

01-986-CD
JOYCE A. HIGGINS -vs- NORMA J. HOCKMAN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

Joyce A. Higgins
vs.
Norma J. Hockman

No. 2001-00986-CD

OATH OR AFFIRMATION OF ARBITRATORS

Now, this 24th day of July, 2002, we the undersigned, having been appointed arbitrators in the above case do hereby swear, or affirm, that we will hear the evidence and allegations of the parties and justly and equitably try all matters in variance submitted to us, determine the matters in controversy, make an award, and transmit the same to the Prothonotary within twenty (20) days of the date of hearing of the same.

John A. Ayres, Jr., Esq.

John A. Ayres, Jr.
Chairman
John
Jewell

John R. Ryan, Esq.
Jonathan W. Jewell, Esq.

FILED

Sworn to and subscribed before me this
24th day of July, 2002

Willie
Prothonotary

JUL 24 2002

AWARD OF ARBITRATORS

William A. Shaw
Prothonotary

Now, this 24 day of JULY, 2002, we the undersigned arbitrators appointed in this case, after being duly sworn, and having heard the evidence and allegations of the parties, do award and find as follows: *Award for Plaintiff in the amount of \$4424.32. Counterclaim of Defendant denied.*

John Ayres, Jr.
Chairman
John
Jewell

(Continue if needed on reverse.)

ENTRY OF AWARD

Now, this 24th day of July, 2002, I hereby certify that the above award was entered of record this date in the proper dockets and notice by mail of the return and entry of said award duly given to the parties or their attorneys.

WITNESS MY HAND AND THE SEAL OF THE COURT

Willie Shaw
Prothonotary
By _____

FILED No cc

01/30/01 Notice to D. King & T. Cherry
JUL 24 2002

William A. Shaw
Prothonotary

COPY

IN THE COURT OF
PLEAS OF CLEARF
No. 2001-00986-CD

Joyce A. Higgins

Vs.

Norma J. Hockman

NOTICE OF AWARD

TO: TONI M. CHERRY

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on July 24, 2002, and have awarded:

Award for Plaintiff in the amount of \$4,424.32. Counterclaim of Defendant denied.

William A. Shaw

Prothonotary

By _____

July 24, 2002

Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

COPY

IN THE COURT OF
PLEAS OF CLEARF
No. 2001-00986-CD

Joyce A. Higgins

Vs.

Norma J. Hockman

NOTICE OF AWARD

TO: DAVID P. KING

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on July 24, 2002, and have awarded:

Award for Plaintiff in the amount of \$4,424.32. Counterclaim of Defendant denied.

William A. Shaw

Prothonotary

By _____

July 24, 2002

Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

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

JOYCE A. HIGGINS,
Plaintiff

vs.

NORMA J. HOCKMAN,
Defendant

NO. 01-986-CO

Type of Case: Civil

Type of Pleading: Complaint

Filed on behalf of: Plaintiff

Counsel of Record for this Party:
David P. King, Esquire
23 Beaver Drive
P. O. Box 1016
DuBois, PA 15801
(814) 371-3760

Supreme Court No. 22980

FILED

JUN 21 2001

William A. Shaw
Prothonotary

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

JOYCE A. HIGGINS, :
Plaintiff :
VS. : NO.
NORMA J. HOCKMAN, :
Defendant :
:

NOTICE

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

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

Court Administrator
Clearfield County Courthouse
1 North Second Street
Clearfield, PA 16830
(814) 765-2641 Ext. 50-51

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

JOYCE A. HIGGINS, :
Plaintiff :
: :
vs. : NO. _____ C.D.
: :
NORMA J. HOCKMAN, :
Defendant :
:

COMPLAINT

AND NOW, comes the Plaintiff, JOYCE A. HIGGINS, through her Attorney, David P. King, and for her cause of action respectfully represents as follows:

1. The Plaintiff is JOYCE A. HIGGINS, and she resides at 308 East Second Avenue, DuBois, PA 15801.
2. The Defendant is NORMA J. HOCKMAN, and she resides at 505 East DuBois Avenue, DuBois, PA 15801.
3. At all times relevant hereto, the said NORMA J. HOCKMAN was the owner of certain residential property known as 308 East Second Avenue, DuBois, PA. On or about July 26, 1999, the Plaintiff and the Defendant, through Plaintiff's realtor entered into an Agreement for the sale of the subject matter premises for the agreed upon price of \$87,000.00.
4. As part of that transaction, and in accordance with law, the Defendant did provide to the Plaintiff a Seller's Property Disclosure Statement in accordance with the Real Estate Seller Disclosure Act. A copy of this is attached hereto and made a part of this action and Complaint by reference, and appears as Exhibit "A", Pages 1 through 4.

5. Pursuant to said Agreement of Sale, and reliance on the Seller's Property Disclosure Statement, the Plaintiff did purchase the subject matter premises, with settlement on the same held on October 12, 1999.

6. Notwithstanding the representations made in said Seller's Property Disclosure Statement, and more particularly in reference to Paragraph 4(b) and (c) thereof, Plaintiff soon became aware of a significant and material water problem that existed in the basement of the home that she had purchased.

7. To wit, instead of simply "walls get damp", Plaintiff discovered that after a normal rainfall, the basement actually experienced water streaming onto the basement floor, and accumulating in puddles to a significant degree.

8. Moreover, Plaintiff had intended all along to utilize the basement as a living area, and intended to remodel the same or otherwise finish it so that it could be used for her intended purposes.

9. However, the streaming and standing water made such improvements and refinishing inappropriate and wasteful unless remedial action was taken to rectify the water problem described herein.

10. Additionally, Plaintiff did too become aware that the Defendant knew or at least should have known that there was such a water problem as described herein rather than just the condition described by the Defendant as "walls get damp".

11. Therefore, Plaintiff had estimated a cost of rectifying the problem described herein, and received a quote and estimate for the same in the amount of \$4,500.00, a copy of the same attached hereto and marked as Exhibit "B".

12. In order to then rectify the problem, the Plaintiff performed all of the remedial work required on her own, at great time and expense to her, including the cost of renting equipment and machinery and all of her labor and time involved in the same.

13. The fair market value of her time, labor and out of pocket costs is in the amount of \$4,500.00.

14. Further, when Plaintiff discovered that the Defendant knew or should have known of the problem as described herein, as alluded to in Paragraph 7 above, Plaintiff attempted to contact the Defendant directly, to work out or otherwise compromise the situation.

15. The Defendant to this date has neglected and otherwise refused to bear any responsibility despite the representations made to the Plaintiff and relied on by her.

16. Plaintiff asserts that the Defendant is liable to her for damages as hereinafter set forth for the following reasons:

(a) That the Defendant violated the applicable

provisions of the Real Estate Sellers Disclosure
Act;

(b) That the Defendant knew or should have known
of the problem and informed the Plaintiff of the
same in all fairness and in good faith;

(c) That the Defendant misrepresented to the Plaintiff the problem described in this Complaint, and the Plaintiff relied on such misrepresentation to her detriment;

(d) That the Defendant intentionally failed to disclose the problem as set forth herein in contradiction to the laws of the Commonwealth of Pennsylvania; and

(e) All of the above in combination and in total.

17. Because of the actions of the Defendant as described above, Plaintiff has suffered actual and monetary damages in the amount of \$4,500.00.

18. Additionally, Plaintiff has incurred Attorney's fees and will incur further Attorney's fees because of the actions of the Defendant as described above.

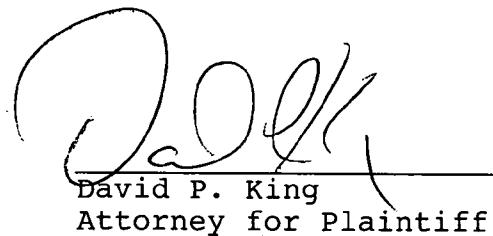
WHEREFORE, Plaintiff prays your Honorable Court to award damages in her favor and against the Defendant as follows:

(a) \$4,500.00 in compensatory damages;

(b) An appropriate amount to be determined by the Court for punitive damages; and

(c) To award unto the Plaintiff an amount to pay for and otherwise offset the legal fees and costs involved in this litigation.

And she will so ever pray.



David P. King
Attorney for Plaintiff

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

Date: 6-14-01


Joyce A. Higgins

SELLER'S PROPERTY DISCLOSURE STATEMENT

Form 128-2

1 Property Address: 308 Decow Ave
 2 Dubois, PA 15801

3 Seller: Nora Jean Hockman

4 A seller must disclose to a buyer all known material defects about property being sold that are not readily observable. This disclosure
 5 statement is designed to assist Seller in complying with disclosure requirements and to assist Buyer in evaluating the property being
 6 considered.

7 This Statement discloses Seller's knowledge of the condition of the property as of the date signed by Seller and is not a substitute for
 8 any inspections or warranties that Buyer may wish to obtain. This Statement is not a warranty of any kind by Seller or a warranty or
 9 representation by any listing real estate broker (Agent for Seller), any real estate broker, or their agents. Buyer is encouraged to address
 10 concerns about the conditions of the property that may not be included in this Statement. This Statement does not relieve Seller of the
 11 obligation to disclose a material defect that may not be addressed on this form.

12 A material defect is a problem with the property or any portion of it that would have a significant adverse impact on the value of the
 13 residential real property or that involves an unreasonable risk to people on the land.

14 1. SELLER'S EXPERTISE Seller does not possess expertise in contracting, engineering, architecture, or other areas related to the
 15 construction and conditions of the property and its improvements, except as follows: _____

16 2. OCCUPANCY Do you, Seller, currently occupy this property? Yes No
 17 If "no," when did you last occupy the property? _____

21 3. ROOF

22 (a) Date roof installed: 1977 Documented? Yes No Unknown
 23 (b) Has the roof been replaced or repaired during your ownership? Yes No
 24 If yes, were the existing shingles removed? Yes No Unknown
 25 (c) Has the roof ever leaked during your ownership? Yes No
 26 (d) Do you know of any problems with the roof, gutters or down spouts? Yes No
 27 Explain any "yes" answers that you give in this section: _____

30 4. BASEMENTS AND CRAWL SPACES (Complete only if applicable)

31 (a) Does the property have a sump pump? Yes No Unknown
 32 (b) Are you aware of any water leakage, accumulation, or dampness within the basement or crawl space? Yes No
 33 If "yes," describe in detail: Walls get damp
 34 (c) Do you know of any repairs or other attempts to control any water or dampness problem in the basement or crawl space?
 35 Yes No
 36 If "yes," describe the location, extent, date, and name of the person who did the repair or control effort: _____

39 5. TERMITES/WOOD DESTROYING INSECTS, DRYROT, PESTS

40 (a) Are you aware of any termites/wood destroying insects, dryrot, or pests affecting the property? Yes No
 41 (b) Are you aware of any damage to the property caused by termites/wood destroying insects, dryrot, or pests? Yes No
 42 (c) Is your property currently under contract by a licensed pest control company? Yes No
 43 (d) Are you aware of any termite/pest control reports or treatments for the property in the last five years? Yes No
 44 Explain any "yes" answers that you give in this section: _____

48 6. STRUCTURAL ITEMS

49 (a) Are you aware of any past or present water leakage in the house or other structures? Yes No *7-27-99*
 50 (b) Are you aware of any past or present movement, shifting, deterioration, or other problems with walls, foundations, or other struc-
 51 tural components? Yes No
 52 (c) Are you aware of any past or present problems with driveways, walkways, patios, or retaining walls on the property?
 53 Yes No
 54 Explain any "yes" answers that you give in this section. When explaining efforts to control or repair, please describe the loca-
 55 tion and extent of the problem, and the date and person by whom the work was done, if known: _____

Exhibit "A"

Seller's Initials: _____

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Pennsylvania Association of
REALTORS®
The Voice of Real Estate in Pennsylvania

58 7. ADDITIONS/REMODELS Have you made any additions, structural changes, or other alterations to the property?

59 Yes No

60 If yes, describe: _____

61 8. WATER AND SEWAGE

62 (a) What is the source of your drinking water?

63 Public Community System Well on Property Other (explain) _____

64 (b) If your drinking water source is not public:

65 When was your water last tested? _____ What was the result of the test? _____

66 Is the pumping system in working order? Yes No

67 If "no," explain: _____

68 (c) Do you have a softener, filter, or other purification system? Yes No

69 If yes, is the system Leased Owned

70 (d) What is the type of sewage system? Public Sewer Community Sewer

71 On-Site (or Individual) sewage system

72 If On-Site, what type? Cesspool Drainfield Unknown Other (specify): _____

73 Is there a septic tank on the Property? Yes No Unknown

74 If yes, what is the type of tank? Metal/steel Cement/concrete Fiberglass Unknown

75 Other (specify): _____

76 Other type of sewage system (explain): _____

77 (e) When was the on-site sewage disposal system last serviced? _____

78 (f) Is there a sewage pump? Yes No

79 If yes, is it in working order? Yes No

80 (g) Is either the water or sewage system shared? Yes No

81 If "yes," explain: _____

82 (h) Are you aware of any leaks, backups, or other problems relating to any of the plumbing, water, and sewage-related items?

83 Yes No

84 If "yes," explain: _____

85 9. PLUMBING SYSTEM

86 (a) Type of plumbing: Copper Galvanized Lead PVC Unknown

87 Other (explain): _____

88 (b) Are you aware of any problems with any of your plumbing fixtures (e.g., including but not limited to: kitchen, laundry, or bath-

89 room fixtures; wet bars; hot water heater, etc.)? Yes No

90 If "yes," explain: _____

91 10. HEATING AND AIR CONDITIONING

92 (a) Type of air conditioning: Central Electric Central Gas Wall None

93 Number of window units included in sale _____ Location _____

94 (b) List any areas of the house that are not air conditioned: _____

95 (c) Type of heating: Electric Fuel Oil Natural Gas Propane (On-site)

96 Are there wood or coal burning stoves? Yes No If yes, how many? _____ Are they working? Yes No

97 Are there any fireplaces? Yes No If yes, how many? _____ Are they working? Yes No

98 Other types of heating systems (explain): _____

99 (d) Are there any chimneys? Yes No If yes, how many? _____ Are they working? Yes No

100 When were they last cleaned? _____

101 (e) List any areas of the house that are not heated: _____

102 (f) Type of water heating: Electric Gas Solar

103 Other: _____

104 (g) Are you aware of any underground fuel tanks on the property? Yes No

105 If yes, describe: _____

106 Are you aware of any problems with any item in this section? Yes No

107 If "yes," explain: _____

108 11. ELECTRICAL SYSTEM Are you aware of any problems or repairs needed in the electrical system? Yes No

109 If "yes," explain: _____

121 12. OTHER EQUIPMENT AND APPLIANCES INCLUDED IN SALE. (Complete only if applicable)

122 Equipment and appliances ultimately included in the sale will be determined by negotiation and according to the terms of the
123 Agreement of Sale.

124 (a) Electric Garage Door Opener No. of Transmitters 0/0
125 (b) Smoke Detectors How many? 1 Location TOP OF STAIRS
126 (c) Security Alarm System Owned Leased Lease Information _____
127 (d) Lawn Sprinkler No. _____ Automatic Timer
128 (e) Swimming Pool Pool Heater Spa/Hot Tub
129 Pool/Spa Equipment (list): _____
130 (f) Refrigerator Range Microwave Oven Dishwasher Trash Compactor Garbage Disposal
131 (g) Washer Dryer
132 (h) Intercom
133 (i) Ceiling fans No. _____ Location _____
134 (j) Other: _____

135 Are any items in this section in need of repair or replacement? Yes No Unknown
136 If "yes," explain: _____

137 13. LAND (SOILS, DRAINAGE, AND BOUNDARIES)

138 (a) Are you aware of any fill or expansive soil on the property? Yes No
139 (b) Are you aware of any sliding, settling, earth movement, upheaval, subsidence, or earth stability problems that have occurred on
140 or affect the property? Yes No

141 Note to Buyer: The property may be subject to mine subsidence damage. Maps of the counties and mines where mine subsi-
142 dence damage may occur and mine subsidence insurance are available through: Department of Environmental Protection, Mine
143 Subsidence Insurance Fund, 3913 Washington Road, McMurray, PA 15317 (412) 941-7100.

144 (c) Are you aware of any existing or proposed mining, strip-mining, or any other excavations that might affect this property?
145 Yes No

146 (d) To your knowledge, is this property, or part of it, located in a flood zone or wetlands area? Yes No
147 (e) Do you know of any past or present drainage or flooding problems affecting the property? Yes No
148 (f) Do you know of any encroachments, boundary line disputes, or easements? Yes No

149 Note to Buyer: Most properties have easements running across them for utility services and other reasons. In many cases, the
150 easements do not restrict the ordinary use of the property, and Seller may not be readily aware of them. Buyers may wish to
151 determine the existence of easement and restrictions by examining the property and ordering an Abstract of Title or searching
152 the records in the Office of the Recorder of Deeds for the county before entering into an Agreement of Sale.

153 (g) Are you aware of any shared or common areas (e.g., driveways, bridges, docks, walls, etc.) or maintenance agreements?
154 Yes No

155 Explain any "yes" answers that you give in this section: _____

156 14. HAZARDOUS SUBSTANCES

157 (a) Are you aware of any underground tanks or hazardous substances present on the property (structure or soil) such as, but not
158 limited to, asbestos, Polychlorinated biphenyls (PCBs), Urea Formaldehyde Foam Insulation (UFFI), etc.? Yes No

159 (b) To your knowledge, has the property been tested for any hazardous substances? Yes No
160 (c) Do you know of any other environmental concerns that might impact upon the property? Yes No
161 Explain any "yes" answers that you give in this section: _____

162 (d) Do you know of any tests for radon gas that have been performed in any buildings on the Property? Yes No
163 If yes, list date, type, and results of all tests below:

DATE	TYPE OF TEST	RESULTS (picocuries/liter or working levels)
_____	_____	_____
_____	_____	_____

164 (e) Are you aware of any radon removal system on the Property? Yes No
165 If yes, list date installed and type of system, and whether it is in working order below:

DATE INSTALLED	TYPE OF SYSTEM	WORKING ORDER
_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No

166 (f) If Property was constructed, or if construction began, before 1978, you must disclose any knowledge of lead-based paint on the
167 Property. Are you aware of any lead-based paint or lead-based paint hazards on the Property? Yes No
168 If yes, explain how you know of it, where it is, and the condition of those lead-based paint surfaces: _____

123 (a) If Property was constructed, or if construction began, before 1978, you must disclose any reports or records of lead-based paint
124 on the Property. Are you aware of any reports or records regarding lead-based paint or lead-based paint hazards on the Property?
125 Yes No
126 If yes, list all available reports and records: _____

127 15. CONDOMINIUMS AND OTHER HOMEOWNERS ASSOCIATIONS (Complete only if applicable)

128 Type: Condominium Cooperative Homeowners Association or Planned Community
129 Other _____

130 *Notice regarding Condominiums, Cooperatives, and Planned Communities: According to Section 3407 of the Uniform Condo-
131 minium Act [68 Pa. C.S. §3407 (relating to resale of units) and 68 Pa. C.S. §4409 (relating to resale of cooperative interests)], and
132 section 5407 of the Uniform Planned Community Act [68 Pa. C.S. §5407 (relating to resale of units)], a buyer of a resale unit in a
133 condominium, cooperative, or planned community must receive a copy of the declaration (other than the plats and plans), the by-
134 laws, the rules or regulations, and a certificate of resale issued by the association in the condominium, cooperative, or planned com-
135 munity. The buyer will have the option of canceling the agreement with the return of all deposit monies until the certificate has been
136 provided to the buyer and for five days thereafter or until conveyance, whichever occurs first.*

137 16. MISCELLANEOUS

138 (a) Are you aware of any existing or threatened legal action affecting the property? Yes No
139 (b) Do you know of any violations of federal, state, or local laws or regulations relating to this property? Yes No
140 (c) Are you aware of any public improvement, condominium or homeowner association assessments against the property that remain
141 unpaid or of any violations of zoning, housing, building, safety or fire ordinances that remain uncorrected? Yes No
142 (d) Are you aware of any judgment, encumbrance, lien (for example co-maker or equity loan) or other debt against this property that
143 cannot be satisfied by the proceeds of this sale? Yes No
144 (e) Are you aware of any reason, including a defect in title, that would prevent you from giving a warranty deed or conveying title to the
145 property? Yes No
146 (f) Are you aware of any material defects to the property, dwelling, or fixtures which are not disclosed elsewhere on this form?
147 Yes No

148 A material defect is a problem with the property or any portion of it that would have a significant adverse impact on the value of
149 the residential real property or that involves an unreasonable risk to people on the land.

150 Explain any "yes" answers that you give in this section: _____

151 The undersigned Seller represents that the information set forth in this disclosure statement is accurate and complete to the best
152 of Seller's knowledge. Seller hereby authorizes the Agent for Seller to provide this information to prospective buyers of the prop-
153 erty and to other real estate agents. **SELLER ALONE IS RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION**
154 **CONTAINED IN THIS STATEMENT.** Seller shall cause Buyer to be notified in writing of any information supplied on this form
155 which is rendered inaccurate by a change in the condition of the property following completion of this form.

156 SELLER _____
157 SELLER _____
158 SELLER _____

(for N.J. Hockenf)

DATE 7-21-99

DATE _____

DATE _____

159 EXECUTOR, ADMINISTRATOR, TRUSTEE SIGNATURE BLOCK

160 According to the provisions of the "Real Estate Seller Disclosure Act," the undersigned executor, administrator or trustee is not required to fill out a Seller's Property
161 Disclosure Statement. The executor, administrator or trustee, should, however, disclose any known material defect(s) of the property.

162 DATE _____

163 RECEIPT AND ACKNOWLEDGEMENT BY BUYER

164 The undersigned Buyer acknowledges receipt of this Disclosure Statement. Buyer acknowledges that this Statement is not a warranty and that, unless
165 stated otherwise in the sales contract, Buyer is purchasing this property in its present condition. It is Buyer's responsibility to satisfy himself or herself as
166 to the condition of the property. Buyer may request that the property be inspected, at Buyer's expense and by qualified professionals, to determine the con-
167 dition of the structure or its components.

168 BUYER _____
169 BUYER _____
170 BUYER _____

171 DATE 7-27-99

DATE _____

DATE _____

"A BETTER CHOICE, INC.
TOLL-FREE 1-877-NO WATER



DATE: 2-22-00

NAME: JOYCE HIGGINS

ADDRESS: 308 E SECOND AVE

IN RESPONSE TO YOUR REQUEST FOR A PROPOSAL TO CORRECT THE WATER INFILTRATION PROBLEM, THE FOLLOWING MEASURES WILL BE UTILIZED (AS INDICATED) IN THE INSTALLATION OF OUR CUSTOMIZED SYSTEM. NOTE: NOT ALL STEPS ARE REQUIRED TO PROPERLY WATERPROOF EVERY HOME.

APPROXIMATE LINEAL FEET TO BE TREATED: 97 INVOLVING: 3 WALLS

REMOVE APPROXIMATELY ONE FOOT OF CONCRETE FLOORING AROUND INSIDE PERIMETER TO BE CORRECTED.

REMOVE DIRT NEXT TO FOOTING.

DRILL OUT THE CELLS & VOIDS BETWEEN BLOCKS & FLUSH OUT IF NECESSARY.

PROPERLY PLACE 4 INCH AGRICULTURAL GRADE WHITE PIPE, MIRA DRAIN, RIVER ROCK AND MOISTURE BARRIER.

TRENCH WILL BE SMOOTHLY CEMENTED OVER.

2 WELL-PLACED, SUBMERSIBLE PRESSURE RELIEF SYSTEM(S) WILL BE USED TO DISCHARGE WATER AWAY FROM STRUCTURE. SYSTEM IS QUIET, AUTOMATIC AND UNDER THE FLOOR.

REINFORCE FOUNDATION CRACKS WHERE REQUIRED.

ODOR CONTROL WILL BE UTILIZED WHILE WORK IS IN PROGRESS.

MSR-14 TREATMENT WILL BE APPLIED

STEEL 8"H BEAMS WILL BE PROPERLY PLACED FOR WALL STABILIZATION.

76 SQ. FEET OF TPO MEMBRANE WILL BE INSTALLED.

SQ. FEET OF WALL INCAPSULATION.

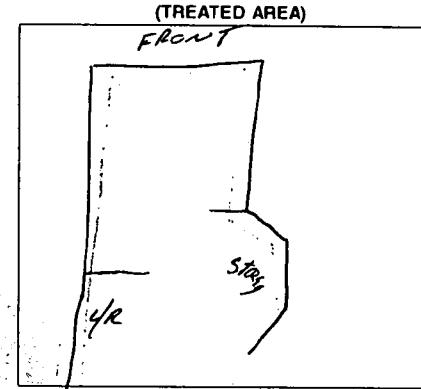
FEET OF SPEEDY-DRAIN WILL BE TIED INTO SYSTEM.

SEAL OUTSIDE COVES AND ABOVE GRADE CRACKS WHERE NEEDED.

FEET OF TRENCHING & SUB-SOIL DRAINAGE SYSTEM TO DIVERT SURFACE WATER.

CLEAN UP AND HAUL AWAY JOB-RELATED DEBRIS.

OTHER: WE WILL REMOVE CONCRETE FROM AREA TO BE TREATED
CUSTOMER TO CEMENT OVER



YOUR CUSTOMISED SYSTEM, AS DESCRIBED, WILL BE BACKED BY A WRITTEN WARRANTY THAT PROVIDES THE FOLLOWING COVERAGE:

* LFL YEARS AGAINST WATER INFILTRATION OR SEEPAGE THROUGH TREATED AREAS.

* LFE YEARS FREE LABOR & MATERIAL TO CORRECT CONTRACTED AREA SHOULD PROBLEM RETURN.

* 4FE YEARS, 100% MONEY BACK IF CONTRACTOR FEELS HE CANNOT CONTROL WATER INFILTRATION IN TREATED AREA.

* 2 YEARS ON SUBMERSIBLE PUMP(S) & CHECK VALVE. INCLUDES REPLACEMENT & FREE LABOR.

WARRANTIES ARE ASSIGNABLE & TRANSFERABLE FOR THE DURATION OF ABOVE STATED PERIOD.

(A TRANSFER FEE IS REQUIRED)

* YOUR PROJECT WILL REQUIRE APPROXIMATELY 2 DAYS TO COMPLETE.

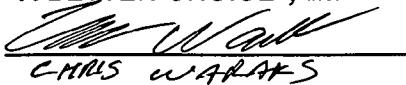
* WORK WILL BE DONE IN CONSECUTIVE DAYS

* A MUTUALLY CONVENIENT START DATE WILL BE SCHEDULED: ★ _____

THE TOTAL COST OF YOUR PROJECT IS \$ 4500. TO HAVE WORK SCHEDULED AND RECEIVE A START DATE, A DEPOSIT OF 10 % IS REQUIRED WITH BALANCE DUE UPON COMPLETION. A BUDGET PLAN MAY ALSO BE AVAILABLE TO QUALIFIED HOMEOWNERS.

"A BETTER CHOICE", INC.

HOMEOWNER


CHRIS WARREN

FILED

JUN 21 2001

Atty King pd

REC'D JUN 01 11:03 AM 2001
William A. Shaw
Prothonotary

480.00

cc Atty King

LAW OFFICES
GLEASON, CHERRY & CHERRY, LLP.

P. O. Box 505
DuBois, Pennsylvania 15801-0505

ATTONEY FOR WOMENA T HORNMAN

John Gleason

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOYCE A. HIGGINS,
Plaintiff
vs.
NORMA J. HOCKMAN,
Defendant

986
: No. 01-987 C.D.
: Type of Case: CIVIL
: Type of Pleading: ANSWER, NEW MATTER
: AND COUNTERCLAIM
: Filed on Behalf of: NORMA J.
: HOCKMAN, Defendant
: Counsel of Record for this Party:
: TONI M. CHERRY, ESQ.
: Supreme Court No.: 30205
: GLEASON, CHERRY AND
: CHERRY, L.L.P.
: Attorneys at Law
: P. O. Box 505
: One North Franklin Street
: DuBois, PA 15801
: (814) 371-5800

FILED

AUG 01 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

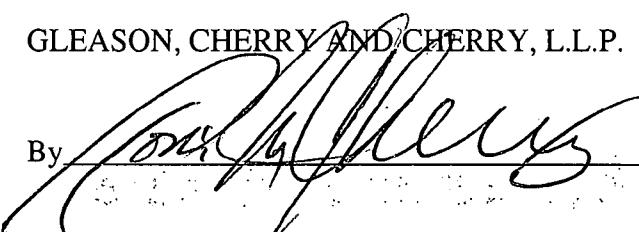
JOYCE A. HIGGINS, :
Plaintiff :
vs. : No. 01 - 987 C.D. *986*
NORMA J. HOCKMAN, :
Defendant :
:

NOTICE TO PLEAD

To The Within Plaintiff:

YOU ARE HEREBY NOTIFIED TO PLEAD
TO THE WITHIN NEW MATTER AND
COUNTERCLAIM WITHIN TWENTY (20)
DAYS FROM THE DATE OF SERVICE
HEREOF.

GLEASON, CHERRY AND CHERRY, L.L.P.

By 

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOYCE A. HIGGINS, :
Plaintiff :
vs. : *986*
: No. 01 - 987 C.D.
NORMA J. HOCKMAN, :
Defendant :
:

A N S W E R

AND NOW, comes the Defendant, NORMA J. HOCKMAN, by and through her Attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and answers the Complaint filed by Plaintiff as follows:

1. ADMITTED.

2. ADMITTED.

3. ADMITTED in part and DENIED in part. It is ADMITTED that Plaintiff and Defendant entered into an Agreement for the sale of the subject premises for the agreed price of \$87,000.00. All other allegations contained in Paragraph 3 are DENIED. Plaintiff, JOYCE A. HIGGINS, became the owner of the residential property situate at 308 East Second Avenue, DuBois, Pennsylvania, by deed from Defendant dated October 6, 1999, and recorded on October 13, 1999, in the Offices of the Register and Recorder of Deeds of Clearfield County, Pennsylvania, Instrument No. 199916968, and was represented by her own realtor throughout the proceedings.

4. ADMITTED.

5. DENIED. On the contrary, Plaintiff agreed to purchase the subject premises only after inspecting it on four separate occasions and after bringing in her contractor to inspect the same and did not purchase the property until after a fifth tour of the property prior to the time of closing.

6. DENIED as stated. Prior to the time of purchase, Plaintiff specifically asked Defendant if she had a lot of water in her cellar. Defendant advised Plaintiff that, "My cellar gets a little bit of water when it rains." Thereafter, and prior to making an offer on the house, Plaintiff secured the services of a contractor and had that contractor go to Defendant's house and the contractor went down to the cellar and was there several hours without disturbance from Defendant. Defendant is not aware of any significant or material water problem that existed in the cellar of the home that she sold to Plaintiff other than what Defendant had experienced and what Defendant told Plaintiff.

7. DENIED as after reasonable investigation, Defendant is without sufficient knowledge to attest to the truth or falsity of the averments contained in Paragraph 7 as the same are within the sole knowledge of the Plaintiff and strict proof of same is required at trial. By way of further answer, it is averred that Defendant fully advised Plaintiff that water came into the cellar of Defendant's home when it rained.

8. DENIED. Defendant is without sufficient knowledge to attest to the truth or falsity of the averments contained in Paragraph 8 as Defendant has no way of knowing what Plaintiff had intended to do with the cellar of the home. However, the cellar was composed of cut stone walls with two large drains, one in the laundry room and one near the back door. The walls had

not been painted for at least 17 years and the condition of the cellar was readily apparent from inspection. The home has 13 rooms, four bedrooms, a front and rear parlor, a dining room and a huge entryway in addition to a kitchen. The third floor has a huge attic. Defendant never used the cellar for living purposes because it was not suitable and an inspection of the same would reveal the condition of the walls and floors. Moreover, the cellar had a musty odor evidencing the dampness and Defendant made no effort to cover up that odor and the same was readily apparent upon entry into the cellar. Defendant maintained skids on the floor of the cellar so that heavy items such as porch furniture and weights could be above the floor and kept small items up on shelves, clearly demonstrating to Plaintiff that the cellar was not a living area.

9. DENIED. The condition of the cellar at all times that Plaintiff inspected it prior to purchasing the house made it readily apparent that the same was not used by Defendant as a living area and that it was not suitable as a living area because it was a cellar that got wet when it rained and Defendant readily disclosed that fact to Plaintiff. Moreover, Plaintiff had a contractor inspect the basement and while Defendant does not know what the contractor reported to Plaintiff, Plaintiff proceeded with the purchase of the premises after she had her contractor inspect the cellar. Plaintiff never disclosed to Defendant prior to purchasing the same that she intended to refinish the cellar and Defendant never imagined that Plaintiff intended to refinish the cellar when there were 13 other rooms on the first two floors and a huge attic and sun porch providing living space in the house.

10. DENIED as stated. In addition to advising Plaintiff by disclosure that the "walls get damp", Defendant advised Plaintiff specifically that she got water in the cellar when it rained.

Moreover, the cellar was relatively empty except for skids on the floor and shelving and it was obvious that the skids were on the floor to raise heavier items up off the ground and that all small items were stored on shelves. Moreover, Plaintiff had plenty of opportunity to inspect the cellar and did, in fact, send in a contractor to inspect the same prior to the time that Plaintiff made an offer to purchase the property.

11. DENIED. There was no problem with the cellar that Defendant ever attempted to hide from Plaintiff that Plaintiff could not have discovered and no work needed to be performed on the cellar because it was not a living area but was used as a "cellar" for the storage of porch furniture, canned goods and the like.

12. DENIED. No work was needed to be done to rectify any problem and, in fact, Defendant believes and therefore avers that if there was an increase in water in the basement it was caused the actions of the Plaintiff who pulled up trees and built retaining walls and blocked a water drain pipe running next to the home and jack hammered out the floor of the cellar.

13. DENIED. No work needed to be done to the cellar and all time, labor and out-of-pocket costs of the Plaintiff were done by her choice and not as the result of any misrepresentation by the Defendant of any condition that could not have been discoverable by Plaintiff.

14. It is DENIED that Defendant misrepresented any condition of the basement to Plaintiff or that Defendant failed to give Plaintiff ample opportunity to inspect the cellar. On the contrary, Plaintiff went through the house five times prior to closing on the sale of the house and on one occasion was accompanied by a contractor who went to the cellar and spent several hours down there with no interference by Defendant. It is further DENIED that there is

anything to work out between Plaintiff and Defendant as Defendant fully advised Plaintiff of the condition of the cellar as she had experienced it and did make no attempt to keep Plaintiff from readily discovering the condition of the same.

15. DENIED as stated. Defendant has no responsibility to the Plaintiff that has not been fulfilled and, in fact, Defendant did all that Plaintiff demanded in order to close on the house including repair of a sewer line and patio. Defendant has no further responsibilities to the Plaintiff and any damages to the cellar that have occurred have occurred as a result of the actions of the Plaintiff.

16. DENIED. Defendant is not liable to the Plaintiff generally or specifically for the following reasons:

(a) DENIED. On the contrary, Defendant did not violate the applicable provisions of the Real Estate Sellers Disclosure Act but made disclosure to Plaintiff that Defendant got water in her cellar when it rained;

(b) DENIED. On the contrary, Defendant fully informed Plaintiff of the condition of the cellar when Defendant occupied the house and told her that the cellar gets wet when it rains. Moreover, the cellar had a musty odor that was readily apparent and Plaintiff had numerous opportunities to inspect the cellar and did bring in her own contractor to evaluate the condition of the cellar;

(c) DENIED. On the contrary, Defendant never misrepresented the condition of the cellar to Plaintiff nor did Plaintiff ever rely on Defendant's statements to her. On the contrary, Plaintiff hired a contractor who went to Defendant's home and spent two hours in the cellar without any interference from Defendant;

(d) DENIED. On the contrary, Defendant fully answered all questions of the Plaintiff and advised Plaintiff that the cellar got wet when it rained. Moreover, the cellar had a musty odor and the walls were bare stone and the floors were cement with drains. An inspection of the cellar itself revealed that it was not used for living purposes but for the storage of canned goods and seasonal items; and

(e) DENIED. By way of further answer, Defendant incorporates herein by reference the averments contained in subparagraphs 16(a) through (d) inclusive as if the same were set forth at length herein.

17. DENIED. On the contrary, Plaintiff has suffered no monetary damages as a result of any action of the part of Defendant. Any expenditure by Plaintiff of any monies resulted solely from Plaintiff's own actions in jack hammering the cellar; constructing retaining walls; removing trees and obstructing the flow of water through a sewer drain.

18. DENIED as after reasonable investigation Defendant is without sufficient knowledge to attest to the truth or falsity of the averments contained in Paragraph 18 as the same are within the sole knowledge of the Plaintiff. Insofar as an answer is required, it is averred that if Plaintiff has incurred attorney's fees, it is because of her own actions in bringing a frivolous lawsuit for which Defendant should be compensated because she is required to defend the same.

WHEREFORE, Defendant denies any and all liability and demands that the Complaint of the Plaintiff be dismissed with prejudice.

NEW MATTER

19. Defendant incorporates herein by reference the averments contained in Paragraphs 1 through 18 inclusive of the foregoing Answer as if the same were set forth at length herein.

20. Defendant avers that the Plaintiff was advised that water came into the cellar when it rained prior to the time that Plaintiff purchased the property and that the Plaintiff accepted the property under those conditions.

21. That at all times when Defendant discussed the cellar with the Plaintiff she referred to it as a "cellar" and made no attempt to characterize it as anything other than the unfinished room underneath the first floor of Defendant's house.

22. That Defendant's cellar at the time that Plaintiff inspected the same was unfinished with walls of rough-cut stone; a cement floor with cracks having a large drain in the floor of the laundry room and a drain by the back door where water could flow out of the cellar.

23. That there were skids on the floor of the cellar where large items such as porch furniture and weights were kept above the floor and canned goods and small items were stored on the shelves located on the walls of the cellar, evidencing further that water came into the floor of the cellar.

24. That the cellar had a musty odor that Defendant made no attempt to mask and it was readily apparent upon entering the cellar when Plaintiff inspected the same.

25. That Plaintiff inspected the cellar five times and on the fourth visit to the house did bring with her a contractor who spent at least two hours in the cellar without any interference from Defendant.

26. That the walls of the cellar had not been painted for at least 17 years and all evidence of the true condition of the cellar walls was readily apparent at the time of Plaintiff's inspection of the premises prior to purchase.

27. That if Plaintiff is experiencing a stream of water coming into the cellar other than when it rains, Defendant believes and therefore avers that the same is as a result of conditions that have changed after the time that Plaintiff acquired the premises including, but not limited to, the fact that Plaintiff pulled up trees in the yard; blocked a water drain pipe; built retaining walls and jack hammered the floor of the cellar out.

WHEREFORE, Defendant denies all liability and respectfully requests that Plaintiff's Complaint be dismissed with prejudice.

COUNTERCLAIM

28. Defendant incorporates herein by reference the averments contained in Paragraphs 19 through 27 inclusive of the foregoing New Matter as if the same were set forth at length herein.

29. That in having to defend herself from Plaintiff's frivolous and vexatious lawsuit, Defendant has had to incur legal fees and costs which were made necessary solely because of the actions of the Plaintiff.

30. That since the Defendant truthfully answered all questions propounded by Plaintiff and made no effort to hide the condition of the cellar from Plaintiff and Plaintiff had ample opportunity to inspect the same and discover its condition prior to sale, Plaintiff cannot recover against Defendant as a matter of law and this action against Defendant is solely for the

purposes of harassing and annoying Defendant, entitling Defendant to an award of counsel fees from the Plaintiff.

WHEREFORE, Defendant respectfully requests your Honorable Court for an award of counsel fees from Plaintiff together with interest and costs.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By

Attorneys for Defendant

COMMONWEALTH OF PENNSYLVANIA :

: SS.

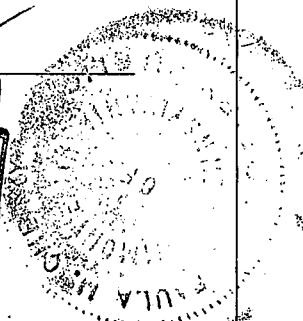
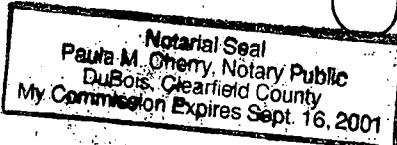
COUNTY OF CLEARFIELD :

Personally appeared before me, a Notary Public in and for the County and State aforesaid, NORMA J. HOCKMAN, who, being duly sworn according to law, deposes and says that the facts contained in the foregoing Answer, New Matter and Counterclaim are true and correct to the best of her knowledge, information and belief.

Norma J. Hockman

Norma J. Hockman

Sworn to and subscribed before me this 31st day of July, 2001.



FILED

AUG 01 2001
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DCC-CITY, Cheyenne
William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOYCE A. HIGGINS, :
Plaintiff :
vs. : No. 01 - 987 C.D. *986*
NORMA J. HOCKMAN, :
Defendant :
:

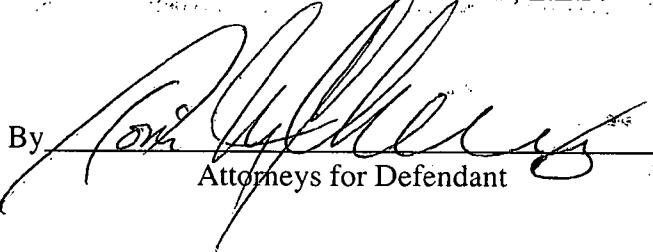
CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of July, 2001, a true and correct copy of Defendant's Answer, New Matter and Counterclaim was served upon counsel for Plaintiff by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

DAVID P. KING, ESQ.
Attorney at Law
23 Beaver Drive
P. O. Box 1016
DuBois, PA 15801

GLEASON, CHERRY AND CHERRY, L.L.P.

By


Tom M. Gleason
Attorneys for Defendant

Dated: July 31, 2001

FILED

AUG 01 2001

John A. Shaw
Prothonotary

FILED

AUG 01 2001
10:32 AM
Acetate Cherry
William A. Shaw
Prothonotary
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

JOYCE A. HIGGINS,
Plaintiff

vs.

NORMA J. HOCKMAN,
Defendant

986
NO. 01-987 C.D.

Type of Case: Civil

Type of Pleading: Reply to New
Matter and Counterclaim

Filed on behalf of: Plaintiff

Counsel of Record for this Party:
David P. King, Esquire
23 Beaver Drive
P. O. Box 1016
DuBois, PA 15801
(814) 371-3760

Supreme Court No. 22980

FILED

FEB 19 2002

William A. Shaw
Prothonotary

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

JOYCE A. HIGGINS, :
Plaintiff :
: :
: : 986
vs. : NO. 01-987 C.D.
: :
NORMA J. HOCKMAN, :
Defendant :
: :

REPLY TO NEW MATTER

AND NOW, comes the Plaintiff, JOYCE A. HIGGINS, through her Attorney, David P. King, and Replies to Defendant's New Matter and Counterclaim as follows:

19. The Plaintiff responds in the same manner as set forth in her Complaint, and further responds as elaborated hereafter, that the Defendant did not disclose as required by law, nor was the defect complained of obvious nor the type of defect which a normal home inspection would disclose. In fact, the Defendant's actions discouraged, deterred and otherwise led the Plaintiff to believe that no water problem existed and thus extraordinary inspection procedures were not necessary.

20. It is vehemently denied that the Defendant advised this Plaintiff that water came into the cellar and that Plaintiff accepted such a condition as part of the transaction and sale.

21. Discussions with the Defendant, including the Disclosure Statement used the word "basement", and discussions with the Defendant, as well as Defendant's characterization were consistent with the same.

22. Although there may have been drains in the basement area, these were not indicative of a water problem, but were normal in the event of a bursted pipe, laundry hose, etc.

23. The facts stated by the Defendant were not an indication to Plaintiff that there was a water problem, as such things would normally be kept above the floor of any basement for the reasons as set forth above, and further to discourage mold or mildew from adhering to such things as may be stored.

24. The Plaintiff has no recollection of a musty odor in the basement, but notwithstanding, especially because of the misrepresentations made by the Defendant, and relying on the same, the Plaintiff assumed there was no water problem as complained of in this matter.

25. Plaintiff did inspect the home, but not specifically for purposes of inspecting the basement, and the contractor utilized by the Plaintiff did not spend two hours in the basement, and instead was doing a whole house inspection.

26. The Plaintiff is without information as to form a belief as to the allegations in Defendant's Paragraph 26, however, such allegations are denied if the same infers that the water problem contained herein was readily apparent.

27. Plaintiff denies that any actions by her or anyone else caused the water problem which is the subject of this Complaint.

WHEREFORE, Plaintiff again requests your Honorable Court to enter judgment in her favor and against the Defendant.

REPLY TO COUNTERCLAIM

28. Plaintiff's Reply to Paragraphs 19 through 27 are herein incorporated by reference.

29. Plaintiff denies any frivolous or vexatious lawsuit for the purposes of causing the Defendant any monetary loss except for the damages which Plaintiff is entitled to because of Defendant's liability.

30. For reasons as set forth in Plaintiff's Complaint and her Reply herein, the Plaintiff again denies that the Defendant truthfully answered all questions and again states that for various reasons and because of Defendant's misstatements, the Plaintiff was mislead and that she was specifically told that there was no water problem and in fact there was a water problem which gives rise to this Complaint.

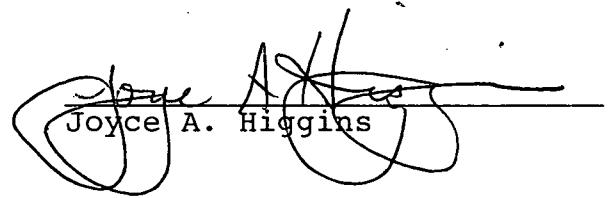
WHEREFORE, Plaintiff requests your Honorable Court to deny Defendant's relief as requested, and again asks that damages be assessed against the Defendant and in favor of the Plaintiff with interest and costs.



David P. King
Attorney for Plaintiff

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

Date: February 18, 2002


Joyce A. Higgins

FILED

01/01/02
FEB 19 2002

2cc
Attn: King
E. King

William A. Shaw
Prothonotary

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

JOYCE A. HIGGINS,
Plaintiff

vs.

NORMA J. HOCKMAN,
Defendant

01-986-CO
NO. 01-987000D?

Type of Case: Civil

Type of Pleading: Praeclipe for
Arbitration

Filed on behalf of: Plaintiff

Counsel of Record for this Party:
David P. King, Esquire
23 Beaver Drive
P. O. Box 1016
DuBois, PA 15801
(814) 371-3760

Supreme Court No. 22980

FILED

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7/11/351 no cc

William A. Shaw
Prothonotary

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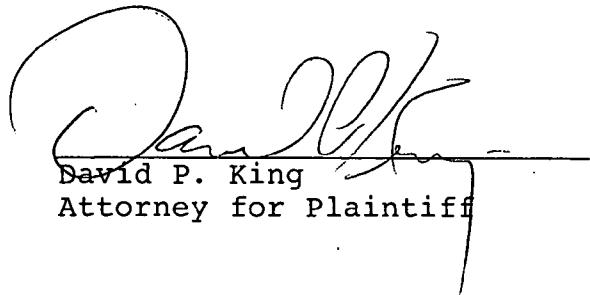
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

JOYCE A. HIGGINS, :
Plaintiff :
: :
vs. : NO. 01-987 C.D.
: :
NORMA J. HOCKMAN, :
Defendant :
:

PRAECIPE FOR ARBITRATION

TO THE PROTHONOTARY:

Please place the above captioned matter on the current
Arbitration List.



David P. King
Attorney for Plaintiff



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

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

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-6089 7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

May 1, 2002

David P. King, Esquire
Attorney at Law
23 Beaver Drive
DuBois, PA 15801

Toni M. Cherry, Esquire
Gleason, Cherry & Cherry
Post Office Box 505
DuBois, PA 15801

RE: JOYCE A. HIGGINS
vs.
NORMA J. HOCKMAN
No. 01-986-CD

Dear Counsel:

The above case is scheduled for Arbitration Hearing to be held Wednesday, July 24, 2002. The following have been appointed to the Board of Arbitrators:

Peter F. Smith, Esquire
John A. Ayres, Jr., Esquire
Warren B. Mikesell, II, Esquire
David J. Hopkins, Esquire
Jonathan W. Jewell, Esquire

If you wish to strike an Arbitrator, you must notify the undersigned within seven (7) days from the date of this letter the name you wish stricken from the list.

You will be notified at a later date the exact time of the Arbitration Hearing.

Very truly yours,

Marcy Kelley
Marcy Kelley

Deputy Court Administrator

FILED

MAY 16 2002

William A. Shaw
Prothonotary



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

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

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-6089 7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

May 10, 2002

David P. King, Esquire
Attorney at Law
23 Beaver Drive
DuBois, PA 15801

Toni M. Cherry, Esquire
Gleason, Cherry & Cherry
Post Office Box 505
DuBois, PA 15801

RE: JOYCE A. HIGGINS
vs.
NORMA J. HOCKMAN
No. 01-986-CD

Dear Counsel:

The above case is scheduled for Arbitration Hearing to be held Wednesday, July 24, 2002 at 8:30 A.M. The following have been appointed as Arbitrators:

John A. Ayres, Jr., Esquire, Chairman
David J. Hopkins, Esquire
Jonathan W. Jewell, Esquire

Pursuant to Local Rule 1306A, you must submit your Pre-Trial Statement seven (7) days prior to the scheduled Arbitration. The original should be forwarded to the Court Administrator's Office and copies to opposing counsel and each member of the Board of Arbitrators. For your convenience, a Pre-Trial (Arbitration) Memorandum Instruction Form is enclosed as well as a copy of said Local rule of Court.

Very truly yours,
Marcy Kelley
Marcy Kelley
Deputy Court Administrator

cc: John A. Ayres, Jr., Esquire
David J. Hopkins, Esquire
Jonathan W. Jewell, Esquire

FILED

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MAY 16 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOYCE A. HIGGINS,
Plaintiff
vs.
NORMA J. HOCKMAN,
Defendant

: No. 01 - 986 C.D.
: Type of Case: CIVIL
: Type of Pleading: NOTICE OF APPEAL
: FROM AWARD OF ARBITRATORS
: Filed on Behalf of: NORMA J.
: HOCKMAN, Defendant
: Counsel of Record for this Party:
: TONI M. CHERRY, ESQ.
: Supreme Court No.: 30205
: GLEASON, CHERRY AND
: CHERRY, L.L.P.
: Attorneys at Law
: P. O. Box 505
: One North Franklin Street
: DuBois, PA 15801
: (814) 371-5800

FILED

AUG 19 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOYCE A. HIGGINS,	:
Plaintiff	:
vs.	:
	: No. 01 - 986 C.D.
NORMA J. HOCKMAN,	:
Defendant	:

NOTICE OF APPEAL FROM AWARD OF ARBITRATORS

TO THE PROTHONOTARY, WILLIAM A. SHAW:

Sir:

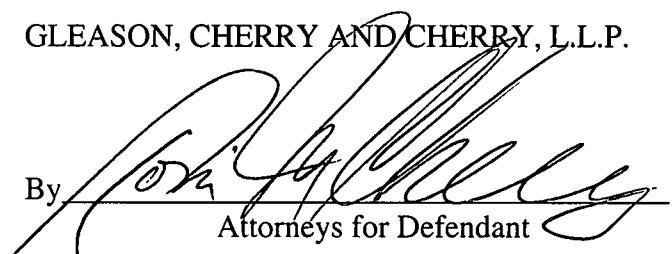
Notice is given that Defendant, NORMA J. HOCKMAN, appeals from the Award of the Board of Arbitrators entered in this case on July 24, 2002.

I hereby certify that the compensation of the Arbitrators has been paid.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By


John J. Kelly
Attorneys for Defendant

Dated: August 19, 2002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOYCE A. HIGGINS, :
Plaintiff :
vs. : No. 01 - 986 C.D.
NORMA J. HOCKMAN, :
Defendant :
:

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of August, 2002, a true and correct copy of Defendant's Notice of Appeal From Award of Arbitrators was served upon counsel for Plaintiff by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

DAVID P. KING, ESQ.
Attorney at Law
23 Beaver Drive
P. O. Box 1016
DuBois, PA 15801

GLEASON, CHERRY AND CHERRY, L.L.P.

By

Attnys for Defendant

Dated: August 19, 2002

FILED

Aug. 19, 2002

pd.

Aug. 19, 2002

pd.

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOYCE A. HIGGINS, :
Plaintiff :
vs. : No. 01 - *986* C.D.
NORMA J. HOCKMAN, :
Defendant :
:

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of December, 2002, Defendant's Request for Production of Documents to Plaintiff and Interrogatories Directed to Plaintiff were served upon counsel for Plaintiff by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

DAVID P. KING, ESQ.
Attorney at Law
P. O. Box 1016
DuBois, PA 15801

FILED

DEC 06 2002

William A. Shaw
Prothonotary

GLEASON, CHERRY AND CHERRY, L.L.P.

By

John B. Cherry
Attorneys for Defendant

Dated: December 4, 2002

FILED
11/9/53
DEC 06 2002

William A. Shaw
Prothonotary

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

JOYCE A. HIGGINS, *
Plaintiff *
*
vs. * NO. 2001-986-C.D.
*
NORMA J. HOCKMAN, *
Defendant *

O R D E R

NOW, this 17th day of January, 2003, following Pre-Trial Conference with counsel for the parties as set forth above and the Court, it is the ORDER of this Court as follows:

1. Non-Jury Trial is scheduled for Wednesday, February 5, 2003, 9 o'clock a.m., Courtroom No. 2, Clearfield County Courthouse, Clearfield, Pennsylvania.

By the Court,



JUDGE FREDRIC J. AMMERMAN

FILED

JAN 20 2003

William A. Shaw
Prothonotary/Clerk of Courts

FILED

JAN 20 2003

07/11/03
William A. Shaw
Prothonotary/Clerk of Courts

ED
KBA

✓ 2 certified copies to David P. King, Esquire
2 certified copies to Toni M. Cherry, Esquire
1 copy to Judge Ammerman
1 copy to Court Administrator

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

JOYCE A. HIGGINS,
Plaintiff

:

:

:

vs.

NO. 01-986-C.D.

:

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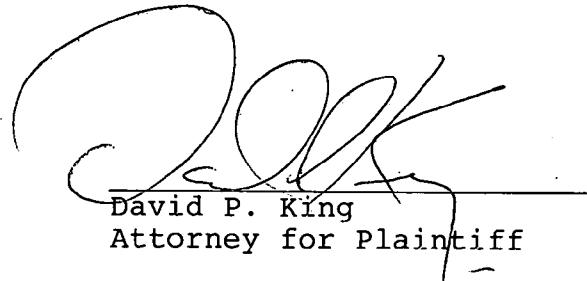
NORMA J. HOCKMAN,
Defendant

JOINT

PRAECIPE

TO THE PROTHONOTARY:

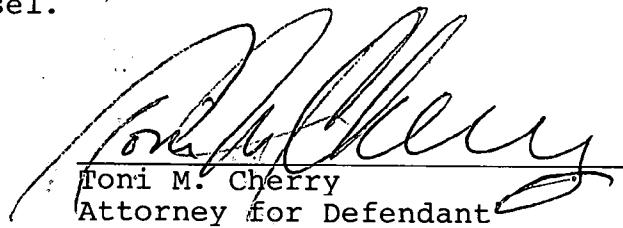
Please mark this case settled and discontinued by
Plaintiff's Counsel.



David P. King
Attorney for Plaintiff

TO THE PROTHONOTARY:

Please mark Defendant's Counterclaim settled and
discontinued by Defendant's Counsel.



Toni M. Cherry
Attorney for Defendant

FILED

FEB 05 2003

William A. Shaw
Prothonotary

FILED No ac

01 8:44 AM Oct 05 2013 Cert. of Disc.

FEJ 05 2013. 2 Cert. of Disc.

to Amy Wang

William A. Shaw copy to CLA *W*

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

CIVIL DIVISION

Joyce A. Higgins

Vs.

No. 2001-00986-CD

Norma J. Hockman

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 February 5, 2003, marked:

Settled and Discontinued

Record costs in the sum of \$100.00 have been paid in full by David P. King, Esq. and costs in the sum of \$600.00 have been paid in full by Toni M. Cherry, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 5th day of February A.D. 2003.

William A. Shaw, Prothonotary

David P. King, Esq.

Law Offices

DAVID P. KING
23 Beaver Drive
P.O. Box 1016
DuBois, PA 15801

Phone (814) 371-3760
Telecopier (814) 371-4874

July 16, 2002

Court Administrator of Clearfield County
Clearfield County Courthouse
230 East Market Street, Suite 228
Clearfield, PA 16830

Re: Joyce A. Higgins vs. Norma J. Hockman
No. 01-986-C.D.

To the Court Administrator:

Please find enclosed the original of our Pre-Trial Statement regarding the up coming Arbitration of this referenced case to be held on July 24th at 8:30 A.M.

We are simultaneously sending copies of the same to opposing Counsel and the Arbitrators.

Very truly yours,

David P. King

DPK:pp
Enclosure

cc: Toni M. Cherry, Esquire
John A. Ayres, Jr., Esquire
David J. Hopkins, Esquire
Jonathan W. Jewell, Esquire
Ms. Joyce A. Higgins

RECEIVED

JUL 17 2002

COURT ADMINISTRATORS
OFFICE

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

JOYCE A. HIGGINS,
Plaintiff

NO. 01-986-C.D.

vs.

Type of Case: Civil

NORMA J. HOCKMAN,
Defendant

Type of Pleading: Pre-Trial
Memorandum

Filed on behalf of: Plaintiff

Counsel of Record for this Party:
David P. King, Esquire
23 Beaver Drive
P. O. Box 1016
DuBois, PA 15801
(814) 371-3760

Supreme Court No. 22980

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JUL 17 2002

COURT ADMINISTRATOR'S
OFFICE

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

JOYCE A. HIGGINS, :
Plaintiff :
vs. : NO. 01-986-C.D.

NORMA J. HOCKMAN,
Defendant

PRE-TRIAL (ARBITRATION) MEMORANDUM OF PLAINTIFF

AND NOW, comes JOYCE A. HIGGINS, Plaintiff in this case, through her Attorney, David P. King, and submits the following Pre-Trial Memorandum.

BRIEF STATEMENT OF CASE

The Plaintiff and the Defendant entered into an Agreement of Sale for a house situated in DuBois, PA, known as 308 East Second Avenue. As part of the transaction, the Defendant submitted a Seller's Property Disclosure Statement to the buyer/Plaintiff as is required by law. Because of prior experiences with another house, Plaintiff was particularly wary of any water problems that might exist in the basement. Based on the Disclosure Statement, and the representations of the seller, Plaintiff was assured that no such problems existed.

Thereafter, Plaintiff did in fact purchase the house and became aware that a significant water problem, beyond what Defendant had represented, did exist. Had Plaintiff known this, this problem could have been addressed in an appropriate fashion. However, Plaintiff was misled and the Defendant has otherwise

violated the applicable laws and statutes of the Commonwealth regarding disclosure requirements.

CITATIONS TO CASES OR STATUTES

Real Estate Seller's Disclosure Act, 68 P.S. §1021 et sec.

LIST OF WITNESSES

Joanne Quashnock, Realtor, Coldwell Banker Developac
Realty

STATEMENT OF DAMAGES AND BILLS

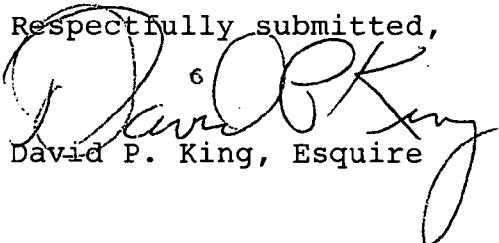
The Plaintiff has incurred Attorney's fees of \$1,000.00 and record costs of \$103.00. This is relevant to punitive damages as prayed for.

Additionally, Plaintiff claims damages of \$4,500.00, which is the estimate of the cost to rectify the problem. A copy of that Estimate is attached hereto, and is also referred to as Exhibit "B" in Plaintiff's Complaint.

Additionally, Plaintiff did much of the work required as per that Estimate on her own, purchased materials on her own, and also hired other contractors to do work to rectify the problem, and those bills, invoices and statements are also attached hereto.

Plaintiff believes then that she is entitled to the appropriate amount of compensatory as well as punitive damages in accordance with the Real Estate Seller's Disclosure Act as referenced herein.

Respectfully submitted,


6
David P. King, Esquire

"A BETTER CHOICE, INC.
TOLL-FREE 1-877-NO WATER



DATE: 2-22-00

NAME: JOYCE HIGGINS ADDRESS: 308 E SECOND AVE

IN RESPONSE TO YOUR REQUEST FOR A PROPOSAL TO CORRECT THE WATER INFILTRATION PROBLEM, THE FOLLOWING MEASURES WILL BE UTILIZED (AS INDICATED) IN THE INSTALLATION OF OUR CUSTOMIZED SYSTEM. NOTE: NOT ALL STEPS ARE REQUIRED TO PROPERLY WATERPROOF EVERY HOME.

APPROXIMATE LINEAL FEET TO BE TREATED: 97 INVOLVING: 3 WALLS

REMOVE APPROXIMATELY ONE FOOT OF CONCRETE FLOORING AROUND INSIDE PERIMETER TO BE CORRECTED.

REMOVE DIRT NEXT TO FOOTING.

DRILL OUT THE CELLS & VOIDS BETWEEN BLOCKS & FLUSH OUT IF NECESSARY.

PROPERLY PLACE 4 INCH AGRICULTURAL GRADE WHITE PIPE, MIRA DRAIN, RIVER ROCK AND MOISTURE BARRIER.

TRENCH WILL BE SMOOTHLY CEMENTED OVER.

2 WELL-PLACED, SUBMERSIBLE PRESSURE RELIEF SYSTEM(S) WILL BE USED TO DISCHARGE WATER AWAY FROM STRUCTURE. SYSTEM IS QUIET, AUTOMATIC AND UNDER THE FLOOR.

REINFORCE FOUNDATION CRACKS WHERE REQUIRED.

ODOR CONTROL WILL BE UTILIZED WHILE WORK IS IN PROGRESS.

MSR-14 TREATMENT WILL BE APPLIED

STEEL 8"H BEAMS WILL BE PROPERLY PLACED FOR WALL STABILIZATION.

776 SQ. FEET OF TPO MEMBRANE WILL BE INSTALLED.

SQ. FEET OF WALL INCAPSULATION.

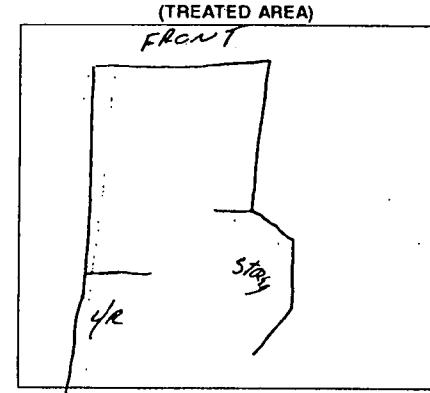
FEET OF SPEEDY-DRAIN WILL BE TIED INTO SYSTEM.

SEAL OUTSIDE COVES AND ABOVE GRADE CRACKS WHERE NEEDED.

FEET OF TRENCHING & SUB-SOIL DRAINAGE SYSTEM TO DIVERT SURFACE WATER.

CLEAN UP AND HAUL AWAY JOB-RELATED DEBRIS.

OTHER: WE WILL REMOVE CONCRETE FROM AREA TO BE TREATED
CUSTOMER TO CEMENT OVER



YOUR CUSTOMISED SYSTEM, AS DESCRIBED, WILL BE BACKED BY A WRITTEN WARRANTY THAT PROVIDES THE FOLLOWING COVERAGE:

* LIFE YEARS AGAINST WATER INFILTRATION OR SEEPAGE THROUGH TREATED AREAS.

* LIFE YEARS FREE LABOR & MATERIAL TO CORRECT CONTRACTED AREA SHOULD PROBLEM RETURN.

* 4YE YEARS, 100% MONEY BACK IF CONTRACTOR FEELS HE CANNOT CONTROL WATER INFILTRATION IN TREATED AREA.

* 2 YEARS ON SUBMERSIBLE PUMP(S) & CHECK VALVE. INCLUDES REPLACEMENT & FREE LABOR.

WARRANTIES ARE ASSIGNABLE & TRANSFERABLE FOR THE DURATION OF ABOVE STATED PERIOD.

(A TRANSFER FEE IS REQUIRED)

* YOUR PROJECT WILL REQUIRE APPROXIMATELY 2 DAYS TO COMPLETE.

* WORK WILL BE DONE IN CONSECUTIVE DAYS

* A MUTUALLY CONVENIENT START DATE WILL BE SCHEDULED: ★ _____

THE TOTAL COST OF YOUR PROJECT IS \$ 4500 TO HAVE WORK SCHEDULED AND RECEIVE A START DATE, A DEPOSIT OF 10 % IS REQUIRED WITH BALANCE DUE UPON COMPLETION. A BUDGET PLAN MAY ALSO BE AVAILABLE TO QUALIFIED HOMEOWNERS.

"A BETTER CHOICE", INC.

HOMEOWNER

Chris Wark

House

LOWE'S
(814)372-8640

-SALE-

SALES #: S1010TT1 13 10-28-00

41349 5GL LTX WTRPRF UG 62.95

41349 5BL LTX WTRPRF UG 62.95

62582 PEGHK 1/8X1"CURVE 1.19

62604 PEGHK 1/8" GRIP C 0.84

SUBTOTAL: 127.93

TAX 38550: 7.68

INVOICE 545 TOTAL: 135.61

BALANCE DUE: 135.61

M/C : 135.61

M/C XXXXXXXXXXXX8249 0801 028041

AMOUNT: 135.61

1010 07 10/28/00 15:00:08 REF#: 545

THANK YOU FOR SHOPPING LOWE'S

Buy for for
Walls

House
THANK YOU FOR SHOPPING AT
J.A. KOHLHEPP SONS INC.
(814) 371-5060

9/30/00 12:01 BREAKS 05 SALE
911941 2 3.69 /EA
6IN BEAVR BRUSH
510271 1 7.38
12OZ FORM SEALANT
004799 3 3.99
5 GAL LATEX WATERPROOF WHITE 69.95 /EA S
209.85

SUB-TOTAL: 221.22 TAX: 13.28
TOTAL: 234.50
PK CARD #: 5471833012032349 BC ANT: 234.50
ID: 062202741997 APP AUTH: 030145

====> JRNL #: C32190
CUST #: 5

THANK YOU JOYCE A HIGGINS
FOR YOUR PATRONAGE.

YOU SAVED \$ 25.02 BY SHOPPING AT
J.A. KOHLHEPP SONS INC.

SULLIVAN COMPANY

P. O. BOX 1112 DuBOIS, PENNSYLVANIA 15801
PHONE (814) 371-3144 FAX (814) 375-3144

August 1, 2000

Invoice # 00-137

Invoice to: Joyce Higgins
308 East Second Avenue
DuBois, PA 15801
(814) 372-2267

Job Site: 308 East Second Avenue
DuBois, PA 15801

Project Title: Basement water proofing

Work Description:

Payment due for completion of project as quoted July 3, 2000

- saw cut and remove existing concrete flooring at perimeter of foundation walls
- haul away all debris
- install perforated p.v.c. channel
- back fill with 2B stone chips
- install 15 gallon sump well with pump (customer responsible for electrical wiring)

Total Amount Due	\$3,541.25
------------------	------------

SULLIVAN COMPANY

P. O. BOX 1112 DuBOIS, PENNSYLVANIA 15801
PHONE (814) 371-3144 FAX (814) 375-3144

August 16, 2000

Invoice # 00-154

Invoice to: Joyce Higgins
308 East Second Avenue
DuBois, PA 15801
(814) 372-2267

Job Site: 308 East Second Avenue
DuBois, PA 15801

Project Title: Basement stairs and sump pump electrical

Work Description:

Payment due for completion of project as quoted August 22, 2000

- install new electrical receptacle and wiring for sump pump
- reinstall basement stairs previously removed for installation of PVC drain channel

Total Amount Due	\$512.96
------------------	----------

Spafford Landscaping
RD#2 Box 435, Dubois, Pa. 15801
814-375-4973



Joyce Higgins
308 East Second Ave
Dubois, Pa. 15801

We are pleased to submit the following bid:

Job Description: install drain , grade fill and topsoil
handrake and hydroseed

SERVICE

Square Feet	Tons topsoil	DESCRIPTION	Price/sq ft/ton	TOTAL
		install drain to road		
		pipe and labor		\$120.00
		1 load fill 18 tons		\$87.00
18.00	1 load topsoil		\$17.00	\$306.00
		rake and hydroseed backyard		\$625.00
Total service charges:				\$1,138.00

Price valid until: 2/9/03

**Spafford Landscaping
RD#2 Box 435, Dubois, Pa. 15801
814-375-4973**

Joyce Higgins

Invoice: Please keep these copies for your records

	DESCRIPTION	Total
2 loads fill	80/looad	\$180.00
1 load topsoil	15/ton	\$225.00
hydro and drain		\$700.00
	Totals	
		\$1,105.00

#141
6-18-01
\$405.00

Invoice:

LAW OFFICES
GLEASON, CHERRY AND CHERRY, L.L.P.
P. O. Box 505
DuBois, Pennsylvania 15801-0505

TONI M. CHERRY
PAULA M. CHERRY
EDWARD V. CHERRY
1950-1990
JAMES A. GLEASON
1946-1975

ONE NORTH FRANKLIN STREET

AREA CODE 814
371-5800
FAX NUMBER
(814) 371-0936

July 16, 2002

Ms. Marcy Kelley
Deputy Court Administrator
Office of the Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830

RE: **JOYCE A. HIGGINS vs.**
NORMA J. HOCKMAN
No. 01 - 986 C.D.

Dear Ms. Kelley:

We are enclosing herewith Defendant's Pre-Trial Memorandum in the above-captioned case.

By copy of this letter, we are this day forwarding a true and correct copy of the same to all of the individuals listed on the Certificate of Service attached to the Memorandum.

Thanking you for your kind attention to this matter, we remain

Very truly yours,

GLEASON, CHERRY AND CHERRY, L.L.P.

By

Toni M. Cherry

TMC:mls

Enclosure

cc/w.enc.: David P. King, Esq.

John A. Ayres, Jr., Esq.

Jonathan W. Jewell, Esq.

David J. Hopkins, Esq.

RECEIVED

JUL 17 2002

COURT ADMINISTRATOR'S
OFFICE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOYCE A HIGGINS,

Plaintiff

vs.

NORMA J. HOCKMAN,

Defendant

:

:

: No. 01 - 986 C.D.

:

: Type of Pleading: DEFENDANT'S PRE-
: TRIAL MEMORANDUM

:

: Filed on Behalf of: NORMA J. HOCKMAN,
: Defendant

:

: Counsel of Record for this Party:

:

: TONI M. CHERRY, ESQ.

: Supreme Court No.: 30205

:

: GLEASON, CHERRY AND
: CHERRY, L.L.P.

: Attorneys at Law

: P. O. Box 505

: One North Franklin Street

: DuBois, PA 15801

:

: (814) 371-5800

RECEIVED

JUL 17 2002

**COURT ADMINISTRATOR'S
OFFICE**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOYCE A. HIGGINS,	:
Plaintiff	:
	: No. 01 - 986 C.D.
vs.	:
	:
NORMA J. HOCKMAN,	:
Defendant	:

DEFENDANT'S PRE-TRIAL MEMORANDUM

1. Statement of Facts:

This matter comes before the Arbitrators on a Complaint filed by Plaintiff to recover damages from Defendant in the amount of \$4,500.00, being the cost to remove concrete from the Plaintiff's cellar and to otherwise waterproof the cellar.

Defendant, NORMA J. HOCKMAN, was the owner of an old Victorian-style home located at 308 East Second Avenue, DuBois, Pennsylvania. Defendant listed the property for sale in the Summer of 1999 and, as a result of such listing, the premises was sold to the Plaintiff, JOYCE A. HIGGINS, by deed dated October 6, 1999, and recorded on October 13, 1999, in the Offices of the Register and Reorder of Deeds of Clearfield County, Pennsylvania, as Instrument No. 199916968. At the time of the sale, Plaintiff had her own realtor.

Plaintiff brought this action against Defendant, NORMA J. HOCKMAN, to recover damages she allegedly incurred as a result of water collecting in the cellar of the home she purchased from Mrs. Hockman, asserting that Mrs. Hockman knew or should have known that there was a water problem in the cellar and that she either misrepresented the nature of the

problem or that she intentionally failed to disclose the same and that Plaintiff relied on that misrepresentation or silence in purchasing the premises, to her detriment. The amount of \$4,500.00 is the price that Plaintiff has been quoted to remodel the cellar and essentially waterproof it.

Defendant, NORMA J. HOCKMAN, contends that Plaintiff was advised of the condition of the cellar not only in the Seller's Property Disclosure Statement but in direct conversations held between Plaintiff and Defendant and through her own inspection of the premises.

The premises in question is an old house with 13 rooms of living area over a cellar. The first floor consists of a front parlor, rear parlor or living room, dining room, kitchen and huge entryway. The second floor boasts four bedrooms and there is a sun porch and attic over the entire structure as well as accompanying bathrooms. The cellar is made of cut stone walls with a cement floor and three bare lightbulbs in the ceiling. At the time of the sale, there were cracks in the floor as well as trenches or troughs dug in the cement floor to catch water and there were drains in the cellar floor in the area used for the laundry room as well as in the area by the back door. The walls of the cellar were whitewashed but had not been touched for at least 17 years. The cellar was used primarily for storage. At the time of the inspection by Plaintiff, prior to sale, there were bicycles and buckets on the floor but little else. There were weights on pallets, to keep them above the floor. Christmas candles were stored on a high shelf in the work room.

Plaintiff inspected the house a total of five times, one of which was with a contractor who went down to the cellar without Defendant accompanying him for several hours before

Plaintiff came back upstairs and Mrs. Hockman went down to the basement with her to meet the contractor.

During the second or third of Plaintiff's visits to the home, Ms. Higgins asked Mrs. Hockman, "Do you have a lot of water in the cellar?" Mrs. Hockman responded by advising Ms. Higgins that the cellar got a little bit of water in it when it rained.

The fifth time that Plaintiff inspected the house was during a water-through which took place after Defendant had moved out of the house. There was nothing in the cellar at that time and nothing to have prevented Plaintiff from examining every inch of the cellar. This walk-through took place before the closing. At no time did Plaintiff ever indicate to Defendant that she wanted to make the cellar into additional living quarters. It was obvious that such a plan would require extensive renovation to a cellar that was intended merely for storage and which obviously had troughs cut into its floor to allow water to exit the structure.

The fact that the cellar took in water during a rain was apparent based not only through an observation of the drains and the trenches or troughs cut into the floor but also because of the musty odor that the cellar had that was apparent immediately upon entering the same. It was obvious from an inspection of the cellar that it was not used as living quarters and that it was used merely for storage and to house the washer and dryer.

All of this water known to Plaintiff prior to the time that she agreed to purchase the home and prior to the time that she closed the sale. Consequently, Defendant maintains that she made full disclosure about the water condition to the Plaintiff and that Plaintiff had ample opportunity to inquire about the extent of the water that came into the cellar since there were

physical signs throughout the cellar area that there was water collection which Defendant made no effort to hide and which were readily apparent to Plaintiff.

The first time that Defendant knew that Plaintiff had any complaints about the water in the cellar was by letter to Defendant from Plaintiff dated April 16, 2001, nearly a year and a half after the purchase was made.

2. List of Exhibits:

- (a) Seller's Property Disclosure Statement;
- (b) Agreement of Sale signed by Plaintiff and Defendant;
- (c) True and correct copy of deed from Defendant to Plaintiff, dated October 6, 1999, and recorded on October 13, 1999, in the Offices of the Register and Recorder of Deeds of Clearfield County, Pennsylvania, as Instrument No. 199916968;
- (d) Any and all other evidence of the transaction that become known to Defendant prior to trial with proper notice thereof to Plaintiff;

3. Witnesses to be Called on Behalf of the Defendant:

- (a) Plaintiff, NORMA J. HOCKMAN, 505 East DuBois Avenue, DuBois, Pennsylvania 15801 - liability and damages;
- (b) THOMAS HOCKMAN - 505 East DuBois Avenue, DuBois, Pennsylvania 15801 - liability and damages;
- (c) TIMOTHY HOCKMAN - Maurs Street, St. Marys, Pennsylvania 15857 - liability and damages;

(d) TERESA BALL, realtor - Howard Hanna Shippen Realty, 902 Beaver Drive, DuBois, Pennsylvania 15801 - liability;

(e) Any witnesses listed on Plaintiff's Pre-Trial Narrative.

(f) Defendant reserves the right to supplement the list of witnesses and to call additional witnesses with due notice in advance of trial to Plaintiff if any should become known to Defendant.

4. Statement of Legal Theory upon which Right of Defense is Predicated:

A seller's duty to disclose a defect in property arises when:

(a) The vendee does not know or have reason to know of the condition or the risk involved, and (b) The vendor knows or has reason to know of the condition, and realizes or should realize the risk involved, and has reason to believe that the vendee will not discover the condition or realize the risk.

Section 353 of the Restatement, 2d Torts.

In the present case, the condition of the property was such that Plaintiff, JOYCE A. HIGGINS, had reason to know of the defect since it was so conspicuous. The cellar was unfinished and was constructed of cut stone walls with a cement floor. There were troughs dug out around the room so that the water which collected in the cellar could drain out. This alone should have put Plaintiff, JOYCE A. HIGGINS, on notice of the defect and relieved Defendant, NORMA J. HOCKMAN, from any obligation to disclose anything to her. However, Defendant did tell Plaintiff that water came into the cellar when it rained. There were drains in the floor and cracks in the floor that clearly indicated the age and condition of this premises. The area was used for storing items and there were pallets on the floor for the express purpose of

keeping property off the floor so that it would not be damaged by water coming into the cellar.

The cellar had a musty odor and Defendant had clearly disclosed that the walls got damp.

In Gozon v. Henderson-Dewey & Associates, Inc., 312 Pa.Super.Ct. 242, 458 A.2d 605 (1983), the purchasers brought an action against their vendors and the real estate agency seeking damages for losses they allegedly suffered because of defects in the house and pool they purchased, alleging that the named defendants misrepresented the condition of the house and pool to them. The pool had obvious defects and the purchasers were given an estimated figure for repairs. As it turned out, the cost of the repairs were far more than the estimated figure given to them by the realtor. In addition, the purchasers suffered leakage in the house. There were signs that a problem had existed and upon inquiry, the purchasers were told it had been fixed. Lastly, the purchasers alleged that the floor vibrated as a result of a defective joist which they conceded was not serious.

The purchasers relief on the case of Quashnock v. Frost, 299 Pa.Super.Ct. 9, 445 A.2d 121 (1982) in bringing their claim for damages. However, the Superior Court held that the ruling of Quashnock would not control in the Gozen case since the facts were totally different.

The Superior Court noted that:

In the recent case, Quashnock v. Frost, 299 Pa.Super. 9, 445 A.2d 121 (1982), our court was faced with the question of whether the vendor of real estate is liable for failing to disclose his knowledge of a termite infestation to an unknown purchaser. We answered the question affirmatively, under the facts of that case. We explained that in an earlier case, Glanski v. Ervine, 269 Pa.Super. 182, 409 A.2d 425 (1979), this court adopted the view that when there is a serious and dangerous latent defect known to exist by the seller, then he must disclose such defect to the unknowing buyer or suffer liability for his failure to do so. See *Id.* at 17-19, 445 A.2d at 125, 128.

Gozen, 458 A.2d 605 at 607.

The Superior Court concluded that there was no allegation by the purchases that the problems were dangerous nor could the Court find them to be latent defects since there were obvious signs of the defects later complained of by the purchasers. Consequently, the Superior court found no duty on the part of the sellers or their agents to disclose a non-dangerous, unconcealed defect and affirmed the lower court order granting summary judgment to the sellers.

In the case at bar, the signs that water collected in the unfinished cellar were unconcealed. There were troughs dug out along the walls. Moreover, Plaintiff was told that the walls were damp and that water came into the cellar when it rained. The cellar had a musty odor and the objects in the cellar at the time of inspection revealed that the use of this room was for nothing more than storage and laundry. The water problem of which Plaintiff now complains was not a latent defect. It was so obvious an imperfection that it was a patent defect, relieving Defendant of any duty to disclose. This was an old home and cellars in old homes are not used for rec rooms or for family rooms. They are used as storage areas and water flows in and out, saving the upper floors from damage.

Plaintiff alleges that Defendant knew that the cellar was prone to flooding and failed to inform Plaintiff of the condition of the property. In other words, Plaintiff claims that Defendant acted to deceive her by suppressing the truth about a condition of the property. In order to recover in an action based on fraud, Plaintiff must prove all of the elements of fraud, which are as follows: "(1) A misrepresentation, (2) a fraudulent utterance thereof, (3) an intention by the maker that the recipient will thereby be induced to act, (4) justifiable reliance

by the recipient upon the misrepresentation, and (5) damage to the recipient as a proximate result". (citations omitted) Delahanty v. First Pennsylvania Bank, N.A., 318 Pa.Super.Ct. 90, 464 A.2d 1243, 1253 (1983). Unless Plaintiff proves every single element of fraud by clear, precise and convincing evidence, there can be no recovery. See Snell v. Pennsylvania, 490 Pa. 277, 416 A.2d 5468, 470 (1980). Consequently, since Defendant made disclosure to Plaintiff, she was put on notice of the defect and it was her burden to further investigate the situation and to make inquiry as to the full extent of the defect if she so desired.

In the case at bar, Plaintiff was put on notice of the obvious defects in the house, not just through her own inspection but by disclosure of the Seller and Realtor. There is no evidence of any fraud to support a recovery on the part of the Plaintiff.

The facts of this case are nearly identical to the facts of the case of Coffee v. Srock, decided by the Court of Common Pleas of Clearfield County, Pennsylvania, to No. 87 - 764 C.D. That decision was appealed by the Plaintiff in that case and affirmed by the Superior Court. A copy of the Clearfield County Court's decision finding for the Defendant as well as the Superior Court's Order affirming the same is attached hereto and made a part of this Pre-Trial.

5. Brief Description of Damages:

Plaintiff claims damages in the amount of \$4,500.00 for expenses that she will incur in improving the property to eliminate the water in the cellar as well as interest from the date that she filed her claim. Defendant has counterclaimed for attorney's fees based on the frivolous nature of the suit.

6. Extraordinary Evidentiary Problems:

None.

7. Stipulations:

None to date.

8. Special Points for Charge:

(1) In order for Plaintiff to recover damages from the Defendant, she must prove by clear, precise and convincing evidence that Defendant knew of a serious and dangerous latent defect and knowingly failed to disclose such defect to the Plaintiff who could not, upon reasonable inspection, have observed the same. Glanski v. Ervine, 269 Pa.Super.Ct., 182, 409 A.2d 425 (1979).

(2) By clear, precise and convincing evidence, it is meant that the witnesses must be credible. They must distinctly remember the facts to which they testify, and narrate the details exactly, that the evidence is not only found to be credible, but of such weight and directness as to make out the facts alleged beyond a reasonable doubt; that the witnesses must be found to be credible, that the facts to which they testify are distinctly remembered and the details thereof narrated exacted and in due order, and that their testimony is so clear, direct, weighty and convincing as to enable you to come to a clear conviction without hesitancy, of the truth of the precise facts in issue. Delahanty v. First Pennsylvania Bank, N.A., 318 Pa.Super.Ct. 90, 464 A.2d 1243, 1253 (1983).

(3) If you find that there was evidence of the defects of which Plaintiff now complains which were fairly observable upon a reasonable inspection of the premises then you must find that the defects were not latent but were patent defects for which a duty to disclose does not exist. Gozen v. Henderson-Dewey & Associates, Inc., 458 A.2d 605 (1983).

(4) A person who makes a fraudulent misrepresentation of a material fact to another person is responsible for all injuries resulting from that other person's reliance on the fraudulent misrepresentation. In order for the plaintiff to recover against the defendant you must find (1) that the defendant made a misrepresentation to the plaintiff (2) that the misrepresentation made by the defendant to the plaintiff was fraudulent (3) that the misrepresentation was of a material fact (4) that the defendant intended that the plaintiff rely on the defendant's misrepresentation (5) that the plaintiff relied on the defendant's misrepresentation (6) that the plaintiff's reliance on the defendant's misrepresentation was a substantial factor in bringing about the harm suffered by the plaintiff.

(5) A misrepresentation is any assertion by words or conduct, which is not in accordance with the facts.

(6) A misrepresentation is fraudulent when the person making the misrepresentation (a) knows that it is untrue or (b) does not believe it is true or is indifferent as to whether it is true, or (c) by reason of a special circumstance has a duty to know whether it is true.

(7) A fact is material if it is one which would be of importance to a reasonable person in determining a choice of action. A material fact need not be the sole or even a substantial factor in inducing or influencing a reasonable person's decision. A fact is also material if the

maker of the misrepresentation knows that the person to whom it is made is likely to regard it as important even though a reasonable person would not regard it as important.

Reliance means that a person would not have acted (or would not have failed to act) as he did unless he considered the misrepresentation to be true.

(8) If you find that Defendant, NORMA J. HOCKMAN, and/or her agent, Teresa Ball, advised the Plaintiff that water did come into the cellar, then you cannot find that Defendant made a fraudulent misrepresentation to the Plaintiff so as to allow her recovery in this case. Quashnock v. Frost, 445 A.2d 121 (1982); Gozen v. Henderson-Dewey & Associates, Inc., 458 A.2d 605 (1983).

Defendant reserves the right to present additional points for charge during the trial of this case.

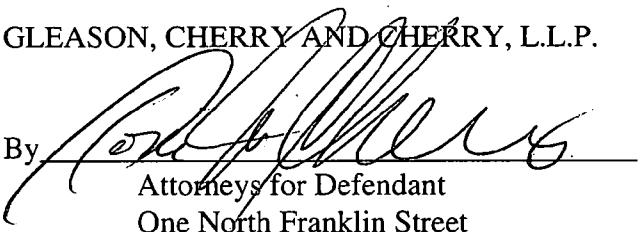
9. Estimated Time for Trial:

One (1) day.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By


Attorneys for Defendant
One North Franklin Street
P. O. Box 505
DuBois, PA 15801
(814) 371-5800

Dated: July 16, 2002

SUPERIOR COURT OF PENNSYLVANIA

PITTSBURGH DISTRICT

LOUISE COFFEE, AN INDIVIDUAL,

APPELLANT

v.

ORWIN W. SROCK AND LUCILLE A. SROCK,
HUSBAND AND WIFE

NO. 394 PITTSBURGH, 1989

ORDER

AND NOW, this 11TH day of DECEMBER , 1989, it is ordered as follows:

- Order affirmed.
- Order reversed.
- Judgment affirmed.
- Judgment of Sentence affirmed.
- Judgment of Sentence reversed.
- Order vacated and lower court directed to proceed in accordance with opinion filed herewith.
- Order modified as set forth in opinion filed herewith.
- Costs to be taxed as provided by Chapter 27 of the Pa.R.A.P.
- Costs to be taxed as provided in opinion filed herewith.
- Appeal quashed.

BY THE COURT

Eleanor R. Valeck
DEPUTY PROTHONOTARY

LOUISE COFFEE, AN INDIVIDUAL : IN THE SUPERIOR COURT OF
Appellant : PENNSYLVANIA
: :
v. : :
: :
ORWIN W. SROCK and : :
LUCILLE A. SROCK, HUSBAND AND WIFE : No. 394 Pittsburgh 1989

Appeal from the Judgment entered February
21, 1989 in the Court of Common Pleas of
Clearfield County, Civil No. 87-764-CD.

BEFORE: ROWLEY, MELINSON, and HOFFMAN, JJ.

MEMORANDUM:

FILED: DECEMBER 11, 1989

This is an appeal from the order of the Court of Common Pleas of Clearfield County entering judgment in favor of Orwin W. and Lucille A. Srock. The appellant, Louise Coffee, purchased real estate from the Srocks and later sought damages from them when the basement flooded. Coffee alleged that the Srocks were aware of substantial and material damages to the property and that they failed to disclose and/or intentionally concealed the basement's propensity to flood. The trial court held that Coffee had failed to prove that the Srocks had concealed a dangerous, latent defect. We affirm.

On appeal, Coffee raises one issue for our consideration, that is, whether the trial court erred in determining that Coffee failed to establish that the flooding of the basement was a latent defect that had been concealed by the Srocks.

Our standard of review is well established. The findings of a trial judge sitting without a jury carry the same weight as a jury verdict, and we may not disturb those findings absent an

error of law or an abuse of discretion. Ecksel v. Orleans Construction Co., 360 Pa.Super. 119, 519 A.2d 1021 (1987); Pato v. Chernuska, 342 Pa.Super. 609, 493 A.2d 758 (1985). When an appellate Court reviews the findings of the trial judge, the evidence is viewed in a light most favorable to the victorious party below and all the evidence and proper inferences favorable to that party must be taken as true and all unfavorable inferences rejected. Mancini v. Morrow, 312 Pa.Super. 192, 458 A.2d 580 (1983), quoting Brenna v. Nationwide Insurance Co., 294 Pa.Super. 564, 567-68, 440 A.2d 609, 611 (1982). Finally, issues of credibility are within the province of the fact finder. Melzer v. Witsberger, 505 Pa. 462, 480 A.2d 991 (1984).

We have independently reviewed the record, the briefs submitted by the parties, and the applicable law, and find that the learned trial judge has adequately and thoroughly addressed the issue raised on appeal in his well-reasoned opinion. We find no abuse of discretion in the trial judge's determination that Coffee failed to prove that the basement flooding was intentionally concealed and not discoverable by visual inspection or that the Srocks knowingly made any false misrepresentations. Hence, we affirm and adopt the the opinion of the trial court.

Judgment affirmed.

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

LOUISE COFFEE, :
an individual :
: :
-vs- : No. 87 - 764 - CD
: :
ORWIN W. SROCK and :
LUCILLE A. SROCK, :
husband and wife :
:

MEMORANDUM AND ORDER

Plaintiff above-named purchased real estate owned by Orwin and Lucille Srock on July 3, 1985. Prior to sale, Plaintiff had opportunities to inspect the premises on three separate occasions and had, in fact, been living in the property for the two weeks immediately prior to the closing of the sale. Following the sale, Plaintiff alleges that due to flooding of the basement on 14 separate occasions she has suffered a loss and seeks to recover damages in the amount of \$5,522.65 (n.t. 66). Plaintiff's claim is based on her theory that where a serious and dangerous latent defect on the premises is known to exist by the seller, he must disclose said defect to the unknowing buyer or suffer liability for his failure to do so. Quashnock v. Frost, 299 Pa. Super. 9, 445 A.2d 121 (1982); Glanski v. Ervine, 269 Pa. Super. 182, 409 A.2d 425 (1979); and Long v. Brownstone Real Estate Co., 335 Pa. Super. Ct. 268, 484 A.2d 126 (1984).

As the Superior Court stated in Quashnock, *supra*.:

"Fraud arises when the misrepresentation is knowingly false where there is any intentional concealment calculated to deceive or where there is a non-privileged failure to disclose."

Plaintiff obviously has the burden of proving her claim by the fair weight or preponderance of the evidence and in support thereof testified that the Defendant, Orwin Srock, had told her that the basement was damp (n.t. 6), that she had inspected the premises on three separate occasions and had noticed the trenches in the basement floor which were about 4 inches wide and an inch and a half to 2 inches deep and that these trenches ran along the entire edge of the basement (n.t. 12), that the trenches and the drain in the basement were pointed out to her by Mr. Srock (n.t. 13), that she was not prevented from making a full inspection of the premises (n.t. 25), but that she was not sufficiently concerned to seek further professional examination or advice. She states that the flooding after the purchase took her completely unaware and required that she expend the amount of money claimed.

The Defendant, Orwin Srock, testified that he did, in fact, tell Plaintiff about the water in the basement, that trenches ran in the basement and that she should be careful not to let the drain get plugged up and further that she should not put anything of value down there and that she should keep electrical tools off the floor (n.t. 89). The realtor who handled the sale, Ms. Barbara Harrier, testified that she pointed out the trenches in the basement and that they were there to take water out of the basement (n.t. 132-133) and that she heard Defendant, Orwin Srock, tell the Plaintiff that she should keep her stuff up in the storage area so it didn't get wet (n.t. 150).

Based on the testimony in this case, this Court cannot determine by the fair weight or preponderance of evidence that Defendant made any knowingly false misrepresentation to the Plaintiff, that there was any intentional concealment of any defect calculated to deceive Plaintiff or that it was a non-privileged failure to disclose a defect. In the instant case, Plaintiff was clearly made aware of the existence of water, to some degree, in the basement of the premises and chose not to inspect further what was at the very least a known defect. The transcript indicates that nowhere did Defendant make any false statements as to the existence of the water and indeed, according to his unrebutted testimony, only on one isolated instance during the course of his ownership did the water ever exceed $\frac{1}{2}$ of an inch. This Court, therefore, can only conclude that the Plaintiff has failed to carry her burden of proof. In view of the foregoing, this Court will not address the liability of the Defendant, Lucille Srock, and will enter the following:

O R D E R

NOW, this 9th day of November, 1988, following hearing, it is the ORDER of this Court that judgment be and is hereby entered in favor of Defendants, Orwin and Lucille Srock.

By the Court,

/s/ John K. Reilly, Jr.

President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOYCE A. HIGGINS, :
Plaintiff :
vs. : No. 01 - 986 C.D.
NORMA J. HOCKMAN, :
Defendant :
:

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of July, 2002, a true and correct copy of Defendant's Pre-Trial Memorandum was served upon the following persons by mailing the same to them by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

DAVID P. KING, ESQ.
Attorney at Law
P. O. Box 1016
DuBois, PA 15801

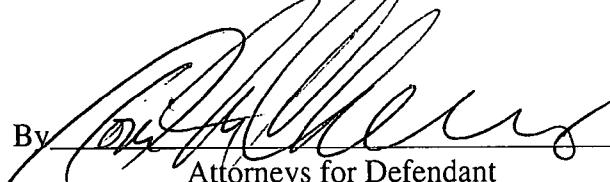
JONATHAN W. JEWELL, ESQ.
Belin & Kubista
Attorneys at Law
P. O. Box 1
Clearfield, PA 16830

JOHN A. AYRES, JR., ESQ.
Attorney at Law
101 South Second Street
Clearfield, PA 16830

DAVID J. HOPKINS, ESQ.
The Hopkins Law Firm
Attorneys at Law
900 Beaver Drive
DuBois, PA 15801

GLEASON, CHERRY AND CHERRY, L.L.P.

By


John A. Ayres
Attorneys for Defendant

Dated: July 16, 2002

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

JOYCE A. HIGGINS,
Plaintiff

NO. 01-986-C.D.

vs.

Type of Case: Civil

NORMA J. HOCKMAN,
Defendant

Type of Pleading: Pre-Trial
Memorandum (Non-Jury)

Filed on behalf of: Plaintiff

Counsel of Record for this Party:
David P. King, Esquire
23 Beaver Drive
P. O. Box 1016
DuBois, PA 15801
(814) 371-3760

Supreme Court No. 22980

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JAN 13 2003

COURT ADMINISTRATOR'S
OFFICE

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

JOYCE A. HIGGINS, :
Plaintiff :
vs. : NO. 01-986-C.D.
NORMA J. HOCKMAN, :
Defendant :
:

PLAINTIFF'S PRE-TRIAL MEMORANDUM

1. Factual Statement of Plaintiff's Case:

The Plaintiff and Defendant entered into an Agreement of Sale for a house situated in DuBois, Pennsylvania, known as 308 East Second Avenue. As part of the transaction, the Defendant submitted a Seller's Property Disclosure Statement to the buyer/Plaintiff. Because of prior experiences with another house, the Plaintiff was particularly wary of any water problems that might exist in the basement. Thus, one question in particular on the Disclosure Statement was question number 6(a). This question asked whether the Defendant was aware of any water leakage in the house or other structures. For some reason, the Defendant/seller did not answer that question. Because of that, the buyer and the realtor that was representing the buyer went to the Defendant's residence and asked her about that question and what her answer would be. Her response was that "the walls get damp". The Plaintiff then believing that she had nothing to worry about regarding water leakage and accumulation in the basement eventually proceeded to purchase the house. However,

lo and behold, after becoming the owner of the house, the Plaintiff was rudely made aware of the fact that after a normal rainfall, the basement actually experienced water streaming onto the basement floor, and accumulating in puddles.

Prior to actually purchasing the property, the Plaintiff did have a home inspection done. The home inspector did point out to the Plaintiff some stains on the walls, indicating dampness, but this was consistent with the Defendant stating to the Plaintiff that only "the walls get damp". The Plaintiff indicated to her inspector that the Defendant had told her that, and thus she was not concerned with that nor should the inspector be.

Subsequent to all of this, Plaintiff had estimated a cost of rectifying the problem and received a quote and estimate for the same in the amount of \$4,500.00. In fact, the Plaintiff performed all of the remedial work required on her own at great time and expense to her, including the cost of renting equipment and machinery, and all of her labor, purchases and time involved in the same.

After attempts by the Plaintiff to amicably resolve the matter obviously failed, Plaintiff commenced suit.

2. List of Exhibits to be Offered:

- (a) Copy of Seller's Property Disclosure Statement.
- (b) Original of Estimate from "A Better Choice, Inc." for remedial work.

- (c) Pictures of water in the basement.
- (d) Copy of letter from Plaintiff to Defendant dated April 9, 2001.
- (e) Letter from Defendant to Plaintiff dated April 24, 2002.
- (f) Invoice from Sullivan Company dated August 1, 2000.
- (g) Invoice from Sullivan Company dated August 16, 2000.
- (h) Receipt from Lowe's Home Improvement Center for materials.
- (i) Receipt from J.A. Kohlhepp Sons, Inc. for materials.
- (j) Home Inspection Report from Minich Home Inspection.
- (k) Proof of Attorney's fees paid by Plaintiff.

3. Names and Addresses of Witnesses:

Joyce A. Higgins, Plaintiff 308 East Second Avenue DuBois, PA 15801	Liability and Damages
Joanne Quashnock, Realtor Coldwell Banker Developac Realty 998 Beaver Drive DuBois, PA 15801	Liability
DeLean Wagner 304 East Second Avenue DuBois, PA 15801	Liability

Mark Sullivan
Sullivan Company
P. O. Box 112
DuBois, PA 15801

Damages

Wayne L. Minich, Jr.
R. R. 1
Brookville, PA 15825

Liability/Rebuttal

4. Plaintiff's Theory of Recovery:

Plaintiff states that the seller/Defendant has violated the provisions of the Real Estate Seller's Disclosure Act, 68 P.S. §1021 et seq., and any case law relevant thereto.

5. Brief Description of Damages Claimed and Basis

Therefore:

The Plaintiff claims compensatory damages of \$4,500.00, this being the estimated cost to rectify the problem and taking into consideration Plaintiff's own time and materials and monies expended.

Punitive damages in an amount to be determined by the Court for Defendant's failure to disclose.

6. Evidentiary Problems:

No extraordinary evidentiary problems anticipated.

7. Stipulations Expected or Agreed Upon:

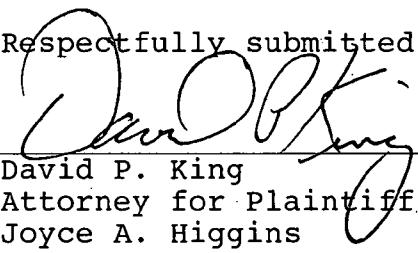
To be discussed at Pre-Trial.

8. Points for Charge: N/A

9. Estimated Time for Trial:

One to two days.

Respectfully submitted,


David P. King
Attorney for Plaintiff,
Joyce A. Higgins

Law Offices

DAVID P. KING
23 Beaver Drive
P.O. Box 1016
DuBois, PA 15801

David P. King, Esq.

(A)

Phone (814) 371-3760
Telecopier (814) 371-4874

January 10, 2003

David S. Meholick, Court Administrator
Forty-Sixth Judicial District of PA
Clearfield County Courthouse
230 East Market Street, Suite 228
Clearfield, PA 16830

Re: Joyce A. Higgins vs. Norma J. Hockman
No. 01-986-C.D.

Dear Mr. Meholick:

In reference to the above, please find enclosed the original of our Pre-Trial Memorandum for the up coming Pre-Trial with Judge Ammerman on Friday, January 17th.

We are simultaneously sending a copy to opposing Counsel.

Very truly yours,

David P. King

DPK:pp
Enclosure

cc: Toni M. Cherry, Esquire

RECEIVED

JAN 13 2003

COURT ADMINISTRATOR'S
OFFICE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOYCE A HIGGINS,

Plaintiff

vs.

NORMA J. HOCKMAN,

Defendant

: No. 01 - 986 C.D.

: Type of Pleading: DEFENDANT'S PRE-
: TRIAL MEMORANDUM

: Filed on Behalf of: NORMA J. HOCKMAN,
: Defendant

: Counsel of Record for this Party:

: TONI M. CHERRY, ESQ.
: Supreme Court No.: 30205

: GLEASON, CHERRY AND
: CHERRY, L.L.P.

: Attorneys at Law
: P. O. Box 505
: One North Franklin Street
: DuBois, PA 15801

: (814) 371-5800

RECEIVED

JAN 10 2003

COURT ADMINISTRATOR'S
OFFICE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOYCE A. HIGGINS, :
Plaintiff :
vs. : No. 01 - 986 C.D.
NORMA J. HOCKMAN, :
Defendant :
:

DEFENDANT'S PRE-TRIAL MEMORANDUM

1. Statement of Facts:

This matter comes before the Court on a Complaint filed by Plaintiff to recover damages from Defendant in the amount of \$4,500.00, being the cost to remove concrete from the Plaintiff's cellar and to otherwise waterproof the cellar.

Defendant, NORMA J. HOCKMAN, was the owner of an old Victorian-style home located at 308 East Second Avenue, DuBois, Pennsylvania. Defendant listed the property for sale in the Summer of 1999 and, as a result of such listing, the premises was sold to the Plaintiff, JOYCE A. HIGGINS, by deed dated October 6, 1999, and recorded on October 13, 1999, in the Offices of the Register and Reorder of Deeds of Clearfield County, Pennsylvania, as Instrument No. 199916968. At the time of the sale, Plaintiff had her own realtor.

Plaintiff brought this action against Defendant, NORMA J. HOCKMAN, to recover damages she allegedly incurred as a result of water collecting in the cellar of the home she purchased from Mrs. Hockman, asserting that Mrs. Hockman knew or should have known that there was a water problem in the cellar and that she either misrepresented the nature of the

problem or that she intentionally failed to disclose the same and that Plaintiff relied on that misrepresentation or silence in purchasing the premises, to her detriment. The amount of \$4,500.00 is the price that Plaintiff has been quoted to remodel the cellar and essentially waterproof it.

Defendant, NORMA J. HOCKMAN, contends that Plaintiff was advised of the condition of the cellar not only in the Seller's Property Disclosure Statement but in direct conversations held between Plaintiff and Defendant and through her own inspection of the premises.

The premises in question is an old house with 13 rooms of living area over a cellar. The first floor consists of a front parlor, rear parlor or living room, dining room, kitchen and huge entryway. The second floor boasts four bedrooms and there is a sun porch and attic over the entire structure as well as accompanying bathrooms. The cellar is made of cut stone walls with a cement floor and three bare lightbulbs in the ceiling. At the time of the sale, there were cracks in the floor as well as trenches or troughs dug in the cement floor to catch water and there were drains in the cellar floor in the area used for the laundry room as well as in the area by the back door. The walls of the cellar were whitewashed but had not been touched for at least 17 years. The cellar was used primarily for storage. At the time of the inspection by Plaintiff, prior to sale, there were bicycles and buckets on the floor but little else. There were weights on pallets, to keep them above the floor. Christmas candles were stored on a high shelf in the work room.

Plaintiff inspected the house a total of five times, one of which was with a contractor who went down to the cellar without Defendant accompanying him for several hours before

Plaintiff came back upstairs and Mrs. Hockman went down to the basement with her to meet the contractor.

During the second or third of Plaintiff's visits to the home, Ms. Higgins asked Mrs. Hockman, "Do you have a lot of water in the cellar?" Mrs. Hockman responded by advising Ms. Higgins that the cellar got a little bit of water in it when it rained.

The fifth time that Plaintiff inspected the house was during a walk-through which took place after Defendant had moved out of the house. There was nothing in the cellar at that time and nothing to have prevented Plaintiff from examining every inch of the cellar. This walk-through took place before the closing. At no time did Plaintiff ever indicate to Defendant that she wanted to make the cellar into additional living quarters. It was obvious that such a plan would require extensive renovation to a cellar that was intended merely for storage and which obviously had troughs cut into its floor to allow water to exit the structure.

The fact that the cellar took in water during a rain was apparent not only through an observation of the drains and the trenches or troughs cut into the floor but also because of the musty odor in the cellar noticeable immediately upon entering the same. Plaintiff herself admitted that there were water stains all over the floor of the cellar evidencing that water came in and out on a regular basis. Plaintiff has also admitted that there was mold on the walls of the basement—a further sign that water came into the cellar. An inspection of the cellar confirmed that it was not used as living quarters but merely for storage and to house the washer and dryer.

All of this was known to Plaintiff prior to the time that she closed the sale. In addition, Plaintiff had a house inspection performed and had a report from an inspector disclosing the condition of the cellar to her fully. She signed off after receiving that report and then

proceeded to close the sale. Consequently, Defendant maintains that she made full disclosure about the water condition to the Plaintiff and that Plaintiff had ample opportunity to inquire about the extent of the water that came into the cellar since there were physical signs throughout the cellar area that there was water collection which Defendant made no effort to hide and which were readily apparent to Plaintiff.

The first time that Defendant knew that Plaintiff had any complaints about the water in the cellar was by letter to Defendant from Plaintiff dated April 16, 2001, nearly a year and a half after the purchase was made.

2. List of Exhibits:

- (a) Seller's Property Disclosure Statement;
- (b) Agreement of Sale signed by Plaintiff and Defendant;
- (c) Realtor's report noting that buyer accepted the inspection report as of August 5, 1999;
- (d) Inspection Report;
- (e) True and correct copy of deed from Defendant to Plaintiff, dated October 6, 1999, and recorded on October 13, 1999, in the Offices of the Register and Recorder of Deeds of Clearfield County, Pennsylvania, as Instrument No. 199916968;
- (f) Photographs of the premises;
- (g) Any and all other evidence of the transaction that become known to Defendant prior to trial with proper notice thereof to Plaintiff;

(h) All documents disclosed to Defendant by Plaintiff through discovery requests, Answers to which are now overdue;

(i) Plaintiff's photographs previously disclosed to Defendant;

3. Witnesses to be Called on Behalf of the Defendant:

(a) Plaintiff, NORMA J. HOCKMAN, 505 East DuBois Avenue, DuBois, Pennsylvania 15801 - liability and damages;

(b) THOMAS HOCKMAN - 505 East DuBois Avenue, DuBois, Pennsylvania 15801 - liability and damages;

(c) TIMOTHY HOCKMAN - 327 Maurs Street, St. Marys, Pennsylvania 15857 - liability and damages;

(d) TERESA BALL, realtor - Howard Hanna Shippen Realty, 902 Beaver Drive, DuBois, Pennsylvania 15801 - liability;

(e) Any witnesses listed on Plaintiff's Pre-Trial Narrative.

(f) Defendant reserves the right to supplement the list of witnesses and to call additional witnesses with due notice in advance of trial to Plaintiff if any should become known to Defendant.

4. Statement of Legal Theory upon which Right of Defense is Predicated:

A seller's duty to disclose a defect in property arises when:

(a) The vendee does not know or have reason to know of the condition or the risk involved, and (b) The vendor knows or has reason to know of the condition, and realizes or should realize

the risk involved, and has reason to believe that the vendee will not discover the condition or realize the risk.

Section 353 of the Restatement, 2d Torts.

In the present case, the condition of the property was such that Plaintiff, JOYCE A. HIGGINS, had reason to know of the defect since it was so conspicuous. The cellar was unfinished and was constructed of cut stone walls with a cement floor. There were troughs dug out around the room so that the water which collected in the cellar could drain out. The floors were water stained and the walls were moldy. An inspection alone should have put Plaintiff, JOYCE A. HIGGINS, on notice of the defect and relieved Defendant, NORMA J. HOCKMAN, from any obligation to disclose anything to her.

However, Defendant did tell Plaintiff that water came into the cellar when it rained. There were drains in the floor and cracks in the floor that clearly indicated the age and condition of this premises. The area was used for storing items and there were pallets on the floor for the express purpose of keeping property off the floor so that it would not be damaged by water coming into the cellar. The cellar had a musty odor and Defendant had clearly disclosed that the walls got damp.

In Gozon v. Henderson-Dewey & Associates, Inc., 312 Pa.Super.Ct. 242, 458 A.2d 605 (1983), the purchasers brought an action against their vendors and the real estate agency seeking damages for losses they allegedly suffered because of defects in the house and pool they purchased, alleging that the named defendants misrepresented the condition of the house and pool to them. The pool had obvious defects and the purchasers were given an estimated figure for repairs. As it turned out, the cost of the repairs were far more than the estimated figure given to them by the realtor. In addition, the purchasers suffered leakage in the house.

There were signs that a problem had existed and upon inquiry, the purchasers were told it had been fixed. Lastly, the purchasers alleged that the floor vibrated as a result of a defective joist which they conceded was not serious.

The purchasers relied on the case of Quashnock v. Frost, 299 Pa.Super.Ct. 9, 445 A.2d 121 (1982) in bringing their claim for damages. However, the Superior Court held that the ruling of Quashnock would not control in the Gozen case since the facts were totally different. The Superior Court noted that:

In the recent case, Quashnock v. Frost, 299 Pa.Super. 9, 445 A.2d 121 (1982), our court was faced with the question of whether the vendor of real estate is liable for failing to disclose his knowledge of a termite infestation to an unknown purchaser. We answered the question affirmatively, under the facts of that case. We explained that in an earlier case, Glanski v. Ervine, 269 Pa.Super. 182, 409 A.2d 425 (1979), this court adopted the view that when there is a serious and dangerous latent defect known to exist by the seller, then he must disclose such defect to the unknowing buyer or suffer liability for his failure to do so. See *Id.* at 17-19, 445 A.2d at 125, 128. Gozen, 458 A.2d 605 at 607.

The Superior Court concluded that there was no allegation by the purchases that the problems were dangerous nor could the Court find them to be latent defects since there were obvious signs of the defects later complained of by the purchasers. Consequently, the Superior court found no duty on the part of the sellers or their agents to disclose a non-dangerous, unconcealed defect and affirmed the lower court order granting summary judgment to the sellers.

In the case at bar, the signs that water collected in the unfinished cellar were unconcealed. There were troughs dug out along the walls. The floors were water stained and

there was mold on the cut stone walls. Moreover, Plaintiff was told that the walls were damp and that water came into the cellar when it rained. The cellar had a musty odor and the objects in the cellar at the time of inspection revealed that the use of this room was for nothing more than storage and laundry. The water problem of which Plaintiff now complains was not a latent defect. It was so obvious an imperfection that it was a patent defect, relieving Defendant of any duty to disclose. This was an old home and cellars in old homes are not used for rec rooms or for family rooms. They are used as storage areas and water flows in and out, saving the upper floors from damage.

Plaintiff alleges that Defendant knew that the cellar was prone to flooding and failed to inform Plaintiff of the condition of the property. In other words, Plaintiff claims that Defendant acted to deceive her by suppressing the truth about a condition of the property. In order to recover in an action based on fraud, Plaintiff must prove all of the elements of fraud, which are as follows: "(1) A misrepresentation, (2) a fraudulent utterance thereof, (3) an intention by the maker that the recipient will thereby be induced to act, (4) justifiable reliance by the recipient upon the misrepresentation, and (5) damage to the recipient as a proximate result". (citations omitted) Delahanty v. First Pennsylvania Bank, N.A., 318 Pa.Super.Ct. 90, 464 A.2d 1243, 1253 (1983). Unless Plaintiff proves every single element of fraud by clear, precise and convincing evidence, there can be no recovery. See Snell v. Pennsylvania, 490 Pa. 277, 416 A.2d 5468, 470 (1980). Consequently, since Defendant made disclosure to Plaintiff, she was put on notice of the defect and it was her burden to further investigate the situation and to make inquiry as to the full extent of the defect if she so desired.

In the case at bar, Plaintiff was put on notice of the obvious defects in the house, not just through her own inspection but by disclosure of the Seller and Realtor. There is no evidence of any fraud to support a recovery on the part of the Plaintiff.

The facts of this case are nearly identical to the facts of the case of Coffee v. Srock, decided by the Court of Common Pleas of Clearfield County, Pennsylvania, to No. 87 - 764 C.D. That decision was appealed by the Plaintiff in that case and affirmed by the Superior Court. A copy of the Clearfield County Court's decision finding for the Defendant as well as the Superior Court's Order affirming the same is attached hereto and made a part of this Pre-Trial.

Plaintiff has asserted that she is entitled to recover against Defendant because Defendant has violated the Real Estate Seller Disclosure Act of 1996 found at 68 P.S. §1021, *et seq.* First of all, that Act has been repealed effective December 20, 2001. The appropriate law at this point is the Residential Real Estate Transfers Law of December 20, 2000, found at 68 Pa. C.S.A. §7101, *et seq.* That law defines a "material defect" as "a problem with a residential real property or any portion of it that would have a significant adverse impact on the value of the property or that involves an unreasonable risk to people on the property". Under that law, Plaintiff must prove that there was an undisclosed material defect that significantly decreased the value of the property she purchased. She cannot merely get damages to fix the cellar or to improve it to eliminate water coming into the cellar. Instead, she must prove that there has been a diminution in the value of the property as a result of some undisclosed material defect that she could not have discovered. Plaintiff must fail in this attempt not only because she cannot prove diminution in value but because she cannot show that the defect was hidden from

her. Instead, the evidence clearly shows that she had an inspection and that her inspector disclosed all of the information about the cellar to her prior to sale.

5. Brief Description of Damages:

Plaintiff claims damages in the amount of \$4,500.00 for expenses that she will incur in improving the property to eliminate the water in the cellar as well as interest from the date that she filed her claim. Defendant has counterclaimed for attorney's fees based on the frivolous nature of the suit.

As previously stated, the Residential Real Estate Transfers Law does not permit reimbursement of expenses. Instead, the measure of damages is based on a diminution in value of the structure. Plaintiff must show not only that a defect was hidden from her but also that the defect caused the value of the house to be far less than what she agreed to pay for it. Unless Plaintiff provides an appraisal that shows this amount, she cannot recover even if she is able to prove fraud. That she cannot do in light of the circumstances of this case.

6. Extraordinary Evidentiary Problems:

None.

7. Stipulations:

None.

8. Special Points for Charge:

There is no jury and thus, there are no special points for charge. However, the law governing this case is as follows:

(1) In order for Plaintiff to recover damages from the Defendant, she must prove by clear, precise and convincing evidence that Defendant knew of a serious and dangerous latent defect and knowingly failed to disclose such defect to the Plaintiff who could not, upon reasonable inspection, have observed the same. Glanski v. Ervine, 269 Pa.Super.Ct., 182, 409 A.2d 425 (1979).

(2) By clear, precise and convincing evidence, it is meant that the witnesses must be credible. They must distinctly remember the facts to which they testify, and narrate the details exactly, that the evidence is not only found to be credible, but of such weight and directness as to make out the facts alleged beyond a reasonable doubt; that the witnesses must be found to be credible, that the facts to which they testify are distinctly remembered and the details thereof narrated exacted and in due order, and that their testimony is so clear, direct, weighty and convincing as to enable you to come to a clear conviction without hesitancy, of the truth of the precise facts in issue. Delahanty v. First Pennsylvania Bank, N.A., 318 Pa.Super.Ct. 90, 464 A.2d 1243, 1253 (1983).

(3) If you find that there was evidence of the defects of which Plaintiff now complains which were fairly observable upon a reasonable inspection of the premises then you must find that the defects were not latent but were patent defects for which a duty to disclose does not exist. Gozen v. Henderson-Dewey & Associates, Inc., 458 A.2d 605 (1983).

(4) A person who makes a fraudulent misrepresentation of a material fact to another person is responsible for all injuries resulting from that other person's reliance on the fraudulent misrepresentation. In order for the plaintiff to recover against the defendant you must find (1) that the defendant made a misrepresentation to the plaintiff (2) that the misrepresentation made by the defendant to the plaintiff was fraudulent (3) that the misrepresentation was of a material fact (4) that the defendant intended that the plaintiff rely on the defendant's misrepresentation (5) that the plaintiff relied on the defendant's misrepresentation (6) that the plaintiff's reliance on the defendant's misrepresentation was a substantial factor in bringing about the harm suffered by the plaintiff.

(5) A misrepresentation is any assertion by words or conduct, which is not in accordance with the facts.

(6) A misrepresentation is fraudulent when the person making the misrepresentation (a) knows that it is untrue or (b) does not believe it is true or is indifferent as to whether it is true, or (c) by reason of a special circumstance has a duty to know whether it is true.

(7) A fact is material if it is one which would be of importance to a reasonable person in determining a choice of action. A material fact need not be the sole or even a substantial factor in inducing or influencing a reasonable person's decision. A fact is also material if the maker of the misrepresentation knows that the person to whom it is made is likely to regard it as important even though a reasonable person would not regard it as important.

Reliance means that a person would not have acted (or would not have failed to act) as he did unless he considered the misrepresentation to be true.

(8) If the Court finds that Plaintiff was aware of the water coming into the cellar, then Plaintiff cannot recover on the basis of fraudulent misrepresentation. Quashnock v. Frost, 445 A.2d 121 (1982); Gozen v. Henderson-Dewey & Associates, Inc., 458 A.2d 605 (1983).

(9) Plaintiff cannot recover under the Residential Real Estate Transfers Law because the defect is not material; Plaintiff was made aware of the condition of the cellar not only from Disclosure Statements but from a house inspection; and the water in the cellar does not diminish the value of the premises. 68 Pa. C.S.A. §7101, *et seq.*

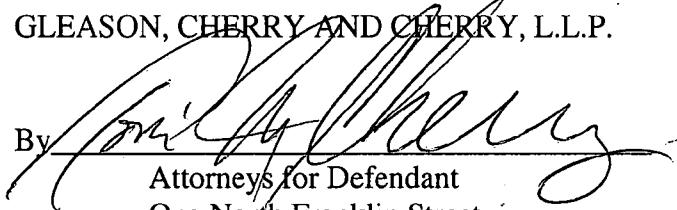
9. Estimated Time for Trial:

One (1) day.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By


Attorneys for Defendant
One North Franklin Street
P. O. Box 505
DuBois, PA 15801
(814) 371-5800

Dated: January 10, 2003

SUPERIOR COURT OF PENNSYLVANIA

PITTSBURGH DISTRICT

LOUISE COFFEE, AN INDIVIDUAL,

APPELLANT

v.

ORWIN W. SROCK AND LUCILLE A. SROCK,
HUSBAND AND WIFE

NO. 394 PITTSBURGH, 1989

ORDER

AND NOW, this 11TH day of DECEMBER , 1989, it is ordered as follows:

- Order affirmed.
- Order reversed.
- Judgment affirmed.
- Judgment of Sentence affirmed.
- Judgment of Sentence reversed.
- Order vacated and lower court directed to proceed in accordance with opinion filed herewith.
- Order modified as set forth in opinion filed herewith.
- Costs to be taxed as provided by Chapter 27 of the Pa.R.A.P.
- Costs to be taxed as provided in opinion filed herewith.
- Appeal quashed.

BY THE COURT

Eleanor R. Valecko
DEPUTY PROTHONOTARY

LOUISE COFFEE, AN INDIVIDUAL : IN THE SUPERIOR COURT OF
Appellant : PENNSYLVANIA
: :
v. : :
: :
ORWIN W. SROCK and : :
LUCILLE A. SROCK, HUSBAND AND WIFE : No. 394 Pittsburgh 1989

Appeal from the Judgment entered February
21, 1989 in the Court of Common Pleas of
Clearfield County, Civil No. 87-764-CD.

BEFORE: ROWLEY, MELINSON, and HOFFMAN, JJ.

MEMORANDUM:

FILED: DECEMBER 11, 1989

This is an appeal from the order of the Court of Common Pleas of Clearfield County entering judgment in favor of Orwin W. and Lucille A. Srock. The appellant, Louise Coffee, purchased real estate from the Srocks and later sought damages from them when the basement flooded. Coffee alleged that the Srocks were aware of substantial and material damages to the property and that they failed to disclose and/or intentionally concealed the basement's propensity to flood. The trial court held that Coffee had failed to prove that the Srocks had concealed a dangerous, latent defect. We affirm.

On appeal, Coffee raises one issue for our consideration, that is, whether the trial court erred in determining that Coffee failed to establish that the flooding of the basement was a latent defect that had been concealed by the Srocks.

Our standard of review is well established. The findings of a trial judge sitting without a jury carry the same weight as a jury verdict, and we may not disturb those findings absent an

error of law or an abuse of discretion. Ecksel v. Orleans Construction Co., 360 Pa.Super. 119, 519 A.2d 1021 (1987); Pato v. Chernuska, 342 Pa.Super. 609, 493 A.2d 758 (1985). When an appellate Court reviews the findings of the trial judge, the evidence is viewed in a light most favorable to the victorious party below and all the evidence and proper inferences favorable to that party must be taken as true and all unfavorable inferences rejected. Mancini v. Morrow, 312 Pa.Super. 192, 458 A.2d 580 (1983), quoting Brenna v. Nationwide Insurance Co., 294 Pa.Super. 564, 567-68, 440 A.2d 609, 611 (1982). Finally, issues of credibility are within the province of the fact finder. Melzer v. Witsberger, 505 Pa. 462, 480 A.2d 991 (1984).

We have independently reviewed the record, the briefs submitted by the parties, and the applicable law, and find that the learned trial judge has adequately and thoroughly addressed the issue raised on appeal in his well-reasoned opinion. We find no abuse of discretion in the trial judge's determination that Coffee failed to prove that the basement flooding was intentionally concealed and not discoverable by visual inspection or that the Srocks knowingly made any false misrepresentations. Hence, we affirm and adopt the the opinion of the trial court.

Judgment affirmed.

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

- LOUISE COFFEE, :
an individual :
: :
-vs- : :
ORWIN W. SROCK and :
LUCILLE A. SROCK, :
husband and wife :
:

: No. 87 - 764 - CD

MEMORANDUM AND ORDER

Plaintiff above-named purchased real estate owned by Orwin and Lucille Srock on July 3, 1985. Prior to sale, Plaintiff had opportunities to inspect the premises on three separate occasions and had, in fact, been living in the property for the two weeks immediately prior to the closing of the sale. Following the sale, Plaintiff alleges that due to flooding of the basement on 14 separate occasions she has suffered a loss and seeks to recover damages in the amount of \$5,522.65 (n.t. 66). Plaintiff's claim is based on her theory that where a serious and dangerous latent defect on the premises is known to exist by the seller, he must disclose said defect to the unknowing buyer or suffer liability for his failure to do so. Quashnock v. Frost, 299 Pa. Super. 9,445 A.2d 121 (1982); Glanski v. Ervine, 269 Pa. Super. 182, 409 A.2d 425 (1979); and Long v. Brownstone Real Estate Co., 335 Pa. Super. Ct. 268, 484 A.2d 126 (1984).

As the Superior Court stated in Quashnock, supra.:

"Fraud arises when the misrepresentation is knowingly false where there is any intentional concealment calculated to deceive or where there is a non-privileged failure to disclose."

Plaintiff obviously has the burden of proving her claim by the fair weight or preponderance of the evidence and in support thereof testified that the Defendant, Orwin Srock, had told her that the basement was damp (n.t. 6), that she had inspected the premises on three separate occasions and had noticed the trenches in the basement floor which were about 4 inches wide and an inch and a half to 2 inches deep and that these trenches ran along the entire edge of the basement (n.t. 12), that the trenches and the drain in the basement were pointed out to her by Mr. Srock (n.t. 13), that she was not prevented from making a full inspection of the premises (n.t. 25), but that she was not sufficiently concerned to seek further professional examination or advice. She states that the flooding after the purchase took her completely unaware and required that she expend the amount of money claimed.

The Defendant, Orwin Srock, testified that he did, in fact, tell Plaintiff about the water in the basement, that trenches ran in the basement and that she should be careful not to let the drain get plugged up and further that she should not put anything of value down there and that she should keep electrical tools off the floor (n.t. 89). The realtor who handled the sale, Ms. Barbara Harrier, testified that she pointed out the trenches in the basement and that they were there to take water out of the basement (n.t. 132-133) and that she heard Defendant, Orwin Srock, tell the Plaintiff that she should keep her stuff up in the storage area so it didn't get wet (n.t. 150).

Based on the testimony in this case, this Court cannot determine by the fair weight or preponderance of evidence that Defendant made any knowingly false misrepresentation to the Plaintiff, that there was any intentional concealment of any defect calculated to deceive Plaintiff or that it was a non-privileged failure to disclose a defect. In the instant case, Plaintiff was clearly made aware of the existence of water, to some degree, in the basement of the premises and chose not to inspect further what was at the very least a known defect. The transcript indicates that nowhere did Defendant make any false statements as to the existence of the water and indeed, according to his unrebuted testimony, only on one isolated instance during the course of his ownership did the water ever exceed $\frac{1}{4}$ of an inch. This Court, therefore, can only conclude that the Plaintiff has failed to carry her burden of proof. In view of the foregoing, this Court will not address the liability of the Defendant, Lucille Srock, and will enter the following:

O R D E R

NOW, this 9th day of November, 1988, following hearing, it is the ORDER of this Court that judgment be and is hereby entered in favor of Defendants, Orwin and Lucille Srock.

By the Court,

/s/ John K. Reilly, Jr.

President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

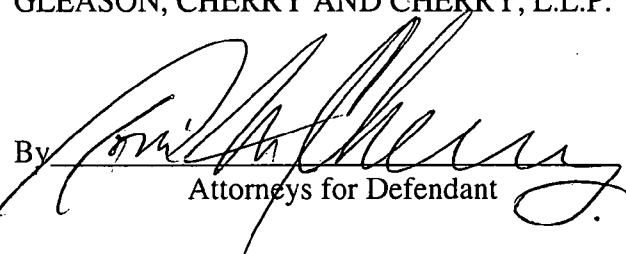
JOYCE A. HIGGINS, :
Plaintiff :
vs. : No. 01 - 986 C.D.
NORMA J. HOCKMAN, :
Defendant :
:

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of January, 2003, a true and correct copy of Defendant's Pre-Trial Memorandum was served upon DAVID P. KING, ESQ., counsel for Plaintiff, by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

DAVID P. KING, ESQ.
Attorney at Law
P. O. Box 1016
DuBois, PA 15801

GLEASON, CHERRY AND CHERRY, L.L.P.

By 
Attorneys for Defendant

Dated: January 10, 2003

(A)

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JAMES A. GLEASON
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AREA CODE 814
371-5800
FAX NUMBER
(814) 371-0936

January 10, 2003

Ms. Marcy Kelley
Deputy Court Administrator
Office of the Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830

RE: **JOYCE A. HIGGINS vs.**
NORMA J. HOCKMAN
No. 01 - 986 C.D.

Dear Ms. Kelley:

We are enclosing herewith Defendant's Pre-Trial Memorandum in the above-captioned case.

By copy of this letter, we are forwarding this date a true and correct copy of Defendant's Pre-Trial Memorandum to David P. King, Esq., counsel for Plaintiff.

Thanking you for your kind attention to this matter, we remain

Very truly yours,

GLEASON, CHERRY AND CHERRY, L.L.P.

By

Toni M. Cherry

TMC:mls

RECEIVED

JAN 10 2003

Enclosure

COURT ADMINISTRATOR'S
OFFICE

cc/w.enc.: David P. King, Esq.
Mrs. Norma J. Hockman