

01-1920-CD  
S. REED JOHNSON -vs- DAVID J. COLLETT

Date: 09/30/2004

Clearfield County Court of Common Pleas

User: BANDERSON

Time: 10:23 AM

ROA Report

Page 1 of 1

Case: 2001-01920-CD

Current Judge: Paul E. Cherry

S. Reed Johnson vs. David J. Collett

Civil Other

Date		Judge
11/26/2001	Filing: Civil Complaint Paid by: Neiswender, Frederick M. (attorney for Johnson, S Reed) Receipt number: 1834520 Dated: 11/26/2001 Amount: \$80.00 (Check) Three CC Attorney Neiswender	No Judge ✓
01/11/2002	Answer and New Matter. Filed by s/George A. Baillie, Esq. Verification s/David J. Collett Cert of Svc 2 cc to Atty	No Judge ✓
02/14/2002	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge ✓
04/26/2002	Reply to New Matter. Filed by s/Frederick M. Neiswender, Esq. Verification s/S. Reed Johnson Certificate of Service 3 cc Atty Neiswender	No Judge ✓
09/25/2003	Certificate of Readiness, filed by s/Frederick M. Neiswender, Esq. Two CC Attorney Neiswender	No Judge ✓
01/07/2004	Motion to Strike Arbitration and List Case for Trial, filed by s/Frederick M. Neiswender, Esq. Three CC Atty	No Judge ✓
01/09/2004	ORDER, NOW, this 9th day of January, 2004, re: Arbitration scheduled in this matter for January 15, 2004, is hereby CANCELLED. The Court Administrator is directed to place this case on the civil trial list for the next available term. by the Court, s/FJA, P.J. 1 cc Atty Neiswender, Baillie	No Judge ✓
04/15/2004	ORDER, AND NOW, this 15th day of April, 2004, re: Pre-Trial Conference is hereby CONTINUED until the next term of Court. No further continuances shall be granted. by the Court, s/PEC, J. 1 cc David Collett, 2 cc Atty Neiswender	Paul E. Cherry ✓
08/19/2004	ORDER, AND NOW, this 16th day of August, 2004, following Pre-Trial Conference, it is the ORDER of this Court: 1. Non-Jury Trial scheduled for October 7, 2004 at 9:00 a.m. (See original for Verdict Slip details) By the Court, Paul E. Cherry, 1 cc Atty Neiswender; 1 cc Def (16 Wood Street, Burgettstown, PA 15021)	Paul E. Cherry ✓

operates a rail freight transportation system with track in 20 states in the Eastern, Midwestern and Southern portions of the United States, including track in Clearfield County, Pennsylvania. Currently, and at all times material, CSX Corp. has and has had its principal offices on Charles Street in Baltimore, Maryland. For further details concerning ~~the business~~ and operations of the defendant CSX, the Court is referred to page 424 of Moody's Transportation Manual for 1996, a true and correct copy of which is Exhibit "C" to this Complaint.

7. From the inception of the Clearfield & Mahoning, and at least until recently, the right of way, tracks and other property of the Clearfield & Mahoning were leased to the BR&P for the term of its corporate existence on terms which included guarantees of dividends of 6% per annum on the \$50 par value stock of the Clearfield & Mahoning (hereinafter "the Lease"). (Exhibit D to this Complaint is a photocopy of that Lease from the defendants CSX and the Clearfield & Mahoning, which also includes provisions requiring the lessee to maintain all of the property leased as well as the expenses of maintaining the Clearfield & Mahoning's corporate existence).

8. The defendant Buffalo & Pittsburgh Railroad, Inc. (hereinafter the "B&P") is a Pennsylvania corporation with its office in Punxatawney, Pennsylvania, which, according to a letter to plaintiffs' counsel of February 19, 1997 (Exhibit "E" to this Complaint) from the Vice President and Corporate Secretary of the CSX, purchased the Lease from BR&P as of October 7, 1991.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL ACTION – EQUITY)

S. REED JOHNSON,

Plaintiff,

vs.

DAVID J. COLLETT,

Defendant.

No. 01 - 1920 - C.D.

Type of case: Civil Action (Equity)

Type of pleading: Complaint

Filed on behalf of: Plaintiff,  
S. Reed Johnson

Counsel for Plaintiff:  
Frederick M. Neiswender, Esquire  
Supreme Court No. 74456  
501 East Market Street, Suite 3  
Clearfield, Pennsylvania 16830  
(814) 765-6500

**FILED**

NOV 26 2001

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL ACTION – EQUITY)

S. REED JOHNSON,	:	
Plaintiff,	:	
	:	
vs.	:	No. 01 - - C.D.
	:	
DAVID J. COLLETT,	:	
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 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  
1 North Second Street  
Clearfield, Pennsylvania 16830  
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL ACTION – EQUITY)

S. REED JOHNSON,	:	
Plaintiff,	:	
	:	
vs.	:	No. 01 - - C.D.
	:	
DAVID J. COLLETT,	:	
Defendant.	:	

**COMPLAINT**

AND NOW, comes the Plaintiff, S. REED JOHNSON, by and through his attorney, FREDERICK M. NEISWENDER, ESQUIRE, and files this Complaint against the Defendant, DAVID J. COLLETT, on a cause of action upon which the following is a statement:

1. Plaintiff, S. REED JOHNSON, is an adult individual residing at RD 2, Box 93, Clearfield, Clearfield County, Pennsylvania 16830.
2. Defendant, DAVID J. COLLETT, is an adult individual residing at 16 Wood Street, Burgettstown, Washington County, Pennsylvania 15021.
3. On April 28, 2001, the Defendant was, and still is, the owner of the premises known as Camp #9-C-450, along Dieble Road, in Benezette Township, Elk County, Pennsylvania.
4. The property is more fully described as a camp situated within Commonwealth of Pennsylvania Game Lands on a plot leased from the Department of Conservation and Natural Resources. *A true and correct copy of the Notice sent to the Elk County Assessment Office is attached as Exhibit "A".*
5. On or about the above mentioned April 28, 2001, the Plaintiff herein entered into a written agreement for the purchase of the aforesaid structure and assignment of the lease from

the Defendant for the price of Ten Thousand Five Hundred Dollars (\$10,500.00), of which Five Hundred Dollars (\$500.00) was paid on account upon the execution of the agreement and the balance of Ten Thousand Dollars (\$10,000.00) was to be paid at a settlement which was to take place within sixty (60) days from the date of the agreement. *A true and correct copy of the agreement is attached as Exhibit "B".*

6. On or about May 3, 2001, the Defendant returned Plaintiff's check marking it "Void". *A true and correct copy of the check is attached as Exhibit "C".*

7. On or about May 21, 2001, the Plaintiff, by his then attorney, William A. Shaw, Jr., fearing the Defendant would breach the agreement, presented a letter to the Defendant giving him the opportunity to abide by the terms of the sales agreement. *A true and correct copy of the letter is attached as Exhibit "D".*

8. The Defendant responded by letter from his attorney George A. Baillie, stating that he would not abide by the terms of the agreement and declaring the agreement null and void. *A true and correct copy of the letter is attached as Exhibit "E".*

9. The Plaintiff was and still is ready, willing, and able to make settlement and complete the purchase in accordance with the terms of the said agreement of purchase, but the Defendant has refused and still refuses to carry out the agreement of the purchase or to sign, execute, and deliver the appropriate documents to transfer the premises.

10. The Plaintiff is entitled to the value of the agreement, and especially since, in view of the present real estate market, it is impossible for the Plaintiff to secure another property in that vicinity at or near the price agreed upon. Plaintiff, therefore, charges that no damages at law can adequately compensate him for the Defendant's breach of said contract or agreement, and that he is entitled to have specific performance thereof.

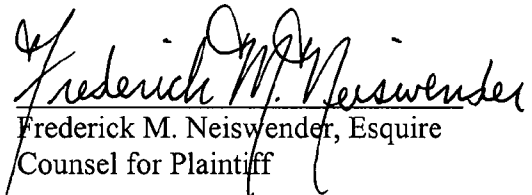
WHEREFORE, Plaintiff needs equitable relief, and prays that your Honorable Court may decree and direct:

FIRST. That pending the hearing on this Complaint, the Defendant, David J. Collett, be specially, and on final hearing be perpetually, enjoined from mortgaging or encumbering said property in any way, or from selling or conveying the same or any part thereof to any person other than the Plaintiff.

SECOND. That the Defendant, David J. Collett, specifically perform the said contract and that by good and sufficient means convey and assure the said premises and every part thereof with marketable title; that the Defendant legally sign, seal, acknowledge, and deliver the appropriate documents of conveyance in the proper form.

THIRD. That general relief be granted.

Respectfully submitted,

  
Frederick M. Neiswender, Esquire  
Counsel for Plaintiff



TO: Elk COUNTY BOARD OF ASSESSMENT & REVISION OF TAXES  
ATTENTION: MAPPING OFFICE

SUBJECT: Change of Lessee of State Lease for Hunting Camp

DATE: May 4, 2001

CAMP LEASE NUMBER: 9-C-450

TOWNSHIP WHERE LOCATED: Benezette

RANGER DIVISION: Quehanna

NAME OF ACCESS ROAD NEAREST TO CAMP LEASE: Dieble Road

APPROXIMATE DATE OF NEW LEASE: January 2009

NAME & ADDRESS OF NEW OWNER OR LESSEE FOR TAX PURPOSE:

David J. Collett

16 Wood Street

Burgettstown, PA 15021

NAME OF FORMER LESSEE FOR CANCELLATION OF ASSESSMENT:

William G. Vento

Robert G. Merrill, Jr.

District Forester

BY: \_\_\_\_\_

CC: Wade Dixon  
Forest Maintenance Supvr.

ALEX W. REINKE  
Forester

(New owner should be advised that property may be sold by County Treasurer for unpaid taxes for two years prior to date of sale. Current year tax statement will be sent to old owner unless new owner notifies Tax Collector and County Treasurer. Name of assessed will not be changed until the year following change of lease provided this form has been filed).

Exhibit "A"

Received down payment on  
Camp # 9C450 on Siebbe Rd.  
from S. Reed Johnson a ck. for  
\$500.<sup>00</sup> - Balance to be payed  
within 60 days. Total price of  
\$10,500 for camp. Agreed to allow  
me 60 days to remove personal  
belonging - L. Reed Johnson

Wm. D. Abbott

0413 7469 399 6	AXP CASH MANAGEMENT FUND	1029
TERESA A JOHNSON		
S REED JOHNSON		
	Date <u>5-28-01</u>	75-46/919
Pay to the order of <u>Five Hundred and no/100</u>		\$ <u>500.00</u>
American Express Financial Advisors		
1-800-437-3133		
Draft Payable Through Wells Fargo Bank, N.A.		
Not for ACH/EFT use		
For <u>AT&amp;T</u>		
	Signature <u>L. Reed Johnson</u>	MP
⑆091900465⑆ 9080925651⑈1029 01		

Exhibit "C"

**William A. Shaw, Jr.**  
**Attorney at Law**

---

211 North Second Street  
Clearfield, PA 16830  
Phone: (814) 765-1910  
Fax: (814) 765-4410  
E-Mail: attyshaw@clearnet.net

May 21, 2001

David J. Collett  
16 Wood Street  
Burgettstown, PA 15021

RE: Johnson v. Collett  
Camp No. 9-C-450

Dear Mr. Collett:

I have recently been retained by Reed Johnson to represent his legal interests regarding a sales contract wherein you agreed to sell Mr. Johnson your rights to Camp No. 9-C-450. Kindly note my entry of appearance for your records.

In reviewing this matter, Mr. Reed provided me with a written sales agreement you signed. Additionally, Mr. Reed provided me with a check in the amount of \$500.00 that was delivered to you as down payment for the camp. Despite a written agreement and payment of money, Mr. Reed reports that you now wish to breach the contract.

Please note, I have reviewed the relevant case law and written agreement that you entered into. My research indicates that you have signed a binding contract to sell Mr. Reed your rights to Camp No. 9-C-450. At this time, I am extending to you the ability to comply with the terms of the sales agreement. Hopefully, we can resolve this matter without the need for costly litigation. However, if you fail to comply with the terms of the sales agreement, Mr. Reed has every intention of pursuing legal action against you. Among other things, Mr. Reed will sue for specific performance of the contract. Additionally, Mr. Reed will seek to recover all money damages that he has suffered because of your breach.

Again, I hope that we can resolve these proceedings without the need for further litigation. Kindly respond to my letter within the next two weeks so that I may take the appropriate action to protect Mr. Reed's interests. Additionally, please note that I am informing the Bureau of Forestry of the claim being made against you as well as the claim Mr. Johnson intends to make

David J. Collett  
May 21, 2001  
Page 2

for the ownership right of Camp Lease No. 9-C-450. It is my experience that when claims are made in these matters, the Bureau of Forestry will not transfer camp leases until the issue is resolved.

Please contact me with any questions or concerns.

Sincerely,

William A. Shaw, Jr.

WAS:nlc

cc: File  
Reed Johnson

# GEORGE A. BAILLIE

ATTORNEY AT LAW

1336 Main Street  
Burgettstown, PA 15021-1006

Phone: (724) 947-8000  
Facsimile: (724) 947-8002

June 28, 2001  
CERTIFIED MAIL # 7000 0600 0025 8006 8824

William A. Shaw, Jr.  
Attorney At Law  
211 North Second Street  
Clearfield, PA 16830

RE: Johnson v. Collett  
Camp No: 9-C-450

Dear Mr. Shaw:

Your letter of May 21<sup>st</sup> was referred to me by Mr. Collett and I have called you numerous times to try to discuss this matter with you. Please note the following:

1. The parties prepared and signed a handwritten document on a half-sheet of paper regarding "camp #9C450" without specifying whether it was an sale of the cabin building, assignment of a lease, a combination of those items, or some other transaction.
2. Mr. Johnson provided Mr. Collett a check for Five Hundred Dollars (\$500.00), dated April 28, 2001, thus dating the document and the discussion.
3. Mr. Collett made numerous calls to Mr. Johnson from April 29<sup>th</sup> through May 3<sup>rd</sup> which Mr. Johnson did not return.
4. Mr. Johnson's check dated April 28, 2001 in the amount of Five Hundred Dollars (\$500.00) was returned by Mr. Collett to Mr. Johnson on or about May 3, 2001.
5. After Mr. Johnson failed to respond to Mr. Collett's telephone calls and return of the check, Mr. Collett understood that any Agreement was rescinded.
6. Mr. Collett then began making repairs and improvements to the cabin with the understanding that the deal was over.
7. After substantial materials were brought to the site and substantial work performed, your letter arrived.
8. I have called you many times to discuss your letter, but never have found you in. You have returned two of the calls, but not the most recent one.

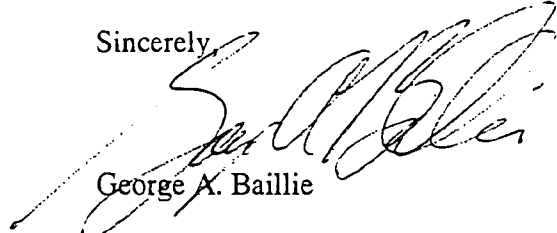
Exhibit "E"

William A. Shaw, Jr.  
June 28, 2001  
Page 2 of 2

9. The original document stated that the total price was to be paid within sixty (60) days of the April 28<sup>th</sup> deposit, which ended Wednesday, June 27, 2001.
10. For the duration of the sixty (60) days which Mr. Johnson was to provide the full purchase price, he neither replaced the deposit nor tendered the purchase price.
11. As of June 28, 2001, therefore, Mr. Johnson is in breach of *any* rights he might of had under *any* interpretation of the April 28<sup>th</sup> Agreement.
12. Even if the Agreement had not been rescinded by mutual agreement in May, or breached by Mr. Johnson in June, there would have remained numerous unclear issues about what was intended to be conveyed.

In light of your client either having accepted the offer to rescind the contract or having breached the Agreement by not re-tendering the deposit and payment, the contract now seems to be void and Mr. Collett will continue to occupy and enjoy the premises. Please confirm that any comment made to the Department of Natural Resources suggesting any claim by Mr. Johnson has been withdrawn.

Sincerely,



George A. Baillie

GB/cc

cc: Dave Collett

S. REED JOHNSON hereby states that he is the Plaintiff in this action and that the statements of fact made in the foregoing Complaint are true and correct upon personal knowledge. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

DATE: 9-21-01

  
S. REED JOHNSON

RECEIVED  
MAY 10 2002  
CLERK OF COURT



FILED

NOV 26 2001

~~SD~~ O 1346 atty  
William A. Shaw  
Prothonotary

Receivend  
pd. \$80.00

See atty Receivend

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

S. REED JOHNSON

Plaintiff

vs.

No. 01 - 1920 C.D.

DAVID J. COLLETT

Defendant

**ANSWER AND  
NEW MATTER**

Filed on behalf of Defendant,  
David J. Collett

Counsel of Record for  
this party:  
George A. Baillie  
Pa. I.D. No. 42056  
1336 Main Street  
Burgettstown, PA 15021  
(724) 947-8000

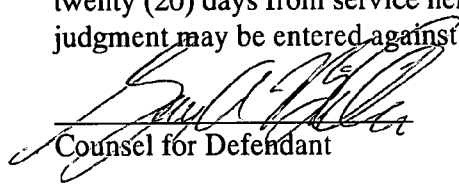
**NOTICE TO PLEAD**

TO: PLAINTIFF You are hereby notified to  
file a written response to the enclosed NEW  
MATTER and COUNTERCLAIM within  
twenty (20) days from service hereof or a  
judgment may be entered against you.

**FILED**

JAN 11 2002

William A. Shaw  
Prothonotary

  
Counsel for Defendant

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

S. REED JOHNSON  
Plaintiff

vs.

No. 01 - 1920 C.D.

DAVID J. COLLETT  
Defendant

**ANSWER AND NEW MATTER**

NOW comes the Defendant, David J. Collett, by his counsel, George A. Baillie, and files this Answer and New Matter to the Complaint of S. Reed Johnson:

**ANSWER**

1. The name and address of Plaintiff ("Johnson") is admitted.
2. The name and address of Defendant ("Collett") is admitted.
3. Denied as stated. On April 28, 2001 Collett was arranging to have the lease of Camp # 9-C-450 assigned over into his name, but on that date it was still in the name of William G. Vento. In addition to seeking assignment of the lease for the camp site surface, Collett had purchased from William Vento the dilapidated cabin structure on the camp site. On April 28, 2001, Collett was engaged in commencing repairs to the cabin structure.
4. Denied as stated. Neither the camp site area leased, nor the cabin structure are "more fully described" in Exhibit A attached to the Complaint.

5. Denied as stated. Exhibit B does not state as alleged by Plaintiff Johnson that is for purchase of any "aforesaid structure" as no structure is mentioned therein. Neither does Exhibit B recite that there is to be any "assignment of the lease" for any term, or with any prepaid rental thereunder. It is admitted that the parties had a discussion on April 28, 2001.
6. Admitted. By way of further answer, Collett repeatedly called Johnson from April 28 through May 3, 2001 in attempts to resolve this matter. Only after Johnson refused to take or return Collett's calls did Collett return the uncashed check of April 28, 2001. After Johnson's refusal to discuss any potential transaction and the return of the April 28, 2001 check, Collett regarded the discussions to be concluded, and continued to repair and improve the cabin structure and camp site.
7. Admitted in part, denied in part. It is admitted that Mr. Shaw sent the letter of May 21, 2001. In immediate response, Mr. Collett called Mr. Shaw, and then had his counsel, Mr. Baillie make numerous additional calls to Mr. Shaw, but despite these efforts no discussion took place. Plaintiff's alleged fear that Collett would "breach the agreement" is denied as there was then no agreement between the parties to be breached.
8. Denied as stated. Exhibit E does not state that Collett was refusing to abide by the terms of an agreement; to the contrary, it states that there was never a specific agreement, that Collett had made numerous improvements to the property in reliance on Johnson having terminated his desire to make any purchase offer, and any claims of Johnson had expired because he had failed to tender the price within the sixty (60) days following April 28, 2001.
9. Denied. Plaintiff Johnson has failed at any time to tender the alleged purchase price which by Exhibits A and B was due no later than June 27, 2001. His assertion, through

new counsel, in a Complaint filed one hundred fifty (150) more days after Exhibit E's notice of his failure, does not mitigate his breach.

10. Denied. There are Five Hundred Seventy Six (576) leased sites in this DCNR camp alone, and other camp sites elsewhere; Plaintiff Johnson in Clearfield has at least an equal opportunity to monitor the market in camp site availability as does Defendant Collett in Washington County. Collett made substantial repairs and improvements to this cabin and this camp site since June 28, 2001 in reliance on Johnson's inactivity regarding this purported transaction. Collett was assigned the camp site lease on July 10, 2001 (in an apparent withdrawal of Johnson's May 21 threat to block transfer). Enforcement of the purported April 28, 2001 sale for the much better structure that exists now would be unfair and unjust to Collett.

WHEREFORE, Defendant Collett requests the Honorable Court to dismiss the Complaint of Plaintiff Johnson, with prejudice, and with costs on Plaintiff.

#### NEW MATTER

11. The averments above are incorporated by reference as if fully restated herein.
12. To the extent Plaintiff asserts a claim to be conveyed a leasehold interest in real property, he **fails to be sufficiently specific** as to (1) the boundary of the property to be conveyed, (2) any easements appurtenant or dominant upon the property, (3) the duration of any proposed leasehold; (4) whether any purported lease is to be sublet or assigned, (5) whether any rental payments are prepaid or due, and (6) what rights of remainder or reverter will exist at the expiration of the lease term.

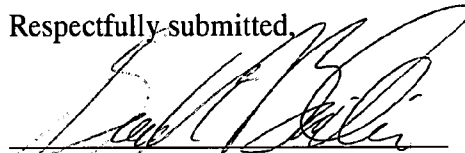
13. To the extent Plaintiff asserts a claim to the cabin structure he fails to state (1) whether the “camp” refers to the cabin structure at all, or only the camp site lease; (2) whether the new building materials brought to the site on April 28 were to be included, or whether they were to be removed by Collett as his personal property; (3) whether the installation labor of Collett for those materials were to be included; (4) and whether the additional repairs and improvements made by Collett since June 28, 2001 are to be included.
14. The claims regarding rights to real property are barred by the **statute of frauds**.
15. Collett’s refusal to accept the alleged deposit and his return of the uncashed check, with no new tender by Johnson, caused a **lack and failure of any consideration** by Johnson.
16. Johnson’s acceptance of the returned check and lack of any later tender of any payment constituted an **accord and satisfaction** of Collett’s offer to rescind any proposed transaction.
17. Any claims of Johnson have been **waived** by his failure to abide by his alleged agreement.
18. Johnson’s failure to tender payment within the alleged sixty (60) day contract term **estops** him from asserting any claim under the alleged agreement.
19. Johnson’s apparent action in withdrawing his asserted blockage of the lease documents to Collett (released by DCNR eight (8) days after Shaw received Exhibit E) constitutes a **release** of Johnson’s claims.
20. In **reliance** on Johnson’s having abandoned any claim to purchase or receive assignment of Collett’s rights, Collett made numerous and substantial improvements to the campsite

and cabin structure, including: (1) repaired three roof trusses, replaced roof sheeting and roofing; (2) repaired stone and block foundation; (3) repaired floor beam and joists; (4) repaired siding boards; (5) replaced warped flooring; (6) rebuilt rotted window frame; (7) installed new window panes, window locks and window blinds; (8) made and installed custom shutters for all windows; (9) repaired wiring installing new outlets, ceiling fan and exterior floodlight; (10) rebuilt interior wall with new framing, wall board, finish and paint; (11) scraped, primed and painted entire exterior, replacing trim where needed; (12) replaced drywall in ceiling where needed; (13) painted entire interior; (14) disposed of refuse and items left by prior tenant; (15) cleared surface of camp area of brush and limbs, mowed area; (16) purchased, had delivered and placed one ton of limestone gravel.(17) purchased and installed electric range, kerosene heater, bunk beds, benches, cabinets and shelving; (18) purchased and brought in furnishings -- mattresses, microwave, etc. Note the Before and After photos attached as Exhibits 1, 2 & 3.

21. Johnson's sleeping on his rights for the sixty (60) day duration of the alleged contract, and the additional one hundred fifty (150) days until this Complaint, while Collett continued to repair and improve the cabin and camp site cause Johnson's claims to be barred by **laches**.
22. Collett's actions were at all times **justified**.

WHEREFORE, Defendant Collett requests the Honorable Court to dismiss the Complaint of Plaintiff Johnson, with prejudice, and with costs on Plaintiff.

Respectfully submitted,



George A. Baillie, Attorney for  
Defendant David J. Collett

**BEFORE**



**AFTER**

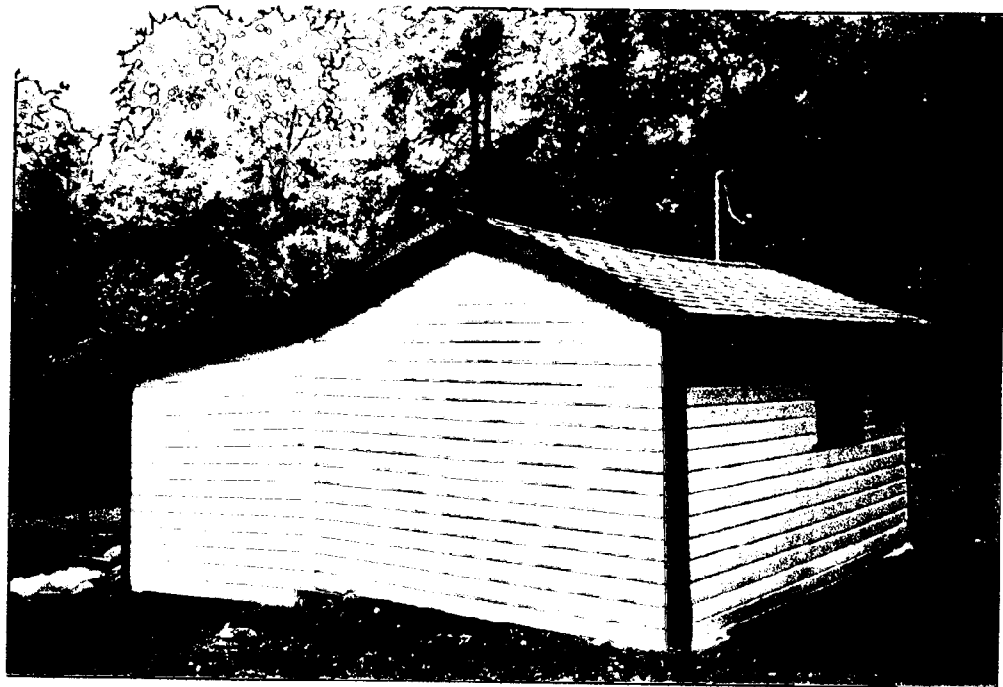




BEFORE



AFTER



**BEFORE**

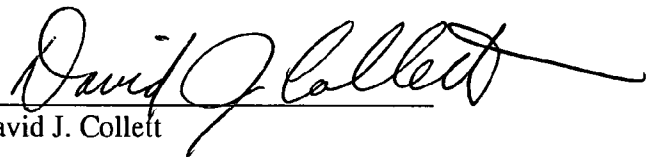


**AFTER**



## VERIFICATION

I verify that, to the best of my knowledge, information and belief, the statement in this ANSWER and NEW MATTER are true and correct. I understand that false statements herein are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsifications to authorities.

  
David J. Collett

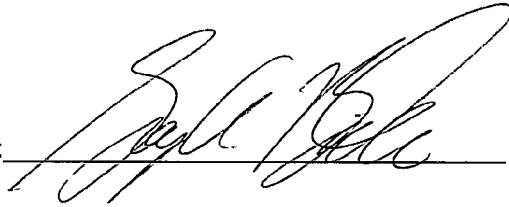
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the above document upon  
counsel for Plaintiff by first class mail postage prepaid addressed as follows:

Frederick M. Neiswender  
501 East Market St., Suite 3  
Clearfield, PA 16830

Date: 1/8/2002

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to be "J. M. Neiswender", written over a horizontal line.

FILED

JAN 11 2002

11:03 a.m.  
William A. Shaw  
Prothonotary

2 cc to atty gen

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

Sheriff Docket # 11800

JOHNSON, S. REED

01-1920-CD

VS.

COLLETT, DAVID J.

COMPLAINT (EQUITY)

**SHERIFF RETURNS**

NOW DECEMBER 4, 2001, LARRY MAGGI, SHERIFF OF WASHINGTON COUNTY  
WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY  
TO SERVE THE WITHIN COMPLAINT ON DAVID J. COLLETT, DEFENDANT.

NOW DECEMBER 10, 2001 SERVED THE WITHIN COMPLAINT ON DAVID J.  
COLLETT, DEFENDANT BY DEPUTIZING THE SHERIFF OF WASHINGTON COUNTY.  
THE RETURN OF SHERIFF MAGGI IS HERETO ATTACHED AND MADE A PART OF  
THIS RETURN STATING THAT HE SERVED DAVID B. COLLETT.

**Return Costs**

Cost	Description
28.14	SHFF. HAWKINS PAID BY: ATTY.
38.50	SHFF. MAGGI PAID BY: ATTY.
10.00	SURCHARGE PAID BY; ATTY.

**FILED**

FEB 14 2002  
01:35 no cc  
William A. Shaw  
Prothonotary

Sworn to Before Me This

14th Day Of February, 2002

*William A. Shaw*

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2006  
Clearfield Co., Clearfield, PA

So Answers,

*Chester A. Hawkins*  
*Larry Maggi*  
Chester A. Hawkins  
Sheriff

# SHERIFF'S DEPARTMENT

WASHINGTON COUNTY, PENNSYLVANIA

COURTHOUSE SQUARE, SUITE 101, WASHINGTON, PA 15301

724-228-6840

DATE 12-7-01

## SHERIFF SERVICE PROCESS RECEIPT, and AFFIDAVIT OF RETURN

INSTRUCTIONS: Please fill out a separate form for each defendant. Type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF / S /

S. REED JOHNSON

COURT NUMBER OF WRIT OR COMPLAINT

01-1920-CD

DEFENDANT / S /

DAVID J. COLLETT

TYPE OF WRIT OR COMPLAINT  
COMPLAINT

SERVE



NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVICE OR DESCRIPTION OF PROPERTY TO BE LEVIED, ATTACHED OR SOLD

DAVID B. COLLETT

ADDRESS (Street or RFD, Apartment No., City, Boro, Twp., State and Zip.)

16 WOOD STREET BURGETTSTOWN, PA 15021

INDICATE TYPE OF SERVICE: ☐ PERSONAL ☐ PERSON IN CHARGE ☐ DEPUTIZE ☐ CERT. MAIL ☐ REG. MAIL ☐ POSTED ☐ OTHER ☐ LEVY ☐ SEIZED & STORE

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE.

Expiration/Hearing Date

12-26-01

NOTE ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN - Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, with out liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction or removal of any such property before sheriff's sale thereof.

SIGNATURE of ATTORNEY or other ORIGINATOR requesting service on behalf of

ADDRESS

TELEPHONE NUMBER

FREDERICK M. NEW

☒ PLAINTIFF  
☐ DEFENDANT

I hereby CERTIFY and RETURN that on the 10 day of Dec, 20 01, at 9:30 o'clock A.M. / P.M. Address Above / Address Below, County of Washington, Pennsylvania

I have served in the manner Described below:

☒ Defendant(s) personally served.

☐ Adult family member with whom said Defendant(s) reside(s). Relationship is \_\_\_\_\_

☐ Adult in charge of Defendant's residence who refused to give name or relationship.

☐ Manager / Clerk of place of lodging in which Defendant(s) reside(s).

☐ Agent or person in charge of Defendant(s) office or usual place of business.

☐ Other \_\_\_\_\_

☐ Property Posted \_\_\_\_\_

☐ Deputize \_\_\_\_\_

☐ Cert. Mail ☐ Levy Made ☐ Reg. Mail

Defendant not found because: ☐ Moved ☐ Unknown ☐ No Answer ☐ Vacant ☐ Other \_\_\_\_\_

Now, \_\_\_\_\_ 20 \_\_\_\_ . I, SHERIFF OF WASHINGTON COUNTY, PA. do hereby deputize the Sheriff of \_\_\_\_\_

County to execute this Writ and make return thereof according to law.

This deputation being made at the request and risk of the plaintiff.

Notary Public \$ \_\_\_\_\_ Check Number \_\_\_\_\_

SHERIFF OF WASHINGTON COUNTY

\$ \_\_\_\_\_ Check Number \_\_\_\_\_ County Costs \$ \_\_\_\_\_

Advance \$ 100.00	Invoice 81307-01	Docket 20	Page 507	Total Costs \$ 38.50	Costs Due \$ _____	REFUND \$ 61.50
----------------------	---------------------	--------------	-------------	-------------------------	-----------------------	--------------------

AFFIRMED and subscribed to before me this 22nd

day of January 20 02

Phyllis Ranko Matheny (DC)

PHYLLIS RANKO MATHENY, PROTHONOTARY

MY COMMISSION EXPIRES

First Monday in January, 2004

PAID BY ATTY. FOR PLFF

By (Sheriff / Dep. Sheriff) (Please Print or Type.)

Date

Signature of Sheriff

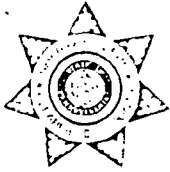
Date

SHERIFF OF WASHINGTON COUNTY

Date Received

I ACKNOWLEDGE RECEIPT OF THE SHERIFF'S RETURN SIGNATURE OF AUTHORIZED ISSUING AUTHORITY AND TITLE.

PROTHONOTARY



CHESTER A. HAWKINS  
SHERIFF

# Sheriff's Office Clearfield County

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

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

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

S. REED JOHNSON

TERM & NO. 01-1920-CD

VS

**SERVE BY:** 12/26/01

DAVID J. COLLETT

or  
**HEARING DATE:**

**DOCUMENT TO BE SERVED:**

COMPLAINT (Equity)

**MAKE REFUND PAYABLE TO:** Frederick M. Neiswender, Attorney

**SERVE:** DAVID J. COLLETT

**ADDRESS:** 16 Wood St, Burgettstown, Pa. 15021

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

This Deputation being made at the request and risk of the Plaintiff this 4th day of DECEMBER 2001.

Respectfully,

CHESTER A. HAWKINS,  
SHERIFF OF CLEARFIELD COUNTY



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL ACTION – EQUITY)

S. REED JOHNSON,

Plaintiff,

vs.

DAVID J. COLLETT,

Defendant.

No. 01 - 1920 - C.D.

Type of case: Civil (Equity)

Type of pleading: Reply to New Matter

Filed on behalf of: Plaintiff,  
S. Reed Johnson

Counsel for Plaintiff:  
Frederick M. Neiswender, Esquire  
Supreme Court No. 74456  
501 East Market Street, Suite 3  
Clearfield, Pennsylvania 16830  
(814) 765-6500

**FILED**

APR 26 2002

0130013ccatty  
William A. Shaw  
Prothonotary

*Epms*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL ACTION – EQUITY)

S. REED JOHNSON,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	No. 01 - 1920 - C.D.
	:	
DAVID J. COLLETT,	:	
	:	
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 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  
1 North Second Street  
Clearfield, Pennsylvania 16830  
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL ACTION – EQUITY)

S. REED JOHNSON,	:	
Plaintiff,	:	
	:	
vs.	:	No. 01 - 1920 - C.D.
	:	
DAVID J. COLLETT,	:	
Defendant.	:	

**REPLY TO NEW MATTER**

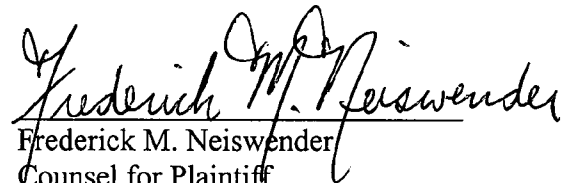
NOW, comes the Plaintiff, S. REED JOHNSON, by and through his attorney,  
FREDERICK M. NEISWENDER, ESQUIRE and makes his Reply to Defendant's New Matter  
as follows:

11. No reply is required.
12. Denied. As contemplated in the sales agreement between Plaintiff and Defendant,  
Plaintiff was to assume all rights to the leasehold that were being held by Defendant at  
the time of the signing of the agreement.
13. Denied. As contemplated in the sales agreement between Plaintiff and Defendant,  
Plaintiff was to receive rights to the land and any fixtures on the land at the time of the  
signing of the agreement for the purchase price of ten thousand five hundred dollars  
(\$10,500.00). Defendant was to remove all personal property within sixty (60) days.
14. Denied. The sales agreement between Plaintiff and Defendant conforms to the statute of  
frauds.
15. Denied. Defendant's acceptance of Plaintiff's down payment at the signing of the sales  
agreement was sufficient consideration.

16. Denied. At the point Defendant returned the check tendered by Plaintiff after initial acceptance of said check, Defendant was in breach of the sales agreement and no further tender from Plaintiff was required.
17. Denied. Plaintiff abided by the sales agreement until Defendant breached the terms of the agreement.
18. Denied. At the point Defendant returned the check tendered by Plaintiff after initial acceptance of said check, Defendant was in breach of the sales agreement and no further tender from Plaintiff was required.
19. Denied. Plaintiff's withdrawal of any blockage against the subject property was collateral in nature and cannot be construed as a release of Plaintiff's claim against Defendant for specific performance.
20. Denied. Plaintiff in no way abandoned his claim to Defendant's leasehold and fixtures as evidenced by the May 21, 2001 letter from Plaintiff's then counsel to Defendant. *See Plaintiff's Complaint Exhibit "D"*. Defendant has provided no proof as to when the alleged improvements were made or the costs expended by Defendant in making the improvements.
21. Denied. Plaintiff acted well within the statute of limitations for this type of case with no knowledge of Defendant's improvements on the subject property. All improvements made by Defendant were made with the knowledge that Plaintiff wanted specific performance of the sale agreement.
22. Denied. Defendant's breach of the sales agreement was not justified and he should be required to specifically perform the terms of the agreement.

WHEREFORE, Plaintiff respectfully requests this Honorable Court award judgment to Plaintiff as set forth in his Complaint.

Respectfully submitted,

  
Frederick M. Neiswender  
Counsel for Plaintiff

S. REED JOHNSON hereby states that he is the Plaintiff in this action and that the statements of fact made in the foregoing Reply to New Matter are true and correct upon personal knowledge. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

DATE: 4-24-02

  
S. REED JOHNSON

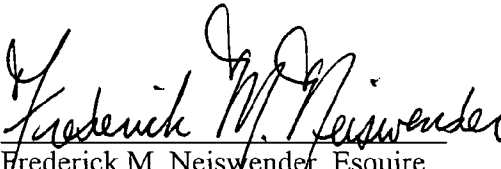
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL ACTION – EQUITY)

S. REED JOHNSON,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	No. 01 - 1920 - C.D.
	:	
DAVID J. COLLETT,	:	
	:	
Defendant.	:	

**CERTIFICATE OF SERVICE**

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Reply to New Matter was made upon David J. Collett, by mailing, first class, postage prepaid, a true copy to the office of his attorney of record, George A. Baillie, Esquire, on April 26, 2002, at the following address:

George A. Baillie, Esquire  
Attorney at Law  
1336 Main Street  
Burgettstown, Pennsylvania 15021-1006

  
Frederick M. Neiswender, Esquire  
Counsel for Plaintiff  
501 East Market Street, Suite 3  
Clearfield, Pennsylvania 16830

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL ACTION – EQUITY)

S. REED JOHNSON,

Plaintiff,

vs.

DAVID J. COLLETT,

Defendant.

No. 01 - 1920 - C.D.

Type of case: Civil (Equity)

Type of pleading: Certificate of Readiness

Filed on behalf of: Plaintiff,  
S. Reed Johnson

Counsel for Plaintiff:  
Frederick M. Neiswender, Esquire  
Supreme Court No. 74456  
501 East Market Street, Suite 3  
Clearfield, Pennsylvania 16830  
(814) 765-6500

FILED

SEP 25 2003

William A. Shaw  
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL ACTION – EQUITY)

S. REED JOHNSON,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	No. 01 - 1920 - C.D.
	:	
DAVID J. COLLETT,	:	
	:	
Defendant.	:	

**CERTIFICATE OF READINESS**

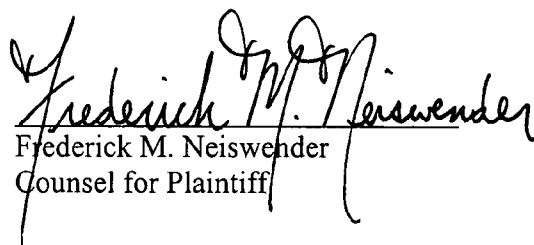
TO THE PROTHONOTARY:

Please place the above captioned case on the Civil Trial List.

1. Date presented: September 25, 2003.
2. Date compliant filed: November 26, 2001.
3. Type of trial requested: Arbitration.
4. Estimated trial time: ½ day.
5. Amount at issue: specific performance.
6. Counsel for the Defendant: George A. Baillie, Esq., Telephone: (724) 947-8000.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.

Respectfully submitted,

  
Frederick M. Neiswender  
Counsel for Plaintiff

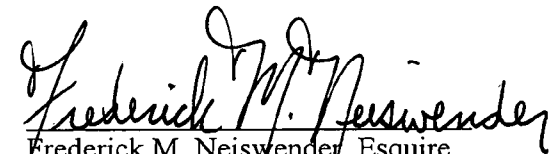
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL ACTION – EQUITY)

S. REED JOHNSON,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	No. 01 - 1920 - C.D.
	:	
DAVID J. COLLETT,	:	
	:	
Defendant.	:	

**CERTIFICATE OF SERVICE**

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Certificate of Readiness was made upon David J. Collett, by mailing, first class, postage prepaid, a true copy to the office of his attorney of record, George A. Baillie, Esquire, on September 25, 2003, at the following address:

George A. Baillie, Esquire  
Attorney at Law  
1336 Main Street  
Burgettstown, Pennsylvania 15021-1006

  
Frederick M. Neiswender, Esquire  
Counsel for Plaintiff  
501 East Market Street, Suite 3  
Clearfield, Pennsylvania 16830

FILED

SEP 25 2003

Att'y Neiswander

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL ACTION – EQUITY)

S. REED JOHNSON,

Plaintiff,

vs.

DAVID J. COLLETT,

Defendant.

No. 01 - 1920 - C.D.

Type of case: Civil (Equity)

Type of pleading: Motion to Strike  
Arbitration and List Case for Trial

Filed on behalf of: Plaintiff,  
S. Reed Johnson

Counsel for Plaintiff:  
Frederick M. Neiswender, Esquire  
Supreme Court No. 74456  
501 East Market Street, Suite 3  
Clearfield, Pennsylvania 16830  
(814) 765-6500

**FILED**

**JAN 07 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL ACTION – EQUITY)

S. REED JOHNSON,

Plaintiff,

vs.

DAVID J. COLLETT,

Defendant.

No. 01 - 1920 - C.D.

**RULE RETURNABLE**

NOW, this \_\_\_\_\_ day of January, 2004, upon consideration of Plaintiff's Motion to Strike Arbitration and List Case for Trial, a Rule is hereby issued upon the Defendant, David J. Collett to show cause why the Motion should not be granted. Rule Returnable for Answer by the Defendant and hearing on said Motion to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 2004, at \_\_\_\_\_ o'clock \_\_\_\_\_. m. in Courtroom No. \_\_\_\_\_ of the Clearfield County Courthouse.

BY THE COURT,

\_\_\_\_\_  
Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL ACTION – EQUITY)

S. REED JOHNSON,	:	
Plaintiff,	:	
	:	
vs.	:	No. 01 - 1920 - C.D.
	:	
DAVID J. COLLETT,	:	
Defendant.	:	

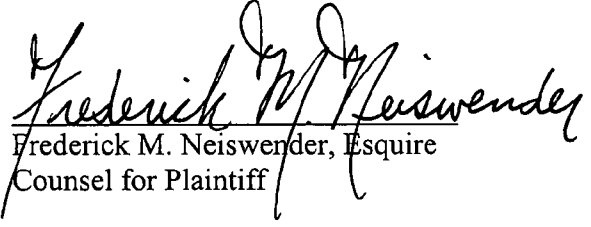
**MOTION TO STRIKE ARBITRATION AND LIST CASE FOR TRIAL**

AND NOW, comes the Plaintiff, S. REED JOHNSON, by and through his attorney, FREDERICK M. NEISWENDER, ESQUIRE, and files this Motion to Strike Arbitration and List Case for Trial upon which the following is a statement:

1. Plaintiff, S. REED JOHNSON, is an adult individual residing at RD 2, Box 93, Clearfield, Clearfield County, Pennsylvania 16830.
2. Defendant, DAVID J. COLLETT, is an adult individual residing at 16 Wood Street, Burgettstown, Washington County, Pennsylvania 15021.
3. This matter was listed for Arbitration based on a Certificate of Readiness filed by the Plaintiff on September 25, 2003.
4. The issue in this case involves a demand by Plaintiff for specific performance of a contract to transfer a lease.
5. Unbeknownst to counsel for the Plaintiff, Clearfield County Local Rule 1301, prohibits civil cases in equity from be decided by a Board of Arbitrators.
6. Arbitration in this matter is scheduled for January 15, 2004 at 9:00 a.m.

WHEREFORE, Plaintiff needs equitable relief, and prays that this Honorable Court strike the Arbitration scheduled and order the case be listed for trial in the next term of Civil Court:

Respectfully submitted,

  
Frederick M. Neiswender, Esquire  
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL ACTION – EQUITY)

S. REED JOHNSON,

Plaintiff,

vs.

DAVID J. COLLETT,

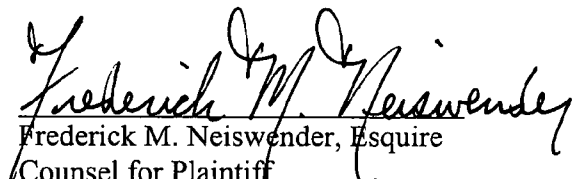
Defendant.

No. 01 - 1920 - C.D.

**CERTIFICATE OF SERVICE**

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Motion to Strike Arbitration and List Case for Trial was made upon David J. Collett, by mailing, first class, postage prepaid, a true copy to the office of his attorney of record, George A. Baillie, Esquire, on January 7, 2004, at the following address:

George A. Baillie, Esquire  
Attorney at Law  
1336 Main Street  
Burgettstown, Pennsylvania 15021-1006

  
Frederick M. Neiswender, Esquire  
Counsel for Plaintiff  
501 East Market Street, Suite 3  
Clearfield, Pennsylvania 16830



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

CIVIL DIVISION

S. REED JOHNSON

:

-VS-

: No. 01-1920-CD

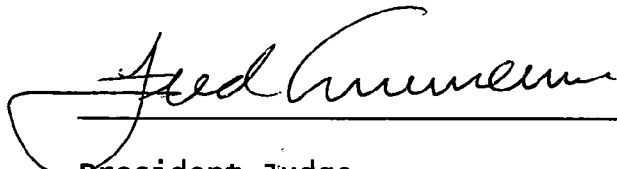
DAVID J. COLLETT

:

O R D E R

NOW, this 9th day of January, 2004, upon consideration of Plaintiff's Motion to Strike Arbitration and List Case for Trial pursuant to Local Rule 1301 and the Defendant having no objection thereto, it is the ORDER of this Court that arbitration scheduled in this matter for January 15, 2004, is hereby cancelled. The Court Administrator is directed to place this case on the civil trial list for the next available term.

BY THE COURT,

  
\_\_\_\_\_  
President Judge

FILED

JAN 09 2004

William A. Shaw  
Prothonotary/Clerk of Courts

FILED 1cc Atty Neiswander  
01:43 PM  
JAN 09 2004 1cc Atty Baillie

William A. Shaw  
Prothonotary/Clerk of Courts  
*WAS*

CA

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

S. REED JOHNSON

V.

DAVID J. COLLETT

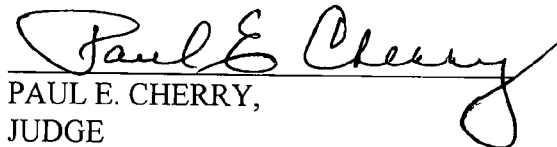
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NO. 01-1920-CD

**ORDER**

AND NOW, this 15<sup>th</sup> day of April, 2004, this being the date scheduled for Pre-Trial Conference relative this matter, upon request by the defendant, it is the ORDER of the Court that this matter be and is hereby continued until the next term of Court. No further continuances shall be granted.

BY THE COURT,

  
PAUL E. CHERRY,  
JUDGE

**FILED**

APR 15 2004

William A. Shaw  
Prothonotary

**FILED**

APR 15 2004

*David's Callist He used that Bugelator 14  
3:22 am 100 city Recorder.*

*W*

William A. Shaw  
Prothonotary

CR

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

S. REED JOHNSON

: NO. 01-1920-CD

V.

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:

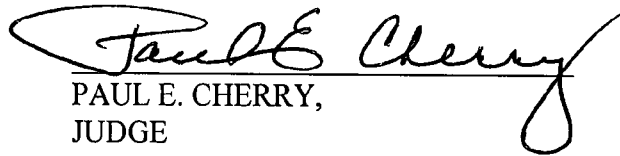
DAVID J. COLLETT

**ORDER**

AND NOW, this 16<sup>TH</sup> day of August, 2004, following Pre-Trial Conference, it is  
the ORDER of this Court:

1. Non-Jury Trial in this matter is scheduled for October 7, 2004 at 9:00 A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Counsel for the parties shall supply to the Court their proposed Verdict Slip by and no later than ten (10) days prior to the commencement of trial.

BY THE COURT,

  
PAUL E. CHERRY,  
JUDGE

FILED

AUG 19 2004

William A. Shaw  
Prothonotary/Clerk of Courts

FILED

1cc Amy Neiswander

10/23/2004

1cc Def-16 Wood Street

2/15

Burgittstown, PA 15021

William A. Shaw

Prothonotary/Clerk of Courts

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

S. REED JOHNSON,

Plaintiff,

vs.

DAVID J. COLLETT,

Defendant.

No. 01 - 1920 - C.D.

Type of case: Civil (Equity)

Type of pleading: Pre-Trial Memorandum

Filed on behalf of: Plaintiff,  
S. Reed Johnson

Counsel for Plaintiff:  
Frederick M. Neiswender, Esquire  
Supreme Court No. 74456  
501 East Market Street, Suite 3  
Clearfield, Pennsylvania 16830  
(814) 765-6500

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

S. REED JOHNSON,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	No. 01 - 1920 - C.D.
	:	
DAVID J. COLLETT,	:	
	:	
Defendant.	:	

**PRE-TRIAL MEMORANDUM**

**A. STATEMENT OF THE CASE**

On or about April 28, 2001, David J. Collett [hereinafter "Defendant"] was and is the owner of the premises known as Camp #9-C-450, along Dieble Road, in Benezette Township, Elk County, Pennsylvania. The property is more fully described as a camp situated within Commonwealth of Pennsylvania Game Lands on a plot leased from the Department of Conservation and Natural Resources. On the above-mentioned date, Reed Johnson [hereinafter "Plaintiff"] entered into a written agreement for the purchase of the aforesaid structure and assignment of the lease from the Defendant for the price of Ten Thousand Five Hundred Dollars (\$10,500.00). Five Hundred Dollars (\$500.00) was paid as earnest money upon the execution of the agreement and the balance of Ten Thousand Dollars (\$10,000.00) was to be paid at settlement which was to take place within sixty (60) days from the date of the agreement. The sixty (60) day settlement term was included to allow Defendant time to remove personal items from the premises.

On May 3, 2001, the Defendant returned Plaintiff's check marking it "Void". Subsequently, on May 21, 2001, the Plaintiff, by his then attorney, William A. Shaw, Jr., fearing



the Defendant would breach the agreement, presented a letter to the Defendant giving him the opportunity to abide by the terms of the agreement. The Defendant responded by letter from his attorney George A. Baillie, stating that he would not abide by the terms of the agreement and declared the agreement null and void. The Plaintiff was and is ready, willing, and able to make settlement and complete the purchase in accordance with the terms of the said agreement of purchase. The Defendant has refused and still refuses to carry out the agreement of purchase or to sign, execute, and deliver the appropriate documents to transfer the premises.

On November 26, 2001, Plaintiff filed a Complaint in Equity asking the Court to enforce the agreement and require specific performance thereof.

**B. EXHIBITS**

1. Change of Lease Notice dated May 4, 2001 from the District Forester to the Elk County Board of Assessment and Revision of Taxes;
2. Written agreement between S. Reed Johnson and David J. Collett;
3. Voided check #1029 dated April 28, 2001;
4. Letter from William A. Shaw, Jr., Esquire to David J. Collett dated May 21, 2001;
5. Letter from George A. Baillie, Esquire, to William A. Shaw, Jr., Esquire dated June 28, 2001;
6. Plaintiff reserves the right to offer additional exhibits with notice to counsel for Defendant.

**C. WITNESSES**

1. S. Reed Johnson, RD 2, Box 93, Clearfield, PA 16830;
2. Expert from the Pennsylvania Department of Conservation and Natural Resources;
3. Plaintiff reserves the right to call additional witnesses with notice to counsel for Defendant.

#### **D. LEGAL THEORY FOR RECOVERY**

The Plaintiff asserts that he is entitled to the value of the agreement. In view of the present real estate market, it is impossible for the Plaintiff to secure another property in that vicinity at or near the price agreed upon. Therefore, Plaintiff charges that no damages at law can adequately compensate him for the Defendant's breach of said agreement, and that he is entitled to have specific performance thereof. This theory of recovery is based on the basic tenets of real estate and contract law regarding specific performance.

#### **E. DAMAGES**

Plaintiff seeks specific performance of the written agreement.

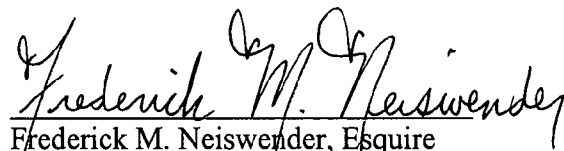
#### **F. EVIDENTIARY PROBLEMS**

No evidentiary problems are anticipated.

#### **G. ESTIMATED TIME FOR TRIAL**

One-half (1/2) to one (1) day.

Respectfully submitted,

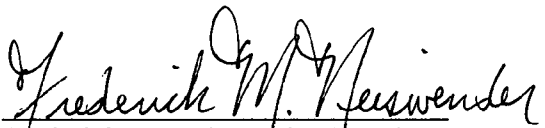
  
Frederick M. Neiswender, Esquire  
Counsel for Plaintiff

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

S. REED JOHNSON,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	No. 01 - 1920 - C.D.
	:	
DAVID J. COLLETT,	:	
	:	
Defendant.	:	

**CERTIFICATE OF SERVICE**

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing  
Pre-trial Statement was made upon David J. Collett, by hand delivery to the Defendant on April  
15, 2004.

  
Frederick M. Neiswender, Esquire  
Counsel for Plaintiff  
501 East Market Street, Suite 3  
Clearfield, Pennsylvania 16830

TO: Elk COUNTY BOARD OF ASSESSMENT & REVISION OF TAXES  
ATTENTION: MAPPING OFFICE

SUBJECT: Change of Lessee of State Lease for Hunting Camp

DATE: May 4, 2001

CAMP LEASE NUMBER: 9-C-450

TOWNSHIP WHERE LOCATED: Benezette

RANGER DIVISION: Quehanna

NAME OF ACCESS ROAD NEAREST TO CAMP LEASE: Dieble Road

APPROXIMATE DATE OF NEW LEASE: January 2009

NAME & ADDRESS OF NEW OWNER OR LESSEE FOR TAX PURPOSE:

David J. Collett

16 Wood Street

Burgettstown, PA 15021

NAME OF FORMER LESSEE FOR CANCELLATION OF ASSESSMENT:

William G. Vento

Robert G. Merrill, Jr.

District Forester

BY: \_\_\_\_\_

CC: Wade Dixon  
Forest Maintenance Supvr.

ALEX W. REINKE  
Forester

(New owner should be advised that property may be sold by County Treasurer for unpaid taxes for two years prior to date of sale. Current year tax statement will be sent to old owner unless new owner notifies Tax Collector and County Treasurer. Name of assessed will not be changed until the year following change of lease provided this form has been filed).

Exhibit "A"

---

Received down payment on  
Camp # 9C450 on Dittke Rd.  
from S. Red Johnson a ck. for  
\$500.<sup>00</sup> - Balance to be paid  
within 60 days. Total price of  
\$10,500 for camp. Agreed to allow  
me 60 days to remove personal  
belongings - S. Red Johnson

Mark D. Bell

---

0413 7469 399 6  
TERESA A JOINSON  
S REED JOINSON

AXP CASH MANAGEMENT FUND

1029

75-46/919

Date 4-28-01

Pay to the  
order of

\$500.00

American Express Financial Advisors

1-800-437-3133

Draft Payable Through

Wells Fargo Bank, N.A.

Not for ACH/EFT use

For ~~ACH/EFT~~

Not Valid for Under \$100.00

*L. Reed Johnson*

MP

⑆091900165⑆ 9080925651⑆102901

William A. Shaw, Jr.  
Attorney at Law

---

211 North Second Street  
Clearfield, PA 16830  
Phone: (814) 765-1910  
Fax: (814) 765-4410  
E-Mail: attyslaw@clearnet.net

May 21, 2001

David J. Collett  
16 Wood Street  
Burgertstown, PA 15021

RE: Johnson v. Collett  
Camp No. 9-C-450

Dear Mr. Collett:

I have recently been retained by Reed Johnson to represent his legal interests regarding a sales contract wherein you agreed to sell Mr. Johnson your rights to Camp No. 9-C-450. Kindly note my entry of appearance for your records.

In reviewing this matter, Mr. Reed provided me with a written sales agreement you signed. Additionally, Mr. Reed provided me with a check in the amount of \$500.00 that was delivered to you as down payment for the camp. Despite a written agreement and payment of money, Mr. Reed reports that you now wish to breach the contract.

Please note, I have reviewed the relevant case law and written agreement that you entered into. My research indicates that you have signed a binding contract to sell Mr. Reed your rights to Camp No. 9-C-450. At this time, I am extending to you the ability to comply with the terms of the sales agreement. Hopefully, we can resolve this matter without the need for costly litigation. However, if you fail to comply with the terms of the sales agreement, Mr. Reed has every intention of pursuing legal action against you. Among other things, Mr. Reed will sue for specific performance of the contract. Additionally, Mr. Reed will seek to recover all money damages that he has suffered because of your breach.

Again, I hope that we can resolve these proceedings without the need for further litigation. Kindly respond to my letter within the next two weeks so that I may take the appropriate action to protect Mr. Reed's interests. Additionally, please note that I am informing the Bureau of Forestry of the claim being made against you as well as the claim Mr. Johnson intends to make



David J. Collett  
May 21, 2001  
Page 2

for the ownership right of Camp Lease No. 9-C-450. It is my experience that when claims are made in these matters, the Bureau of Forestry will not transfer camp leases until the issue is resolved.

Please contact me with any questions or concerns.

Sincerely,

William A. Shaw, Jr.

WAS:alc

cc: File  
Reed Johnson

# GEORGE A. BAILLIE

ATTORNEY AT LAW

1336 Main Street  
Burgettstown, PA 15021-1006

Phone: (724) 947-8000  
Facsimile: (724) 947-8002

June 28, 2001

CERTIFIED MAIL # 7000 0600 0025 8006 8824

William A. Shaw, Jr.  
Attorney At Law  
211 North Second Street  
Clearfield, PA 16830

RE: Johnson v. Collett  
Camp No: 9-C-450

Dear Mr. Shaw:

Your letter of May 21<sup>st</sup> was referred to me by Mr. Collett and I have called you numerous times to try to discuss this matter with you. Please note the following:

1. The parties prepared and signed a handwritten document on a half-sheet of paper regarding "camp #9C-450" without specifying whether it was an sale of the cabin building, assignment of a lease, a combination of those items, or some other transaction.
2. Mr. Johnson provided Mr. Collett a check for Five Hundred Dollars (\$500.00), dated April 28, 2001, thus dating the document and the discussion.
3. Mr. Collett made numerous calls to Mr. Johnson from April 29<sup>th</sup> through May 3<sup>rd</sup> which Mr. Johnson did not return.
4. Mr. Johnson's check dated April 28, 2001 in the amount of Five Hundred Dollars (\$500.00) was returned by Mr. Collett to Mr. Johnson on or about May 3, 2001.
5. After Mr. Johnson failed to respond to Mr. Collett's telephone calls and return of the check, Mr. Collett understood that any Agreement was rescinded.
6. Mr. Collett then began making repairs and improvements to the cabin with the understanding that the deal was over.
7. After substantial materials were brought to the site and substantial work performed, your letter arrived.
8. I have called you many times to discuss your letter, but never have found you in. You have returned two of the calls, but not the most recent one.

Exhibit "E"

William A. Shaw, Jr.  
June 28, 2001  
Page 2 of 2

9. The original document stated that the total price was to be paid within sixty (60) days of the April 28<sup>th</sup> deposit, which ended Wednesday, June 27, 2001.
10. For the duration of the sixty (60) days which Mr. Johnson was to provide the full purchase price, he neither replaced the deposit nor tendered the purchase price.
11. As of June 28, 2001, therefore, Mr. Johnson is in breach of *any* rights he might of had under *any* interpretation of the April 28<sup>th</sup> Agreement.
12. Even if the Agreement had not been rescinded by mutual agreement in May, or breached by Mr. Johnson in June, there would have remained numerous unclear issues about what was intended to be conveyed.

In light of your client either having accepted the offer to rescind the contract or having breached the Agreement by not re-tendering the deposit and payment, the contract now seems to be void and Mr. Collett will continue to occupy and enjoy the premises. Please confirm that any comment made to the Department of Natural Resources suggesting any claim by Mr. Johnson has been withdrawn.

Sincerely,



George A. Baillie

GB/cc

cc: Dave Collett

Aug. 6, 2004  
16 Wood ST.  
Burgettstown, Pa.  
15021

(9)

To whom it may concern,

The enclosed letters concern The Problems regarding Camp # 9C450. I think they explain The Disagreement Between Mr. Collett and Mr. Johnson. The DCNR issued me a 10yr. lease being aware of The problem. My attorney assured me That The camp was mine and I could Do as I wished with it. The grounds were cleaned, The cabin was cleaned and remodelled which Took a lot of time and expense and Travel Time. I Did all of This in good faith Thinking The cabin and lease were mine. I think I should Be able To Keep The camp or more money should Be paid me since it was greatly improved. Pre Trail Conference held at Monday 8-16-04 at 9:30 A.M.

Sincerely

**RECEIVED**

**AUG 09 2004**

**COURT ADMINISTRATOR'S  
OFFICE**

William A. Shaw, Jr.  
Attorney at Law

211 North Second Street  
Clearfield, PA 16830  
Phone: (814) 765-1910  
Fax: (814) 765-4410  
E-Mail: attyshaw@clearnet.net

May 21, 2001

David J. Collett  
16 Wood Street  
Burgertstown, PA 15021

RE: Johnson v. Collett  
Camp No. 9-C-450

Dear Mr. Collett:

I have recently been retained by Reed Johnson to represent his legal interests regarding a sales contract wherein you agreed to sell Mr. Johnson your rights to Camp No. 9-C-450. Kindly note my entry of appearance for your records.

In reviewing this matter, Mr. Reed provided me with a written sales agreement you signed. Additionally, Mr. Reed provided me with a check in the amount of \$500.00 that was delivered to you as down payment for the camp. Despite a written agreement and payment of money, Mr. Reed reports that you now wish to breach the contract.

Please note, I have reviewed the relevant case law and written agreement that you entered into. My research indicates that you have signed a binding contract to sell Mr. Reed your rights to Camp No. 9-C-450. At this time, I am extending to you the ability to comply with the terms of the sales agreement. Hopefully, we can resolve this matter without the need for costly litigation. However, if you fail to comply with the terms of the sales agreement, Mr. Reed has every intention of pursuing legal action against you. Among other things, Mr. Reed will sue for specific performance of the contract. Additionally, Mr. Reed will seek to recover all money damages that he has suffered because of your breach.

Again, I hope that we can resolve these proceedings without the need for further litigation. Kindly respond to my letter within the next two weeks so that I may take the appropriate action to protect Mr. Reed's interests. Additionally, please note that I am informing the Bureau of Forestry of the claim being made against you as well as the claim Mr. Johnson intends to make

②

David J. Collett  
May 21, 2001  
Page 2

for the ownership right of Camp Lease No. 9-C-450. It is my experience that when claims are made in these matters, the Bureau of Forestry will not transfer camp leases until the issue is resolved.

Please contact me with any questions or concerns.

Sincerely,

William A. Shaw, Jr.

WAS:nlc

cc: File  
Reed Johnson

# GEORGE A. BAILLIE

ATTORNEY AT LAW

1336 Main Street  
Burgettstown, PA 15021-1006

Phone: (724) 947-8000  
Facsimile: (724) 947-8002

June 28, 2001  
CERTIFIED MAIL # 7000 0600 0025 8006 8824

William A. Shaw, Jr.  
Attorney At Law  
211 North Second Street  
Clearfield, PA 16830

RE: Johnson v. Collett  
Camp No: 9-C-450

Dear Mr. Shaw:

Your letter of May 21<sup>st</sup> was referred to me by Mr. Collett and I have called you numerous times to try to discuss this matter with you. Please note the following:

1. The parties prepared and signed a handwritten document on a half-sheet of paper regarding "camp #9C450" without specifying whether it was an sale of the cabin building, assignment of a lease, a combination of those items, or some other transaction.
2. Mr. Johnson provided Mr. Collett a check for Five Hundred Dollars (\$500.00), dated April 28, 2001, thus dating the document and the discussion.
3. Mr. Collett made numerous calls to Mr. Johnson from April 29<sup>th</sup> through May 3<sup>rd</sup> which Mr. Johnson did not return.
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6. Mr. Collett then began making repairs and improvements to the cabin with the understanding that the deal was over.
7. After substantial materials were brought to the site and substantial work performed, your letter arrived.
8. I have called you many times to discuss your letter, but never have found you in. You have returned two of the calls, but not the most recent one.

William A. Shaw, Jr.  
June 28, 2001  
Page 2 of 2

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11. As of June 28, 2001, therefore, Mr. Johnson is in breach of *any* rights he might of had under *any* interpretation of the April 28<sup>th</sup> Agreement.
12. Even if the Agreement had not been rescinded by mutual agreement in May, or breached by Mr. Johnson in June, there would have remained numerous unclear issues about what was intended to be conveyed.

In light of your client either having accepted the offer to rescind the contract or having breached the Agreement by not re-tendering the deposit and payment, the contract now seems to be void and Mr. Collett will continue to occupy and enjoy the premises. Please confirm that any comment made to the Department of Natural Resources suggesting any claim by Mr. Johnson has been withdrawn.

Sincerely,



George A. Baillie

GB/cc

cc: Dave Collett



ΣV- (1)

# GEORGE A. BAILLIE

ATTORNEY AT LAW

1336 Main Street  
Burgettstown, PA 15021-1006

Phone: (724) 947-8000  
Facsimile: (724) 947-8002

July 27, 2001

David Collett  
16 Wood Street  
Burgettstown, PA 15021

RE: Johnson vs. Collett

Dear Dave:

As I told you, I have received no word or reply since my June 28<sup>th</sup> letter to Attorney Shaw. You received the camp lease bearing the date of May 15<sup>th</sup>, but mailed to you on July 10<sup>th</sup>. It now appears that the claims with Johnson have been avoided and you have a ten (10) year lease for the camp.

I am pleased that we were able to reach a successful result in this matter.

Sincerely,



George A. Baillie

GB/cc

Enclosure: Invoice

Σ 11 - ②

# GEORGE A. BAILLIE

ATTORNEY AT LAW

1336 Main Street  
Burgettstown, PA 15021-1080

Phone: (724) 947-8000  
Facsimile: (724) 947-8002

April 3, 2002

Frederick M. Neiswender  
501 East Market Street, Suite 3  
Clearfield, PA 16830

RE: Johnson vs. Collett  
No: 01-1920 C.D.

Dear Mr. Neiswender:

I am writing this letter confirming the telephone message I left on your machine, Mr. Collett has not authorized a sale offer for the leasehold and improvements. I have told him that I am obliged to forward any offer to purchase which you care to present. As indicated in the New Matter and Counterclaim, however, there have been many substantial improvements to the property since the previous discussions and the price should be increased commensurately.

In the meantime, the Reply to the New Matter and Counterclaim is overdue I expect to hear from you within ten (10) days of this letter or I will take the necessary steps to obtain a Default Judgment.

Sincerely,



George A. Baillie

GB/cc

cc: Dave Collett

2

# GEORGE A. BAILLIE

ATTORNEY AT LAW

1336 Main Street  
Burgettstown, PA 15021-1080

Phone: (724) 947-8000  
Facsimile: (724) 947-8002

March 7, 2002

Frederick M. Neiswender  
501 East Market Street, Suite 3  
Clearfield, PA 16830

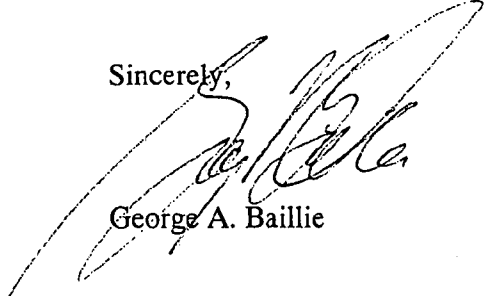
RE: Johnson vs. Collett  
No: 01-1920 C.D.

Dear Mr. Neiswender:

The time has expired for your response to the New Matter filed with the Court. I enclose a Notice of Intention to Take Default Judgment.

Since your delay may indicate that you have reviewed the merits of the New Matter, I also enclose for your convenience a Praecipe to Settle and Discontinue the action.

Sincerely,

  
George A. Baillie

GB/cc

cc: Dave Collett

Enclosure: Notice of Intention and Praecipe

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

S. REED JOHNSON

Plaintiff

vs.

DAVID J. COLLETT

Defendant

No. 01 - 1920 C.D.

**ANSWER AND  
NEW MATTER**

Filed on behalf of Defendant,  
David J. Collett

Counsel of Record for  
this party:

George A. Baillie

Pa. I.D. No. 42056

1336 Main Street

Burgettstown, PA 15021

(724) 947-8000

**NOTICE TO PLEAD**

**TO: PLAINTIFF** You are hereby notified to  
file a written response to the enclosed **NEW  
MATTER** and **COUNTERCLAIM** within  
twenty (20) days from service hereof or a  
judgment may be entered against you.

---

Counsel for Defendant

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

S. REED JOHNSON  
Plaintiff

vs.

No. 01 - 1920 C.D.

DAVID J. COLLETT  
Defendant

**ANSWER AND NEW MATTER**

NOW comes the Defendant, David J. Collett, by his counsel, George A. Baillie, and files this Answer and New Matter to the Complaint of S. Reed Johnson:

**ANSWER**

1. The name and address of Plaintiff ("Johnson") is admitted.
2. The name and address of Defendant ("Collett") is admitted.
3. Denied as stated. On April 28, 2001 Collett was arranging to have the lease of Camp # 9-C-450 assigned over into his name, but on that date it was still in the name of William G. Vento. In addition to seeking assignment of the lease for the camp site surface, Collett had purchased from William Vento the dilapidated cabin structure on the camp site. On April 28, 2001, Collett was engaged in commencing repairs to the cabin structure.
4. Denied as stated. Neither the camp site area leased, nor the cabin structure are "more fully described" in Exhibit A attached to the Complaint.

- 6
5. Denied as stated. Exhibit B does not state as alleged by Plaintiff Johnson that is for purchase of any "aforesaid structure" as no structure is mentioned therein. Neither does Exhibit B recite that there is to be any "assignment of the lease" for any term, or with any prepaid rental thereunder. It is admitted that the parties had a discussion on April 28, 2001.
  6. Admitted. By way of further answer, Collett repeatedly called Johnson from April 28 through May 3, 2001 in attempts to resolve this matter. Only after Johnson refused to take or return Collett's calls did Collett return the uncashed check of April 28, 2001. After Johnson's refusal to discuss any potential transaction and the return of the April 28, 2001 check, Collett regarded the discussions to be concluded, and continued to repair and improve the cabin structure and camp site.
  7. Admitted in part, denied in part. It is admitted that Mr. Shaw sent the letter of May 21, 2001. In immediate response, Mr. Collett called Mr. Shaw, and then had his counsel, Mr. Baillie make numerous additional calls to Mr. Shaw, but despite these efforts no discussion took place. Plaintiff's alleged fear that Collett would "breach the agreement" is denied as there was then no agreement between the parties to be breached.
  8. Denied as stated. Exhibit E does not state that Collett was refusing to abide by the terms of an agreement; to the contrary, it states that there was never a specific agreement, that Collett had made numerous improvements to the property in reliance on Johnson having terminated his desire to make any purchase offer, and any claims of Johnson had expired because he had failed to tender the price within the sixty (60) days following April 28, 2001.
  9. Denied. Plaintiff Johnson has failed at any time to tender the alleged purchase price which by Exhibits A and B was due no later than June 27, 2001. His assertion, through

6

new counsel, in a Complaint filed one hundred fifty (150) more days after Exhibit E's notice of his failure, does not mitigate his breach.

10. Denied. There are Five Hundred Seventy Six (576) leased sites in this DCNR camp alone, and other camp sites elsewhere; Plaintiff Johnson in Clearfield has at least an equal opportunity to monitor the market in camp site availability as does Defendant Collett in Washington County. Collett made substantial repairs and improvements to this cabin and this camp site since June 28, 2001 in reliance on Johnson's inactivity regarding this purported transaction. Collett was assigned the camp site lease on July 10, 2001 (in an apparent withdrawal of Johnson's May 21 threat to block transfer). Enforcement of the purported April 28, 2001 sale for the much better structure that exists now would be unfair and unjust to Collett.

WHEREFORE, Defendant Collett requests the Honorable Court to dismiss the Complaint of Plaintiff Johnson, with prejudice, and with costs on Plaintiff.

#### NEW MATTER

11. The averments above are incorporated by reference as if fully restated herein.
12. To the extent Plaintiff asserts a claim to be conveyed a leasehold interest in real property, he **fails to be sufficiently specific** as to (1) the boundary of the property to be conveyed, (2) any easements appurtenant or dominant upon the property, (3) the duration of any proposed leasehold; (4) whether any purported lease is to be sublet or assigned, (5) whether any rental payments are prepaid or due, and (6) what rights of remainder or reverter will exist at the expiration of the lease term.

13. To the extent Plaintiff asserts a claim to the cabin structure he fails to state (1) whether the "camp" refers to the cabin structure at all, or only the camp site lease; (2) whether the new building materials brought to the site on April 28 were to be included, or whether they were to be removed by Collett as his personal property; (3) whether the installation labor of Collett for those materials were to be included; (4) and whether the additional repairs and improvements made by Collett since June 28, 2001 are to be included.
14. The claims regarding rights to real property are barred by the **statute of frauds**.
15. Collett's refusal to accept the alleged deposit and his return of the uncashed check, with no new tender by Johnson, caused a **lack and failure of any consideration** by Johnson.
16. Any claims of Johnson have been **waived** by his failure to abide by his alleged agreement.
17. Johnson's failure to tender payment within the alleged sixty (60) day contract term **estops** him from asserting any claim under the alleged agreement.
18. Johnson's apparent action in withdrawing his asserted blockage of the lease documents to Collett (released by DCNR eight (8) days after Shaw received Exhibit E) constitutes a **release** of Johnson's claims.
19. In **reliance** on Johnson's having abandoned any claim to purchase or receive assignment of Collett's rights, Collett made numerous and substantial improvements to the campsite and cabin structure, including: (1) repaired three roof trusses, replaced roof sheeting and roofing; (2) repaired stone and block foundation; (3) repaired floor beam and joists; (4) repaired siding boards; (5) replaced warped flooring; (6) rebuilt rotted window frame; (7) installed new window panes, window locks and window blinds; (8) made and



6

installed custom shutters for all windows; (9) repaired wiring installing new outlets, ceiling fan and exterior floodlight; (10) rebuilt interior wall with new framing, wall board, finish and paint; (11) scraped, primed and painted entire exterior, replacing trim where needed; (12) replaced drywall in ceiling where needed; (13) painted entire interior; (14) disposed of refuse and items left by prior tenant; (15) cleared surface of camp area of brush and limbs, mowed area; (16) purchased, had delivered and placed one ton of limestone gravel. (17) purchased and installed electric range, kerosene heater, bunk beds, benches, cabinets and shelving; (18) purchased and brought in furnishings -- mattresses, microwave, etc.

20. Johnson's sleeping on his rights for the sixty (60) day duration of the alleged contract, and the additional one hundred fifty (150) days until this Complaint, while Collett continued to repair and improve the cabin and camp site cause Johnson's claims to be barred by **laches**.

21. Collett's actions were at all times **justified**.

WHEREFORE, Defendant Collett requests the Honorable Court to dismiss the Complaint of Plaintiff Johnson, with prejudice, and with costs on Plaintiff.

Respectfully submitted,

---

George A. Baillie, Attorney for  
Defendant David J. Collett

**FORM OF PRE-TRIAL MEMORANDUM  
FOR CLEARFIELD COUNTY**

The Court will expect the following in the nature of a Pre-Trial Memorandum\* one week prior to the date of the Pre-Trial Conference.

1. A brief factual statement of the claim or defense. (This shall include all material facts to be proven by competent evidence.)

2. A list of all exhibits to be offered in evidence.

X (a). A copy of all reports containing findings or conclusions of any physician who has treated, examined or has been consulted in connection with the injuries complained of, and whom a party expects to call as a witness at the trial of the case.

X (b). A copy of all reports containing the substance of the facts, findings, opinions and a summary of the grounds or reasons for each opinion of any expert whom a party expects to call as a witness at trial.

X 3. Names and addresses of all witnesses expected to be called. Said witnesses shall be classified as liability, medical or damage witnesses.

? 4. A statement of the legal theory upon which the right of recovery or defense is predicted, which shall include citation of the authorities relied upon.

X 5. A brief description of the damages claimed and the basis therefor. There should be included a brief statement of:

(a). The principal injury or injuries sustained.

(b). Hospitalization and convalescence.

(c). Present disability.

(d). A summary of the special monetary damages.

(Include a detailed statement of loss of earnings to date and a detailed statement as to loss of future impairment of earning capacity, total medical expenses, property damages, and miscellaneous expenses.)

X 6. Any extraordinary evidentiary problems shall be set forth and briefed together with authorities.

X 7. A list of stipulations which the opposition reasonably can be expected to agree to for the purpose of avoiding the necessity of proof of matters as to which there is no basic dispute.

X 8. All special Points for Charge which the party wishes the court to charge on, together with authority therefor.

1 1/2 hour 9. Estimated time for trial.

SET OFF e Counsel must be prepared to fix specific dates for trial at the Pre-Trial Conference.

**\*PLEASE NOTE: The original Pre-Trial Memorandum should be sent directly to the COURT ADMINISTRATOR'S OFFICE, with copies forwarded to opposing counsel.**

**HONORABLE PAUL E. CHERRY, PRESIDING**  
**CLEARFIELD COUNTY NON-JURY TRIAL LIST – FALL 2004**

**CALL JULY 29, 2004 AT 11:00 A.M.**

No. 01-1920-CD	#1	1/9/04*
S. REED JOHNSON		Frederick M. Neiswender, Esquire
vs.		
DAVID J. COLLETT		Pro Se

---

No. 03-841-CD	#2	# 3/22/04*
TIMOTHY J. SEGRAVES and		Brian K. Marshall, Esquire
RANDI L. POWERS		
vs.		
WILLIAM J. DUFOUR and		Frederick M. Neiswender, Esquire
DARLENE L. DUFOUR		

---

No. 02-1456-CD	#3	6/8/04*
MERRILL JONES and RUTH		Girard Kasubick, Esquire
JONES, his wife, and JONES AUTO		
SALVAGE, a/k/a JONES SALVAGE		
vs.		
MICHAEL TREJO		Philip L. Zulli, Esquire

---

No. 03-1366-CD	#4	6/25/04*
THOMAS E. JOSEPHSON and LISA		F. Cortez Bell, III, Esquire
A. JOSEPHSON, husband and wife		
vs.		
GINGER J. KENDRICK		Stuart L. Hall, Esquire

---

\*Date Placed on Trial List



OFFICE OF COURT ADMINISTRATOR  
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

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

DAVID S. MEHOLICK  
COURT ADMINISTRATOR

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

MARCY KELLEY  
DEPUTY COURT ADMINISTRATOR

July 21, 2004

MEMO - PRO SE LITIGANTS

Re: 2004 FALL CIVIL TRIAL LIST


Enclosed you will find a copy of the Civil Non-Jury Trial List for Judge Cherry for the upcoming FALL Term. Civil Call will be held on THURSDAY, July 29, 2004, at 11:00 A.M. in Court Room No. 1. All litigants who have a case on the list must be present at the Call.

Pre-Trial Conferences will be held on <sup>9:30</sup>Monday and Wednesday, August 16 and 18, 2004 for Judge Cherry.

Pursuant to Local Rule 212.4e, your Pre-Trial Statement must be submitted one week prior to the date of the Pre-Trial Conference and should be mailed or delivered to the undersigned with copy to opposing counsel. For your convenience, a Pre-Trial Memorandum Instruction Form is also enclosed.

If you have any questions regarding the Call, please contact the undersigned.

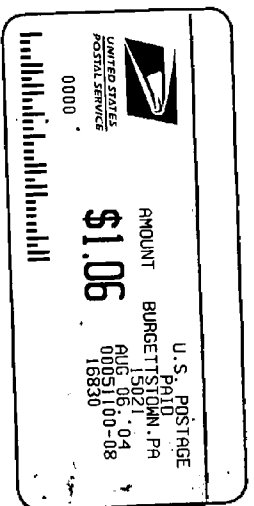
Respectfully yours,

  
David S. Meholick  
Court Administrator

Enclosures (2)

Collet  
stown, PA 15021-2444

DAVID S. Meholick  
OFFICE OF COURT ADMINISTRATION  
CLEARFIELD COUNTY COURTHOUSE  
230 EAST MARKET STREET  
SUITE 228  
CLEARFIELD, PA  
16830



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL ACTION – EQUITY)

S. REED JOHNSON,

Plaintiff,

vs.

DAVID J. COLLETT,

Defendant.

No. 01 - 1920 - C.D.

Type of case: Civil (Equity)

Type of pleading: Praeceptum to Discontinue

Filed on behalf of: Plaintiff,  
S. Reed Johnson

Counsel for Plaintiff:  
Frederick M. Neiswender, Esquire  
Supreme Court No. 74456  
501 East Market Street, Suite 3  
Clearfield, Pennsylvania 16830  
(814) 765-6500

FILED

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MAY 15 2006

William A. Shaw  
Prothonotary/Clerk of Courts

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL ACTION – EQUITY)

S. REED JOHNSON,

Plaintiff,

vs.

DAVID J. COLLETT,

Defendant.

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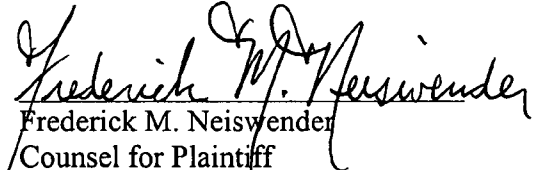
No. 01 - 1920 - C.D.

**PRAECIPE TO DISCONTINUE**

TO THE PROTHONOTARY:

Please mark the above captioned case DISCONTINUED.

Respectfully submitted,

  
Frederick M. Neiswender  
Counsel for Plaintiff

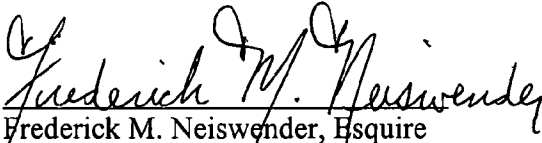
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL ACTION – EQUITY)

S. REED JOHNSON,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	No. 01 - 1920 - C.D.
	:	
DAVID J. COLLETT,	:	
	:	
Defendant.	:	

**CERTIFICATE OF SERVICE**

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Praecipe to Discontinue was made upon David J. Collett, by mailing, first class, postage prepaid, a true copy to David J. Collett on May 12, 2006, at the following address:

David J. Collett  
16 Wood Street  
Burgettstown, Pennsylvania 15021

  
Frederick M. Neiswender, Esquire  
Counsel for Plaintiff  
501 East Market Street, Suite 3  
Clearfield, Pennsylvania 16830



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

**CIVIL DIVISION**

**S. Reed Johnson**

**Vs.  
David J. Collett**

**No. 2001-01920-CD**

**CERTIFICATE OF DISCONTINUATION**


Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on May 15, 2006, marked:

Discontinued

Record costs in the sum of \$80.00 have been paid in full by Frederick M. Neiswender, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 15th day of May A.D. 2006.

  
\_\_\_\_\_  
William A. Shaw, Prothonotary