

01-1535-CD
MARGIE S. BURNETT -vs- BI LO MARKET

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

MARJORIE S. BURNETT,

CIVIL ACTION

Plaintiff

No. 00 - 1535 - CD

vs.

COMPLAINT

BI LO MARKET,

Filed on behalf of:

Defendant

Plaintiff, MARJORIE S.
BURNETT

Counsel of Record for
Said Party:

PAUL COLAVECCHI, ESQUIRE
PA I.D. 83274

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

DEC 11 2000

William A. Shaw
Prothonotary

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

MARJORIE S. BURNETT, :
Plaintiff : No. 00 - - CD
:
Vs. :
:
BI LO MARKET, :
Defendant :

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
Second and Market Streets
Clearfield, PA 16830
Phone 814/765-2641 Ex. 5982

LAW OFFICES OF
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221 E. MARKET ST.
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P. O. BOX 131
CLEARFIELD, PA

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

MARJORIE S. BURNETT, :
Plaintiff :
:
vs. : No. 00 - - CD
:
BI LO MARKET :
Defendant :
:

C O M P L A I N T

1. Plaintiff is Marjorie S. Burnett, an individual, having a mailing address of P.O. Box 175, Morrisdale, Pennsylvania, 16858.
2. Defendant is Bi Lo Market, a corporation, having a branch at Rt. 322 West, Philipsburg, Pennsylvania, 16866.
3. At all times relevant hereto, Defendant was in exclusive custody, possession, and control of said area hereinafter described as "premises", and it was the duty of Defendant to keep and maintain said premises in a reasonably safe condition for those persons lawfully thereon.
4. Notwithstanding its duties, the Defendant did on September 25, 2000, carelessly, recklessly and negligently allow to permit and remain on said premises a dangerous condition; to-wit, a moveable red carpet in front of the entrance and left in such a state as to create a dangerous condition.

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5. On or about September 25, 2000 at approximately 11:00 a.m., Plaintiff was walking into the main entrance of Bi Lo Market in Philipsburg, Pennsylvania.

6. A moveable red carpet was left in front of the entrance and caused Plaintiff to slip and fall to the ground, resulting in a broken leg.

7. At the time of the incident, Defendant did, or should have had both notice and knowledge of the aforesaid dangerous condition, being the moveable red carpet left in front of the entrance which made it easy for someone lawfully on the premises to slip and fall to the ground.

8. The injuries and damages which are hereinafter set forth were caused solely by and with the direct proximate result of negligence of the Defendant in any or all of the following respects:

a. In failing to keep the premises in a safe condition for persons lawfully using the same;

b. In permitting a dangerous condition to be and remain on the premises when the Defendant knew, or in the exercise of reasonable care, should have known the danger involved;

c. In failing to warn Plaintiff of the various condition created by the above-described hazard;

d. In failing to cover, blockade, or otherwise remove the dangerous condition of which Defendant knew, or in the exercise of reasonable care, should have known;

e. Permitting persons, in particular, the Plaintiff, to traverse the premises when Defendant knew, or in the exercise of reasonable care, should have known it was dangerous to do so and involved a reasonable risk of harm in persons in so doing;

f. In failing to notify or warn the Plaintiff of the dangerous condition so that the hazard involved could have been avoided;

g. Maintain the premises in such a manner as to constitute a danger to persons lawfully thereon;

h. In failing to provide persons lawfully using the premises with a safe area to traverse; and

i. In failing to inspect the premises to discover the dangerous condition.

9. Solely as a result of the negligence of the Defendant as aforesaid, Plaintiff sustained a broken leg, shock, and injury to her nerves and nervous system which may be of a permanent nature.

10. As a result of the aforesaid injuries, Plaintiff has sustained the following damages:

a. Plaintiff has suffered and will continue to suffer great pain, inconvenience, embarrassment, mental anguish, and loss of the enjoyment of life;

b. Plaintiff has expended and will be required to expend sums of money for medical and surgical attention, hospitalization, medical supplies, surgical supplies, medicines and attendant services; and

c. Plaintiff's general health, strength and vitality have been impaired.

WHEREFORE, Plaintiff brings this action against Defendant to recover damages in excess of the jurisdiction of the Board of Arbitrators of this Court and in excess of Twenty Thousand (\$20,000) Dollars.

Paul Colavecchi
PAUL COLAVECCHI, ESQUIRE
Attorney for Plaintiff

VERIFICATION

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


MARJORIE S. BURNETT

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

MARJORIE S. BURNETT,
Plaintiff

vs.

BI LO MARKET,
Defendant

COMPLAINT

NOTICE TO DEFENDANT:

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

Paul Colavecchi

PAUL COLAVECCHI, ESQUIRE
Attorney for Plaintiff

3 CC
Att'y
10/09/00
DEC 11 2000
William A. Shaw
Prothonotary

COLAVECCHI
RYAN & COLAVECCHI

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

MARJORIE S. BURNETT,
Plaintiff

vs.

BI LO MARKET,
Defendant

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

: No. 00-1535 C.D.

: **ENTRY OF APPEARANCE**

: Counsel of Record for Filing Party:

: DENNIS M. McGLYNN, ESQUIRE
: 969 Eisenhower Boulevard
: Johnstown, PA 15904
: (814) 262-0812

: Supreme Court I.D. No. 19855

FILED

DEC 29 2000

01/12/01 LMR

William A. Shaw

Prothonotary

mc/c

9/4/01

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

MARJORIE S. BURNETT,
Plaintiff

vs. : No. 00-1535 CD

BI LO MARKET,
Defendant

ENTRY OF APPEARANCE

Enter my appearance for Defendant, Bi Lo Market, in the above captioned case. Papers may be served at the address stated below.

DEMAND FOR JURY TRIAL

Pursuant to Rule 1007.1 of the Pennsylvania Rules of Civil Procedure, as amended, a Jury Trial is demanded on all issues raised by the pleadings in the above captioned case.

We certify that this Entry of Appearance and Demand for Jury Trial shall be served forthwith by ordinary mail upon all parties herein.

Dated: December 28, 2000



DENNIS M. McGLYNN, ESQUIRE
ATTORNEY FOR DEFENDANT
969 Eisenhower Boulevard
Johnstown, PA 15904
I.D. No. 19855

cc: Paul Colavecchi, Esquire

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10486

BURNETT, MARJORIE S.

00-1535-CD

VS.

BI LO MARKET

COMPLAINT

SHERIFF RETURNS

NOW DECEMBER 21, 2000 AT 10:40 AM EST SERVED THE WITHIN COMPLAINT
ON BI-LO MARKET, DEFENDANT AT EMPLOYMENT, PHILIPSBURG BI-LO, AMES
PLAZA PARKING LOT, PHILIPSBURG, CLEARFIELD COUNTY, PENNSYLVANIA BY
HANDING TO PAT BENNETT, STORE MGR. A TRUE AND ATTESTED COPY OF THE
ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: NEVLING/RYEN

Return Costs

Cost	Description
26.65	SHFF. HAWKINS PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

FILED

JAN 15 2001
10:00
William A. Shaw
Prothonotary

Sworn to Before Me This

15th Day Of January 2001
William A. Shaw

So Answers,

*Chester Hawkins
by Marley Farn*
Chester A. Hawkins
Sheriff

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

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

MARJORIE S. BURNETT,
Plaintiff

vs.

: No. 00-1535 CD

BI LO MARKET,
Defendant

FILED

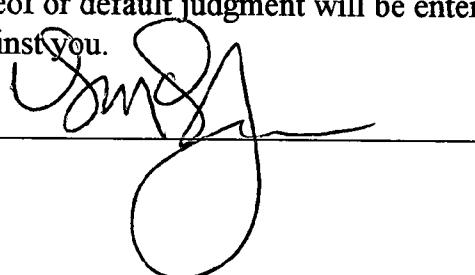
JAN 31 2001

William A. Shaw
Prothonotary

ANSWER AND NEW MATTER

TO THE WITHIN NAMED PARTIES:

You are hereby notified to
plead to the enclosed New Matter within
twenty (20) days from the date of service
hereof or default judgment will be entered
against you.



Counsel of record for filing party:

DENNIS M. McGLYNN, ESQUIRE
969 Eisenhower Boulevard
Suite I
Johnstown, PA 15904
(814) 262-0812
I.D. No. 19855

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

MARJORIE S. BURNETT,
Plaintiff

vs. : No. 00-1535 CD

BI LO MARKET,
Defendant

DEFENDANT'S ANSWER AND NEW MATTER

AND NOW comes the Defendant, Bi Lo Market, by and through its attorney, Dennis M. McGlynn, Esquire, and files the following Answer and New Matter:

1. Admitted.
2. Denied. To the contrary, the proper party defendant is The Penn Traffic Company, a Delaware corporation, who maintains its principal place of business at 1200 State Fair Boulevard, Syracuse, NY 13221.
3. Admitted.
4. Denied. It is specifically denied that the Defendant was careless, reckless, or negligent in any fashion concerning its premises on September 25, 2000, as is alleged by the Plaintiff. To the contrary, the premises was in a perfectly safe and reasonable condition and if it were otherwise, the Defendant had no notice or knowledge of any such condition.

5. Denied. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment and therefore, proof is required.

6. Denied. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment and therefore, proof is required.

7. Denied. To the contrary, the Defendant did not have any notice, actual or otherwise, of any dangerous conditions in its premises. To the contrary, the premises of the Defendant was in a reasonable and safe condition at all times and the allegations made by the Plaintiff are specifically denied to that effect.

8. Denied. To the contrary, any injuries or damages claimed by the Plaintiff are beyond the scope of information available to the Defendant and are specifically denied and strict proof is hereby demanded. Furthermore, it is specifically denied that any action or negligence on the part of the Defendant was the proximate cause of any alleged injuries and particularly, pursuant to PA R.C.P. 1029(e), the allegations of subparagraph a. through i. are denied.

9. Denied. It is denied the Defendant was negligent in any fashion. As to the remainder of the allegation, after reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment and therefore, proof is required.

10. Denied. After reasonable investigation, Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment and therefore, proof is required.

Wherefore, Defendant Bi Lo Market prays for judgment in its behalf.

NEW MATTER

By way of further answer, Defendant avers as follows:

11. The Defendant, Bi Lo Market, is informed, believes, and therefore avers that the Plaintiff is contributorily and/or comparatively negligent and Plaintiff is thus barred from recovery of any damages under the terms of the Pennsylvania Comparative Negligence Act. Act No. July 9, 1976 Pl. 855 No. 152 and the Act of April 28, 1978 Pl. 202 No. 53 Section 10(89), 42 Pa. CSA Section 7102A, effective as to the causes of action arising on or after September 7, 1976 as the Plaintiff's causal negligence is greater than the negligence, if any, of the Defendant.

12. In the alternative, pursuant to the aforesaid provisions of the Pennsylvania Comparative Negligence Act. 42 Pa. CSA §7102A any damage which the Plaintiff may have legally suffered and can prove at trial and which are not otherwise barred by any of the defenses asserted in this Answer and New Matter should be diminished in proportion to the amount of negligence attributed to the Plaintiff.

13. Plaintiff was contributorily negligent and/or assumed the risk of her actions by fully understanding the risk, voluntarily choosing to encounter it and under circumstances that manifest a willingness to accept it.

Wherefore, Defendant Bi Lo Market prays for judgment in its behalf.

Respectfully submitted,



DENNIS M. McGLYNN, ESQUIRE
ATTORNEY FOR DEFENDANT
I.D. No. 19855

VERIFICATION

I, Tabitha A. May state that I am the General Liability Claims Adjuster of Bi Lo Market, the Defendant herein, that I am authorized to make this affidavit on its behalf and that the facts set forth in the foregoing Answer and New Matter are true upon my personal knowledge, information and belief.

I understand that my statements are made subject to 18 Pa. Con. Stat. §4904 providing for criminal penalties for unsworn falsification to authorities.

Tabitha A. May

Date 1/22/01

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

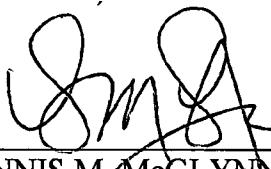
MARJORIE S. BURNETT,
Plaintiff

vs. : No. 00-1535 CD

BI LO MARKET,
Defendant

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing Answer and New Matter on behalf of Defendant, Bi Lo Market, was forwarded on the 30th day of January, 2001, by U.S. Mail, postage prepaid, to all counsel of record, addressed as follows:



DENNIS M. McGLYNN, ESQUIRE
ATTORNEY FOR DEFENDANT
I.D. No. 19855

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

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

FILED

FEB 02 2001

William A. Shaw
Prothonotary

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

MARJORIE S. BURNETT, :
Plaintiff :
: vs. : NO. 00-1535-CD
: :
BI LO MARKET, :
Defendant :
:

REPLY TO NEW MATTER

AND NOW, comes the Plaintiff, Marjorie S. Burnett, by her attorney, Paul Colavecchi, Esquire, and files the following reply to New Matter filed by Defendant as follows:

11. Denied for the reasons set forth in the Complaint.
12. Denied for the reasons set forth in the Complaint.
13. Denied for the reasons set forth in the Complaint.

WHEREFORE, Plaintiff respectfully requests that judgment be entered in her favor and against the Defendant.

Paul Colavecchi

PAUL COLAVECCHI, ESQUIRE
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
NO. 00-1535-CD

MARJORIE S. BURNETT, Plaintiff

vs.

BI LO MARKET, Defendant

REPLY TO NEW MATTER

FILED 3 cc
O/10/15 AM
FEB 02 2001
William A. Shaw
Prothonotary

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

MARJORIE S. BURNETT,
Plaintiff

vs.

BI LO MARKET,
Defendant

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

: : No. 00-1535 CD

: : : **Notice of Service of Interrogatories/**
Request for Production of Documents

: : : **Counsel of Record for Filing Party:**

: : : DENNIS M. McGLYNN, ESQUIRE
: 969 Eisenhower Boulevard
: Johnstown, PA 15904
: (814) 262-0812

: : : Supreme Court I.D. No. 19855

FILED

FEB 02 2001
MHS/noc
William A. Shaw
Prothonotary 886

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

MARJORIE S. BURNETT,
Plaintiff

vs. : No. 00-1535 CD

BI LO MARKET,
Defendant

NOTICE OF SERVICE OF INTERROGATORIES/
REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Prothonotary, Clearfield County

Defendant, Bi Lo Market, by its attorney, Dennis M. McGlynn, Esquire, hereby notifies the Court that Interrogatories/Request for Production of Documents have been served upon the Plaintiff, Marjorie S. Burnett, by mailing an original and one copy of same to her counsel, Paul Colavecchi, Esquire, at 221 E. Market St., P.O. Box 131, Clearfield, Pennsylvania 16830 on this 31st day of January, 2001.



DENNIS M. McGLYNN, ESQUIRE
ATTORNEY FOR DEFENDANT
I.D. No. 19855

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARJORIE S. BURNETT,

Plaintiff

CIVIL DIVISION

vs.

No. 00 - 1535 - CD

BI LO MARKET,

Defendant

PRAECLYPE FOR DISCONTINUANCE

Filed on Behalf of:

Plaintiff, MARJORIE S. BURNETT

Counsel of Record for This Party:

PAUL COLAVECCHI, ESQUIRE
Pa. I.D. #83274

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

814/765-1566

FILED

AUG 31 2001

William A. Shaw
Prothonotary

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

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

MARJORIE S. BURNETT,
Plaintiff

vs. : No. 00-1535 CD

BI LO MARKET,
Defendant

PRAECIPE FOR DISCONTINUANCE

Please mark the above captioned case ended, settled, and forever
discontinued.

Paul Colavecchi
PAUL COLAVECCHI, ESQUIRE
ATTORNEY FOR PLAINTIFF

FILED

AUG 31 2001
Cert. Re. to Office
William A. Shaw
Prothonotary
Copy CA
[Signature]

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

CIVIL DIVISION

Marjorie S. Burnett

Vs.
Bi Lo Market

No. 2000-01535-CD

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on August 31, 2001 marked:

Ended, Settled and Forever Discontinued.

Record costs in the sum of \$80.00 have been paid in full by Paul Colavecchi, Esquire.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 31st day of August A.D. 2001.



William A. Shaw, Prothonotary