

01-1084-CD
Kelly Foods vs C.B. Tracy & Assoc.



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

KELLY FOODS, INC. d/b/a CLEARFIELD : No. 2001- 1084-CD
COUNTY MARKET, :
Plaintiff : Type of Case:
vs. : CIVIL
C.B. TRACY & ASSOCIATES, INC., : Type of Pleading:
Defendant : COMPLAINT
: Filed on Behalf of:
: PLAINTIFF
:
: Attorney for this party:
: Peter F. Smith, Esquire
: Supreme Court No. 34291
: 30 South Second Street
: P.O. Box 130
: Clearfield, PA 16830
: (814) 765-5595

FILED

JUL 06 2001

William A. Shaw
Prothonotary

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

KELLY FOODS, INC. d/b/a CLEARFIELD :
COUNTY MARKET, :
Plaintiff :
: :
vs. : No. 2001-
: :
C.B. TRACY & ASSOCIATES, INC., :
Defendant :
:

NOTICE TO DEFEND

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

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

Clearfield County Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814) 765-2641

AMERICANS WITH DISABILITIES ACT OF 1990

The Court of Common Pleas of Clearfield County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the Court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the Court. You must attend the scheduled conference or hearing.

Clearfield County Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814) 765-2641

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

KELLY FOODS, INC. d/b/a CLEARFIELD:

COUNTY MARKET,

Plaintiff :

No. 2001-

C.B. TRACY & ASSOCIATES, INC.,

COMPLAINT

COMES NOW, KELLY FOODS, INC. d/b/a CLEARFIELD COUNTY MARKET, by its attorney, Peter F. Smith, which avers in support of the complaint:

1. The name of the Plaintiff is **KELLY FOODS, INC. d/b/a CLEARFIELD COUNTY MARKET**, which is a Pennsylvania business corporation with address of P.O. Box 567, Clearfield, PA 16830.

2. The name of the Defendant is **C.B. TRACY & ASSOCIATES, INC.**, which is believed to be a Pennsylvania business corporation with address at 506 Pellis Road, Greensburg, PA 15601.

3. The Defendant is an insurance agency.

4. For several years Plaintiff purchased various policies of insurance to cover its supermarket in Lawrence Township, Clearfield County, Pennsylvania from the Defendant.

5. Plaintiff sold its assets to an unrelated third party in early November 2000.

6. On November 5, 2000 Susan Kelly, who was an officer of Plaintiff, contacted Gary Helman, who was employed as Defendant's account representative with Plaintiff and advised him to cancel all coverage's as of November 5, 2000.

7. Plaintiff and Defendant had established a custom of making changes or cancellations of various insurance policies or coverage's during their years of business verbally by phone. In the past, Defendant made these changes effective for an entire month if it received notice by the tenth of the month.

8. Plaintiff has made verbal and written demand upon the Defendant to refund Plaintiff's premiums for the month of November 2000, but Plaintiff without excuse has failed to refund these amounts.

9. Plaintiff attaches to and incorporates herein by reference as Plaintiff's Exhibit 1 a true and correct invoice submitted to it by Defendant for various types of insurance on Plaintiff's former employees for the period commencing November 1, 2000.

10. Plaintiff paid Defendant Eleven Thousand Five Hundred Ninety Five Dollars and Sixty-Five (\$11,595.65) Cents, the invoiced amount for said coverage. A true and correct copy of both sides of said check is attached hereto and incorporated herein by reference as Plaintiff's Exhibit 2.

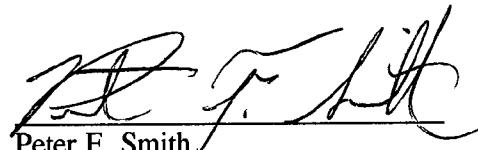
11. Attached hereto and incorporated herein by reference as Plaintiffs Exhibit 3 is a letter dated May 8, 2001 by Thomas K. Kelly, Plaintiff's President, to Gary (Helman) at Defendant's business address requesting the refund at issue.

12. Defendant has complete copies of the insurance policies, binders and other documentation representing the insurance coverage's listed on the November 1, 2000 invoice. Therefore copies are not attached to the complaint.

WHEREFORE, Plaintiff prays this Honorable Court to enter judgment in its favor and against the Defendant in the amount of \$11,595.65 together with interest from November 5th and court costs.

Respectfully submitted,

Dated: 6-20-01



Peter F. Smith
Attorney for Plaintiff

Employee Name	Change Date	Health Class	Wk Life/Add	LTD Amount	Hosp Amount	Drug Amount	Dent Amount	Vision Amount	Retiree Amount	Employee Amount	Total Amount
17800 Clearfield County Market											
Employee Detail and Adjustment Billing											
Kelly, Sr, Thomas K	OWN	49.00		426.35	78.43	31.50	6.50				591.78
Hiltbrand, Donna L	MG	4.90		150.52	28.22	11.50	2.20				197.34
Kelly, Susan K	MG	4.90									4.90
Tkach, Todd A	FT	2.45		426.35	78.43	31.50	6.50				547.68
Dudak, Michael E	FT	2.45		150.52	28.22	11.50	2.20				194.89
Franson, Carolyn I	FT	2.45		426.35	78.43	31.50	6.50				545.23
Michaels, Cindy L	FT	2.45		381.97	73.36	31.50	6.50				495.78
Reiter III, William J	FT	2.45		426.35	78.43	31.50	6.50				545.23
Springola, Bridget M	FT	2.45		426.35	78.43	31.50	6.50				545.23
Behel, Pamela	MG	4.90									
Billore, Edmund	MG	4.90		150.52	28.22	11.50	2.20				197.34
Cable, Dennis L	MG	4.90		381.97	73.36	31.50	6.50				498.23
Thompson, Todd	CH 8/31/2000	MG	4.90	381.97	73.36	31.50	6.50				498.23
Thurman, Joseph J	MG	4.90		150.52	28.22	11.50	2.20				197.34
Weaver, Ronald	MG	4.90		381.97	73.36	31.50	6.50				498.23
Farns, Rosemarie	FT	2.45		150.52	28.22	11.50	2.20				194.89
Green, Juan	FT	2.45		381.97	73.36	31.50	6.50				495.78
Guthier, Jimmie J	FT	2.45		150.52	28.22	11.50	2.20				194.89
Heaton, Scott M	FT	2.45		150.52	28.22	11.50	2.20				194.89
Collins, Gloria J	PT	2.45		150.52	28.22	11.50	2.20				194.89
Farmerly, Sherri	PT	2.45		150.52	28.22	11.50	2.20				194.89
Meek, Dorothy L	PT	2.45		150.52	28.22	11.50	2.20				194.89
Ogden, Barbara A	PT	2.45		150.52	28.22	11.50	2.20				194.89
Parks, Karen L	PT	2.45		150.52	28.22	11.50	2.20				194.89
Quinn, Joyce R	PT	2.45		150.52	28.22	11.50	2.20				194.89
Renard, Sonya L	PT	2.45		150.52	28.22	11.50	2.20				194.89
Wiser, Cora E	PT	2.45		426.35	78.43	31.50	6.50				545.23
Bachter, Gary	PT	2.45		150.52	28.22	11.50	2.20				194.89
Buck, Judy	PT	2.45		150.52	28.22	11.50	2.20				194.89
Buck, Tina	PT	2.45		150.52	28.22	11.50	2.20				194.89
Butler, Kenneth L	PT	2.45		150.52	28.22	11.50	2.20				194.89
Gillingham, Judith	PT	2.45		150.52	28.22	11.50	2.20				194.89

**Client: 10602 Affiliated Retail Outlets/SNS
17800 Clearfield County Market**

INVOCATION

Invoice Number: I38488

Employee Name	Date	Change	Health	WT	LTD	Hosp	Drug	Dent	Vision	Retiree	Employee	Total
			Date	Class	Life/Add	Amount	Amount	Amount	Amount	Amount	Amount	Amount
Larson, Billie J		PT				150.52	28.22	11.50	2.20			194.89
Lope, Phillip		PT				150.52	28.22	11.50	2.20			194.89
Maines, Lacy		PT				150.52	28.22	11.50	2.20			193.67
McCourds, Penny		PT				150.52	28.22	11.50	2.20			194.89
Patterson, Melissa L		PT				150.52	28.22	11.50	2.20			194.89
Ross, Donald		PT				150.52	28.22	11.50	2.20			194.89
Stummel, Tia		PT				150.52	28.22	11.50	2.20			194.89
Shirey, Bobbi		PT				150.52	28.22	11.50	2.20			194.89
Stoele, David		PT				150.52	28.22	11.50	2.20			194.89
Barrett, Brent N	TE 9/24/2000	PT				426.33-	78.43-	31.50-	6.50-			545.23-
Thompson, Todd	DR 8/31/2000	MG				462.90	90.28	49.00	8.60			601.78
King, Sarah	TE 8/13/2000	PT				441.06-	82.69-	31.25-	6.60-			570.95-
Pannchaker, Bryan	TE 10/01/2000	PT				150.52-	28.22-	11.50-	2.20-			194.89-
Wiser, Robert	TE 8/01/2000	PT				7.35-		33.25-	6.60-			47.20-

INVOICE

Invoice Number: 13848

*****IMPORTANT*****

Federal Law Requires COBRA offering within 14 days of Qualifying Event.

Is Any New Employee eligible for benefits?

Has anyone terminated employment?

Is anyone off work due to accident or illness?

Is anyone on workers compensation?

Has anyone returned to work following medical leave or workers compensation leave?

Change Code explanation:

DR - Debit CR - Credit
CH - Change AD - Addition
TE - Termination RE - Reinstate

All adjustments (CR, DR, TE) will appear on the bottom of the bill for each employee with retro activity

Invoice Total Summary

Life Amount/Count:	147.01	41	WT Amount/Count:	0.00	0	Hospital Amount/Count:	8,402.31	39
ADD Amount/Count:	6.00	41	LTD Amount/Count:	0.00	0	Prescription Amount/Count:	1,578.69	39
Total Life/ADD Amount:	147.01		Retiree Life Amount/Count:	0.00	0	Dental Amount/Count:	6,192.68	39
Employee Amount/Count:			Vision Amount/Count:			124.19	39	
000	619.00	39						
H08	8,403.31	39						
P08	1,578.69	39						
V00	124.19	39						

STORE COPY

NOT AN INVOICE

Payable: C. B. Tracy & Associates, Inc.

506 Pettis Road
Greensburg, PA 15601

Invoice Amount: 10,872.11
Service Fee: 521.87

Invoice Amount Past Due: 6.00

Total Invoice Amount Due By: October 31, 2000 11,393.98

Total Due After: October 31, 2000 11,621.86

Please do not adjust — pay as rendered
2% late fee charge on past due balances...

Clearfield County Market

Kelly Foods, Inc.
P.O. Box 567
Clearfield, PA 16830

NBOC Bank
Clearfield, PA 16830

PAY *Eleven Thousand Five Hundred Ninety Five AND 65/100*

TO THE ORDER OF **C B TRACY & ASSOC., INC.**
OF **506 PELLIS RD**
GREENSBURG PA 15601-4656

Check No. 17589
Date 10/21/2000

\$ ***11,595.65

James X. Kelly, Jr.

0001659565

0007888 6"

ENDORSE HERE **PAY TO THE ORDER OF**
X S & T BANK
FOR DEPOSIT ONLY
C B TRACY & ASSOCIATES INC.
D ACCOUNT
3000489926

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
RESERVED FOR INSTITUTION USE

► OCT 2000 1000
► OCT 2000 1000
► OCT 2000 1000
► OCT 2000 1000

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Thomas K.Kelly
P.O.Box 567
Clearfield, Pa. 16830

May 8, 2001

C.B.Tracy & Associates Inc.
506 Pellis Road
Greensburg, Pa 15601

Dear Gary,

I am inquiring to find out when I can expect repayment for the November insurance premium which you received from Clearfield County Market and was advised by Telephone conversation from Sue to you to cut all employee benefits as of Nov 5, 2000.

I have dealt with C.B.Tracy for over 20 years and think that this matter should be taken care of immediately. We were never late on payments and I think that you should treat us in the same matter.

I have a very good rapor with many fellow Retailers and would not want to have to relay the information to them as to how I have been treated. If I do not receive reimbursement by 5-20-01 Then I will be forced to contact these Retailers and relay the message. Also after 5-20-01 I will turn this matter over to my Attorneys and ask for cost and interest on the moneys due back to us in November 2000.

I have been a good customer and should not have to take these steps to get repaid.

Looking for a quick reply,

Thomas K.Kelly

AFFIDAVIT

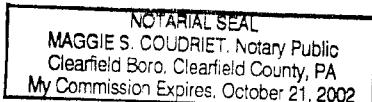
STATE OF PENNSYLVANIA :
: SS
COUNTY OF CLEARFIELD :

THOMAS K. KELLY, being duly sworn according to law, deposes and says that he is the President for KELLY FOODS, INC. d/b/a CLEARFIELD COUNTY MARKET, and, as such, is duly authorized to make this Affidavit, and further, that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

Thomas K. Kelly, Pres.
Thomas K. Kelly
President

SWORN TO AND SUBSCRIBED
before me this 20th
day of June, 2001.

Maggie S. Coudriet
Notary Public



3 CERT TO ATTY

80--
Prothonotary
William A. Shew
0/1105/001
JUL 06 2001

FILED

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

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11203

KELLY FOODS, INC. d/b/a CLEARFIELD COUNTY MARKET

01-1084-CD

VS.

C.B. TRACY & ASSOCIATES, INC.

COMPLAINT

SHERIFF RETURNS

NOW JULY 6, 2001, CHRIS SCHERER, SHERIFF OF WESTMORELAND COUNTY
WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY
TO SERVE THE WITHIN COMPLAINT ON C.B. TRACY & ASSOCIATES INC.,
DEFENDANT.

NOW JULY 12, 2001 SERVED THE WITHIN COMPLAINT ON C.B. TRACY &
ASSOCIATES INC., DEFENDANT BY DEPUTIZING THE SHERIFF OF WESTMORELAND
COUNTY. THE RETURN OF SHERIFF SCHERER IS HERETO ATTACHED AND
MADE A PART OF THIS RETURN STATING THAT HE SERVED GARY HELMAN,
PRES./CEO

Return Costs

Cost	Description
27.89	SHFF. HAWKINS PAID BY: PLFF.
29.30	SHFF. SCHERER PAID BY: PLFF.
10.00	SURCHARGE PAID BY: PLFF.
<u>67.19</u>	

FILED
O/A/2001
JUL 31 2001
E
William A. Shaw
Prothonotary

Sworn to Before Me This

31st Day Of July 2001,
Chester A. Hawkins

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

So Answers,

Chester A. Hawkins
Sig: Marilyn Harry
Chester A. Hawkins
Sheriff

10.

CHRIS SCHERER, SHERIFF OF WESTMORELAND COUNTY
 2 NORTH MAIN STREET
 GREENSBURG, PA 15601
 (724) 830-3457 FAX (724) 830-3660

LAST DAY TO SERVE: 8-05-01

PLAINTIFF: Kelly Foods Inc. dba Clearfield County Market
 vs.

DEFT(S): C.B. Tracy + ASSOCIATES, Inc.

SERVE: C.B. Tracy + ASSOCIATES, Inc.
 (DEFT (S)/GARNISHEE)

ADDRESS: 5010 Pellis Road

Greensburg, PA 15601

INDICATE TYPE OF SERVICE:

PERSON IN CHARGE PERSONAL ONLY DEPUTIZE
 CERT. MAIL POST OTHER
 SEIZE & STORE

SHERIFF'S OFFICE USE ONLY

I hereby CERTIFY and RETURN that on the 1241 day of JULY, 2001, at
930 O'clock, A.M./P.M. Address Above/Address Below, County of Westmoreland, Pennsylvania

I have served in the manner Described below:

Defendant(s) personally served.
 Adult in charge of Defendant's residence at time of serve (name & relationship)
 Manager/other person authorized to accept GARY Heiman - PRES/CEO
 Agent or person in charge of Defendant(s) office or usual place of business.
 Other _____
 Property Posted _____

Defendant not found because: Moved Unknown No Answer Vacant Other _____

Certified Mail _____ 1st Class Mail _____ Ordinary Mail/Certificate of Mailing _____

ATTEMPTS _____ / _____ / _____ / _____ / _____

DEPUTY SHAREK

Westmoreland County Costs	DS/Notary	Deputized County Costs	Costs Due	Refund	Total Costs (West. Co. Only)
\$ <u>27.30</u>	\$ <u>2.00</u>	\$ _____	\$ _____	\$ _____	\$ <u>29.30</u>

NOW: _____ 20 I, SHERIFF OF WESTMORELAND COUNTY, PA do hereby depelize the Sheriff of
 County to execute this Writ and make return thereof according to law.
 Mary Ann Jordan, Notary Public
 Greensburg, Westmoreland County
 My Commission Expires June 14, 2004

CK# _____ \$ _____

SHERIFF

AFFIRMED and subscribed to before me this

10 Day of JULY 20 01

Mary Ann Jordan
 Notary Public/Prothonotary
 Prothonotary (White Copy)

Attorney (Canary Copy)

Signature of Sheriff (Westmoreland County)

Sheriff (Pink Copy)

Deputized Sheriff (Gold Copy)

DATE 07.10.01
 RECEIPT 8032
 PAGE 88

CASE NO. 01-1084-C1
Clearfield County

SUMMONS
 SEIZURE OR POSSESSION
 NOTICE/COMPLAINT (1)
 REVIVAL OR SCI FA
 INTERROGATORIES
 EXECUTION, GARNISHEE
 HANDBILL
 NOTICE OF SALE/DEBTORS RIGHT
 OTHER
 LETTER MAILED

ATTY: Peter Smith

ADDRESS: 30 S. Second St.
P.O. Box 130 Clearfield, PA

PHONE: 814-765-5595 10830

DATE: _____

Deputized Sheriff _____ Date _____
 7-13-01 Date _____



Sheriff's Office Clearfield County

OFFICE (814) 765-2641
AFTER 4:00 P.M. (814) 765-1533
CLEARFIELD COUNTY FAX
(814) 765-5915

CHESTER A. HAWKINS
SHERIFF

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

DARLENE SHULTZ
CHIEF DEPUTY
MARGARET PUTT
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK
PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KELLY FOODS INC. d/b/a

SERVE BY: 8/5/01

VS:

or
HEARING DATE:

C.B. TRACY & ASSOCIATES INC

TERM & NO.: 01-1084-CD

DOCUMENT TO BE SERVED:
COMPLAINT

SERVE: C.B. TRACY & ASSOCIATES INC

ADDRESS: 506 Pellis Road, Greensburg, Pa.15601

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby depelize the SHERIFF of WESTMORELAND County Pennsylvania to execute this writ.

This Deputation being made at the request and risk of the Plaintiff this 6th day of JULY 2001.

MAKE REFUND PAYABLE TO: THOMAS K. KELLY SR.

Respectfully,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY

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

CERTIFIED TRUE AND CORRECT COPY

ATTONEY FOR

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

KELLY FOODS, INC. d/b/a CLEARFIELD :
COUNTY MARKET, :
Plaintiff :
vs. :
No. 2001-1084-CD
C.B. TRACY & ASSOCIATES, INC., :
Defendant :
:

PRAECIPE TO DISCONTINUE

TO: William A. Shaw, Prothonotary

Dear Sir:

On behalf of the Plaintiff in the above captioned matter, please mark the docket
"DISCONTINUED."

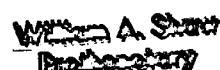
Respectfully submitted,


Peter F. Smith, Esquire
Attorney for Plaintiff

Date: August 10, 2001

FILED

AUG 14 2001


William A. Shaw
Prothonotary

FILED NO AC
O 16:53 AM
AUG 14 2001
Atty Smith
William A. Shaw Copy to C/A
Prothonotary

RECEIVED

COPY

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

CIVIL DIVISION

**Kelly Foods, Inc.
Clearfield County Market**

Vs. **No. 2001-01084-CD**
C. B. Tracy & Associates, Inc.

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on August 14, 2001 marked:

Discontinued

Record costs in the sum of \$147.19 have been paid in full by Attorney and Plaintiff.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 14th day of August A.D. 2001.

William A. Shaw, Prothonotary