

02-558-CD
CLEARFIELD BANK & TRUST CO. -vs- ROBERT BRYCE CONTAINERS INC.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD BANK & TRUST CO.,

CIVIL DIVISION

Plaintiff,

vs.

No. 02-558-CO

ROBERT BRYCE CONTAINERS INC.,

Defendant.

**COMPLAINT IN CONFESSION OF
JUDGMENT**

Filed on Behalf of:
Clearfield Bank & Trust Co.

Counsel for Plaintiff:

Thomas E. Reiber, Esquire
Pa. I.D. #41825
Brett A. Solomon, Esquire
PA I.D. #83746

TUCKER ARENSBERG, P.C.
Firm #287
1500 One PPG Place
Pittsburgh, PA 15222
(412) 566-1212

FILED

APR 10 2002

**William A. Shaw
Prothonetary**

ACT 105 OF 2000 NOTICE

A JUDGMENT HAS BEEN ENTERED AGAINST YOU BY CONFESSION OF JUDGMENT.

PURSUANT TO 42 PA. C.S.A. §2737.1, IF YOU WERE INCORRECTLY IDENTIFIED AS A DEFENDANT IN THE COMPLAINT IN CONFESSION OF JUDGMENT, YOU MAY BE ENTITLED TO COSTS AND REASONABLE ATTORNEY FEES AS DETERMINED BY THE COURT.

YOU MAY TAKE ACTION TO STRIKE THE JUDGMENT BY FOLLOWING THE PROCEDURE IN RULE 2959 WHICH IS AS FOLLOWS:

Pennsylvania Rule of Civil Procedure 2959 – Striking Off Judgment.

(a)(1) Relief From a judgment by confession shall be sought by petition. Except as provided in subparagraph (2), all grounds for relief whether to strike off the judgment or to open it must be asserted in a single petition. The petition may be filed in the county in which the judgment was originally entered, in any county to which the judgment has been transferred or in any other county in which the sheriff has received a writ of execution directed to the sheriff to enforce the judgment.

(2) The ground that the waiver of the due process rights of notice and hearing was not voluntary, intelligent and knowing shall be raised only

(i) in support of a further request for a stay of execution where the court has stayed execution despite the timely filing of a petition for relief from the judgment and the presentation of prima facie evidence of a defense; and

(ii) as provided by Pennsylvania Rule of Civil Procedure 2958.3 or Rule 2973.3.

(3) If written notice is served upon the petitioner pursuant to Rule 2956.1(c)(2) or Rule 2973.1(c), the petition shall be filed within thirty days after such service. Unless the defendant can demonstrate that there were compelling reasons for the delay, a petition not timely filed shall be denied.

(b) If the petition states prima facie grounds for relief the court shall issue a rule to show cause and may grant a stay of proceedings. After being served with a copy of the petition the plaintiff shall file an answer on or before the return day of the rule. The return day of the rule shall be fixed by the court by local rule or special order.

(c) A party waives all defenses and objections, which are not included in the petition or answer.

(d) The petition and the rule to show cause and the answer shall be served as provided in Rule 440.

(e) The court shall dispose of the rule on petition and answer, and on any testimony, depositions, admissions and other evidence. The court for cause shown may stay proceedings on the petition insofar as it seeks to open the judgment pending disposition of the application to strike off the judgment. If evidence is produced which a jury trial would require the issues to be submitted to the jury the court shall open the judgment.

(f) The lien of the judgment or of any levy or attachment shall be preserved while the proceedings to strike off or open the judgment is pending.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD BANK & TRUST CO.,)	
)	
Plaintiff,)	
)	
vs.)	No.
)	
ROBERT BRYCE CONTAINERS INC.,)	
)	
Defendant.)	

COMPLAINT IN CONFESSION OF JUDGMENT

Plaintiff, Clearfield Bank & Trust Co., by and through its counsel, Tucker Arensberg, P.C., avers as follows:

1. The Plaintiff is Clearfield Bank & Trust Co., a corporation with offices located at 11 North Second Street, Clearfield, PA 16830.
2. The Defendant, Robert Bryce Containers Inc., is a Pennsylvania corporation with a last known address of P.O. Box 28, Woodland, PA 16881-0028.
3. On or about December 1, 2000 the Defendant executed and delivered to the Plaintiff a Note in the original principal amount of \$200,000, upon terms and conditions contained in the Note, a true and correct copy of which is attached hereto, incorporated herein, and labeled as Exhibit "A" (the "**Note**").
4. Pursuant to the terms of the Note, the entire outstanding principal balance, plus all accrued unpaid interest thereon was due and payable on September 30, 2001
5. The Defendant is in defaulted under the Note by, *inter alia*, failing to make payment when due.

6. Notwithstanding default, the Defendant has not repaid the Plaintiff and remains in default under the terms of the Note.
7. The Note contains a warrant of attorney authorizing the confession of judgment in favor of the Plaintiff and against the Defendant, as of any term, for the unpaid balance of the Note, together with costs of suit and an attorneys' commission not to exceed fifteen percent (15%) for collection.
8. Judgment has not been entered on the Note in any jurisdiction.
9. The Note has not been assigned.
10. **JUDGMENT IS NOT BEING ENTERED BY CONFESSION AGAINST A NATURAL PERSON IN CONNECTION WITH A CONSUMER CREDIT TRANSACTION.**
11. As of April 1, 2002, the amount due from the Defendant to the Plaintiff pursuant to the Note, and for which judgment is authorized, is \$232,888.00, plus costs of suit and accruing interest, computed as follows:

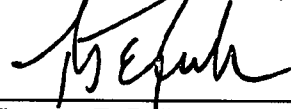
Principal Debt:	\$199,874.13
Interest Accrued through April 1, 2002: (per diem \$31.48702)	3,022.75
Late Charges:	10.00
Attorney's Commission of 15%:	29,981.12
Total:	\$232,888.00

*Plus interest accruing at the contract rate and costs and expenses of suit.

WHEREFORE, Plaintiff demands that judgment be entered in its favor and against Defendant in the amount of Two Hundred Thirty Two Thousand Eight Hundred Eighty Eight 00/100 Dollars (\$232,888.00), plus interest thereon at the contract rate after April 1, 2002, plus costs and expenses of suit and such other relief as this Court deems appropriate.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



Thomas E. Reiber, Esquire

Pa. I.D. #41825

Brett Solomon, Esquire

Pa. I.D. #83746

1500 One PPG Place

Pittsburgh, Pennsylvania 15222

Phone: (412) 566-1212

Facsimile: (412) 594-5619

Counsel for Clearfield Bank & Trust Co.

Date: April 5, 2002

EXHIBIT "A"

ROBERT BRYCE CONTAINERS INC PO BOX 28 WOODLAND PA 16881-0028 BORROWER'S NAME AND ADDRESS <small>"I" includes each borrower above, joint and severally.</small>	CLEARFIELD BANK & TRUST COMPANY 1935 DAISY STREET CLEARFIELD, PA 16830 LENDER'S NAME AND ADDRESS <small>"You" means the lender, its successors and assigns.</small>	Loan Number <u>636290</u> Date <u>12/01/00</u> Maturity Date <u>09/30/01</u> Loan Amount \$ <u>200,000.00</u> Renewal Of <u>636290</u>
--	---	--

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of Two hundred thousand & no/100 Dollars \$ 200,000.00

☐ **Single Advance:** I will receive all of this principal sum on _____. No additional advances are contemplated under this note.

☒ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$.00 and future principal advances are contemplated.

Conditions: The conditions for future advances are _____
AT CUSTOMERS REQUEST

☒ **Open End Credit:** You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on SEPTEMBER 30, 2001.

☐ **Closed End Credit:** You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from DECEMBER 01, 2000 at the rate of 10.5000 % per year until The Prime Rate Changes.

☒ **Variable Rate:** This rate may then change as stated below.

☒ **Index Rate:** The future rate will be 1.000% Above the following index rate: _____
CLEARFIELD BANK AND TRUST COMPANY BASE RATE

☐ **No Index:** The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ **Frequency and Timing:** The rate on this note may change as often as Daily
 A change in the interest rate will take effect Daily

☒ **Limitations:** During the term of this loan, the applicable annual interest rate will not be more than N/A % or less than N/A %. The rate may not change more than N/A % each N/A.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☒ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

ACCURAL METHOD: Interest will be calculated on a 365/365 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____

☒ **LATE CHARGE:** If a payment is made more than 15 days after it is due, I agree to pay a late charge of _____

☐ **RETURNED CHECK CHARGE:** I agree to pay a fee of \$ _____ for each check, negotiable order of withdrawal or draft I issue in connection with this loan that is returned because it has been dishonored.

☒ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount above: _____

PAYMENTS: I agree to pay this note as follows:

☒ **Interest:** I agree to pay accrued interest On Demand, But If No Demand Is Made
Monthly Beginning - DECEMBER 30, 2000

☒ **Principal:** I agree to pay the principal On Demand, But If No Demand Is Made
At Maturity - SEPTEMBER 30, 2001

☐ **Installments:** I agree to pay this note in _____ payments. The first payment will be in the amount of \$ _____ and will be due _____. A payment of \$ _____ will be due _____ thereafter. The final payment of the entire unpaid balance of principal and interest will be due _____.

☒ **WARRANT OF AUTHORITY TO CONFESS JUDGMENT.** Upon default, in addition to all other remedies and rights available to you, by signing below Borrower irrevocably authorizes the prothonotary, clerk, or any attorney to appear in any court of record having jurisdiction over this matter and to confess judgment against me at any time without stay of execution. I waive notice, service of process and process. I agree and understand that judgment may be confessed against me for any unpaid principal, accrued interest and accrued charges due on this note, plus collection costs and reasonable attorneys' fees up to 15 percent of the judgment. The exercise of the power to confess judgment will not exhaust this warrant of authority to confess judgment and may be done as often as you elect. I further understand that my property may be seized without prior notice to satisfy the debt owed. I knowingly, intentionally, and voluntarily waive any and all constitutional rights I have to pre-deprivation notice and hearing under federal and state laws and fully understand the consequences of this waiver.

ADDITIONAL TERMS:

PURPOSE: The purpose of this loan is _____

☒ **SECURITY:** This note is separately secured by (describe separate document by type and date):

SECURITY AGREEMENT DATED 06/30/98

(This section is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

Signature, for Lender

Linda S. Starr
LINDA S. STARR
 ASST VICE PRESIDENT

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

Bryce Hathaway
BRYCE HATHAWAY

Thomas Robert Duval
THOMAS ROBERT DUVAL

DEFINITIONS: As used on page 1, "X" means the terms that apply to this loan. "I," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this note (together referred to as "us"). "You" or "your" means the Lender and its successors and assigns.

APPLICABLE LAW: The law of the State of Pennsylvania will govern this note. Any term of this note which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement.

PAYMENTS: Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the contrary).

INTEREST: Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, each advance will start to earn interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal advanced at that time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to here (either before or after maturity). If any notice of interest accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

INDEX RATE: The index will serve only as a device for setting the rate on this note. You do not guarantee by selecting this index, or the margin, that the rate on this note will be the same rate you charge on any other loans or class of loans to me or other borrowers.

ACCRUAL METHOD: The amount of interest that I will pay on this loan will be calculated using the interest rate and accrual method stated on page 1 of this note. For the purpose of interest calculation, the accrual method will determine the number of days in a "year." If no accrual method is stated, then you may use any reasonable accrual method for calculating interest.

POST MATURITY RATE: For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the earliest of the following:

- the date of the last scheduled payment indicated on page 1 of this note;
- the date you accelerate payment on the note; or
- after the entry of judgment on this note by confession or otherwise and applies to amounts owed under this note on any such judgment until paid in full.

SINGLE ADVANCE LOANS: If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph below.

MULTIPLE ADVANCE LOANS: If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed credit, repaying a part of the principal will not entitle me to additional credit.

ADVANCE PROCEDURE AND MEANS: You will advance the loan proceeds by way of check, cash, wire transfer, credit to an account or any combination as You and I agree. The advance(s) will occur upon consummation of the loan and as You and I agree, except that no advance(s) will occur until after three business days from the date of consummation if the loan is rescindable pursuant to Regulation Z (12 C.F.R. § 226).

PAYMENTS BY LENDER: If you are authorized to pay, on my behalf, charges I am obligated to pay (such as property insurance premiums), then you may treat those payments made by you as advances and add them to the unpaid principal under this note, or you may demand immediate payment of the charges.

SET-OFF: I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

"Right to receive money from you" means:

- any deposit account balance I have with you;
- any money owed to me on an item presented to you or in your possession for collection or exchange; and
- any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance due date for which you properly accelerate under this note.

If my right to receive money from you is also owned by someone who has not agreed to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a representative. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

REAL ESTATE OR RESIDENCE SECURITY: If this note is secured by real estate or a residence that is personal property, the existence of a default and your remedies for such a default will be determined by applicable law, by the terms of any separate instrument creating the security interest and, to the extent not prohibited by law and not contrary to the terms of the separate security instrument, by the "Default" and "Remedies" paragraphs herein.

DEFAULT: I will be in default if any one or more of the following occur: (1) I fail to make a payment on time or in the amount due; (2) I fail to keep the property insured, if required; (3) I fail to pay, or keep any promise, on any debt or agreement I have with you; (4) any other creditor of mine attempts to collect any debt I owe him through court proceedings; (5) I die, am declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due); (6) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided; (7) I do or fail to do something which causes you to believe that you will have difficulty collecting the amount I owe you; (8) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by a legal authority; (9) I change my name or assume an additional name without first notifying you before making such a change; (10) I fail to plant, cultivate and harvest crops in due season; (11) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

REMEDIES: If I am in default on this note you have, but are not limited to, the following remedies:

- You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued charges).
- You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "Set-Off" paragraph herein.
- You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.
- You may refuse to make advances to me or allow purchases on credit by me.
- You may use any remedy you have under state or federal law.

By selecting any one or more of these remedies you do not give up your right to later use any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to later consider the event as a default if it continues or happens again.

COLLECTION COSTS AND ATTORNEY'S FEES: I agree to pay all costs of collection, replevin or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

WAIVER: I give up my rights (to the extent permitted by law) to require you to do certain things. I will not require you to:

- demand payment of amounts due (presentment);
- obtain official certification of nonpayment (protest); or
- give notice that amounts due have not been paid (notice of dishonor).

I waive any defenses I have based on suretyship or impairment of collateral.

OBLIGATIONS INDEPENDENT: I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect this note. You may do so without any notice that it has not been paid (notice of dishonor). You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us will not release me from my duty to pay it. (Of course, you are entitled to only one payment in full.) I agree that you may at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval.

CREDIT INFORMATION: I agree and authorize you to obtain credit information about me from time to time (for example, by requesting a credit report) and to report to others your credit experience with me (such as a credit reporting agency). I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will be accurate, correct and complete.

NOTICE: Unless otherwise required by law, any notice to me shall be given by delivering it or by mailing it by first class mail addressed to me at my last known address. My current address is on page 1. I agree to inform you in writing of any change in my address. I will give any notice to you by mailing it first class to your address stated on page 1 of this agreement, or to any other address that you have designated.

DATE OF TRANSACTION	PRINCIPAL ADVANCE	BORROWER'S INITIALS (not required)	PRINCIPAL PAYMENTS	PRINCIPAL BALANCE	INTEREST RATE	INTEREST PAYMENTS	INTEREST PAID THROUGH:
/ /	\$		\$	\$	%	\$	/ /
/ /	\$		\$	\$	%	\$	/ /
/ /	\$		\$	\$	%	\$	/ /
/ /	\$		\$	\$	%	\$	/ /
/ /	\$		\$	\$	%	\$	/ /
/ /	\$		\$	\$	%	\$	/ /
/ /	\$		\$	\$	%	\$	/ /
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/ /	\$		\$	\$	%	\$	/ /
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/ /	\$		\$	\$	%	\$	/ /
/ /	\$		\$	\$	%	\$	/ /

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CLEARFIELD

AFFIDAVIT

I, William A. Shiner, am Senior Vice President for Clearfield Bank & Trust Co., Plaintiff in the above captioned action and a person authorized to make this Affidavit on behalf of the Plaintiff, hereby certifies that the averments contained in the foregoing Complaint are true and correct to the best of my knowledge and information.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A.,
Section 4904, relating to unsworn falsification to authorities.

William A. Shiner
 William A. Shiner
 Senior Vice President
 Clearfield Bank & Trust Co., Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

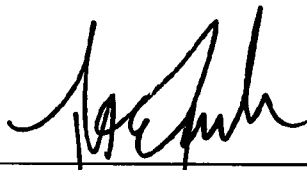
CLEARFIELD BANK & TRUST CO.,)	
)	
Plaintiff,)	
)	
vs.)	No.
)	
ROBERT BRYCE CONTAINERS INC.,)	
)	
Defendant.)	

CONFESSION OF JUDGMENT

Pursuant to the authority contained in the Warrant of Attorney contained in the Note a copy of which is attached to the Complaint filed in this action as Exhibit "A", I hereby appear for the Defendants and confess judgment in favor of the Plaintiff and against the Defendants, jointly and severally as follows:

Principal Debt:	\$199,874.13
Interest Accrued through April 1, 2002:	3,022.75
(per diem \$31.48702)	
Late Charges:	10.00
Attorney's Commission of 15%:	29,981.12
Total:	\$232,888.00

*Plus interest accruing at the contract rate and costs and expenses of suit.



Attorney for Defendants
pro hac vice

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD BANK & TRUST CO.,)	
)	
Plaintiff,)	
)	
vs.)	No.
)	
ROBERT BRYCE CONTAINERS INC.,)	
)	
Defendant.)	

CERTIFICATE OF RESIDENCE

I hereby certify that the precise address of the Plaintiff is:

Clearfield Bank & Trust Co.
11 N. Second Street
Clearfield, Pa 16830

and the last known address of the Defendant, Robert Bryce Containers, Inc. is:

P.O. Box 28
Woodland, PA 16881-0028



Attorney for Plaintiff

FILED

APR 10 2002

William A. Shaw
Proprietary

pd 80.00

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Prothonotary, Clearfield County