

02-48-00  
CSB BANK -vs- MICROS & MORE, INC.

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

CSB BANK,

Plaintiff

vs.

MICROS & MORE, INC.,  
Defendant

No. 02- 48 -CD

Type of Case: Civil Action

Type of Pleading: COMPLAINT

Filed on behalf of: Plaintiff

Counsel of Record for this Party:  
Andrew P. Gates

Supreme Court No.: 36604

GATES & SEAMAN  
Attorneys at law  
2 North Front Street  
P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

FILED

JAN 10 2002  
01/11/25/attg Gates  
William A. Shaw pd \$80.00  
Prothonotary  
icc attg

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

CSB BANK, Plaintiff	:	No. 02 -	- CD
	:		
-vs-	:		
	:		
MICROS & MORE, INC.	:		

COMPLAINT

AND NOW, comes Plaintiff, CSB BANK, by its Solicitors, Gates & Seaman, and avers the following cause of action and in support thereof alleges the following:

COUNT ONE

1. Plaintiff is CSB Bank, a state banking corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its primary place of business located at 434 State Street, Curwensville, Pennsylvania 16833.

2. Defendant, Micros & More, Inc., is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its registered address being 130 Logan Street, Osceola Mills, Pennsylvania 16666.

3. Nicholas P. Cimino, an individual, residing at R.R.#1, Box 462A, Osceola Mills, Pennsylvania 16666, is one of the original incorporators of Defendant, Micros & More, Inc. and upon information and belief said individual has been and continues to be one of the principals, partners or executive officers of said corporation.

4. Defendant, Micros & More, Inc. since its inception was in the business of selling and servicing office machines and related supplies, including providing ongoing service of computer and related equipment, including consulting services.

5. On or about May 17, 2000, Plaintiff CSB Bank and Defendant, Micros & More, Inc. entered into a written two-year service agreement which in exchange for the monetary consideration to be paid by Plaintiff to Defendant, Defendant agreed for a period of two-years, beginning May 31, 2000, to provide Plaintiff networking, consulting and needs analysis, training and other services. A copy of said Total Care 2 year Service Agreement is attached hereto and made a part hereof as Exhibit "A".

6. Pursuant to the "payment terms" of the aforementioned Total Care 2 year Service Agreement, Plaintiff CSB Bank was to pay 25% of the annual contract value due upon acceptance (being the sum of \$6,250.00) with the balance due under the Agreement to be billed in monthly increments over the term of the contract.

7. Despite only the sum of \$6,250.00 being due to Defendant, Micros and More, Inc. at the inception of the contract, the Defendant nevertheless invoiced Plaintiff, CSB Bank on May 18, 2001 for the sum of \$12,500.00 (which represents 25% of both years of the contract not just one year)

which CSB Bank inadvertently paid to Defendant on or about May 30, 2000.

8. Thereafter, Plaintiff, CSB Bank paid the monthly incremental amounts invoiced by Micros & More, Inc. for the months of July 2000 through August 2001.

9. On or about August 24, 2001, CSB Bank was informed by one of the technicians working for Micros & More, Inc. that said Defendant was going out of business and said service provider would not be honoring the remaining nine plus months it owed to CSB Bank under the terms of the aforementioned two-year service agreement.

10. From August 25, 2001 to the present time, neither Micros & More, Inc. nor any representative or employee thereof has provided CSB Bank with the services Defendant, Micros & More, Inc. was contractually obligated to provide to CSB Bank pursuant to the aforementioned two-year service agreement.

11. At present, Defendant Micros & More, Inc. has been overpaid by the sum of \$6,630.43 for services it failed to provide CSB Bank pursuant to the terms of the two-year service Agreement and which sum consists of:

(a) the sum of \$6,250.00 which is the amount Plaintiff overpaid to the Defendant, on or about May 30, 2000, and which was not called for in the agreement, as more specifically described in Paragraph 6 hereof, and

(b) the remaining \$380.43 being the 7 days in August 2001 (August 24, 2001 - August 30, 2001) during which Micros & More, Inc. did not provide services but for which it had been paid.

12. Defendant, Micros & More, Inc.'s failure to provide the agreed upon services to Plaintiff, CSB Bank, pursuant to the aforementioned two-year service agreement is a material breach of said Agreement between Plaintiff and Defendant.

13. Plaintiff, CSB Bank, through its counsel's letter of November 14, 2001 demanded that Micros & More, Inc. remit to it the sum of \$6,630.43, which said Defendant has failed and/or refused to do. A copy of said attorney's demand letter is attached hereto and made a part hereof as Exhibit "B".

14. Defendant, Micros & More, Inc.'s breach, of the aforementioned two-year service agreement has caused Plaintiff, CSB Bank injury in the amount of \$6,630.43.

WHEREFORE, Plaintiff, CSB Bank demands judgment against Defendant, Micros & More, Inc. in the amount of \$6,630.43, together with costs, interest from date of demand (November 14, 2001, being the date the Bank's attorney mailed its demand letter to the principals, Micros & More, Inc.).

#### COUNT TWO

In the alternative, Plaintiff, CSB Bank, avers the following alternate cause of action and in support thereof avers the following:

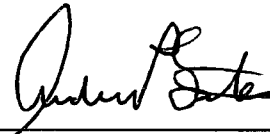
15. Paragraphs 1 through 11 and Paragraphs 13 of Plaintiff's Complaint are incorporated herein by reference as though set forth at length.

16. As a result of the foregoing, Defendant, Micros & More, Inc. has become unjustly enriched at Plaintiff's expense.

WHEREFORE, Plaintiff, CSB Bank demands judgment against Defendant, Micros & More, Inc. in the amount of \$6,630.43, together with costs, interest from date of demand (November 14, 2001, being the date the Bank's attorney mailed its demand letter to the principals, Micros & More, Inc.).

GATES & SEAMAN

By:



Andrew P. Gates, Esquire,  
Attorney for Plaintiff, CSB Bank

Two North Front Street  
P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

Date: January 9, 2002

Contract # \_\_\_\_\_

**Micros & More, Inc.**  
**TotalCARE™ 2-Year Service Agreement (TSA)**

Customer **CSB Bank** \_\_\_\_\_

Contract Value **\$50,000.00** \_\_\_\_\_

Primary Address **PO Box 29** \_\_\_\_\_

Start Date **5-31-2000** \_\_\_\_\_

**Curwensville, PA 16833** \_\_\_\_\_

Auto-Renewal Date \_\_\_\_\_

IT Contact **Ms. Patty Larson** \_\_\_\_\_

Phone # **814-236-2550**

Billing Contact \_\_\_\_\_

E-Mail \_\_\_\_\_

Tier 1 Service Rate: ~~\$80.00~~ <sup>77.00</sup> per hour *Nick Curran*

**Tier 1 Services:**

- Networking (LAN/WAN)
- Consulting & Needs Analysis
- Training

Tier 2 Service Rate: ~~\$70.00~~ <sup>\$77.00 per hour</sup> per hour *Nick Curran*

**Tier 2 Services:**

- Desk-Side Support
- PC-Repair
- Phone Support

**TotalCARE™ Service Agreement Includes:**

- Guaranteed 24 x 7 Emergency Priority Response (6-hour Onsite Response) Pager # 814-342-9165 x130
- Next Business Day Response (Non-emergency service)
- Price protection for 1 Year
- Evening and Weekend Service Option (rate x1 ½ evening/Saturday; x2 for holiday or Sunday service)
- Phone Support/Research & Development billed at "Tier 2" Rates, Minimum ¼ hour billing

Please note: Principal level services including consulting and needs analysis will be billed at \$125.00 per hour. E-Business and application development/database development rates quoted on a per-project basis.

**Terms and Conditions**

1. Contract term is two (2) years. Unused value is forfeited at end of contract.
2. Payment Terms:  
25% of annual contract value due upon acceptance. Balance billed in monthly increments over term of contract, with 1<sup>st</sup> monthly billing generated on the first day of the 2<sup>nd</sup> month of this contract, and due on the 10<sup>th</sup> day of the month received. In the event that the customer's annual service consumption exceeds the annual contract value, the customer will be billed hourly at the above contract rates. If customer's service consumption exceeds, at any time in the contract, the amount paid by customer, the customer will be billed the difference at the end of the month and the contract balance will be recalculated.
3. 6% PA Sales Tax not included (if applicable). Travel will be billed \$75.00 per hour, port to port from Philipsburg, PA office.

**Customer Acceptance**

*[Signature]*  
(Authorized Customer Signature and Date)

*[Signature]* 5/17/00  
*[Signature]* 5/17/00  
(Authorized Company Signature and Date)

Signature designates customer has read and accepted the terms of this contract on face and reverse side of this document.



**Standard of Performance and Limitation of Liability**

4. Early Termination Penalty - Customer may terminate this contract in writing, only on a (90-day) notice, and payments will continue according to contract during this notice period. Customer agrees to all terms of early termination penalty as follows: Customer will pay termination fee, which will be calculated as the greater of (a) 15% of contract value (minimum of \$3600.00) or (b) the overage which the customer has paid, but for which the Micros & More, Inc. has not delivered service. Any balance of termination fees owed Micros & More, Inc. will be due 5 days from end of 90-day notice period.
5. If customer is in default of any of the terms of this contract (i.e.: does not adhere to items 1-4 in this document), customer agrees to pay Micros & More, Inc. entire contract value as documented at the top of this form, plus any outstanding balance owed Micros & More, Inc., plus any and all legal fees incurred by the Micros & More, Inc. to collect these monies.

**Acceptance**

Micros & More, Inc. will perform its service in a professional manner according to generally accepted standards of ordinary care and reasonable skill as exercised by other competent consultants practicing in this market area. The liability of Micros & More, Inc. for its service, including errors or omissions, shall be limited to refund of its fees for services actually paid pursuant to this agreement, and the liability of Micros & More, Inc. for defective or otherwise non-conforming goods, software and other products provided hereunder shall be limited to repair or replacement of the item(s) in question or refund of the price paid for it at the Customer's option.

As an additional inducement to Micros & More, Inc. for providing the goods, software, other products and/or services subject to this proposal, the customer agrees that in no event shall Micros & More, Inc. be liable either in contract or tort for incidental, consequential, indirect or special damages, such as, by way of example and not in limitation: lost profits, lost business opportunities or lost business, lost programs, lost digitized or record information, personal injury, injury to property or lost business, and in no event shall damages exceed the price paid by the customer for the goods and/or services subject to this agreement.

**Disclaimer Of Warranties**

There are no warranties which extend beyond the description on the face hereof. Any and all warranties of fitness for a particular purpose or merchantability are disclaimed.

**Warranties By Others**

The foregoing Limitation and Disclaimer are not intended to affect any warranties provided to the customer by the manufacturer of goods sold or provided by Micros & More, Inc.

**Acceptance**

By signing the "Acceptance" on the face of this document, I acknowledge that I have read, understood and agreed to the terms of this service agreement. I wish to accept this service agreement listed on the face of this document, subject to the terms described on the face and reverse side of this document.

LAURANCE B. SEAMAN  
ANDREW P. GATES

LAW OFFICES  
GATES & SEAMAN  
TWO NORTH FRONT STREET  
P. O. BOX 846  
CLEARFIELD, PA. 16830

JOHN B. GATES  
(1917-1984)

(814) 765-1766  
FAX (814) 765-1488

November 14, 2001

James A. Gatto  
113 Cherrywood Road  
Port Matilda, PA 16870

Nicholas P. Cimino  
R. R. #1, Box 462A  
Osceola Mills, PA 16666

Re: TOTALCARE 2-Year Service Agreement (TSA) between CSB Bank and  
Micros & More, Inc.

Dear Mr. Gatto and Mr. Cimino:

Since this office acts as Solicitor for CSB Bank, I am writing to  
you in that capacity regarding the aforementioned matter.

As you are both aware, on or about May 17, 2000, CSB Bank entered  
into the aforementioned contract with Micros & More, Inc. for purposes  
of Micros & More, Inc. providing the Bank with guaranteed around-the-  
clock emergency advice regarding its computer and data processing  
operations. At the time the agreement was entered into, CSB Bank paid  
Micros & More, Inc. the sum of \$12,500.00 which represented 25% of the  
total contract amount, while the contract itself only called for 25%  
of the annual contract value (which in this case would have amounted  
to \$6,250.00). On August 24, 2001, CSB Bank was informed by one of  
your technicians that Micros & More, Inc. had decided to go out of  
business and thus would not be honoring the remaining nine (9) plus  
months it owed to CSB Bank under the terms of the aforementioned  
agreement. Since that time, CSB Bank has had to engage a substitute  
service provider at a cost, which, at this time, remains unknown to  
the Bank, but which could be in excess of what it was paying to your  
company.

In addition to the aforementioned up-front payment, CSB Bank also  
paid Micros & More, Inc. a monthly amount called for in the agreement,  
which, when broken down monthly, came to a payment of \$1,630.43 per  
month and which the Bank paid through August 31, 2001.

In other words, as of August 31, 2001, CSB Bank had paid Micros &  
More, Inc. the sum of \$6,630.43 (\$6,250.00 toward annual contract  
value not called for in the agreement and \$380.43 for the 7 days in  
August 2001 after Micros & More stopped providing service) for which  
CSB Bank received no services.

GATES & SEAMAN

Page Two  
November 14, 2001

Even though Micros & More, Inc. has chosen to go out of business, this does not relieve it of its responsibilities to compensate its customers which had paid for services in advance. Therefore, CSB Bank is demanding that you promptly pay to it the sum of \$6,630.43 which represents the amount CSB Bank had paid in advance for which no services were rendered in return. In the event the payment of said amount is not received within twenty (20) days from the date of this letter, CSB Bank has authorized me to file suit versus Micros & More, Inc. seeking not only a judgment in the amount which was prepaid (\$6,630.43), but also for the costs CSB Bank has incurred in having to find a suitable substitute provider for the services which Micros & More was contractually obligated to provide to CSB Bank through May 31, 2002.

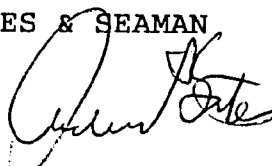
Therefore, the Bank would hope you see there are several advantages to resolving this matter amicably and it therefore expects to receive a check from you in the amount of \$6,630.43 by the deadline set forth herein.

In the event you should have any further questions, please do not hesitate to contact me.

Very truly yours,

GATES & SEAMAN

By:




Andrew P. Gates

APG/sjb

xc: Wesley M. Weymers, President and CEO, CSB Bank  
Edward A. Andrulonis,  
Vice President Director of Operations, CSB Bank  
Micros & More, Inc.

V E R I F I C A T I O N

I, Wesley M. Weymers, President of CSB Bank, verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I the undersigned understand that false statements made herein are subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Wesley M. Weymers,  
President of CSB Bank

Date: \_\_\_\_\_

1/9/02

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA No. 02 - - CD	CSB BANK, Plaintiff  -vs-  MICROS & MORE, INC., Defendant	<u>C O M P L A I N T</u>		LAW OFFICES GATES & SEAMAN 2 NORTH FRONT STREET P.O. BOX 846 CLEARFIELD, PA. 16830
--	--	--------------------------	--	--

CSB BANK,  
Plaintiff

-vs-

MICROS & MORE, INC.,  
Defendant

**FILED**

**William A. Shaw**  
**Prothonotary**

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

CSB BANK,	:	
Plaintiff	:	No. 02-48 - CD
	:	
-vs-	:	
	:	
MICROS & MORE, INC.	:	
Defendant	:	

PRAECIPE FOR DEFAULT JUDGMENT

TO: WILLIAM A. SHAW, PROTHONOTARY:

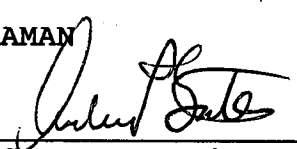
Enter Judgment in favor of CSB BANK, Plaintiff herein, and against Defendant, Micros & More, Inc., for its failure to file a timely Answer to the Complaint which was served upon it as indicated in the Sheriff's Affidavit of Service, in the following amounts:

(a) Amount prayed for in Plaintiff's Complaint                      \$ 6,630.42

\*\*Plus interest at the legal rate of 6.0% from November 7, 2001 and costs of suit

Furthermore, the undersigned attorney certifies that said Defendant was also served with the Notice specified in Pa. R.C.P. §237.1 by regular first class mail, postage prepaid, on February 1, 2002. A copy of the Notices mailed to the Defendant and U. S. Postal Service Form 3817 for said mailing are attached hereto and made a part hereof, collectively as Exhibit "A".

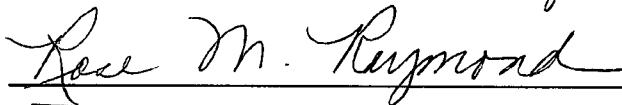
GATES & SEAMAN  
By:

  
\_\_\_\_\_  
Andrew P. Gates, Esquire  
Attorney for Plaintiff

Date: February 21, 2002

Sworn to and subscribed before me

this 21<sup>st</sup> day of February, 2002.

  
\_\_\_\_\_  
Rose M. Raymond

NOTARIAL SEAL  
ROSE M. RAYMOND, Notary Public  
Clearfield Boro, Clearfield County  
My Commission Expires Oct. 28, 2005

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

CSB BANK, Plaintiff

-vs-

MICROS & MORE, INC.

: No. 02 - 48 - CD  
:  
:  
:  
:

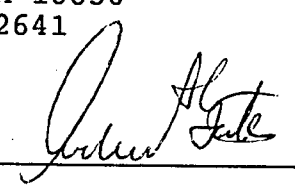
TO: Micros & More, Inc.  
130 Logan Street  
Osceola Mills, Pennsylvania 16666

DATE OF NOTICE: February 1, 2002

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

David S. Meholick, Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641

  
\_\_\_\_\_  
Andrew P. Gates, Esquire,  
Attorney for Plaintiff

P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766



U.S. POSTAL SERVICE  
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT  
PROVIDE FOR INSURANCE-POSTMASTER

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if  
it



Received From:

GATES & SEAMAN  
2 North Front Street  
P.O. Box 846  
Clearfield, PA 16830



One piece of ordinary mail addressed to:

Micros & More, Inc.

130 Logan Street

Osceola Mills, Pennsylvania 16666

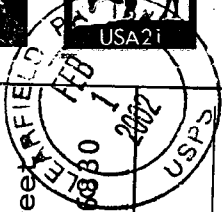


PS Form 3817, Mar. 1989

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<b>U.S. POSTAL SERVICE</b>	
<b>CERTIFICATE OF MAILING</b>	
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER	
Received From:	<b>GATES &amp; SEAMAN</b>
	2 North Front Street
	P.O. Box 846
	Clearfield, PA 16830
One piece of ordinary mail addressed to:	
	<b>Micros &amp; More, Inc.</b>
	c/o Nicholas P. Cimino
	R. R. # 1, Box 462A
	Osceola Mills, PA 16666



PS Form 3817, Mar. 1989

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY ,  
PENNSYLVANIA  
STATEMENT OF JUDGMENT

COPY

CSB Bank  
Plaintiff(s)

No.: 2002-00048-CD

Real Debt: \$6,630.42

Atty's Comm:

Vs.

Costs: \$

Int. From: November 7, 2001 at the rate of  
6.0%

Micros & More, Inc.  
Defendant(s)

Entry: \$20.00

Instrument: Default Judgment

Date of Entry: February 21, 2002

Expires: February 21, 2007

Certified from the record this 21st of February, 2002

---

William A. Shaw, Prothonotary

\*\*\*\*\*

SIGN BELOW FOR SATISFACTION

Received on \_\_\_\_\_, \_\_\_\_\_, of defendant full satisfaction of this Judgment, Debt,  
Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

---

Plaintiff/Attorney

COPY

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

CSB BANK,	:	
Plaintiff	:	No. 02-48 - CD
	:	
-vs-	:	IN MORTGAGE FORECLOSURE
	:	
MICROS & MORE, INC.	:	
Defendant	:	

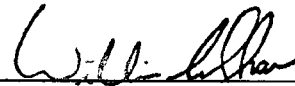
TO: Micros & More, Inc.  
130 Logan Street  
Osceola Mills, PA 16666

Micros & More, Inc.  
c/o Nicholas P. Cimino  
R.R.#1, Box 462A  
Osceola Mills, PA 16666

Notice is given that a JUDGMENT in the above captioned  
matter has been entered against Defendant, Micros & More, Inc.,  
in the amount of \$6,630.43 on February 21, 2002.

William A. Shaw, Prothonotary

By



Deputy

FILED

FEB 21 2002

01/24/01 atty. Walter PD

William A. Shaw  
Prothonotary

\$20.00

Not. to Depo  
Statement atty

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

Sheriff Docket # 11956

CSB BANK

02-48-CD

VS.

MICROS & MORE, INC.

COMPLAINT

**SHERIFF RETURNS**

NOW JANUARY 11, 2002 AT 1:49 PM EST SERVED THE WITHIN COMPLAINT  
ON NICHOLAS P. CIMINO, EXECUTIVE OFFICE FOR MICORS & MORE INC.,  
DEFENDANT AT MEETING PLACE, ALTON & McGURK STS., S.R. 53, CHESTER  
HILL BOROUGH, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO  
NOCHOLAS CIMINO A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT  
AND MADE KNOWN TO HIM THE CONTENTS THEREOF.  
SERVED BY: NEVLING.

**Return Costs**

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

Sworn to Before Me This

25th Day Of March 2002  
*Jacqueline Kendrick*  
Deputy Prothonotary  
My Commission Expires  
1st Monday in Jan. 2006  
Clearfield Co., Clearfield, PA

So Answers,

*Chester A. Hawkins*  
*by Marilyn Harris*  
Chester A. Hawkins  
Sheriff

**FILED**

MAR 25 2002  
01980 am  
William A. Shaw  
Prothonotary