

01-457-CD  
ELISIE M. BAER -vs- JANET L. MCGARVEY et al

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

ELSIE M. BAER

Plaintiff

vs.

JANET L. MCGARVEY, individually  
and as Executrix of the estate  
of Robert Turner Baer a/k/a  
Robert T. Baer and U.S. BANK  
formerly known as UNITED STATES  
NATIONAL BANK OF JOHNSTOWN  
Defendants

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No. 2001- 457 - -CD

Type of Pleading:  
COMPLAINT IN EQUITY

Filed on behalf of  
Plaintiff:

ELSIE M. BAER

Counsel of Record for  
this party:

**FILED**

APR 02 2001

William A. Shaw  
Prothonotary

TIMOTHY E. DURANT, ESQ.  
Pa. I.D. No. 21352  
201 North Second Street  
Clearfield, PA 16830  
(814) 765-1711

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

ELSIE M. BAER

Plaintiff

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vs.

JANET L. MCGARVEY, individually  
and as Executrix of the estate  
of Robert Turner Baer a/k/a  
Robert T. Baer and U.S. BANK  
formerly known as UNITED STATES  
NATIONAL BANK OF JOHNSTOWN

Defendants

No. 2001-

-CD

**NOTICE TO DEFEND**

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 and for any other claims 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  
North Second Street  
Clearfield, PA 16830  
(814) 765-2641

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

ELSIE M. BAER

Plaintiff

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vs.

JANET L. McGARVEY, individually  
and as Executrix of the estate  
of Robert Turner Baer a/k/a  
Robert T. Baer and U.S. BANK  
formerly known as UNITED STATES  
NATIONAL BANK OF JOHNSTOWN

Defendants

No. 2001-

-CD

COMPLAINT IN EQUITY

1. Plaintiff **ELSIE M. BAER**, is a competent adult individual who resides in Irvona, PA with a mailing address of P.O. Box 57, Irvona, Clearfield County, PA 16656.

2. Defendant, **JANET L. McGARVEY**, is a competent adult individual who resides at RR #1, Box 773, Coalport, Clearfield County, PA 16627.

3. Defendant, **U.S. BANK**, formerly United States NATIONAL BANK OF JOHNSTOWN is a Banking Institution and Corporate Body with a regular place of business on Main Street in the Borough of Coalport, Clearfield County, PA.

4. Defendant **JANET L. McGARVEY**, is the Executrix and sole beneficiary under the October 21, 2000 Will of Robert Turner Baer a/k/a Robert T. Baer late of P.O. Box 57, Irvona, PA. Said **JANET L. McGARVEY**, is also the daughter of the Plaintiff herein and the

late Robert T. Baer and was appointed Executrix on March 9, 2001 by the Clearfield County Register of Wills.

5. The aforesaid Robert Turner Baer a/k/a Robert T. Baer departed this life on February 16, 2001 survived by his wife, the Plaintiff herein and four daughters, one of whom is the defendant herein.

6. For some time prior to his death decedent suffered from and showed signs of mental disorders including progressive dementia of the alzheimers type, and extreme suspicion bordering on paranoia and a worrisome temper. His behavior was such that Plaintiff was advised by a physician that it was in her best interest to leave the house and she moved in with one of her daughters, a Shirley Smith in Abbotstown, PA.

7. Plaintiff and decedent were married on June 20, 1947 and neither she nor he ever filed a divorce action against the other.

8. During their 50+ years of married life together Plaintiff and decedent accumulated a goodly amount of funds and assets as a result of their frugal life style and their mutual efforts in the work place. These funds and assets were always titled and kept in both names with the right of survivorship.

9. As recently as June of 1999 the Plaintiff and decedent had \$191,014.30 invested in Certificates of Deposit in joint names at local banks. These funds were entireties property.

10. Plaintiff never gave consent to the decedent to change this ownership arrangement.

11. At some time unknown to Plaintiff (on or after June 1999)

decedent with or without the assistance of others unilaterally withdrew the funds from the joint names of the marital unit and placed them in his name alone.

12. Decedent's unilateral withdrawal was apparently intended to be an appropriation of entirety property for the use of the decedent alone to the exclusion of the plaintiff and without plaintiff's consent.

13. After decedent became hospitalized in December 2000 Plaintiff removed these funds from decedent's name utilizing an existing power of attorney dated May 11, 1998 and placed them in the U.S. Bank (Coalport Office) to be held in her name as guardian for Robert T. Baer as this title was suggested to her by the Social Security Office to be appropriate for a depository account to receive his Social Security checks.

14. Had decedent not unilaterally, wrongly and secretly transferred the joint marital funds into his own account at his death they would have (as entirety assets) been Plaintiff's and would not pass through his estate nor be subject to any inheritance tax.

15. Plaintiff believes and therefore avers that the funds existing in the U. S. Bank are actually, fairly and equitably her funds by operation of law and maintain their entirety status.

16. Decedent, in dying prior to a divorce or a decision of the court as to any partition of entirety property has made the determination of title unnecessary since death prior to such intervention or determination by the court vests the entire title

to the entirety assets in plaintiff herein by operation of law as his surviving spouse.

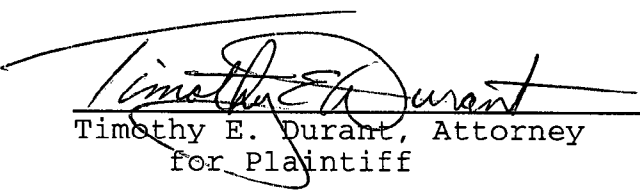
17. Defendant McGarvey has made a demand on the defendant U.S. Bank to pay over the entirety funds to her either as Executrix or as individual beneficiary.

18. Unless this honorable court intervenes and declares the nature of the funds to be entirety assets, Defendant McGarvey is likely to continue such conduct and Defendant Bank may pay over the funds all to the detriment of Plaintiff.

WHEREFORE, Plaintiff requests that this court declare that the funds held by Elsie M. Baer as Guardian for Robert T. Baer in the U.S. Bank are the funds of Elsie M. Baer solely; that such funds are hers as the surviving spouse; that such funds are entirety funds and not funds of the estate of Robert T. Baer.

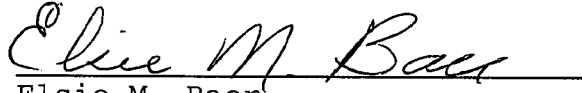
Respectfully submitted,

April 2, 2001

  
Timothy E. Durant, Attorney  
for Plaintiff

VERIFICATION

I, **ELSIE M. BAER**, verify that the statements made in this Pleading are true and correct to the best of my knowledge, information and belief. Plaintiff understands that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

  
Elsie M. Baer

Dated: March 30, 2001



FILED

APR 02 2001

William A. Shaw  
Prothonotary

City of Durant

PD # 80.00

acc Sheriff

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10847

BAER, ELSIE M.

01-457-CD

VS.

MCGARVEY, JANET L., ind. & as Executrix

COMPLAINT IN EQUITY

SHERIFF RETURNS

NOW APRIL 3, 2001 AT 1:41 PM DST SERVED THE WITHIN COMPLAINT IN EQUITY ON UNITED STATES NATIONAL BANK OF JOHNSTOWN, DEFENDANT AT EMPLOYMENT, MAIN ST., COALPORT, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO LINDA L. MATISH, TELLER, A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN EQUITY AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: NEVLING/RYEN

NOW APRIL 3, 2001 AT 1:58 PM DST SERVED THE WITHIN COMPLAINT IN EQUITY ON JANET L. MCGARVEY IND. & AS EXECUTRIX OF ESTATE OF ROBERT TURNER BAER A/K/A ROBERT T. BAER, DEFENDANT AT RESIDENCE, RR# 1, BOX 773, COALPORT, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO JANET MCGARVEY A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN EQUITY AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: NEVLING/RYEN

Return Costs

Cost	Description
38.90	SHFF. HAWKINS PAID BY: ATTY.
20.00	SURCHARGE PAID BY: ATTY.

FILED

APR 04 2001  
01:08/100 CE  
William A. Shaw  
Prothonotary

Sworn to Before Me This

4th Day Of April 2001  
*William A. Shaw*

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

So Answers,

*Chester A. Hawkins*  
*by Marilyn Harris*  
Chester A. Hawkins  
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELSIE M. BAER,

Plaintiff

COURT OF EQUITY

vs.

No. 01-457-CD

JANET L. MCGARVEY,  
individually and as Executrix  
of the estate of Robert  
Turner Baer a/k/a Robert T.  
Baer and U. S. BANK formerly  
known as UNITED STATES  
NATIONAL BANK,

Defendants

**PRELIMINARY OBJECTION: LACK OF  
SUBJECT MATTER JURISDICTION**

Filed on Behalf of:

Defendant, Janet L. McGarvey,  
individually and as Executrix of  
the estate of Robert Turner Baer  
a/k/a Robert T. Baer, deceased

Counsel of Record For This Party:

JOSEPH COLAVECCHI, ESQUIRE  
Pa. I. D. No. 06810

Colavecchi, Ryan & Colavecchi  
221 East Market Street  
P. O. Box 131  
Clearfield, PA 16830  
Phone: 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 2001

William A. Shaw  
Prothonotary

the time of his death were not owned by him.

B. This is essentially a dispute over the title of what is claimed by the Defendant to be estate assets involving the decedent's wife and the daughter as executrix and sole heir.


C. The Probate, Estates and Fiduciaries Code describes the mandatory jurisdiction of the Orphans' Court under 20 Pa. C.S.A. 711 which sets out that the jurisdiction of the Court of Common Pleas shall be exercised through its Orphans' Court Division in connection with the administration and distribution of the real and personal property of decedents' estates.

D. 20 Pa.C.S.A. 701 also sets out that the Orphans' Court Division shall handle the administration and distribution of the real and personal property of the estates of incapacitated persons. In this case, Plaintiff is alleging that her husband was incapacitated and unable to be aware of what he was doing administering personal property held in his own name and formerly held in the name of him and Plaintiff.

E. It is specifically set out in 20 Pa. C.S.A. 711 that the Orphans' Court Division shall handle the adjudication of the title to personal property in the possession of the personal representative or registered in the name of the decedent or his nominee, or alleged by the personal

representative to have been in the possession of the decedent at the time of his death.

2. For all of the above reasons, this legal action should be transferred to the jurisdiction of the Court of Common Pleas of Clearfield County, Orphans' Court Division.



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JOSEPH COLAVECCHI, ESQUIRE  
Attorney for Defendant, Janet L.  
McGarvey, individually and as  
Executrix of the Estate of Robert  
Turner Baer a/k/a Robert T. Baer,  
deceased

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
COURT OF EQUITY  
No. 01-457-CD

ELSIE M. BAER,  
Plaintiff

VS.

JANET L. MCGARVEY, individually  
and as Executrix of the estate of  
Robert Turner Baer a/k/a Robert T.  
Baer and U. S. Bank formerly  
known as UNITED STATES NATIONAL  
BANK,

Defendants

PRELIMINARY OBJECTION: LACK  
OF SUBJECT MATTER JURISDICTION

FILED  
APR 10 2005  
William A. Sweeney  
Prothonotary

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

Lap over margin

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

ELSIE M. BAER,

Plaintiff,

vs.

JANET L. McGARVEY, individually  
and as Executrix of the Estate of  
Robert Turner Baer a/k/a Robert  
T. Baer and U. S. BANK formerly  
known as UNITED STATES  
NATIONAL BANK IN JOHNSTOWN,

Defendants.

No. 2001 - 457 - CD

Type of Pleading: ANSWER AND  
NEW MATTER TO PLAINTIFF'S  
COMPLAINT IN EQUITY

Filed on behalf of Defendant  
U. S. BANK formerly known as  
UNITED STATES NATIONAL  
BANK IN JOHNSTOWN

COUNSEL OF RECORD FOR  
THIS PARTY

GILBERT E. CAROFF, ESQUIRE  
PA I.D. NO. 05916

SUZANN M. LEHMIER, ESQUIRE  
PA I.D. NO. 78127

227 FRANKLIN STREET, SUITE 310  
JOHNSTOWN, PA 15901  
(814) 535-7817

You are hereby notified to plead  
to the within document within  
thirty (30) days of service hereof.



**FILED**

APR 19 2001

William A. Shaw  
Prothonotary

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

ELSIE M. BAER,

Plaintiff,

vs.

JANET L. McGARVEY, individually  
and as Executrix of the Estate of  
Robert Turner Baer a/k/a Robert  
T. Baer and U. S. BANK formerly  
known as UNITED STATES  
NATIONAL BANK IN JOHNSTOWN,

Defendants.

No. 2001 - 457 - CD

**ANSWER AND NEW MATTER  
TO PLAINTIFF'S COMPLAINT IN EQUITY**

AND NOW, comes the Defendant, U.S. Bank, formerly known as United States National Bank in Johnstown, by and through its undersigned attorneys, and files the within Answer and New Matter to Plaintiffs' Complaint in Equity, as follows:

1. After reasonable investigation, Defendant U. S. Bank is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 1; therefore, same are denied and strict proof is demanded at the time of trial.
2. After reasonable investigation, Defendant U. S. Bank is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 2; therefore, same are denied and strict proof is demanded at the time of trial.
3. The averments of paragraph 3 are admitted.
4. After reasonable investigation, Defendant U. S. Bank is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 4; therefore, same are denied and strict proof is demanded at the time of trial.
5. After reasonable investigation, Defendant U. S. Bank is without information



or knowledge sufficient to form a belief as to the truth of the averments of paragraph 5; therefore, same are denied and strict proof is demanded at the time of trial.

6. After reasonable investigation, Defendant U. S. Bank is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 6; therefore, same are denied and strict proof is demanded at the time of trial.

7. After reasonable investigation, Defendant U. S. Bank is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 7; therefore, same are denied and strict proof is demanded at the time of trial.

8. After reasonable investigation, Defendant U. S. Bank is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 8; therefore, same are denied and strict proof is demanded at the time of trial.

9. After reasonable investigation, Defendant U. S. Bank is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 9; therefore, same are denied and strict proof is demanded at the time of trial.

10. After reasonable investigation, Defendant U. S. Bank is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 10; therefore, same are denied and strict proof is demanded at the time of trial.

11. After reasonable investigation, Defendant U. S. Bank is without information or knowledge sufficient to form a belief as to the truth of the averments of paragraph 11; therefore, same are denied and strict proof is demanded at the time of trial.

12. The averments of paragraph 12 are conclusions of law to which no response is required. To the extent a response is necessary, after reasonable investigation, Defendant U. S. Bank is without information or knowledge regarding the averments of paragraph 12; therefore, same are denied and strict proof is demanded at the time of trial.

13. The averments of paragraph 13 are admitted in part and denied in part. It is admitted that, on or after December 2000, funds were deposited by Plaintiff with Defendant U. S. Bank to be held in the name of Elsie M. Baer as guardian for Robert T. Baer. After reasonable investigation, Defendant U. S. Bank is without information or knowledge regarding the remaining averments of paragraph 13; therefore, same are denied and strict proof is demanded at the time of trial.

14. The averments of paragraph 14 are conclusions of law to which no response is required. To the extent a response is necessary, after reasonable investigation, Defendant U. S. Bank is without information or knowledge regarding the averments of paragraph 14; therefore, same are denied and strict proof is demanded at the time of trial.

15. The averments of paragraph 15 are conclusions of law to which no response is required. To the extent a response is necessary, after reasonable investigation, Defendant U. S. Bank is without information or knowledge regarding the averments of paragraph 15; therefore, same are denied and strict proof is demanded at the time of trial.

16. The averments of paragraph 16 are conclusions of law to which no response is required. To the extent a response is necessary, after reasonable investigation, Defendant U. S. Bank is without information or knowledge regarding the averments of paragraph 16; therefore, same are denied and strict proof is demanded at the time of trial.

17. The averments of paragraph 17 are conclusions of law to which no response is required. To the extent a response is necessary, the averments of paragraph 17 are admitted.

18. The averments of paragraph 18 are conclusions of law to which no response is required. To the extent a response is necessary, the averments of paragraph 18 are admitted.

WHEREFORE, Defendant U. S. Bank requests this Honorable Court to make a determination regarding the nature of the funds held by Elsie M. Baer as Guardian for Robert T. Baer with Defendant U. S. Bank, as requested by Plaintiff in her Complaint in Equity.

#### **NEW MATTER OF DEFENDANT U. S. BANK**


19. Paragraphs 1 through 18 are incorporated herein by reference as if more fully set forth at length herein.

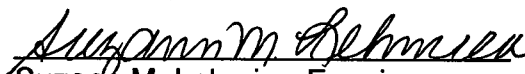
20. Defendant U. S. Bank, as the holder of the funds at issue, is merely a stakeholder in the instant litigation.

21. Defendant U. S. Bank takes no position as to the nature of the disputed funds and agrees to be bound by this Honorable Court's determination as to the nature and disposition of said funds.

WHEREFORE, Defendant U. S. Bank requests this Honorable Court to make a determination regarding the nature of the funds held by Elsie M. Baer as Guardian for Robert T. Baer with Defendant U. S. Bank, as requested by Plaintiff in her Complaint in Equity.

Respectfully submitted,

  
Gilbert E. Caroff, Esquire  
PA I. D. No. 05916

  
Suzann M. Lehmier, Esquire  
PA I. D. No. 78127

Attorneys for Defendant U. S. Bank  
227 Franklin Street, Suite 310  
Johnstown, PA 15901  
(814) 535-7817

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

ELSIE M. BAER,

Plaintiff,

vs.

JANET L. McGARVEY, individually  
and as Executrix of the Estate of  
Robert Turner Baer a/k/a Robert  
T. Baer and U. S. BANK formerly  
known as UNITED STATES  
NATIONAL BANK IN JOHNSTOWN,

Defendants.

No. 2001 - 457 - CD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on this date, via United States regular mail, postage pre-paid, on the following counsel of record:

Timothy E. Durant, Esquire  
201 North Second Street  
Clearfield, PA 16830  
Attorney for Plaintiff

William Lynn Hollen, Esquire  
1633 East Pleasant Valley Blvd.  
Altoona, PA 16602  
Attorney for Defendant Janet L. McGarvey

Date: 4/18/01

  
Attorney for Defendant U.S. Bank

**VERIFICATION**

The undersigned verifies that the facts set forth in the foregoing document are made by it and based upon its own information and belief or upon its own personal knowledge. The undersigned is aware that false statements made herein are made subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.

U. S. Bank, formerly known as United States  
National Bank in Johnstown

Dated: April 18, 2001

By: John E. Kubinskiy  
Title: Senior Vice President

**FILED**

APR 19 2001

m/120/mcc

William A. Shaw

Prothonotary

di  
KBS

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA

ELSIE M. BAER

Plaintiff

vs.

JANET L. MCGARVEY, individually  
and as Executrix of the estate  
of Robert Turner Baer a/k/a  
Robert T. Baer and U.S. BANK  
formerly known as UNITED STATES  
NATIONAL BANK OF JOHNSTOWN  
Defendants

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No. 2001-457-CD  
IN EQUITY

Type of Pleading:

REPLY TO NEW MATTER OF  
DEFENDANT U.S. BANK

Filed on behalf of  
Plaintiff:

ELSIE M. BAER

Counsel of Record for  
this party:

**TIMOTHY E. DURANT, ESQ.**  
Pa. I.D. No. 21352  
201 North Second Street  
Clearfield, PA 16830  
(814) 765-1711

Attorneys for Defendant  
U.S. Bank:

**GILBERT E. CAROFF, ESQ.**

Pa. I.D. No. 05916

**SUZANN M. LEHMIER, ESQ.**

Pa. I.D. No. 78127

227 Franklin St., Suite 310  
Johnstown, PA 15901

(814) 535-7817

Attorney for Defendant  
Janet L. McGarvey:

**JOSEPH COLAVECCHI, ESQ.**

Pa. I.D. No. 06810

Colavecchi, Ryan & Colavecchi  
221 East Market St.

P.O. Box 131

Clearfield, PA 16830

(814) 765-1566

**FILED**

MAY 16 2001

William A. Shaw  
Prothonotary

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

ELSIE M. BAER

Plaintiff

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No. 2001-457-CD

vs.

JANET L. MCGARVEY, individually  
and as Executrix of the estate  
of Robert Turner Baer a/k/a  
Robert T. Baer and U.S. BANK  
formerly known as UNITED STATES  
NATIONAL BANK OF JOHNSTOWN  
Defendants

REPLY TO NEW MATTER OF DEFENDANT U.S. BANK

Plaintiff by her counsel Timothy E. Durant, provides the following Reply to the New Matter raised by defendant U. S. Bank:

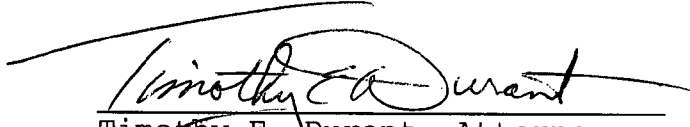
19. No answer required as this paragraph is an incorporating paragraph and makes no averments of new facts but merely re-alleges their answers to plaintiff's complaint in paragraphs 1-18. To the extent necessary Plaintiff re-alleges the facts contained in her complaint paragraphs 1-18.

20. Admitted.

21. Admitted.

Respectfully submitted,

Dated: May 15, 2001

  
Timothy E. Durant, Attorney  
for Plaintiff



VERIFICATION

I, **ELSIE M. BAER**, verify that the statements made in this pleading are true and correct to the best of my knowledge, information and belief. Plaintiff understands that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Elsie M. Baer  
Elsie M. Baer

Dated: May 15, 2001

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

ELSIE M. BAER

Plaintiff

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No. 2001-457-CD

vs.

JANET L. MCGARVEY, individually  
and as Executrix of the estate  
of Robert Turner Baer a/k/a  
Robert T. Baer and U.S. BANK  
formerly known as UNITED STATES  
NATIONAL BANK OF JOHNSTOWN  
Defendants

PROOF OF SERVICE

I hereby certify that I am this day serving one certified copy  
of the Plaintiff's Reply To New Matter of Defendant U.S. Bank on  
the following persons and in the manner indicated below.

Service by first class mail addressed as follows:

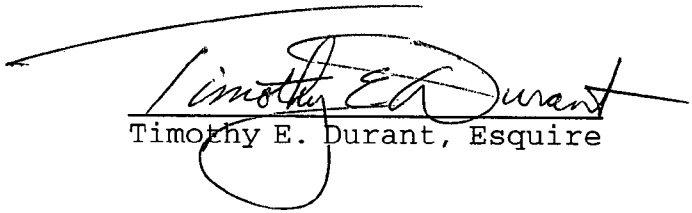
**Attorneys for Defendant U.S. Bank:**

Gilbert E. Caroff, Esquire and  
Suzann M. Lehmier, Esquire  
227 Franklin St., Suite 310  
Johnstown, PA 15901

**Attorney for Defendant Janet L. McGarvey:**

Joseph Colavecchi, Esquire  
Colavecchi & Ryan  
221 East Market St.  
P.O. Box 131  
Clearfield, PA 16830

DATED: May 16, 2000

  
Timothy E. Durant, Esquire

**FILED**

MAY 16 2001

*[Signature]*  
9:38/4cc atty Durant  
William A. Shaw  
Prothonotary

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

ELSIE M. BAER,

Plaintiff

v.

No. 01-457-CD

JANET L. McGARVEY,  
Individually and as Executrix of the  
Estate of Robert T. Baer a/k/a  
Robert T. Baer and U.S. Bank formerly  
Known as UNITED STATES NATIONAL  
BANK,

Defendants

**FILED**

AUG 20 2001

William A. Shaw  
Prothonotary

OPINION AND ORDER

Plaintiff, Elsie M. Baer, commenced the above-captioned in Equity based on the following:

Plaintiff and Robert Turner Baer (decedent) were married from June 20, 1947 until his death on February 16, 2001. Neither party filed an action of divorce against the other during their marriage. When Robert Turner Baer died, his wife and four (4) daughters, one of who is the Defendant, survived him.

As a result of their frugal life style and mutual efforts in the work place, Plaintiff and decedent accumulated a reasonably large amount of funds and assets over their fifty-three (53) years of life together. These funds and assets were always titled and kept in the name of both the husband and wife as entireties assets or joint owners with the right of survivorship.

Prior to his death, Plaintiff was advised by her physician to leave the marital home. Plaintiff, in acting on this advice moved in with her daughter, Shirley Smith, who lives in Abbotstown, Pennsylvania.

As recently as June of 1999, the Plaintiff and decedent had \$191,014.30 invested in Certificates of Deposit in joint names at local banks. It is also believed and averred that there were other bank assets exceeding \$10,000.00 in both names and all of the funds referred to in this matter were entireties property belonging to Elsie and Robert Baer.

Plaintiff asserts that she never gave consent to the decedent to change this ownership arrangement.

Eventually, decedent became hospitalized in December 2000 and never regained his health or left the hospital. Plaintiff reclaimed and removed all but \$10,000.00 of the marital funds from decedent's sole name by utilizing an existing power of attorney dated May 11, 1998 and placed these funds in two (2) accounts at the U.S. Bank (Coalport Office) to be held in her name as Guardian for Robert T. Baer and a \$7,000.00 prepaid funeral account for Robert with Lloyd-Dimmick Funeral Home, Inc. named as Trustee. The title used for these two (2) bank accounts were originally suggested to Elsie by the DuBois Social Security Office to be appropriate for a depository account to receive Robert's Social Security checks. The title was also evidence of the intent of Plaintiff to use the funds not just for her but also for Robert as and when needed during his lifetime.

Plaintiff contends that if decedent had not unilaterally, wrongly and secretly transferred the joint marital funds into his own account at his death, these funds, as entireties assets, would have been Plaintiff's and would not pass through decedent's estate nor be subject to any inheritance tax.

Plaintiff believes that the funds remaining and existing in the U.S. Bank in the name of Elsie M. Baer as guardian for Robert T. Baer are actually, fairly and equitably her own sole funds by operation of law and that due to her lack of consent to their removal by Robert they retained their entirety status or in the alternative should be deemed by this Court sitting in equity to have retained their entirety status.

Defendant asserts that the Probate, Estates, and Fiduciaries Code mandate the jurisdiction of the Orphans' Court under 20 Pa.C.S.A. 711, which sets out that the jurisdiction of the Court of the Common Pleas, shall be exercised through its Orphans' Court Division in connection with the administration and distribution of the real and personal property of the decedents' estates.

On April 2, 2001, Elsie Baer by her counsel filed a Complaint in Equity in the instant matter. On April 18, 2001, Defendant U.S. Bank filed an Answer and New Matter; on April 19, 2001, Defendant Janet McGarvey filed Preliminary Objections-Lack of Subject Matter Jurisdiction. Plaintiff filed a Reply to U.S. Bank's New Matter on May 16, 2001. The Court Administrator of Clearfield County, Pennsylvania instructed all parties to file briefs in support of their positions as to whether the action was properly brought and filed in Equity. Defendant U.S. Bank formerly known as United States National Bank did not take a position in this matter and did not file a brief. This Court now reviews whether this matter should proceed in the Court of Common Pleas sitting in equity or be dismissed and transferred to Orphans' Court.

After argument and a review of the briefs, it is the opinion of this Court that the Preliminary Objections of the Plaintiff must be dismissed.

Plaintiff alleges that the assets, which are subject of this suit, are not the assets of Robert T. Baer, but are instead the assets of Elsie M. Baer and that during Robert's lifetime

Elsie merely made these entireties funds available for his care on an as needed basis but at his death these assets are solely her assets. The Plaintiff seeks to have this Honorable Court declare that these assets were entireties assets during decedent's lifetime but by operation of law his death, they are the property of his surviving spouse.

Plaintiff asks this Court to use its equitable power to find and direct that the assets unilaterally transferred by Robert out of the joint marital names are Nunc Pro Tunc restored to the joint marital names and that upon Robert's death they became the sole property of Elsie and do not pass through Robert's Estate for distribution purposes.

The courts of Pennsylvania have recognize that the appropriation of entireties property by one spouse Backus v. Backus, 464 Pa. 380, 346 A.2d 790 (1975), or the exclusion by one spouse of the other spouse from the property held by them in a tenancy by the entireties, Shapiro v. Shapiro, 424 Pa. 120, 224 A.2d 164 (1966) gives rise to a right in the excluded spouse to bring an action in equity to protect as separate property his or her interest in the subject property, Backus, supra. The title sought to be confirmed by Plaintiff in this matter, is property not in possession or control of the decent at his death and therefore, not subject to the control or direction of the Orphans' Court.

Furthermore, Defendant fails to present any case law to support her argument. Thus, under the circumstances, this Court concludes that Defendant's Preliminary Objections must be dismissed.

THEREFORE, this Court enters the following:

ORDER

NOW, this 20<sup>th</sup> day of August, 2001, it is the ORDER of this Court that Defendant's Preliminary Objections are hereby DISMISSED.

BY THE COURT,

President Judge



**FILED**

AUG 29 2001

Q/3:5/1cc atty Duren

William A. Shaw

Prothonotary

1cc atty Colavacca

~~cc~~

1cc atty Carrobb

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ELSIE M. BAER,

Plaintiff

COURT OF EQUITY

vs.

No. 01-457-CD

JANET L. MCGARVEY,  
individually and as Executrix  
of the estate of Robert  
Turner Baer a/k/a Robert T.  
Baer and U. S. BANK formerly  
known as UNITED STATES  
NATIONAL BANK,

ANSWER

Defendants

Filed on Behalf of:

Defendant, Janet L. McGarvey,  
individually and as Executrix of  
the estate of Robert Turner Baer  
a/k/a Robert T. Baer, deceased

Plaintiff, Elsie M. Baer, file answer to the Complaint.

I solemnly swear as follows:

Counsel of Record For This Party:

1. Admitted.

JOSEPH COLAVECCHI, ESQUIRE

2. Admitted.

Pa. I. D. No. 06810

3. Admitted.

Colavecchi, Ryan & Colavecchi

221 East Market Street

4. Admitted.

P. O. Box 131

Clearfield, PA 16830

5. Admitted.

Phone: 814/765-1566

I do not admit that Robert Baer was

**FILED**

that he had a son.

Plaintiff and Robert Baer and


without legal justification. Strictly

I demanded at the trial of this case

and

18. Janet L. McGarvey as Executrix of the Will of Robert T. Baer has a duty to collect all funds that were owned by Robert T. Baer at the time of his death, pay the bills, and distribute the funds as required under the laws of the Commonwealth of Pennsylvania.

WHEREFORE, Defendant asks that this legal action filed by Elsie M. Baer be dismissed and that the funds of Robert T. Baer be paid over to his estate and to Janet L. McGarvey as Executrix of said estate.



---

JOSEPH COLAVECCHI, ESQUIRE  
Attorney for Defendant, Janet L.  
McGarvey, individually and as  
Executrix of the Estate of Robert  
Turner Baer a/k/a Robert T. Baer,  
deceased

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION  
No. 01-457-CD

ELSIE M. BAER,

Plaintiff

vs.

JANET L. MCGARVEY et al,  
Defendants

ANSWER

**FILED**

AUG 28 2001

OB 15/30-att  
William A. Shaw  
Prothonotary

Colavecchi  
for

**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

ELSIE M. BAER

Plaintiff

Vs.

JANET L. MCGARVEY, Individually  
and as Executrix of the Estate  
of Robert Turner Baer, a/k/a  
Robert T. Baer, and US Bank,  
f/k/a United States National  
Bank,

Defendants

CIVIL DIVISION

No. 01 - 0457 - CD

PRAECIPE TO DISCONTINUE

Filed on Behalf of:

Defendant, JANET L. MCGARVEY

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** No cc  
01354/01  
JUN 28 2007 No Certificate  
Requested  
William A. Shaw  
Prothonotary/Clerk of Courts

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

ELSIE M. BAER

Plaintiff

Case No. 01 - 0457 - CD

Vs.

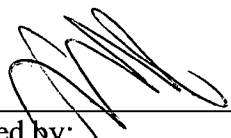
JANET L. MCGARVEY, Individually and  
as Executrix of the Estate of Robert  
Turner Baer, a/k/a Robert T. Baer;  
~~and US BANK, f/k/a United States~~  
National Bank Defendant

Praecepte to Discontinue

To the Prothonotary:

Please mark the above-referenced case Settled, Discontinued, and Ended.

06/28/07  
Date

  
Filed by:  
JOSEPH COLAVECCHI, ESQUIRE  
Attorney for Janet L. McGarvey  
221 East Market Street  
Clearfield, PA 16830

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

Elsie M. Baer  
Plaintiff

Vs.

Janet L. McGarvey  
et. al. Defendant

Case No. 01-0457-CD

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\*  
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Praeipue to Discontinue

To the Prothonotary:

Please mark the above-referenced case Settled, Discontinued, and Ended.

6/28/2007  
Date

Timothy E. Durant  
Filed by Timothy E. Durant  
attorney for Plaintiff

FILED No CC  
9/3/2007  
JUN 29 2007 Certificate  
of Disc. to  
William A. Shaw  
Prothonotary/Clerk of Courts Ashy

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Elsie M. Baer

Vs.

No. 2001-00457-CD

Janet L. McGarvey  
Robert Turner Baer Estate  
U. S. Bank

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 June 29, 2007, marked:

Settled, Discontinued, and Ended

Record costs in the sum of \$80.00 have been paid in full by Timothy E. Durant, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 29th day of June A.D. 2007.

A handwritten signature in cursive script, appearing to read "William A. Shaw", with a large, stylized initial "W" and a signature mark at the end.

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William A. Shaw, Prothonotary