C. Owens  
221 East Market Street  
Clearfield, PA 16830  
814/765-1566

LAW OFFICES OF  
COLAVECCHI  
& 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

DENNIS L. MERREY and ELMO L. BRAID, :  
Plaintiffs :  
 :  
vs. : No. 00-1525-CD  
 :  
STANLEY B. OWENS and :  
MARIE C. OWENS :  
Defendants :

**PRAECIPE TO ENTER JUDGMENT**

To: William A. Shaw, Sr., Clearfield County Prothonotary

Dear Sir:

Please enter judgment in favor of the Plaintiffs and against the Defendants pursuant to the order of this Court entered by the Honorable John K. Reilly, Jr., Senior Judge, dismissing the Defendants' exceptions and confirming the Master's report.

I certify pursuant to Pa.R.C.P. 327 that a true and correct of this Praecipe has been sent to Defendants' attorneys of record prior to the filing hereof.

Respectfully submitted,



Peter F. Smith, Attorney for Plaintiffs

Date: 9/8/04

FILED NO CC  
010:25:01  
SEP 09 2004

William A. Shaw  
Prothonotary/Clerk of Courts

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

DENNIS L. MERRY and ELMO L. BRAID

Plaintiffs

vs.

STANLEY B. OWENS and

MARIE C. OWENS

Defendants

No. 00-1525-CD

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Dennis L. Merrey and Elmo L. Braid, in the above-captioned matter, certify that I sent to Joseph Colavecchi, attorney for Marie C. Owens and Warren B. Mikesell, II, attorney for Stanley B. Owens a certified true and correct copy of the **PRAECIPE TO ENTER JUDGMENT** by First Class Mail, postage prepaid on September 9, 2004 at the following addresses:

Warren B. Mikesell, II, Esquire  
115 East Locust Street  
Clearfield, PA 16830

Joseph Colavecchi, Esquire  
P.O. Box 131  
221 East Market Street  
Clearfield, PA 16830

Respectfully submitted,

Date:

9/8/04



Peter F. Smith, Attorney for Plaintiffs

**FILED** *Noce*  
01/10: 2561  
SEP 09 2004

William A. Shaw  
Prothonotary/Clerk of Courts

44

FILED

SEP 07 2004

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DENNIS L. MERREY and :  
 ELMO L. BRAID :  
 VS. : NO. 00-1525-CD  
 STANLEY B. OWENS and :  
 MARIE C. OWENS :

ORDER

This matter comes before the Court on exceptions and objections to the Master's report in the above-captioned action in partition. On December 18, 2001, this Court entered an Order appointing J. Richard Mattern, Esquire, as Master in the above proceeding primarily to determine whether the subject premises were capable of division without prejudice to or spoiling the whole into parts proportionate in value to the interests of the co-tenants and to determine the value of the entire property. On February 27, 2003, the Master filed his report concluding that the property was not capable of subdivision and setting its value as a whole in the amount of \$150,000. These objections and exceptions on behalf of the Defendants were timely filed and are now ready for disposition.

The Court first notes that no additional testimony was taken before this Court and, therefore, ruling on the objections and exceptions will be based on the transcript of testimony before the Master and the Master's report itself. In

#43

this regard, the Court notes that the scope of review by this Court is limited to determining whether the Master abused his discretion or committed an error of law in arriving at his conclusions. In this respect, this Court relies on Walley v. Iraca, 360 Pa.Super. 436, 520 A.2d 886, 889 (1987) wherein the Superior Court held:

"The scope of appellate review of a decree in equity is limited. Absent an abuse of discretion or an error of law, we are bound to accept the findings of the trial court or master, particularly where the findings are largely dependent upon the credibility of the witnesses.",

as well as Werner v. Werner, 573 A.2d 1119 (Pa.Super. 1990). Further, this Court agrees with the Court of Common Pleas of Washington County in its decision in Clark v. Fawcett, 1939, 19 Wash. 159, wherein the Court stated

"The Court, in confirming the report and dismissing the exceptions, held that the master, having viewed the property, seen and heard the witnesses, observed their manner on the stand, was the judge of what findings should be made from the testimony, and unless there was some complaint supported by evidence that the master had not exercised discretion but had fixed an arbitrary and capricious value or statement in the report, the master's report must be confirmed."

Whether the Court agrees with the Master's decision or would have held differently had the testimony been presented directly to the Court is immaterial if the Master committed no

abuse of discretion or error of law. The facts in the instant case are fully set forth in the Master's report, as well as the basis for his opinion and, in this regard, the Court notes that on page 17 of his Opinion the Master found the testimony of Plaintiff Dennis L. Merrey to be very credible as it was consistent, uncontradicted, supported by the testimony of others and by written documents.

The Master found the testimony of Richard Provost, Defendant's appraisal expert, not to be credible as his testimony was unsupported by evidence and that he ignored a recent arm's length sale of the subject premises.

The Master further found the testimony of Defendant Stanley B. Owens not to be credible in that it was "inconsistent, wishy-washy and, whatever his intent was, said intent was not supported by the concrete evidence".

The Master found the testimony of Donald Klinger to be credible, especially with regard to deer herd management.

The Master further found the testimony of Craig Ostheim to be credible, as well as the testimony of Daniel Owens, as it was consistent with other testimony and the written evidence supplied by the Plaintiffs.

Based on the above and the Master's discussion with regards to division of the property in his opinion, this Court finds that he did not abuse his discretion in arriving at the conclusion that the premises are not subject to division without

prejudice to or spoiling the whole.

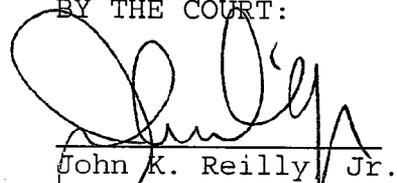
In placing the value of the entire premises at \$150,000, the Master considered the Plaintiffs' deeds, Exhibits A and B, the testimony of Daniel Owens and a portion of the testimony of Stanley Owens, along with the Master's determination of credibility, providing a sufficient factual basis for his determination and this Court cannot find that he abused his discretion in this regard.

Moreover, in examining his Conclusions of Law, this Court finds that the Master committed no error and, therefore, enters the following

O R D E R

NOW this 3rd day of September, 2004, upon consideration of objections and exceptions filed to the Master's report by the above-named Defendants and argument and briefs thereon, it is the ORDER of this Court that said objections and exceptions shall be and are hereby dismissed and the Master's report confirmed.

BY THE COURT:

  
John K. Reilly Jr.  
Senior Judge  
Specially Presiding

FILED

Eck

SEP 10 10:15 AM

REC'D BY Smith  
1000 BY Mitchell  
3000 BY Calancho

SEP 07 2004

DALS Burns 14307 Lakeside Dr  
Greensville VA 22065

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.  
NO. 00-1525-CD  
IN PARTITION

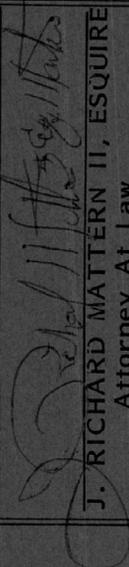
IN RE:

DENNIS L. MERREY and  
ELMA L. BRAID,  
Plaintiffs

-VS-

STANLEY B. OWENS and  
MARIE C. OWENS,  
Defendants

MASTER'S RETURN OF SALE,  
SCHEDULE OF DISTRIBUTION,  
PROPOSED DECREE, DECREE FOR  
PAYMENT OF MASTER'S FEES and  
COSTS, and NOTICE OF FILING.

  
J. RICHARD MATTERN II, ESQUIRE  
Attorney At Law  
MASTER IN PARTITION  
October 14, 2003

**RICK MATTERN**  
ATTORNEY AT LAW  
211 EAST PINE STREET  
CLEARFIELD, PENNSYLVANIA 16830

William A. Snaw  
Prthonotary/Clerk of Courts

FILED  
OCT 14 2003

Necc

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DENNIS L. MERREY  
And ELMO L. BRAID,

Plaintiffs

vs.

STANLEY B. OWENS and  
MARIE C. OWENS,

Defendants

No. 00-1525-CD

Type of Case: **Civil**

Type of Pleading:  
**MASTER'S RETURN OF SALE,  
SCHEDULE OF DISTRIBUTION,  
PROPOSED DECREE, REVISED  
SCHEDULE OF MASTER'S  
COSTS AND FEES AND  
ORDER FOR PAYMENT OF  
MASTER**

Filed on Behalf of: **Master  
in Partition**

Master of Record:

J. RICHARD MATTERN, II, ESQUIRE  
Attorney ID# 06817  
**MASTER IN PARTITION**  
211 East Pine Street  
Clearfield, Pa., 16830  
(814) 765-6416

**FILED**

**OCT 14 2003**

William A. Shaw  
Prothonotary/Clerk of Courts

6412

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

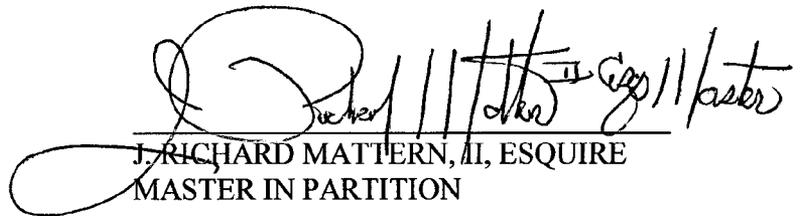
DENNIS L. MERREY and :  
ELMO L. BRAID, :  
Plaintiffs :  
 : No. 00-1525-CD  
vs. :  
 :  
STANLEY B. OWENS and :  
MARIE C. OWENS, :  
Defendants :

**NOTICE OF DATE RETURN OF SALE  
AND PROPOSED DECREE SHALL BE FILED**

TO: Peter F. Smith, Esquire Warren B. Mikeseli, II, Esq. Joseph Colavecchi, Esq.  
P. O. Box 130 115 East Locust Street P. O. Box 131  
Clearfield, PA 16830 Clearfield, PA 16830 Clearfield, PA 16830

You are hereby notified that pursuant to Pa.R.C.P. §1573 - **Master's Return of Sale and Proposed Decree**, shall be filed with the **Clearfield County, Pennsylvania Prothonotary on October 14, 2003**. I am enclosing a copy of such for your examination.

Date: September 30, 2003

  
J. RICHARD MATTERN, II, ESQUIRE  
MASTER IN PARTITION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DENNIS L. MERREY and	:	
ELMO L. BRAID,	:	
Plaintiffs	:	
	:	No. 00-1525-CD
vs.	:	
	:	
STANLEY B. OWENS and	:	
MARIE C. OWENS,	:	
Defendants	:	

**MASTER'S NOTICE OF SALE**  
**SCHEDULE OF DISTRIBUTION**  
**PROPOSED DECREE**

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

Pursuant to Order of your Honorable Court dated June 26, 2003, J. Richard Mattern II, Master, did conduct on August 28, 2003, a Private Sale confined to the parties and reports as follows:

1. A copy of said Order dated June 26, 2003, is attached hereto marked Exhibit "A".
2. Notice of Private Sale confined to the parties dated July 14, 2003, was mailed to all parties' counsel on July 14, 2003, setting the date and time of private sale to be on August 28, 2003 at 1:30 PM at the Law Offices of Joseph Colavecchi, Esquire. Said Notice is marked Exhibit "B" attached hereto.

3. Said Private Sale was held on the aforesaid time and date with the following parties in attendance:

Dennis L. Merrey  
Elmo L. Braid  
Peter F. Smith, Esquire  
Stanley B. Owens  
Warren B. Mikesell, II Esquire  
Marie C. Owens  
Joseph Colavecchi, Esquire  
J. Richard Mattern II, Esquire  
Sherry Greenland, Stenographer

4. The only private parties bidding were Dennis L. Merrey and Elmo L. Brady, through their counsel, Peter F. Smith, Esquire, and Marie C. Owens, through her counsel, Joseph Colavecchi, Esquire. Stanley B. Owens did not wish to bid.
5. Bidding commenced with the initial bid by Marie C. Owens, through her counsel, Joseph Colavecchi, Esquire, in the amount of \$150,000.00.
6. After several minutes of bidding, the Master granted a recess to Joseph Colavecchi, Esquire, to confer with his client, Marie C. Owens.
7. Bidding then re-commenced with the final and successful bid being by Dennis L. Merrey and Elmo L. Braid, through their counsel, Peter F. Smith, Esquire, in the amount of:

**TWO HUNDRED THIRTEEN THOUSAND  
FIVE HUNDRED (\$213,500.00) DOLLARS**

8. The Master hereby confirms to your Honorable Court the sale of the subject property in its entirety for the total price of \$213,500.00 to Dennis L. Merrey and Elmo L. Braid.

9. Accordingly, said proceeds shall be distributed pursuant to the interest of the parties as follows:

Stanley B. Owens  
Marie C. Owens

37.5%

37.5 X \$213,500.00

\$80,062.50

Dennis L. Merrey  
Elmo L. Braid

62.5%

62.5% X \$213,500.00

\$133,437.50

**Total:**

**\$213,500.00**

Purchase Price Due:

Stanley B. Owens  
Marie C. Owens

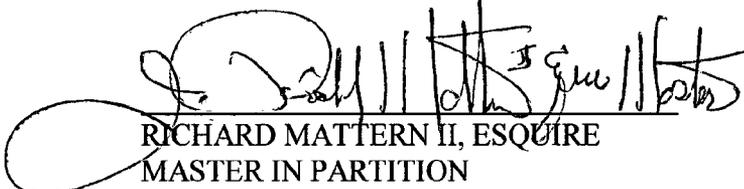
From:

Dennis L. Merrey  
Elmo L. Braid

For deed of 37.5% interest in 549.5 acres  
Goshen Township, Clearfield County, PA

\$80,062.50

Date: 9/30/03

  
RICHARD MATTERN II, ESQUIRE  
MASTER IN PARTITION

**SCHEDULE OF COSTS AND FEES**

THE MASTER HEREBY CALCULATES THE FOLLOWING NECESSARY AND  
REASONABLE COSTS AS FOLLOWS:

1.	<b><u>COSTS OF LITIGATION FROM DOCKET ENTRIES</u></b>	
	Filing of Complaint in Partition Paid by Plaintiff	\$80.00
2.	<b><u>TRANSFER TAX FOR VALUE OF 37.5% INTEREST \$80,062.50</u></b>	
	2% of \$80,062.50	\$1,601.25
3.	<b><u>RECORDING OF DEED</u></b>	\$28.50
4.	<b><u>MASTER'S FEES AND COSTS</u></b>	
	A. Stenographer	\$75.00
	B. Postage	\$3.88
	C. Copies 88 @ \$ .20	\$17.60
	D. Master's Fee (Includes time for Deed Preparation, Closing and Dispersing Proceeds)	
	13 and 1/4 hours	\$1,987.50
	<b><u>TOTAL</u></b>	<b><u>\$3,793.73</u></b>

**APPORTIONMENT OF COSTS AND FEES**

THE MASTER, PURSUANT TO R.C.P. 1574, APPORTIONS THE COSTS AND FEES IN  
PROPORTION TO THE INTEREST IN THE PROPERTY:

A.	Stanley B. Owens Marie C. Owens	$37.5\% \times \$3,793.73$	\$1,422.65
B.	Dennis L. Merrey Elmo L. Braid	$62.5\% \times \$3,793.73$	\$2,371.08
	<b><u>TOTAL</u></b>		<b>\$3,793.73</b>

**PROPOSED DISTRIBUTION AFTER APPORTIONMENT OF FEES AND COSTS**

**GROSS PROCEEDS DUE:**

Stanley B. Owens  
Marie C. Owens \$80,062.50

**LESS PROPORTIONATE SHARES OF FEES AND COSTS:** -\$1,422.65

**NET PROCEEDS DUE AT TIME OF DISPURSEMENT:** **\$78,639.85**

---

**PROCEEDS DUE BY PURCHASER:**

Dennis L. Merrey  
Elmo L. Braid

**GROSS PROCEEDS DUE:** \$80,062.50

**PLUS PROPORTIONATE SHARES OF FEES AND COSTS:** \$2,371.08  
(LESS CREDIT OF \$80.00 FOR FILING OF COMPLAINT IN PARTITION) -\$80.00  
\$2,291.08

**TOTAL DUE AT CLOSING** **\$82,353.58**

**CLOSING PROCEEDURE**

AT THE TIME OF CLOSING, DENNIS L. MERREY AND ELMO L. BRAID SHALL  
PRESENT THE MASTER, J. RICHARD MATTERN, II, ESQ., A CASHIER'S CHECK  
PAYABLE TO HIM IN THE AMOUNT OF **\$82,353.58.**

THE MASTER WILL THEN DISPURSE FROM HIS IOLTA ACCOUNT ALL CHECKS  
FOR COSTS AND FEES AND WILL DISPURSE TO:

STANLEY B. OWENS and  
MARIE C. OWENS

1. STANLEY B. OWENS  
A CHECK FOR 1/2 OF \$78,639.85 **\$39,319.92**
  
2. MARIE C. OWENS  
A CHECK FOR 1/2 OF \$78,639.85 **\$39,319.93**

RESPECTFULLY SUBMITTED,

9/30/03  
DATE

  
J. RICHARD MATTERN, II, ESQ.  
MASTER IN PARTITION

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

DENNIS L. MERREY and	:	
ELMO L. BRAID,	:	
Plaintiffs	:	
	:	No. 00-1525-CD
vs.	:	
	:	
STANLEY B. OWENS and	:	
MARIE C. OWENS,	:	
Defendants	:	

**PROPOSED DECREE**

AND NOW, this \_\_\_\_ day of October, 2003, the Court acknowledges the Master's Return of Private Sale, Schedule of Distribution and Costs, and approves his recommendations.

Accordingly, the sale of the entire tract to Dennis L. Merrey and Elmo L. Braid for the total sum of \$213,500.00 is hereby approved and confirmed.

Therefore, it is the Order of this Court that the Master prepare a Special Warranty Deed wherein Stanley B. Owens and Marie C. Owens convey to Dennis L. Merrey and Elmo L. Braid their entire interest in the subject property consisting of an undivided 37.5% interest in the 549.5 acres surface in Goshen Township, Clearfield County, Pennsylvania, for the total consideration of Eighty Thousand Sixty-Two Dollars and Fifty Cents (\$80,062.50).

It is the further Order of this Court that the Schedule of Costs and Fees is hereby approved and the parties are ordered to pay such in proportion to their interests in the property as calculated by the Master.

BY THE COURT,  
  
\_\_\_\_\_





items, it is the ORDER of this Court that J. Richard Mattern II, Esquire, be paid immediately by the parties in proportion to their interests in the property as follows:

The total fees and costs of the Master are: **\$1,783.98**

Therefore, Dennis L. Merrey and Elmo L. Braid shall pay:

62.5% of \$1,987.50 or: **\$1,115.00**

Marie C. Owens shall pay:

1/2 of 37.5% or 18.75% of \$1,987.50 or: **\$334.49**

Stanley B. Owens shall pay:

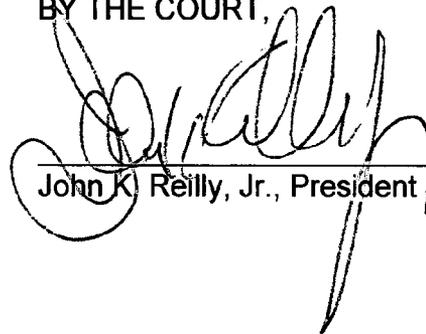
1/2 of 37.5% or 18.75% of \$1,987.50 or **\$334.49**

**Total: \$1,783.98**

Payment shall be made forthwith to:

J. Richard Mattern II, Esq.  
Attorney at Law  
211 East Pine Street  
Clearfield, PA 16830

BY THE COURT,



John K. Reilly, Jr., President Judge

Honorable John K. Reilly, Jr.  
President Judge

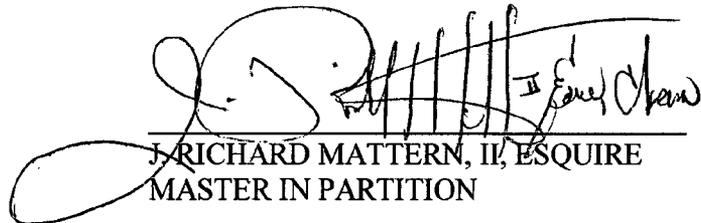
**CERTIFICATE OF SERVICE**

I, J. Richard Mattern II, Esquire, Master in Partition in the above captioned matter, hereby certify that true and correct copies of the "Master's Return of Sale, Schedule of Distribution and Proposed Decree" were mailed on October 1<sup>st</sup>, by First Class Mail, to the following:

Peter F. Smith, Esquire  
P. O. Box 130  
Clearfield, PA 16830

Warren B. Mikesel, II, Esq.  
115 East Locust Street  
Clearfield, PA 16830

Joseph Colavecchi, Esq.  
P. O. Box 131  
Clearfield, PA 16830

  
J. RICHARD MATTERN, II, ESQUIRE  
MASTER IN PARTITION

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

JUN 26 2003

Attest.

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DENNIS L. MERREY, et al :  
VS. : NO. 00-1525-CD  
STANLEY B. OWENS, et al :

I hereby certify this to be a true  
ORDER

NOW, this 26th day of June, 2003, this being the day and date set for argument into Objections and Amended Objections to the private sale filed on behalf of Plaintiffs above-named; upon agreement of the parties, it is the ORDER of this Court that said objections and amendments thereto shall be and are hereby withdrawn and the proceedings referred to the Master, J. Richard Mattern, Esquire, for purposes of conducting a private sale confined to the parties. It is the further Order of this Court that said Master shall conduct the bidding between the parties on an oral basis.

It is the further Order of this Court that the successful bidder shall post as security and down payment therefor with the Master 10 percent of the successful bid price, said down payment to serve as bond and to be treated as a lien against the interest in the property currently owned by said successful bidder. The Master shall record for the record the final successful bid and the bid immediately preceding it.

EXHIBIT "A"

Nothing herein shall be construed as the parties  
Defendant in any manner waiving their rights to object to the  
Master's report.

BY THE COURT,

/s/ JOHN K. REILLY, JR.

President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DENNIS L. MERREY and  
ELMO L. BRAID,  
Plaintiffs

VS.

STANLEY B. OWENS and  
MARIE C. OWENS,  
Defendants

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

No. 00-1525-CD

CASE NUMBER: 00-1525-CD

TYPE OF CASE: Partition Action

TYPE OF PLEADING: **EXCEPTIONS AND OBJECTIONS TO  
MASTER'S REPORT AND RETURN OF SALE,  
SCHEDULE OF DISTRIBUTION AND  
PROPOSED DECREE UNDER P.A.R.C.P.  
1569(c)**

FILED ON BEHALF OF: Defendant, Stanley B. Owens

COUNSEL OF RECORD FOR THIS PARTY: WARREN B. MIKESELL II, ESQUIRE  
Supreme Court I.D. #63717  
115 East Locust Street  
Clearfield, PA 16830  
(814) 765-6605

FILED *ms*

OCT 09 2003

01:40 / *cc atty mikeseall*

William A. Shaw

Prothonotary/Clerk of Courts

#41

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DENNIS L. MERREY and :  
ELMO L. BRAID, :  
Plaintiffs :  
 :  
VS. : No. 00-1525-CD  
 :  
STANLEY B. OWENS and :  
MARIE C. OWENS, :  
Defendants :

**EXCEPTIONS AND OBJECTIONS TO  
MASTER'S REPORT AND RETURN OF SALE,  
SCHEDULE OF DISTRIBUTION AND  
PROPOSED DECREE UNDER P.A.R.C.P. 1569(c)  
by Stanley B. Owens**

STANLEY B. OWENS, through his attorney, Warren B. Mikesell, II, Esquire, files his Exceptions to the Master's Report of J. Richard Mattern, II, and respectfully avers as follows:

1. Defendant, Stanley B. Owens, excepts to the proposed Finding Number 2 of the Master's Preliminary Notice that the property is not capable of division without prejudice to or spoiling the whole.
2. Defendant, Stanley B. Owens, excepts to the proposed Finding Number 3 of the Master's Preliminary Notice that the valuation of the property as a whole is One Hundred Fifty Thousand (\$150,000.00) Dollars.
3. Defendant, Stanley B. Owens, excepts to the proposed Finding

- Number 5 of the Master's Preliminary Notice that the subject property be sold at a Private Sale confined to the parties pursuant to Pennsylvania R.C.P. No. 1563 and joins with Defendant, Marie C. Owens, and objects to said sale itself.
4. Defendant, Stanley B. Owens, excepts to the Finding of Fact Number 5 that Plaintiff's intended to purchase 100% of the five hundred forty-nine acres (549) at issue for \$150,000.00 since by operation of law they only purchased a 62.5% interest according to the Deeds they accepted which by said acceptance by law concluded any and all transactions or legal rights under any sales agreement they may have had. Furthermore, by testimony of the Plaintiff Merrey, he admitted he was aware that they could purchase a majority interest in the parcel then proceed to file a partition action to obtain the remaining portion which appears to be what they have done. (Hearing Transcript pp. 33-34.)
  5. Defendant, Stanley B. Owens, excepts to the Finding of Fact Number 7 that Plaintiff could legally bind his estranged wife, Marie C. Owens, who by and through her Divorce Complaint sought to have equitable division of marriage property including but not limited to the subject property and said Exhibit "E", as admitted, fails to include a definite time or price and merely states that a sale may be completed when his divorce problems were solved.
  6. Defendant, Stanley B. Owens, excepts to the Finding of Fact Number 13 that a premium was paid for the property by the

Plaintiffs when Plaintiff's witness, Daniel Owens, testified that the property was never appraised by a licensed real estate appraiser prior to negotiations and the said parcel was appraised by Richard Provost at \$330,000.00.

7. Defendant, Stanley B. Owens, excepts to the Finding of Fact Number 16 that the only access is gained over the property of Peerless Fuel Company since the Plaintiff Merry testified that he had obtained a legal right-of-way across another adjoining property wherein he had legal access by roadway from a separately owned parcel of the Plaintiff to the southern portion of the subject property being the portion proposed to be granted in purpart to Plaintiff.
8. Defendant, Stanley B. Owens, excepts to the Finding of Fact Number 19 that a timber harvest could not be expected for 50 to 70 years according to the Plaintiff Merrey's testimony found on pages 17 and 18 of the Transcript where the Master totally neglected Mr. Osteim's uncontradicted report that the value of the existing timber was \$49,000.00 and that it would only take a "lifetime" to realize veneer quality timber on the subject property but that differs from marketable timber.
9. Defendant, Stanley B. Owens, excepts to the Finding of Fact Number 23 that the Ostheim timber value of \$49,000.00 did not adjust the value on the basis of the need for a survey in that Mr. Ostheim testified during cross examination that if the adjoining owners could agree to a property line they

could agree to cut trees that were an agreed upon distance from that line without a survey (Transcript 88.) Further, by implication, the Master implies that the value of \$49,000.00 is incorrect because it would basically destroy the property. Although that would actually be the result of a clear-cut timber operation, the Master neglects to set a value for the timber that is to remain on the premises and award the Defendant's their fair share of the value of the same letting the decision to the Plaintiffs as to whether to actually engage in timber operations.

10. Defendant, Stanley B. Owens, excepts to the Finding of Fact Number 26 through 30 the testimony of Donald Harvey Klinger, as a wildlife management expert was objected to on the basis that the undisclosed basis of a purchase of a piece of property by a purchaser should have no bearing on whether the parcel can be partitioned by the Court. Furthermore, the Master failed to take into account as to qualifications that Mr. Klinger never has nor never will achieve the perfect ideal deer herd buck to doe ratio he testified to and it did not matter what the size of the parcel of land he was hired as a wildlife manager.
11. Defendant, Stanley B. Owens, excepts to the Finding of Fact Number 34 that the sale by Daniel Owens of his interest in the premises and the sale by the heirs of Robert Owens of their interest in the property are the best evidence of the premise value as a whole to be One Hundred Fifty Thousand

(\$56,250.00) Dollars.

17. Defendant, Stanley B. Owens, excepts to Conclusion of Law Number 15 that the evidence in connection with the Agreement of Sale between the parties and the applicability of the Statute of Frauds is admissible to the extent that it is relevant to the issue of the value of the property, and Defendant, Stanley B. Owens' belief as to the value of the property.
18. Defendant, Stanley B. Owens, excepts to the Opinion of the Master as set out on Page 17 of the Master's Report that the testimony of Richard Provost is not credible because his opinions and conclusions were unsupported by evidence, unsupported by reasons and that he ignored the recent arms-length comparable sales of this property.
19. Defendant, Stanley B. Owens, excepts to the Opinion of the Master as set out on Page 17 that Donald Harvey Klinger's testimony was credible especially with regards to deer herd management in that the Defendant, through counsel, objected to Mr. Klinger's testimony in its entirety as to deer herd management because it was irrelevant as to value or division of the property in question.
20. Defendant, Stanley B. Owens, excepts to the Opinion of the Master as set out on Page 17 that the Master can, sua sponte can take judicial notice that of a newspaper article in the progress regarding the sale of properties not previously entered into evidence nor offered by a party in interest.

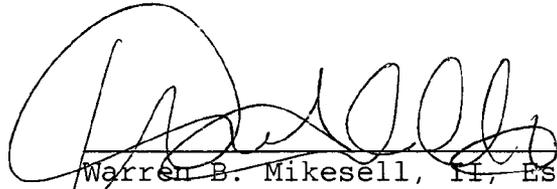
21. Defendant, Stanley B. Owens, excepts to the Opinion of the Master as set out on Pages 17 and 18 that Craig Ostheim's testimony regarding the value of the timber being \$49,000.00 was negated because of a low interest and no legal right of way to remove the timber. The Master failed to consider that these factors were included in the valuation of the timber and fails to give the Defendant's their fair value for the standing timber on the property in the event of a forced sale.
22. Defendant, Stanley B. Owens, excepts to the Opinion of the Master as set out on Page 18 that the Master found the testimony of Dan (Daniel) Owens credible as consistent with other testimony when the said Daniel Owens testified he had no authority, written or otherwise, to negotiate for Stanley Owens or Marie C. Owens, that he never had the property appraised prior to setting a price and that he, himself, had health problems which affected his decision to sell.
23. Defendant, Stanley B. Owens, excepts to the Opinion of the Master on Page 18 of the Master's Report that he is not impressed by the testimony of Stanley and Marie Owens with regard to keeping the property in the family and wanting to continue to hunt on the property.
24. Defendant, Stanley B. Owens, excepts to the Opinion of the Master as set forth on Page 18 and 19 of the Maser's Report that Merrey and Braid suffered a detriment in failing to secure the 549.5 acres and that they had any right to rely

**WHEREFORE**, Stanley B. Owens, Defendant in the above-captioned case, asks that the Court find the following:

a. That the property be partitioned in purparts in accordance with the proportionate interests owned by Plaintiffs and Defendants; or

b. In the alternative, that the total value of the property be set at Three Hundred Seventy-Nine Thousand (\$379,000.00) Dollars, the figure testified to by Richard Provost and by Craig Ostheim.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Warren B. Mikesell, II', written over a horizontal line.

Warren B. Mikesell, II, Esquire  
Attorney for Defendant,  
Stanley B. Owens

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

No. 00 - 1525 - CD

DENNIS L. MERRY and ELMO L.  
BRAID,

Plaintiffs

vs.

STANLEY B. OWENS and MARIE C.  
OWENS,

Defendants

EXCEPTIONS AND OBJECTIONS TO  
MASTER'S REPORT AND RETURN OF  
SALE, SCHEDULE OF DISTRIBUTION  
AND PROPOSED DECREE UNDER

Pa. R.C.P. 1569(c)

**FILED**

*O 3:20 PM 6 02 to ldy*

OCT 07 2003

William A. Shaw  
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

DENNIS L. MERREY and  
ELMO L. BRAID,

Plaintiffs

Vs.

STANLEY B. OWENS and MARIE C.  
OWENS,

Defendants

CIVIL DIVISION

No. 00 - 1525 - CD

EXCEPTIONS AND OBJECTIONS TO  
MASTER'S REPORT AND RETURN OF  
SALE, SCHEDULE OF DISTRIBUTION  
AND PROPOSED DECREE UNDER PA.  
R.C.P. 1569(c)

Filed on Behalf of:

Defendant, MARIE C. OWENS

Counsel of Record for This  
Party:

JOSEPH COLAVECCHI, ESQUIRE  
Pa. I.D. #06810

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

814/765-1566

FILED

OCT 07 2003

William A. Shaw  
Prothonotary

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

#40

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

DENNIS L. MERREY and ELMO L. :  
BRAID, : No. 00 - 1525 - CD  
Plaintiffs: :  
Vs. :  
STANLEY B. OWENS and MARIE C. :  
OWENS, :  
Defendants: :

**EXCEPTIONS AND OBJECTIONS TO  
MASTER'S REPORT AND RETURN OF SALE,  
SCHEDULE OF DISTRIBUTION AND PROPOSED DECREE  
UNDER PA. R.C.P. 1569(c)**

Marie C. Owens, through her attorney, Joseph Colavecchi, Esquire, files the following Exceptions and Objections to the Master's Report and Return of Sale:

1. Marie C. Owens excepts to Proposed Finding No. 2 that the property is not capable of division without prejudice to or spoiling the whole.

2. Marie C. Owens excepts to Proposed Finding No. 3 that the valuation of the property as a whole is One Hundred Fifty Thousand Dollars (\$150,000.00).

3. Marie C. Owens excepts to Proposed Finding No. 5 that the subject property be sold at a Private Sale confined to the parties pursuant to Pennsylvania R.C.P. 1563 and objects to said sale.

4. Defendant excepts to Conclusion of Law No. 8 that the property cannot be divided, and that it is not necessary to determine purparts.

5. Marie C. Owens excepts to Conclusion of Law No. 9 that the valuation of the entire property is One Hundred Fifty Thousand Dollars (\$150,000.00).

6. Marie C. Owens excepts to Conclusion of Law No. 12 that the property shall be offered at a Private Sale, and that the Plaintiffs who own a majority in value of the property shall have it awarded to them at its evaluation of One Hundred Fifty Thousand Dollars (\$150,000.00).

7. Marie C. Owens excepts to Conclusion of Law No. 13 that the Plaintiffs can purchase Defendants' interest for the sum of Fifty-six Thousand Two Hundred Fifty Dollars (\$56,250.00).

8. Marie C. Owens excepts to Finding of Fact No. 34 that the sale by Daniel Owens of his interest in the premises and the sale by the heirs of Robert Owens of their interest in the property are the best evidence of the premise value as a whole which is One Hundred Fifty Thousand Dollars (\$150,000.00).

9. Marie C. Owens excepts to Conclusion of Law No. 15 that the evidence in connection with the Agreement of Sale between the parties and the applicability of the Statute of Frauds is admissible to the extent that it is relevant to the issue of the

value of the property, and Defendant, Stanley B. Owens' belief as to the value of the property.

10. Marie C. Owens excepts to the Opinion of the Master as set out on Page 17 of the Master's Report that the testimony of Richard Provost is not credible as he has given opinions and conclusions unsupported by evidence, unsupported by reasons, and that he ignored the recent arms-length comparable sales of this property.

11. Marie C. Owens excepts to the Opinion of the Master on Page 18 of the Master's Report that he is not impressed by the testimony of Stanley and Marie Owens with regard to keeping the property in the family and wanting to continue to hunt on the property.

12. Marie C. Owens excepts to the Opinion of the Master as set forth on Page 18 and 19 of the Master's Report that Merrey and Braid suffered a detriment in failing to secure the 549.5 acres and that they had any right to rely on Stanley Owens to sell his interest to them.

13. Marie C. Owens excepts to the findings and/or Opinion of the Master as set forth on Page 20, that Merrey and Braid could have succeeded in an action for specific performance in a Court of equity to force the sale of the interest of Marie Owens and Stanley Owens.

14. Marie C. Owens objects to the sale of the property for the sum of Two Hundred Thirteen Thousand Five Hundred Dollars (\$213,500.00) which is less than the appraised value placed upon it by Richard Provost and by the timber appraiser, which found a total value of the surface and timber at Three Hundred Seventy-nine Thousand Dollars (\$379,000.00).

15. Marie C. Owens objects to not having had the property physically divided and her receiving a proportionate share of the property itself.

16. Marie C. Owens objects to the disbursement of the cash from the sale of this property as being divided evenly between herself and Stanley B. Owens. This is to be determined by the Court as part of her divorce action.

Respectfully submitted,

  
\_\_\_\_\_  
JOSEPH COLAVECCHI, ESQUIRE  
Attorney for Marie C. Owens

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

**FILED**

JUN 26 2003

DENNIS L. MERREY, et al :

VS. : NO. 00-1525

STANLEY B. OWENS, et al :

William A. Shaw  
Prothonotary

ORDER

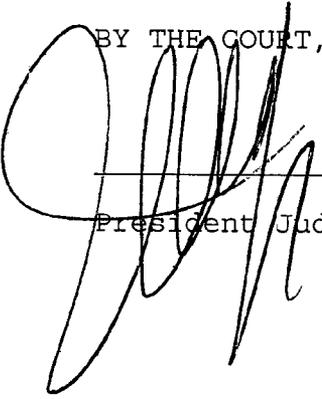
NOW, this 26th day of June, 2003, this being the day and date set for argument into Objections and Amended Objections to the private sale filed on behalf of Plaintiffs above-named; upon agreement of the parties, it is the ORDER of this Court that said objections and amendments thereto shall be and are hereby withdrawn and the proceedings referred to the Master, J. Richard Mattern, Esquire, for purposes of conducting a private sale confined to the parties. It is the further Order of this Court that said Master shall conduct the bidding between the parties on an oral basis.

It is the further Order of this Court that the successful bidder shall post as security and down payment therefor with the Master 10 percent of the successful bid price, said down payment to serve as bond and to be treated as a lien against the interest in the property currently owned by said successful bidder. The Master shall record for the record the final successful bid and the bid immediately preceding it.

#39

Nothing herein shall be construed as the parties  
Defendant in any manner waiving their rights to object to the  
Master's report.

BY THE COURT,



\_\_\_\_\_  
President Judge

FILED

3:27 PM

JUN 26 2003

William A. Shaw  
Notary

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.  
CIVIL DIVISION  
No. 00 - 1525 - CD

DENNIS L. MERREY and  
ELMO L. BRAID,  
Plaintiffs

vs.

STANLEY B. OWENS and MARIE C.  
OWENS,  
Defendants

ANSWER TO OBJECTIONS PURSUANT  
TO Pa.R.C.P. 1563(b)

**FILED** <sup>NO</sup> <sup>CC</sup>  
02:40 PM EJS  
JUN 18 2003

William A. Shaw  
Prothonotary

**GOLAVECCHI  
RYAN & GOLAVECCHI**  
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

DENNIS L. MERREY and  
ELMO L. BRAID,

Plaintiffs

Vs.

STANLEY B. OWENS and MARIE C.  
OWENS,

Defendants

CIVIL DIVISION

No. 00 - 1525 - CD

ANSWER TO OBJECTIONS PURSUANT  
TO Pa.R.C.P. 1563(b)

Filed on Behalf of:

Defendant, MARIE C. OWENS

Counsel of Record for This  
Party:

JOSEPH COLAVECCHI, ESQUIRE  
Pa. I.D. #06810

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

314/765-1566

**FILED**

JUN 18 2003

William A. Shaw  
Prothonotary

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

138

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

DENNIS L. MERREY and ELMO L. :  
BRAID, : No. 00 - 1525 - CD  
Plaintiffs:  
:  
Vs. :  
:  
STANLEY B. OWENS and MARIE C. :  
OWENS, :  
Defendants:

**ANSWER TO OBJECTIONS  
PURSUANT TO PA.R.C.P. 1563(b)**

NOW COMES, Marie C. Owens, who, through her attorney, Joseph Colavecchi, Esquire, files her Answer to the Objections filed by Plaintiffs Pursuant to Pa.R.C.P. 1563(b), and respectfully avers as follows:

1. Admitted.
2. Denied for the following reasons:

a. The valuation of One Hundred Fifty Thousand Dollars (\$150,000.00) is inadequate and contrary to proof as produced at the Master's Hearing.

b. Pa.R.C.P. 1563(b) which is cited by Plaintiffs clearly states that parties Defendant owning a majority in the value of the property may object in writing to any sale, requesting that the property be awarded to them and its valuation fixed by the Court and that their interest in the same remain undivided. It further states that upon such request, the entire property shall be

awarded to the parties objecting to sale, as tenants in common, subject to the payment to the parties desiring partition and sale of the amounts of the respective interests based upon the valuation. It should be observed that Merrey and Braid are "parties Plaintiff" not "parties Defendant".

c. Marie C. Owens has opposed the Partition Action and has stated that the property can be equitably partitioned.

d. Marie C. Owens has further accepted to the erroneous valuation placed upon the property by the Master and affirmed by the Court.

3. Denied. This averment is ambiguous. It appears to say that Plaintiffs want to continue to hold the premises free of the Partition Action and continue to hold their undivided Sixty-seven percent (67%).

4. Admitted.

5. Denied that the value of Defendant's interest is Fifty-six Thousand Two Hundred Fifty Dollars (\$56,250.00). On the contrary, Defendant's interest is 37½% of Three Hundred Seventy-nine Thousand Dollars (\$379,000) for a valuation of One Hundred Forty-two Thousand One Hundred Twenty-five Dollars (\$142,125).

6. It is further averred that the Court issued a Decree on February 28, 2003, directing that the property be sold at a private sale confined to the parties pursuant to Pa.R.C.P. 1563. No objections were filed to this Order by Plaintiffs.

7. Plaintiffs further sent a letter dated April 17, 2003, to the Court asking that the Court conduct a private sale.

8. Rule of Civil Procedure 1566 requires that any objections to the sale be filed within twenty (20) days. 1563(b)(1) states that the notice in the case of inability to partition shall state that the property will be sold unless objection is made as provided in Rule 1563(b). Plaintiffs did not file objections until June 3, 2003. They, in effect, have waived objections to a private sale.

WHEREFORE, Defendant, Marie C. Owens, asks that the Objections filed by Merrey and Braid be dismissed.

Respectfully submitted,

  
\_\_\_\_\_  
JOSEPH COLAVECCHI, ESQUIRE  
Attorney for MARIE C. OWENS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DENNIS L. MERREY and  
ELMO L. BRAID,  
Plaintiffs

VS.

STANLEY B. OWENS and  
MARIE C. OWENS,  
Defendants

:  
:  
:  
:  
: No. 00-1525-CD  
:  
:  
:  
:

CASE NUMBER: 00-1525-CD

TYPE OF CASE: Partition Action

TYPE OF PLEADING: ANSWER TO OBJECTIONS  
PURSUANT TO PA.R.C.P. 1563(b)

FILED ON BEHALF OF: Defendant

COUNSEL OF RECORD FOR THIS PARTY: WARREN B. MIKESELL II, ESQUIRE  
Supreme Court I.D. #63717  
115 East Locust Street  
Clearfield, PA 16830  
(814) 765-6605

**FILED**

JUN 18 2003

William A. Shaw  
Prothonotary

#37

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

DENNIS L. MERREY and :  
ELMO L. BRAID, :  
Plaintiffs :  
VS. : No. 00-1525-CD  
STANLEY B. OWENS and :  
MARIE C. OWENS, :  
Defendants :

ANSWER TO OBJECTIONS

NOW COMES, Stanley B. Owens, who, through his attorney, Warren B. Mikesell, II, Esquire, files his Answer to the Objections filed by Plaintiffs Pursuant to Pa.R.C.P. 1563(b), and respectfully avers as follows:

1. Admitted.
2. Denied for the following reasons:

a. The valuation of One Hundred Fifty Thousand (\$150,000.00) Dollars is inadequate and contrary to the value established at the Master's Hearing.

b. Pa.R.C.P. 1563(b) which is cited by Plaintiffs clearly states that **parties Defendant owning a majority** (emphasis added) in the value of the property **may** (emphasis added) object in writing to any sale, requesting that the property be awarded to them at its valuation fixed by the Court and that their interest in the same remain undivided. Pa.R.C.P. 1563(b) further states that upon such request (i.e. by the parties Defendant), the entire property shall be awarded to the **parties objecting to sale** (emphasis added), as tenants in common, subject to the

payment to the **parties desiring partition and sale** (emphasis added) of the amounts of the respective interest based upon the valuation. In this case, Merrey and Braid are "parties Plaintiff" not "parties Defendant". Merrey and Braid cannot be both the parties objecting to the sale **and** parties desiring partition at the same time. Pa.R.C.P. 1563(a) controls here not Pa.R.C.P. 1563(b).

c. Stanley B. Owens has further accepted to the erroneous valuation placed upon the property by the Master and affirmed by the Court.

3. Denied. This averment is ambiguous. Although Merry and Braid may be asking the Court to award the entire parcel at the Court's fixed valuation according to their current tenancy, this averment appears to say that Plaintiffs want to continue to hold the premises free of the Partition Action and continue to hold their undivided Sixty-Seven (67%) percent.

4. Admitted.

5. Denied. It is denied that the value of Defendant's (Owens') interest is Fifty-Six Thousand Two Hundred Fifty (\$56,250.00) Dollars. On the contrary, Defendant's (Owens') interest is Thirty-Seven and one-half (37 ½%) Percent of Three Hundred Seventy-Nine Thousand (\$379,000.00) Dollars for a valuation of One Hundred Forty-Two Thousand One Hundred Twenty-Five (\$142,125.00) Dollars.

6. It is further averred that the Court issued a Decree on February 28, 2003, directing that the property be sold at a

private sale, confined to the parties, pursuant to Pa.R.C.P. 1563(a). No objections were filed to this Order by Plaintiffs.

7. Plaintiffs further sent a letter dated April 17, 2003, to the Court asking that the Court conduct a private sale.

8. Rule of Civil Procedure 1566 requires that any objections to the sale be filed within twenty (20) days. Specifically, Pa.R.C.P. 1566(b)(1) states that the notice, in the case of inability to partition, shall state that the property will be sold unless objection is made as provided in Pa.R.C.P. 1563(b). Plaintiffs did not file their objections until June 3, 2003-Ninety-Five (95) days after the February 28, 2003, Court Order directing a private sale. Plaintiffs have waived objections to a private sale.

**WHEREFORE**, Defendant, Stanley B. Owens, asks that the Objections filed by Merrey and Braid be dismissed.



Warren B. Mikesell, II, Esquire  
Attorney for Stanley B. Owens

**FILED**

SEC

of 1:40-661  
JUN 18 2003

W. A. M. Vesel  
W. A. M. Vesel

William A. Shaw  
Prathensary

**PETER F. SMITH**  
ATTORNEY  
CLEARFIELD, PA. 16830  
814-765-5595

RTIFIED TRUE AND CORRECT COPY  
ATTORNEY FOR

*GA*

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

DENNIS L. MERREY and ELMO L. BRAID, :  
Plaintiffs :  
 :  
vs. :  
 :  
STANLEY B. OWENS & MARIE C. OWENS, :  
Defendants :

No. 00-1525-CD

FILED

JUN 06 2003

William A. Shaw  
Prothonotary

CORRECTED OBJECTIONS PURSUANT TO PA.R.C.P.1563(b)

COMES NOW, the Plaintiffs by their Attorney Peter F. Smith who make the following objection to any sale of the real estate subject to this action and in support thereof state:

1. They own a majority in value of the property holding an undivided 62.5% interest.

The interest stated in their first objection of 67% was incorrect.

2. Plaintiffs request that the property be awarded to them at its valuation fixed by the Court which is \$150,000.00.

3. The Plaintiffs further request that their interest in the premises remain undivided and that they take title as Tenants in Common.

4. The Defendants own an undivided 37.5% interest.

5. Therefore the value of the Defendants' interest in the premises is \$56,250.00.

WHEREFORE the plaintiffs pray this Honorable Court to enter an Order awarding them the premises as Tenants in Common subject to the payment of \$56,250.00 to the Defendants.

Respectfully submitted,



Peter F. Smith,  
Attorney for Plaintiffs

Date: 6/5/03

#36

RECEIVED  
JUN 10 2003  
01/10/13  
#12X  
cc

William A. Shaw  
Prothonotary

CA

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

DENNIS L. MERREY and ELMO  
L. BRAID

vs.

No. 00-1525-CD

STANLEY B. OWENS and  
MARIE C. OWENS

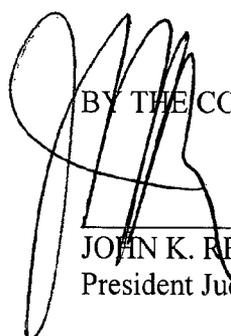
**ORDER**

NOW, this 5<sup>th</sup> day of June, 2003, upon consideration of the  
attached Motion for Continuance, it is the ORDER of the Court that said Motion  
is Granted and argument on Plaintiffs' Objections Pursuant to PA R.C.P. 1563(b)  
is hereby rescheduled for the 26 day of June, 2003 at 2:00 P.M.  
in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

FILED

JUN 05 2003

William A. Shaw  
Prothonotary



BY THE COURT:

JOHN K. REILLY, JR.  
President Judge

35



RECEIVED

013:58 PM  
JUN 05 2003  
for service

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION  
No. 00-1525-CD

DENNIS L. MERREY and ELMO  
L. BRAID,  
Plaintiffs

vs.

STANLEY B. OWENS and  
MARIE C. OWENS,  
Defendants

DEFENDANT'S MOTION FOR  
CONTINUANCE

*ICC  
of Amy Colavecchi  
KDS*

*013151-601*

**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

DENNIS L. MERREY and  
ELMO L. BRAID,

Plaintiffs

vs.

STANLEY B. OWENS and  
MARIE C. OWENS,

Defendants

CIVIL ACTION

No. 00 - 1525 - CD

DEFENDANT'S MOTION FOR  
CONTINUANCE

Filed on behalf of:

Defendant, MARIE C. OWENS

Counsel of Record for this  
Party:

JOSEPH COLAVECCHI, ESQUIRE  
PA I.D. 06810

COLAVECCHI & 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

JUN 05 2003

William A. Shaw  
Prothonotary

#31

3. It was the understanding of this office that the Argument on the Exceptions to the Master's Report had been rescheduled or had been postponed at the request of Peter Smith, Attorney for Plaintiff, who had asked that the sale go forward.

4. Joseph Colavecchi, Attorney for Marie C. Owens, has been scheduled for some time to be out of town on June 6, 2003 and has prepaid reservations.

WHEREFORE, for the above reasons, Joseph Colavecchi, Attorney for Marie C. Owens, is respectfully requesting that Argument as set forth in the letter dated June 3, 2003 from the office of the Court Administrator, a copy of which is attached hereto, be rescheduled.

Respectfully submitted:

  
\_\_\_\_\_  
JOSEPH COLAVECCHI, ESQUIRE  
Attorney for Marie Owens



OFFICE OF COURT ADMINISTRATOR  
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE  
SUITE 228, 230 EAST MARKET STREET  
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK  
COURT ADMINISTRATOR

PHONE: (814) 765-2641  
FAX: 1-814-765-7649

MARCY KELLEY  
DEPUTY COURT ADMINISTRATOR

June 3, 2003

Peter F. Smith, Esquire  
Attorney at Law  
Post Office Box 130  
Clearfield, PA 16830

Warren B. Mikesell, II Esquire  
Attorney at Law  
115 East Locust Street  
Clearfield, PA 16830

Joseph Colavecchi, Esquire  
Colavecchi & Colavecchi  
Post Office Box 131  
Clearfield, PA 16830

RE: DENNIS L. MERREY, al

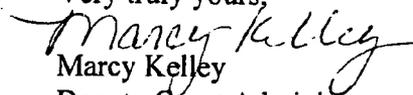
vs.

STANLEY B. OWENS, al  
No. 00-1525-CD

Dear Counsel:

With regard to the above matter, please be advised that argument on Attorney Smith's Objections Pursuant to PA R.C.P. 1563(b) will be included with argument on Defendants' Exceptions to Master's Report currently scheduled for **Friday, June 6, 2003 at 2:00 P.M.** in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

Very truly yours,

  
Marcy Kelley  
Deputy Court Administrator

cc: Honorable John K. Reilly, Jr.  
J. Richard Mattern, II, Esquire

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

DENNIS L. MERRY and ELMO L. BRAID  
Plaintiffs

vs.

STANLEY B. OWENS  
Defendant

No. 00-1525-CD

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Dennis L. Merrey and Elmo L. Braid, in the above-captioned matter, certify that I sent by First Class Mail, postage prepaid a certified true and correct copy of **OBJECTIONS PURSUANT TO PA.R.C.P. 1563(b)** on June 3, 2003 at the following address:

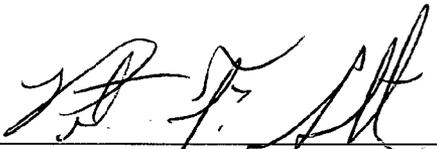
Warren B. Mikesell, II, Esquire  
115 East Locust Street  
Clearfield, PA 16830

Joseph Colavecchi, Esquire  
221 East Market Street  
Clearfield, PA 16830

J. Richard Mattern, II, Esquire  
211 East Pine Street  
Clearfield, PA 16830

Respectfully submitted,

Date: 6/2/03

  
Peter F. Smith, Attorney for Plaintiffs

**FILED**  
BA  
D 9:06 BA NOCC  
JUN 03 2003

William A. Shaw  
Prothonotary

#33

**PETER F. SMITH**  
ATTORNEY  
CLEARFIELD, PA. 16830  
814-765-5595

NOTIFIED TRUE AND CORRECT COPY

*PS*

ATTORNEY FOR

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

DENNIS L. MERREY and ELMO L. BRAID, :  
Plaintiffs :  
vs. : No. 00-1525-CD  
STANLEY B. OWENS & MARIE C. OWENS, :  
Defendants :

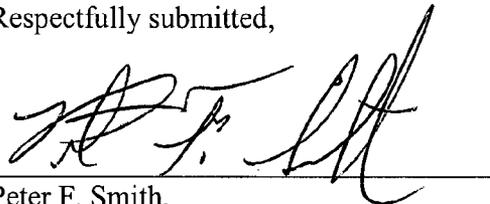
OBJECTIONS PURSUANT TO P.A.R.C.P.1563(b)

COMES NOW, the Plaintiffs by their Attorney Peter F. Smith who make the following objection to any sale of the real estate subject to this action and in support thereof state:

1. They own a majority in value of the property holding an undivided 67% interest.
2. Plaintiffs request that the property be awarded to them at its valuation fixed by the Court which is \$150,000.00.
3. The Plaintiffs further request that their interest in the premises remain undivided and that they take title as Tenants in Common.
4. The Defendants own an undivided 37.5% interest.
5. Therefore the value of the Defendants' interest in the premises is \$56,250.00.

WHEREFORE the plaintiffs pray this Honorable Court to enter an Order awarding them the premises as Tenants in Common subject to the payment of \$56,250.00 to the Defendants.

Respectfully submitted,



Peter F. Smith,  
Attorney for Plaintiffs

Date:

**FILED**  
0 9:06 BA noc  
JUN 03 2003

William A. Shaw  
Prothonotary

#32

(#31)

William A. Shaw  
Prothonotary

MAY 19 2003

FILED

Resident Judge

By the Court,

named shall be and is hereby continued pending results of the private sale.

ORDER of this Court that disposition of the objections filed on behalf of Defendants above-

NOW, this 16<sup>th</sup> day of May, 2003, upon agreement of the parties, it is the

ORDER

No. 00 - 1525 - CD

STANLEY B. OWENS and  
MARIE C. OWENS

-vs-

DENNIS T. MERREY and  
ELMO L. BRAID

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

FILED

0 340 BA

MAY 19 2003

William A. Shaw  
Prothonotary

*CC BY Smith  
100 copy Michael*

*SA*

<

D

D

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DENNIS L. MERREY and :  
ELMO L. BRAID, :  
Plaintiffs :  
VS. : No. 00-1525-CD  
STANLEY B. OWENS and :  
MARIE C. OWENS, :  
Defendants :

CASE NUMBER: 00-1525-CD

TYPE OF CASE: Partition Action

TYPE OF PLEADING: EXCEPTIONS TO MASTER'S REPORT  
BY STANLEY B. OWENS

FILED ON BEHALF OF: Defendant

COUNSEL OF RECORD FOR THIS PARTY: WARREN B. MIKESELL II, ESQUIRE  
Supreme Court I.D. #63717  
115 East Locust Street  
Clearfield, PA 16830  
(814) 765-6605

**FILED**

FEB 27 2003

William A. Shaw  
Prothonotary

#30

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DENNIS L. MERREY and :  
ELMO L. BRAID, :  
Plaintiffs :  
VS. : No. 00-1525-CD  
STANLEY B. OWENS and :  
MARIE C. OWENS, :  
Defendants :

EXCEPTIONS TO MASTER'S REPORT  
BY STANLEY B. OWENS

STANLEY B. OWENS, through his attorney, Warren B. Mikesell, II, Esquire, files his Exceptions to the Master's Report of J. Richard Mattern, II, and respectfully avers as follows:

1. Defendant, Stanley B. Owens, excepts to the proposed Finding Number 2 of the Master's Preliminary Notice that the property is not capable of division without prejudice to or spoiling the whole.
2. Defendant, Stanley B. Owens, excepts to the proposed Finding Number 3 of the Master's Preliminary Notice that the valuation of the property as a whole is One Hundred Fifty Thousand (\$150,000.00) Dollars.
3. Defendant, Stanley B. Owens, excepts to the proposed Finding Number 5 of the Master's Preliminary Notice that the subject property be sold at a Private Sale confined to the parties pursuant to Pennsylvania R.C.P. No. 1563 and joins with Defendant, Marie C. Owens, and objects to said sale itself.

4. Defendant, Stanley B. Owens, excepts to the Finding of Fact Number 5 that Plaintiff's intended to purchase 100% of the five hundred forty-nine acres (549) at issue for \$150,000.00 since by operation of law they only purchased a 62.5% interest according to the Deeds they accepted which by said acceptance by law concluded any and all transactions or legal rights under any sales agreement they may have had. Furthermore, by testimony of the Plaintiff Merrey, he admitted he was aware that they could purchase a majority interest in the parcel then proceed to file a partition action to obtain the remaining portion which appears to be what they have done. (Hearing Transcript pp. 33-34.)
5. Defendant, Stanley B. Owens, excepts to the Finding of Fact Number 7 that Plaintiff could legally bind his estranged wife, Marie C. Owens, who by and through her Divorce Complaint sought to have equitable division of marriage property including but not limited to the subject property and said Exhibit "E", as admitted, fails to include a definite time or price and merely states that a sale may be completed when his divorce problems were solved.
6. Defendant, Stanley B. Owens, excepts to the Finding of Fact Number 13 that a premium was paid for the property by the Plaintiffs when Plaintiff's witness, Daniel Owens, testified that the property was never appraised by a licensed real estate appraiser prior to negotiations and the said parcel was appraised by Richard Provost at \$330,000.00.

7. Defendant, Stanley B. Owens, excepts to the Finding of Fact Number 16 that the only access is gained over the property of Peerless Fuel Company since the Plaintiff Merry testified that he had obtained a legal right-of-way across another adjoining property wherein he had legal access by roadway from a separately owned parcel of the Plaintiff to the southern portion of the subject property being the portion proposed to be granted in purpart to Plaintiff.
8. Defendant, Stanley B. Owens, excepts to the Finding of Fact Number 19 that a timber harvest could not be expected for 50 to 70 years according to the Plaintiff Merrey's testimony found on pages 17 and 18 of the Transcript where the Master totally neglected Mr. Osteim's uncontradicted report that the value of the existing timber was \$49,000.00 and that it would only take a "lifetime" to realize veneer quality timber on the subject property but that differs from marketable timber.
9. Defendant, Stanley B. Owens, excepts to the Finding of Fact Number 23 that the Ostheim timber value of \$49,000.00 did not adjust the value on the basis of the need for a survey in that Mr. Ostheim testified during cross examination that if the adjoining owners could agree to a property line they could agree to cut trees that were an agreed upon distance from that line without a survey (Transcript 88.) Further, by implication, the Master implies that the value of \$49,000.00 is incorrect because it would basically destroy

the property. Although that would actually be the result of a clear-cut timber operation, the Master neglects to set a value for the timber that is to remain on the premises and award the Defendant's their fair share of the value of the same letting the decision to the Plaintiffs as to whether to actually engage in timber operations.

10. Defendant, Stanley B. Owens, excepts to the Finding of Fact Number 26 through 30 the testimony of Donald Harvey Klinger, as a wildlife management expert was objected to on the basis that the undisclosed basis of a purchase of a piece of property by a purchaser should have no bearing on whether the parcel can be partitioned by the Court. Furthermore, the Master failed to take into account as to qualifications that Mr. Klinger never has nor never will achieve the perfect ideal deer herd buck to doe ratio he testified to and it did not matter what the size of the parcel of land he was hired as a wildlife manager.

11. Defendant, Stanley B. Owens, excepts to the Finding of Fact Number 34 that the sale by Daniel Owens of his interest in the premises and the sale by the heirs of Robert Owens of their interest in the property are the best evidence of the premise value as a whole to be One Hundred Fifty Thousand (\$150,000.00) Dollars in that the Master failed to consider the fact that although these were arms-length transactions, Daniel Owens testified that he did not have the property appraised by a licensed real estate appraiser prior to

- negotiating a sale of the property and clearly Daniel Owens had no authority, real or apparent, to negotiate the sale of Marie C. Owens' share.
12. Defendant, Stanley B. Owens, excepts to the Conclusions of Law Number 5 that the property, being 549 acres, is not capable of division without prejudice to or spoiling the whole.
  13. Defendant, Stanley B. Owens, excepts to the Conclusion of Law Number 8 that the property cannot be divided, and that it is not necessary to determine purparts.
  14. Defendant, Stanley B. Owens, excepts to the Conclusion of Law Number 9 that the valuation of the entire property is One Hundred Fifty Thousand (\$150,000.00) Dollars.
  15. Defendant, Stanley B. Owens, excepts to the Conclusion of Law Number 12 that the property shall be offered at a Private Sale, and that the Plaintiffs who own a majority in value of the property shall have it awarded to them at its evaluation of One Hundred Fifty Thousand (\$150,000.00) Dollars.
  16. Defendant, Stanley B. Owens, excepts to the Conclusion of Law Number 13 that the Plaintiffs can purchase Defendants interest for the sum of Fifty-six Thousand Two Hundred Fifty (\$56,250.00) Dollars.
  17. Defendant, Stanley B. Owens, excepts to Conclusion of Law Number 15 that the evidence in connection with the Agreement of Sale between the parties and the applicability of the

Statute of Frauds is admissible to the extent that it is relevant to the issue of the value of the property, and Defendant, Stanley B. Owens' belief as to the value of the property.

18. Defendant, Stanley B. Owens, excepts to the Opinion of the Master as set out on Page 17 of the Master's Report that the testimony of Richard Provost is not credible because his opinions and conclusions were unsupported by evidence, unsupported by reasons and that he ignored the recent arms-length comparable sales of this property.
19. Defendant, Stanley B. Owens, excepts to the Opinion of the Master as set out on Page 17 that Donald Harvey Klinger's testimony was credible especially with regards to deer herd management in that the Defendant, through counsel, objected to Mr. Klinger's testimony in its entirety as to deer herd management because it was irrelevant as to value or division of the property in question.
20. Defendant, Stanley B. Owens, excepts to the Opinion of the Master as set out on Page 17 that the Master can, sua sponte can take judicial notice that of a newspaper article in the progress regarding the sale of properties not previously entered into evidence nor offered by a party in interest.
21. Defendant, Stanley B. Owens, excepts to the Opinion of the Master as set out on Pages 17 and 18 that Craig Ostheim's testimony regarding the value of the timber being \$49,000.00 was negated because of a low interest and no legal right of

way to remove the timber. The Master failed to consider that these factors were included in the valuation of the timber and fails to give the Defendant's their fair value for the standing timber on the property in the event of a forced sale.

22. Defendant, Stanley B. Owens, excepts to the Opinion of the Master as set out on Page 18 that the Master found the testimony of Dan (Daniel) Owens credible as consistent with other testimony when the said Daniel Owens testified he had no authority, written or otherwise, to negotiate for Stanley Owens or Marie C. Owens, that he never had the property appraised prior to setting a price and that he, himself, had health problems which affected his decision to sell.
23. Defendant, Stanley B. Owens, excepts to the Opinion of the Master on Page 18 of the Master's Report that he is not impressed by the testimony of Stanley and Marie Owens with regard to keeping the property in the family and wanting to continue to hunt on the property.
24. Defendant, Stanley B. Owens, excepts to the Opinion of the Master as set forth on Page 18 and 19 of the Maser's Report that Merrey and Braid suffered a detriment in failing to secure the 549.5 acres and that they had any right to rely on Stanley Owens through Exhibit "E" to sell his interest to them when they had no prior writings from him and could not confirm his signature at that time other than relying on Daniel Owens' word.

25. Defendant, Stanley B. Owens, excepts to the findings and or opinion of the Master as set forth on Page 20 that Merrey and Braid could have succeeded in an action for specific performance in a Court of equity to force the sale of the interest of Marie Owens and Stanley Owens.

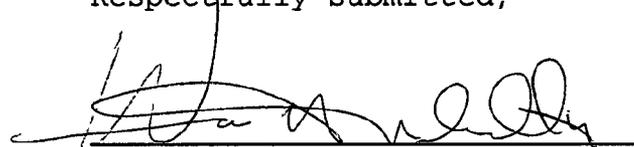
**WHEREFORE,** Stanley B. Owens, Defendant in the above-captioned case, asks that the Court find the following:

a. That the property be partitioned in purparts in accordance with the proportionate interests owned by Plaintiffs and Defendants;

b. In the alternative, that the total value of the property be set at Three Hundred Seventy-Nine Thousand (\$379,000.00) Dollars, the figure testified to by Richard Provost and by Craig Ostheim;

c. In the event the Court should agree with the Master that the property cannot be partitioned in purparts in accordance with the proportionate interest owned by the respective parties, that the Court schedule a hearing to clarify or take evidence on the value of the property only.

Respectfully submitted,



Warren B. Mikesell, II, Esquire  
Attorney for Defendant,  
Stanley B. Owens

**FILED**

FEB 27 2003

William A. Shaw  
Prothonotary

*0/3-45*

*4 cc to [Signature]*

*GA*

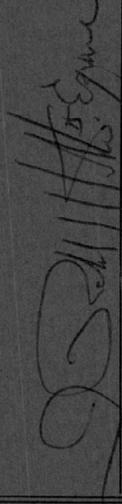
IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.  
CIVIL DIVISION  
NO. 00-1525-CD

DENNIS L. MERREY  
and  
ELMO L. BRAID  
Plaintiffs

-VS-

STANLEY B. OWENS  
and  
MARIE C. OWENS  
Defendants

MASTER'S PRELIMINARY NOTICE  
and  
MASTER'S REPORT  
and  
DECREE NISI



J. RICHARD MATTERN, ESQUIRE  
MASTER IN PARTITION

FEBRUARY 27th., 2003

**RICK MATTERN**  
ATTORNEY AT LAW  
211 EAST PINE STREET

CLEARFIELD, PENNSYLVANIA 16830

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DENNIS L. MERREY  
And ELMO L. BRAID,  
Plaintiffs

vs.

STANLEY B. OWENS and  
MARIE C. OWENS,  
Defendants

: No. 00-1525-CD  
:  
:  
: Type of Case: **Civil**  
:  
: Type of Pleading: **Master's  
Preliminary Notice  
and Master's Report**  
:  
: Filed on Behalf of: **Master  
in Partition**  
:  
:  
: Master of Record:  
:  
: J. RICHARD MATTERN, II, ESQUIRE  
Attorney ID# 06817  
: MASTER IN PARTITION  
211 East Pine Street  
: Clearfield, Pa., 16830  
(814) 765-6416

**FILED** <sup>no</sup>  
 of 10:40 <sup>cc</sup>  
 FEB 27 2003

William A. Shaw  
Prothonotary

#28

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DENNIS L. MERREY and	:	
ELMO L. BRAID,	:	
Plaintiffs	:	
	:	No. 00-1525-CD
vs.	:	
	:	
STANLEY B. OWENS and	:	
MARIE C. OWENS,	:	
Defendants	:	

**MASTER'S PRELIMINARY NOTICE**

AND NOW, this 17<sup>th</sup> day of February, 2003, the duly appointed Master in the above captioned case, J. Richard Mattern II, Esquire, gives this Preliminary Notice and the following proposed findings pursuant to Pa.R.C.P. No. 1563.

1. The subject property consists of 549.5 acres surface and is the eastern half of Warrant No. 5319, situate in Goshen Township, Clearfield County, Pennsylvania, Tax Map No. 115-L04-3 of which the Plaintiffs, Dennis L. Merrey and Elmo L. Braid, own 62.5%, and of which the Defendants Owens own 37.5%.
2. The property is not capable of division without prejudice to or spoiling the whole.
3. The valuation of the property as a whole is One Hundred Fifty Thousand (\$150,000.00) Dollars.
4. There are no mortgages, liens, encumbrances or charges which effect the whole property or any part thereof.

5. The Master recommends and proposes that the subject property be sold at a private sale confined to the parties pursuant to Pa.R.C.P. No. 1563.

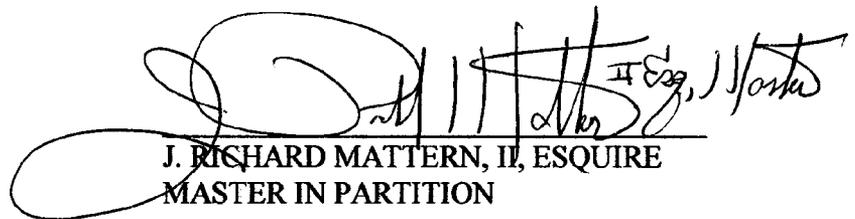
The property will be sold unless objection is made as provided in Rule 1563(b).

Therefore, make objection if you wish under Subdivision (b) of Rule 1563.

6. I intend to file my Master's Report and proposed Decree with the Prothonotary of Clearfield County on February 27, 2003. I enclose a copy of the Master's Report.

Pursuant to Rule 1569 (c), any party will have ten days to file exceptions to the Findings of Fact, Conclusions of Law and to the proposed Decree nisi from the date I file my Master's Report, February 27, 2003.

Respectfully submitted,



J. RICHARD MATTERN, II, ESQUIRE  
MASTER IN PARTITION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DENNIS L. MERREY and :  
ELMO L. BRAID, :  
Plaintiffs :  
 : No. 00-1525-CD  
vs. :  
 :  
STANLEY B. OWENS and :  
MARIE C. OWENS, :  
Defendants :

**CERTIFICATE OF SERVICE**

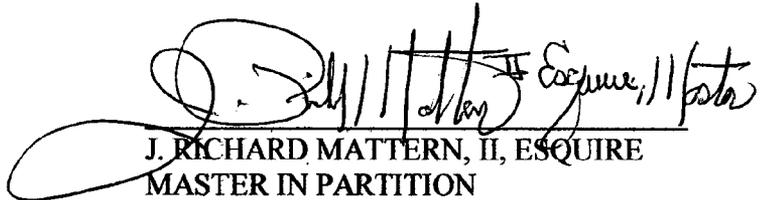
I, J. Richard Mattern II, Esquire, Master in Partition in the above captioned matter, hereby certify that true and correct copies of the "Master's Preliminary Notice" were delivered to the following on February 17, 2003, at the following addresses:

Peter F. Smith, Esq.  
P. O. Box 130  
Clearfield, PA 16830

Warren B. Mikesell, II, Esq.  
115 East Locust Street  
Clearfield, PA 16830

Joseph Colavecchi, Esq.  
221 East Market Street  
Clearfield, PA 16830

Hon. John K. Reilly, Jr.  
President Judge  
Courthouse  
Clearfield, PA 16830

  
J. RICHARD MATTERN, II, ESQUIRE  
MASTER IN PARTITION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DENNIS L. MERREY	:	No. 00-1525-CD
And ELMO L. BRAID,	:	
Plaintiffs	:	
	:	
vs.	:	Type of Case: <b>Civil</b>
	:	Type of Pleading: <b>Master's Report</b>
	:	
STANLEY B. OWENS and	:	
MARIE C. OWENS,	:	Filed on Behalf of: <b>Master</b>
Defendants	:	<b>in Partition</b>
	:	
	:	Master of Record:
	:	
	:	J. RICHARD MATTERN, II, ESQUIRE
	:	Attorney ID# 06817
	:	MASTER IN PARTITION
	:	211 East Pine Street
	:	Clearfield, Pa., 16830
	:	(814) 765-6416



- ○
- C. Whether or not there are any mortgages, liens, encumbrances or charges, which affect the whole property or any part thereof and the amount due thereon;
  - D. In the event that the property is not capable of division without prejudice to or spoiling the whole, then to offer whole the property for private sales to the parties in accordance with the Rules of Civil Procedure and, if a party elects to purchase the premises, then to enter a sales agreement with the purchasing party upon such terms and conditions as the Master deems reasonable subject, however, to confirmation of said sale by the Court;
  - E. To deduct from the sale proceeds any liens and charges as determined by the Master;
  - F. To assess each party his proportionate share of costs including the compensation of appraisers and the Master's fees and to determine whether or not it would be equitable to charge the property or funds resulting there from each party's proportionate share of counsel fees; and,
  - G. In the event that the property cannot be divided without prejudice to or spoiling the whole and if a private sale to one of the parties is not concluded, then to offer the property for sale to the general public and to conclude said sale upon such terms and conditions as the Master deems reasonable subject, however, to conformation of said sale by the Court.

The Masters reports as follows:

1. Pursuant to the duties of the Master, a Pretrial Conference was scheduled to be conducted Thursday, January 24, 2002, commencing at 9:30 AM. The primary undertaking at the conference was to view the subject premises. Said notice was dated January 7, 2002 and is attached hereto marked Exhibit 2.

2. Said View was conducted at the above time and date with the following in attendance: Dennis L. Merrey, Elmo L. Braid, Peter F. Smith, Esquire, Warren B. Mikesell, II, Esquire, and the Master. Travel time and the View consumed approximately two and one-half hours.

3. After multiple correspondence and telephone calls with counsel of record, a Master's Hearing was set for March 26, 2002 commencing at 1:30 at the office of Peter F. Smith. Said Notice, together with addendum, is marked Exhibit 3 and attached hereto.

4. By letter dated March 13, 2002 to the Master Attorney Dwight L. Koerber, Jr., who represented Marie C. Owens, wife of Stanley B. Owens, in a Divorce action, informed the Master that he had a conflict of interest and requested an extension of time to permit Mrs. Owens to retain counsel to participate in the lawsuit.

5. Pursuant to Attorney Koerber's request, Notice was sent by the Master dated March 19, 2002, that the Hearing was continued until April 25, 2002 at 1:30 to be held at the office of Peter F. Smith. Said Notice is marked Exhibit 4 and attached hereto.

6. A Petition for Intervention by Marie C. Owens, wife of Stanley Owens, was filed by Attorney Joseph Colavecchi on April 10, 2002.

7. By letter dated April 12, 2002, Attorney Colavecchi requested that the Master reschedule the Hearing scheduled for April 25, 2002 as he had just been retained as counsel for Marie C. Owens on April 12, 2002.

8. By letter dated April 24, 2002, to John K. Reilly, Jr., President Judge, Peter F. Smith, Esquire, stipulated to the joinder of Marie C. Owens as a Defendant.

9. On May 8, 2002, a status conference was conducted before the Honorable John K. Reilly, Jr. Counsel for Defendants requested a survey. The Master took it under advisement and by letter to all counsel dated May 13, 2002, the Master informed counsel that he would conduct the initial hearing with regard to whether or not the property is capable of division, without prejudice to or spoiling the whole, into parts proportionate in value to the interests of the co-tenants without first having a survey. A copy of said letter is marked Exhibit 5 and attached hereto.

10. By Order dated May 2002, the Court ordered that Partition be made of the real estate described in paragraph 5 of the Complaint in this case consisting of 549.5 acres of surface rights, having Clearfield County Assessment Map Number 115-L04-3 and being the Eastern one-half of Warrant Number 5319, among the parties therein named, as follows:

Stanley B. Owens	37.50%
Dennis L. Merrey and Elmo L. Braid	62.50%

The Order also affirmed the appointment of J. Richard Mattern II, Esquire, as Master. Said Order is marked Exhibit 6 and attached hereto.

11. After numerous further communications and telephone calls with counsel, the Master's Hearing was set to be conducted Thursday, July 25, 2002, commencing at 9:30 AM at the office of Peter F. Smith, Esquire. Copy of said Notice is attached as Exhibit 7.

12. Subsequently, by agreement of all counsel, it was agreed the Hearing would be conducted at the office of Joseph Colavecchi at 9:30 AM, July 25, 2002.

13. Said Hearing was conducted on said date and consisted of approximately seven hours of pre-hearing discussions and testimony.

14. By stipulation of counsel, Sherry Greenland was retained to take testimony and exhibits at said hearing and to further transcribe said testimony. Mrs. Greenland attended the hearing, and subsequently, in the months of August and September transcribed said testimony which consisted of 203 pages. An original and three copies were made of the transcript and were provided to counsel.

15. By letter dated October 11, 2002 from the Master to all counsel of record, the Master requested that counsel submit Briefs and proposed Findings of Fact and Conclusions of Law within thirty days to be received by the Master on or before November 22, 2002. Said letter is marked Exhibit 8 and attached hereto.

16. Said Brief, Proposed Findings of Fact and Conclusions of Law were received by Attorney Peter F. Smith on behalf of Dennis L. Merrey and Elmo L. Braid and by Attorney Colavecchi on behalf of Marie C. Owens by November 22, 2002.

17. By letter dated November 22, 2002, Attorney Mikesell requested a thirty-day continuance which request was granted by the Master, who set the due date for his Brief and Proposed Findings of Fact to be December 23, 2002. A copy of this correspondence is cumulatively marked Exhibits 9 and 10 and attached hereto.

18. The Master has been advanced \$1,250.00 by Peter F. Smith on behalf of his clients, Warren B. Mikesell on behalf of his client, and Joseph Colavecchi on behalf of his client. The Master's fees and costs will be apportioned in accordance with Pennsylvania Rule of Civil Procedure 1574 in accordance with to be paid by the parties in proportion to their interest in the property and will be so allocated in the Master's final Order.

19. This is the Master's allocation of fees and costs pursuant to Pa.R.C..P. 1574.

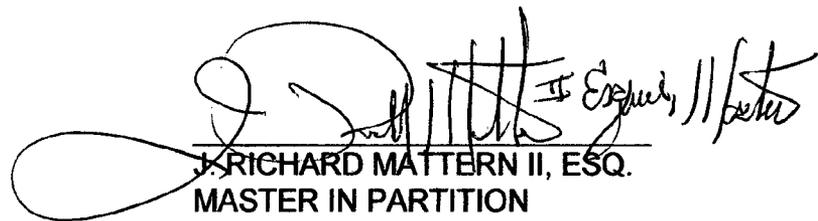
The Master's fees, costs and stenographer's fees total \$6,192.00. The Master's invoice is attached hereto, Exhibit 11, showing a balance due him, after applying credits and allocations, of \$2,442.00.

The allocation is as follows:

Stanley Owens & Marie Owens 37.5%	
37.5% of \$6,192.00 =	\$2,322.00
Stanley Owens - 18.75% =	\$1,161.00
Marie Owens - 18.75% =	\$1,161.00
Stanley Owens	\$1,161.00
Advanced to Master	<u>\$1,250.00</u>
Balance due from Plaintiff for overpayment Pursuant to allocation:	\$ +89.00
Marie Owens	\$1,161.00
Advanced to Master	<u>\$1,250.00</u>
Balance due from Plaintiff for overpayment Pursuant to allocation:	\$ +89.00
Dennis L. Merrey/Elmo L. Braid 62.5%	
62.5% of \$6,192.00 =	\$3,870.00
Advanced to Master:	<u>\$1,250.00</u>
Balance:	\$2,620.00
Adjustment for overpayment by Defendants 2 X \$89.00 to be paid by Plaintiffs	<u>\$ - 178.00</u>
<b>Balance Due Master:</b>	<b>\$2,442.00</b>

20. The Master's Preliminary Notice of proposed Findings and Recommendation was delivered to all parties' counsel and the Court on February 17, 2003.

21. The Master also notified all parties on February 17, 2003 of his intent to file the Master's full Report on February 27, 2003, and enclosed with said Notice a copy of the Mater's Report to all counsel of record.

  
J. RICHARD MATTERN II, ESQ.  
MASTER IN PARTITION

**MASTER IN PARTITION**

**FINDINGS OF FACT**

The Master having thoroughly reviewed the testimony of the hearing and having thoroughly reviewed the proposed Findings of Fact, proposed Legal Conclusions and opinions of all counsel in this matter and having made his own independent Findings of Fact and Legal Conclusions of Law prior to reviewing such, now finds that the proposed Findings of Fact and Conclusions of Law as provided by Peter F. Smith, Esquire, on behalf of Dennis Merrey and Elmo Braid, basically coincide with the Master's independent Findings of Fact and Conclusions of Law.

Therefore, basically, the Master adopts that submitted by Peter F. Smith as his Findings of Fact and Conclusions of Law

Those primary Findings of Fact are:

1. This case involves 549.5 acres of surface, more or less, located in Goshen Township, Clearfield County, Pennsylvania.
2. Plaintiffs acquired an undivided 37.5% interest in the property from Daniel Owens by deed dated August 13, 1999 and recorded at Clearfield County Instrument Number 199913405 (Tr. 10, Pl. Ex. A).
3. Plaintiffs acquired an additional 25% interest in the property by deed from the Heirs of Robert Owens recorded April 5, 2001 at Clearfield County Instrument Number 2000104717. (Tr. 11, Pl. Ex. B).
4. Marie C. Owens intervened in this action and appeared at the Master's hearing with counsel because divorce proceedings are pending between herself and her husband, the Defendant, Stanley B. Owens.
5. Plaintiffs intended to purchase 100% of the five hundred forty-nine acres (549) acres at issue for \$150,000.00. (Tr. 33 & 134). Prior to purchasing any

of these interests, Plaintiffs negotiated with Daniel Owens. Although he did not have a Power of Attorney or written authorization, he represented to the Plaintiffs that he was acting on his own behalf and on behalf of his co-tenants, Defendant Stanley B. Owens and the Heirs of Robert Owens. (Tr. 12, 134 & 137).

✓6. Defendant Stanley B. Owens knew of these discussions, acknowledged that Daniel Owens communicated the substance of his discussions with the Plaintiffs to Defendant Stanley B. Owens and further acknowledged that he knew that Daniel Owens was representing to the Plaintiffs that he was speaking on Stanley Owens' behalf. (Tr. 152).

✓7. Plaintiffs received written assurance by letter from the Defendant that he would sell his 37.5% interest in the property upon the terms negotiated by Daniel Owens. (Tr. 162 & 194 Ex. E).

✓8. Although Defendant Stanley B. Owens disputed the authenticity of this letter, the handwriting and signature were recognized by his brother Daniel Owens (Tr. 132) and by himself later in the proceedings. (Tr. 176).

✓9. The Defendant did acknowledge that he wrote a letter to Plaintiff Dennis L. Merrey in a conversation on the premises that occurred last fall.

✓10. A comparison of the signature on Plaintiffs Exhibit E with the signature on the verification attached to the Defendant's answer reveals a convincing similarity. (Tr. 193).

✓11. Defendant indicated in this letter that he was waiting until his "problems were solved" before completing the sale. (Pl. Ex. E). He was referring to his divorce.

✓12. Relying upon those assurances, Plaintiffs tendered a deposit to Daniel Owens in the amount of \$7,500.00. (Tr. 149). Daniel Owens advised Defendant Stanley B. Owens that he had received the \$7,500.00 and in response to Defendant's

counsel testified that the Defendant "...did not say nothing about not selling..." at that time. (Tr. 149).

13. Plaintiffs paid a premium for the property believing that they would acquire complete ownership of the entire 549.5-acre parcel.

14. Plaintiffs' goal was to acquire a parcel for recreational purposes large enough to keep and manage a deer herd on the property. (Tr. 15).

✓ 15. The property is about five - six miles from the nearest public thoroughfare. (Tr. 18).

✓ 16. Access is gained over the property of Peerless Fuel Company. (Tr. 17).

✓ 17. No written right-of-way agreement exists with Peerless Fuel Company.

✓ 18. The land is unimproved, with vegetative cover, basically rock oak, which is a cut of scrub trees with mountain laurel, red bush, huckleberry patches and very little hardwood timber. The property is basically a flat top with some fairly steep siding and no streams or public utilities. All surrounding properties are used for hunting or recreational purposes. (Tr. 17, 18).

✓ 19. The property was clear-cut several decades ago and will not be suitable for timber harvest for another 50 to 70 years. The Defendant and his co-owners showed the property to a Mr. Iraca from Coalport, who was a logger. It was indicated by Defendant's counsel that Mr. Iraca backed out because there was no marketable timber on the property. (Tr. 18).

20. There are no natural boundaries to the property.

✓ 21. Marie C. Owens' real estate expert Richard Provost testified that the highest and best use of this property is for recreation and camps. (Tr. 126).

22. Defendant Stanley B. Owens responded to the statement that, "this property is best suited for hunting, hiking and recreational purposes? "That's all it's good for." (Tr. 191).

23. Based on the testimony of Craig Ostheim, who is an expert in timber marketing and timber management, and based on his report dated July 24, 2002 , the Master finds as fact that his evaluation of the fair market value of the timber as it sits on the property based on a clear-cut situation of removing the pulp with the saw timber is approximately \$49,000.00. Clear-cutting the property would basically "smoke it" and turn it into a "desert". Mr. Ostheim did state that due to the access to the property coupled with the overall quality and condition of the timber resource, we do not feel that there would be a high level of interest from individuals who wish to harvest the timber. He stated that this was factored into the \$49,000.00 and, of course, this assumes a logger could obtain a legal right of way to remove the timber. Also, the estimate did not adjust the value on the basis of the need for a survey. (Tr. 86-89).

24. The property has never been surveyed to anyone's knowledge. It borders the state gamelands which provides one good boundary line. (Tr. 41 & 67).

25. The record at the Clearfield County Courthouse shows no judgments, mortgages, unpaid taxes, leases or other liens against the property.

26. Based on the testimony of Donald Harvey Klinger, a professional consulting forester, who is engaged in wildlife management and who has had a dozen wildlife management clients in the last five years, from a timber harvesting point of view, the property is not attractive to the logging community in Central Pennsylvania, and clear-cutting the land would cause erosion, depreciate the

value and eliminate food for wildlife. Regarding deer herd management; the average home range of the white-tailed deer is one square mile or 644 acres.

*V of* 27. Mr. Klinger opined that although the property has little timber value, it has excellent potential for wildlife management, specifically whitetail deer. (Tr. 101).

28. Mr. Klinger explained that the average range of a whitetail deer is approximately 1 square mile or 644 acres. Therefore, a larger parcel is better suited to deer herd management. The deer tend to stay within the boundaries of that property where they are being fed, sheltered and protected.

29. The bottom line is that although deer herd management could be conducted on a 320-acre tract, it can be better done on a 560-acre tract. (Tr. 120).

30. Mr. Klinger's evaluation of the property and approach to deer herd management is consistent with the character of the other properties surrounding the premises at issue. This fact was confirmed by the testimony of Plaintiff, Dennis L. Merrey, who testified that all the surrounding properties are large acreage used for hunting and other recreational purposes, for example: Punxsutawney Camp, Crooked Run Camp and Bee Hollow Camp. (Tr. 62).

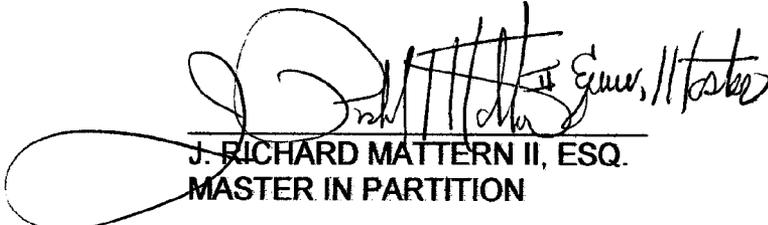
*Vol* 31. Daniel Owens, a former owner of the premises, testified on behalf of the Plaintiffs that he sold his interest in the property for \$56,250.00, which is 37.5% of the negotiated price of \$150,000.00. (Pl. Ex. A).

*Vol* 32. Daniel Owens also testified that his brother Defendant Stanley B. Owens told him that he would sell his 37.5% interest to Plaintiffs upon the same terms as Daniel, once his divorce was concluded. (Pl. Ex. E).

*Vol* 33. Marie C. Owens offered the testimony of Richard J. Provost as an expert real estate appraiser who opined the property had a value of \$330,000.00

or \$600.55 per acre. However, the Master finds his testimony and opinion not credible.

*N/S* 34. The sale by Daniel Owens of his interest in the premises and the sale by the Heirs of Robert Owens of their interest in the property are recent, arms-length, bona-fide transactions and are the best evidence of the premises value as a whole to be \$150,000.00 and of Defendant's 37.5% interest in the premises.

  
J. RICHARD MATTERN II, ESQ.  
MASTER IN PARTITION

**MASTER IN PARTITION**

**CONCLUSIONS OF LAW**

1. This Partition action was properly instituted and served.
2. Marie C. Owens was granted permission to intervene. She has an equitable interest in the property, as she is the wife of Stanley B. Owens.
3. J. Richard Mattern, II, Esquire, was duly authorized to serve as Master in this Partition.
4. The Master properly convened his hearing with all parties present and represented by counsel.
5. The property is not capable of division without prejudice to or spoiling the whole.
6. The Plaintiffs, Dennis L. Merrey and Elmo L. Braid, own an undivided 62.50% interest in the property, and therefore, own the majority of value in the premises.
7. The Defendant, Stanley B. Owens, owns an undivided 37.50% interest in the premises, and therefore, owns the minority of value in the premises.
8. Since the property cannot be divided, it is not necessary to determine purparts.
9. The value of the entire property is \$150,000.00.
10. There are no mortgages, liens or other encumbrances or charges which affect the whole or any part of the property.

11. No party should be allowed a credit or charge because of use and occupancy of the property, taxes, rents or other amounts paid, services rendered, liabilities incurred or benefits derived in connection with the property or from the property.

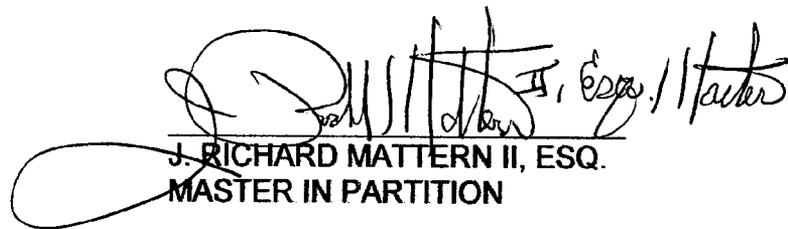
12. Pursuant to Pa.R.C.P. §1563, the property shall be offered for private sale confined to the parties, and in the event that the Plaintiffs, who own a majority in value of the property, object in writing to any sale, the property shall be awarded to them at its evaluation fixed by the court and that their interest in the same remain undivided.

13. In the event that the Plaintiffs exercise their right to object and purchase the Defendant's interest pursuant to Pa. R.C.P. §1563(b), they shall pay the Defendant as owelty the sum of \$56,250.00.

14. The Master has incurred fees and costs to date in the amount of \$6,192.00, which consist of stenographer costs to Sherry Greenland at the hearing, transcribing the testimony, preparing this Report, costs of the transcripts, postage and copying and the fee of the Master. The total fees and costs shall be paid by the parties. The Master acknowledges receipt of \$1,250.00 from Plaintiffs, and \$1,250.00 from Defendant Stanley B. Owens and \$1,250.00 from Defendant Marie C. Owens. These amounts shall be credited against their respective shares of the Master's total bill.

15. Counsel for Marie C. Owens objected to any evidence about an agreement of sale between the parties (Tr. 4) and the applicability of the Statute of Frauds. Said objection is sustained, but testimony as to the alleged agreement between Plaintiffs and Defendant Stanley B. Owens is admissible to the extent that it

is relevant to the issue of the property's value, and Defendant Stanley B. Owens' belief as to the value of the property.



J. RICHARD MATTERN II, ESQ.  
MASTER IN PARTITION

**MASTER IN PARTITION**

**OPINION**

✓ The Master's Findings of Fact are based upon the credibility of witnesses, consistency of testimony, uncontradicted testimony and various written documents.

✓ The Master finds the testimony of Dennis L. Merrey to be very credible as it was consistent, uncontradicted, supported by the testimony of others and supported by written documents, especially Exhibit E.

✓ The Master finds the testimony of Richard Provost not to be credible, as he has given opinions and conclusions unsupported by evidence, unsupported by reasons, and he ignored the recent arms-length comparable sales of this property.

✓ The Master finds the testimony of Stanley B. Owens not to be credible in that it is inconsistent, wishy-washy and whatever his intent was, said intent was not supported by the concrete evidence.

✓ The Master finds the testimony of Donald Harvey Klinger to be credible especially with regard to deer herd management being better accomplished on a tract of land in excess of 500 acres. This is supported, in addition to his testimony, that which the Master takes judicial notice of which consists of multiple ads in the local newspaper, The Progress, under Wanted to Buy, tracts of land of over 500 acres for deer herd management.

The testimony of Craig Ostheim is credible as far as it goes; however, after giving his opinion of the pulp wood to be \$49,000.00, he premises his conclusion with

the statement that there would not be a high level of interest for any one to harvest the timber, and that there is no legal right of way to remove the timber.

The Master finds the testimony of Dan Owens to be credible as consistent with other testimony, the written evidence and the concrete evidence supplied by the Plaintiffs.

✓ The Master is not impressed by the testimony of Stanley Owens and Marie Owens with regard to wanting to keep the property in the family and wanting to continue to hunt on the property. Stanley Owens and his sons have not even hunted on the property for several years. It also appears that Stanley Owens is in poor health and disabled leaving the Master to the conclusion that he couldn't do much hunting on this property.

There is no question that the Plaintiffs desired to purchase 100% of the land or 549.5 acres. There is no question that the only reason they wanted to purchase the land was to secure the whole amount, as this is what is ideal for management of a deer herd. There is no question it was conveyed to Stanley Owens, Dan Owens and Dale Owens their intent to purchase 100% of the tract. There is no question that Dan, Stanley and Dale all knew that the purchasers wanted to buy 100%. This was conveyed to Stanley by Dan Owens. There is no question that the purchase price agreed upon was a total of \$150,000.00. There is no question that Stanley Owens, through Exhibit E, made a promise that he would sell the property when his marriage problems were taken care of. There is no question that the Plaintiffs relied upon this promise and it induced them to purchase the 2/3 of the property they did purchase. They relied on this promise to their detriment. Their detriment is that they did not secure the 549.5 acres. They only secured 320, which is not suitable. Although possible for deer herd management, it is not the ideal amount of land. Therefore, the

Defendant, Stanley Owens, should be estopped from denying his intent to sell the land at this time.

The primary legal conclusion the Master must make in his preliminary proceedings in order for a Court to enter an award pursuant to Rule 1563 are:

1. Can the property be divided without prejudice to or spoiling the whole; and,
2. A determination as to the value of the subject property.

With regard to issue number one:

**CAN THE PROPERTY BE DIVIDED WITHOUT PREJUDICE TO OR SPOILING THE WHOLE?**

The Master concludes:

**THE PROPERTY CANNOT BE DIVIDED WITHOUT PREJUDICE TO OR SPOILING THE WHOLE.**

Prior to a discussion of this matter, the Master would like to point out that in his opinion principles of equitable estoppel govern this transition that equitable estoppel is the preclusion of a person by his act or conduct or silence from asserting rights which might otherwise have existed. Elements or essentials of such estoppel include change of position for the worse by party asserting estoppel. It is also defined as misleading a person to his prejudice. It is also defined as the reliance by a party upon representation or conduct of the person sought to be estopped.

"Legal estoppel" excludes evidence of the truth and the equity of the particular case to support a strict rule of law on grounds of public policy. WHEREAS, "equitable estoppel" is admitted on exactly the opposite ground of promoting the equity and justice of the individual case by preventing a party from asserting his right

under a general technical rule of law, when he has so conducted himself that it would be contrary to equity and good conscience for him to allege and prove the truth.

It was objected by defense counsel at the hearing for the Master to consider any equitable considerations and that the Statute of Frauds were not complied with to provide a proposed sale of the land by Stanley Owens. Based on the Master's Findings of Fact which are in turn based on the conduct, silence and written evidence of Stanley Owens, the Master is of the opinion that the Plaintiffs very well could have succeeded in an action of specific performance in a Court of Equity to force the sale of this land.

It is the opinion of the Master based on his research that the Court gives very wide discretion to the Master under Rule 1558 in determining how much or how little authority to grant the Master. There is no question that the Master is to perform a quasi-judicial function in receiving or rejecting testimony, in evaluating testimony and in reaching conclusions of the issues presented and in the Report that follows rendering adjudication and a proposed Decree.

Be that as it may, the Master was ordered by your Honorable Court to make a determination as to whether or not the property could be divided without prejudice to or spoiling the whole.

The Plaintiffs negotiated to purchase one hundred (100%) percent of the entire acreage. The price they paid to the Defendant's former co-tenants was based on this price. In other words, Plaintiffs agreed to one price for a 549.5 acre tract, not a 300 acre tract.

Given the remote location of this property, the lack of public access and public utilities, the rocky hillside with shrub vegetation, which provides cover and food, all parties agree that that highest and best use of this property is for hunting and

recreation. Plaintiffs and their expert believe that the property taken as a whole is ideal for management of a deer herd and other game. This use requires a larger parcel because a deer's home range is approximately 640 acres.

A review of Pennsylvania's appellate decisions of partition actions provides little guidance on the application or meaning of "without prejudice to or spoiling the whole." Many appeals have been decided, but no case establishes the factors, which should or can be considered in the determination of whether division can be accomplished without spoiling or prejudicing the whole.

This is a fact-sensitive determination, which is left to the sound discretion of the Master.

Partition actions are part of Pennsylvania's equity jurisprudence. Sellers v. Hanratty, 343 Pa. 316, 22 A.2d 697 (1941). The role of Equity is to consider all relevant facts and render a fair result.

✓ On this basis, the Master considered the property's history, its location, the uses to which the parties have put it, the nature of the surrounding properties and their uses, and the property's future potential. The remote location, the absence of public utilities, the absence of frontage on a public right-of-way and similar considerations indicate that this property will never be suited for a residential subdivision, a retail establishment or similar uses. Surrounding properties are all large acreage hunting camps.

All would agree that clear cutting would destroy the property's scenic beauty. It would also greatly reduce its recreational and hunting value.

The parties through their testimony and their actions demonstrate that the property is best suited for recreational purposes. For many in Clearfield County, outdoor recreation is synonymous with hunting, and the favorite quarry is the whitetail

deer. In fact, this is the Plaintiffs' motivation for purchasing the property. Successful deer herd management requires adequate acreage, some investment in food plots and cover, record keeping and a disciplined harvest. A unified ownership and management best achieve these goals. Hunting parties on smaller parcels can also pose safety issues.

Several generations of the Owens family have owned this property. They prized and used the property as a whole. If it were only a question of dividing the acreage, the property could and probably would have been partitioned ages ago.

Recently, two branches of the Owens family decided it was time to sell. Stanley Owens and his families' attachment to the whole property are acknowledged. However, the modern rules governing joint ownership supercede family attachments. The rules governing Partition make sense because a point is reached where joint ownership is not feasible or desirable to all. Families multiply and divide with each generation. Some members move away. Some need money more than land.

Defendant's own circumstances illustrate this point. Attorney Colavecchi questioned if there was a falling out between Stanley Owens and his brother. Stanley and Marie Owens are divorcing. Neither is working, and both have health problems. Cash would serve their needs better than a remote hilltop in Goshen. Stanley Owens and his sons have not hunted together or had contact for several years because of the marital situation and a PFA.

The Master concludes for these reasons that this property cannot be divided without spoiling and prejudicing the whole.

Pa.R.C.P. 1563(a) then mandates that, "...the whole shall be offered for private sale confined to the parties." Subsection (b) of that rule grants the party owning a majority in value of the property the right to purchase at its valuation fixed

by the Court. Plaintiffs own a 62.5% interest and have the first opportunity to purchase the outstanding interest. The valuation of the property is the next and final issue for the Master's decision.

The second issue for the Master to consider is:

**WHAT IS THE VALUE OF THE SUBJECT PROPERTY?**

The Master concludes:

**THE VALUE OF THE WHOLE IS \$150,000.00.**

This case presents three compelling pieces of evidence establishing the monetary value of the subject property. This evidence is obvious. The first two are Plaintiffs' deeds, Exhibits A and B, which are of public record and easily accessible to all. Marie C. Owens' expert Mr. Provost, while acknowledging their existence, chose to completely ignore those deeds in his formulation of the property's value.

The price which Plaintiffs paid Daniel Owens to acquire his 37.5% interest in the property was 37.5% of \$150,000.00 or \$56,250.00. Plaintiffs then paid the heirs of Robert Owens 25% of \$150,000.00 or \$37,500.00 to acquire their 25% interest in the property. The testimony of Daniel Owens and Plaintiff Dennis L. Merrey shows that those prices were negotiated over a period of several weeks. These negotiations show that the sellers had ample opportunity to consider, discuss and reflect upon the price they would accept.

Mr. Merrey and Mr. Owens negotiated in terms of one price for the entire tract. They did not negotiate in terms of dollars per acre.

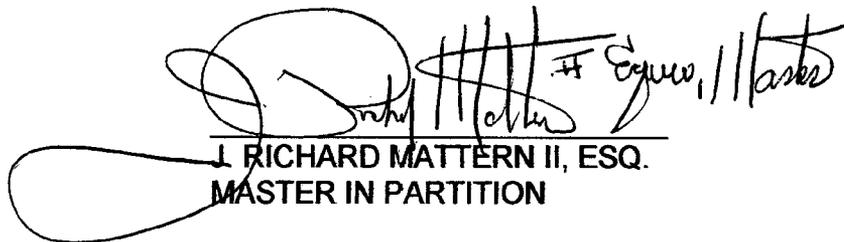
The sales occurred in 2001. They involve the subject property. Daniel Owens' interest is identical in every respect to the Defendant's. There can be no more relevant evidence of the property's value, but Mr. Provost did not consider it.

Daniel Owens' testimony also states that the parties had sought other buyers but could not get the price they wanted. In fact, Stanley Owens recalled agreeing to sell the entire property for \$20,000.00 several years earlier, but the buyers backed out. (Tr. 190).

Much testimony was presented at the Master's Hearing of Stanley Owens' role, howbeit disputed by him, in these negotiations. Eventually, he admitted writing a letter to the Plaintiffs, which he sent to his brother Daniel. Although his recollection of the letter's contents and what the letter actually states reveal some "slippage", he did acknowledge that it appeared to be his handwriting

This evidence is admissible not to establish an agreement between Stanley Owens and the Plaintiff but rather as an expression of Stanley Owens' opinion as to the property's value and as an admission against his interest. Pa.R.E. 803(25): Pascal Pennsylvania Evidence §803(25) (St. Paul Minn. 1999). Traditionally, Pennsylvania Courts have permitted the owners of property to express their opinion as to their property's value. Id., §701-1, footnote 13.

The record of this case presents clear and compelling evidence produced by the parties' conduct and affecting their personal monetary interests. This evidence proves the value of the property to be \$150,000.00.

  
J. RICHARD MATTERN II, ESQ.  
MASTER IN PARTITION

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

COPY

DENNIS L. MERREY and  
ELMO L. BRAID  
Plaintiffs

vs.

No. 00-1525-CD

STANLEY B. OWENS  
Defendant

FILED

DEC 18 2001

William A. Shaw  
Prothonotary

ORDER

AND NOW this 18 day of December, 2001, this being the date and time set by this Court for hearing on Plaintiff's Motion for an Order Directing Partition and Answer having been filed, it is:

ORDERED, ADJUDGED and DECREED, that J. Richard Mattem, Esq. is hereby appointed to serve as Master in the above-referenced case. The Master is authorized and directed to hear testimony and receive exhibits concerning the following issues, take the following acts and report to the Court his Findings of Fact and Conclusions of Law:

- A. Whether or not the property is capable of division, without prejudice to or spoiling the whole, into parts proportionate in value to the interests of the co-tenants;
- B. The value of the entire property;
- C. Whether or not there are any mortgages, liens, encumbrances or charges which affect the whole property or any part thereof and the amount due thereon;
- D. In the event that the property is not capable of division without prejudice to or spoiling the whole, then to offer whole the property for private sale to the parties in accordance with the Rules of Civil Procedure and, if a party elects to purchase the premises, then to enter a sales agreement with the purchasing party upon such terms and conditions as the Master deems reasonable subject, however, to confirmation of said sale by the Court;
- E. To deduct from the sale proceeds any liens and charges as determined by the Master.
- F. To assess each party his proportionate share of costs including the compensation of appraisers and the Master's fees and to determine whether or not it would be equitable to charge the property or funds resulting therefrom each party's proportionate share of counsel fees; and,

EXHIBIT # 1

G. In the event that the property cannot be divided without prejudice to or spoiling the whole, and if a private sale to one of the parties is not concluded, then to offer the property for sale to the general public and to conclude said sale upon such terms and conditions as the Master deems reasonable subject, however, to confirmation of said sale by the Court.

BY THE COURT:

/s/ JOHN K. REILLY, JR.

---

President Judge

COPY

**RICK MATTERN**  
LAWYER  
211 EAST PINE STREET  
CLEARFIELD, PENNSYLVANIA 16830

FAX  
(814) 765-2620

TELEPHONE  
(814) 765-6416

DATE: January 7, 2002

TO: Peter F. Smith, Esquire  
P. O. Box 130  
Clearfield, PA 16830

Warren B. Mikesell, II., Esq.  
115 East Locust Street  
Clearfield, PA 16830

FROM: J. Richard Mattern II  
Master in Partition

RE: Dennis L. Merrey and Elmo L. Braid, Plaintiffs  
Vs. Stanley B. Owens, et al.  
No. 00-1525-CD

Gentlemen:

Please be advised that a Pre-Trial Conference will be conducted in this matter on Thursday, January 24, 2002, commencing at 9:30 AM.

This Conference will include as its primary concern a View of the subject premises, at which time, we will discuss scheduling of formal hearing and whether or not appraisals will be obtained.

The approximate time needed to View the premises is two and one-half to three hours. Please allot in your schedules with travel distance, three and one-half hours.

I suggest we meet at the office of Peter F. Smith to travel together to View the premises at 9:00 AM.

Very truly yours,

J. Richard Mattern II  
MASTER IN PARTITION

JRM/sg

EXHIBIT # 2

**RICK MATTERN**

LAWYER

211 EAST PINE STREET  
CLEARFIELD, PENNSYLVANIA 16830

FAX  
(814) 765-2620

March 14, 2002

TELEPHONE  
(814) 765-6416

TO: Peter F. Smith, Esquire  
P.O. Box 130  
Clearfield, Pa. 16830

Warren B. Miksell, II, Esq.  
115 East Locust Street  
Clearfield, Pa. 16830

RE: MERREY & BRAID -vs- OWENS  
No. 00-1525-CD

Please be advised that the Notice of Master's Hearing of March 13th, 2002 inadvertently states the Hearing date to be March 19th., whereas the correct Hearing Date agreed upon was MARCH 26th., 2002.

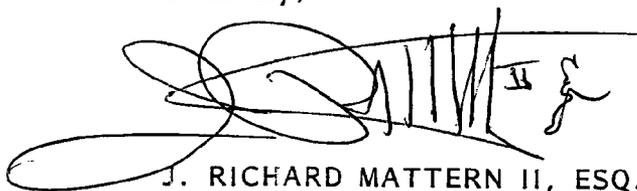
In the meantime, today I received a letter from Dwight Koerber, Esq. who represented Marie Owens requesting a Continuance for Mrs. Owens to secure new Counsel.

If you are in agreement with Attorney Koerber's request for a continuance, please advise.

Other dates that were available are April 25th and April 30th, 2002. If you still have these dates available I could reschedule the matter for one of these dates. That would give Mrs. Owens over a month to secure new Counsel.

Please respond to this office in the near future.

Sincerely,



J. RICHARD MATTERN II, ESQ.  
MASTER IN PARTITION

JRM II: rm  
cc: Dwight Koerber, Esq.

EXHIBIT #3

**RICK MATTERN**

LAWYER

211 EAST FINE STREET  
CLEARFIELD, PENNSYLVANIA 16830

FAX  
(814) 765-2620

March 19, 2002

TELEPHONE  
(814) 765-6416

Peter F. Smith, Esquire  
P. O. Box 130  
Clearfield, PA 16830

Warren B. Mikesell, II, Esq.  
115 East Locust Street  
Clearfield, PA 16830

John Sughrue, Esquire  
23 North Second Street  
Clearfield, PA 16830

Dwight Koerber, Jr., Esquire  
110 North Second Street  
Clearfield, PA 16830

RE: **Dennis L. Merrey and Elmo L. Braid, Plaintiffs  
vs. Stanley B. Owens  
No. 00-1525-CD**

Gentlemen:

Please be advised that the Master's Hearing in regard to the above captioned action is now continued until **April 25, 2001 at 1:30 PM** to be held at the Offices of Peter F. Smith, Esquire, 30 South Second Street, Clearfield, Pa.

This should certainly give Mrs. Owens ample time to secure counsel.

I assume as this letter is directed to both Attorney Sughrue and Dwight Koerber's office that Mrs. Owens will be notified of the time and date of the Hearing by either Attorney Sughrue or Attorney Koerber's office.

The issues to be covered were outlined in the original Notice of Master's Hearing dated and mailed March 13, 2002.

I want to emphasize that no continuances of this Hearing will be granted other than for an absolute emergency situation involving accident, sickness, death or the like.

Very truly yours,

  
J. Richard Mattern II  
MASTER IN PARTITION

JRM/sg

EXHIBIT #4

**RICK MATTERN**

LAWYER

211 EAST PINE STREET  
CLEARFIELD, PENNSYLVANIA 16830

FAX  
(814) 765-2620

May 13, 2002

TELEPHONE  
(814) 765-6416

Peter F. Smith, Esquire  
P. O. Box 130  
Clearfield, PA 16830

Warren B. Mikesell, II, Esq.  
115 East Locust Street  
Clearfield, PA 16830

Joseph Colavecchi, Esq.  
P. O. Box 131  
Clearfield, PA 16830

**RE: Dennis L. Merrey and Elmo L. Braid, Plaintiffs  
vs. Stanley B. Owens  
No. 00-1525-CD**

Gentlemen:

After consideration of the issues brought up at the meeting with Judge Reilly on May 8, I have decided to conduct the initial hearing with regard to whether or not the property is capable of division, without prejudice to or spoiling the whole, into parts proportionate in value to the interests of the co-tenants, WITHOUT first having a survey.

If, during the process of the hearing, it becomes absolutely necessary in my opinion to have such a survey to resolve the issues, then in such case, I will continue the hearing and request that a survey be conducted.

In the event my decision is that the property is capable of division without spoiling the whole, then in such case, to divide the property accurately, a survey would probably be necessary.

I will be available to conduct a hearing on the following dates: June 18, 20, 21, 25, 27, 28, July 11, 16, 18, 23, 25 or 30.

I would appreciate it if respective counsel would communicate with each other as to availability dates, reach an agreement and inform this office of the availabilities.

Very truly yours,

J. Richard Mattern II, Esquire  
MASTER IN PARTITION

JRM/sg

EXHIBIT # 5

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

DENNIS L. MERREY and ELMO :  
L. BRAID :  
Plaintiffs :  
vs. : No. 00 - 1525 - CD  
STANLEY B. OWENS :  
Defendant :

ORDER DIRECTING PARTITION  
UNDER PENNSYLVANIA R.C.P. 1557

AND NOW, this \_\_\_\_\_ day of May, 2002, a Motion for an Order Directing Partition having been filed by Plaintiffs and no one having filed Objections to it, it is hereby ORDERED, ADJUDGED and DECREED that Partition be made of the real estate described in Paragraph 5 of the Complaint in this case consisting of 549.5 acres of surface rights, having Clearfield County Assessment Map Number 115-L04-3 and being the Eastern one-half of Warrant Number 5319, among the parties therein named, as follows:

Stanley B. Owens	37.50%
Dennis L. Merrey and Elmo L. Braid	62.50%

The Order of this Court dated December 18, 2001 appointing J. Richard Mattern, Esquire, is affirmed nunc pro tunc.

EXHIBIT # 6

The Preliminary Conference, Status Conference, and all legal proceedings that have taken place before this Court prior to the date of this Order of Partition are affirmed nunc pro tunc.

BY THE COURT:

\_\_\_\_\_  
PRESIDENT JUDGE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DENNIS L. MERREY	:	No. 00-1525-CD
And ELMO L. BRAID,	:	
Plaintiffs	:	
	:	
vs.	:	Type of Case: <b>Civil</b>
	:	Type of Pleading: <b>Notice of Master's</b>
	:	<b>Hearing</b>
STANLEY B. OWENS and	:	
MARIE C. OWENS,	:	
Defendants	:	Filed on Behalf of: <b>Master</b>
	:	<b>in Partition</b>
	:	
	:	Master of Record:
	:	
	:	J. RICHARD MATTERN, II, ESQUIRE
	:	Attorney ID# 06817
	:	MASTER IN PARTITION
	:	211 East Pine Street
	:	Clearfield, Pa., 16830
	:	(814) 765-6416

EXHIBIT # 7

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DENNIS L. MERREY and :  
ELMO L. BRAID, :  
Plaintiffs :  
 : No. 00-1525-CD  
vs. :  
 :  
STANLEY B. OWENS and :  
MARIE C. OWENS, :  
Defendants :

**NOTICE OF MASTER'S HEARING**

TO: Peter F. Smith, Esquire Warren B. Mikesell, II, Esq. Joseph Colavecchi, Esq.  
P. O. Box 130 115 East Locust Street P. O. Box 131  
Clearfield, PA 16830 Clearfield, PA 16830 Clearfield, PA 16830

Please be advised that J. Richard Mattern, II, Esquire, Master in Partition, in regard to the above captioned action will conduct a Hearing on **Thursday, July 25, 2002**, commencing at 9:30 AM at the offices of Peter F. Smith, Attorney at Law, 30 South Second Street, Clearfield, Pa., 16830.

The purpose of this Hearing is pursuant to Court Order dated December 18, 2001, whereby the Master is authorized and directed to hear testimony and receive exhibits concerning the following issues and take the following actions:

A. Whether or not the property is capable of division, without prejudice to or spoiling the whole, into parts proportionate in value to the interests of the co-tenants; If, during the process of the Hearing, it becomes absolutely necessary in the opinion of the Master to have a survey to resolve this issue, then in such case, the Hearing will be continued, and a survey will be requested.

B. The value of the entire property;

C. Whether or not there are any mortgages, liens, encumbrances or charges, which affect the whole property or any part thereof and the amount due thereon;

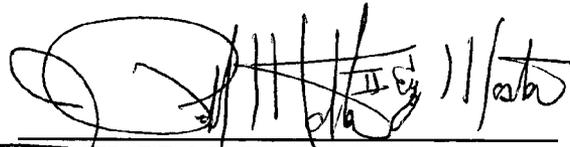
D. In the event that the property is not capable of division without prejudice to or spoiling the whole, then to offer whole the property for private sales to the parties in accordance with the Rules of Civil Procedure and, if a party elects to purchase the premises, then to enter a sales agreement with the purchasing party upon such terms and conditions as the Master deems reasonable subject, however, to confirmation of said sale by the Court;

E. To deduct from the sale proceeds any liens and charges as determined by the Master;

F. To assess each party his proportionate share of costs including the compensation of appraisers and the Master's fees and to determine whether or not it would be equitable to charge the property or funds resulting therefrom each party's proportionate share of counsel fees; and,

G. In the event that the property cannot be divided without prejudice to or spoiling the whole and if a private sale to one of the parties is not concluded, then to offer the property for sale to the general public and to conclude said sale upon such terms and conditions as the Master deems reasonable subject, however, to conformation of said sale by the Court.

Very truly yours,



Date: May 31, 2002

J. RICHARD MATTERN, II, ESQUIRE  
MASTER IN PARTITION

**RICK MATTERN**  
LAWYER  
211 EAST PINE STREET  
CLEARFIELD, PENNSYLVANIA 16830

FAX  
(814) 765-2620

TELEPHONE  
(814) 765-6416

October 11, 2002

Peter F. Smith, Esquire  
P. O. Box 130  
Clearfield, PA 16830

Warren B. Mikesell, II, Esq.  
115 East Locust Street  
Clearfield, PA 16830

Joseph Colavecchi, Esq.  
P. O. Box 131  
Clearfield, PA 16830

**RE: Dennis L. Merrey and Elmo L. Braid, Plaintiffs  
vs. Stanley B. Owens  
No. 00-1525-CD**

Gentlemen:

By now, you have received a copy of the transcript prepared by Sherry Greenland in regard to the above captioned action. I am in the process of doing my Report. However, I will not complete my Findings and Conclusions of Law until I receive your positions.

Kindly submit to me within the near future (No deadline; I realize you may have other pressing matters.) a Brief stating your client's position with proposed Findings of Fact and Conclusions of Law.

Also, at this time, I am requesting another interim payment, which will cover my time to date, in the amount of \$750.00 each.

Of the \$1,500.00 advanced previously, the stenographer fees, transcribing the testimony, preparing copies and preparation of the Report will amount to approximately \$1,000.00.

Very truly yours,

J. Richard Mattern II, Esquire  
MASTER IN PARTITION

JRM/sg

EXHIBIT # 8-A

**RICK MATTERN**

LAWYER

211 EAST PINE STREET  
CLEARFIELD, PENNSYLVANIA 16830

FAX  
(814) 765-2620

October 18, 2002

TELEPHONE  
(814) 765-6416

Peter F. Smith, Esq.  
P.O. Box 130  
Clearfield, Pa. 16830

Warren B. Mikesell, II, Esq.  
115 East Locust Street  
Clearfield, Pa. 16830

Joseph Colavecchi, Esq.  
P.O. Box 131  
Clearfield, Pa. 16830

RE: Dennis L. Merrey and Elmo L. Braid, Plaintiffs

-vs-

Stanley B. Owens

No. 00-1525-CD

Gentlemen:

I find the suggestion of Attorney Joseph Colavecchi in his letter to me of October 14, 2002, (copies of which you received) to be reasonable and appropriate.

Accordingly, I am setting a deadline for all briefs to be received by me to be FRIDAY, NOVEMBER 22nd., 2002.

Sincerely yours,

J. RICHARD MATTERN, II, ESQ  
MASTER IN PARTITION

JRM II: rm

EXHIBIT # 8-B

**MIKESELL & MIKESELL**

ATTORNEYS AT LAW  
115 EAST LOCUST STREET  
CLEARFIELD, PENNSYLVANIA 16830

DONALD R. MIKESELL  
WARREN B. MIKESELL II

TELEPHONE (814) 765-6605  
FAX (814) 765-9039

November 22, 2002

Mr. J. Richard Mattern II, Esquire  
211 East Pine Street  
Clearfield, PA 16830

In Re: Dennis L. Merrey and Elmo L. Braid,  
Vs. Stanley B. Owens, et al.; No. 00-1525-CD

Dear Rick:

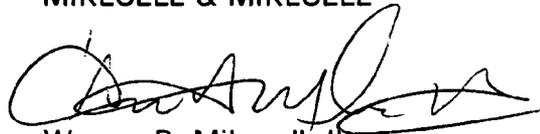
This letter is written to request a thirty (30) day continuance in submitting a brief for the above stated matter (for personal reasons).

Enclosed please find check number 1860 in the amount of seven hundred fifty (\$750.00) dollars representing payment for Mr. Owens' share of the costs associated with appointment of Master in the above matter. I am concerned that the costs are not being apportioned in accordance with Pennsylvania Rule of Civil Procedure 1574 which requires all fees and costs to be paid by the parties in proportion to their interest in the property. The total Owens' interest is only thirty-seven and one-half (37.5%) percent and therefore their total shall of all Court costs (including Master's fees and reporter fees) should be in proportion to their share. I trust that this will be allocated in your Final Order.

Kindly advise.

Very truly yours,

MIKESELL & MIKESELL

  
Warren B. Mikesell, II

WBM/kkj  
Enclosure

EXHIBIT # 9

**RICK MATTERN**  
LAWYER  
211 EAST PINE STREET  
CLEARFIELD, PENNSYLVANIA 16830

FAX  
(814) 765-2620

TELEPHONE  
(814) 765-6416

December 4, 2002

Warren B. Mikesell, II, Esq.  
115 East Locust Street  
Clearfield, PA 16830

**RE: Dennis L. Merrey and Elmo L. Braid, Plaintiffs  
vs. Stanley B. Owens  
No. 00-1525-CD**

Dear Warren:

This is to acknowledge receipt of your letter of November 22, 2002 in regard to the above captioned matter. Your request for a thirty-day continuance to submit your Brief is granted. Accordingly, your Brief is due on or about Monday, December 23, 2002.

Also, you can be assured I will apportion the total costs in my final Order pursuant to the Pennsylvania Rules of Civil Procedure.

Sincerely yours,

J. Richard Mattern II  
MASTER IN PARTITION

JRM/sg

cc: Peter F. Smith, Esq. (w. enc.)  
Joseph Colavecchi, Esq. (w. enc.)

EXHIBIT # 10

**RICK MATTERN**  
LAWYER  
211 EAST PINE STREET  
CLEARFIELD, PENNSYLVANIA 16830

FAX  
(814) 765-2620

TELEPHONE  
(814) 765-6416

---

***FOR PROFESSIONAL SERVICES RENDERED***

**RE: Dennis L. Merrey and Elmo L. Braid  
vs. Stanley B. Owens and Marie C. Owens  
No. 00-1525-CD  
MASTER IN PARTITION**

- 12/19/01      Securing all filed papers from Prothonotary:  
Complaint, Answer, etc., Review to determine issues;
- 1/7/02        Prepare Notice of Preliminary Hearing Conference; calls to Attorneys  
Mikesell and Smith;
- 1/24/02      Travel to premises to review property at issue. Secure plat map of  
property;
- 2/19/02      Phone communications with counsel to set hearing date for 3/26/02;  
Preparation Master's Notice of Hearing and service of the same;
- 3/19/02      Prepare additional Master's Hearing Notice continuing Hearing to 4/25/02  
after numerous phone communications;
- 4/12/02      Review Attorney Colavecchi's letters and Petition to Intervene on behalf  
of Marie Owens;
- 5/8/02        Status Conference with Judge Reilly Re: Survey, appraisal and hearing;
- 5/13/02      Written communications to counsel of record, Re: Survey and hearing  
date;
- 5/2-5/3/02   Scheduling hearing and preparation and service of Master's Notice of  
Hearing setting date for July 25, 2002;

**EXHIBIT #11**

**RE: Dennis L. Merrey and Elmo L. Braid  
Vs. Stanley B. Owens and Marie C. Owens  
Master in Partition Services  
Page 2 of 3**

10/11 -  
10/18/02 Written communication to attorneys regarding fee and brief deadlines:

10/14 -  
10/24/02 Review transcript, make notes for Findings of Fact; letter to Attorney Mikesell regarding continuance to file Brief

12/9/02 Work on Master's Report, review Attorney Colavecchi and Attorney Smith's Findings of Fact, Conclusions of Law and Briefs;

1/6/03 Continue work on Report; Review Attorney Mikesell's Findings of Fact, Conclusions of Law and Brief;

1/7, 1/14  
& 1/21 Findings of Fact;

1/28 Conclusions of Law/Opinion;

2/5 Master's Preliminary Notice of Proposed Value and proposed property be sold, review rules;

2/6 Preparation Notice of Intent to file Master's Report;

2/11-2/21 Complete Master's Report and file;

Time spent at View, status conference, hearing and writing opinion are billed at \$150.00 per hour.

Time spent otherwise: office, notices, correspondence, reviewing testimony, phone communications, making Findings of Fact, etc., all time other than above billed at \$75 per hour.

**Total Time**

45.25 hours @ \$75.00 per hour	\$3,393.75
12.25 hours at \$150.00 per hour	<u>\$1,912.50</u>
<b>Total</b>	<b>\$4,968.75</b>

**RE: Dennis L. Merrey and Elmo L. Braid  
Vs. Stanley B. Owens and Marie C. Owens  
Master in Partition Services  
Page 3 of 3**

**BALANCE FORWARDED: \$4,968.75**

**Sherry Greenland, Stenographer**

Hearing & transcription  
46 hours @ \$15.00 per hour: \$690.00

Office Time - Preparation Report  
32 hours @ \$12.00 per hour: \$384.00

Costs: Batch Business Machines  
& ink cartridge \$ 98.53

**TOTAL: \$1,172.53 \$1,172.53**

Miscellaneous: Copying Report,  
Notices, correspondence, etc., at office  
260 copies @ \$.20 each: \$52.00 \$ 52.00

**TOTAL FEES AND COSTS: \$6,193.28**

**Rounded to: \$6,192.00**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DENNIS L. MERREY and  
ELMO L. BRAID,  
Plaintiffs

vs.

STANLEY B. OWENS and  
MARIE C. OWENS,  
Defendants

No. 00-1525-CD

**FILED**

FEB 28 2003

William A. Shaw  
Prothonotary

DECREE NISI

AND NOW, this 28<sup>th</sup> day of February, 2003, the Court  
acknowledges the Master in Partition Report of J. Richard Mattern II, Esquire.

ACCORDINGLY, the Court finds:

1. The subject property consists of 549.5 acres surface, the eastern half of Warrant No. 5319, situate in Goshen Township, Clearfield County, Pennsylvania, Tax Map No. 115-L04-3, of which Plaintiffs Dennis L. Merrey and Elmo L. Braid own 62.5% and of which Defendants Stanley B. Owens and Marie C. Owens own 37.5%;  
The property is not capable of division without prejudice to or spoiling the whole;
2. The valuation of the property as a whole is One Hundred Fifty Thousand (\$150,000.00) Dollars;
3. There are no mortgages, liens or encumbrances or charges which effect the whole property or any part thereof.

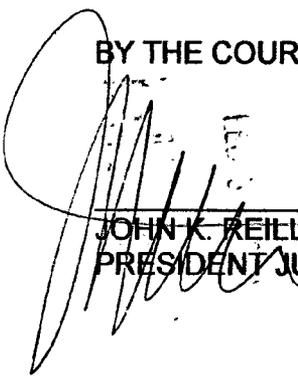
*(Handwritten initials)*

4. The balance of the Master's fees, costs and Stenographer fees are hereby ORDERED to be paid to the Master, J. Richard Mattern II, Esquire, by Dennis L. Merrey and Elmo L. Braid in the amount of \$2,442.00, and pursuant to the Master's allocation, Plaintiffs are to reimburse Attorney Colavecchi for Marie C. Owens the amount of \$89.00 and Attorney Mikesell for Stanley B. Owens the amount of \$89.00.

ACCORDINGLY, the Court ORDERS that the subject property be sold at a private sale confined to the parties pursuant to Pa.R.C.P. No. 1563.

Said property will be sold unless objection is made as provided in Rules 1563(b).

BY THE COURT,

  
\_\_\_\_\_  
JOHN K. REILLY, JR.  
PRESIDENT JUDGE

**FILED**

019:5081

FEB 28 2003

William A. Shaw  
Prothonotary

200

Attly matter.

*[Handwritten initials]*

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

DENNIS L. MERREY and ELMO :  
L. BRAID :  
Plaintiffs :  
vs. : No. 00 - 1525 - CD  
STANLEY B. OWENS and :  
MARIE C. OWENS, :  
Defendants :

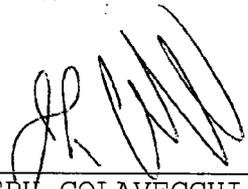
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27<sup>th</sup> day of February, 2003, a true and correct copy of Exceptions to Master's Report by Marie C. Owens, in regard to the above matter, was served on the following by depositing said copy in the United States Mail, first class, postage prepaid and addressed as follows:

J. Richard Mattern, II  
Attorney at Law  
211 East Pine Street  
Clearfield, PA 16830

Peter F. Smith  
Attorney at Law  
P.O. Box 130  
Clearfield, PA 16830

Warren Mikesell, Esquire  
Mikesell & Mikesell  
115 East Locust Street  
Clearfield, PA 16830



JOSEPH COLAVECCHI, ESQUIRE  
Attorney for Marie C. Owens  
221 East Market Street  
Clearfield, PA 16830  
814/765-1566

**FILED**

**FEB 25 2003**

**William A. Shaw  
Prothonotary**

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

(27)

**FILED**

FEB 25 2003

*0/3:41 PM*

*no cc*

**William A. Shaw  
Proprietary**

*ES*

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

No. 00 - 1525 - CD

DENNIS L. MERREY and ELMO L.  
BRAID,  
Plaintiffs

vs.

STANLEY B. OWENS and  
MARIE C. OWENS,  
Defendants

EXCEPTIONS TO MASTER'S REPORT  
BY MARIE C. OWENS

**FILED**

500

0/3:42 PM  
FEB 25 2003

J. Colavecchi  
GAC

William A. Shaw  
Proprietary

**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

DENNIS L. MERREY and ELMO L.  
BRAID,

Plaintiffs

vs.

STANLEY B. OWENS and MARIE C.  
OWENS,

Defendants

CIVIL DIVISION

No. 00 - 1525 - CD

EXCEPTIONS TO MASTER'S REPORT  
BY MARIE C. OWENS

Filed on Behalf of:

Petitioner, MARIE C. OWENS

Counsel of Record for This  
Party:

JOSEPH COLAVECCHI, ESQUIRE  
Pa. I.D. #06810

COLAVECCHI & 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**

FEB 25 2003

William A. Shaw  
Prothonotary

#26



4. Defendant excepts to Conclusion of Law Number 8 that the property cannot be divided, and that it is not necessary to determine purparts.

5. Defendant excepts to Conclusion of Law Number 9 that the valuation of the entire property is One Hundred Fifty Thousand (\$150,000) Dollars.

6. Defendant excepts to Conclusion of Law Number 12 that the property shall be offered at a Private Sale, and that the Plaintiffs who own a majority in value of the property shall have it awarded to them at its evaluation of One Hundred Fifty Thousand (\$150,000) Dollars.

7. Defendant excepts to Conclusion of Law Number 13 that the Plaintiffs can purchase Defendants interest for the sum of Fifty-six Thousand Two Hundred Fifty (\$56,250) Dollars.

8. Defendant excepts to Finding of Fact Number 34 that the sale by Daniel Owens of his interest in the premises and the sale by the heirs of Robert Owens of their interest in the property are the best evidence of the premise value as a whole to be One Hundred Fifty Thousand (\$150,000) Dollars.

9. Defendant excepts to Conclusion of Law Number 15 that the evidence in connection with the Agreement of Sale between the parties and the applicability of the Statute of Frauds is

admissible to the extent that it is relevant to the issue of the value of the property, and Defendant, Stanley B. Owens' belief as to the value of the property.

10. Defendant excepts to the Opinion of the Master as set out on Page 17 of the Master's Report that the testimony of Richard Provost is not credible as he has given opinions and conclusions unsupported by evidence, unsupported by reasons, and that he ignored the recent arms-length comparable sales of this property.

11. Defendant excepts to the Opinion of the Master on Page 18 of the Master's Report that he is not impressed by the testimony of Stanley and Marie Owens with regard to keeping the property in the family and wanting to continue to hunt on the property.

12. Defendant excepts to the Opinion of the Master as set forth on Page 18 and 19 of the Master's Report that Merrey and Braid suffered a detriment in failing to secure the 549.5 acres and that they had any right to rely on Stanley Owens to sell his interest to them.

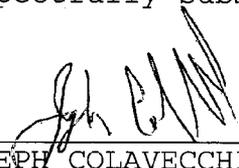
13. Defendant excepts to the findings and or opinion of the Master as set forth on Page 20 that Merrey and Braid could have succeeded in an action for specific performance in a Court of Equity to force the sale of the interest of Marie Owens and Stanley Owens.

WHEREFORE, Marie C. Owens, Defendant in the above-captioned case, asks that the Court find the following:

a. That the property be partitioned in purparts in accordance with the proportionate interests owned by Plaintiffs and Defendants;

b. In the alternative, that the total value of the property be set at Three Hundred Seventy-nine Thousand (\$379,000), the figure testified to by Richard Provost and by Craig Ostheim.

Respectfully submitted:



---

JOSEPH COLAVECCHI, ESQUIRE  
Attorney for Defendant,  
Marie C. Owens

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DENNIS L. MERREY and	:	
ELMO L. BRAID,	:	
Plaintiffs	:	
	:	
VS.	:	No. 00-1525-CD
	:	
STANLEY B. OWENS and	:	
MARIE C. OWENS,	:	
Defendants	:	

*PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW*

STANLEY B. OWENS, through his attorney, Warren B. Mikesell, II, Esquire, files his Proposed Findings of Fact and Conclusions of Law as directed to J. Richard Mattern, Esquire, Master in Partition, and respectfully avers as follows:

PROPOSED FINDINGS OF FACT

1. A Complaint for Partition was filed on or about December 8, 2000, by Dennis L. Merrey and Elmo L. Braid, Plaintiffs, against Stanley B. Owens, the heirs of Robert Owens, Dale R. Owens, Dolores Eunice Doyle, Josephine E. Bartley and Brent Charles Owens.
2. An Order was issued by the Court dated June 18, 2001, discontinuing the Partition Action as to Dale R. Owens, Dolores Eunice Doyle, Josephine E. Bartley and Brent Charles Owens.
3. An Order was issued by the Court dated December 18, 2001, appointing J. Richard Mattern, Esquire, as Master in this case.
4. By agreement of the parties of record as of December 18, 2001, a view of the property was conducted on January 24, 2001, by the appointed Master, Richard Mattern, Esquire, with Attorney Peter Smith, Esquire, Plaintiff's Dennis L. Merrey and Elmo L. Braid, and Attorney Warren B. Mikesell, II, Esquire, being present. The Defendant, Stanley B. Owens, was unable to attend due to health problems. Note: Defendant, Marie C. Owens, was not a named party at the time and had no representation at said view by the appointed Master.

5. An Order was issued by the Court dated May 8, 2002, directing that Marie C. Owens be added as a party Defendant.

6. The Court issued an Order dated May 15, 2002, directing that Partition be made of the real estate consisting of 549.5 acres of surface rights, having Clearfield County

WILLIAMS A. SHAW  
PROthonary

DEC 23 2002

FILED

25

Assessment Map No. 115-L04-3 and being the eastern one-half of Warrant No. 5319, and that said partition be among the parties as follows: Stanley B. Owens - 37 ½%; and, Dennis L. Merry and Elmo L. Braid - 62 ½%. Said Order further affirmed the appointment of J. Richard Mattern as Master.

7. J. Richard Mattern, Master in Partition, held a hearing on July 25, 2002, which, according to his letter of May 13, 2002, was to decide whether or not the property subject to the Partition Action (herein after referred to as the "subject property") was capable of division, without prejudice to or spoiling the whole, into parts proportionate to the interests of the co-tenants, without first having a survey.
8. At the hearing, Dennis L. Merrey testified that he and Elmo L. Braid, his father-in-law, did on August 13, 1999, purchased a 37 1/2% interest in the subject property from Daniel Owens and Marjorie Owens for the sum of \$56,250.00. (Hearing Transcript Page 10) Said Deed was recorded in the Office of the Recorder of Deeds of Clearfield County at Instrument Number 199913408.
9. Dennis Merrey, a/k/a Dennis Merry, testified that he and Elmo L. Braid, his father-in-law, later purchased a 25% interest of this property from Dale R. Owens, Ellen K. Owens, Brent Charles Owens, Louise Owens, Wayne Doyle, Dolores Doyle and Josephine Bartley, being the heirs of Robert Owens, for the sum of \$37,500.00. (Hearing Transcript Page 11) Said Deed was recorded in the Office of the Recorder of Deeds of Clearfield County at Instrument Number 200104717.
10. Merrey testified that he had been dealing with Dan Owens who represented to Merrey that he, Dan Owens, was the individual representing the family concerning the proposed purchase by him of the entire property. (Hearing Transcript Page 12)
11. Merrey testified that Daniel Owens, a/k/a Dan Owens, never produced a power of attorney or an agreement from Marie Owens and/or Stanley Owens showing that he, Daniel Owens, had any authority to speak for them. (Hearing Transcript Page 27)
12. Merrey further testified Dan Owens never made any decisions as to the property and when they got to a crossroad Dan Owens indicated that he would have to speak with Stanley Owens and Dale Owens. (Hearing Transcript Page 41)
13. Merrey testified that a letter dated February 12, 1999, was believed to have been delivered to Dan Owens setting forth the terms for the sale of the subject property the he, Dennis Merrey, had agreed upon with Dan Owens. (Hearing Transcript Page 45)
14. Merrey further testified with regards to the February 12, 1999, letter sent by him was either sent or delivered to Dan Owens and he was unaware or unsure of

- whether a copy of the aforesaid letter setting forth the terms and conditions of the sale of the subject property had been delivered to Stanley Owens (Hearing Transcript Page 47)
15. Merrey testified that Dan Owens had given him a letter from Stanley Owens. (Hearing Transcript Page 14)
  16. Merrey testified that Dan Owens and Dale Owens had signed the agreement but he had not received a signed agreement from from Stanley Owens. (Hearing Transcript Page 49)
  17. Merrey further testified that the letter allegedly from Stanley Owens stated "I have no problem with the terms that he outline to me. As soon as my problems are resolved I will get in contact with you and will complete the contract. (Hearing Transcript Page 36)
  18. Mr. Merrey further testified that he never had any conversations with Stanley Owens and was not sure what problems needed solved. (Hearing Transcript Page 38.)
  19. Merrey also testified that he had knowledge of marital issues which were later confirmed through counsel. (Hearing Transcript Page 39)
  20. Dan Owens testified that Merrey knew that his brother was having divorce issues in February of 1999. (Hearing Transcript Page 152). He further testified that "Well, they knew Stanley was in a divorce proceedings, and I mean, they knew that from the get go." (Hearing Transcript Page 153)
  21. Merrey testified that he was aware that the Owens' family brothers had less than a cordial relationship. (Hearing Transcript Page 29)
  22. Merrey testified that access to the subject property was through the Peerless Fuel property and that you have to cross the property of other parties to get to the 549.5 acre subject property. (Hearing Transcript Page 16)
  23. Merrey further testified that to his knowledge that there were no written right of way agreements with either Peerless or the other entity that owns the property that must be crossed to gain access to the subject property. (Hearing Transcript Page 17)
  24. Merrey testified that the property is basically a flat top and includes some fairly steep siding with no roads, no streams, no mountains or hills within the property that would be a physical landmark with no utilities available at the property. (Hearing Transcript Page 18)

25. Merrey testified that the distance to the nearest public thoroughfare, which is a public township road, is five to six miles. (Hearing Transcript Page 18)
26. Merrey testified that he attempted to have conversations with Stanley Owens but was not able to do so. (Hearing Transcript Page 23)
27. Merrey testified that the property cannot be divided into purparts without spoiling the whole because the surrounding properties primary use has been hunting and recreation. (Hearing Transcript Pages 24 and 25)
28. Merrey testified that he never spoke with Marie Owens or had any dealings with her. (Hearing Transcript Page 32)
29. Merrey testified that if 37 1/2% of the land was cut out it would harm his interest concerning the purpose for which he entered into the deal since his purpose was to own the entire portion of land to use for recreational purposes, hunting primarily. (Hearing Transcript Page 33)
30. Merrey testified that he knew procedurally that they could file a Partition Action if they did not acquire the entire land. (Hearing Transcript Page 34)
31. Merrey testified that concerning his letter of February 12, 1999, he had nothing from Stanley Owens or from Marie Owens saying that they agreed to the terms. (Hearing Transcript Page 51)
32. Merrey testified that he believed that there may have been some problems between Dan Owens and Stanley Owens or some issues involving them. (Hearing Transcript Page 54)
33. Merrey testified that the one time that he saw Stanley Owens and spoke with him about selling his interest in the property, Stanley Owens said that he was not interested, and that he did not want to sell it. This was in 2001. (H.T Page 64)
34. Merrey testified that when he spoke with Stanley Owens on the one occasion, Stanley Owens made a reference to a letter and said that the recollection of Stanley Owens was that he did not really want to sell it and the best recollection he had was when he wrote the letter, he indicated to them that he did not want to sell it but would keep their name and if he ever did want to sell it, he would contact them. (Hearing Transcript Page 60)
35. Merrey testified that he made an offer to Stanley Owens to proceed with the sale under the terms of what he referred to as his letter of February 12, 1999, agreement and that he would also permit Stanley Owens and a guest to hunt on the ground.

36. Craig W. Ostheim, a timber expert, of American Forestry Consultants testified that he made an onsite view of the standing timber on the subject property and subsequently prepared an estimate of the value of the timber on the Owens property. His written report indicates that the fair market value of the timber, based on a clear-cut situation of removing the pulp and saw timber, is approximately \$49,000.00. This estimate took into account the remote location of the timber and the access to the same. (Hearing Transcript Page 84)
37. Dennis Owens testified that he is the son of Stanley and Marie Owens. He made a request to his mother and father that they retain the land for he and his family to hunt on it. (Hearing Transcript Page 91)
38. Donald Harvey Klinger, a consulting forester, testified that he manages forest land for private and industrial clients. He testified that he works for several large hunting clubs and that the primary focus is hunting and he also helped them through timber management. (Hearing Transcript Page 97)
39. Klinger testified he visited the 549.5 acre subject property in Goshen Township. (Hearing Transcript Page 99)
40. He testified that as far as timber value, it was consistently pretty poor quality. (Hearing Transcript Page 100)
41. Klinger testified that the average home range of white tailed deer is one square mile or 644 acres. (Page 102)
42. Klinger testified you can improve deer habitat on any size property.
43. Klinger further testified that the most important things to look at in whitetail deer management are the availability of food, water and shelter. (Hearing Transcript page 109).
44. Klinger testified that he did not or has not conducted any studies as to the one-square mile range of the average deer relative to any available water source. (Hearing Transcript Page 111)
45. Klinger further testified that the subject property has no stream going through it (Hearing Transcript Page 109) and that surrounding properties have several major water sources available. (Hearing Transcript Page 112)
46. Klinger testified that he currently manages parcels ranging from 20 acres to 650 acres. (Hearing Transcript Pages 107 and 108)
47. Klinger also testified that the most important factor is managing the doe to buck ratio with the ideal ratio being 1:1. (Hearing Transcript Page 110)

48. Klinger further testified of the twelve (12) or more properties he has been hired to assist in the management of the whitetail deer that he has never achieved nor does he ever expect to achieve a 1:1 doe to buck ratio and that the preferred ratio was an "ideal" not a "reality". (Hearing Transcript Page 110)
49. Klinger testified that even as to his largest managed acreage of 650 acres he has not even achieved a 4:1 doe to buck ratio and it may be less than 10:1. (Hearing Transcript Pages 113 and 114)
50. Klinger testified that there would be no difference in the doe to buck ratio if you removed two (2) doe from 320 acres versus 549 and in fact it would make no difference at all in either scenario. (Hearing Transcript Page 114)
51. Merrey had previously testified that the subject property was not capable of being divided or maintained as currently owned due to safety reasons because a bullet does not recognize a posted sign or where a boundary line begins and ends or where other hunters are. (Hearing Transcript Page 25 )
52. Klinger further testified that if you have a significant doe hunt on the subject property and do not harvest bucks until they are 3 ½ to 4 ½ years old you will be altering the natural balance of doe to buck. (Hearing Transcript Page 114)
53. Klinger also testified that an average doe's chances of multiple births each year are increased with an increase of available food sources and part of the management techniques that would be employed would be the increase of food plots and planting of fruit bearing trees which in turn would increase the size of the deer herd on the subject property which would likely require the increase in the harvesting of doe on the property. (Hearing Transcript Page 115)
54. J. Richard Mattern summarized Klinger's testimony that 320 acres is sufficient as far as deer management is concerned but it can be better done with 550 acres. (Hearing Transcript Page 120)
55. Richard J. Provost, a real estate appraiser, testified. His qualifications were admitted by all parties. (Hearing Transcript Page 121)
56. Provost testified that he examined the Owens property both by vehicle and by walking it. He testified that in his opinion, the market value of the Owens property is \$330,000.00 and submitted a written report. (Hearing Transcript Page 122)
57. Provost further testified that the property could be partitioned without disturbing and without devaluing the whole. (Hearing Transcript Page 123)

58. Provost testified that if you remove 37 1/2% of the 549 acres that it would not devalue the rest of the property. (Hearing Transcript Page 124)
59. Provost testified that no one would pay a premium for the difference between buying 549 1/2 acres as opposed to 320 + or 200+ acres. (Hearing Transcript Page 128)
60. Daniel Owens testified that when he approached Stanley Owens about selling his interest in the real estate, he said he could not do anything. He would not sign any papers or anything until after the divorce was final. Dan Owens said okay would you write a letter or a paper, give me a paper or something that would state what you would do when the divorce was final. (Hearing Transcript Page 132)
61. Dan Owens testified that he received a letter from Stanley Owens in June of 1999 and he gave the letter to Denny Merrey. (Hearing Transcript Page 133 and 134)
62. Dan Owens testified that Stanley Owens did not indicate a willingness to turn the dealings on the property over to him and would not let Dan Owens do the talking. (Hearing Transcript Page 136)
63. Dan Owens testified that the alleged letter from Stanley Owens was the sole extent of any writings between himself and his brother as far as his authority to act on Stanley's behalf in selling the Owens property. (Hearing Transcript Page 140)
64. Dan Owens testified that he received \$7,500.00 from Merrey and Braid as a down payment and that the check was payable to him. (Hearing Transcript Page 156)
65. Dan Owens testified the money was deposited into his bank account. No one else's name was on it but Dan Owens. (Hearing Transcript Page 156 and 157)
66. Dan Owens said he left the \$7,500.00 in the bank since in the letter, it states that if the deal did not go through, he had to give the money back to them. He further said he kept the money until they decided they were going to buy his share of the subject property and then the money became his. (Hearing Transcript Pages 157 and 158)
67. Dan Owens testified that he had the \$7,500.00 in his account but they did not really have a deal as far as it being sold. He said it was more like a down payment in case they wanted to buy it. The money had to be there for them to get their money back if they did not buy the ground; (Hearing Transcript Page 159) Dan Owens further said that if they would have told him the deal fell through and just forget it, he would have returned the \$7,500.00. (Hearing Transcript Page 159)
68. Dan Owens testified that he signed the February 12, 1999, letter he received from Merrey; however, he did not send a copy to Stan Owens or Dale Owens. (Hearing

Transcript Page 149)

69. Dan Owens further testified as to the February 12, 1999, time frame had heart problems and that he was just interested in getting rid of his share. (Hearing Transcript Page 150)
70. Dan Owens further testified that he knew his brother, Stanley Owens, did not want to sell his share and that he had told the Plaintiffs but could not remember when but it was around the same time frame of February 12, 1999. (Hearing Transcript Pages 151 and 152)
71. Dan Owens testified that he had never had the subject property appraised prior to reaching the value for which he eventually sold his share. (Hearing Transcript Page 154)
72. Dan Owens testified that the \$7,500.00 was his when the deal was completed for his 37.5% interest/share and he received his \$56,250.00, less \$7,500.00 that he had already deposited. (Hearing Transcript Page 160)
73. Dan Owens testified that he was not aware of the dealings concerning his brother Dale and his brother Stanley. He said he did not know what they were doing. He had no idea. He further stated that they were negotiating for themselves. (Hearing Transcript Page 161)
74. Dan Owens testified that from August 13, 1999, Stanley Owens and Dale Owens were on their own. He stated whether or not they completed the sale of their interest was up to them. (Hearing Transcript Page 161)
75. Marie Owens testified through a stipulation that she never agreed to sell the property and never signed anything and that she wants to hold onto the property to turn it over to her boys and grandchildren. (Hearing Transcript Page 163)
76. It was agreed that there was a pending divorce action between Marie Owens and Stanley Owens and that she has an equitable interest in the property. (Hearing Transcript Page 165 and 166)
77. Marie Owens testified that she originally filed for divorce on December 30, 1998, and asked for equitable distribution of the marital assets. (Hearing Transcript Page 169 and 170)
78. Stanley Owens obtained his interest in the property somewhere around 1970. (Hearing Transcript Page 170)
79. Stanley Owens testified that he never spoke with Braid or Merrey until he talked to them in 2001 at deer season. (Hearing Transcript Page 172)

80. Stanley Owens testified that he received letters from them. One letter he got that he was suppose to sign, he did not sign it and send it back because it said that if they did not get the whole deal then it was up to them whether they wanted to keep it or not. He said he would not sign it. (Hearing Transcript Page 172)
81. Stanley Owens testified that there was no agreement between he and Dan Owens, his brother, for Dan to represent Stanley Owens in the sale of the property. (Hearing Transcript Page 173)
82. Stanley Owens testified that the whole deal was set up by Dan Owens and that Stanley Owens knew nothing about it until after the fact that Dan Owens had sole his interest to them and he found out through his son Denny. (Hearing Transcript Page 173)
83. Stanley Owens testified that when he started getting letters about the sale of the property that is when he contacted Warren Mikesell and told him he did not want to sell and he further said that he was informed by Warren Mikesell that he could not sell it any how because he did not own it all by himself. (Hearing Transcript Page 175)
84. Stanley Owens testified that he wrote a letter to his brother Dan that he was not interested in selling but if he ever decided to sell, he would give him first chance. (Hearing Transcript Page 177)
85. Stanley Owens testified that he believed the subject parcel could be divided in such a way as to preserve his 37.5% share so he and his sons could hunt on it. (Hearing Transcript Pages 179 and 180)
86. Stanley Owens testified that he has hunted on the property since he was 12 years old—since 1951. (Hearing Transcript Page 181)
87. Stanley Owens testified that he is not interested in selling the property and that he was not interested in selling it from the get go, from day one. (Hearing Transcript Page 182)
88. Stanley Owens testified he thought the property was worth \$600 to \$700 an acres. (Page 182)
89. Stanley Owens identified the property as described in the deed dated May 14, 1970, from Howard Owens and Hollis E. Owens to Daniel G. Owens and Stanley B. Owens recorded in Volume 560, Page 394. (Hearing Transcript Page 184)
90. Stanley Owens testified that he was married in 1964 or 1965. (Hearing Transcript Page 184)

## PROPOSED CONCLUSIONS OF LAW

STANLEY B. OWENS, through his attorney, Warren B. Mikesell, II, Esquire, files his Proposed Conclusions of Law and respectfully avers as follows:

1. The subject property of this Partition Action consists of 549.5 acres and is situated in Goshen Township, Clearfield County, Pennsylvania.
2. The land is owned as follows: Dennis L. Merrey and Elmo L. Braid - 62 ½%; Stanley B. Owens - 37 ½% (with Marie C. Owens claiming an equitable share or part in a separate divorce action).
3. The Court has directed J. Richard Mattern to determine whether or not the property is capable of division, without prejudice to or spoiling the whole, into parts proportionate in value to the interest of the co-tenants. The other directions by the Court are set forth in the Order.
4. The surface value of the property as testified to by Richard Provost is \$330,000.00. To this would be added the value of the timber as testified to by Craig Ostheim of \$49,000.00 for a total value of \$379,000.00.
5. The property will be divided into two purparts, one purpart to represent 62 1/2% of the property to be awarded to Dennis L. Merrey and Elmo M. Braid and the remaining purpart consisting of 37 ½% of the whole is to be awarded to Stanley Owens and Marie Owens, his wife. This is in accordance with Pennsylvania Rule of Civil Procedure 1560 (a).
6. The Masters fees and costs and the court costs should be divided between the parties proportionate to their respective shares in accordance with Pennsylvania rule of Civil Procedure 1574.
7. Testimony by Richard Provost has established that the property can be divided without affecting the value of the whole. Testimony establishes that the land which is essentially flat can be divided into purparts proportionate in value of the ownership interest of the parties.
8. The Master shall retain a surveyor who shall divide the property into two separate purparts being proportionate in value to the interest of the parties. The costs of the subdivision should be divided between the parties proportionate to their respective shares in accordance with Pennsylvania rule of Civil Procedure 1574.
9. That by stipulation, the acceptance of the Deed dated August 13, 1999, by the Plaintiffs from Daniel Owens and Marjorie Owens for the sum of \$56,250.00.

(Said Deed was recorded in the Office of the Recorder of Deeds of Clearfield County at Instrument Number 199913408) for the Daniel Owens 37.5% share; and the Deed dated December 27, 2000, to Dennis Merry et. al. for the 25% interest of this property from Dale R. Owens, Ellen K. Owens, Brent Charles Owens, Louise Owens, Wayne Doyle, Dolores Doyle and Josephine Bartley, being the heirs of Robert Owens, for the sum of \$37,500.00. (Said Deed was recorded in the Office of the Recorder of Deeds of Clearfield County at Instrument Number 200104717) served to merge any agreement between the parties thereto and they had to accept what was on the respective Deeds unless language was present that certain terms of the agreement were to survive.

10. The alleged agreement between Stanley Owens to sell his interest to Merrey and Braid is not legally enforceable for the following reasons:
  - a. Statute of Frauds requires this type of agreement to sell real estate to be in writing.
  - b. There was never a meeting of the minds between Stanley Owens and Merrey and Braid.
  - c. Dan Owens had no apparent or real authority to act on behalf of Stanley Owens.
  - d. Marie Owens, the wife of Stanley Owens, has an equitable interest in this property and was not a party to any type of dealings and her interest in the property cannot be extinguished without the completion of the divorce action. It is entirely possible that Marie Owens could be awarded the interest of Stanley Owens in this real estate as a result of the divorce action.
  - e. The Master lacks jurisdiction to enforce an oral contract to convey real estate.

#### *LAW AND ARGUMENT*

Insofar as the relevant law is concerned, the Defendant, Stanley Owens, by and through his counsel, Warren B. Mikesell, II, would admit that there is limited case law in the realm of a Partition proceeding. We would rely on the court cases cited by Attorney Colavecchi in his brief and will not attempt to restate what they stand for but will present our argument accordingly.

We believe that a judicial sale of a parcel of land is not the purpose of a Partition Action as stated in Seiders vs. Giles (1891) 141 Pa 93, 21 A 514. If it were, there would be no basis for the Rules of Civil Procedure governing these matters in the first place under Rule 1560.

The conclusion reached by the Court in Fry vs. Stetson (1952) 370 Pa 132, 87 A.2d 305

that the primary purpose of a partition action is to divide, that is partition, the real estate so as to enable each owner to possess and control his or her own share of the estate. Fry vs. Stetson (1952) 370 Pa 132, 87 A.2d 305. Arguably, the division of the estate among the several owners would serve to prevent strife and disagreement between them. Caldwell vs. Snyder (1896) 178 Pa 240, 35 A 996.

Pennsylvania Rule of Civil Procedure 1560 states if division can be made without prejudice to or spoiling the whole, the property shall be divided as set forth therein.

The first and most preferable method of dividing the property in a Partition proceeding is set forth in 1560 (a) wherein a parcel is to be divided into as many purparts, one for each of the co-tenants, with each purpart being proportionate in value to the recipient's proportionate interest in the whole. This is the obligatory procedure set forth under Rule 1560 (a) where division can be made without prejudice to or spoiling the whole. Any property divided in this manner must be awarded to the parties according to their respective interest. Pa R.C.P. 1561

If division under the provision of Rule 1560(a) cannot be made, then section (b) indicates a division should be made into as many purparts as there are parties entitled thereto, without regard to proportionate value. Pa R.C.P. 1560 (b). This is the second most preferred method of division under which each co-tenant receives a purpart, although the value of the parcel awarded to each party is not exactly proportionate to his or her interest in the whole.

If division under the provisions of Rule 1560(a) or (b) cannot be made, the section (c) indicates that the property should be divided into such number of purparts as shall be most advantageous and convenient without regard to the number of parties.

Property not subject to division under Rule 1560(a) but capable of division under Rule 1560 (b) or (c), should be awarded equitably among the parties with a provision for owelty. Pa R.C.P. 1562.

The Defendant, Stanley Owens, believes that the Master can order a division of subject property among the parties as provided under 1560 (a) according to their respective interest with provisions for right-of-way across one purpart to reach the state game lands which adjoin the one corner of the whole.

If, however, it becomes necessary to divide the property under 1560 (b) or 1560 (c), the Master is directed to follow the provisions of Pennsylvania Rule of Civil Procedure 1566 which provides that the Master give preliminary notice of the purposed Partition and allotment of the purparts under 1560 (b) and 1560 (c) and if any party rejects the proposed allotment of the purparts, the property would be offered for private sale by open bidding confined to the parties.

The first and controlling question that must be decided by the Master in this matter is whether 549.5 acres of land can be divided without prejudicing or spoiling the whole. The Defendant, Stanley Owens, would suggest it can. The subject parcel of ground is a sizeable amount of acreage that would easily lend itself to subdivision into two (2) separate purparts

without spoiling the whole.

Testimony at the hearing revealed that all parties agree that the primary use of the subject parcel is for recreational/hunting use. Both sides further agreed that one can hunt on 200 acres and 349 acres respectfully; however, the Plaintiffs want the entire 549.5 acres. Ironically, that is not what they bought into. Although they had some sort of primitive sales agreement as evidenced by the February 12, 1999, letter sent to Daniel Owens, for the purchase of the whole 549.5 acres, this agreement was never signed by all of the parties. Nevertheless, the Plaintiffs subsequently purchased from Dan Owens his 37.5 % share and later purchased the 25% interest from Dale Owens et.al. By stipulation, the terms of any agreement would have merged into the Deeds accepted by the Plaintiffs. All they purchased was fractional interest for values determined to be acceptable by the parties selling the same. Dan Owens testified that he never had the property appraised for value prior to selling his share and accepted the amount he received because he had health problems and just wanted to get rid of his share. There was no testimony as to the basis for the Dale Owens' et.al. share as to value so the Deed would speak for itself and that is that the Plaintiff's purchased a 25% share or part for the value therein stated. Despite wanting to own the whole parcel, and despite knowing the Stanley Owens was going through a divorce action and was unwilling or unable to sell until the same was completed, the Plaintiff's completed the sales between Daniel Owens and Dale Owens, et.al., and therefore gave up any right to purchase the whole at that time. Furthermore, the Plaintiffs were aware through legal counsel, that they could bring a Partition Action for the entire parcel once they purchased the fractional interests of Daniel Owens and Dale Owens et.al.

The Plaintiff's now want to say that their desire to purchase the whole should be controlling and that their motive for entering into the negotiations, although not disclosed to any of the Defendants including Daniel Owens, should now be controlling and would serve to prevent the Master from dividing the subject property into proportional purparts as required by Pa.R.C.P. 1560(a). That motive being the desire to own 549.5 acres in order to manage the deer herd thereon.

As to deer management, even though this testimony was objected to by the Defendant, Stanley Owens, by and through his counsel, it was interesting to note that the expert presented by the Plaintiff's indicated that the ideal ratio of 1:1 doe to buck was not and could not be expected to be achieved on either a 549.5 acre parcel or 349 acre parcel although it could be managed better on a larger tract. This expert went on to say that even on a 650 acre parcel he was currently managing, he has not nor will not expect to ever achieve a 1:1 doe/buck ration nor has he achieved a 4:1 ratio. Given the nature of the property and the surrounding properties, a total deer management program could not be expected to work short of fencing in the property. This was not in the plans. Plaintiff Merrey testified that he had safety concerns with a smaller parcel because of the fact that a bullet would not recognize a posted sign. This is conceded by the Defendant, Stanley Owens, but this statements merely begs the question: How is a bullet supposed to know to stop from other adjoining property lines either?

Stanley Owens believes that this Master can fairly and equitably divide the subject parcel into two (2) separate parcels proportionate to each parties respective share. Hunting safety and

deer management will be the same whether the acreage owned by the Plaintiff's is 549 acres or 349 acres. The only difference is what the Plaintiff's want.

Until the Plaintiff's filed this action and up until the Master in this matter renders his decision, the Defendant, Stanley Owens, has and will have the same right to hunt on the entire 549.5 acre subject parcel as he did in 1951 when he was a young boy hunting there for the first time at the age of 12. Stanley Owens is asking that the Master divide this parcel in accordance with Rule 1560(a) and award him 206 acres, more or less, so he can continue to maintain his right to hunt on a parcel of ground that has been in his family for over half a century. Plaintiff's would argue that equity should prevail and their underlying purpose for wanting to purchase the whole 549 acres should prevail despite having, by law, purchased fractional interests. The Plaintiff's want their right to manage the deer herd and hunt on the property to prevail merely because they own a larger share. The question as to whose "whole" is being spoiled may be more appropriate in a court of equity. In this case, Stanley Owens and his heirs are losing much more than the Plaintiff's ever purchased...their right to hunt on the entire 549.5 acres as has been done for over a half a century. Stanley Owens has said he will accept the decision of his brother to sell out on him and thereby only leaving him a 37.5% interest and would accept 206 acres as his share. Something is better than nothing in his mind.

The Defendant, Stanley Owens, believes that the Court, standing in Equity, can properly and equitably divide the entire 549.5 acre parcel into two (2) purparts. As suggested by the Defendant, Stanley Owens, the Master can order a survey at a cost to both parties proportionate to their respective shares and award Mr. Owens the 206 acre parcel where his small trailer currently sits. A right-of-way over and across this purpart over the existing dirt roadway leading to the state game lands would be agreeable to Stanley Owens to the Plaintiffs, their heirs, successors and assigns, as a means of gaining access to hunting on the state game lands only. Since all parties agree that the subject property is a remote parcel of land with access over and across several other parcels of land without any legal right of way for the same, creating a right-of-way across a smaller portion of the whole will not in any way diminish or restrict either tenant and would give both parties the benefit of being able to hunt on state game lands.

In summary, it is the position of Stanley Owens that the property can be perfectly Partitioned between the two owners so that they have proportionate purparts.

However, in the event the Master feels that the purparts cannot be perfectly proportioned, the Master is free to propose a division of the property as set out at 1560 (b) or under 1560 (c) and under Pa R.C.P. 1566 submit the proposal to the parties at which time if there is any objection, the property would then be sold a sale confined to the parties by open bidding.

Respectfully submitted,



---

Warren B. Mikesell, II, Esquire

*William A. Shaw*

**FILED**

DEC 23 2002  
10/3:35 AM  
WILLIAM A. SHAW  
PROTHONOTARY

Form (4) cc to City  
E  
RET

CA

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

DENNIS L. MERREY and ELMO :  
L. BRAID :  
Plaintiffs :  
vs. :  
STANLEY B. OWENS :  
Defendant :

No. 00 - 1525 - CD

**FILED**

MAY 15 2002

ORDER DIRECTING PARTITION William A. Shaw  
UNDER PENNSYLVANIA R.C.P. 1557 Prothonotary

AND NOW, this 15<sup>th</sup> day of May, 2002, a Motion for an Order Directing Partition having been filed by Plaintiffs and no one having filed Objections to it, it is hereby ORDERED, ADJUDGED and DECREED that Partition be made of the real estate described in Paragraph 5 of the Complaint in this case consisting of 549.5 acres of surface rights, having Clearfield County Assessment Map Number 115-L04-3 and being the Eastern one-half of Warrant Number 5319, among the parties therein named, as follows:

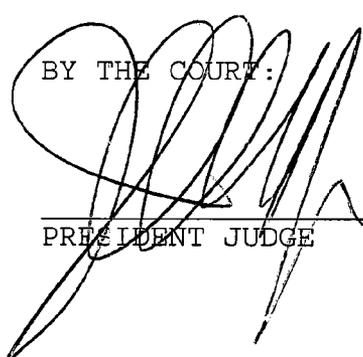
Stanley B. Owens 37.50%  
Dennis L. Merrey and  
Elmo L. Braid 62.50%

The Order of this Court dated December 18, 2001 appointing J. Richard Mattern, Esquire, is affirmed nunc pro tunc.

#24

The Preliminary Conference, Status Conference, and all legal proceedings that have taken place before this Court prior to the date of this Order of Partition are affirmed nunc pro tunc.

BY THE COURT:

  
\_\_\_\_\_  
PRESIDENT JUDGE

FILED

MAY 15 2002

O/S 353/1cc City Colarucca  
William A. Shaw  
Prothonotary  
E  
K

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

DENNIS L. MERREY and ELMO L.  
BRAID

-vs-

STANLEY B. OWENS

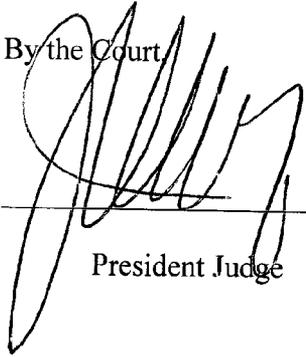
:  
:  
:  
:  
:  
:

No. 00 - 1525 - CD

**ORDER**

NOW, this 8<sup>th</sup> day of May, 2002, upon agreement of the parties, it is the  
ORDER of this Court that Petition to Intervene filed on behalf of Marie C. Owens shall be and  
is hereby granted and she be permitted to be added as a party defendant.

By the Court,



President Judge

**FILED**

MAY 08 2002

0111391 ICC atty Colavecchio

William A. Shaw  
Prothonotary ICC atty Smith

ICC atty Miskell

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION  
No. 00 - 1525 - CD

DENNIS L. MERREY and ELMO L.  
BRAID,  
Plaintiffs

vs.

STANLEY B. OWENS,  
Defendant

O R D E R

**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

DENNIS L. MERREY and ELMO L.  
BRAID,

Plaintiffs

vs.

STANLEY B. OWENS,

Defendant

CIVIL DIVISION

No. 00 - 1525 - CD

ORDER

Filed on Behalf of:

Petitioner, MARIE C. OWENS

Counsel of Record for This  
Party:

JOSEPH COLAVECCHI, ESQUIRE  
Pa. I.D. #06810

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

814/765-1566

**FILED**

APR 20 2002

019:45/4cc atty Colavecchi  
William A. Shaw  
Prothonotary  
E  
1/25

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

22



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

No. 00 - 1525 - CD

DENNIS L. MERREY and ELMO L.  
BRAID,  
Plaintiffs

vs.

STANLEY B. OWENS,  
Defendant

PETITION TO ENTER ORDER OF  
PARTITION

**FILED**

0/10/18  
APR 26 2002

William A. Shaw  
Prothonotary

**COLAVECCHI  
RYAN & COLAVECCHI**

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

4CC  
Amy Colavecchi  
E/S

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DENNIS L. MERREY and ELMO L.  
BRAID,

Plaintiffs

vs.

STANLEY B. OWENS,

Defendant

CIVIL DIVISION

No. 00 - 1525 - CD

PETITION TO ENTER ORDER OF  
PARTITION

Filed on Behalf of:

Petitioner, MARIE C. OWENS

Counsel of Record for This  
Party:

JOSEPH COLAVECCHI, ESQUIRE  
Pa. I.D. #06810

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

814/765-1566

**FILED**

**APR 26 2002**

**William A. Shaw  
Prothonotary**

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

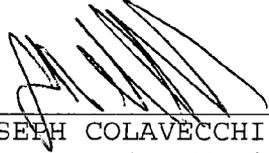
121



4. After the Order directing Partition has been entered under Rule 1557, the Court would then go forward under Rule 1558 directing the parties to appear for a Preliminary Conference and at that time, may appoint a Master to hear the entire matter.

5. It is respectfully requested that an Order be issued directing Partition as required under Pennsylvania Rule of Civil Procedure 1557 which shall set forth the names of all the co-tenants and the nature and extent of their interests in the property.

Respectfully submitted:



---

JOSEPH COLAVECCHI, ESQUIRE  
Attorney for Marie C. Owens

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION  
No. 00 - 1525 - CD

DENNIS L. MERREY and ELMO L.  
BRAID,  
Plaintiffs

vs.

STANLEY B. OWENS,  
Defendant

R U L E

**FILED**

013:39  
APR 19 2002

William A. Shaw  
Prothonotary

**GOLAVECCHI  
RYAN & GOLAVECCHI**

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

*See  
Atty Colavecchi  
a  
GPT*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DENNIS L. MERREY and ELMO L.  
BRAID,

Plaintiffs

vs.

STANLEY B. OWENS,

Defendant

CIVIL DIVISION

No. 00 - 1525 - CD

RULE

Filed on Behalf of:

Petitioner, MARIE C. OWENS

Counsel of Record for This  
Party:

JOSEPH COLAVECCHI, ESQUIRE  
Pa. I.D. #06810

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**

APR 19 2002

William A. Shaw  
Prothonotary

\*20



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

No. 00 - 1525 - CD

DENNIS L. MERREY and ELMO L.  
BRAID,

Plaintiffs

vs.

STANLEY B. OWENS,  
Defendant

PETITION FOR INTERVENTION BY  
MARIE C. OWENS, WIFE OF STANLEY  
B. OWENS

**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

DENNIS L. MERREY and ELMO L.  
BRAID,

Plaintiffs

vs.

STANLEY B. OWENS,

Defendant

CIVIL DIVISION

No. 00 - 1525 - CD

PETITION FOR INTERVENTION BY  
MARIE C. OWENS, WIFE OF  
STANLEY B. OWENS

Filed on Behalf of:

Petitioner, MARIE C. OWENS

Counsel of Record for This  
Party:

JOSEPH COLAVECCHI, ESQUIRE  
Pa. I.D. #06810

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**

APR 18 2002

0/2109/5ccatty  
William A. Shaw  
Prothonotary

Colavecchi

*[Handwritten signature]*

#19



8. If Petitioner is permitted to intervene, she will assert her right to demand that the property be distributed to her and her husband, Stanley B. Owens.

9. In the alternative, if Petitioner is permitted to intervene, she will assert that the sale price which is being asserted for the real estate is inadequate and would demand that a higher price be paid for said property.

10. Petitioner's interest in this action is not adequately represented since Stanley B. Owens and Petitioner are involved in a Divorce Action and as such, their interests in said real estate may be adverse to each other.

WHEREFORE, Petitioner respectfully requests that this Court enter an Order allowing Petitioner to intervene as a party defendant pursuant to Pennsylvania R.C.P. 2327 and Pennsylvania R.C.P. 2329 and that this Court Stay all proceedings pending the disposition of this Petitioner.

  
\_\_\_\_\_  
JOSEPH COLAVECCHI, ESQUIRE  
Attorney for Petitioner

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

DENNIS L. MERREY and  
ELMO L. BRAID  
Plaintiffs

vs.

STANLEY B. OWENS  
Defendant

No. 00-1525-CD

**FILED**

DEC 18 2001

William A. Shaw  
Prothonotary

**ORDER**

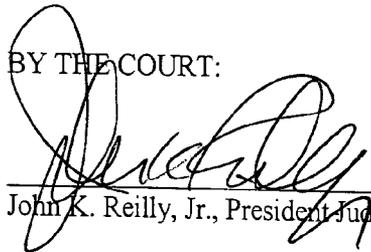
AND NOW this 18 day of December, 2001, this being the date and time set by this Court for hearing on Plaintiff's Motion for an Order Directing Partition and Answer having been filed, it is:

ORDERED, ADJUDGED and DECREED, that J. Richard Mattem, Esq. is hereby appointed to serve as Master in the above-referenced case. The Master is authorized and directed to hear testimony and receive exhibits concerning the following issues, take the following acts and report to the Court his Findings of Fact and Conclusions of Law:

- A. Whether or not the property is capable of division, without prejudice to or spoiling the whole, into parts proportionate in value to the interests of the co-tenants;
- B. The value of the entire property;
- C. Whether or not there are any mortgages, liens, encumbrances or charges which affect the whole property or any part thereof and the amount due thereon;
- D. In the event that the property is not capable of division without prejudice to or spoiling the whole, then to offer whole the property for private sale to the parties in accordance with the Rules of Civil Procedure and, if a party elects to purchase the premises, then to enter a sales agreement with the purchasing party upon such terms and conditions as the Master deems reasonable subject, however, to confirmation of said sale by the Court;
- E. To deduct from the sale proceeds any liens and charges as determined by the Master.
- F. To assess each party his proportionate share of costs including the compensation of appraisers and the Master's fees and to determine whether or not it would be equitable to charge the property or funds resulting therefrom each party's proportionate share of counsel fees; and,

G. In the event that the property cannot be divided without prejudice to or spoiling the whole, and if a private sale to one of the parties is not concluded, then to offer the property for sale to the general public and to conclude said sale upon such terms and conditions as the Master deems reasonable subject, however, to confirmation of said sale by the Court.

BY THE COURT:

  
\_\_\_\_\_  
John K. Reilly, Jr., President Judge

FILED

DEC 18 2001

013,091 cc atty Mckee  
William A. Shaw  
Prothonotary

cc atty Smith  
cc atty Matern

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

DENNIS L. MERREY and  
ELMO L. BRAID,  
Plaintiff  
vs.  
STANLEY B. OWENS,  
Defendant

:  
:  
: No. 00-1525-CD  
:  
:  
: TYPE OF CASE:  
: Partition  
:

CASE NUMBER: 00-1525-CD

TYPE OF CASE: Partition

TYPE OF PLEADING: RESPONSE TO MOTION FOR ORDER  
DIRECTING PARTITION AND SCHEDULING  
OF PRELIMINARY CONFERENCE

FILED ON BEHALF OF: Defendant

COUNSEL OF RECORD FOR THIS PARTY: WARREN B. MIKESELL II, ESQUIRE  
Supreme Court I.D. #63717  
115 East Locust Street  
Clearfield, PA 16830  
(814) 765-6605

**FILED**

DEC 07 2001

0/12:35/m  
William A. Shaw  
Prothonotary

4 Cent to Att

*WAS*

#17

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

DENNIS L. MERREY and :  
ELMO L. BRAID, :  
Plaintiff : No. 00-1525-CD  
 :  
vs. :  
 : TYPE OF CASE:  
STANLEY B. OWENS, : Partition  
Defendant :

**RESPONSE TO MOTION FOR ORDER DIRECTING  
PARTITION AND SCHEDULING OF PRELIMINARY CONFERENCE**

AND NOW COMES, STANLEY B. OWENS, by and through their Attorney, Warren B. Mikesell, II, Esquire, who respectfully states and responds to Plaintiff's motion:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted in part and denied in part. It is admitted that by Order dated June 18, 2001, this Honorable Court discontinued the Action as to the heirs of Robert Owens because they no longer owned an interest in the properties; however the Defendant is without sufficient knowledge as to whether or not an actual Deed of Conveyance for the twenty-five (25%) percent interest in the property from the heirs of Robert Owens has been executed and/or recorded. To date, the Defendant has not contracted to have any title search or review of the records for the same.
5. Admitted.
6. Admitted.
7. Admitted in part and denied in part. It is admitted that Stanley B. Owens opposed the partition in prayer on the basis of price at which the heirs of Robert

Owens agreed to accept their interest; however, it is denied that this is the only basis for his opposition to partition. Specifically, Stanley B. Owens stands by his original answer in that he avers that he believes the acreage that we are dealing with (five hundred forty-nine and five tenths (549.5) acres) that the same can be equitably divided between the parties by reason of a survey and subdivision as ordered by the Court without spoilage to the whole.

WHEREFORE, the Defendant prays that this Honorable Court to schedule and conduct a preliminary conference as to the matters in question with a resolution of a division of the parcel in question according to the ownership rights held by the parties.

Respectfully submitted,



Dated: 12/7/01

---

Warren B. Mikesell, II, Esquire  
Attorney for the Defendant

*Handwritten signature*

**FILED**

DEC 07 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DENNIS L. MERREY and  
ELMO L. BRAID,  
Plaintiff,

VS.

STANLEY B. OWENS,  
Defendant.

:  
:  
:  
: No. 00-1525-CD  
:  
: Partition  
:  
:

Type of Pleading:  
Petition for Extension of time  
to file and Change of  
Preliminary Conference

Filed on behalf of:  
Defendant

Counsel of record for this  
party:

Warren B. Mikesell II  
PA I.D. No. 63717  
115 East Locust Street  
Clearfield, PA 16830  
(814) 765-6605

**FILED**

NOV 08 2001

William A. Shaw  
Prothonotary

#16

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

DENNIS L. MERREY and :  
ELMO L. BRAID, :  
Plaintiff, :  
VS. : No. 00-1525-CD  
STANLEY B. OWENS, :  
Defendant. : Partition

**Petition for Extention of Time to File**  
**and**  
**Change of Preliminary Conference Date**

AND NOW COMES the Defendant, STANLEY B. OWENS, by and through his attorney, Warren B. Mikesell, II, Esquire, he respectfully states in support of this request the following:

1. The Plaintiffs have filed a Complaint for the Petition of Five Hundred Forty-nine (549) acres surface situate in Goshen Township, Clearfield County, Pennsylvania on December 8, 2000.
2. The Complaint was served on Defendant, STANLEY B. OWENS, who resides at 126 ½ Evergreen Street, DuBois, Pennsylvania, 15801, on December 21, 2000.
3. The Defendant, STANLEY B. OWENS, owns an undivided Thirty-seven and one-half (37.5%) percent interest in the subject premises of the Partition Action.
4. That on or about October 19, 2001, the Court filed entered a Rule Returnable directing the Defendant, STANLEY B.

OWENS, to show cause, if any, why Plaintiff's Motion for Order Directing Partition and Scheduling of Preliminary Conference should not be filed.

5. The said Notice and Rule Returnable dated October 19, 2001, (A copy of said Order is attached) was forwarded to counsel of record for the Defendant, Warren B. Mikesell, II, Esquire, by First Class Mail with a post mark of November 2, 2001.

6. Counsel of record for the Defendant, STANLEY B. OWENS, received said mail on or about November 5, 2001.

7. The said time set for the written response set forth in the October 19, 2001, Order of this Court was set for on or before November 8, 2001.

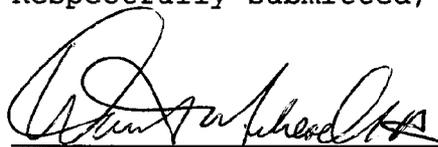
8. There is insufficient time due to the delay in the mail system for Counsel to adequately review the matter with the Defendant, STANLEY B. OWENS, and file the said written response as required by this Court's Order of October 19, 2001.

9. That counsel for the Defendant, Warren B. Mikesell, II, Esquire, is scheduled to be on vacation from November 19, 2001 until December 3, 2001, and, therefore, would be unable to complete the necessary response and prepare for the Preliminary Conference as previously scheduled by the Court.

**WHEREFORE**, it is respectfully requested that the Order of October 19, 2001, be set aside and that the matter be rescheduled.

Respectfully submitted,

Dated: 11/6/01

  
\_\_\_\_\_  
Warren B. Mikesell, II  
Attorney for Defendant

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

DENNIS L. MERREY and ELMO L.  
BRAID,

Plaintiffs

No. 00-1525-CD

vs

STANLEY B. OWENS,

Defendant

**RULE RETURNABLE**

AND NOW THIS 19<sup>th</sup> day of October, 2001, upon consideration of the Plaintiff's Motion For Order Directing Partition and Scheduling of Preliminary Conference, it is entered upon Stanley B. Owens, Defendant herein and directed to Stanley B. Owens to show cause, if any, why said Motion should not be granted.

Written response to this Motion is due by the 8<sup>th</sup> day of November, 2001.

This Order shall be heard in Court on the 19<sup>th</sup> day of November, 2001, at 2:30 p.m.

By the Court,

/s/JOHN K. REILLY, JR.

J.

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

**OCT 19 2001**

Attest:

William L. Shaw  
Prothonotary

**FILED** ycc  
0/2:10  
NOV 08 2001  
William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DENNIS L. MERREY and :  
ELMO L. BRAID :  
Plaintiff, :  
vs. : No. 00-1525-CD  
STANLEY B. OWENS, :  
Defendant :

RULE RETURNABLE

NOW, this 13<sup>th</sup> day of November, 2001,  
upon consideration of the Plaintiff's Motion For Order Directing  
Partition and Scheduling of Preliminary conference, it is entered  
upon Stanley B. Owens, Defendant herein and directed to Stanley  
B. Owens to show cause, if any, why said Motion should not be  
granted.

Written response to this Motion is due by the 3rd day of  
December, 2001.

This Order shall be heard in Court on the 18<sup>th</sup> day of  
December, 2001, at 2:00 A.m.

BY THE COURT



Judge

**FILED**

NOV 13 2001

William A. Shaw  
Prothonotary

FILED  
NOV 13 2001  
William A. Shaw  
Prothonotary  
Atty. M. Resell

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

DENNIS L. MERRY and ELMO L. BRAID  
Plaintiffs

vs.

STANLEY B. OWENS  
Defendant

No. 00-1525-CD

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Dennis L. Merrey and Elmo L. Braid, in the above-captioned matter, certify that I sent by First Class Mail, postage prepaid to Warren B. Mikesell a certified true and correct copy of **DEFENDANTS MOTION FOR ORDER DIRECTING PARTITION AND SCHEDULING OF PRELIMINARY CONFERENCE AND RULE RETURNABLE** on November 2, 2001 at the following address:

Warren B. Mikesell, Esquire  
115 East Locust Street  
Clearfield, PA 16830

Respectfully submitted,



Peter F. Smith, Attorney for Plaintiffs

Date:

11-2-01

**FILED**

NOV 02 2001

M. J. Shaw  
Notary



#15



FILED

*1cc*  
*013:17484*  
OCT 30 2001 *Atty Smith*

William A. Shaw  
Prothonotary

*WAS*

				<p><b>PETER F. SMITH</b> ATTORNEY 30 SOUTH SECOND STREET P.O. BOX 130 CLEARFIELD, PA. 16830</p>
--	--	--	--	---

**FILED** 2cc  
12/4/30  
OCT 18 2001  
Atty Smith  
WAS

William A. Shaw  
Prothonotary

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

DENNIS L. MERREY and ELMO L.  
BRAID,  
Plaintiffs

vs

STANLEY B. OWENS,  
Defendant

No. 00-1525-CD

TYPE OF CASE:  
**Partition**

TYPE OF PLEADING:  
**Motion For Order Directing  
Partition and Scheduling of  
Preliminary Conference**

FILED ON BEHALF OF:  
**Plaintiffs**

ATTORNEY OF RECORD FOR THIS  
PARTY:  
**Peter F. Smith, Esquire**  
Supreme Court I.D. #34291  
30 South Second Street  
P.O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

ATTORNEY FOR STANLEY B. OWENS:  
**Warren B. Mikesell, II, Esquire**  
Supreme Court I.D. #63717  
115 East Locust Street  
Clearfield, PA 16830  
(814) 765-6605

**FILED**

OCT 18 2001

William A. Shaw  
Prothonotary

113

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

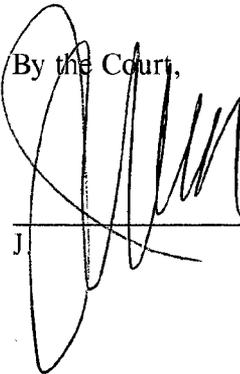
DENNIS L. MERREY and ELMO L. BRAID, :  
Plaintiffs : No. 00-1525-CD  
vs :  
STANLEY B. OWENS, :  
Defendant :

**RULE RETURNABLE**

AND NOW THIS 19<sup>th</sup> day of October, 2001, upon consideration of the Plaintiff's Motion For Order Directing Partition and Scheduling of Preliminary Conference, it is entered upon Stanley B. Owens, Defendant herein and directed to Stanley B. Owens to show cause, if any, why said Motion should not be granted.

Written response to this Motion is due by the 8<sup>th</sup> day of November, 2001.

This Order shall be heard in Court on the 19<sup>th</sup> day of November, 2001, at 2:30 P.m.

By the Court,  
  
J

William A. Shaw  
Prothonotary  
OCT 19 2001  
**FILED**

2cc AHY  
PROSECUTOR  
William A. Shaw  
6/2:56 pm  
OCT 19 2001

FILED

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

DENNIS L. MERREY and ELMO L. BRAID, :  
Plaintiffs : No. 00-1525-CD  
vs :  
STANLEY B. OWENS, :  
Defendant :

***MOTION FOR ORDER DIRECTING PARTITION AND  
SCHEDULING OF PRELIMINARY CONFERENCE***

COMES NOW, DENNIS L. MERREY and ELMO L. BRAID by their Attorney Peter F. Smith, who respectfully states in support of this Motion:

1. Plaintiffs have filed a Complaint for the Partition of 549.5 acres surface situate in Goshen Township, Clearfield County, Pennsylvania, on December 8, 2000.
2. The Complaint was served on Defendant Stanley B. Owens, who resides at 126½ Evergreen Street, DuBois, Pennsylvania, 15801, on December 21, 2000.
3. Defendant Stanley B. Owens owns an undivided 37.5% interest in the premises.
4. Plaintiffs subsequently purchased the other outstanding 25% interest in this property from the Heirs of Robert Owens, to wit: Dale R. Owens, Dolores Eunice Doyle, Josephine E. Bartley and Brent Charles Owens by deed recorded at Clearfield County Instrument Number 2001047417. By Ordered entered June 18, 2001, this Honorable Court discontinued the action as to the Heirs of Robert Owens because they no longer owned an interest in the premises.
5. Plaintiffs now own an undivided 62.50% interest in the premises.

6. Defendant Stanley B. Owens admits that he owns an undivided 37.5% interest in the premises in paragraph 7 of his Answer.

7. Defendant Stanley B. Owens states that he opposes partition in the prayer at the conclusion at the of his Answer. However, that was on the basis of the price which the Heirs of Robert Owens agreed to accept for their interest in the premises.

WHEREFORE, Plaintiffs pray this Honorable Court to enter a Rule against Stanley B. Owens directing him to show cause, if any he may have why an Order should not be entered directing the partition of the premises and scheduling a preliminary conference pursuant to Pa.R.C.P. 1558.

Respectfully submitted,

Dated: 10-17-01



Peter F. Smith, Esquire  
Attorney for Plaintiffs

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

DENNIS L. MERREY and ELMO L. BRAID, :  
Plaintiffs : No. 00-1525-CD  
vs :  
STANLEY B. OWENS, :  
Defendant :

**ORDER**

AND NOW this \_\_\_\_ day of \_\_\_\_\_, 2001, upon consideration of the foregoing Motion, service having been made upon Defendant, Stanley B. Owens' counsel, it is,

ORDERED ADJUDGED AND DECREED that Partition of the premises described in the foregoing Motion has been granted and a Preliminary Conference shall be scheduled on \_\_\_\_\_, 2001, at \_\_\_\_:\_\_\_\_.m..

By the Court,

\_\_\_\_\_  
Judge

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

DENNIS L. MERREY and ELMO L. BRAID, :  
Plaintiffs : No. 00-1525-CD  
vs :  
STANLEY B. OWENS, :  
Defendant :

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Plaintiffs in the above-captioned matter, certify that I sent by First Class Mail, postage prepaid to Attorney Warren B. Mikesell a certified true and correct copy of the Order entered June 18, 2001, at the following address:

Warren B. Mikesell, Esquire  
115 East Locust Street  
Clearfield, PA 16830

Respectfully submitted,



Peter F. Smith, Attorney for Plaintiffs

Date: June 19, 2001

**FILED**

JUN 19 2001

William A. Shaw  
Prothonotary

#12

*[Handwritten signature]*

**FILED**  
0110:0581  
JUN 19 2001  
William A. Sharv  
Prothonotary  
no cc  
E  
K

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

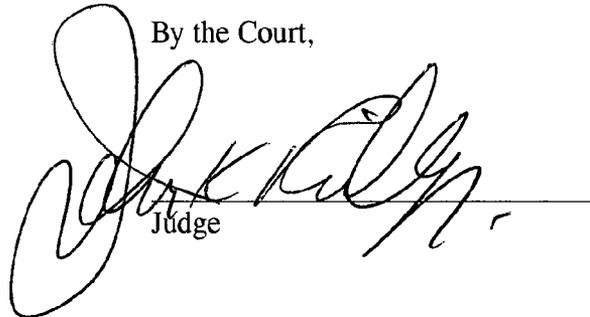
DENNIS L. MERREY and ELMO L. BRAID, :  
Plaintiffs : No. 00-1525-CD  
vs :  
STANLEY B. OWENS, THE HEIRS OF :  
ROBERT OWENS: DALE R. OWENS, :  
DOLORES EUNICE DOYLE, :  
JOSEPHINE E. BARTLEY, BRENT :  
CHARLES OWENS, :  
Defendants :

**ORDER**

AND NOW this 18 day of June, 2001, upon consideration of Plaintiffs' Motion to Discontinue suit as to the Heirs of Robert Owens, and an Answer having been filed on behalf of Stanley B. Owens, the remaining Defendant who has no objection to the Motion to Discontinue, it is,

ORDERED ADJUDGED AND DECREED that this action is discontinued as to the Heirs of Robert Owens, to wit: Dale R. Owens, Dolores Eunice Doyle, Josephine E. Bartley and Brent Charles Owens.

By the Court,

  
Judge

FILED

JUN 18 2001

William A. Shaw  
Prothonotary

# 11

FILED acc  
011:51384  
JUN 18 2001  
Atty Smith  
William A. Shaw  
Prothonotary

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

DENIS L. MERREY and ELMO L. BRAID, :  
Plaintiffs :

VS. :

No. 00-1525-CD

STANLEY B. OWENS, THE HEIRS OF :  
ROBERT OWENS: DALE R. OWENS, :  
DOLORES EUNICE DOYLE, :  
JOSEPHINE E. BARTLEY AND :  
BRENT CHARLES OWENS, :  
Defendants :

Type of Pleading:  
ANSWERS TO DISCONTINUE AS TO  
THE HEIRS OF ROBERT OWENS

Filed on behalf of:  
DEFENDANTS: STANLEY B. OWENS,  
THE HEIRS OF ROBERT OWENS:  
DALE R. OWENS, DOLORES EUNICE  
DOYLE, JOSEPHINE E. BARTLEY  
AND BRENT CHARLES OWENS,

Counsel of record for this  
party:

Warren B. Mikesell, II  
PA I.D. No. 63717

115 East Locust Street  
Clearfield, PA 16830  
(814) 765-6605

**FILED**

MAY 16 2001

William A. Shaw  
Prothonotary

410



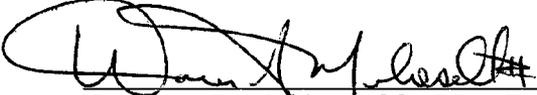
Defendant, Stanley B. Owens, has any personal knowledge as to whether or not the said heirs of Robert Owens have in fact sold their interest.

WHEREFORE, the Defendant respectfully submits to the Court that he has no objection to the Court entering an Order discontinuing the action as to the heirs of Robert Owens, to wit: Dale R. Owens, Dolores Eunice Doyle, Josephine E. Bartley and Brent Charles Owens pursuant to Pennsylvania Rule of Civil Procedure Number 229.

**I verify that the statements made in this Partition Action are true and correct. I understand that false statements herein are made subject to the penalties of 18 PaC.S. § 4904, relating to unsworn falsification to authorities.**

  
STANLEY B. OWENS  
Defendant

Date: 5-15-01

  
Warren B. Mikesell II, Esquire  
Attorney for Defendant

COMMONWEALTH OF PENNSYLVANIA :  
 : SS.  
COUNTY OF CLEARFIELD :

**A F F I D A V I T**

Before me, the undersigned officer, personally appeared, STANLEY B. OWENS, who being duly sworn according to law deposes and says that the facts set forth in the foregoing **ANSWER TO MOTION TO DISCONTINUE IN THE UNDERLYING PARTITION ACTION** is true and correct to the best of his knowledge, information, and belief.

  
\_\_\_\_\_  
Stanley B. Owens

Sworn to and subscribed  
before me this 15<sup>th</sup> day  
of May, 2001.

  
\_\_\_\_\_

NOTARIAL SEAL  
KIMBERLY JORDAN, Notary Public  
Clearfield Boro, Clearfield County  
My Commission Expires March 24, 2003

**FILED**

MAY 16 2001

DP-0913cc  
William A. Shaw  
Prothonotary  
of

*Atty. Michael*

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

DENNIS L. MERREY and ELMO L.  
BRAID,  
Plaintiffs

vs.

No. 00-1525-CD

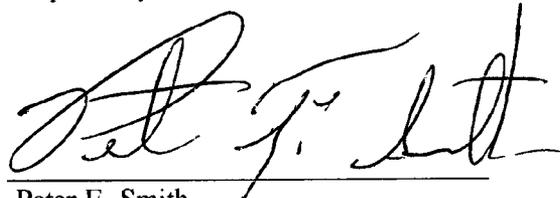
STANLEY B. OWENS, THE HEIRS OF  
ROBERT OWENS: DALE R. OWENS,  
DOLORES EUNICE DOYLE,  
JOSEPHINE E. BARTLEY, BRENT  
CHARLES OWENS,  
Defendants

CERTIFICATE OF SERVICE

I, Peter F. Smith, Attorney for the Plaintiffs in the above-captioned matter certify that I served true correct and complete copies of the Motion to Discontinue filed in this action and the completed scheduling order by U.S. First Class Mail to Warren B. Mikesell, II, Attorney for Stanley B. Owens.

Warren B. Mikesell, II, Esquire  
115 East Locust Street  
Clearfield, PA 16830

Respectfully submitted,



Peter F. Smith  
Attorney for Plaintiff  
30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

Date: April 27, 2001

**FILED**

APR 27 2001

m/3:07 pm  
William A. Shaw  
Prothonotary

721

#9

2 cc  
Atty Smith  
9/25

01/11/85

**PETER F. SMITH**  
ATTORNEY  
30 SOUTH SECOND STREET  
P.O. BOX 130  
CLEARFIELD, PA. 16830

REPRODUCTION PROHIBITED BY FEDERAL LAW

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

DENNIS L. MERREY and ELMO L.  
BRAID,

Plaintiffs

vs

STANLEY B. OWENS, THE HEIRS OF  
ROBERT OWENS: DALE R. OWENS,  
DOLORES EUNICE DOYLE,  
JOSEPHINE E. BARTLEY, BRENT  
CHARLES OWENS,

Defendants

No. 00-1525-CD

TYPE OF CASE:

**Partition**

TYPE OF PLEADING:

**Motion to Discontinue as to  
the Heirs of Robert Owens**

FILED ON BEHALF OF:

**Plaintiffs**

ATTORNEY OF RECORD FOR THIS  
PARTY:

**Peter F. Smith, Esquire**

Supreme Court I.D. #34291

30 South Second Street

P.O. Box 130

Clearfield, PA 16830

(814) 765-5595

ATTORNEY FOR STANLEY B. OWENS:

**Warren B. Mikesell, II, Esquire**

Supreme Court I.D. #63717

115 East Locust Street

Clearfield, PA 16830

(814) 765-6605

**FILED**

APR 26 2001

**William A. Shaw**  
Prothonotary

#8

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

DENNIS L. MERREY and ELMO L. BRAID, :  
 :  
 Plaintiffs : No. 00-1525-CD  
 :  
 vs :  
 :  
 STANLEY B. OWENS, THE HEIRS OF :  
 ROBERT OWENS: DALE R. OWENS, :  
 DOLORES EUNICE DOYLE, :  
 JOSEPHINE E. BARTLEY, BRENT :  
 CHARLES OWENS, :  
 Defendants :

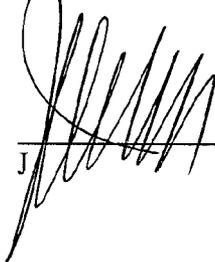
**SCHEDULING ORDER**

AND NOW THIS 26<sup>th</sup> day of April, 2001, upon consideration of the Plaintiff's Motion to Discontinue as to the Heirs of Robert Owens, it is entered upon Stanley B. Owens, one of the Defendants herein and directed to Stanley B. Owens to show cause, if any, why said Motion should not be granted.

Written response to this Motion is due by the 16<sup>th</sup> day of May, 2001.

This Order shall be heard in Court on the 18<sup>th</sup> day of June, 2001, at 1:30 P.m.

By the Court,



**FILED**

APR 26 2001

William A. Shaw  
Prothonotary

William A. Shaw  
Prothonotary

APR 25 2001

FILED  
Oll: 27-01

Att'y Smith  
2cc

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

DENNIS L. MERREY and ELMO L. BRAID,	:	
	:	
Plaintiffs	:	No. 00-1525-CD
	:	
vs	:	
	:	
STANLEY B. OWENS, THE HEIRS OF ROBERT OWENS: DALE R. OWENS, DOLORES EUNICE DOYLE, JOSEPHINE E. BARTLEY, BRENT CHARLES OWENS,	:	
	:	
Defendants	:	

***MOTION***

COMES NOW, DENNIS L. MERREY and ELMO L. BRAID by their Attorney Peter F. Smith, who respectfully states in support of this Motion:

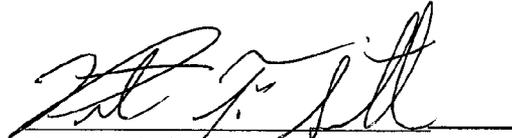
1. The Plaintiffs initiated this Partition Action by Complaint filed December 8, 2000.
2. Defendant, Stanley B. Owens was served by the Clearfield County Sheriff at his residence 126½ Evergreen Street, DuBois, Pennsylvania, 15801, on December 21, 2000.
3. Plaintiffs also named as Defendants the Heirs of Robert Owens, to wit: Dale R. Owens, Dolores Eunice Doyle, Josephine E. Bartley and Brent Charles Owens.
4. Subsequent to filing this action, the Heirs of Robert Owens transferred their interest in the premises subject to this action to the Plaintiffs by deed recorded on April 5, 2001, at Clearfield County Instrument Number 200104717.
5. This gives the Plaintiffs an undivided 62.5% interest in the premises.

6. Since the Heirs of Robert Owens no longer have title to an interest in the premises, they are no longer necessary parties to this Partition Action.

WHEREFORE, Plaintiffs prays this Honorable Court to enter an Order discontinuing this action as to the Heirs of Robert Owens, to wit: Dale R. Owens, Dolores Eunice Doyle, Josephine E. Bartley and Brent Charles Owens pursuant to Pa.R.C.P. 229.

Respectfully submitted,

Dated: 4/23/01



Peter F. Smith, Esquire  
Attorney for Plaintiffs

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

DENNIS L. MERREY and ELMO L. BRAID,	:	
	:	
Plaintiffs	:	No. 00-1525-CD
	:	
vs	:	
	:	
STANLEY B. OWENS, THE HEIRS OF ROBERT OWENS: DALE R. OWENS, DOLORES EUNICE DOYLE, JOSEPHINE E. BARTLEY, BRENT CHARLES OWENS,	:	
	:	
Defendants	:	

**ORDER**

AND NOW this \_\_\_\_ day of \_\_\_\_\_, 2001, upon consideration of the foregoing Motion, service having been made upon the remaining Defendant, Stanley B. Owens' counsel, it is,

ORDERED ADJUDGED AND DECREED that this action is discontinued as to the Heirs of Robert Owens, to wit: Dale R. Owens, Dolores Eunice Doyle, Josephine E. Bartley and Brent Charles Owens.

By the Court,

\_\_\_\_\_  
Judge

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

DENNIS L. MERREY and ELMO L.  
BRAID,

Plaintiffs

vs

STANLEY B. OWENS, THE HEIRS OF  
ROBERT OWENS: DALE R. OWENS,  
DOLORES EUNICE DOYLE,  
JOSEPHINE E. BARTLEY, BRENT  
CHARLES OWENS,

Defendants

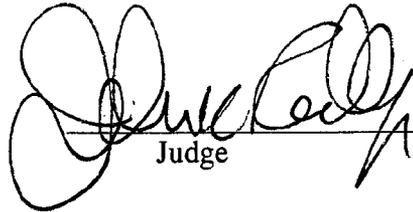
No. 00-1525-CD

**ORDER**

AND NOW this 5 day of March, 2001, a Rule being Returnable  
against the Defendant, Dale R. Owens, it is

ORDERED ADJUDGED AND DECREED that the Defendant, Dale R. Owens shall  
serve true, correct and complete answers to the Interrogatories served upon him by Plaintiff  
within 5 days of the date of this Order.

By the Court,

  
Judge

**FILED**

MAR 05 2001

William A. Shaw  
Prothonotary

#7

**FILED**

MAR 05 2001

09:07:36  
William A. Shaw  
Prothonotary

*cc Cathy*  
*W. A. Shaw*  
*Prothonotary*

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

DENNIS L. MERREY and ELMO L. BRAID, :  
 :  
 Plaintiffs : No. 00-1525-CD  
 :  
 vs :  
 :  
 STANLEY B. OWENS, THE HEIRS OF :  
 ROBERT OWENS: DALE R. OWENS, :  
 DOLORES EUNICE DOYLE, :  
 JOSEPHINE E. BARTLEY, BRENT :  
 CHARLES OWENS, :  
 Defendants :

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Plaintiffs in the above captioned matter, hereby certify that I sent by U.S. First Class Mail, a true and correct copy of Plaintiffs' **MOTION TO COMPEL DISCOVERY** with completed Rule Returnable to Dale R. Owens, one of the Defendants herein on February 1, 2001, at the following address:

Dale R. Owens  
14207 Lakeview Drive  
Gainesville, VA 20155

Date: February 1, 2001

  
Peter F. Smith, Esquire  
Attorney for Plaintiffs

**FILED**

FEB 02 2001  
01:10:38  
William A. Shaw  
Prothonotary

*ES*

*#10*

FILED

24 2001

01/33/3cc atty

William A. Shaw

Prothonotary

of Smith

has

PETER F. SMITH  
ATTORNEY

30 SOUTH SECOND STREET  
P.O. BOX 130  
CLEARFIELD, PA. 16830

COMMERCIAL PRINTING CO., CLEARFIELD, PA.

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

DENNIS L. MERREY and ELMO L.  
BRAID,

Plaintiffs

vs

STANLEY B. OWENS, THE HEIRS OF  
ROBERT OWENS: DALE R. OWENS,  
DOLORES EUNICE DOYLE,  
JOSEPHINE E. BARTLEY, BRENT  
CHARLES OWENS,

Defendants

No. 00-1525-CD

TYPE OF CASE:

**Civil**

TYPE OF PLEADING:

**Motion to Compel Discovery**

FILED ON BEHALF OF:

**Plaintiffs**

ATTORNEY OF RECORD FOR THIS  
PARTY:

**Peter F. Smith, Esquire**  
Supreme Court I.D. #34291  
30 South Second Street  
P.O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

**FILED**

JAN 24 2001

William A. Shaw  
Prothonotary

45

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

DENNIS L. MERREY and ELMO L. BRAID, :  
Plaintiffs : No. 00-1525-CD  
vs :  
STANLEY B. OWENS, THE HEIRS OF :  
ROBERT OWENS: DALE R. OWENS, :  
DOLORES EUNICE DOYLE, :  
JOSEPHINE E. BARTLEY, BRENT :  
CHARLES OWENS, :  
Defendants :

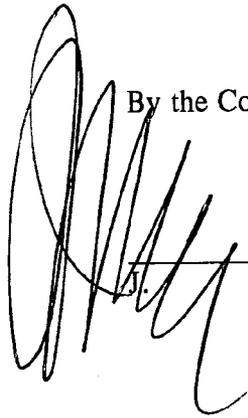
**RULE RETURNABLE**

AND NOW THIS 31<sup>st</sup> day of January, 2001, upon consideration of the Plaintiff's Motion to Compel, a Rule is entered upon Dale R. Owens, one of the Defendants herein and directed to the Dale R. Owens to show cause, if any, why said Motion should not be granted.

Written response to this Motion is due by the 20<sup>th</sup> day of February, 2001.

This Rule shall be Returnable in Court on the 5<sup>th</sup> day of March, 2001, at 9:00 A.m.

By the Court,



**FILED**

JAN 31 2001  
07:00 Acc atty  
William A. Shaw  
Prothonotary Smith  
Gross

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

DENNIS L. MERREY and ELMO L. BRAID,	:	
	:	
Plaintiffs	:	No. 00-1525-CD
	:	
vs	:	
	:	
STANLEY B. OWENS, THE HEIRS OF ROBERT OWENS: DALE R. OWENS, DOLORES EUNICE DOYLE, JOSEPHINE E. BARTLEY, BRENT CHARLES OWENS,	:	
Defendants	:	

***MOTION TO COMPEL DISCOVERY***

COMES NOW, DENNIS L. MERREY and ELMO L. BRAID by their Attorney Peter F. Smith, who make the following Motion to Compel answers to Interrogatories:

1. The movants are the Plaintiffs in this matter.
2. Dale R. Owens is a Defendant who resides at 14207 Lakeview Drive, Gainesville, Virginia, 20155.
3. On December 8, 2000, the Clearfield County Sheriff served the Complaint and Interrogatories on Dale R. Owens by certified mail.
4. A true and correct copy of said Interrogatories are attached hereto and incorporated herein by reference.
5. Answers to Interrogatories are necessary to obtain the addresses of the siblings of Dale R. Owens who are named Defendants and essential parties to this action.

6. More than 30 days have elapsed since service of the Interrogatories on Defendant, Dale R. Owens, but he has failed to answer the Interrogatories.

WHEREFORE, Movants prays this Honorable Court to enter an Order directing the Defendant, Dale R. Owens to file true, correct and complete answers to the Interrogatories served upon him by Plaintiffs within 5 days of the date of the Order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Peter F. Smith', written over a horizontal line.

Peter F. Smith, Esquire  
Attorney for Plaintiffs

Dated: 1-24-01

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

DENNIS L. MERREY and ELMO L.  
BRAID,

Plaintiffs

No. 00- -CD

vs

STANLEY B. OWENS, THE HEIRS OF  
ROBERT OWENS; DALE R. OWENS,  
DOLORES EUNICE DOYLE,  
JOSEPHINE E. BARTLEY, BRENT  
CHARLES OWENS,

Defendants

***INTERROGATORIES DIRECTED TO DALE R. OWENS***

You are directed to file Answers to the following Interrogatories within thirty days of service upon you. These Interrogatories are submitted pursuant to Pa.R.C.P. 4005. These Interrogatories are intended to be of a continuing nature, and your Answers thereto must be supplemented in a timely fashion.

1. Please state the full address of the residence, and the full mailing address if different from the residential address, of your sister and a Defendant in this action, Dolores Eunice Doyle: \_\_\_\_\_  
\_\_\_\_\_

2. Please state the full address of the residence, and the full mailing address if different from the residential address, of your sister and Co-Defendant in this action, Josephine E. Bartley: \_\_\_\_\_  
\_\_\_\_\_

3. Please state the full address of the residence, and the full mailing address if different from the residential address. of your brother and Co-Defendant in this action, Brent Charles Owens: \_\_\_\_\_

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Plaintiffs

Dated: 12-7-00

VERIFICATION

I, Dale R. Owens, Co-Defendant in the foregoing Interrogatories, hereby verify that the answers to the foregoing Interrogatories are true based upon my personal knowledge or information and belief. This statement is made subject to the penalties of 18 Pa C.S.A. § 4904 relating to unsworn falsification to authorities.

Date:

\_\_\_\_\_  
Dale R. Owens

MERREY, DENNIS L. And ELMO L. BRAID

00-1525-CD

VS.

OWENS, STANLEY B. AI

COMPLAINT FOR PARTITION and INTERROGATORIES

SHERIFF RETURNS

NOW DECEMBER 8, 2000 MAILED THE WITHIN COMPLAINT IN PARTITION AND INTERROGATORIES TO DALE R. OWENS, DEFENDANT BY CERTIFIED MAIL # 7000 0600 0023 2701 1632 AT 14207 LAKEVIEW DRIVE, GAINESVILLE, VA. 22065 BEING HIS LAST KNOWN ADDRESS. THE RETURN RECEIPT IS HERETO ATTACHED AND MADE A PART OF THIS RETURN ENDORSED BY DEFENDANT. NO DATE OF DELIVERY WAS ON RETURN RECEIPT CARD. THE LETTER WAS SENT MARKED "ADDRESSEE ONLY".

NOW DECEMBER 21, 2000 AT 11:13 AM EST SERVED THE WITHIN COMPLAINT IN PARTITION ON STANLEY B. OWENS, DEFENDANT AT RESIDENCE, 126 1/2 EVERGREEN ST., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO STANLEY B. OWENS A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN PARTITION AND MADE KNOWN TO HIM THE CONTENTS THEREOF. SERVED BY: COUDRIET

Return Costs

Cost	Description
30.72	SHFF. HAWKINS PAID BY: ATTY.
20.00	SURCHARGE PAID BY: ATTY.

FILED  
JAN 10 2001  
11:10:17 AM  
William A. Shaw  
Prothonotary  
E  
XR

Sworn to Before Me This

10<sup>th</sup> Day Of January 2000

*William A. Shaw*

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

So Answers,

*Chester A. Hawkins*  
*William A. Shaw*  
Chester A. Hawkins  
Sheriff

#4

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

DALE R. OWENS  
14207 Lakeview Drive  
Gainesville, VA. 22065

**COMPLETE THIS SECTION ON DELIVERY**

Received by (Please Print Clearly) \_\_\_\_\_ B. Date of Delivery \_\_\_\_\_

C. Signature Dale Owens  Agent Addresser:  Yes  No

D. Is delivery address different from item 1?  Yes  No  
If YES, enter delivery address below:

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Copy from service label)  
7000 0600 0023 2701 1632

PS Form 3811, July 1999

Domestic Return Receipt

102595-99-M-1769

+

UNITED STATES POSTAL SERVICE



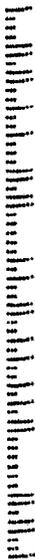
First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box.

CHESTER A. HAWKINS  
Sheriff of Clearfield County  
1 N. 2nd St. Suite 116  
Clearfield, Pa. 16830

C-10479

16830+2325



**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
*(Domestic Mail Only; No Insurance Coverage Available)*

Article Sent To:

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
<b>Total Postage &amp; Fees</b>	<b>\$ 6.39</b>



Name (Please Print Clearly) (to be completed by mailer):  
**DALE R. OWENS**  
 Street, Apt. No., or PO Box, No.  
**14207 Lakeview Drive**  
 City, State, ZIP+4  
**Gainesville, VA. 22065**

PS Form 3800, July 1999 See Reverse for Instructions

7000 0620 1232

**Certified Mail Provides:**

- A mailing label for your mailpiece
- A unique identifier for your mailpiece
- A signature upon delivery
- A record of delivery kept by the Postal Service for two years

**Important Reminders:**

- Certified Mail may ONLY be combined with First-Class Mail or Priority Mail.
- Certified Mail is not available for any class of international mail.
- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a Return Receipt may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

**IMPORTANT: Save this receipt and present it when making an inquiry.**

PS Form 3800, July 1999 (Reverse)

102595-99-M-2087

C-10479

In The Court of Common Pleas  
of  
Clearfield County, Pennsylvania

No. 00-1525-CD

Dennis L. Merrey and  
Elmo L. Braid  
\_\_\_\_\_  
Plaintiff

Versus

Stanley B. Owens, et al.  
\_\_\_\_\_  
Defendant

ANSWER TO  
COMPLAINT FOR PARTITION

**FILED**

DEC 29 2000

*0114213cc atty Mitchell*

William A. Shaw  
Prothonotary

*6 2/23*



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

DENNIS L. MERREY and  
ELMO L. BRAID,  
Plaintiffs

VS.

No. 00-1525-CD

STANLEY B. OWENS, THE HEIRS OF  
ROBERT OWENS; DALE R. OWENS,  
DOLORES EUNICE DOYLE, JOSEPHINE  
E. BARTLEY, BRENT CHARLES OWENS  
Defendants

ANSWERS TO COMPLAINT FOR PARTITION

NOW COMES the Defendant, STANLEY B. OWENS, by and through his attorney, Warren B. Mikesell, II, and sets forth the following Answers to Complaint for Partition, and in support thereof would aver as follows:

1. Paragraph one is admitted.
2. Paragraph two is admitted.
3. Paragraph three is denied. The current address of Stanley B. Owens is 126 ½ Evergreen Street, DuBois, Pennsylvania, 15801.
4. Paragraph four - The Defendant, Stanley B. Owens, is without sufficient knowledge to provide an answer to this averment.
5. Paragraph five is admitted.
6. Paragraph six is admitted.
7. Paragraph seven is admitted.
8. Paragraph eight is admitted.
9. Paragraph nine is admitted insofar as it is believed that Robert Owens and his wife, Laura Owens, are both

deceased; however, the Defendant, Stanley B. Owens, is without sufficient knowledge to provide an answer to the remaining contents of this averment.

10. Paragraph ten is admitted.

11. Paragraph eleven is admitted.

12. Paragraph twelve is admitted in part and denied in part. It is admitted that as evidenced by Exhibit "A" of the Plaintiff's Complaint, a letter agreement dated February 12, 1999, may have been executed by Daniel Owens and Dale Owens for the purchase price of \$150,000.00. It is denied that the Defendant, Stanley B. Owens, ever became a party to the said letter agreement or contract for sale of the properties for that value and it is denied that the value of the property is as stated in that Sales Agreement of \$150,000.00.

13. Paragraph thirteen - The Defendant, Stanley B. Owens, is without sufficient knowledge as to what Defendant, Dale Owens, may or may not have accepted and that he is still holding a check from the Plaintiff.

14. Paragraph fourteen - The Defendant, Stanley B. Owens, is without sufficient knowledge as to provide an answer to this averment.

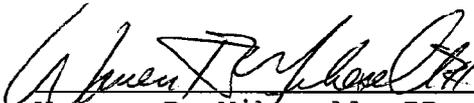
**WHEREFORE**, the Defendant, Stanley B. Owens, respectfully requests that your Honorable Court not decree a Partition of Real Estate subject to this action or appoint a Master to conduct a partition;

A. The Defendant, Stanley B. Owens, respectfully requests that this Court not partition the above parcel since he was not a party to the contract for sale and it would be highly prejudicial for the Court to place a value on the property that which other owners may have agreed to sell the said property and the Defendant, Stanley B. Owens, be forced to accept their value of the property. The Defendant, Stanley B. Owens, believes that an equitable partition of the property can be made wherein his 37.5% interest could be preserved in the said real estate.

WHEREFORE, the Defendant, Stanley B. Owens, respectfully requests that, if necessary to sell the property in question, that the property be properly appraised at a value set by Clearfield County standards wherein acreage is being sold at a rate of approximately \$500.00 per acre.

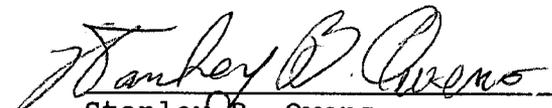
B. The Defendant, Stanley B. Owens, respectfully requests that, if necessary, this Court to divide the property after an appropriate survey is prepared and submitted to the Court for a division of the property; the said Defendant, Stanley B. Owens, believes that the property can be divided without prejudice to spoiling the whole since there are 549 acres, more or less, involved.

C. The Defendant, Stanley B. Owens, stands silent as to the Plaintiff's request as to this matter.

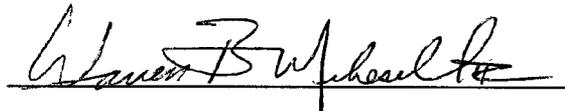
  
Warren B. Mikesell, II  
Attorney for Defendant

COMMONWEALTH OF PENNSYLVANIA :  
: SS.  
COUNTY OF CLEARFIELD :

Before me, the undersigned Officer, personally appeared  
STANLEY B. OWENS, who being duly sworn according to law, deposes  
and states that the facts set forth in the foregoing Answer to  
Partition are true and correct to the best of his knowledge,  
information and belief.

  
Stanley B. Owens

SWORN and SUBSCRIBED  
before me this 28th  
day of December, 2000



Notarial Seal  
Warren B. Mikesell II, Notary Public  
Clearfield Boro, Clearfield County  
My Commission Expires June 14, 2004  
Member, Pennsylvania Association of Notaries

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

DENNIS L. MERREY and ELMO L.  
BRAID.

Plaintiffs

vs

STANLEY B. OWENS, THE HEIRS OF  
ROBERT OWENS; DALE R. OWENS,  
DOLORES EUNICE DOYLE,  
JOSEPHINE E. BARTLEY, BRENT  
CHARLES OWENS.

Defendants

No. 00-1525-CD

TYPE OF CASE:  
**Equity**

TYPE OF PLEADING:  
**Answer to Complaint for Partition**

FILLED ON BEHALF OF:  
**Defendants**

PRO SE:  
**Dale R. Owens**  
14207 Lakeview Dr.  
Gainesville, Va. 20155  
(703) 754-8604

**FILED**

DEC 28 2000

William A. Shaw  
Prothonotary

(#2)

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

DENNIS L. MERREY and ELMO L.  
BRAID,

Plaintiffs

No. 00- -CD

vs

STANLEY B. OWENS, THE HEIRS OF  
ROBERT OWENS; DALE R. OWENS,  
DOLORES EUNICE DOYLE,  
JOSEPHINE E. BARTLEY, BRENT  
CHARLES OWENS,

Defendants

***NOTICE TO DEFEND***

TO: Dennis L. Merrey  
Elmo L. Braid

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

DENNIS L. MERREY and ELMO L.  
BRAID,

Plaintiffs

No. 00- -CD

vs

STANLEY B. OWENS, THE HEIRS OF  
ROBERT OWENS; DALE R. OWENS,  
DOLORES EUNICE DOYLE,  
JOSEPHINE E. BARTLEY, BRENT  
CHARLES OWENS,

Defendants

**COMPLAINT**

COMES NOW: DALE R. OWENS, DOLORES EUNICE DOYLE, JOSEPHINE E.  
BARTLEY, and BRENT CHARLES OWENS who files this Answer to Complaint for Partition  
and in support thereof aver as follows:

1. Agree
2. Agree
3. Agree
4. Agree
5. Agree
6. Agree
7. Agree
8. Agree
9. Robert Owens and his wife are both Deceased.
10. Agree

11. Agree

12. Agree

13. Agree

14. Agree

15. An attorney was retained by the Heirs of Robert Owens on October 23, 2000 to open two estates. One for Robert Owens, who predeceased his wife, and then one for his wife. The attorney stated this will take three to four months to clear the Pennsylvania inheritance tax department. As soon as this inheritance tax issue is resolved, the 25% interest in the above property will be transferred to the plaintiffs.

16. Stanley B. Owens is in the middle of a divorce. All of his properties are frozen until the divorce and property settlement are completed.

17. The real estate subject to this action does not have public roads for access.

18. The intent of the purchase of said property by Robert Owens and the other grantees was to share equally in the use of the entire property without partitioning.

WHEREFORE, the Defendents respectfully request that:

The Court **Not** decree partition of the real estate subject to this action.

Respectfully submitted,

  
Dale R. Owens

Dale R. Owens

Date: 12-26-00

**FILED**

DEC 28 2000

 11/25/00  
William A. Strain  
Prothonotary

*D. O'Quinn*

*E. Kat*

**FILED**

DEC 08 2000

*William A. Shaw*

Prothonotary

*Pa. J.S.A.*

*Sec. of H.S. Smith*

**PETER F. SMITH**  
ATTORNEY

30 SOUTH SECOND STREET  
P.O. BOX 130  
CLEARFIELD, PA. 16830

COMMERCIAL PRINTING CO., CLEARFIELD, PA.

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

DENNIS L. MERREY and ELMO L.  
BRAID,

Plaintiffs

vs

STANLEY B. OWENS, THE HEIRS OF  
ROBERT OWENS: DALE R. OWENS,  
DOLORIS EUNICE DOYLE,  
JOSEPHINE E. BARTLEY, BRENT  
CHARLES OWENS,

Defendants

No. 00-1525-CD

TYPE OF CASE:

**Equity**

TYPE OF PLEADING:

**Complaint for Partition**

FILED ON BEHALF OF:

**Plaintiffs**

**FILED**

DEC 08 2000

William A. Shaw  
Prothonotary

ATTORNEY OF RECORD FOR THIS  
PARTY:

**Peter F. Smith, Esquire**

Supreme Court I.D. #34291

30 South Second Street

P.O. Box 130

Clearfield, PA 16830

(814) 765-5595

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

DENNIS L. MERREY and ELMO L. BRAID, :  
 :  
 Plaintiffs : No. 00- -CD  
 :  
 vs :  
 :  
 STANLEY B. OWENS, THE HEIRS OF :  
 ROBERT OWENS: DALE R. OWENS, :  
 DOLORES EUNICE DOYLE, :  
 JOSEPHINE E. BARTLEY, BRENT :  
 CHARLES OWENS, :  
 Defendants :

***NOTICE TO DEFEND***

TO: Stanley B. Owens  
Dale R. Owens  
Dolores Eunice Doyle  
Josephine E. Bartley  
Brent Charles Owens

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you, and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR CANNOT AFFORD A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

Clearfield County Court Administrator  
Clearfield County Courthouse  
Second and Market Streets  
Clearfield, PA 16830  
(814) 765-2641 ext. 5982

***AMERICANS WITH DISABILITIES ACT OF 1990***

The Court of Common Pleas of Clearfield County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

Clearfield County Court Administrator  
Clearfield County Courthouse  
Corner of Market and Second Streets  
Clearfield, PA 16830  
(814) 765-2641, ext. 5982

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

DENNIS L. MERREY and ELMO L. BRAID,	:		
	:		
Plaintiffs	:	No. 00-	-CD
	:		
vs	:		
	:		
STANLEY B. OWENS, THE HEIRS OF ROBERT OWENS: DALE R. OWENS, DOLORES EUNICE DOYLE, JOSEPHINE E. BARTLEY, BRENT CHARLES OWENS,	:		
	:		
Defendants	:		

**COMPLAINT**

COMES NOW, DENNIS L. MERREY and ELMO L. BRAID by their Attorney Peter F. Smith, who files this Complaint for Partition and in support thereof aver as follows:

1. The name of the first Plaintiff is DENNIS L. MERREY who resides at RR 3, Box 30, Clearfield, Pennsylvania, 16830.
2. The name of the second Plaintiff is ELMO L. BRAID who resides at 707 Jade Road, Clearfield, Pennsylvania, 16830.
3. The name of the first Defendant is STANLEY B. OWENS whose address is RD 2, Box 274, Clearfield, Pennsylvania, 16830.
4. The final Defendants are the heirs at law of ROBERT OWENS, whose names and addresses are:
  - a) DALE R. OWENS, 14207 Lakeview Drive, Gainesville, Virginia, 22065,
  - b) DOLORES EUNICE DOYLE, address unknown to Plaintiffs,
  - c) JOSEPHINE E. BARTLEY, address unknown to Plaintiffs; and,
  - d) BRENT CHARLES OWENS, address unknown to Plaintiffs.

5. The parcel of real estate subject to this action is situated in Goshen Township and identified by Clearfield County Tax Map Number 115-L04-3. It consists of 549.5 acres surface and is the eastern 1/2 of Warrant No. 5319, more particularly described as follows:

**ALL that certain piece or parcel of land situated in Goshen Township, Clearfield County, Pennsylvania, bounded and described as follows:**

**The Eastern one-half of Warrant No. 5319 beginning at a point on the northern line of Warrant No. 5319 and the said point being equidistant between the west line of No. 5319 and the east line of #5319 and being bounded on the north by Warrant No. 5320; on the east by No. 5321 and No. 5318; on the south by Warrant No. 5316; and on the west by the western one-half of Warrant no. 5319. Containing according to original survey five hundred forty-nine and one-half acres, and is sold as the eastern one-half of Warrant No. 5319 and has not been surveyed separately.**

**EXCEPTING AND RESERVING to Whitmer Steele Company, its successors and assigns, all coal, fireclay, oil, gas and other minerals together with drilling and deep mining rights.**

6. Plaintiffs became the owners of an undivided 37.5% interest in the premises subject to this action by a deed from Daniel G. Owens and Marjorie E. Owens, husband and wife, dated August 13, 1999, and recorded in Clearfield County Instrument Number 199913408 on August 13, 1999.

7. Defendant, STANLEY B. OWENS, obtained an undivided 37.5% interest in the premises by deed dated May 14, 1970, granted by Howard Owens, et ux. and recorded in Clearfield County Deed Book 560, Page 394.

8. ROBERT OWENS obtained an undivided 25% interest in the premises by a deed dated April 8, 1924, granted by Whitmer-Steele Co. recorded in Clearfield County Deed Book 270, Page 172.

9. ROBERT OWENS is believed to have died. The date of his death is unknown to Plaintiffs. No estate was opened for him in Clearfield County, Pennsylvania. Robert Owens' wife is also believed to be deceased. His heirs are believed to be his children who are the individuals

identified in paragraph 4 above.

10. As a result of the foregoing transfers and devises, ownership of the premises subject to this action is currently held as follows:

Plaintiffs: 37.5%  
Defendant, Stanley B. Owens: 37.5%  
Defendant, Heirs of Robert Owens: 25%

11. No partition or division of the property has ever been made although Plaintiffs have requested the Defendants to join with them in selling their interest to the Plaintiffs.

12. By letter agreement dated February 12, 1999, Defendant Dale Owens, who represented that he had authority to act on behalf of all Heirs of Robert Owens, agreed to sell his interest in the premises. The total purchase price was \$150,000.00, of which the heirs of Robert Owens would receive 25%. A true and correct copy of said letter agreement is attached hereto and incorporated herein by reference as Exhibit A.

13. Defendant, DALE OWENS also accepted and still holds a check from Plaintiff, ELMO L. BRAID in the amount of \$2,625.00, as a down payment for the ROBERT OWENS interest. A true and correct copy of said check is attached hereto and incorporated herein as Exhibit B.

14. Plaintiffs and their counsel have urged Dale R. Owens to conclude this transfer which will require opening an estate for Robert Owens to establish the identity of his heirs and to appoint a fiduciary with authority to transfer the estate's interest in the subject premises and to prepare and file a Pennsylvania Inheritance Tax Return and pay any necessary tax, interest and/or penalties.

WHEREFORE, the Plaintiffs respectfully request that:

- A. The Court decree partition of the real estate subject to this action and appoint a Master to conduct the partition;
- B. The Court decree that the real estate cannot be divided without prejudice to or spoiling the whole and such proper and necessary sale of the same may be made by the Master as the Court may direct;
- C. If the Heirs of Robert Owens fail to open an estate, file an inheritance tax return and pay any tax, interest and penalties, the Master be authorized to do this on their behalf and that any legal fees, court costs, taxes, interest or penalties incurred in this regard be assessed against the share of the Heirs of Robert Owens in the premises or proceeds from its sale.

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Plaintiffs

Dated: 12-2-00



DENNIS L. MERREY  
 R.D. 3 - Box 30  
 Clearfield, PA 16830

814-765-4712

February 12, 1999



Daniel Owens, Dale Owens and Stanley Owens  
 R.R. 3, Box 273  
 Clearfield, PA 16830

Gentlemen:

I write to confirm the agreement we have reached. Elmo Braid and I have agreed to purchase, and you have agreed to sell, 549 $\frac{1}{2}$  acres of real estate in Goshen Township, Clearfield County, PA, identified by Tax Map No. 115-L4-3 to which you took title by deed in Clearfield County Record Volume 560, Page 394. We have agreed to pay \$150,000.00.

*ELMO  
 BSA*

We have also agreed that Elmo and I will tender a down payment of \$7,500.00. We sent you an initial \$1,000.00 with our cover letter. I enclose an additional \$6,500.00. The down payment is to be credited toward the purchase price. We plan to close this transaction on or before March 12, 1999. At that time the remaining balance of \$142,500.00 will be tendered.

This sale is conditioned upon your ability to convey good and marketable title to the premises and our ability to get a right-of-way from adjoining landowners in recordable form. If either one of these conditions should fail, Elmo and I will have the option to terminate this sale, and you will agree to refund our \$7,500.00 down payment.

Attorney Peter F. Smith of Clearfield will be representing us. He can be reached at (814) 765-5595.

If you find these terms acceptable, I request that you each sign the enclosed second copy of this letter at the bottom and return it to me. This letter will then constitute a binding sales contract.

BUYERS

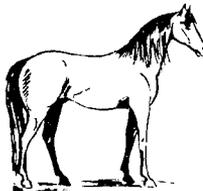
*Dennis L. Merrey*  
 Dennis L. Merrey  
*Elmo L. Braid*  
 Elmo L. Braid

SELLERS

We agree to these terms

*Daniel Owens*  
 Daniel Owens

*Dale Owens* Downpayment Held by Daniel Owens  
 Dale Owens for Robert Owens, Deceased



Stanley Owens



MARY E. BRAID  
ELMO L. BRAID  
707 JADE RD, PH 814-785-2177  
CLEARFIELD, PA 16830-1005

5584

80-627/313

DATE 4/15/97

PAY TO THE ORDER OF HEIRS OF ROBERT OWENS & DALE R. OWENS \$ 2,625.00

TWENTY SIX HUNDRED TWENTY-FIVE AND NO/100 DOLLARS  Security Feature  
includes  
transfer to name  
Maximum Value Plan

**CNB**  
COUNTY NATIONAL BANK  
MAIN OFFICE CLEARFIELD, PA

PARTIAL PAYMENT ON GOSHEN TOWNSHIP  
FOR PROPERTY LISTED ON CLFD. CO. TAX MAP #115-14-3

*Elmo L. Braid*

⑆031306278⑆ ⑆1116255⑆ ⑆11⑆ 5584

©HAWLAND

AFFIDAVIT

STATE OF PENNSYLVANIA :  
:SS  
COUNTY OF CLEARFIELD :

DENNIS L. MERREY, being duly sworn according to law, depose and say that the information contained in the foregoing Complaint is true, correct and complete to the best of his information, knowledge and belief.

*Dennis L. Merrey*  
Dennis L. Merrey

SWORN TO AND SUBSCRIBED  
before me this 19th  
day of October, 2000.

*Maggie S. Coudriet*  
Notary Public  
NOTARIAL SEAL  
MAGGIE S. COUDRIET, Notary Public  
Clearfield Boro. Clearfield County, PA  
My Commission Expires, October 21, 2002

AFFIDAVIT

STATE OF PENNSYLVANIA :  
:SS  
COUNTY OF CLEARFIELD :

ELMO L. BRAID, being duly sworn according to law, depose and say that the information contained in the foregoing Complaint is true, correct and complete to the best of his information, knowledge and belief.

*Elmo L. Braid*  
Elmo L. Braid

SWORN TO AND SUBSCRIBED  
before me this 19th  
day of October, 2000.

*Maggie S. Coudriet*  
Notary Public  
NOTARIAL SEAL  
MAGGIE S. COUDRIET, Notary Public  
Clearfield Boro. Clearfield County, PA  
My Commission Expires, October 21, 2002

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

*Superior Court of PA  
Office of the Prothonotary  
600 Grant Building  
Pittsburgh, PA 15219*

*00-1525-cv*

2. Article Number  
*(Transfer from service label)*

*7002 3150 0000 7855 4988*

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

*X [Signature]*

Agent  
 Addressee

B. Received by (Printed Name)

C. Date of Delivery  
*11-3*

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

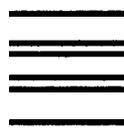
3. Service Type

- Certified Mail
- Registered
- Insured Mail
- Express Mail
- Return Receipt for Merchandise
- C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

UNITED STATES POSTAL SERVICE

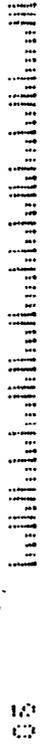


First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

William A. Shaw  
 Prothonotary/Clerk of Courts  
 P.O. Box 549  
 Clearfield, PA 16830

00-1525-02



00-1525-CD

FILED <sup>26K</sup>

m/10:36/30

NOV 05 2004

William A. Shaw  
Prothonotary/Clerk of Courts

PCL XL error

Subsystem: KERNEL

Error: IllegalStreamHeader

Operator: 0x0

Position: 0

**FILED**

NOV 02 2004

0/3:00/w

William A. Shaw  
Prothonotary

00-1525-w

7002 3150 0000 7855 4988

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
*(Domestic Mail Only; No Insurance Coverage Provided)*

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

PITTSBURGH PA 15219

Postage	\$ 6.80
Certified Fee	\$ 2.30
Return Receipt Fee (Endorsement Required)	\$ 1.75
Restricted Delivery Fee (Endorsement Required)	\$ 0.00
<b>Total Postage &amp; Fees</b>	<b>\$ 10.85</b>

16830  
 0830  
 Postmark Here  
 NOV - 2 2004  
 PITTSBURGH PA 15219  
 USPS

Sent To: Superior Court of PA-Prothonotary  
 Street, Apt. No., or PO Box No.: 1000 Grant Building  
 City, State, ZIP+4: Pittsburgh, PA 15219

PS Form 3800, June 2002 See Reverse for Instructions

COPY

November 2, 2004

Superior Court of Pennsylvania  
Office of the Prothonotary  
600 Grant Building  
Pittsburgh, PA 15219

Re: Dennis L. Merrey and Elmo L. Braid  
Vs.  
Stanley B. Owens and Marie C. Owens;  
The Heirs of Robert Owens: Dale R. Owens, Dolores E. Doyle, Josephine E.  
Bartley, Brent Charles Owens  
No. 00-1525-CD  
Superior Court No. 1654 WDA 2004

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

John K. Reilly, Jr., Sr. Judge, Specially  
Presiding  
Court of Common Pleas  
230 E. Market Street  
Clearfield, PA 16830

Peter F. Smith  
PO Box 130  
Clearfield, PA 16830

Warren B. Mikesell, II  
115 E. Locust Street  
Clearfield, PA 16830

Dale R. Owens  
14207 Lakeview Drive  
Gainsville, VA 22065

Joseph Colavecchi  
PO Box 131  
Clearfield, PA 16830

Dennis L. Merrey and Elmo L. Braid  
Vs.

Stanley B. Owens and Marie C. Owens;  
The Heirs of Robert Owens: Dale R. Owens, Dolores E. Doyle, Josephine E. Bartley,  
Brent Charles Owens

Court No. 00-1525-CD; Superior Court No. 1654 WDA 2004

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior  
Court of Pennsylvania on November 2, 2004.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

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

NOV 02 2004

Civil Other

Date		Attest. Judge	<i>William B. Shaw</i> Prothonotary/ Clerk of Courts
12/08/2000	Filing: Complaint for Partition Paid by: Smith, Peter F. (attorney for Merrey, Dennis L.) Receipt number: 0052591 Dated: 12/08/2000 Amount: \$80.00 (Check) Eight Certified Copies to Attorney Smith	No Judge	
12/28/2000	Answer to Complaint for Partition , filed by s/DALE R. OWENS 2 cc D. Owens	No Judge	
12/29/2000	Answer to Complaint for Partition, filed by s/Warren B. Mikesell, II, Esq. 3 cc atty Mikesell	No Judge	
01/10/2001	Sheriff Return, Complaint in Partition and Interrogatories upon Dale R. Owens and Stanley B. Owens. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge	
01/24/2001	Motion to Compel Discovery, Filed by s/Peter F. Smith, Esq. 3 cc atty Smith	No Judge	
01/31/2001	Rule Returnable upon Dale R. Owens, Written Response due by Feb. 20, 2001, Rule Returnable March 5, 2001. By the Court, s/JKR,JR,PJ. 31 Jan 2001. 4 cc atty Smith	John K. Reilly Jr.	
02/02/2001	Certificate of Service, Motion to Compel Discovery upon Dale R. Owens. Filed by s/Peter F. Smith, Esq.	John K. Reilly Jr.	
03/05/2001	ORDER, AND NOW, this 5th day of March, 2001, Rule issued against Dale R. Owens, shall serve true, correct and complete answers to the Interrogatories served upon him by Plaintiff within 15 days of the date of this Order. By the Court, s/JKR,JR.,PJ 3 cc atty Neiswender	John K. Reilly Jr.	
04/26/2001	Motion to Discontinue as to the Heirs of Robert Owens. filed by s/Peter F. Smith, Esq. 2 cc atty Smith	John K. Reilly Jr.	
	SCHEDULING ORDER, AND NOW THIS 26th day of April, 2001, upon Stanley B. Owens, to show cause, Written Response to Motion due by the 16th day of May, 2001. This Order shall be heard in Court on the 18th day of June, 2001, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 2 cc atty Smith	John K. Reilly Jr.	
04/27/2001	Certificate of Service, Motion to Discontinue upon Warren B. Mikesell, II, Esq. s/Peter F. Smith, Esq.	John K. Reilly Jr.	
05/16/2001	Answers To Discontinue As To The Heirs of Robert Owens, Filed by Warren Mikesell, II.	John K. Reilly Jr.	
06/18/2001	ORDER, AND NOW, this 18th day of June, 2001, re: Action is DISCONTINUED as to the Heirs of Robert Owens, to wit: Dale R. Owens, Dolores Eunice Doyle, Josephine E. Bartley and Brent Charles Owen. by the Court, s/JKR,JR., P.J.	John K. Reilly Jr.	
06/19/2001	Certificate of Service, Order of June 18, 2001, upon Warren B. Mikesell, Esq. s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.	
10/18/2001	Motion for Order Directing Partition and Scheduling of Preliminary Conference. Filed by s/Peter F. Smith, Esq. 2 cc Atty Smith	John K. Reilly Jr.	
10/19/2001	Rule Returnable, AND NOW THIS 19th day of October, 2001, Written response to this Motion due by the 8th day of November, 2001. Order shall be heard in Court on the 19th day of November, 2001, at 2:30 p.m. BY THE COURT: /s/John K. Reilly, Jr., P.J. Two CC Atty	John K. Reilly Jr.	
10/30/2001	RULE RETURNABLE, AND NOW THIS 30th day of Oct. 2001, issued upon Stanley B. Owens, written response to this motion is due by the 8th day of Nov., 2001. This Order shall be heard in Court on the 7th day of Dec. 2001, at 9:30 a.m. by the Court, s/JKR,JR.,P.J. 1 cc Atty Smith	John K. Reilly Jr.	
11/06/2001	Certificate of Service, Defendants Motion For Order Directing Partition and Scheduling of Preliminary Conference and Rule Returnable upon Warren B. Mikesell, Esq. s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.	
11/08/2001	Petition for Extension of Time to file and Change of Preliminary Conference, filed by s/Warren B. Mikesell, II Four CC Attorney Mikesell	John K. Reilly Jr.	

## Civil Other

Date		Judge
11/13/2001	RULE RETURNABLE, NOW, this 13th day of November, 2001, entered upon Stanley B. Owens, Defendant. Written Response due by 3rd day of Dec., 2001. Order shall be heard in Court on the 18th day of Dec. 2001, at 9:00 a.m. by the Court, s/JKR, JR., P.J. 4 cc Atty Mikesell	John K. Reilly Jr.
12/07/2001	Response to Motion for Order Directing Partition and Scheduling of Preliminary Conference. Filed by s/Warren B. Mikesell, II, Esq. 4 cc to Atty	John K. Reilly Jr.
12/18/2001	ORDER, AND NOW, this 18th day of December, 2001, re: Hearing on Plaintiff's Motion for an Order Directing Partition and Answer Having been filed, J. Richard Mattern, Esq. is appointed Master. by the Court, s/JKR, JR., P.J. 1 cc Atty Mikesell, Smith, and Mattern	John K. Reilly Jr.
04/16/2002	Petition For Intervention by Marie C. Owens, wife of Stanley B. Owens. Filed by s/Joseph Colavecchi, Esq. 5 cc Atty Colavecchi	John K. Reilly Jr.
04/19/2002	RULE, AND NOW, this 19th day of April, 2002, Issued upon ALL PARTIES, returnable for Argument On the 8th day of May, 2002. by the Court, s/JKR, JR., P.J. 5 cc Atty Colavecchi	John K. Reilly Jr.
04/26/2002	Petition to Enter Order of Partition. Filed by s/Joseph Colavecchi, Esq. 4 cc Atty Colavecchi	John K. Reilly Jr.
04/29/2002	ORDER, AND NOW, this 29th day of April, 2002, re: Rule issued and directed to Peter F. Smith, Esq. Atty for Plaintiffs, Warren B. Mikesell, II, Esq. Atty for Stanley B. Owens and J. Richard Mattern, III, Esq. Master in Partition. Rule returnable for Argument the 8th day of May, 2002, at 10:30 a.m. by the Court, s/JKR, JR., P.J. 4 cc Atty Colavecchi	John K. Reilly Jr.
05/08/2002	ORDER, NOW, this 8th day of May, 2002, re: Petition to Intervene filed on behalf of Marie C. Owens shall be and is hereby granted and she be permitted to be added as a party defendant. By the Court, s/JKR, JR., P.J. 1 cc Atty Colavecchi, Smith, and Mikesell	John K. Reilly Jr.
05/15/2002	ORDER DIRECTING PARTITION UNDER PENNSYLVANIA R.C.P. 1557, AND NOW, this 15th day of May, 2002, re: Owens 37.50%, Merrey and Braid 62.50%. by the Court, s/JKR, JR, P.J. 1 cc Atty Colavecchi	John K. Reilly Jr.
12/23/2002	Proposed Findings Of Fact and Conclusions Of Law. filed by s/Warren B. Mikesell, II, Esquire 4 cc to Atty Mikesell	John K. Reilly Jr.
02/25/2003	Exceptions To Master's Report By Marie C. Owens. s/Joseph Colavecchi, Esquire 5 cc J. Colavecchi	John K. Reilly Jr.
02/27/2003	Certificate of Service, Exceptions to Master's Report by Marie C. Owens upon: J. Richard Mattern II, Esq., Peter F. Smith, Esq. and Warren Mikesell, Esq. filed by s/Joseph Colavecchi, Esq. no cc	John K. Reilly Jr.
	Master's Preliminary Notice and Master's Report. no cc	John K. Reilly Jr.
	Transcript Of Hearing Held July 25, 2003. filed.	John K. Reilly Jr.
	Exceptions To Master's Report By Stanley B. Owens. filed by s/Warren B. Mikesell, II, Esquire 4 cc to Atty	John K. Reilly Jr.
02/28/2003	DECREE NISI, AND NOW, this 28th day of Feb., 2003 by the Court, s/JKR, JR., P.J. 2 cc Atty Mattern	John K. Reilly Jr.
05/19/2003	ORDER, NOW, this 16th day of May, 2003, re: Disposition of the Objections filed on behalf of Defendants above-named shall be and is hereby continued pending results of the private sale. by the Court, s/JKR, JR., P.J. 1 cc Atty Smith, Mikesell	John K. Reilly Jr.
06/03/2003	Filing: Objections pursuant to PA. R.C., P. 1563(b) filed by Atty. Smith. No cc.	John K. Reilly Jr.
	Certificate of Service of Objections Pursuant to PA R.C. P.1563(b). filed by Atty. Smith No cc.	John K. Reilly Jr.

## Civil Other

Date		Judge
06/05/2003	Defendant's Motion For Continuance. filed by s/Joseph Colavecchi, Esquire 1 cc Atty Colavecchi	John K. Reilly Jr.
	ORDER, NOW, this 5th day of June, 2003, re: Motion For Continuance is GRANTED and Argument is hereby rescheduled for the 26th day of June, 2003, at 2:00 p.m. by the Court, s/JKR,JR.,P.J. 3 cc Atty Colavecchi for Service	John K. Reilly Jr.
06/06/2003	CORRECTED OBJECTIONS PURSUANT TO PA. R.C.P. 1563(b) filed by s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
06/18/2003	Answer To Objections Pursuant To Pa. R.C.P. 1563(b) filed by s/Warren B. Mikesell, II, Esquire 5 cc Atty Mikesell	John K. Reilly Jr.
	Answer To Objections Pursuant To Pa. R.C.P. 1563(b). filed by s/Joseph Colavecchi, Esquire no cc	John K. Reilly Jr.
06/26/2003	Order: Now, this 26th day of June, 2003, the date set for argument into Objections and Amended Objections to Private sale filed on behalf of Plaintiffs. Proceedings will be referred to the Master, J. Richard Mattern, Esq. for conducting a private sale confined to the parties. s/JKR 2 CC Atty. Mikesell, 2 CC Atty. Smith, 1 CC Atty. Colavecchi	John K. Reilly Jr.
10/07/2003	Exceptions and Objections to Master's Report and Return of Sale filed by Atty. Colavecchi. 6 CC to Atty.	John K. Reilly Jr.
10/09/2003	Execeptions and Objections to Master's Report and Return of Sale, Schedule of Distribution and Proposed Decree under PA. R. C.P. 1569 (c), filed by Atty. Mikesell 6 Cert. to Atty.	John K. Reilly Jr.
10/14/2003	Master's Return of Sale, Schedule of Distribution, Proposed Decree, Revised Schedule of Master's Costs and Fees and Order For Payment Of Master. filed by s/J. Richard Mattern, II, Esquire Certificate of Service no cc	John K. Reilly Jr.
09/07/2004	Order. This matter comes before the Court on exceptions and objections to the Master's report in the above-captioned action in partition. In examining the Master's conclusions of Law, this Court finds that the Master committed no error and, therefore, enters the following Order. NOW this 3rd day of Sept. 2004 upon consideration of objections and exeptions filed to the Master's report by the above-named Defendants and argument and briefs thereon, it is the ORDER of this Court that said objections and exceptions shall be and are hereby dismissed and the Master's reprt confirmed. s/JKR 2 CC to Atty. Smith 1 CC Atty. Mikesell 1 CC Dale Owens, 14207 Lakeview Dr. Gainsville VA 22065. 5 CC to Atty. Colavecchi	John K. Reilly Jr.
09/09/2004	Certificate of Service of Praecepte to enter judgment filed by Atty. Smith No cc.	John K. Reilly Jr.
	Praecepte to Enter Judgment in favor of the Plffs. pursuant to Court Order filed by Atty. Smith. No cc.	John K. Reilly Jr.
09/21/2004	Filing: Appeal to High Court Superior Court Paid by: Colavecchi, Joseph (attorney for Owens, Marie C.) Receipt number: 1886946 Dated: 09/21/2004 Amount: \$45.00 (Check) 1 Cert. to Atty. 1 Cert. with check for \$60.00 to Superior.	John K. Reilly Jr.
	Order for Transcript, filed by Atty. Colavecchi 2 Cert. to Atty.	John K. Reilly Jr.
09/30/2004	Appeal Docket Sheet, filed. # 1654 WDA 2004	John K. Reilly Jr.
11/02/2004	Appeal mailed to Superior Court November 2, 2004.	John K. Reilly Jr.

The Superior Court of Pennsylvania  
Sitting at Pittsburgh

1015 Grant Building  
Pittsburgh, Pennsylvania  
15219

FILED  
m 11:03 AM  
AUG 08 2005 GR

CERTIFICATE OF CONTENTS OF REMANDED RECORD  
AND NOTICE OF REMAND  
under  
PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572

William A. Shaw  
Prothonotary/Clerk of Courts

THE UNDERSIGNED, Prothonotary (or Deputy Prothonotary) of the Superior Court of Pennsylvania, the said court of record, does hereby certify that annexed to the original hereof, is a true and correct copy of the entire record:

Original Record and One Transcript, Superior Court opinion

As remanded from said court in the following matter:

In Re: **Dennis L. Merrey and Elmo L. Braid v. Stanley B. Owens, et al.**  
**No. 1654 WDA 2004**

Court of Common Pleas, Civil Div of Clearfield County  
At No. 00-1525-CD

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded is: August 4, 2005.

An additional copy of this certificate is enclosed with the original hereof and the clerk or prothonotary of the lower court or the head, chairman, deputy, or the secretary of the other government unit is hereby directed to acknowledge receipt of the remanded record by executing such copy at the place indicated by forthwith returning the same to this court.

*Eleanor R. Valecko*  
DEPUTY PROTHONOTARY

RECORD, ETC. RECEIVED:

DATE: August 8, 2005

*William A. Shaw*  
(Signature & Title)

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2006  
Clearfield Co., Clearfield, PA

J. A18037/05

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

DENNIS L. MERREY AND ELMO L. BRAID,

Appellees

v.

STANLEY B. OWENS AND MARIE C. OWENS,

Appellees

APPEAL OF: MARIE C. OWENS,

Appellant

IN THE SUPERIOR COURT OF PENNSYLVANIA

**FILED**  
m/11:03  
AUG 08 2005 @

William A. Shaw  
Prothonotary/Clerk of Courts

No. 1654 WDA 2004

Appeal from the Judgment Entered September 9, 2004, in the Court of Common Pleas of Clearfield County, Civil Division, at No. 00-1525-CD.

BEFORE: MUSMANNO, TODD AND BOWES, JJ.

MEMORANDUM:

Filed: June 21, 2005.

Marie C. Owens appeals from the judgment entered in this partition action. She assails the equity court's decision to affirm the master's findings that the property at issue in this action cannot be partitioned without harm to the whole and that it had a fair market value of \$150,000. We affirm.

On December 8, 2000, Dennis L. Merrey and Elmo L. Braid, Appellees, instituted this partition action against Stanley B. Owens. The action related to the surface rights to 549.5 acres of unimproved and unencumbered land in Goshen Township, Clearfield County. The matter was referred to a master, who inspected the property to determine whether partition should be ordered. Marie Owens, who is not a record title holder to the property and who was in the process of a divorce from Stanley Owens, petitioned to intervene and was added as party defendant because she had an equitable

interest in the property as Stanley's wife. Based on the master's initial findings on May 15, 2002, the equity court entered an order directing partition and awarding the Owenses thirty-seven and one-half percent of the property and Appellees sixty-three and one-half percent of the parcel. The equity court then referred the case back to the same master for a determination of whether the property was capable of division into parts proportionate in value to the interests of the co-tenants without prejudice to the whole as well as a determination of the property's value.

The master conducted a hearing on July 25, 2002, and on February 17, 2003, issued a report concluding that the property was not capable of division without prejudice to or spoiling the whole and that its value as a whole was \$150,000. The master also recommended that the property be sold at a private sale conducted pursuant to Pa.R.C.P. 1563 and that if Appellees, as majority interest holders, objected under that Rule, they could purchase the minority interest owned by Stanley and Marie Owens for

\$56,250.<sup>1</sup>

These legal conclusions were premised upon the master's findings of fact, which we now summarize. Appellees initially intended to purchase the entire 549 acres by negotiating with Daniel Owens, one of the record owners. Stanley had given Daniel written authority to negotiate on his behalf but Marie had not executed that document. Appellees negotiated with Daniel to purchase the entire tract of property for \$150,000. The price represented a premium because the tract was large enough to manage a deer herd located on the property. Appellees purchased their sixty-three and one-half percent interest in the property by paying Daniel \$56,250 for his thirty-seven and one-half percent interest in the property and by paying the heirs of Robert Owens \$37,500 for their twenty-five percent interest in

---

<sup>1</sup> Rule 1563. Property not Capable of Division without Prejudice. Sale. Objections.

(a) Except as otherwise provided in Subdivision (b), property not capable of division without prejudice to or spoiling the whole shall be offered for private sale confined to the parties.

(b) Parties defendant owning a majority in value of the property may object in writing to any sale, requesting that the property be awarded to them at its valuation fixed by the court and that their interests in the same remain undivided. Upon such request the entire property shall be awarded to the parties objecting to sale, as tenants in common, subject to the payment to the parties desiring partition and sale of the amounts of their respective interests based upon the valuation. The amounts due the parties shall be charged as liens upon the property, to be paid in such manner and time as the court shall direct.

the property. These two recent purchases evidenced a value of \$150,000 for the entire tract.

The unimproved land was clear cut several decades ago, and Appellees presented evidence at the hearing that it had no harvestable timber. Craig Osthon, an expert in timber marketing and management, also testified for Appellees and opined that, while the property had timber worth of approximately \$50,000, if the property was timbered, a total loss of remaining vegetation would result.

Appellees also presented the testimony of a professional consulting forester, Mr. Donald Harvey Klinger, who is engaged in wildlife management. He confirmed that while the property would not be attractive to loggers, he opined that the property would provide an excellent locale for management of a deer herd because the herd would tend to stay within the property's boundaries. A herd of deer has an average home range of 644 acres. Mr. Klinger stated that while it is possible to manage a herd on a smaller tract, the 549 acre size was better suited for this purpose due to a herd's home range. The master credited Mr. Klinger's opinion that deer herd management requires tracts of over 500 acres. The master also observed that in local newspaper advertisements, buyers purchasing land for deer herd management sought tracts of over 500 acres. Mr. Klinger's opinion also was confirmed by Mr. Merrey, who testified that all of the surrounding properties consist of large tracts of over 500 acres used for hunting and

recreational purposes. Indeed, all the parties agreed that the property's best use was for recreational pursuits such as hiking and hunting. The master found that clear cutting the remaining \$50,000 in timber would destroy the land's value for those pursuits. Daniel Owens testified that both he and his brother, Stanley, had been willing to sell their interest in the property based on an overall valuation of \$150,000.

Appellant presented the testimony of an expert witness, Richard J. Provost, who opined that the property was worth \$330,000. The master found Mr. Provost's "testimony and opinion not credible" because Mr. Provost ignored the arms length sales recently conducted by Appellees and Robert Owens' heirs and Appellees and Daniel Owens. Master's Report, 2/27/03, at 13. The master further concluded, "The sale by Daniel Owens of his interest in the premises and the sale by the Heirs of Robert Owens of their interest in the property are recent, arms-length, bona-fide transactions and are the best evidence of the premises value as a whole to be \$150,000.00 and of Defendant's 37.5% interest in the premises." *Id.* at ¶ 34.

The equity court denied exceptions and confirmed the master's report. After proceedings pursuant to Pa.R.C.P. 1563, the property was awarded to Appellees upon payment to Stanley and Marie Owens of \$56,250. This appeal by Marie followed. She argues that the equity court erred when it failed to order the division of the property and that the court should have

accepted Mr. Provost as the credible witness on the question of the property's value.

We first recite our standard of review in an equity matter because it virtually compels our resolution of these issues.

In equity matters, appellate review is based on a determination by the appellate court of such questions as whether (1) sufficient evidence supports the findings of the judge; (2) the factual inferences and legal conclusions based on those findings are correct; and (3) there has been an abuse of discretion or an error of law. Generally, in an appeal from a trial court sitting in equity, the standard of review is rigorous. The function of this Court on an appeal from an adjudication in equity is not to substitute its view for that of the lower tribunal; our task is rather to determine whether a judicial mind, on due consideration of all the evidence, as a whole, could reasonably have reached the conclusion of that tribunal.

***Omicron Systems, Inc. v. Weiner***, 860 A.2d 554, 557-58 (Pa.Super. 2004) (quoting ***Hess v. Gebhard & Co.***, 570 Pa. 148, 808 A.2d 912, 920 (2002)).

Pa.R.C.P. 1560, Property Capable of Division without Prejudice, provides that division of real property in accordance with each record holder's interest is appropriate when "division can be made without prejudice to or spoiling the whole" but that if division cannot be made without prejudice to the whole, it shall be sold in accordance with the dictates of Pa.R.C.P. 1563.

At first blush, it would appear odd to suggest that a vast tract of unimproved land is not capable of division. Nevertheless, the language of Rule 1560 prevents division if that division would prejudice the property as a

whole. In this case, there was sufficient evidence of record to support the equity court's conclusion that the whole would be prejudiced by the property's division due to the unique characteristic of this unimproved tract of over 500 acres as desirable venue for deer herd management. As a reviewing court, we cannot and will not overturn findings supported by the record. The master was acquainted personally with the land use in the area and credited an expert witness produced by Appellees establishing the increased value of the property when kept whole.

Appellant argues that *Caldwell v. Snyder*, 178 Pa. 420, 35 A. 996 (1896), where plaintiffs were permitted to proceed with a partition action, holds that partition is mandated unless the inherent quality of the property prevents partition. However, that case did not examine the central question presented herein, which is what type of land characteristics would prevent the property from being divided among its record owners. In this case, the record supports that the division of the property would prejudice the property as a whole because when kept as a whole, the property can be used to manage a herd of deer and has an increased value.

Appellant's objection to valuation also cannot be sustained because the equity court's determination of value was supported by the evidence of the two arms-length sales of the property conducted by Appellees with the other owners of the property.

Judgment affirmed.

J. A18037/05

Judgment Entered:

Eleanor K. Valecko  
Deputy Prothonotary

DATE: June 21, 2005

Prothonotary, Clerk of Courts

William A. Straw

AUG 08 2005

FILED

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

DENNIS L. MERREY and ELMO L.  
BRAID,

Plaintiffs

vs

STANLEY B. OWENS and  
MARIE C. OWENS,

Defendants

No. 00-1525-CD

TYPE OF CASE:

**Partition**

TYPE OF PLEADING:

**Motion to Enter Master's  
Proposed Decree**

FILED ON BEHALF OF:

**Plaintiffs**

ATTORNEY OF RECORD FOR THIS  
PARTY:

**Peter F. Smith, Esquire**

Supreme Court I.D. #34291

30 South Second Street

P.O. Box 130

Clearfield, PA 16830

(814) 765-5595

ATTORNEY FOR STANLEY B. OWENS:

**Warren B. Mikesell, II, Esquire**

Supreme Court I.D. #63717

115 East Locust Street

Clearfield, PA 16830

(814) 765-6605

ATTORNEY FOR MARIE C. OWENS:

**Joseph Colavecchi, Esquire**

Supreme Court I.D. #06810

221 East Market Street

P. O. Box 131

Clearfield, PA 16830

(814) 765-1566

**FILED**

SEP 06 2005

0/3:05

William A. Shaw

Prothonotary/Clerk of Courts

4 SENT TO

ATTY

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

DENNIS L. MERREY and ELMO L. BRAID, :  
Plaintiffs : No. 00-1525-CD  
vs :  
STANLEY B. OWENS and :  
MARIE C. OWENS, :  
Defendants :

**FILED**

**SEP 06 2005**

William A. Shaw  
Prothonotary/Clerk of Courts

**MOTION TO ENTER MASTER'S PROPOSED DECREE**

COMES NOW, DENNIS L. MERREY and ELMO L. BRAID by their Attorney Peter F. Smith, who move this Honorable Court to enter the Decree proposed by J. Richard Mattern, II, Master in this partition action, and in support thereof state:

1. Plaintiffs are the owners of an undivided 62.5% interest in 549 acres of undeveloped surface in Goshen Township.
2. The Defendant Stanley B. Owens is the owner of the remaining 37.5% undivided interest in that parcel.
3. Defendant Marie C. Owens was permitted to intervene in these proceedings by Order entered May 8, 2002 in conjunction with her divorce from Stanley B. Owens.
4. The Plaintiffs instituted this Partition Action by complaint filed on December 8, 2000.
5. By Order dated May 15, 2002, this Court directed the partition of the premises. J. Richard Mattern, II was appointed to serve as Master of this partition by Order entered December 18, 2001.

6. Mr. Mattern conducted a hearing and received evidence on July 25, 2002.
7. Mr. Mattern filed his Master's Preliminary Notice and Report on February 17, 2003.
8. In his notice and report, Mr. Mattern concluded that the property has a current fair market value of \$150,000, that it is subject to no mortgages, liens, encumbrances or charges, that it is not capable of division without prejudice to or spoiling the whole and that it be sold at a private sale confined to the parties pursuant to Pa.R.C.P. 1563.
  9. The Master's Report was entered as this Court's Order on June 26, 2003 and a private sale of the subject premises was conducted on August 28, 2003.
  10. At that sale, Plaintiffs purchased the premises by making the high bid of \$213,500.
  11. Mr. Mattern subsequently filed his Master's Notice of Sale, Schedule of Distribution, Proposed Decree dated on or about September 30, 2003. A true and correct copy of said Notice, Schedule and Proposed Decree are attached hereto and incorporated herein as Plaintiffs' Exhibit 1.
  12. The Defendants both took exception to the Master's Report and the Court's Order confirming it.
  13. The Defendants' exceptions were dismissed by Order entered September 3, 2004.
  14. Defendant Marie C. Owens subsequently appealed this case to the Superior Court of Pennsylvania by Notice of Appeal filed on or about September 21, 2004.
  15. The Superior Court affirmed this Court's Order by Memorandum filed June 21, 2005.
  16. More than 30 days have elapsed since the Superior Court entered its decision. The Defendants have not taken a further appeal or petitioned the Superior Court for rehearing or other relief.

17. Plaintiffs are ready, willing and able to tender the balance due to complete the private sale of the subject premises and acquire the Defendants' interest as specified in Mr. Mattern's Schedule of Distribution attached hereto as Exhibit 1.

18. Plaintiffs' counsel has contacted Defendants' counsel to arrange a closing but no date has been set.

19. Defendant Stanley B. Owens has left an inoperable Ford Bronco and a travel trailer on the subject premises for many years. These items are not affixed to the real estate and were not purchased by Plaintiffs at the parties' private sale.

20. These items of Mr. Owens' personal property are in poor condition, unsightly and constitute a potential liability.

21. Plaintiffs, through their counsel, have requested that Mr. Owens remove these items of personal property from the premises prior to closing.

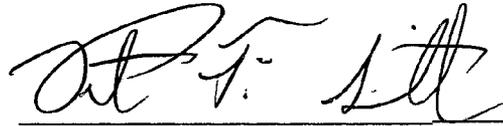
22. Mr. Owens has neither consented to nor declined this request.

23. Plaintiffs request that \$2,500 of the closing proceeds be held in escrow by Plaintiffs' counsel in his IOLTA account to be disbursed to Defendant Stanley B. Owens upon removal of said items of personal property or to be used by Plaintiffs to hire and pay a third party to remove these items if Mr. Owens fails to do so within 30 days of the date of closing.

WHEREFORE, Plaintiffs pray this Honorable Court to enter the Master's Proposed Decree as its Order, directing him to forthwith conduct a closing and deliver a Special Warranty Deed to the Plaintiffs for the Defendants' interest in the subject premises, and further to authorize Plaintiffs' counsel to escrow \$2,500 of the settlement proceeds pending removal of the Ford Bronco and the travel trailer from the premises by Mr. Owens within 30 days of closing and if he fails to remove

those items within that time frame, to reimburse the Plaintiffs for all expenses they incur to remove those items themselves. Said \$2,500 escrow shall be held in Plaintiffs' counsel's IOLTA account.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter F. Smith", written over a horizontal line.

Dated: September 6, 2005

Peter F. Smith, Esquire  
Attorney for Plaintiffs  
P. O. Box 130, 30 South Second St.  
Clearfield, PA 16830

**VERIFICATION**

DENNIS L. MERREY does hereby swear and affirm that he has read the foregoing Motion and it is true and accurate to the best of his information, knowledge and belief, Furthermore, he understands that the same is made pursuant to 18 Pa.C.S.A. 4904, relating to unsworn falsification to authorities.

Dated: 9-2-05

  
Dennis L. Merrey

**VERIFICATION**

ELMO L. BRAID does hereby swear and affirm that he has read the foregoing Motion and it is true and accurate to the best of his information, knowledge and belief. Furthermore he understands that the same is made pursuant to 18 Pa. S.C.A. 4904, relating to unsworn falsification to authorities.

Dated: 04/02/05

  
Elmo L. Braid  
Elmo L. Braid

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DENNIS L. MERREY and  
ELMO L. BRAID,  
Plaintiffs

vs.

STANLEY B. OWENS and  
MARIE C. OWENS,  
Defendants

No. 00-1525-CD

**MASTER'S NOTICE OF SALE**  
**SCHEDULE OF DISTRIBUTION**  
**PROPOSED DECREE**

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

Pursuant to Order of your Honorable Court dated June 26, 2003, J. Richard Mattern II, Master, did conduct on August 28, 2003, a Private Sale confined to the parties and reports as follows:

1. A copy of said Order dated June 26, 2003, is attached hereto marked Exhibit "A".
2. Notice of Private Sale confined to the parties dated July 14, 2003, was mailed to all parties' counsel on July 14, 2003, setting the date and time of private sale to be on August 28, 2003 at 1:30 PM at the Law Offices of Joseph Colavecchi, Esquire. Said Notice is marked Exhibit "B" attached hereto.

EXHIBIT 1

3. Said Private Sale was held on the aforesaid time and date with the following parties in attendance:

Dennis L. Merrey  
Elmo L. Braid  
Peter F. Smith, Esquire  
Stanley B. Owens  
Warren B. Mikesell, II Esquire  
Marie C. Owens  
Joseph Colavecchi, Esquire  
J. Richard Mattern II, Esquire  
Sherry Greenland, Stenographer

4. The only private parties bidding were Dennis L. Merrey and Elmo L. Brady, through their counsel, Peter F. Smith, Esquire, and Marie C. Owens, through her counsel, Joseph Colavecchi, Esquire. Stanley B. Owens did not wish to bid.
5. Bidding commenced with the initial bid by Marie C. Owens, through her counsel, Joseph Colavecchi, Esquire, in the amount of \$150,000.00.
6. After several minutes of bidding, the Master granted a recess to Joseph Colavecchi, Esquire, to confer with his client, Marie C. Owens.
7. Bidding then re-commenced with the final and successful bid being by Dennis L. Merrey and Elmo L. Braid, through their counsel, Peter F. Smith, Esquire, in the amount of:

**TWO HUNDRED THIRTEEN THOUSAND  
FIVE HUNDRED (\$213,500.00) DOLLARS**

8. The Master hereby confirms to your Honorable Court the sale of the subject property in its entirety for the total price of \$213,500.00 to Dennis L. Merrey and Elmo L. Braid.

9. Accordingly, said proceeds shall be distributed pursuant to the interest of the parties as follows:

Stanley B. Owens  
Marie C. Owens

37.5%

37.5 X \$213,500.00                      \$80,062.50

Dennis L. Merrey  
Elmo L. Braid

62.5%

62.5% X \$213,500.00                      \$133,437.50

**Total:**                                      **\$213,500.00**

Purchase Price Due:

Stanley B. Owens  
Marie C. Owens

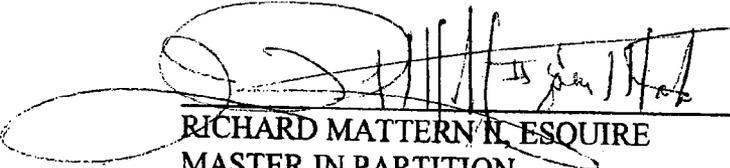
From:

Dennis L. Merrey  
Elmo L. Braid

For deed of 37.5% interest in 549.5 acres  
Goshen Township, Clearfield County, PA

\$80,062.50

Date: 9/30/03

  
RICHARD MATTERN, ESQUIRE  
MASTER IN PARTITION

**SCHEDULE OF COSTS AND FEES**

THE MASTER HEREBY CALCULATES THE FOLLOWING NECESSARY AND  
REASONABLE COSTS AS FOLLOWS:

1. **COSTS OF LITIGATION FROM DOCKET ENTRIES**

Filing of Complaint in Partition Paid by Plaintiff \$80.00

2. **TRANSFER TAX FOR VALUE OF 37.5% INTEREST \$80,062.50**

2% of \$80,062.50 \$1,601.25

3. **RECORDING OF DEED**

\$28.50

4. **MASTER'S FEES AND COSTS**

A. Stenographer \$75.00

B. Postage \$3.88

C. Copies 88 @ \$ .20 \$17.60

D. Master's Fee

(Includes time for Deed Preparation,  
Closing and Dispersing Proceeds)

13 and 1/4 hours \$1,987.50

**TOTAL**

**\$3,793.73**

**APPORTIONMENT OF COSTS AND FEES**

THE MASTER, PURSUANT TO R.C.P. 1574, APPORTIONS THE COSTS AND FEES IN  
PROPORTION TO THE INTEREST IN THE PROPERTY:

A.	Stanley B. Owens Marie C. Owens		
	37.5% x \$3,793.73		\$1,422.65
B.	Dennis L. Merrey Elmo L. Braid		
	62.5% x \$3,793.73		\$2,371.08
		<b><u>TOTAL</u></b>	<b>\$3,793.73</b>

**PROPOSED DISTRIBUTION AFTER APPORTIONMENT OF FEES AND COSTS**

**GROSS PROCEEDS DUE:**

Stanley B. Owens  
Marie C. Owens \$80,062.50

**LESS PROPORTIONATE SHARES OF FEES AND COSTS:** -\$1,422.65

**NET PROCEEDS DUE AT TIME OF DISPURSEMENT:** **\$78,639.85**

---

**PROCEEDS DUE BY PURCHASER:**

Dennis L. Merrey  
Elmo L. Braid

**GROSS PROCEEDS DUE:** \$80,062.50

**PLUS PROPORTIONATE SHARES OF FEES AND COSTS:** \$2,371.08  
(LESS CREDIT OF \$80.00 FOR FILING OF COMPLAINT IN PARTITION) -\$80.00  
\$2,291.08

**TOTAL DUE AT CLOSING** **\$82,353.58**

**CLOSING PROCEEDURE**

AT THE TIME OF CLOSING, DENNIS L. MERREY AND ELMO L. BRAID SHALL  
PRESENT THE MASTER, J. RICHARD MATTERN, II, ESQ., A CASHIER'S CHECK  
PAYABLE TO HIM IN THE AMOUNT OF **\$82,353.58.**

THE MASTER WILL THEN DISPURSE FROM HIS IOLTA ACCOUNT ALL CHECKS  
FOR COSTS AND FEES AND WILL DISPURSE TO:

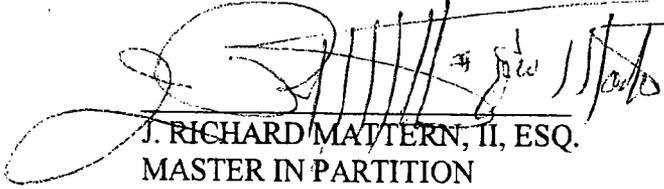
STANLEY B. OWENS and  
MARIE C. OWENS

1. STANLEY B. OWENS  
A CHECK FOR 1/2 OF \$78,639.85 **\$39,319.92**
  
2. MARIE C. OWENS  
A CHECK FOR 1/2 OF \$78,639.85 **\$39,319.93**

RESPECTFULLY SUBMITTED,

DATE

9/30/03

  
J. RICHARD MATTERN, II, ESQ.  
MASTER IN PARTITION

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

DENNIS L. MERREY and  
ELMO L. BRAID,  
Plaintiffs

vs.

STANLEY B. OWENS and  
MARIE C. OWENS,  
Defendants

No. 00-1525-CD

**PROPOSED DECREE**

AND NOW, this \_\_\_\_ day of October, 2003, the Court acknowledges the Master's Return of Private Sale, Schedule of Distribution and Costs, and approves his recommendations.

Accordingly, the sale of the entire tract to Dennis L. Merrey and Elmo L. Braid for the total sum of \$213,500.00 is hereby approved and confirmed.

Therefore, it is the Order of this Court that the Master prepare a Special Warranty Deed wherein Stanley B. Owens and Marie C. Owens convey to Dennis L. Merrey and Elmo L. Braid their entire interest in the subject property consisting of an undivided 37.5% interest in the 549.5 acres surface in Goshen Township, Clearfield County, Pennsylvania, for the total consideration of Eighty Thousand Sixty-Two Dollars and Fifty Cents (\$80,062.50).

It is the further Order of this Court that the Schedule of Costs and Fees is hereby approved and the parties are ordered to pay such in proportion to their interests in the property as calculated by the Master.

BY THE COURT,

\_\_\_\_\_  
Honorable John K. Reilly, Jr.  
President Judge

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

DENNIS L. MERREY and ELMO L. BRAID, :  
 :  
 Plaintiffs : No. 00-1525-CD  
 :  
 vs :  
 :  
 STANLEY B. OWENS and :  
 MARIE C. OWENS, :  
 Defendants :

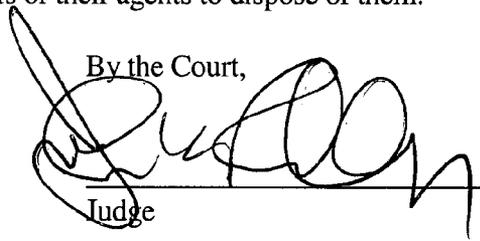
FILED<sup>4cc</sup>  
01:27:34 AM  
SEP 22 2005  
William A. Shaw  
Prothonotary/Clerk of Courts 

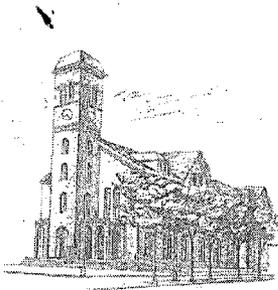
**ORDER**

AND NOW this 22nd day of September, 2005, upon consideration of Plaintiff's Motion to Enter the Master's Proposed Decree, it is,

ORDERED ADJUDGED AND DECREED that the Master's Proposed Decree be and hereby is entered as the Order of this Court, and pursuant thereto the Master is directed to conduct a closing pursuant to his Notice of Sale and Schedule of Distribution, and the Master is authorized to execute, acknowledge and deliver a Special Warranty Deed conveying to the Plaintiffs the Defendants' interest in the subject premises.

It is the further Order of this Court that \$100.00 of the purchase money due from Plaintiffs be held by Plaintiffs' counsel in his IOLTA to be disbursed to pay for the removal of the Ford Bronco and travel trailer from the subject premises. This \$100.00 shall be deducted from the Defendant Stanley B. Owens' share of the net settlement proceeds as specified by the Master. He will receive a check in the amount of \$39,219.92. Marie C. Owens shall receive a check in the amount of \$39,319.93. The Defendants shall tender at closing executed and acknowledged Certificates of Title for the Ford Bronco and travel trailer which will enable the Plaintiffs or their agents to dispose of them.

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



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

Date: September 19, 2005

Over the past several weeks, 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

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 DIVISION

DENNIS L. MERREY and ELMO L.  
BRAID,

Plaintiffs

vs

STANLEY B. OWENS and  
MARIE C. OWENS,

Defendants

No. 00-1525-CD

FILED *4cc*  
*01:26301 Amy Smith*  
SEP 22 2005 *(cc)*

William A. Shaw  
Prothonotary/Clerk of Courts

**RULE: ANSWER & HEARING**

AND NOW, this 19 day of Sept, 2005, upon consideration of the foregoing Motion to Enter Master's Proposed Decree, it is hereby ordered that:

1. A Rule is issued upon the Defendants STANLEY B. OWENS and MARIE C. OWENS to show cause why the Plaintiffs are not entitled to the relief requested;
2. The Defendants shall file an answer to the Motion within twenty (20) days of service upon the Defendants;
3. The Motion shall be decided under Pa.R.C.P No. 206.7;
4. An evidentiary hearing on disputed issues of material fact shall be held on \_\_\_\_\_, 2005 in Courtroom \_\_\_\_\_ of the Clearfield County Courthouse;
5. Notice of the entry of this Order shall be provided to all parties by the Plaintiffs.

NOTICE

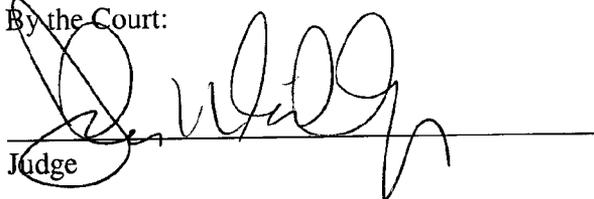
A MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE MATTERS SET FORTH IN THE FOLLOWING MOTION, YOU MUST ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE AN ANSWER IN WRITING WITH THE PROTHONOTARY SETTING FORTH YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU AND SERVE A COPY ON THE ATTORNEY OR PERSON FILING THE MOTION. 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 THE RELIEF REQUESTED BY THE PLAINTIFFS. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

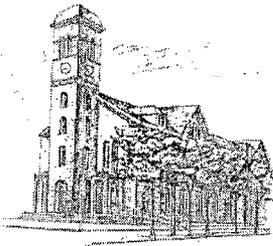
YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR  
Clearfield County Courthouse  
Second and Market Streets  
Clearfield, PA 16830  
(814) 765-2641, Ext. 5982

By the Court:

Judge

A handwritten signature in black ink, appearing to be "D. W. [unclear]", is written over a horizontal line. The signature is written in a cursive, somewhat stylized font.



## 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

Date: September 19, 2005

Over the past several weeks, 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

X 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 DIVISION

DENNIS L. MERRY and ELMO L. BRAID

Plaintiffs

vs.

STANLEY B. OWENS and

MARIE C. OWENS

Defendants

No. 00-1525-CD

**FILED**

10:53 6K

SEP 26 2005

No CC

**CERTIFICATE OF SERVICE**

**William A. Shaw**  
**Prothonotary**

I, Peter F. Smith, attorney for Plaintiffs in the above-captioned matter, certify that I sent certified copies of a **RULE** and an **ORDER** dated September 22, 2005 by hand delivery to Dwight L. Koerber, Jr., attorney for Marie C. Owens, by hand delivery to Warren B. Mikesell, II, attorney for Stanley B. Owens, and by U.S. First Class Mail, Postage Pre-Paid to J. Richard Mattern, II, Master in Partition, on September 23, 2005 to the following addresses:

**HAND DELIVER**

Warren B. Mikesell, II, Esquire  
115 East Locust Street  
Clearfield, PA 16830

**HAND DELIVER**

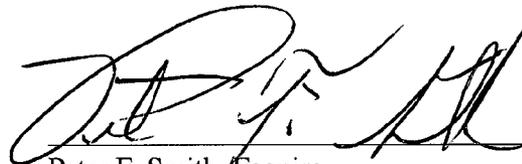
Dwight L. Koerber, Jr., Esquire  
110 North Second Street  
Clearfield, PA 16830

**U.S. FIRST CLASS MAIL**

J. Richard Mattern, II, Esquire  
211 East Pine Street  
Clearfield, PA 16830

Respectfully submitted,

Date: September 26, 2005



Peter F. Smith, Esquire  
Attorney for Plaintiffs  
P. O. Box 130, 30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

William A. Shaw  
Prothonotary

**FILED**

SEP 26 2005

William A. Shaw  
Prothonotary

ENCLOSURE

Date: AUGUST 11, 2004

Re: MERREY/BRAID V. OWENS - NO. 2000-1525-CD

We enclose the following: COPY OF PLAINTIFF'S BRIEF DATED NOVEMBER 22, 2002

AND SUPPLEMENT TO PLAINTIFF'S BRIEF DATED NOVEMBER 29, 2003.

If checked here, please acknowledge receipt of enclosure  
on enclosed RECEIPT and return to us.

TO

MARCY KELLEY  
DEPUTY COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE

HAND DELIVER

RECEIVED

AUG 11 2004

COURT ADMINISTRATORS  
OFFICE

PETER F. SMITH

ATTORNEY

30 SOUTH SECOND ST. P. O. BOX 130  
CLEARFIELD, PENNSYLVANIA 16830  
(814) 765-5595

## Civil Other

Date		Judge
12/08/2000	① Filing: Complaint for Partition Paid by: Smith, Peter F. (attorney for Merrey, Dennis L.) Receipt number: 0052591 Dated: 12/08/2000 Amount: \$80.00 (Check) Eight Certified Copies to Attorney Smith	10 No Judge
12/28/2000	② Answer to Complaint for Partition , filed by s/DALE R. OWENS 2 cc D. Owens	5 No Judge
12/29/2000	③ Answer to Complaint for Partition, filed by s/Warren B. Mikesell, II, Esq. cc atty Mikesell	35 No Judge
01/10/2001	④ Sheriff Return, Complaint in Partition and Interrogatories upon Dale R. Owens and Stanley B. Owens. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
01/24/2001	⑤ Motion to Compel Discovery, Filed by s/Peter F. Smith, Esq. 3 cc atty Smith	No Judge
01/31/2001	Rule Returnable upon Dale R. Owens, Written Response due by Feb. 20, 2001, Rule Returnable March 5, 2001. By the Court, s/JKR,JR,PJ. 31 Jan 2001. 4 cc atty Smith	John K. Reilly Jr.
02/02/2001	⑥ Certificate of Service, Motion to Compel Discovery upon Dale R. Owens. Filed by s/Peter F. Smith, Esq.	John K. Reilly Jr.
03/05/2001	⑦ ORDER, AND NOW, this 5th day of March, 2001, Rule issued against Dale R. Owens, shall serve true, correct and complete answers to the Interrogatories served upon him by Plaintiff within 15 days of the date of this Order. By the Court, s/JKR,JR.,PJ 3 cc atty Neiswender	John K. Reilly Jr.
04/26/2001	⑧ Motion to Discontinue as to the Heirs of Robert Owens. filed by s/Peter F. Smith, Esq. 2 cc atty Smith	John K. Reilly Jr.
	SCHEDULING ORDER, AND NOW THIS 26th day of April, 2001, upon Stanley B. Owens, to show cause, Written Response to Motion due by the 16th day of May, 2001. This Order shall be heard in Court on the 18th day of June, 2001, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 2 cc atty Smith	John K. Reilly Jr.
04/27/2001	⑨ Certificate of Service, Motion to Discontinue upon Warren B. Mikesell, II, Esq. s/Peter F. Smith, Esq.	John K. Reilly Jr.
05/16/2001	⑩ Answers To Discontinue As To The Heirs of Robert Owens, Filed by Warren Mikesell, II.	John K. Reilly Jr.
06/18/2001	⑪ ORDER, AND NOW, this 18th day of June, 2001, re: Action is DISCONTINUED as to the Heirs of Robert Owens, to wit: Dale R. Owens, Dolores Eunice Doyle, Josephine E. Bartley and Brent Charles Owen. by the Court, s/JKR,JR., P.J.	John K. Reilly Jr.
06/19/2001	⑫ Certificate of Service, Order of June 18, 2001, upon Warren B. Mikesell, Esq. s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
10/18/2001	⑬ Motion for Order Directing Partition and Scheduling of Preliminary Conference. Filed by s/Peter F. Smith, Esq. 2 cc Atty Smith	John K. Reilly Jr.
10/19/2001	Rule Returnable, AND NOW THIS 19th day of October, 2001, Written response to this Motion due by the 8th day of November, 2001. Order shall be heard in Court on the 19th day of November, 2001, at 2:30 p.m. BY THE COURT: /s/John K. Reilly, Jr., P.J. Two CC Atty	John K. Reilly Jr.
10/30/2001	⑭ RULE RETURNABLE, AND NOW THIS 30th day of Oct. 2001, issued upon Stanley B. Owens, written response to this motion is due by the 8th day of Nov., 2001. This Order shall be heard in Court on the 7th day of Dec. 2001, at 9:30 a.m. by the Court, s/JKR,JR.,P.J. 1 cc Atty Smith	John K. Reilly Jr.
11/06/2001	⑮ Certificate of Service, Defendants Motion For Order Directing Partition and Scheduling of Preliminary Conference and Rule Returnable upon Warren B. Mikesell, Esq. s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
11/08/2001	⑯ Petition for Extension of Time to file and Change of Preliminary Conference, filed by s/Warren B. Mikesell, II Four CC Attorney Mikesell	John K. Reilly Jr.

## Civil Other

Date		Judge
11/13/2001	RULE RETURNABLE, NOW, this 13th day of November, 2001, entered upon Stanley B. Owens, Defendant. Written Response due by 3rd day of Dec., 2001. Order shall be heard in Court on the 18th day of Dec. 2001, at 9:00 a.m. by the Court, s/JKR,JR., P.J. 4 cc Atty Mikesell	John K. Reilly Jr.
12/07/2001	(17) Response to Motion for Order Directing Partition and Scheduling of Preliminary Conference. Filed by s/Warren B. Mikesell, II, Esq. 4 cc to Atty	John K. Reilly Jr.
12/18/2001	(18) ORDER, AND NOW, this 18th day of December, 2001, re: Hearing on Plaintiff's Motion for an Order Directing Partition and Answer Having been filed, J. Richard Mattern, Esq. is appointed Master. by the Court, s/JKR,JR.,P.J. 1 cc Atty Mikesell, Smith, and Mattern	John K. Reilly Jr.
04/16/2002	Filing: Subpoena Paid by: Smith, Peter F. (attorney for Braid, Elmo L.) Receipt number: 1841248 Dated: 04/16/2002 Amount: \$3.00 (Check)	John K. Reilly Jr.
04/19/2002	(19) Petition For Intervention by Marie C. Owens, wife of Stanley B. Owens. Filed by s/Joseph Colavecchi, Esq. 5 cc Atty Colavecchi	John K. Reilly Jr.
04/19/2002	(20) RULE, AND NOW, this 19th day of April, 2002, Issued upon ALL PARTIES, returnable for Argument On the 8th day of May, 2002. by the Court, s/JKR,JR.,P.J. 5 cc Atty Colavecchi	John K. Reilly Jr.
04/26/2002	(21) Petition to Enter Order of Partition. Filed by s/Joseph Colavecchi, Esq. cc Atty Colavecchi	John K. Reilly Jr.
04/29/2002	(22) ORDER, AND NOW, this 29th day of April, 2002, re: Rule issued and directed to Peter F. Smith, Esq. Atty for Plaintiffs, Warren B. Mikesell, II, Esq. Atty for Stanley B. Owens and J. Richard Mattern, III, Esq. Master in Partition. Rule returnable for Argument the 8th day of May, 2002, at 10:30 a.m. by the Court, s/JKR,JR.,P.J. 4 cc Atty Colavecchi	John K. Reilly Jr.
05/08/2002	(23) ORDER, NOW, this 8th day of May, 2002, re: Petition to Intervene filed on behalf of Marie C. Owens shall be and is hereby granted and she be permitted to be added as a party defendant. By the Court, s/JKR,JR.,P.J. 1 cc Atty colavecchi, Smith, and Mikesell	John K. Reilly Jr.
05/15/2002	(24) ORDER DIRECTING PARTITION UNDER PENNSYLVANIA R.C.P. 1557, AND NOW, this 15th day of May, 2002, re: Owens 37.50%, Merrey and Braid 62.50%. by the Court, s/JKR,JR, P.J. 1 cc Atty Colavecchi	John K. Reilly Jr.
12/23/2002	(25) Proposed Findings Of Fact and Conclusions Of Law. filed by s/Warren B. Mikesell, II, Esquire 4 cc to Atty Mikesell	John K. Reilly Jr.
02/25/2003	(26) Exceptions To Master's Report By Marie C. Owens. s/Joseph Colavecchi, Esquire 5 cc J. Colavecchi	John K. Reilly Jr.
02/27/2003	(27) Certificate of Service, Exceptions to Master's Report by Marie C. Owens upon: J. Richard Mattern II, Esq., Peter F. Smith, Esq. and Warren Mikesell, Esq. filed by s/Joseph Colavecchi, Esq. no cc	John K. Reilly Jr.
02/27/2003	(28) Master's Preliminary Notice and Master's Report. no cc (49)	John K. Reilly Jr.
02/27/2003	(29) Transcript Of Hearing Held July 25, 2003. filed sk	John K. Reilly Jr.
02/28/2003	(30) Exceptions To Master's Report By Stanley B. Owens. filed by s/Warren B. Mikesell, II, Esquire 4 cc to Atty	John K. Reilly Jr.
02/28/2003	DECREE NISI, AND NOW, this 28th day of Feb., 2003 by the Court, s/JKR,JR.,P.J. 2 cc Atty Mattern	John K. Reilly Jr.
05/19/2003	(31) ORDER, NOW, this 16th day of May, 2003, re: Disposition of the Objections filed on behalf of Defendants above-named shall be and is hereby continued pending results of the private sale. by the Court, s/JKR,JR.,P.J. 1 cc Atty Smith, Mikesell	John K. Reilly Jr.
06/03/2003	(32) Filing: Objections pusuant to PA. R.C., P. 1563(b) filed by Atty. Smith. No cc.	John K. Reilly Jr.
06/03/2003	(33) Certificate of Service of Objections Pursuant to PA R.C. P.1563(b). filed by Atty. Smith No cc.	John K. Reilly Jr.

Civil Other

Date		Judge
06/05/2003	<p>(34) Defendant's Motion For Continuance. filed by s/Joseph Colavecchi, 4 Esquire 1 cc Atty Colavecchi</p> <p>ORDER, NOW, this 5th day of June, 2003, re: Motion For Continuance is GRANTED and Argument is hereby rescheduled for the 26th day of June, 2003, at 2:00 p.m. by the Court, s/JKR, JR., P.J. 3 cc Atty Colavecchi for Service</p>	John K. Reilly Jr.
06/06/2003	(36) CORRECTED OBJECTIONS PURSUANT TO PA. R.C.P. 1563(b) filed by s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
06/18/2003	(37) Answer To Objections Pursuant To Pa. R.C.P. 1563(b) filed by s/Warren B. Mikesell, II, Esquire 5 cc Atty Mikesell	John K. Reilly Jr.
06/26/2003	<p>(38) Answer To Objections Pursuant To Pa. R.C.P. 1563(b). filed by s/Joseph Colavecchi, Esquire no cc</p> <p>Order: Now, this 26th day of June, 2003, the date set for argument into Objections and Amended Objections to Private sale filed on behalf of Plaintiffs. Proceedings will be referred to the Master, J. Richard Mattern, Esq. for conducting a private sale confined to the parties. s/JKR 2 CC Atty. Mikesell, 2 CC Atty. Smith, 1 CC Atty. Colavecchi</p>	John K. Reilly Jr.
10/07/2003	(40) Exceptions and Objections to Master's Report and Return of Sale filed by Atty. Colavecchi. 6 CC to Atty.	John K. Reilly Jr.
10/09/03	(41) Execeptions and Objections to Master's Report and Return of Sale, Schedule of Distribution and Proposed Decree under PA. R. C.P. 1569 (c), filed by Atty. Mikesell 6 Cert. to Atty.	John K. Reilly Jr.
10/14/2003	(42) Master's Return of Sale, Schedule of Distribution, Proposed Decree, Revised Schedule of Master's Costs and Fees and Order For Payment Of Master. filed by s/J. Richard Mattern, II, Esquire Certificate of Service no cc	John K. Reilly Jr.
09/07/2004	<p>(43) Order. This matter comes before the Court on exceptions and objections to the Master's report in the above-captioned action in partition. In examining the Master's conclusions of Law, this Court finds that the Master committed no error and, therefore, enters the following Order. NOW this 3rd day of Sept. 2004 upon consideration of objections and exceptions filed to the Master's report by the above-named Defendants and argument and briefs thereon, it is the ORDER of this Court that said objections and exceptions shall be and are hereby dismissed and the Master's rept confirmed. s/JKR 2 CC to Atty. Smith 1 CC Atty. Mikesell 1 CC Dale Owens, 14207 Lakeview Dr. Gainsville VA 22065. 5 CC to Atty. Colavecchi</p>	John K. Reilly Jr.
09/09/2004	(44) Certificate of Service of Praeipce to enter judgment filed by Atty. Smith No cc.	John K. Reilly Jr.
09/21/2004	(45) Praeipce to Enter Judgment in favor of the Plffs. pursuant to Court Order filed by Atty. Smith. No cc.	John K. Reilly Jr.
09/21/2004	(46) Filing: Appeal to High Court Superior Court Paid by: Colavecchi, Joseph (attorney for Owens, Marie C.) Receipt number: 1886946 Dated: 09/21/2004 Amount: \$45.00 (Check) 1 Cert. to Atty. 1 Cert. with check for \$60.00 to Superior.	John K. Reilly Jr.
09/30/2004	(47) Order for Transcript, filed by Atty. Colavecchi 2 Cert. to Atty.	John K. Reilly Jr.
09/30/2004	(48) Appeal Docket Sheet, filed. # 1654 WDA 2004	John K. Reilly Jr.

Date: 9/30/2004

Time: 02:44 PM

Page 1 of 3

Clearfield County Court of Common Pleas

Complete Case History

2000-01525-CD

User: BILLSHAW

Dennis L. Merrey, etal. vs. Stanley B. Owens, etal.

Filed: 12/8/2000

Subtype: Civil Other

Physical File: Y      Appealed: Y

Comment:

Register of Actions

12/8/2000	Filing: Complaint for Partition Paid by: Smith, Peter F. (attorney for Merrey, Dennis L.) Receipt number: 0052591 Dated: 12/08/2000 Amount: \$80.00 (Check) Eight Certified Copies to Attorney Smith	No Judge,
12/28/2000	Answer to Complaint for Partition , filed by s/DALE R. OWENS 2 cc D. Owens	No Judge,
12/29/2000	Answer to Complaint for Partition, filed by s/Warren B. Mikesell, II, Esq. 3 cc atty Mikesell	No Judge,
1/10/2001	Sheriff Return, Complaint in Partition and Interrogatories upon Dale R. Owens and Stanley B. Owens. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge,
1/24/2001	Motion to Compel Discovery, Filed by s/Peter F. Smith, Esq. 3 cc atty Smith	No Judge,
1/31/2001	Rule Returnable upon Dale R. Owens, Written Response due by Feb. 20, 2001, Rule Returnable March 5, 2001. By the Court, s/JKR,JR,PJ. 31 Jan 2001. 4 cc atty Smith	Reilly, John K. Jr.
2/2/2001	Certificate of Service, Motion to Compel Discovery upon Dale R. Owens. Filed by s/Peter F. Smith, Esq.	Reilly, John K. Jr.
3/5/2001	ORDER, AND NOW, this 5th day of March, 2001, Rule issued against Dale R. Owens, shall serve true, correct and complete answers to the Interrogatories served upon him by Plaintiff within 15 days of the date of this Order. By the Court, s/JKR,JR.,PJ 3 cc atty Neiswender	Reilly, John K. Jr.
4/26/2001	Motion to Discontinue as to the Heirs of Robert Owens. filed by s/Peter F. Smith, Esq. 2 cc atty Smith SCHEDULING ORDER, AND NOW THIS 26th day of April, 2001, upon Stanley B. Owens, to show cause, Written Response to Motion due by the 16th day of May, 2001. This Order shall be heard in Court on the 18th day of June, 2001, at 1:30 p.m. by the Court, s/JKR,JR.,P.J. 2 cc atty Smith	Reilly, John K. Jr.
4/27/2001	Certificate of Service, Motion to Discontinue upon Warren B. Mikesell, II, Esq. s/Peter F. Smith, Esq.	Reilly, John K. Jr.
5/16/2001	Answers To Discontinue As To The Heirs of Robert Owens, Filed by Warren Mikesell, II.	Reilly, John K. Jr.
6/18/2001	ORDER, AND NOW, this 18th day of June, 2001, re: Action is DISCONTINUED as to the Heirs of Robert Owens, to wit:	Reilly, John K. Jr.

## Dennis L. Merrey, etal. vs. Stanley B. Owens, etal.

## Register of Actions

12/18/2001	ORDER, AND NOW, this 18th day of December, 2001, re: Hearing on Plaintiff's Motion for an Order Directing Partition and Answer Having been filed, J. Richard Mattern, Esq. is appointed Master. by the Court, s/JKR,JR.,P.J. 1 cc Atty Mikesell, Smith, and Mattern	Reilly, John K. Jr.
4/16/2002	Filing: Subpoena Paid by: Smith, Peter F. (attorney for Braid, Elmo L.) Receipt number: 1841248 Dated: 04/16/2002 Amount: \$3.00 (Check) Petition For Intervention by Marie C. Owens, wife of Stanley B. Owens. Filed by s/Joseph Colavecchi, Esq. 5 cc Atty Colavecchi	Reilly, John K. Jr. Reilly, John K. Jr.
4/19/2002	RULE, AND NOW, this 19th day of April, 2002, Issued upon ALL PARTIES, returnable for Argument On the 8th day of May, 2002. by the Court, s/JKR,JR.,P.J. 5 cc Atty Colavecchi	Reilly, John K. Jr.
4/26/2002	Petition to Enter Order of Partition. Filed by s/Joseph Colavecchi, Esq. 4 cc Atty Colavecchi	Reilly, John K. Jr.
4/29/2002	ORDER, AND NOW, this 29th day of April, 2002, re: Rule issued and directed to Peter F. Smith, Esq. Atty for Plaintiffs, Warren B. Mikesell, II, Esq. Atty for Stanley B. Owens and J. Richard Mattern, III, Esq. Master in Partition. Rule returnable for Argument the 8th day of May, 2002, at 10:30 a.m. by the Court, s/JKR,JR.,P.J. 4 cc Atty Colavecchi	Reilly, John K. Jr.
5/8/2002	ORDER, NOW, this 8th day of May, 2002, re: Petition to Intervene filed on behalf of Marie C. Owens shall be and is hereby granted and shee be permitted to be added as a party defendant. By the Court, s/JKR,JR.,P.J. 1 cc Atty colavecchi, Smith, and Mikesell	Reilly, John K. Jr.
5/15/2002	ORDER DIRECTING PARTITION UNDER PENNSYLVANIA R.C.P. 1557, AND NOW, this 15th day of May, 2002, re: Owens 37.50%, Merrey and Braid 62.50%. by the Court, s/JKR,JR, P.J. 1 cc Atty Colavecchi	Reilly, John K. Jr.
12/23/2002	Proposed Findings Of Fact and Conclusions Of Law. filed by s/Warren B. Mikesell, II, Esquire 4 cc to Atty Mikesell	Reilly, John K. Jr.
2/25/2003	Exceptions To Master's Report By Marie C. Owens. s/Joseph Colavecchi, Esquire 5 cc J. Colavecchi	Reilly, John K. Jr.
	Certificate of Service, Exceptions to Master's Report by Marie C. Owens upon: J. Richard Mattern II, Esq., Peter F. Smith, Esq. and Warren Mikesell, Esq. filed by s/Joseph Colavecchi, Esq. no cc	Reilly, John K. Jr.
2/27/2003	Master's Preliminary Notice and Master's Report. no cc	Reilly, John K. Jr.
	Transcript Of Hearing Held July 25, 2003.	Reilly, John K. Jr.

**Dennis L. Merrey, etal. vs. Stanley B. Owens, etal.**

**Register of Actions**

6/26/2003	Order: Now, this 26th day of June, 2003, the date set for argument into Objections and Amended Objections to Private sale filed on behalf of Plaintiffs. Proceedings will be referred to the Master, J. Richard Mattern, Esq. for conducting a private sale confined to the parties. s/JKR 2 CC Atty. Mikesell, 2 CC Atty. Smith, 1 CC Atty. Colavecchi	Reilly, John K. Jr.
10/7/2003	Exceptions and Objections to Master's Report and Return of Sale filed by Atty. Colavecchi. 6 CC to Atty.	Reilly, John K. Jr.
	Execptions and Objections to Master's Report and Return of Sale, Schedule of Distribution and Proposed Decree under PA. R. C.P. 1569 (c), filed by Atty. Mikesell 6 Cert. to Atty.	Reilly, John K. Jr.
10/14/2003	Master's Return of Sale, Schedule of Distribution, Proposed Decree, Revised Schedule of Master's Costs and Fees and Order For Payment Of Master. filed by s/J. Richard Mattern, II, Esquire	Reilly, John K. Jr.
9/7/2004	Certificate of Service no cc	
9/7/2004	Order. This matter comes before the Court on exceptions and objections to the Master's report in the above-captioned action in partition. In examining the Master's conclusions of Law, this Court finds that the Master committed no error and, therefore, enters the following Order. NOW this 3rd day of Sept. 2004 upon consideration of objections and exceptions filed to the Master's report by the above-named Defendants and argument and briefs thereon, it is the ORDER of this Court that said objections and exceptions shall be and are hereby dismissed and the Master's rept confirmed. s/JKR 2 CC to Atty. Smith 1 CC Atty. Mikesell 1 CC Dale Owens, 14207 Lakeview Dr. Gainsville VA 22065. 5 CC to Atty. Colavecchi	Reilly, John K. Jr.
9/9/2004	Certificate of Service of Praeipce to enter judgment filed by Atty. Smith No cc.	Reilly, John K. Jr.
	Praeipce to Enter Judgment in favor of the Plffs. pursuant to Court Order filed by Atty. Smith. No cc.	Reilly, John K. Jr.
9/21/2004	Filing: Appeal to High Court Superior Court Paid by: Colavecchi, Joseph (attorney for Owens, Marie C.) Receipt number: 1886946 Dated: 09/21/2004 Amount: \$45.00 (Check) 1 Cert. to Atty. 1 Cert. with check for \$60.00 to Superior.	Reilly, John K. Jr.
	Order for Transcript, filed by Atty. Colavecchi 2 Cert. to Atty.	Reilly, John K. Jr.
9/30/2004	Appeal Docket Sheet, filed. # 1654 WDA 2004	Reilly, John K. Jr.