

01-884-CD  
DONALD R. MIKSELL et al -vs- THOMAS F. MORGAN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DONALD R. MIKESELL,  
ROBERT B. MIKESELL and  
Janeell K. MIKESELL,  
Plaintiff,

VS.

THOMAS F. MORGAN, TRUSTEE  
Defendant.

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No. 2001- 884-CD

Type of Pleading:  
Complaint for Partition

Filed on behalf of:  
Plaintiffs, Donald R. Mikesell  
Robert B. Mikesell and Janeell  
K. Mikesell

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

JUN 08 2001

William A. Shaw  
Prothonotary

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

DONALD R. MIKESELL,	:		
ROBERT B. MIKESELL and	:		
Janeell K. MIKESELL,	:		
Plaintiff,	:		
	:		
VS.	:	No. 2001-	-CD
	:		
THOMAS F. MORGAN, TRUSTEE	:		
Defendant.	:		

**NOTICE TO DEFEND**

To: Thomas F. Morgan, Trustee

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action withing 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 Plaintiffs. 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, Pennsylvania 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 seventy-two (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  
Second and Market Streets  
Clearfield, Pennsylvania 16830  
(814) 765-2641 ext. 5982

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

DONALD R. MIKESELL,	:	
ROBERT B. MIKESELL and	:	
Janell K. MIKESELL,	:	
Plaintiff,	:	
	:	
VS.	:	No. 2001- -CD
	:	
THOMAS F. MORGAN, TRUSTEE	:	
Defendant.	:	

**COMPLAINT**

AND NOW COMES the Plaintiffs, DONALD R. MIKESELL, ROBERT B. MIKESELL and JANELL K. MIKESELL, by and through their attorney, Warren B. Mikesell, II, Esquire, and sets forth this **Complaint for Partition** and in support thereof aver as follows:

1. The name of the first Plaintiff is DONALD R. MIKESELL, an individual who resides at 101 West First Street, Clearfield, Pennsylvania 16830.
2. The name of the second Plaintiff is ROBERT B. MIKESELL, an individual who resides at R.R. # 3, Box 219B, Clearfield, Pennsylvania, 16830.
3. The name of the third Plaintiff is JANELL K. MIKESELL a/k/a JANELL K. DANIELSON, who resides at 317 West Main Street, Grove City, Pennsylvania 16127.
4. The Defendant is THOMAS F. MORGAN, TRUSTEE who resides at P.O. Box 808, Lawrence Township, Clearfield County,

Pennsylvania 16830. Also with offices at 301 East Pine Street, Clearfield Borough, Clearfield County, Pennsylvania, 16830.

5. The parcel of real estate subject to this action is situate in Lawrence Township, Clearfield County, Pennsylvania and is identified as Clearfield County Tax Map Number 123-K-7-71. The said parcel consists of sixty-seven (67) acres, more or less, of surface and is more particularly described as follows:

**ALL** that certain tract or piece of ground situate in the Township of Lawrence, County of Clearfield and State of Pennsylvania, bounded and described as follows:

**BEGINNING** at a stone at the margin of the West branch of the Susquehanna River, corner between this tract and land of William Mapes; thence North one hundred and seventy-seven (177) perches to stones; thence West ninety-eight (98) perches to a black oak; thence South sixty-three (63) perches to a post; thence East twenty-two (22) perches to a hickory; thence South forty-three (43) degrees East ten (10) perches to a hickory; thence South thirty-eight (38) perches to the Susquehanna River; thence down the said river by its several courses and sitances seventy-seven (77) acres, more or less, and being part of a larger tract surveyed on Warrant No. 5605.

**EXCEPTING AND RESERVING** out of the above described tract the following 2 lots sold and conveyed to Philip F. Gingrich by

deed dated June 12, 1902 and recorded in Deed Book 126, pay 14; 1 lot sold and conveyed to George Noll by deed dated October 15, 1904 and recorded in Deed Book 143, page 227; 1 lot sold and conveyed to William T. Baney by deed dated September 5, 1906 and recorded in Deed Book 157, page 169; 2 lots sold and conveyed to Martha Amon by deed dated July 26, 1905 and recorded in Deed Bok 176, page 139; 2 lots sold and conveyed to Wilson Maines dated July 15, 1910 and recorded in Deed Book 181, page 550.

**ALSO** excepting and reserving Lots No. 1 to 23 inclusive Lots No. 48 to 59 inclusive and Lots 80 to 82 ½ inclusive in what is known as the Kerr, Welch & O'Neill addition as laid out on said tract of land.

**AND BEING** the same premises conveyed by Harold J. Boulton and Elizabeth D. Boulton, his wife, to Patterson Fire Brick Company by Deed dated April 28, 1949 and recorded in Clearfield County Recorder of Deeds Office in Deed Book 441, page 348.

**AND BEING** a part of the same premises which were conveyed to the Grantor herein by Deed of H. K. Porter Company, Inc. dated October 5, 1976 and recorded in Clearfield County Recorder of Deeds Office in Deed Book 728, page 137, said deed not referring specifically to the property but it being the intention thereof to convey the premises to the Grantor herein.

6. The Plaintiff, DONALD R. MIKESELL, became the owner of an undivided 2/15th interest in the premises subject to this action by Court Order dated April 24, 1979 and recorded in the

Clearfield County Recorder of Deeds Office in Deed Book 781, page 403.

7. The Plaintiff's ROBERT B. MIKESELL and JANELL K. MIKESELL, a/k/a JANELL K. DANIELSON, became the owners of an undivided 12/15th interest in the premises subject to this action by Deed from Fahy W. McDonald, et. al. dated February 6, 1997 and recorded in the Clearfield County Recorder of Deeds Office on February 14, 1997 in Deed and Record Book 1820, page 336 and by Deed from R. Wesley Smith, et.al. dated April 3, 1997 and recorded in the Clearfield County Recorder of Deeds Office on April 7, 1997 in Deed and Record Book 1831, page 346 and by Deed from Bertram D. Danver, et.al. dated August 5, 1997 and recorded in the Clearfield County Recorder of Deeds Office on August 5, 1997 in Deed and Record Book 1862, page 234.

8. The Defendant, THOMAS F. MORGAN, obtained an undivided 1/15th interest in the premises subject to this action by Court Order dated April 24, 1979 and recorded in the Clearfield County Recorder of Deeds Office in Deed Book 781, page 403.

9. As a result of the foregoing transfers and devises, ownership of the premises subject to this action is currently held as follows:

Plaintiffs:	14/15th.
Defendant:	1/15th.

10. No partition or division of the property has ever been made although Plaintiffs have requested the Defendant to sell his interest to the Plaintiffs.

11. That the real estate subject to this action cannot be divided without prejudice to or spoiling of the whole.

**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 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;

Respectfully submitted,

Dated: \_\_\_\_\_

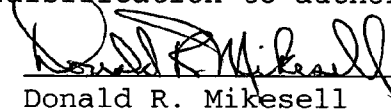
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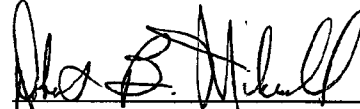
Warren B. Mikesell, II  
Attorney for Plaintiffs

**VERIFICATION**

The undersigned verify that they are the Plaintiffs in the within action, and that the statements made in the foregoing document are true and correct to the best of their knowledge, information and belief. The undersigned understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.



Donald R. Mikesell



Robert B. Mikesell



Janell K. Mikesell, a/k/a  
Janell K. Danielson

Date: 6-7-01

In The Court of Common Pleas  
of  
Clearfield County, Pennsylvania

No. \_\_\_\_\_

Donald R. Mikesell,  
Robert B. Mikesell and  
Janell K. Mikesell  
\_\_\_\_\_  
Plaintiff

Versus

Thomas F. Morgan, Trustee  
\_\_\_\_\_  
Defendant

PDW  
01/24/38 80.00  
Atty pd.  
4cc Atty

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

Sheriff Docket # 11092

MIKESELL, DONALD R.; ROBERT B. & JANELL K.

01-884-CD

VS.

MORGAN, THOMAS F.

COMPLAINT FOR PARTITION

**SHERIFF RETURNS**

NOW JUNE 8, 2001 AT 12:15 PM DST SERVED THE WITHIN COMPLAINT IN  
PARTITION ON THOMAS F. MORGAN, TRUSTEE, DEFENDANT AT RESIDENCE,  
P.O. BOX 808, LAWRENCE TWP., CLEARFIELD, CLEARFIELD COUNTY,  
PENNSYLVANIA BY HANDING TO THOMAS MORGAN A TRUE AND ATTESTED  
COPY OF THE ORIGINAL COMPLAINT IN PARTITION AND MADE KNOWN TO HIM  
THE CONTENTS THEREOF.  
SERVED BY: SNYDER

**Return Costs**

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

Sworn to Before Me This

13 / Day Of June 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

**FILED**  
2:01  
JUN 13 2001  
*WAS*  
William A. Shaw  
Prothonotary

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

DONALD R. MIKESELL,  
ROBERT B. MIKESELL, and  
JANELL K. MIKESELL

vs.

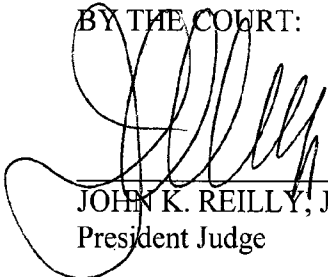
THOMAS F. MORGAN, TRUSTEE

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: No. 01-884-CD  
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ORDER

NOW, this 22 day of October, 2001, upon consideration of  
recusal of both Judges sitting in the 46<sup>th</sup> Judicial District, it is the ORDER of this  
Court that the Court Administrator of Clearfield County refer the above-captioned  
civil matter to Administrative Regional Unit II for assignment of a specially presiding  
judicial authority.

BY THE COURT:

  
\_\_\_\_\_  
JOHN K. REILLY, JR.  
President Judge

**FILED**


OCT 22 2001

William A. Shaw  
Prothonotary

FILED

OCT 22 2001

0/245/1cc att mkeall  
William A. Shaw  
Prothonotary

 1cc att Noble  
1cc GA. Dave mehdick

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No. 01-884-CD

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## REFERENCES

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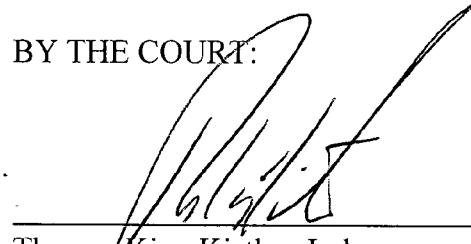
**William A. Shaw**  
Prothonotary

5. In the event the responding party fails to timely deliver a responsive brief, as required above, the matter shall be considered by the Court as if uncontroverted.

6. The Court will decide the Preliminary Objections on the briefs submitted by each party.

7. If the parties desire oral argument, the same must be requested in writing to the Court within five (5) days of the date the brief of the responding party is due to be filed or the Court determines oral argument is necessary.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'TK Kistler', is written over a horizontal line.

Thomas King Kistler, Judge  
Specially Presiding

**FILED**

NOV 08 2001

11/2/13 p.m.

William A. Shaw

Prothonotary

no cc

*ES*  
*PLS*

*Judge Kester already served Counsel Copies*

CA

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

DONALD R. MIKESELL, et al.

Plaintiffs,

v.

THOMAS F. MORGAN, Trustee,

Defendant.

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No. 01 - 884 - CD

*Attorneys for Plaintiff:*  
*Attorney for Defendant:*

*Warren B. Mikesell, Esquire*  
*Theron G. Noble, Esquire*

**OPINION AND ORDER**

**KISTLER, J.**

Presently before the Court for consideration are Defendant Thomas F. Morgan's, as Trustee, Preliminary Objections to Plaintiffs Donald Mikesell's, et al., Complaint for Partition of Real Property.

**FINDINGS OF FACT**

1. On November 20, 1964, a Declaration of Trust was recorded which demonstrates that Thomas F. Morgan (hereinafter, "Morgan") holds certain property in trust for William F. Smith, Una D. Morgan, Anthony Guido and Thomas Morgan. Each beneficiary and their spouses also gave Morgan, as trustee, power of attorney.

2. Anthony S. Guido subsequently conveyed his interest to William Smith, Thomas F. Morgan, Una D. Morgan and Richard G. Kenney. Richard Kenney and his spouse also executed a power of attorney in favor of Morgan.

**FILED**

**DEC 26 2001**

**William A. Shaw**  
Prothonotary

3. Plaintiffs Donald Mikesell, et al. (hereinafter, "Mikesell") filed a Complaint for Partition of Real Property naming only Morgan, as trustee, as a defendant.

4. Morgan filed the instant Preliminary Objections alleging that Mikesell has failed to join the necessary parties and also failed to conform their pleadings to law.

5. The Court has had the opportunity to review briefs submitted by both parties and as such, is prepared to render a decision in the instant matter.

### **CONCLUSIONS OF LAW**

1. An action for partition may be brought by any one or more co-tenants. All other co-tenants shall be joined as defendants. Pa.R.C.P. 1553.

2. A trustee is one who, having legal title to the property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary. Black's Law Dictionary 1519 (7<sup>th</sup> ed. 1999).

### **DISCUSSION**

Initially, Morgan contends that the proper parties were not named in the complaint for partition of real property. Specifically, Morgan avers that only he, as trustee to the property, was named as a defendant and no other co-tenants were properly named as defendants.

The Court agrees that Pa.R.C.P. 1553 states that all co-tenants shall be joined as defendants in an action to partition property. The reason for this rule is to protect a co-tenants' interest in the land concerning, among other issues, value of property, control over

property and maintenance of the integrity of the property. See Lohmiller v. Weidenbaugh, 503 Pa. 329, 469 A. 2d 578 (1983).

In the instant matter, all of the unnamed co-tenants conveyed their interest in the land to Morgan, as trustee. All co-tenants also gave Morgan power of attorney. As trustee, Morgan acquired legal title to the land at issue in this proceeding. It is well recognized that when a legal estate is vested in a trustee all actions at law which effect the trust must be brought in his name. Pennsylvania R. Co. v. Duncan, 5 A. 742, 11 Pa. 352 (1886), *affirmed* 10 S.Ct. 34, 33L.Ed. 267. Similarly, trustees of estates have been found to be proper parties in actions at equity such as the action to partition real property in this case. See In re Becker's Estate, 43 A.2d 4, 352 Pa. 452 (1945)( when one sister effectively transferred all her estate to a trustee, the trustee was a proper party in a proceeding for inquest in partition of intestate's realty). Additionally, when a trustee acquires legal title to a property, the beneficiary of the trust has no standing to ask for partition because title to the real estate belongs to the trustee. Johnson v. Gaul, 77 A. 399, 228 Pa. 75 (1910).

The Court determines that solely naming Thoms F. Morgan, trustee of the land, as defendant in this action to partition land is satisfactory. Morgan, as trustee, and not the beneficiaries (co-tenants), holds legal title to the land which Mikesell is attempting to partition. Allowing this suit to proceed with just Morgan, as trustee, named as defendant will unify into one single procedure all the diverse interests which may be difficult to accurately ascertain due to clouds on the present title. Furthermore, if Morgan adequately fulfills his fiduciary obligations imposed as trustee of the land, all interests of the beneficiaries / co-tenants will be protected as envisioned by Pa.R.C.P. 1553.

Next, Morgan states that Mikesell failed to include a proper description of the land in the complaint for partition of real property. A complaint for partition of real property must

include a description of the property to be partitioned. See Pa.R.C.P. 1554. The description of the real property is essential. Goodrich-Amram 2d § 1554:2.

For these reasons, the Court finds that Mikesell must include an accurate description of the property that is subject to the partition complaint.

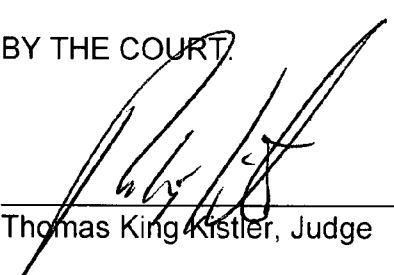
**ORDER**

AND NOW, this 20<sup>th</sup> day of December, 2001, after consideration of briefs submitted by both parties, the ORDER and DECREE of this Court is as follows:

Defendant Thomas F. Morgan's, as trustee, Preliminary Objection pertaining to the failure to name necessary defendants is hereby **OVERRULED**.

Defendant Thomas F. Morgan's, as trustee, Preliminary Objection pertaining to the failure to conform a pleading to law is hereby **SUSTAINED**. Plaintiff shall have twenty (20) days from the date of this Order to file an Amended Complaint to include an accurate and correct description of the land at issue in the instant matter.

BY THE COURT,

  
\_\_\_\_\_  
Thomas King Kistler, Judge

**FILED**

DEC 26 2001

01/10/40 a.m.  
William A. Shaw  
Prothonotary

1 cc to atty: Noble  
1 cc to atty: Michael

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

DOANLD R. MIKESELL,  
ROBERT B. MIKESELL, and  
JANELL K. MIKESELL,

PLAINTIFFS,

v.

THOMAS F. MORGAN, TRUSTEE

DEFENDANT.

CIVIL ACTION NO.

01-884-CD

TYPE OF PLEADING:

PRELIMINARY OBJECTIONS

FILED BY:

DEFENDANT

COUNSEL FOR THIS PARTY:

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
814-375-2221  
PA I.D.#: 55942

FILED

MAR 02 2001

William A. Shaw  
Prothonotary

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

DONALD R. MIKESELL,	)	
ROBERT B. MIKESELL, and	)	
JANELL K. MIKESELL,	)	
	)	
PLAINTIFFS,	)	
	)	No. 01-884-CD
v.	)	
	)	
THOMAS F. MORGAN, TRUSTEE,	)	
	)	
DEFENDANT.	)	
	)	

PRELIMINARY OBJECTIONS

AND NOW, comes the Defendant, Thomas F. Morgan, Trustee, by and through his counsel of record, Theron G. Noble, Esquire of Ferraraccio & Noble, who avers as follows in support of Defendant's PRELIMINARY OBJECTIONS:

Background

1. This matter was commenced by the filing of a CIVIL COMPLAINT, on June 6, 2001, whereat partition of a jointly held property is sought.
2. The property is located in Lawrence Township, Clearfield County, Pennsylvania.
3. The COMPLAINT was properly served upon the Defendant on June 9, 2001.
4. The PRELIMINARY OBJECTIONS herein raised are timely.

Count I: Nonjoinder of a Necessary Party  
(Pa.R.Civ.P. 1028(a)(5))

5. That per Pa.R.Civ.P. 1553 all co-tenants are to be named as parties to the action.
6. That Pa.R.Civ.P. 1028(a)(5) provides for preliminary objections in the event nonjoinder of a necessary party has occurred.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'T. Noble', with a long horizontal flourish extending to the right.

---

Theron G. Noble, Esquire  
Ferraraccio & Noble  
Attorney for Defendant  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.#: 55942

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

DONALD R. MIKESELL,	)	
ROBERT B. MIKESELL, and	)	
JANELL K. MIKESELL,	)	
	)	
PLAINTIFFS,	)	
	)	No. 01-884-CD
v.	)	
	)	
THOMAS F. MORGAN, TRUSTEE,	)	
	)	
DEFENDANT.	)	
	)	

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, attorney for Defendant, does hereby certify that I did mail a true and correct copy to the below listed person, being counsel for Plaintiff, by depositing a true and correct copy of PRELIMINARY OBJECTIONS in the United States Mail, postage prepaid, first class as follows, this 29th day of June, 2001:

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

Respectfully Submitted,



Theron G. Noble, Esquire  
Ferraraccio & Noble  
Attorney for Defendant  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.#: 55942

FILED

M 11:28 AM  
JUL 12 2001

NO  
CC

William A. Sherry  
Prothonotary

*WAS*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DONALD R. MIKESELL,  
ROBERT B. MIKESELL and  
JANELLE K. MIKESELL,  
Plaintiff,

VS.

THOMAS F. MORGAN, TRUSTEE  
Defendant.

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No. 2001-884 -CD  
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CERTIFICATE OF SERVICE

Kimberly Jordan, being duly sworn according to law, deposes  
and says that as an adult resident of the Commonwealth of  
Pennsylvania, I did personally cause to be served upon the  
Defendant's Attorney, THERON G. NOBLE, ESQUIRE, a true and  
correct certified copy of the Amended Complaint for Partition by  
handing same to his secretary, Lisa Picard, at 301 East Pine  
Street, Clearfield, Pennsylvania, 16830 on January 7, 2002 at

3:37 p.m.

**FILED**

JAN 08 2002

01/05/03 cc atty Mike Sell  
William A. Shaw  
Prothonotary

Kimberly Jordan

Sworn to and subscribed

before me this 7th day

of January, 2002.

William A. Shaw

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, CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL DIVISION)

DONALD R. MIKESELL,  
ROBERT B. MIKESELL, and  
JANELL K. MIKESELL,

PLAINTIFFS,

v.

THOMAS F. MORGAN, TRUSTEE,

DEFENDANT.

No. 01-884-CD

Type of Pleading:

ANSWER & NEW MATTER

Filed By:

Defendant

Counsel of Record:

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.#: 55942

**FILED**

JAN 28 2002

m11571noc  
William A. Shaw  
Prothonotary

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Denied. For the reasons more fully set forth in Defendant's NEW MATTER, it is specifically DENIED that Defendant Thomas F. Morgan owns a 1/15th undivided interest in the subject premises. Strict proof of the same is demanded at time of trial.

9. Denied. For the reasons more fully set forth in Defendant's NEW MATTER, it is specifically DENIED that Defendant Thomas F. Morgan owns a 1/15th undivided interest in the subject premises. Strict proof of the same is demanded at time of trial.

10. Admitted. By way of further response, Defendant avers that he has also offered to sell his interest to Plaintiffs who have refused to acquire the premises on fair and commercially reasonable terms. In addition, Defendant also offered to acquire Plaintiffs' interests in the subject parcel.

11. Admitted.

New Matter

**To: Plaintiffs**

**You are hereby notified to Plead to the following NEW MATTER within twenty (20) days hereof or judgment could be entered against you.**



**Theron G. Noble, Esquire  
Attorney for Defendant**

12. That the property also contains merchantable timber.

13. That in the event it is determined the property must be liquidated, the timber value must be accounted for in the partition action.

14. That Defendant Thomas F. Morgan, Trustee did hold title to some portion of the 1/15th interest referenced to by Plaintiffs in their complaint (see averments 9 and 10) as Trustee and not in his individual capacity, subject to a conveyance to be more fully detailed herein.

15. That in the event it is determined that Thomas F. Morgan, Trustee is to deliver said trust interest for purposes of partition, a pro rata portion of the proceeds must be paid to the trustors.

16. That the trust interest presently includes William F. Smith, his heirs or assigns, and Richard G. Kenney, his heirs or assigns.

17. By deed dated December 6, 1982, and recorded at Deed Book 865, Page 260, in the Clearfield County Recorder's office, Una D. Morgan, the mother of Defendant Thomas F. Morgan, trustee, conveyed her interest out of trust and unto Thomas F. Morgan (individually) and Anne L. Morgan, husband and wife.

18. That Thomas F. Morgan, Trustee, and Thomas F. Morgan and Anne L. Morgan, husband and wife, conveyed the interest in the subject premises referenced by Plaintiffs, to Scott McMasters, III, by Deed dated June 26, 2001, and recorded as instrument number 200110080 in the Clearfield County Recorder's office, for good and valuable consideration.

19. That Scott McMasters, III, has an interest in the property and is not a party. Furthermore, upon information and belief, Scott McMasters, III, is aware of this action and would be willing to join this matter as a party.

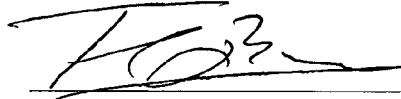
20. That in the alternative, if for any unknown reason, it would be determined that the above referenced conveyance to Scott McMasters, III, failed for any reason, then in that alternative Thomas F. Morgan, in his individual capacity, and Anne L. Morgan, husband and wife, have an interest in the subject premises and are not parties to this action and would also be willing to join this matter as parties.

WHEREFORE, Defendant requests as follows:


- 1) A master be appointed to administer to this action;**
- 2) That factual determinations be made as to persons having interest in the subject premises so that all interested parties be joined such that a lawful, as compared to voidable, partition action can be performed;**
- 3) That factual determinations be made as to whether the premises are capable of division without prejudice or spoliation, and if so, then such a division be ordered, and if not, then the master proceed as follows:**
  - (a) An accredited real estate appraiser be hired to determine the properties fair and commercially reasonable value;**
  - (b) An accredited timber valuation expert be hired to perform valuation of the timber;**
  - (c) The master oversee the liquidation of the property with these values in mind in accordance with Pennsylvania law relating to partitions; and**
- (4) That the master award counsel fees in proportions of the interest in the premises in accordance with Pennsylvania law relating to partition actions; and**
- (5) Any other award or determination which is fair and just under the attenuate facts and**

**circumstances.**

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'T. Noble', written over a horizontal line.

Theron G. Noble, Esquire  
Attorney for Defendant  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

  
Thomas F. Morgan, Trustee, Defendant

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

DONALD R. MIKESELL,  
ROBERT B. MIKESELL, and  
JANELL K. MIKESELL,

PLAINTIFFS,

v.

THOMAS F. MORGAN, TRUSTEE,

DEFENDANT.

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) No. 01-884-CD  
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**CERTIFICATE OF SERVICE**

I, Theron G. Noble, Esquire, of Ferraraccio & Noble, attorney for Defendant, does hereby certify that I did mail a true and correct copy to the below listed person, being counsel for Plaintiffs, by depositing a true and correct copy of Defendant's ANSWER & NEW MATTER in the United States Mail, postage prepaid, first class as follows, this 24<sup>th</sup> day of January, 2002:

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

Respectfully Submitted,



Theron G. Noble, Esquire  
Ferraraccio & Noble  
Attorney for Defendant  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.#: 55942

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

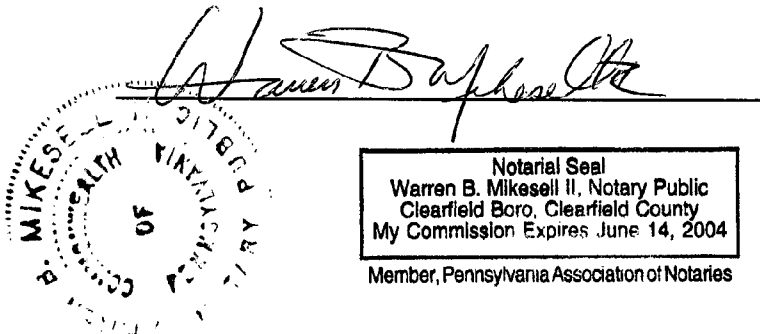
DONALD R. MIKESELL, :  
ROBERT B. MIKESELL and :  
JANELL K. MIKESELL, :  
Plaintiff, :  
VS. : No. 2001-884-CD  
THOMAS F. MORGAN, TRUSTEE :  
Defendant. :

CERTIFICATE OF SERVICE

Kimberly Jordan, being duly sworn according to law, deposes and says that as an adult resident of the Commonwealth of Pennsylvania, I did personally cause to be served upon the Defendant's Attorney, THERON G. NOBLE, ESQUIRE, a true and correct certified copy of the Preliminary Objection by handing same to his secretary, at 301 East Pine Street, Clearfield, Pennsylvania, 16830 on February 14, 2002 at 11:54 a.m.

Kimberly Jordan

Sworn to and subscribed  
before me this 14th day  
of February, 2002.



**FILED**

FEB 14 2002  
O/85213-Cathy Mikesell  
William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DONALD R. MIKESELL,  
ROBERT B. MIKESELL and  
Janell K. MIKESELL,  
Plaintiff,

VS.

THOMAS F. MORGAN, TRUSTEE  
Defendant.

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: No. 2001-884-CD  
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Type of Pleading:  
Preliminary Objection

Filed on behalf of:  
Plaintiffs, Donald R. Mikesell  
Robert B. Mikesell and Janell  
K. Mikesell

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**

**FEB 19 2002**

**William A. Shaw  
Prothonotary**

Jacki - I sent <sup>not yet</sup>  
a copy of this to <sup>you</sup>  
the US Landing <sup>to read</sup>  
it - have to wait &  
see what he wants  
to do. Thanks! m-

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

DONALD R. MIKESELL,	:	
ROBERT B. MIKESELL and	:	
Janell K. MIKESELL,	:	
Plaintiff,	:	
	:	
VS.	:	No. 2001-884-CD
	:	
THOMAS F. MORGAN, TRUSTEE	:	
Defendant.	:	

**Preliminary Objections**

**AND NOW**, comes the Plaintiffs, Donald R. Mikesell, Robert B. Mikesell and Janell K. Mikesell, by and through their attorney, Warren B. Mikesell, II, Esquire, who avers as follows in support of Plaintiff's Preliminary Objections to Defendant's New Matter:

Background:

1. This matter was commenced by the filing of a Civil Complaint on June 6, 2001, whereas a partition of a jointly held property is sought.
2. Service was made on the Defendant, Thomas F. Morgan, Trustee, by Deputy Snyder or the Clearfield County Sheriff's Office on June 8, 2001, at 12:15 p.m. by personal service at the Defendant's residence situate at P.O. Box 808, Lawrence Township, Clearfield County, Pennsylvania.
3. Preliminary Objections were filed by the Defendant on July 2, 2001, by and through counsel of record, Theron g. Noble, Esquire.
4. By Order dated October 22, 2001, both Clearfield County Judges recused themselves from this action and the same was referred to the Administrative Regional Unit II for the assignment of a specially presiding judicial authority.
5. By Order dated November 5, 2001, briefs in support and against the Defendant's Preliminary Objections were scheduled by this Honorable Court specially presiding in the matter.
6. By Order of December 20, 2001, this Honorable Court issued an Opinion and Order finding that the Defendant, Thomas F. Morgan, Trustee, was the properly named defendant and that the beneficiaries of the Trust need not be joined, and further Ordering that the Plaintiff's file and amended complaint.

7. The said amended complaint was properly and timely filed by the Plaintiffs.
8. That on or after January 24, 2002, the Defendant filed a Answer and New Matter.

**Count 1:**

9. That by the Defendant's New Matter, the Defendant, Thomas F. Morgan, Trustee, has alleged that he, Thomas F. Morgan, as an individual, is no longer the owner of the beneficial interest that he obtained from his mother, UNA D. MORGAN, by Deed dated December 6, 1982, as recorded in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania, in Deed Book 865, page 260.

10. That the said Defendant, on or after June 26, 2001, did attempt to convey to and individual named Scott McMasters, III, the aforesaid Una D. Morgan interest in the trust as evidenced by the instrument filed of record in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania, as Instrument Number 200110080.

11. As in the Plaintiff's brief in support of denying Defendant's Preliminary Objections, it was noted that the aforesaid Deed from Una D. Morgan to Thomas F. Morgan was and should be considered a nullity since the Trustee, himself, the legal title holder to the property did not join in the said deed of conveyance nor did the Trustee seek and obtain Court approval for the same.

12. That since the deed from Una D. Morgan to Thomas F. Morgan could not have conveyed any legal title, the Deed dated June 26, 2001, could not have conveyed any legal interest regardless of whether the said Thomas F. Morgan, Trustee, joined in this Deed.

13. That the purported conveyance by Deed dated June 26, 2001, was not approved by this or any other Court.

14. That the said conveyance is after the commencement of this action.

15. That prior to any conveyance of any interest from the Trust, the Trustee should have sought Court approval of the same. See Seif v. Krebs, 86 A. 872, 234 Pa. 423, Sup. 1913 (Purchaser of land by deed from trustees without court approval, title would be doubtful and unmarketable).

16. That by his prayer for relief that the interest that was purportedly transferred to Scott McMasters, III, requires the joinder of him as a party as well as the joinder of Thomas F. Morgan and Anne L. Morgan, husband and wife.

17. That the Defendant, by purportedly transferring the interest of Una D. Moran that he claims to have acquired, has set in motion a mechanism that if allowed, would permit this matter to be continued again and again so long as the beneficiaries in this Trust are permitted to transfer their beneficial interest without Court approval.

18. That this procedure is in effect giving not credence to this Honorable Court's Order of December 20, 2001, wherein it was ordered that Thomas F. Morgan, Trustee, was the properly named Defendant and that the individual beneficiaries of the Trust did not have to be joined as Co-Defendants since the Trustee was, by law, the legal title holder to the interest in the property in question.

19. That the tactics of the Defendant, whether with or without knowledge of the counsel of record for the Defendant, are dilatory tactics and are highly improper and only serve to waste this Honorable Courts valuable time and only further complicates the resolution of this case.

WHEREFORE, the Plaintiffs respectfully request that the Defendant's new matter be stricken, and further that it be ordered that the conveyance to Scott McMasters, III, by the Deed dated June 26, 2001, as recorded as Instrument Number 200110080 be declared a nullity and void as the interest of Una D. Morgan was itself a nullity.

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 Plaintiffs

In The Court of Common Pleas  
of  
Clearfield County, Pennsylvania

No. 2001-884-CD

DONALD R. MIKESELL, et. al.  
Plaintiff

Versus

THOMAS F. MORGAN, TRUSTEE  
Defendant

**FILED**

FEB 13 2002

2:34 PM

William A. Shaw  
Prothonotary

3cc to AHG  
JAS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DONALD R. MIKESELL,  
ROBERT B. MIKESELL and  
Janelle K. MIKESELL,  
Plaintiff,

VS.

THOMAS F. MORGAN, TRUSTEE  
Defendant.

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: No. 2001-884-CD  
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Type of Pleading:  
Amended Complaint for  
Partition

Filed on behalf of:  
Plaintiffs, Donald R. Mikesell  
Robert B. Mikesell and Janelle  
K. Mikesell

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**

JAN 07 2002

William A. Shaw  
Prothonotary

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

DONALD R. MIKESELL,	:	
ROBERT B. MIKESELL and	:	
Janell K. MIKESELL,	:	
Plaintiff,	:	
	:	
VS.	:	No. 2001-884-CD
	:	
THOMAS F. MORGAN, TRUSTEE	:	
Defendant.	:	

**NOTICE TO DEFEND**

To: Thomas F. Morgan, Trustee

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 Plaintiffs. 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, Pennsylvania 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 seventy-two (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  
Second and Market Streets  
Clearfield, Pennsylvania 16830  
(814) 765-2641 ext. 5982

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

DONALD R. MIKESELL,	:	
ROBERT B. MIKESELL and	:	
Janell K. MIKESELL,	:	
Plaintiff,	:	
	:	
VS.	:	No. 2001-884-CD
	:	
THOMAS F. MORGAN, TRUSTEE	:	
Defendant.	:	

**AMENDED COMPLAINT**

AND NOW COMES the Plaintiffs, DONALD R. MIKESELL, ROBERT B. MIKESELL and JANELL K. MIKESELL, by and through their attorney, Warren B. Mikesell, II, Esquire, and sets forth this **Amended Complaint for Partition** and in support thereof aver as follows:

1. The name of the first Plaintiff is DONALD R. MIKESELL, an individual who resides at 101 West First Street, Clearfield, Pennsylvania 16830.

2. The name of the second Plaintiff is ROBERT B. MIKESELL, an individual who resides at R.R. # 3, Box 219B, Clearfield, Pennsylvania, 16830.

3. The name of the third Plaintiff is JANELL K. MIKESELL a/k/a JANELL K. DANIELSON, who resides at 317 West Main Street, Grove City, Pennsylvania 16127.

4. The Defendant is THOMAS F. MORGAN, TRUSTEE who resides at P.O. Box 808, Lawrence Township, Clearfield County,

Pennsylvania 16830. Also with offices at 301 East Pine Street, Clearfield Borough, Clearfield County, Pennsylvania, 16830.

5. **The description is hereby amended to read as follows:**

The parcel of real estate subject to this action is situate in Lawrence Township, Clearfield County, Pennsylvania and is identified as Clearfield County Tax Map Number 123-K-7-71. The said parcel consists of sixty-seven (67) acres, more or less, of surface and is more particularly described as follows:

**ALL** that certain tract or piece of ground situate in the Township of Lawrence, County of Clearfield and State of Pennsylvania, bounded and described as follows:

**BEGINNING** at a stone at the margin of the West branch of the Susquehanna River, corner between this tract and land of William Mapes; thence North one hundred and seventy-seven (177) perches to stones; thence West ninety-eight (98) perches to a black oak; thence South sixty-three (63) perches to a post; thence East twenty-two (22) perches to a hickory; **thence South thirty-six (36) perches to a black oak;** thence South forty-three (43°) degrees East ten (10) perches to a hickory; thence South thirty-eight (38) perches to the Susquehanna River; thence down the said river by its several courses and distances seventy-seven (77) **perches to the place of beginning. Containing seventy-seven (77) acres,** more or less, and being part of a larger tract surveyed on Warrant No. 5605.

**EXCEPTING AND RESERVING** out of the above described tract the following 2 lots sold and conveyed to Philip F. Gingrich by deed dated June 12, 1902 and recorded in Deed Book 126, pay 14; 1 lot sold and conveyed to George Noll by deed dated October 15, 1904 and recorded in Deed Book 143, page 227; 1 lot sold and conveyed to William T. Baney by deed dated September 5, 1906 and recorded in Deed Book 157, page 169; 2 lots sold and conveyed to Martha Amon by deed dated July 26, 1905 and recorded in Deed Book 176, page 139; 2 lots sold and conveyed to Wilson Maines dated July 15, 1910 and recorded in Deed Book 181, page 550.

**ALSO** excepting and reserving Lots No. 1 to 23 inclusive Lots No. 48 to 59 inclusive and Lots 80 to 82  $\frac{1}{2}$  inclusive in what is known as the Kerr, Welch & O'Neill addition as laid out on said tract of land.

**AND BEING** the same premises conveyed by Harold J. Boulton and Elizabeth D. Boulton, his wife, to Patterson Fire Brick Company by Deed dated April 28, 1949 and recorded in Clearfield County Recorder of Deeds Office in Deed Book 441, page 348.

**AND BEING** a part of the same premises which were conveyed to the Grantor herein by Deed of H. K. Porter Company, Inc. dated October 5, 1976 and recorded in Clearfield County Recorder of Deeds Office in Deed Book 728, page 137, said deed not referring specifically to the property but it being the intention thereof to convey the premises to the Grantor herein.

6. The Plaintiff, DONALD R. MIKESELL, became the owner of an undivided 2/15th interest in the premises subject to this action by Court Order dated April 24, 1979 and recorded in the Clearfield County Recorder of Deeds Office in Deed Book 781, page 403.

7. The Plaintiff's ROBERT B. MIKESELL and JANELL K. MIKESELL, a/k/a JANELL K. DANIELSON, became the owners of an undivided 12/15th interest in the premises subject to this action by Deed from Fahy W. McDonald, et. al. dated February 6, 1997 and recorded in the Clearfield County Recorder of Deeds Office on February 14, 1997 in Deed and Record Book 1820, page 336 and by Deed from R. Wesley Smith, et.al. dated April 3, 1997 and recorded in the Clearfield County Recorder of Deeds Office on April 7, 1997 in Deed and Record Book 1831, page 346 and by Deed from Bertram D. Danver, et.al. dated August 5, 1997 and recorded in the Clearfield County Recorder of Deeds Office on August 5, 1997 in Deed and Record Book 1862, page 234.

8. The Defendant, THOMAS F. MORGAN, obtained an undivided 1/15th interest in the premises subject to this action by Court Order dated April 24, 1979 and recorded in the Clearfield County Recorder of Deeds Office in Deed Book 781, page 403.

9. As a result of the foregoing transfers and devises,

ownership of the premises subject to this action is currently held as follows:

Plaintiffs: 14/15th.

Defendant: 1/15th.

10. No partition or division of the property has ever been made although Plaintiffs have requested the Defendant to sell his interest to the Plaintiffs.

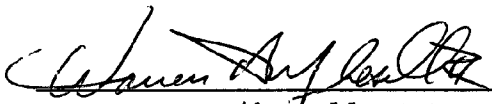
11. That the real estate subject to this action cannot be divided without prejudice to or spoiling of the whole.

**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 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;

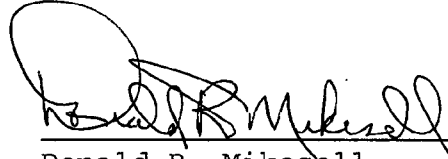
Respectfully submitted,

Dated: 6/07-02

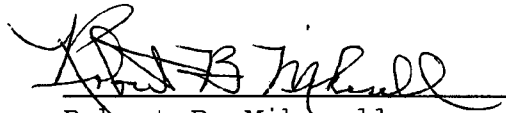
  
Warren B. Mikesell, II  
Attorney for Plaintiffs

**VERIFICATION**

The undersigned verify that they are the Plaintiffs in the within action, and that the statements made in the foregoing document are true and correct to the best of their knowledge, information and belief. The undersigned understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.



Donald R. Mikesell



Robert B. Mikesell



Janell K. Mikesell, a/k/a  
Janell K. Danielson

Date: 1-7-2002

In The Court of Common Pleas  
of  
Clearfield County, Pennsylvania

No. 2001-884-CD

DONALD R. MIKESELL, et. al.  
Plaintiff

Versus

THOMAS F. MORGAN, Trustee  
Defendant

**FILED**

JAN 07 2002

*013:06/4ccathy mitchell*  
William A. Shaw  
Prothonotary *WAS*

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

DONALD R. MIKESELL,  
ROBERT B. MIKESELL, and  
JANEL K. MIKESELL,  
Plaintiffs,

VS.

THOMAS F. MORGAN, TRUSTEE,  
Defendant.

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NO. 01-884-CD

**PRAECIPE TO DISCONTINUE**

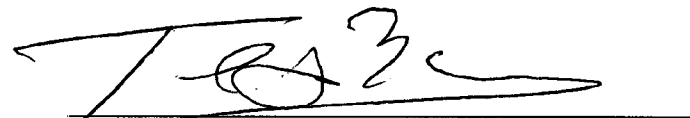
To William A. Shaw, Sr., Prothonotary

The parties have resolved all matters at issue by purchase and the execution of proper deeds of conveyance.

Please mark the above captioned case settled, discontinued and satisfied upon payment of record costs.



WARREN B. MIKESELL, II, ESQUIRE  
Attorney for the Plaintiffs



THERON G. NOBLE, ESQUIRE  
Attorney for the Defendant

**FILED**

SEP 04 2003

01/3:45/12

William A. Shaw  
Prothonotary/Clerk of Courts

4 case to have 61  
copy to C/A. 12/6

CA

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

DONALD R. MIKESELL,  
ROBERT B. MIKESELL, and  
JANELL K. MIKESELL,  
Plaintiffs,

v.

THOMAS F. MORGAN, Trustee,  
Defendant.

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No. 01-884-CD

**ORDER**

WHEREAS, on the 13th day of February, 2002, Plaintiffs, Donald R. Mikesell, Robert B. Mikesell and Janell K. Mikesell, having filed Preliminary Objections to Defendant's New Matter in the above-captioned case, it is **ORDERED** this 18th day of March, 2002, as follows:

1. The brief of the moving party shall be delivered to the chambers of Judge Thomas King Kistler, **Centre County Courthouse**, and a copy sent to responding party, no later than the close of business on **April 12, 2002**.

2. The brief of the responding party shall be delivered to the chambers of Judge Thomas King Kistler, **Centre County Courthouse**, and a copy sent to the moving party, no later than the close of business on **April 26, 2002**.

3. Absent compelling circumstances, no continuances shall be granted, including continuances by stipulation of counsel.

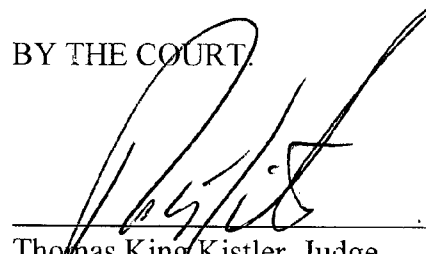
**FILED**

MAR 21 2002

William A. Shaw  
Prothonotary

4. In the event the moving party fails to timely deliver a brief in support of the Preliminary Objections, as required above, the matter shall be considered withdrawn.
5. In the event the responding party fails to timely deliver a responsive brief, as required above, the matter shall be considered by the Court as if uncontroverted.
6. The Court will decide the Preliminary Objections on the briefs submitted by each party.
7. If the parties desire oral argument, the same must be requested in writing to the Court within five (5) days of the date the brief of the responding party is due to be filed or the Court determines oral argument is necessary.

BY THE COURT.



---

Thomas King Kistler, Judge  
Specially Presiding

FILED

MAR 21 2002

012:29 p.m.  
William A. Shaw  
Prothonotary *cm*

1 CC to Atty Mikesell  
1 CC to Atty Noble

*cm*



JUDGE'S CHAMBERS  
FORTY-NINTH JUDICIAL DISTRICT OF PENNSYLVANIA  
CENTRE COUNTY  
BELLEFONTE, PENNSYLVANIA 16823

CHARLES C. BROWN, JR.  
PRESIDENT JUDGE

March 18, 2002

DAVID E. GRINE  
JUDGE

THOMAS KING KISTLER  
JUDGE

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

**Re: Donald R. Mikesell, et al. v. Thomas F. Morgan**  
**Clearfield County Docket No. 01-884-CD**

Dear Marcy:

Please find enclosed the executed Briefing Order that needs to be filed in the above-listed case.

I would ask that you file this document with your Prothonotary. I have already mailed copies to Mr. Mikesell and Mr. Noble to save on time of service.

Thank you for your assistance in this matter, and if you should have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "TKK", written over a horizontal line.

Thomas King Kistler, Judge

TKK:tsh

Enclosure

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DONALD R. MIKESELL,  
ROBERT B. MIKESELL and  
JANELL K. MIKESELL,  
Plaintiff,

VS.

THOMAS F. MORGAN, TRUSTEE  
Defendant.

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No. 2001-884-CD

CERTIFICATE OF SERVICE

Kimberly Jordan, being duly sworn according to law,  
deposes and says that as an adult resident of the Commonwealth  
of Pennsylvania, I did personally cause to be served upon the  
Defendant's Attorney, THERON G. NOBLE, ESQUIRE, a true and  
correct copy of the Brief in Support of Plaintiff's Preliminary  
Objections by handing same to his secretary, at 301 East Pine  
Street, Clearfield, Pennsylvania, 16830 on April 9, 2002,  
at 4:19 p.m.

*Kimberly Jordan*

FILED

Sworn to and subscribed

before me this 10th day

of April, 2002.

APR 11 2002

William A. Shaw  
Prothonotary

*Warren B. Mikesell II*

Notarial Seal  
Warren B. Mikesell II, Notary Public  
Clearfield Boro, Clearfield County  
My Commission Expires June 14, 2004

Member, Pennsylvania Association of Notaries



FILED

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APR 11 2002  
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Atty. Mikesell

*[Signature]*

William A. Shaw  
Prothonotary



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

DONALD R. MIKESELL,  
ROBERT B. MIKESELL, and  
JANELLE K. MIKESELL,  
Plaintiffs,

v.

THOMAS F. MORGAN, Trustee,  
Defendant.

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No. 01-884-CD

**ORDER**

AND NOW, this 28th day of May, 2002, upon request for a status conference on the Preliminary Objections, it is the **ORDER** of this Court that a conference is scheduled for the **12th** day of **June, 2002**, at **1:30 P.M.**, in **Jury Room No. 1**, Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

  
\_\_\_\_\_  
Thomas King Kistler, Judge  
Specially Presiding

**FILED**

JUN 05 2002

William A. Shaw  
Prothonotary

**FILED**

JUN 05 2002

M/12:05 (u)

William A. Shaw  
Prothonotary

CORREX TO PARTIES

BY T.K.K., J.



JUDGE'S CHAMBERS  
FORTY-NINTH JUDICIAL DISTRICT OF PENNSYLVANIA  
CENTRE COUNTY

CHARLES C. BROWN, JR.  
PRESIDENT JUDGE

BELLEFONTE, PENNSYLVANIA 16823

May 28, 2002

DAVID E. GRINE  
JUDGE

THOMAS KING KISTLER  
JUDGE

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

**Re: Donald R. Mikesell, et al. v. Thomas F. Morgan**  
**Clearfield County Docket No. 01-884-CD**

Dear Marcy:

Please find enclosed the executed Status Conference Order that needs to be filed in the above-listed case.

I would ask that you file this document with your Prothonotary. I have already mailed copies to Mr. Mikesell and Mr. Noble to save on time of service.

Thank you for your assistance in this matter, and if you should have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "TKK", written over a horizontal line.

Thomas King Kistler, Judge

TKK:tsh

Enclosure

CA

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

FILED

DONALD R. MIKESELL, *et al.*

Plaintiffs,

v.

THOMAS F. MORGAN, Trustee,

Defendant.

No. 01 - 884 - CD

JUL 10 2002

01 11:30 AM  
William A. Shaw  
Prothonotary

*Attorneys for Plaintiff:*

*Attorney for Defendant:*

*Warren B. Mikesell, Esquire*

*Theron G. Noble, Esquire*

**OPINION AND ORDER**

**KISTLER, J.**

Presently before the Court for consideration are Plaintiff Donald Mikesell's Preliminary Objections to the Answer and New Matter filed by Defendant Thomas F. Morgan's, as Trustee.

**FINDINGS OF FACT**

1. On November 20, 1964, a Declaration of Trust was recorded which demonstrates that Thomas F. Morgan holds certain property in trust for William F. Smith, Una D. Morgan, Anthony Guido and Thomas Morgan. Each beneficiary and their spouses also gave Morgan, as trustee, power of attorney.

2. Anthony S. Guido subsequently conveyed his interest to William Smith, Thomas F. Morgan, Una D. Morgan and Richard G. Kenney. Richard Kenney and his spouse also executed a power of attorney in favor of Morgan.

3. Una Morgan subsequently transferred her interest to Thomas Morgan, as an individual.

4. On June 6, 2001, Plaintiffs Donald Mikesell, et al. (hereinafter, "Mikesell") filed a Complaint for Partition of Real Property naming only Morgan, as trustee, Defendant.

5. On July 2, 2001, Trustee filed Preliminary Objections alleging that the proper parties were not named as Defendants. The Court determined that Morgan, as Trustee, was the properly named Defendant in this action.

6. On or about January 24, 2002, Trustee filed an Answer and New Matter in which he alleged that he, Thomas Morgan, as individual, transferred a one sixty-fourth (1/64) interest in the subject land to Scott McMasters, III.

7. On February 13, 2002, Mikesell filed Preliminary Objections to the Answer and New Matter on the basis that the deed conveyed to McMasters is void because Trustee did not get Court approval to sell the land.

### **CONCLUSIONS OF LAW**

1. The Probate, Estates and Fiduciary Code provides that a trustee may convey real estate, transfer title to personal estate, or perform any other act of administration by an attorney or attorneys-in-fact. 35 Standard Pennsylvania Practice 2d § 161:53; *citing* 20 Pa.C.S.A. § 3319(a).

2. Except as otherwise provided in the trust instrument, the trustee, for any purpose of administration or distribution, may sell, at public or private sale, any real or personal property of the trust. 20 Pa.C.S.A. § 7141.

### **DISCUSSION**

Mikesell contends that Trustee's conveyance by Deed of a one sixty-fourth (1/64) interest in the contested land to Scott McMasters, III, on June 26, 2001, was not approved

by the Court. Mikesell contends that no legal title could have passed by virtue of the McMaster's Deed because "a trustee must obtain Court approval before transferring an interest in the subject premises." This Court does not agree.

A trustee is one who, having legal title to the property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary. Black's Law Dictionary 1519 (7<sup>th</sup> ed. 1999). The Probate, Estates and Fiduciary Code provides that a trustee may convey real estate, transfer title to personal estate, or perform any other act of administration by an attorney or attorneys-in-fact. 35 Standard Pennsylvania Practice 2d § 161:53; *citing* 20 Pa.C.S.A. § 3319(a). A trustee can properly exercise only such powers as are conferred upon him or her in specific words by the terms of the trust *or* are necessary to carry out the purposes of the trust and are not forbidden by the terms of the trust. Delaware Valley Factors, Inc. v. Ronca, 442 Pa.Super 609, 660 A.2d 623 (1995)(emphasis added); *citing* Restatement (Second) of Trusts § 186. Except as otherwise provided in the trust instrument, the trustee, for any purpose of administration or distribution, may sell, at public or private sale, any real or personal property of the trust. 20 Pa.C.S.A. § 7141.

Mikesell is correct in asserting that there is no trust document or instrument on record assigning the responsibilities and duties of Trustee. As such, Mikesell must concede that there is no instrument in existence specifically forbidding the sale or transfer of the land at issue. Absent a specific provision limiting Trustee's powers, a trustee may sell any real or personal property of the trust. See 20 Pa.C.S.A. § 7141. Likewise, all case law in support of the proposition that Court approval is necessary in order for a Trustee to transfer land deals with situations where the trust instrument specifically forbade the transfer. See Banes Estate, In re, 452 Pa. 388, 305 A.2d 723 (1973)(Where will specifically forbade sale. . . administration of estate required prior court approval). Compare York Trust

Company's Petition, 12 York, 78 (1898)(When a trustee has ample authority to sell under the deed of trust, a petition to the common pleas to authorize a sale will be dismissed).

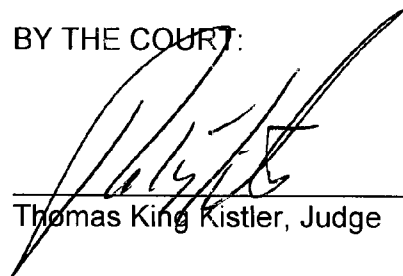
Mikesell cites the case of Seif v. Krebs, 86 A. 872, 234 Pa. 423 (Sup. 1913) in support of his contention that court approval is necessary prior to the passing of any legal title to the subject premises. However, the Seif Court held that where a purchaser of land accepts a deed made by the trustees of a *charitable trust* without the approval of the court on a supposed power of sale contained in a will, the title will be at least doubtful and unmarketable. Seif, 86 A. 872 (Sup. 1913). A charitable trust is treated differently because it benefits the general public to whom the social and economic advantages of the trusts accrue. See McCune, In re, 705 A.2d 861 (Pa. Super. 1997). Under these circumstances the general public is properly represented by the attorney general. Id. A charitable trust is created with a specific purpose, to benefit a specific charity or the general public rather than a private individual or entity.

In the instant matter, the trust was not created with a specific intent that could be frustrated absent an approval of sale by the Court. The transfer of a one sixty-fourth (1/64) interest in the trusted estate does not frustrate the purpose of the trust or alter its character. There is no instrument limiting Trustee's ability to sell, transfer, or mortgage the land. There exists absolutely no restraints on sale or transfer pursuant to the Probate Code. The Court also notes that there has been no evidence presented indicating that a *lis pendens* has been filed in regard to this property. A trustee does not need Court approval for every act entrusted upon him or her in carrying out the fiduciary duties. Finally, no beneficiaries of the trust have objected, only a third party not associated with the trust.

**ORDER**

AND NOW, this 5<sup>th</sup> day of July, 2002, after a conference and consideration of briefs submitted by both parties, it is the ORDER of this Court that Plaintiff Donald Mikesell's, *et al.*, Preliminary Objections to the Answer and New Matter are hereby **OVERRULED.**

BY THE COURT:



Thomas King Kistler, Judge



JUDGE'S CHAMBERS  
FORTY-NINTH JUDICIAL DISTRICT OF PENNSYLVANIA  
CENTRE COUNTY

CHARLES C. BROWN, JR.  
PRESIDENT JUDGE

BELLEfonte, PENNSYLVANIA 16823

July 3, 2002

DAVID E. GRINE  
JUDGE

THOMAS KING KISTLER  
JUDGE

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

**Re: Donald R. Mikesell, et al. v. Thomas F. Morgan**  
**Clearfield County Docket No. 01-884-CD**

Dear Marcy:

Please find enclosed the Opinion and Order deciding the Preliminary Objections to the Answer and New Matter that needs to be filed in the above-listed case.

I would ask that you file this document with your Prothonotary. I have already mailed copies to Mr. Mikesell and Mr. Noble to save on time of service.

Thank you for your assistance in this matter, and if you should have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "TKK", written over a horizontal line.

Thomas King Kistler, Judge

TKK:tsh

Enclosure.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DONALD R. MIKESELL,  
ROBERT B. MIKESELL and  
JANELL K. MIKESELL,  
Plaintiff,

VS.

THOMAS F. MORGAN, TRUSTEE  
Defendant.

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No. 2001-884-CD

Type of Pleading:  
Answer to New Matter

Filed on behalf of:  
Plaintiffs, Donald R. Mikesell  
Robert B. Mikesell and Janell  
K. Mikesell

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

JUL 25 2002

William A. Shaw  
Prothonotary

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

DONALD R. MIKESELL,	:	
ROBERT B. MIKESELL and	:	
Janell K. MIKESELL,	:	
Plaintiff,	:	
	:	
VS.	:	No. 2001-884-CD
	:	
THOMAS F. MORGAN, TRUSTEE	:	
Defendant.	:	

**Answer to New Matter**

**AND NOW**, comes the Plaintiffs, Donald R. Mikesell, Robert B. Mikesell and Janell K. Mikesell, by and through their attorney, Warren B. Mikesell, II, Esquire, who avers as follows as their Answer to Defendant, Thomas F. Morgan, Trustee's, New Matter:

Paragraph 12: Admitted.

Paragraph 13: Denied. It is denied that a separate accounting for the timber should be accounted for in this partition action in that the value for the same would be included in any fair market value assigned to the property based upon a qualified licensed real estate broker.

Paragraph 14: Admitted in part. It is admitted that the Defendant, Thomas F. Morgan, Trustee is the legal title holder to an 1/15th interest in the subject parcel which title was created and came into being for the first time by Court Order dated April 24, 1979, and recorded in Clearfield County in Deed Book 781, page 403. Plaintiff is without sufficient information or knowledge as to Thomas F. Morgan's claim as a beneficiary of the Trust property created for the first time by Court Order dated April 24, 1979, and Plaintiff is without sufficient information or knowledge as to the basis for the alleged conveyance to Scott McMasters, III, as evidenced by Instrument Number 200110080.

Paragraph 15: It is admitted that a pro rata portion of the proceeds must be delivered to the beneficiaries of the Trust; however, given the state of the record, it is unclear who those individuals are.

Paragraph 16: Admitted in part and denied in part. It is admitted that William F. Smith and Richard G. Kenny are two purported named beneficiaries of the Trust. William F. Smith by the Trust Agreement dated November 20, 1964; and Richard G. Kenny by a purported Deed to the premises in question dated April 7, 1965 and recorded in Clearfield County in Deed Book 514, page 90. Neither of which Instruments passed any title to the premises in question. Thomas F. Morgan, Trustee, acquired title to a 1/15th interest to the premises in question by a Court Order

dated April 24, 1979, which created this 1/15th interest for the first time. This title came into existence some 15 years after the Execution of the William F. Smith Trust Agreement and the aforementioned Deed to Richard G. Kenny. It is further denied that the conveyance to Richard G. Kenny by Deed Book 514, page 90 was a valid conveyance since the said Thomas F. Morgan, Trustee, failed to join in the conveyance. The Plaintiffs are without sufficient information or knowledge as to whether William F. Smith or Richard G. Kenny are alive or deceased or who their heirs and assigns may be.

Paragraph 17: Admitted in part and denied in part. It is admitted that the said Una D. Morgan did by deed dated December 6, 1982, purportedly convey her interest in the Trust to Thomas F. Morgan and Anne L. Morgan, husband and wife. However, it is denied that the said conveyance was a legal conveyance since the said Thomas F. Morgan, Trustee, and legal title holder to the same did not join in the Deed and further said Deed was acknowledged and notarized by Anne L. Morgan, Grantee in the Deed in violation of the Notary Public law 57 P.S. §165(e) Limitation of Powers: fees—"No notary public may act as such in any transaction in which he is a party or pecuniarily interested." Since the Deed and purported conveyance was not properly notarized, it should be declared a nullity and be stricken from the Clearfield County Public Records.

Paragraph 18: Admitted in part and denied in part. It is admitted that Thomas F. Morgan, Trustee, and Thomas F. Morgan and Anne L. Morgan, husband and wife, purported to convey an interest in the so called Trust property to Scott McMasters, by Deed dated June 26, 2001, and recorded as instrument number 200110080 in the Clearfield County Recorder's Office. However, it is denied that this is a lawful conveyance of a beneficial interest in the trust for two reasons: **First**, by Court order dated July 5, 2002, the Honorable Judge Kissler, stated that a deed is valid where the Trustee joins in the same as the legal title holder, however, since the McMaster's conveyance purportedly attempts to convey the interest of Una D. Morgan which was conveyed to Thomas F. Morgan and Anne L. Morgan, his wife, and the aforesaid Deed dated December 6, 1982, was not joined by the Trustee, and was not properly acknowledged; therefore, the conveyance to Scott McMasters is a nullity. **Second**, the signature of Thomas F. Morgan, Trustee, and the signatures of Thomas F. Morgan and Anne L. Morgan, his wife, in the Deed dated June 26, 2001, and was notarized by his wife, Anne L. Morgan, in violation of the Notary Public law 57 P.S. §165(e) Limitation of Powers: fees—"No notary public may act as such in any transaction in which he is a party or pecuniarily interested." Since the Deed and purported conveyance was not properly notarized, it should be declared a nullity and be stricken from the Clearfield County Public Records.

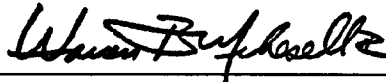
Paragraph 19: It is Denied that Scott McMasters has an interest in the subject property as aforesaid. Plaintiff is without sufficient information or knowledge as to whether Scott McMasters is aware of this action, and, furthermore, would not object to Scott McMasters and/or Richard G. Kenny, interpleading in this action to establish their claims. Further if the joinder of Scott McMasters and Richard G. Kenny, as interested parties, is necessary in this case, it is the responsibility of Thomas F. Morgan, Trustee, to join them as parties at the expense of said Thomas F. Morgan, since the so called Deed of Conveyance to Richard G. Kenny, was prior to the title to the premises vesting in Thomas F. Morgan, Trustee, and the Deed to Scott McMasters was executed and recorded on June 26, 2001, some nineteen (19) days after the filing of this

action in the Court of Common Pleas of Clearfield County on June 8, 2001, and after service of same on Thomas F. Morgan, Trustee, which occurred on June 8, 2001.

Paragraph 20: No answer required: In the event an answer is required, Plaintiffs have no problem with Thomas F. Morgan and Anne L. Morgan interpleading in this action to establish their claims.

WHEREFORE, the Plaintiffs respectfully request that the Defendant's new matter be stricken, and further that it be ordered that the conveyance to Scott McMasters, III, by the Deed dated June 26, 2001, as recorded as Instrument Number 200110080 be declared a nullity and void as the interest of Una D. Morgan was itself a nullity and further that it was executed on June 26, 2001, some nineteen (19) days after the filing of this action in the Court of Common Pleas of Clearfield County.

Respectfully submitted,

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

Warren B. Mikesell, II, Esquire  
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DONALD R. MIKESELL,	:	
ROBERT B. MIKESELL and	:	
JANELL K. MIKESELL,	:	
Plaintiff,	:	
	:	
VS.	:	No. 2001-884-CD
	:	
THOMAS F. MORGAN, TRUSTEE	:	
Defendant.	:	

**VERIFICATION**

I, Donald R. Mikesell, Plaintiff, does hereby swear and affirm that I have read the foregoing and attached ANSWER & NEW MATTER, in the above captioned matter, and that to the best of my information, knowledge and belief, the facts as set forth therein are true and correct. Furthermore, that I make this statement subject to the penalties of 18 Pa.C.S.A. 4101, relating to unsworn falsification to authorities.

So made this 25<sup>th</sup> day of January, 2002.

  
Donald R. Mikesell, Plaintiff

In The Court of Common Pleas  
of  
Clearfield County, Pennsylvania

No. 01-884-CD

DONALD R. MIKESELL,  
ROBERT B. MIKESELL and  
JANEL K. MIKESELL  
Plaintiff

Versus

THOMAS F. MORGAN, TRUSTEE  
Defendant

FILED

01/25/02  
JAN 25 2002

William A. Shaw  
Clerk

4 cc  
Atty Mike Sell  
JMS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DONALD R. MIKESELL,  
ROBERT B. MIKESELL and  
JANELL K. MIKESELL,  
Plaintiff,

VS.

THOMAS F. MORGAN, TRUSTEE  
Defendant.

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No. 2001-884-CD

CERTIFICATE OF SERVICE

Kimberly Jordan, being duly sworn according to law, deposes and says that as an adult resident of the Commonwealth of Pennsylvania, I did personally cause to be served upon the Defendant's Attorney, THERON G. NOBLE, ESQUIRE, a true and correct copy of the Plaintiff's Answer to New Matter by handing same to his secretary, at 301 East Pine Street, Clearfield, Pennsylvania, 16830 on July 24, 2002, at 3:06 p.m.

Kimberly Jordan  
**FILED**

Sworn to and subscribed

before me this 26th day

of July, 2002.

Warren B. Mikesell II

Notarial Seal  
Warren B. Mikesell II, Notary Public  
Clearfield Boro, Clearfield County  
My Commission Expires June 14, 2004  
Member, Pennsylvania Association of Notaries



JUL 26 2002  
Olivia B. Beatty  
William A. Shaw  
Prothonotary  
Mikesell  
EJB

CA

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) No. 01-884-CD

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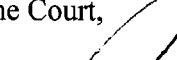
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## ORDER

3<sup>RD</sup> day of March, 2003

By The Court,



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

Judge, Specially Presiding

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William A. Shaw  
Prothonotary

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T. N. O. L.

**FILED**

**MAR 07 2003**

**William A. Shaw  
Prothonotary**



JUDGE'S CHAMBERS  
FORTY-NINTH JUDICIAL DISTRICT OF PENNSYLVANIA  
CENTRE COUNTY

CHARLES C. BROWN, JR.  
PRESIDENT JUDGE

BELLEFONTE, PENNSYLVANIA 16823

March 4, 2003

DAVID E. GRINE  
JUDGE

THOMAS KING KISTLER  
JUDGE

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

**Re: Donald R. Mikesell, et al. v. Thomas F. Morgan**  
**Clearfield County Docket No. 01-884-CD**

Dear Marcy:

Please find enclosed the executed Order of March 3, 2003, which is to be filed in the above-listed case.

I would ask that you file this document with your Prothonotary and have them send copies to all counsel listed in this case.

Thank you for your assistance in this matter, and if you should have any questions, please do not hesitate to contact me.

Very truly yours,

Thomas King Kistler, Judge

TKK:tsh

Enclosure

Warren Mikesell } copies to!  
Terry Hable }