

02-1038-CD
JEFFREY B. AKERS et al -vs- ANDREW JOHN FAUDE

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

JEFFREY B. AKERS and
MARY M. AKERS,

Plaintiff

vs.

ANDREW JOHN FAUDIE,

Defendant

IN EQUITY

No. 2002-1038-CD

Type of Pleading: Complaint

Filed on behalf of: Jeffrey B. Akers
and Mary M. Akers, Plaintiffs

Counsel of Record for this party:

THE HOPKINS LAW FIRM

DAVID J. HOPKINS, ESQUIRE
Attorney at Law
Supreme Court No. 42519

LEA ANN HELTZEL, ESQUIRE
Attorney at Law
Supreme Court No. 83998

900 Beaver Drive
DuBois, Pennsylvania 15801

(814) 375-0300

FILED

JUL 01 2002

01/21/02

William A. Shaw
Prothonetary

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

JEFFREY B. AKERS and	:	
MARY M. AKERS,	:	IN EQUITY
Plaintiff	:	
	:	
vs.	:	No.
	:	
ANDREW JOHN FAUDIE,	:	
Defendant	:	

TO: Defendant

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 is 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.

Office of the Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641 (ext. 5982)

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

JEFFREY B. AKERS and	:	
MARY M. AKERS,	:	IN EQUITY
Plaintiff	:	
	:	
vs.	:	No.
	:	
ANDREW JOHN FAUDIE,	:	
Defendant	:	

COMPLAINT IN EQUITY

AND NOW, comes Plaintiffs, Jeffrey B. Akers and Mary M. Akers, by and through their attorneys, The Hopkins Law Firm, and says as follows:

1. Plaintiffs, Jeffrey B. Akers and Mary M. Akers, are husband and wife, with a mailing address of 315 Treasure Lake, DuBois, Pennsylvania 15801.

2. Defendant, Andrew John Faudie, is an adult individual whose address is R.R. #2, Box 270 ½, Brookville, Pennsylvania 15825.

3. Plaintiffs are the owners of real property located within the Treasure Lake Subdivision of Sandy Township, Clearfield County, Pennsylvania 15801, known as Section 4, Lot 63 and 64.

4. Defendant is the owner of real property located within the Treasure Lake Subdivision of Sandy Township, Clearfield County, Pennsylvania 15801, known as Section 4, Lot 82. Defendant acquired the property by Deed dated December 9, 1999 and recorded in the Office of the Recorder of Deeds of Clearfield County on December 9, 1999 as Instrument No. 199920154.

5. Plaintiffs' property described herein and Defendant's property described herein are contiguous to each other. Plaintiffs' property fronts Treasure Lake Road and Defendant's property fronts Captain Jack Road.

6. Prior to Defendant's purchase of the property, a home was located on Defendant's property for many years and Plaintiffs and Defendant's former property owner co-existed without any claims or damages to each other's property as a result of the other.

7. In or about 1999, the home located on Defendant's property was destroyed by fire.

8. Defendant has commenced the construction of a home on Defendant's property and as a result of said construction and the design of Defendant's home and the surrounding land, Plaintiffs' property has for the first time ever been flooded.

9. Defendant has changed the natural flow of water causing the water to flood the land and property of Plaintiff.

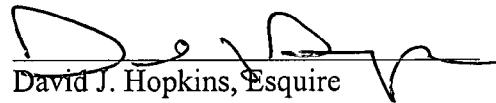
10. Attached hereto as Exhibits "A", "A1" and "A2" are photographs of Plaintiffs' property taken in the year 2002 which depict flooding of Plaintiffs' property that has come directly from Defendant's property.

WHEREFORE, Plaintiffs' respectfully request this Honorable Court enter judgment in favor of Plaintiff and against Defendant and order the following:

1. Restrain Defendant from permitting water from Section 4, Lot 82 from entering Plaintiffs' property;
2. Obligate Defendant to install appropriate drains to divert the flow of water to Captain Jack Road;


3. Obligate Defendant to install a storm water pond of sufficient size to prohibit water from Section 4, Lot 82 from reaching Plaintiffs' property.
4. Reimburse Plaintiffs' for damage Plaintiffs have sustained, if any;
and
5. Such other and further relief as the Court deems fair, just and equitable.

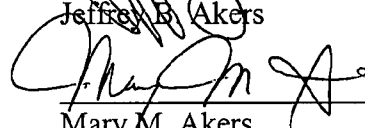
Respectfully submitted,


David J. Hopkins, Esquire

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.



Jeffrey B. Akers


Mary M. Akers

Date: 6/28/02



EXHIBIT "A"



EXHIBIT "A1"



EXHIBIT "A2"

FILED

JUL 01 2002

William A. Shaw
Prothonotary

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

JEFFREY B. AKERS and
MARY M. AKERS,
Plaintiff,

IN EQUITY

v.

NO. 2002-1038-C.D.

ANDREW JOHN FAUDIE,
Defendant.

TYPE OF PLEADING:
Defendant's Answer

FILED ON BEHALF OF: Defendant,
Andrew John Faudie

Counsel of Record for this party:

WHEELER LAW OFFICES

MARK A. WHEELER, ESQUIRE
SUP. CT. ID. #64335

512 Main Street
P.O. Box 176
Reynoldsville, PA 15851
(814)653-2000
(814)653-2200 (fax)

FILED

AUG 01 2002

William A. Shaw
Prothonotary

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

JEFFREY B. AKERS and
MARY M. AKERS,
Plaintiff,

IN EQUITY

v.

No. 2002-1038-C.D.

ANDREW JOHN FAUDIE,
Defendant.

DEFENDANT'S ANSWER IN EQUITY

AND NOW, comes the Defendant, ANDREW JOHN FAUDIE, by and through his attorney, Mark A. Wheeler, and answers the Complaint of the Plaintiffs' as follows:

1. Admitted.
2. Admitted. Defendant avers that his correct address is R.D. #1 Box 20 B-1, Reynoldsville, PA 15851.
3. Admitted.
4. Admitted.
5. Admitted.
6. Defendant is without knowledge to answer the averment of fact found in Plaintiff's Paragraph Number 6. Strict proof would be demanded thereof.
7. Admitted.
8. Admitted in part. Denied in part. Defendant admits that he has constructed a home on the property and denies that the Plaintiffs' property is flooded due to his actions.
9. Admitted in part. Denied in part. Defendant admits that some modifications have been made to the property but avers that the Property Owners Association and their agent Dan Flanders directed and instructed the Defendant to put a ditch in to divert the

water to the right rear corner of the property. Attached hereto, find a letter from Sheryl Adams, Restrictions Compliance Officer for the Treasure Lake Property Owners Association marked Defendant's Exhibit One.

10. Admitted in part. Denied in part. Defendant avers that the water that flooded the Plaintiffs' property did not come from his property solely but also came from other neighbor's properties as well, specifically Defendant avers that the neighbor on Section 4, Lot 81 has drainage that unloads on to the Plaintiffs' property.

WHEREFORE, Defendant respectfully request this Court to refrain from entering Judgment in favor of the Plaintiff as follows:

1. Defendant avers that it would be unjust to have this Court restrain water flow because the Defendant is not exclusively in control of the water problem that the Plaintiffs' are suffering. Defendant further avers that the Plaintiffs' property receives this water as a function of gravity and there is no way that the Defendant can reroute their water without draining the same across the Plaintiffs' property;

2. Defendant asks the Court to refrain from ordering this relief because it is impossible to drain the water up to Captain Jack Road because Captain Jack Road is approximately 8 feet higher in elevation than the rear of this lot;

3. Defendant asks this Court to refrain from giving this requested relief because a storm pond is not a feasible option since there are young children in the neighborhood and the restrictions on all Treasure Lake Property will not permit such an open body of water on the property;

4. Defendant would ask that the Court refrain from offering any money damages

as it can not be established where the water came from and in what amounts from the Defendant's property.

5. Defendant would request that the Court offer no relief as the Plaintiffs' can not show that the Defendant is responsible for the damage to the Plaintiffs' property.

Respectfully Submitted,

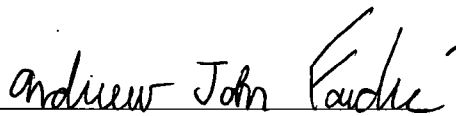


Mark A. Wheeler, Esquire

DEFENDANT'S VERIFICATION

I, Andrew John Faudie, verify that the statements made in this Answer in Equity are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

Date: 8-1-02



Andrew John Faudie



Treasure Lake Property Owners Association, Inc.

13 Treasure Lake • DuBois, PA 15801-9099

Phone 814-371-0711 • Fax 814-375-9072

Email: tlpoa@penn.com • Website: treasurelakepoa.com

October 2, 2001

Mr. & Mrs. Andrew Faudie
RR 2 Box 2701/2
Brookville, PA 15825

Dear Mr. & Mrs. Faudie:

RE: Section 4 Lot 82

Dan Flanders and I met with Audi Geer in regard to the drainage issue on the side and rear of your property. Audi agreed to put a swale along the side and across the back to direct water toward the right rear corner of the above lot by October 31, 2001.

If the work is completed and approved by that time, the citation will be canceled and no fine imposed.

If you have any questions, please do not hesitate to call me at the above number.

Sincerely,

Sheryl Adams, Restrictions
Compliance Officer

SA/th

cc: Matthew Begley, General Manager

Defendant's Exhibit One

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

JEFFREY B. AKERS and
MARY M. AKERS,
Plaintiff,

IN EQUITY

v.

NO. 2002-1038-C.D.

ANDREW JOHN FAUDIE,
Defendant.

CERTIFICATE OF SERVICE

I, MARK A. WHEELER, Attorney for the Defendant in the foregoing Answer In Equity, hereby certify that I have caused to be served upon the Plaintiffs' Attorney a copy of the foregoing Defendant's Answer in Equity by first class mail, postage prepaid at the address indicated below.

THE HOPKINS LAW FIRM
David J. Hopkins
900 Beaver Drive
DuBois, PA 15801



WHEELER LAW OFFICES
Mark A. Wheeler, Esquire
Pa. Sup. Ct. ID # 64335

512 Main Street / P.O. Box 176
Reynoldsville, PA 15851
(814)653-2000
(814)653-2200 (FAX)

FILED

213:13
AUG 01 2002

William A. Shaw
Prothonotary

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WAS

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12723

AKERS, JEFFREY B. & MARY M.

02-1038-CD

VS.

FAUDIE, ANDREW JOHN

COMPLAINT IN EQUITY

SHERIFF RETURNS

NOW JULY 3, 2002, THOMAS DEMKO, SHERIFF OF JEFFERSON COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT IN EQUITY ON ANDREW JOHN FAUDIE, DEFENDANT.

NOW JULY 12, 2002 SERVED THE WITHIN COMPLAINT IN EQUITY ON ANDREW JOHN FAUDIE, DEFENDANT BY DEPUTIZING THE SHERIFF OF JEFFERSON COUNTY. THE RETURN OF SHERIFF DEMKO IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED DORIE FAUDI, STEPMOTHER.

Return Costs

Cost	Description
32.97	SHFF. HAWKINS PAID BY: ATTY.
26.20	SHFF. DEMKO PAID BY: ATTY.
10.00	SURCHARGE PAID BY; ATTY.

FILED

BA AUG 29 2002
018:59 BA
William A. Shaw
Prothonotary

Sworn to Before Me This

29 Day Of August 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

by Marilyn Harris
Chester A. Hawkins
Sheriff

No. 02-1038-CD

Personally appeared before me, Carl J. Gotwald, Sr., Deputy for Thomas A. Demko, Sheriff of Jefferson County, Pennsylvania, who according to law deposes and says that on July 12, 2002 at 11:10 o'clock A.M. served the Notice and Complaint in Equity upon ANDREW JOHN FAUDIE, Defendant, at his residence, R.D. #1, Box 270½, Brookville, Township of Knox, County of Jefferson, State of Pennsylvania by handing to Dorie Faudi, his stepmother and adult person in charge at time of service, a true copy of the Notice and Complaint, and by making known to her the contents thereof.

Advance Costs Received:	\$125.00
My Costs:	\$ 24.20 Paid
Prothy:	\$ 2.00
Total Costs:	\$ 26.20
Refunded:	\$ 98.80

Sworn and subscribed

to before me this 24th

day of July 2002

By Laura S. Best

PROTHONOTARY

MY COMMISSION EXPIRES THE FIRST
MONDAY IN JANUARY 2006.

So Answers,

Carl J. Gotwald, Sr.
Deputy
Thomas A. Demko
Sheriff

JEFFERSON COUNTY, PENNSYLVANIA

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

JEFFREY B. AKERS and
MARY M. AKERS,

Plaintiff

vs.

ANDREW JOHN FAUDIE,

Defendant

IN EQUITY

No. 2002-1038 C.D.

Type of Pleading: Praecepto to Discontinue

Filed on behalf of: Jeffrey B. Akers and
Mary M. Akers

Counsel of Record for this party:

DAVID J. HOPKINS, ESQUIRE
Attorney at Law
Supreme Court No. 42519

900 Beaver Drive
DuBois, Pennsylvania 15801

(814) 375-0300

FILED

SEP 23 2002

William A. Shaw
Prothonotary

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

JEFFREY B. AKERS and
MARY M. AKERS,

Plaintiff

vs.

ANDREW JOHN FAUDIE,

Defendant

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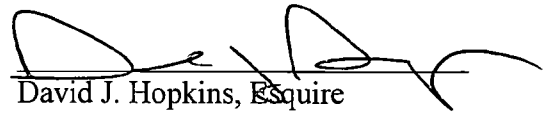
IN EQUITY

No. 2002-1038 C.D.

PRAECIPE TO DISCONTINUE

TO THE PROTHONOTARY:

Kindly mark the above captioned civil action settled and discontinued.


David J. Hopkins, Esquire

FILED

1002 Disc.

JP 07/11/2011
SEP 23 2002

Atty Hopkins

Copy of Disc. to C/4

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

CIVIL DIVISION

Jeffrey B. Akers
Mary M. Akers

Vs.
Andrew John Faudie

No. 2002-01038-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 September 23, 2002 marked:

Settled and Discontinued

Record costs in the sum of \$149.17 have been paid in full by David J. Hopkins, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 23rd day of September A.D. 2002.

William A. Shaw, Prothonotary