

01-1977-CD
KATHY CUMMINGS -vs- SEARS ROEBUCK & COMPANY

—Lap over margin—

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

KATHY CUMMINGS,

Plaintiff

vs.

SEARS ROEBUCK & COMPANY,
Defendant

C O M P L A I N T

NOTICE TO DEFENDANT:

YOU are hereby notified that
you are required to file an
Answer to the within Complaint
within twenty (20) days after
service upon you or judgment may
be entered against you.

Paul J. Shaw
PAUL COLAVECCHI, ESQUIRE
Attorney for Plaintiff

COLAVECCHI
RYAN & COLAVECCHI

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

FILED

DEC 07 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KATHY CUMMINGS,

CIVIL DIVISION

Plaintiff

No. 2001 - 1977 - CD

vs.

COMPLAINT

SEARS ROEBUCK & COMPANY,

Filed on behalf of:

Defendant

Plaintiff, KATHY CUMMINGS

Counsel of Record for
Said Party:

PAUL COLAVECCHI, ESQUIRE
PA I.D. 83274

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

FILED

*Rec'd
12/07/2001
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DEC 07 2001
William A. Shaw
Prothonotary
PP
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BY ATT

3 cert to Att

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

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

KATHY CUMMINGS, :
Plaintiff :
:
vs. : No. 2001 - - CD
:
SEARS ROEBUCK & COMPANY, :
Defendant :
:

N O T I C E

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

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

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
230 North Second Street
Clearfield, PA 16830

Phone 814/765-2641, Ext. 5982

LAW OFFICES OF
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CLEARFIELD, PA

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

KATHY CUMMINGS, :
Plaintiff :
:
vs. : No. 2001 - - CD
:
SEARS ROEBUCK & COMPANY, :
Defendant :

C O M P L A I N T

1. Plaintiff is Kathy Cummings, an individual having a mailing address of R.D. 1, Box 582, Mahaffey, Pennsylvania, 15757.

2. Defendant is Sears Roebuck & Company, a Corporation, of DuBois Mall, DuBois, Pennsylvania, 15801.

3. At all times relevant hereto, Defendant was in exclusive custody, possession and control of said area hereinafter described as "premises", and it was the duty of Defendant to keep and maintain said premises under reasonably safe conditions for those persons lawfully thereon.

4. Notwithstanding its duties, the Defendant did on November 12, 2001, allow to permit and remain on premises a dangerous condition, to-wit; a pile of plastic SALE signs on the floor in such a state as to create a dangerous condition.

5. On or about November 12, 2001 at approximately 2:30 p.m., Plaintiff was walking in the electronics department of Sears Roebuck & Company.

6. A pile of plastic SALE signs were left sitting on the floor around a corner which caused the Plaintiff to slip on the signs and fall down, resulting in injuries.

7. At the time of the incident, Defendant did or should have had notice and knowledge of the aforesaid dangerous condition, being a pile of plastic SALE signs left on the floor in the electronics department of the store which made it easy for someone lawfully on the premises to slip and fall.

8. The injuries and damages which are hereinafter set forth were caused solely by and with the direct and proximate result of the negligence of the Defendant in any and all of the following respects.

a. In failing to keep the premises in a safe condition for persons lawfully using the same;

b. In permitting a dangerous condition to be and remain on the premises when the Defendant knew or in the exercise of reasonable care, should have known the danger involved;

c. In failing to warn Plaintiff of the dangerous condition caused by the described hazard;

d. In failing to cover, blockade or otherwise remove the dangerous condition of which Defendant knew or in the exercise of reasonable diligence should have known;

e. Permitting persons, in particular the Plaintiff, to traverse the premises when Defendant knew, or in the exercise of

reasonable diligence, should have known it was dangerous to do so and involved a reasonable risk of harm to persons in so doing;

f. In failing to notify or warn Plaintiff of the dangerous condition so that the hazard involved could have been avoided;

g. Maintaining the premises in such a manner to constitute a danger to persons lawfully thereon;

h. Failing to provide persons lawfully using the premises with a safe area to traverse; and

I. To inspect the premises to discover the dangerous condition.

9. Solely as a result of the negligence of the Defendant as aforesaid, Plaintiff sustained an injury to her left knee, including injuries to the muscles and ligaments, left leg, back, and shock and injury to her nerves and nervous system which may be of a permanent nature.

10. As a result of the aforesaid injuries, Plaintiff has sustained the following damages:

a. Plaintiff has suffered and will continue to suffer great pain, inconvenience, embarrassment, mental anguish and the loss of enjoyment of life;

b. Plaintiff has expended and will be required to expend sums of money for medical and surgical attention, hospitalization,

medical supplies, surgical supplies, medicines and attendant services, and

c. Plaintiff's general welfare, strength and vitality have been impaired.

WHEREFORE, Plaintiff brings this action against Defendant to recover damages in excess of the jurisdiction of the Board of Arbitrators of this Court and in excess of Twenty Thousand (\$20,000) Dollars.

Paul Colavecchi
PAUL COLAVECCHI, ESQUIRE

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

VERIFICATION

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



KATHY CUMMINGS

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

KATHY CUMMINGS,

CIVIL DIVISION

Plaintiff,

v.

No.: 2001 – 1977 CD

SEARS ROEBUCK & COMPANY,

Defendant.

PRAECIPE FOR APPEARANCE

Filed on behalf of Defendants.

Counsel of record for this party:

Victor J. Sullivan, Jr., Esquire
PA ID 19981
Marshall, Dennehey, Warner,
Coleman & Goggin
USX Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219

412-803-1165

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FILED

JAN 04 2002

**William A. Shaw
Prothonotary**

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

KATHY CUMMINGS,

CIVIL DIVISION

Plaintiff,

v.

No.: 2001 - 1977 CD

SEARS ROEBUCK & COMPANY,

Defendant.

PRAECIPE FOR APPEARANCE

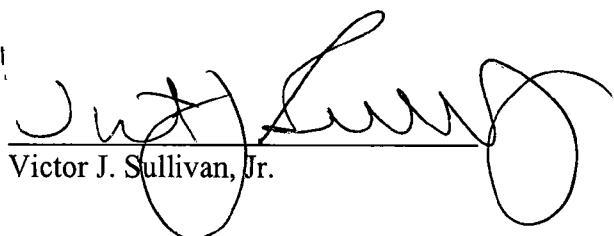
TO: Prothonotary, Clearfield County, Pennsylvania

Please enter my appearance on behalf of Defendants in the above captioned matter.

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

By:


Victor J. Sullivan, Jr.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within PRAECIPE FOR APPEARANCE was served upon all parties listed below, by first class United States Mail, postage prepaid, this 31 day of December 2001, addressed as follows:

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

By: Victor J. Sullivan
Victor J. Sullivan, Jr. *om*

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

KATHY CUMMINGS,

CIVIL DIVISION

Plaintiff,

v.

No.: 2001 - 1977 CD

SEARS ROEBUCK & COMPANY,

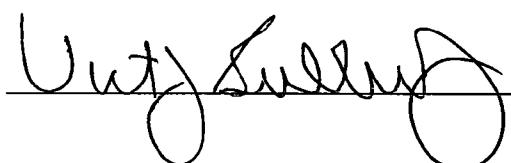
Defendant.

ANSWER AND NEW MATTER

Filed on behalf of Defendants.

TO THE WITHIN NAMED PARTY:

You are hereby notified to file a written response to the enclosed New Matter within twenty (20) days from service hereof or a judgment may be entered against you.



Counsel of record for this party:

Victor J. Sullivan, Jr., Esquire
PA ID 19981
Marshall, Dennehey, Warner,
Coleman & Goggin
USX Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219

412-803-1165

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FILED

JAN 25 2002
m 11:28 amcc
William A. Shaw
Prothonotary

ANSWER AND NEW MATTER

AND NOW, comes the Defendant, Sears, Roebuck & Company, by its attorney, Victor J. Sullivan, Jr., and denies that it is indebted to the Plaintiff in the cause of action declared on in the sum demanded or in any sum whatsoever and on the contrary avers that it has a just, full and complete defense to the whole of the claims asserted against it, which defense, insofar as it is necessary to set the same forth in an Answer is as follows:

1. The averments contained in paragraph 1 of Plaintiff's Complaint are believed to be true and correct to the knowledge of these Defendants at this time.
2. The averments contained in Paragraph 2 of Plaintiff's Complaint are admitted as stated.
3. The averments contained in Paragraph 3 of Plaintiff's Complaint are admitted in part and denied in part. It is admitted that the Defendant was in the possession, custody and control of the premises described in Plaintiff's Complaint. It is specifically denied that the Defendant was in exclusive possession, custody and control of said premises as it is the duty of all patrons to exercise reasonable care and caution for their own safety. The remaining averments contained in Paragraph 3 are conclusions of law to which no reply is necessary.
4. The averments contained in Paragraph 4 of Plaintiff's Complaint are specifically denied based upon information received and believed by this Defendant. To this Defendant's knowledge, no incident as described in Plaintiff's Complaint occurred on November 12, 2001 and, on the contrary, this Defendant has been supplied with information by the Plaintiff that said incident occurred on November 13, 2001. If it is determined that the date of November 12, 2001 is true and correct, then and in that event, it is averred that the remaining averments contained in Paragraph 4 of Plaintiff's Complaint are conclusions of law to which no reply is necessary.
5. The averments contained in Paragraph 5 of Plaintiff's Complaint are specifically denied for the reasons set forth in Paragraph 4 above, which is incorporated herein by reference thereto as though fully set forth herein at length.

6. The averments contained in Paragraph 6 of Plaintiff's Complaint are specifically denied for the reasons set forth in Paragraph 4 above, which is incorporated herein by reference thereto as though fully set forth herein at length. If, at the time of the trial of this matter, it is demonstrated that the date of November 12, 2001 is true and correct, then and in that event, this Defendant is without sufficient knowledge or information by which to form a reasonable belief as to the averment that the Plaintiff slipped and fell on any said signs, and strict proof thereof is demanded.

7. The averments contained in Paragraph 7 of Plaintiff's Complaint are specifically denied for the reasons set forth in Paragraphs 4, 5 and 6 above, which are incorporated herein by reference thereto as though fully set forth herein at length.

8. This Defendant has been advised by counsel and therefore believes and avers that it need not make any response to the allegations of Paragraph 8 of Plaintiff's Complaint as all averments are specifically denied and placed at issue by virtue of this Answer and in accordance with Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

9. After reasonable investigation, this Defendant is without sufficient knowledge or information by which to form a belief as to the truth of the averments contained in Paragraph 9 of Plaintiff's Complaint and the same are therefore specifically denied.

10. After reasonable investigation, this Defendant is without sufficient knowledge or information by which to form a belief as to the truth of the averments contained in Paragraph 10 of Plaintiff's Complaint and the same are therefore specifically denied.

WHEREFORE, the above-mentioned Defendant denies and continues to deny any and all liability to the Plaintiff under any theory or cause of action as set forth in Plaintiff's Complaint and demands judgment in its favor.

NEW MATTER

AND NOW, comes the above-mentioned Defendant, by its attorney, and by way of further defense sets forth the following New Matter:

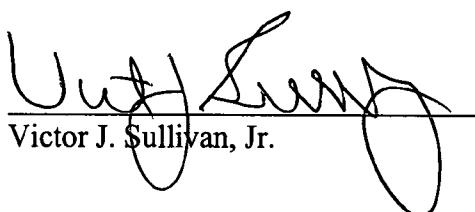
1. The rights of the Plaintiff in this action are governed, diminished, or barred by the contributory and/or comparative negligence of Plaintiff and this Defendant claims all of the benefits of the provisions of the Pennsylvania Comparative Negligence Act as set forth at 42 Pa. C.S.A. § 7102 et seq., and pleads the same as an affirmative defense in this action.
2. Plaintiff's Complaint fails to state a proper cause of action against this Defendant upon which relief can be granted and therefore should be dismissed.

WHEREFORE, the above-mentioned Defendant denies and continues to deny any and all liability to the Plaintiff under any theory or cause of action as set forth in Plaintiff's Complaint and demands judgment in its favor.

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

By:


Victor J. Sullivan, Jr.

VERIFICATION

I, Zellw B. Peace, _____ of Sears, Roebuck & Company, Defendant in the within action, do hereby verify that I have read the foregoing Answer and New Matter and that the statements contained herein are true and correct to the best of my knowledge.

This verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Zellw B. Peace

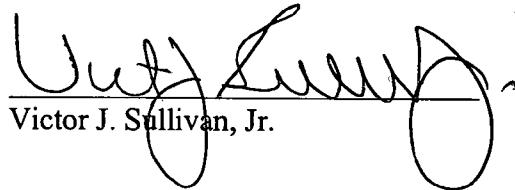
Dated: 1-17-08

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Answer and New Matter was served upon all parties listed below, by first class United States Mail, postage prepaid, this 23 day of January 2002, addressed as follows:

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

By:


Victor J. Sullivan, Jr.

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

No. 01 - 1977 - CD

KATHY CUMMINGS,

Plaintiff

vs.

SEARS ROEBUCK & COMPANY,

Defendant

REPLY TO NEW MATTER

FILED

01/10/00 4:51
JAN 30 2002 4:51
M. P. Colavecchi

William A. Shaw
Prothonotary

COLAVECCHI
RYAN & COLAVECCHI

ATTORNEYS AT LAW
221 EAST MARKET STREET
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P. O. BOX 131
CLEARFIELD, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KATHY CUMMINGS,
Plaintiff
Vs.

SEARS ROEBUCK & COMPANY,
Defendant

CIVIL DIVISION
No. 01 - 1977 - CD

REPLY TO NEW MATTER

Filed on Behalf of:

Plaintiff, KATHY CUMMINGS

Counsel of Record for This
Party:

PAUL COLAVECCHI, ESQUIRE
Pa. I.D. #83274

COLAVECCHI RYAN & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

FILED

JAN 30 2002

William A. Shaw
Prothonotary

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

KATHY CUMMINGS,

Plaintiff : No. 01 - 1977 - CD

Vs.

SEARS ROEBUCK & COMPANY,

Defendant :

REPLY TO NEW MATTER

NOW COMES, Kathy Cummings, and by her attorney, Paul Colavecchi, Esquire, files her Reply to the New Matter of the Defendant as follows:

1. Denied. Plaintiff's rights are not diminished or barred by contributory and/or comparative negligence because Defendant breached their duty of care to an "invitee" by leaving a condition on the premises which involved an unreasonable risk of harm and by failing to exercise any reasonable care to protect against the danger.

2. Denied. Plaintiff's Complaint states a cause of action pursuant to Section 344 of the Restatement of Torts, setting forth the duty owed to an "invitee."

WHEREFORE, Plaintiff asks that the New Matter of Defendant be dismissed and that judgment be entered in her favor.

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

Paul Colavecchi
PAUL COLAVECCHI, ESQUIRE
Attorney for Plaintiff

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IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION
No. 2001-1977-CD

KATHY CUMMINGS, Plaintiff

vs.

SEARS ROEBUCK & COMPANY,
Defendant

PRAECLPICE TO DISCONTINUE

FILED

MAY 28 2002

OBG/C/Cott Colavecchi
William A. Shaw
Prothonotary

Crt. Ct. to Atty

COLAVECCHI
RYAN & COLAVECCHI

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

Copy to Atty
Cott

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KATHY CUMMINGS,

CIVIL DIVISION

Plaintiff

No. 2001 - 1977 - CD

vs.

PRAECIPE TO DISCONTINUE

SEARS ROEBUCK & COMPANY,

Filed on behalf of:

Defendant

Plaintiff, KATHY CUMMINGS

Counsel of Record for
Said Party:

PAUL COLAVECCHI, ESQUIRE
PA I.D. 83274

COLAVECCHI RYAN & COLAVECCHI
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814/765-1566

FILED

MAY 28 2002

013561

William A. Shaw
Prothonotary

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CLEARFIELD, PA

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

KATHY CUMMINGS, :
Plaintiff :
:
vs. : No. 2001 - 1977 - CD
:
SEARS ROEBUCK & COMPANY, :
Defendant :

PRAECIPE TO DISCONTINUE

Please mark the records in the above captioned action
discontinued, settled and ended.

Paul Colavecchi
PAUL COLAVECCHI, ESQUIRE
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

CIVIL DIVISION

Kathy Cummings

Vs. **No. 2001-01977-CD**
Sears Roebuck & Company

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 28, 2002 marked:

Discontinued, Settled and Ended.

Record costs in the sum of \$80.00 have been paid in full by Paul Colavecchi, Esquire.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 28th day of May A.D. 2002.

William A. Shaw, Prothonotary