

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
Prothonotary**

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.)
ROBERT BRYCE CONTAINERS INC.,)
Defendant.)

No.

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:

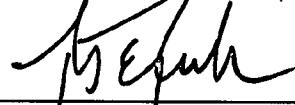
Principal Debt:	\$199,874.13
Interest Accrued through April 1, 2002:	3,022.75
(per diem \$31.48702)	
Late Charges:	10.00
<u>Attorney's Commission of 15%:</u>	<u>29,981.12</u>
Total:	\$232,888.00

*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 "I" includes each borrower above, joint and severally.	CLEARFIELD BANK & TRUST COMPANY 1935 DAISY STREET CLEARFIELD, PA 16830 LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	Loan Number 636290 Date 12/01/00 Maturity Date 09/30/01 Loan Amount \$ 200,000.00 Renewal Of 636290
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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.

ACCRUAL 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 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.

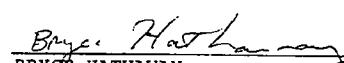
ADDITIONAL TERMS:

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

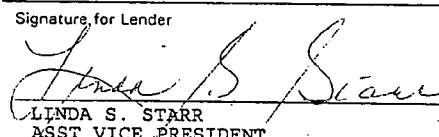
(This section is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

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


THOMAS ROBERT DUVAL

Signature for Lender


LINDA S. STARR
ASST VICE PRESIDENT

COMMONWEALTH OF PENNSYLVANIA)
) SS:
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

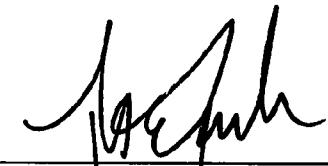
CLEARFIELD BANK & TRUST CO.,)
Plaintiff,)
vs.) No.
ROBERT BRYCE CONTAINERS INC.,)
Defendant.)

CONFESSTION 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: (per diem \$31.48702)	3,022.75
Late Charges:	10.00
<u>Attorney's Commission of 15%:</u>	<u>29,981.12</u>
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.)

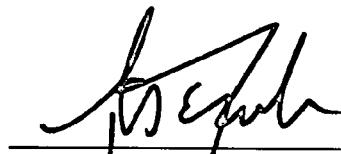
CERTIFICATE OF RESIDENCE

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

MILLISAI CHI Solomon
William A. Shaw
Prothonotary

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not to file

COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD BANK & TRUST CO.,)

Plaintiff,)

vs.)

ROBERT BRYCE CONTAINERS INC.,)

Defendant.)

No. 02-558-CO

NOTICE OF ENTRY OF JUDGMENT

TO: Robert Bryce Containers, Inc.
P.O. Box 28
Woodland, PA 16881-0028

You are hereby notified that a judgment was entered against you by confession in the
above captioned proceeding on April 10, 2002.

The amount of the judgment is \$232,888.00 plus interest accruing at the contract rate and
costs and expenses of suit.

A copy of the complaint is enclosed.



Prothonotary, Clearfield County