

02-1049-CD  
FRANK J. FERRIS -vs- THERESA S. VIDA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANK J. FERRIS,

CIVIL ACTION

Plaintiff

No. 02 - 1049 - CD

vs.

COMPLAINT IN EQUITY-PARTITION

THERESA S. VIDA,

Filed on behalf of:

Defendant

Plaintiff, FRANK J. FERRIS

Counsel of Record for  
Said Party:

JOSEPH COLAVECCHI, ESQUIRE  
PA I.D. 06810

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

814/765-1566

FILED

JUL 02 2002

William A. Shaw  
Prothonotary

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

FRANK J. FERRIS, :  
Plaintiff :  
:  
vs. : No. 02 - - CD  
:  
THERESA S. VIDA, :  
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  
Second and Market Streets  
Clearfield, PA 16830

Phone 814/765-2641 Ext. 5982

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

FRANK J. FERRIS, :  
Plaintiff :  
:  
vs. : No. 02 - - CD  
:  
THERESA S. VIDA, :  
Defendant :

COMPLAINT IN EQUITY - PARTITION

1. Plaintiff is Frank J. Ferris, an individual residing at 141 Teaberry Road, St. Marys, Pennsylvania, 15857.

2. Defendant is Theresa S. Vida, an individual residing at 871 Treasure Lake, DuBois, Pennsylvania, 15801.

3. Plaintiff and Defendant are the owners of certain real estate situated in Sandy Township, Clearfield County, Pennsylvania as described below, and all the interests of the parties in the property are held as tenants in common and are undivided.

4. Plaintiff acquired title to the above property by deed dated August 1, 1995, recorded at Clearfield County in Volume 1693, Page 368, wherein Thomas L. Thropp and Tina M. Thropp, husband and wife, conveyed to Theresa S. Vida and Frank J. Ferris, as tenants in common, more fully described as follows:

ALL that certain tract of land designated as Section 2 "Santa Cruz", Lot 14, in the Treasure Lake Subdivision in Sandy Township, Clearfield County, Pennsylvania, recorded in the Recorder of Deeds Office in Miscellaneous Docket Map File No. 24.

1. All easements, rights of way, reservations, restrictions and limitations shown or contained in prior instruments of record and in the aforesaid recorded plan.

2. The Declaration of Restrictions, Treasure Lake, Inc., recorded in Miscellaneous Book 146, Page 476; all of said restrictions being covenants which run with the land.

3. All minerals and mining rights of every kind and nature.

4. A lien for all unpaid charges or assessments as may be made by Treasure Lake, Inc. or Treasure Lake Property Owners Association, Inc.; which lien shall run with the land and be an encumbrance against it.

5. No person other than the parties to this suit has any interest in the property which is presently in the possession of Defendant.

6. No partition or division of the property has ever been made, although Plaintiff has requested the Defendant to join with him in making one.

WHEREFORE, Plaintiff demands that:

a. The Court Decree partition of the real estate.

b. The shares to which the respective parties are entitled be set out to them in severalty, and that all proper and necessary conveyances and assurances be executed for carrying such

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partition into effect; and that, if the real estate cannot be divided without prejudice to or spoiling the whole, such proper and necessary sale or sales of the same may be made by such persons and in such manner as the Court may direct.

c. Such other and further relief be granted as the Court deems just and proper.



JOSEPH COLAVECCHI, ESQUIRE  
Attorney for Plaintiff

LAW OFFICES OF  
COLAVECCHI  
RYAN & COLAVECCHI  
221 E. MARKET ST.  
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CLEARFIELD, PA

VERIFICATION

I verify that the statements made in this Answer 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.



FRANK J. FERRIS

LAW OFFICES OF  
COLAVECCHI  
RYAN & COLAVECCHI  
221 E. MARKET ST.  
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P. O. BOX 131  
CLEARFIELD, PA

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IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION  
No. 02-  
-CD

FRANK J. FERRIS,  
Plaintiff

vs.

THERESA S. VIDA,  
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.

JOSEPH COLAVECCHI, ESQUIRE  
ATTORNEY FOR PLAINTIFF

William A. Shaw  
Prothonotary

10/3/02  
JUL 02 2002  
Atty pd \$0.00  
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Atty

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANK J. FERRIS,

CIVIL ACTION

Plaintiff

No. 02 - 1049 - CD

vs.

RULE

THERESA S. VIDA,

Filed on behalf of:

Defendant

Plaintiff, FRANK J. FERRIS

Counsel of Record for  
Said Party:

JOSEPH COLAVECCHI, ESQUIRE  
PA I.D. 06810

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

814/765-1566

**FILED**

JUL 10 2002

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William A. Shaw  
Prothonotary

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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

FRANK J. FERRIS, :  
Plaintiff :  
:  
vs. : No. 02 - - CD  
:  
THERESA S. VIDA, :  
Defendant :  
:

R U L E

AND NOW, this 10<sup>th</sup> day of July, 2002, a Rule is hereby issued and directed to the Defendant to Show Cause why an Order should not be issued directing partition of the lands described in the Complaint herein, and why distribution should not be made to the named parties in proportion to their respective interests as follows:

To: Frank J. Ferris - 50%

To: Theresa S. Vida - 50%

This Rule is Returnable before the Court on the 30 day of July, 2002, at 9:00 o'clock A.M. at the Clearfield County Courthouse.

BY THE COURT  
JUDGE



IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION  
No. 02-  
-CD

FRANK J. FERRIS,  
Plaintiff

vs.

THERESA S. VIDA,  
Defendant

R U L E

FILED

JUL 10 2002

William A. Shaw  
Prothonotary

**COLAVECCHI**  
**RYAN & COLAVECCHI**

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

In The Court of Common Pleas of Clearfield County, Pennsylvania

FERRIS, FRANK J.

Sheriff Docket # 12735

VS.

02-1049-CD

VIDA, THERESA S.

COMPLAINT IN EQUITY-PARTITION

SHERIFF RETURNS

NOW JULY 9, 2002 AT 6:35 PM DST SERVED THE WITHIN COMPLAINT  
IN EQUITY-PARTITION ON THERESA S. VIDA, DEFENDANT AT RESIDENCE  
871 TREASURE LAKE, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY  
HANDING TO MIKE VIDA, SON A TRUE AND ATTESTED COPY OF THE ORIGINAL  
COMPLAINT IN EQUITY-PARTITION AND MADE KNOWN TO HIM THE CONTENTS  
THEREOF.

SERVED BY: McCLEARY/NEVLING

Return Costs

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

FILED

JUL 29 2002

8/10/00

William A. Shaw  
Prothonotary

Sworn to Before Me This

20th Day Of July 2002

Will. A. Shaw

So Answers,

Chester A. Hawkins  
My Marty Ham  
Chester A. Hawkins  
Sheriff

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2006  
Clearfield Co., Clearfield, PA

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

FRANK J. FERRIS

-vs-

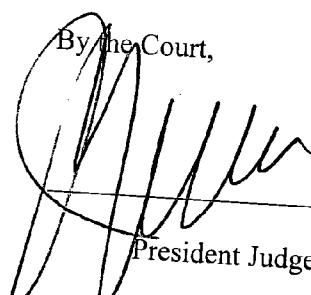
THERESA S. VIDA

No. 02 - 1049 - CD

ORDER

NOW, this 30<sup>th</sup> day of July, 2002, this being the day and date set for return of rule in the above-captioned action in partition, it is the ORDER of this Court that said matter shall be and is hereby continued to provide Defendant an opportunity to file a responsive pleading, said pleading to be filed on or before Friday, August 9, 2002.

By the Court,

  
President Judge

FILED

OC/3:35/3A cc to act  
JUL 30 2002 J.C. Deleehan

1 to defendant  
871, Treasury Bldg  
William A. Shaw Dubai's PA 1584  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

FRANK J. FERRIS,

: CIVIL ACTION

Plaintiff

:

: No. 02 - 1049 C.D.

vs.

THERESA S. VIDA,

Defendant

: Type of Case: EQUITY- PARTITION

:

: Type of Pleading: ANSWER, NEW

: MATTER AND COUNTERCLAIM

:

: Filed on Behalf of: THERESA S.

: VIDA, Defendant

:

: Counsel of Record for this Party:

:

: TONI M. CHERRY, ESQ.

: Supreme Court No.: 30205

:

: GLEASON, CHERRY AND

: CHERRY, L.L.P.

: Attorneys at Law

: P. O. Box 505

: One North Franklin Street

: DuBois, PA 15801

:

: (814) 371-5800

FILED

AUG 09 2002

0122415ccathy Cherry  
William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

FRANK J. FERRIS,

: CIVIL ACTION

Plaintiff : :

vs.

: No. 02 - 1049 C.D.

THERESA S. VIDA,

Defendant : :

**NOTICE TO PLEAD**

To The Within Plaintiff:

YOU ARE HEREBY NOTIFIED TO  
PLEAD TO THE WITHIN NEW MATTER  
AND COUNTERCLAIM WITHIN TWENTY  
(20) DAYS FROM THE DATE OF SERVICE  
HEREOF.

GLEASON, CHERRY AND CHERRY, L.L.P.

By

Atorneys for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

FRANK J. FERRIS,	:	CIVIL ACTION
	Plaintiff	:
		:
vs.	:	No. 02 - 1049 C.D.
		:
THERESA S. VIDA,	:	
	Defendant	:

**ANSWER TO COMPLAINT IN EQUITY - PARTITION**

AND NOW, comes the Defendant, THERESA S. VIDA, by and through her attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and answers the Complaint filed by Plaintiff as follows:

1. ADMITTED.

2. ADMITTED.

3. DENIED as stated. On the contrary, Defendant alone is the owner of real estate situated in Sandy Township, Clearfield County, Pennsylvania, and described and/or designated as Section 2 "Santa Cruz", Lot 14, in the Treasure Lake Subdivision of Sandy Township, Clearfield County, Pennsylvania. Plaintiff is not an owner of the real estate nor did he ever exercise any of the responsibilities or obligations or rights of an owner of said real estate.

4. DENIED as stated. Plaintiff did not acquire title to the property described in Paragraph 4 of his Complaint through deed dated August 1, 1995, and recorded in the Offices of the Register and Recorder of Deeds of Clearfield County in Vol. 1693, page 368. Although the name of Frank J. Ferris appears on the deed, it was never the intention of either Plaintiff or

Defendant that he become an owner of the property or that he acquired title to the same and Plaintiff has never exercised any of the responsibilities or obligations of an owner of said property from August 1, 1995, to the present.

5. DENIED as stated. No person other than Defendant has any interest in the property which is presently in the possession of Defendant.

6. ADMITTED in part and DENIED in part. It is ADMITTED that no partition or division of the property has ever been made. All other aspects of the allegations contained in Paragraph 6 are DENIED. It is DENIED that Plaintiff has ever requested the Defendant to join with Plaintiff in partitioning or dividing the subject premises. It is further DENIED that Plaintiff has any right to request a partition or division of the premises described and designated as Lot 14 in Section 2 "Santa Cruz" in the Treasure Lake Subdivision of Sandy Township, Clearfield County, Pennsylvania. On the contrary, Plaintiff has no interest in the real estate that would allow him to demand a partition or division of the same. On the contrary, Defendant is the sole owner of the subject premises and Plaintiff has no claim of ownership thereof as he has never exercised any of the rights, obligations or responsibilities of ownership and was never intended to become an owner thereof.

WHEREFORE, Defendant respectfully requests your Honorable Court to issue an Order:

- (a) denying Plaintiff's request for a partition of the real estate;
- (b) declaring that Plaintiff has no ownership interest in the real estate and that his name should be removed as a record owner thereof; and

(c) granting such other and further relief as your Honorable Court may deem just and proper including the reimbursement to Defendant by Plaintiff of monies due and owing to her by Plaintiff.

### **NEW MATTER**

7. Defendant incorporates herein by reference the averments contained in Paragraphs 1 through 6 inclusive of the foregoing Answer to Plaintiff's Complaint as if the same were set forth at length herein.

8. That Defendant contracted to purchase the subject premises in her name alone and did secure a mortgage commitment in her name alone for \$65,000.00 toward payment of the purchase price of \$95,000.00. A true and correct copy of the mortgage commitment letter to Defendant alone is attached hereto and made a part hereof as Exhibit "A".

9. That Defendant alone paid the earnest money of \$500.00 due and owing at the time of the signing of the Agreement of Sale.

10. That sometime after the issuance of the mortgage commitment and prior to the scheduled closing, Defendant lost her job and although she was able to secure other employment, the bank was leery about giving a mortgage to Defendant.

11. That sometime prior to closing Plaintiff approached Defendant and advised that his son needed a home in which to reside within the DuBois Area School District because Plaintiff's son had been expelled from the St. Marys Area School District.

12. That Plaintiff offered to give to Defendant \$5,000.00 in consideration for Defendant allowing Plaintiff's minor son who was going into the 11<sup>th</sup> grade to reside with her for the next

two years so that said child could attend the 11<sup>th</sup> and 12<sup>th</sup> grade at DuBois Area High School and graduate from the DuBois Area High School.

13. That in consideration for Defendant agreeing to his proposal, Plaintiff also agreed to give to Defendant the additional monies she required to pay the balance owing on the closing costs for said transaction.

14. That Defendant needed \$30,829.53 in order to purchase the real estate for her home over and above the \$65,000.00 she had secured through her mortgage. A true and correct copy of the Settlement Statement evidencing that Defendant alone was the purchaser and the borrower of the monies from the mortgage company is attached hereto and made a part hereof as Exhibit "B".

15. That of the amount of \$30,829.53 due from Defendant in cash for the purchase of the premises, Defendant contributed the sum of \$26,200.00 from her own monies and actually received the sum of \$4,629.53 from Plaintiff.

16. That although the Plaintiff's payment of \$4,629.53 to Defendant was in consideration for her allowing his son to live with her in her residence so that he could go to school in the DuBois Area School District, Plaintiff's name was mistakenly placed upon the deed and mortgage that was prepared.

17. That although both Plaintiff and Defendant executed the mortgage, only Defendant executed the Note as evidenced by a true and correct copy of the same which is attached hereto and made a part hereof as Exhibit "C".

18. That in furtherance of their agreement, Plaintiff's minor son did move into the subject premises with Defendant and her three children and did enroll in the DuBois Area School District.

19. That thereafter, in the Fall of 1995, the personal relationship between Plaintiff and Defendant became more serious and Plaintiff moved into Defendant's home and would stay there with her for periods of time.

20. That Plaintiff advised Defendant that in consideration for both he and his son being permitted to reside in the residence that he would give Defendant sufficient monies to allow her to pay her real estate taxes and the assessment dues for the premises which he did for the years of 1996 and 1997.

21. That by 1997, Defendant could not continue to afford to pay all of the utility bills and grocery bills for Plaintiff and his minor son and did advise Plaintiff that the monies he was giving her to cover her taxes and Treasure Lake assessment dues was not sufficient to cover the expenses she was incurring as a result of permitting Plaintiff and his minor son to reside in her home and she demanded that Plaintiff contribute more money toward the payment of the expenses Defendant was incurring due to the fact that Plaintiff and his minor son were living in the residence of Defendant.

22. That despite Defendant's demand that Plaintiff pay his fair share of the living expenses incurred as a result of the fact that he was sharing Defendant's residence, he wholly failed to do so and Defendant was required to pay for not only her living expenses and the living expenses of her children but for the share of the living expenses attributable to Plaintiff and his minor son.

23. That at no time did Plaintiff pay Defendant for any interest in the residence.
24. That at no time until Defendant demanded that Plaintiff vacate her residence did Plaintiff ever claim to be an owner of the premises.
25. That at all times from the time of the purchase of the premises in 1995 to the present, Defendant made all mortgage payments without contribution therefor from the Plaintiff.
26. That Defendant wholly fulfilled her obligations under the Agreement reached by Plaintiff and Defendant and did allow the son of the Plaintiff to reside in her home until he graduated in June of 1998.
27. That after Plaintiff's son graduated in June of 1998, Plaintiff would come and go from Defendant's home but did not claim the same as his residence.
28. That the name of the Plaintiff was never to have appeared on the deed and mortgage for the subject premises and his name appears on the deed and mortgage by mutual mistake.
29. That Plaintiff's demand for partition of the subject premises is barred because he is not an owner of the premises by the doctrine of mutual mistake.
30. That Plaintiff's claim for an interest in the subject premises is barred by the defense of failure of consideration since he paid no money for the purchase of the same.
31. That, in the alternative, if it should be determined that Plaintiff acquired an interest in the subject premises and that the parties were joint adventurers, Plaintiff has forfeited any interest he may have acquired in the subject premises by his failure to reimburse Defendant for the monies she advanced toward the purchase of the property at the time of closing and by his

failure to pay his share of the mortgage payments, insurance and other expenses attendant to the ownership of said premises.

WHEREFORE, Defendant respectfully requests your Honorable Court to issue an Order:

- (a) denying Plaintiff's request for a partition of the real estate;
- (b) declaring that Plaintiff has no ownership interest in the real estate and that he holds the same solely for the benefit of and in trust for the Defendant;
- (c) directing Plaintiff to execute a deed vesting sole interest in the premises in the Defendant; and
- (d) granting such other and further relief as your Honorable Court may deem just and proper including the reimbursement to Defendant by Plaintiff of monies due and owing to her by Plaintiff.

## **COUNTERCLAIM**

By way of Counterclaim, answering Defendant, THERESA S. VIDA, avers:

### **Count I - Unjust Enrichment**

32. Defendant incorporates herein by reference as though fully set forth, all of the averments set out in Paragraphs 7 through 31 inclusive of the foregoing New Matter as if the same had been set forth at length herein.

33. That Plaintiff's exercise of ownership in the subject premises and his receipt of any monies for an interest therein constitutes a failure to properly give Defendant restitution for property and/or benefits received by Plaintiff and Plaintiff has been unjustly enriched at the expense of Defendant.

34. That the continued exercise by Plaintiff of any ownership or title to the subject premises constitutes an unjust retention of a benefit to the loss of Defendant and the Plaintiff's retention of an interest in the subject premises is against the fundamental principles of justice and good conscience and is patently unfair.

35. That as a direct and proximate result of Plaintiff's unjust retention of a record interest in the subject realty and his claim for the proceeds therefrom, Defendant has suffered and continues to suffer serious financial injury and inequities that have resulted in substantial damages.

36. That as a result of the actions of the Plaintiff in failing to contribute toward the purchase or maintenance of the subject premises, Plaintiff holds said premises for the benefit of the Defendant and any interest that the Plaintiff is deemed to have in said premises is held by him in trust for the Defendant.

37. That Defendant is entitled to have a constructive trust declared over the interest that Plaintiff claims in said premises for her benefit.

WHEREFORE, Defendant respectfully requests your Honorable Court to issue an Order:

(a) declaring that Plaintiff has been unjustly enriched at the expense of Defendant;

(b) declaring the creation of a constructive trust as to any interest Plaintiff may have acquired in the subject premises for the benefit of the Defendant;

(c) declaring that Plaintiff, as the constructive trustee, execute a deed to Defendant, conveying all of the interest he acquired through the deed dated December 1, 1995, to Defendant;

(d) awarding attorney's fees, costs and expenses to Defendant; and

(e) granting such other relief as your Honorable Court may deem equitable and proper, including an award of counsel fees to Defendant.

**Count II - Partition in Accordance with Pa.R.C.P. 1563(b)**

38. Defendant incorporates herein by reference as though fully set forth, all of the averments set out in Paragraphs 7 through 31 inclusive of the foregoing New Matter as if the same had been set forth at length herein.

39. That, in the alternative, if Plaintiff is found to have an interest in said premises, Defendant is entitled to be declared the majority owner of the premises.

40. That as the majority owner of said premises, Defendant does object to any sale of said premises and does request that the subject premises be awarded to her at the valuation fixed by your Honorable Court and that her interest in the same remain undivided pursuant to her rights under Pa.R.C.P. 1563(b).

41. That Plaintiff owes to Defendant reimbursement for all of the mortgage payments, real estate taxes, insurance and other costs to maintain and repair said premises proportionate to whatever interest the Court determines he has in said premises.

42. That any amount owed by Plaintiff to Defendant, with interest thereon, must be deducted from any monies owed to Plaintiff for his share of the value of the premises.

WHEREFORE, Defendant respectfully requests your Honorable Court to:

- (a) declare that Defendant owns a majority in value of the subject real estate and that Defendant is entitled to have the same awarded to her at its valuation and that her interest in the same shall remain undivided;
- (b) value said premises;
- (c) ascertain what, if any, share the Plaintiff owns in said premises;
- (d) ascertain the monies owed by Plaintiff to Defendant to reimburse her for payments she made on behalf of the Plaintiff;
- (e) deduct from any monies owed by Defendant to Plaintiff for his share, the amount owed by Plaintiff to Defendant as reimbursement for payments made by Defendant toward the purchase, maintenance and repair of said premises;
- (f) award to Defendant attorney's fees and costs from Plaintiff; and
- (g) grant such other relief as your Honorable Court may deem equitable and proper.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By

Attorney for Defendant

COMMONWEALTH OF PENNSYLVANIA

: SS.

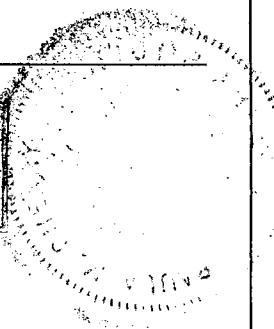
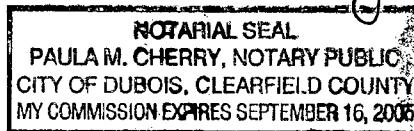
COUNTY OF CLEARFIELD

Personally appeared before me, a Notary Public in and for the County and State aforesaid, THERESA S. VIDA, who, being duly sworn according to law, deposes and says that the facts set forth in the foregoing Answer, New Matter and Counterclaim are true and correct to the best of her knowledge, information and belief.



Theresa S. Vida

Sworn to and subscribed before me, this 8th day of August, 2002.



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

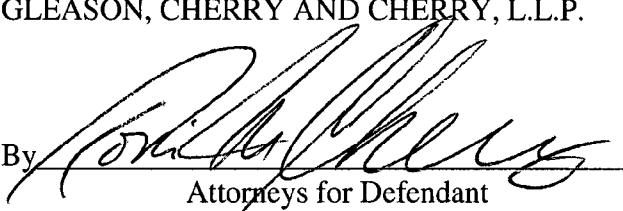
FRANK J. FERRIS,	:	CIVIL ACTION
	Plaintiff	:
		:
vs.		No. 02 - 1049 C.D.
		:
THERESA S. VIDA,		:
	Defendant	:

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>th</sup> day of August, 2002, a true and correct copy of the Answer, New Matter and Counterclaim filed on behalf of Defendant was served upon JOSEPH COLAVECCHI, ESQ., counsel for Plaintiff, by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

JOSEPH COLAVECCHI, ESQ.  
Colavecchi, Ryan & Colavecchi  
Attorneys at Law  
P. O. Box 131  
Clearfield, PA 16830

GLEASON, CHERRY AND CHERRY, L.L.P.

By   
Attorneys for Defendant

Dated: August 9, 2002



Integra Mortgage Company  
801 State Street  
Erie, PA 16501

Commitment Date: July 26, 1995  
Commitment Expiration: August 15, 1995

Theresa S. Vida —  
108 Filmore Avenue  
Ridgway, PA 15853

Dear Applicant:

Integra Mortgage Company (the "Company") is pleased to advise you that your application for a first mortgage loan on property located at Section 2, Lot 14, Bay Road, Treasure Lake, DuBois, PA 15801 has been approved. The following terms and conditions are hereby offered:

Loan Number:	0144390
Type:	Conventional Fixed/Bi-Weekly
Loan Amount:	\$65,000.00
Interest Rate:	8.00%
Origination & Discount Fee:	\$162.50/0.250%
Term:	360 Months
Principal & Interest Payment:	\$238.48/Bi-Weekly

This Loan is subject to: (1) our determination that the title to the property is good and marketable and free and clear of all liens and encumbrances, subject only to such exceptions as are acceptable to counsel for the Company; (2) the statutory and other requirements by which the Company is governed; and (3) compliance with all other provisions of this commitment. If the requirements of the loan are not fulfilled, your loan may not close on the intended date.

**A. Integra and/or its Legal counsel will, on your behalf obtain documentation as noted below.**

1. ALTA Title Policy.
2. Restrictions, Survey and Environmental Lien, and Title Policy Endorsements. An acceptable survey may need to be provided prior to closing if required by the Title Company.
3. An original marked-up title commitment, with title cover sheet, must be submitted to Integra Mortgage Company with closing package.
4. Tax Service Fee of \$88.00 to be collected at closing.

**B. Borrowers to furnish the following documentation:**

*Exhibit "A"*

1. An original hazard policy in an amount equal to the loan amount or 100% replacement cost, whichever is less. The mortgagee clause should be endorsed to "Integra Mortgage Company, ATIMA, Its Successors and/or Assigns, P. O. Box 840, Pittsburgh, Pennsylvania 15230-0840". A one year's paid receipt must accompany the policy, except when a current policy is in effect with a minimum of three (3) months remaining after closing.
2. Satisfactory rental reference.
3. Receipt of most recent paystub for borrower to confirm return to work at same rate of pay.
4. Execute enclosed Automatic Transfer Agreement per IntegraMax Program. Provide voided check or deposit slip and return with commitment letter. Borrower will receive \$250.00 credit towards closing costs.

**Additional Items for your information:**

- Integra may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, unless the mortgage or another law that applies to the Funds sets a lesser amount.
- Interest will be paid at the rate of two percent (2%) per annum by the Company to you, the borrower(s), on funds required to be paid to the Company into tax and/or insurance escrow accounts for the purpose of paying the real estate taxes and insurance premiums when the same shall become due, subject to applicable law. This interest will be paid so long as Integra Mortgage Company is the servicer of your loan. Should the servicing rights to your loan be assigned at a future date to another servicer, the payment of interest on escrow may be discontinued at the option of any subsequent servicer of your loan.
- It is a condition of this commitment that any certifications and appraisals required by the Company are for the purposes of the loan and for the benefit of the Company only. The Company does not in any manner whatsoever warrant, guarantee or certify the condition of the property.
- Unless otherwise specifically stated, time shall be of the essence of all dates and periods of time set forth herein.
- This commitment is subject to change, if, for any reason, settlement does not occur on or before August 15, 1995.
- All documents must be executed in a form satisfactory to the Company.

- The terms and conditions of this commitment and the covenants and agreements herein shall survive the closing of the loan.
- This commitment may not be assigned, nor any of the rights hereunder transferred, without the prior written consent of the Company.

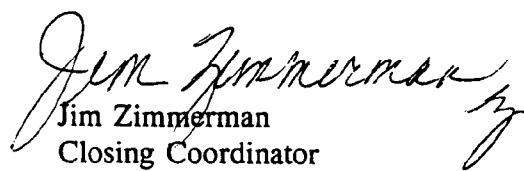
1. **By accepting this commitment, you hereby agree:**

- a. To cooperate in any post-closing review and/or audit, and to sign other documentation and take such action deemed necessary by Integra and/or its counsel before, during or after closing.
- b. To promptly notify Integra of any change in employment or income status which occurs prior to loan closing and may render this commitment null and void.
- c. To pay the cost of the title insurance issued by a title insurance company acceptable to the Company, fees of the Company's legal counsel for services in connection with this loan, and all expenses, and expenses of the Company relating to matters contemplated herein.

This commitment must be accepted by you and returned to Integra Mortgage Company, prior to closing, or it shall become void and of no effect.

A closing date and time can be arranged by calling Attorney David Hopkins, 902 Beaver Drive, DuBois, PA 15801 at 814-375-0300. Please contact the undersigned, who will be coordinating your closing to discuss any questions you may have in regard to this letter at 814-871-1272 or 1 (800) 647-9768. Please allow five (5) business days notice from scheduling closing date to day of closing.

Very truly yours,

  
Jim Zimmerman  
Closing Coordinator  
Erie Processing Center

JZ/dc

cc: Attorney David Hopkins  
Doug Shaffer

## ACCEPTANCE

I/We accept this loan approval commitment and agree to all of its provisions.

I/We hereby certify that no part of the down payment and/or settlement costs will be given in the form of a note, second mortgage or other obligation unless prior written approval of the Company is obtained.

---

Theresa A. Vida

---

Date

A. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT				SETTLEMENT STATEMENT	
B. TYPE OF LOAN		1. FHA	2. FmIIA	6. File Number:	7. Loan Number:
3. CONV. UNINS.		4. VA	5. CONV. INS.	8. Mortgage Insurance Case Number	
C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.					
NOTE: TIN = Taxpayer's Identification Number					
D. NAME AND ADDRESS OF BORROWER:		E. NAME, ADDRESS, AND TIN OF SELLER:		F. NAME AND ADDRESS OF LENDER:	
Theresa S. Vida 108 Filmore Street Ridgway, PA 15853		Thomas L. Thropp Tina M. Thropp 844 Treasure Lake DuBois, PA 15801		Integra Mortage Company 801 State Street Erie, PA 16501	
G. PROPERTY LOCATION:		H. SETTLEMENT AGENT NAME, ADDRESS AND TIN		I. SETTLEMENT DATE	
Treasure Lake Sandy Township		David J. Hopkins, Esquire 902 Beaver Drive, DuBois, PA 15801		08/01/95	
Clearfield County LOT 14 BLOCK 2		PLACE OF SETTLEMENT 902 Beaver Drive DuBois, PA 15801			

J. SUMMARY OF BORROWER'S TRANSACTION			K. SUMMARY OF SELLER'S TRANSACTION		
100. GROSS AMOUNT DUE FROM BORROWER:			400. GROSS AMOUNT DUE TO SELLER:		
101. Contract sales price	95,000.00		401. Contract sales price	95,000.00	
102. Personal property			402. Personal property		
103. Settlement charges to borrower (Line 1400)	2,234.92		403.		
104.			404.		
105.			405.		
Adjustments for items paid by seller in advance			Adjustments for items paid by seller in advance		
106. City/town taxes 8/1 to 12/31	✓ 183.83		406. City/town taxes 8/1 to 12/31	183.83	
107. County taxes to			407. County taxes to		
108. Assessments to			408. Assessments to		
109. TLPOA 8/1 to 4/30/96	134.63		409. TLPOA 8/1 to 4/30/96	134.63	
110.			410.		
111.			411.		
112.			412.		
120. GROSS AMOUNT DUE FROM BORROWER	97,553.38		420. GROSS AMOUNT DUE TO SELLER	95,318.46	

200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:			500. REDUCTIONS IN AMOUNT DUE TO SELLER:		
201. Deposit or earnest money	500.00		501. Excess deposit	500.00	
202. Principal amount of new loan(s)	65,000.00		502. Settlement charges to seller (Line 1400)	1,050.00	
203. Existing loan(s) taken subject to			503. Existing loan(s) taken subject to		
204. Integra Max	250.00		504. S&T	51,585.83	
205.			505.		
206.			506.		
207.			507.		
208.			508.		
209.			509.		
Adjustments for items unpaid by seller			Adjustments for items unpaid by seller		
210. City/town taxes to			510. City/town taxes to		
211. County taxes to			511. County taxes to		
212. Assessments to			512. Assessments to		
213. School 1/1 to 8/1/95	✓ 973.85		513. School 1/1 to 8/1/95	973.85	
214.			514. Final water	104.00	
215.			515.		
216.			516.		
217.			517.		
218.			518.		
219.			519.		
220. TOTAL PAID BY/FOR SELLER	66,723.85		520. TOTAL REDUCTION AMOUNT DUE SELLER	54,213.68	

300. CASH SETTLEMENT FROM/TO SELLER		600. CASH AT SETTLEMENT FROM/TO SELLER	
301. Gross amount due from borrower (Line 120)	97,553.38	601. Gross amount due to seller (Line 420)	95,318.46
302. Less amount paid by/for borrower (Line 220)	66,723.85	602. Less reduction in amount due seller (Line 520)	54,213.68
303. CASH [X] FROM/ [ ] TO BORROWER	30,829.53	603. CASH [X] TO/ [ ] FROM SELLER	41,104.78

## SUBSTITUTE FORM 1099 SELLER STATEMENT

The information contained in Blocks E, G, H, and I and on line 401 (or, if line 401 is asterisked, line 403 and 404) is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required to be reported and the IRS determines that it has not been reported. If this real estate is your principal residence, file Form 2119, Sale or Exchange of Principal Residence, for any gain, with your income tax return; for other transactions, complete the applicable parts of Form 4797, Form 6252 and/or Schedule D (Form 1040). You are required to provide the Settlement Agent (named above) with your correct taxpayer identification number. If you do not provide the Settlement Agent with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law. Under penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number.

(Seller's Signature) Thomas L. Thropp

Exhibit "B"

L. SETTLEMENT CHARGES *				EASY SOFT, Inc. (C)	
700. TOTAL SALES/BROKER'S COMMISSION based on price \$ 95,000.00 @ %			PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT	
Division of Commission (line 700) as follows:					
701. \$ to					
702. \$ to					
703. Commission paid at Settlement					
704.					
800. ITEMS PAYABLE IN CONNECTION WITH LOAN					
801. Loan Origination Fee	%			162.50	
802. Loan Discount	%				
803. Appraisal Fee to (POC \$250.00)					
804. Credit Report to (POC \$100.00)					
805. Lender's Inspection Fee					
806. Mortgage Insurance Application Fee to					
807. Assumption Fee					
808. Tax Service Fee				88.00	
809. Underwriting Fee				50.00	
810.					
811.					
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE					
901. Interest from 08/01/95 to 08/20/95 @ 14.246 /day				284.92	
902. Mortgage Insurance Premium for months to					
903. Hazard Insurance Premium for years to					
904. years to					
905.					
1000. RESERVES DEPOSITED WITH LENDER					
1001. Hazard Insurance	months @ \$	per month			
1002. Mortgage Insurance	months @ \$	per month			
1003. City property taxes	months @ \$	per month			
1004. County property taxes	months @ \$	per month			
1005. Annual assessments	months @ \$	per month			
1006.	months @ \$	per month			
1007.	months @ \$	per month			
1008.	months @ \$	per month			
1100. TITLE CHARGES					
1101. Settlement or closing fee to David J. Hopkins, Esquire				50.00	50.00
1102. Abstract or title search to David J. Hopkins, Esquire				80.50	
1103. Title Examination to					
1104. Title insurance binder to					
1105. Document preparation to Integra Mort. Co./David J. Hopkins				125.00	50.00
1106. Notary fees to					
1107. Attorney's fees to David J. Hopkins, Esquire (includes above item numbers; )				400.00	
1108. Title Insurance to (includes above item numbers; )					
1109. Lender's coverage					
1110. Owner's coverage					
1111.					
1112.					
1113.					
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES					
1201. Recording fees: Deed \$ 20.00 Mortgage \$ 24.00 Release \$				44.00	
1202. City/ctny tax stamps: Deed \$ Mortgage \$ Release \$					
1203. State tax stamps: Deed \$ Mortgage \$ Release \$				950.00	950.00
1204.					
1205.					
1300. ADDITIONAL SETTLEMENT CHARGES					
1301. Survey to					
1302. Pest inspection to					
1303.					
1304.					
1305.					
1306.					
1307.					
1308.					
1400. TOTAL SETTLEMENT CHARGES (enter on line 103, Section J and 502, Section K)				2,234.92	1,050.00

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements in my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

*Thomas L. Thropp*

Thomas L. Thropp

*Tina M. Thropp*

Tina M. Thropp

CERTIFICATION

*Theresa S. Vida*

Borrower

Borrower

To the best of my knowledge the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.

*David J. Hopkins, Esquire*

Settlement Agent

08/01/95

Date

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S.C. Section 1001 and Section 1010.

**NOTE**  
(Biweekly Payments-Fixed Rate-Without Conversion)

August 1, 1995

DuBois

Pennsylvania

[City]

[State]

SEC 2 LOT 14 BAY RD TREASURE LAKE

DUBOIS, PA 15801

[Property Address]

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$ 65,000.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is Integra Mortgage Company

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note will be called the "Note Holder."

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 8.0000 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

**3. PAYMENTS**

**Time and Place of Payments**

I will pay principal and interest by making payments every fourteen days (the "biweekly payments"), beginning on September 04, 1995. I will make the biweekly payments every fourteen days until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My biweekly payments will be applied to interest before principal. If on April 16, 2018, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "maturity date."

I will make my biweekly payments at 116 Allegheny Center Mall Pittsburgh, Pennsylvania 15212-5356 or at a different place if required by the Note Holder.

**(B) Amount of Biweekly Payments**

My biweekly payment will be in the amount of U.S. \$ 238.48

**(C) Manner of Payment**

My biweekly payments will be made by an automatic deduction from an account I will maintain with the Note Holder, or with a different entity specified by the Note Holder. I will keep sufficient funds in the account to pay the full amount of each biweekly payment on the date it is due.

I understand that the Note Holder, or an entity acting for the Note Holder, may deduct the amount of my biweekly payment from the account to pay the Note Holder for each biweekly payment on the date it is due until I have paid all amounts owed under this Note.

**4. BORROWER'S RIGHT TO PREPAY**

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or a partial prepayments without paying any prepayment charge. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due date or in the amount of my biweekly payment unless the Note Holder agrees in writing to those changes.

**5. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

**6. BORROWER'S FAILURE TO PAY AS REQUIRED**

**(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any of my biweekly payments by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

**(B) Default**

If I do not pay the full amount of each biweekly payment on the date it is due, I will be in default. I also will be in default if I do not maintain the account I am required to maintain under Section 3(C) above.

**(C) Notice of Default**

If I am in default, the Note Holder may send me a written notice telling me that if I do not cure the default by a certain date, the Note Holder may require me to pay immediately the full amount of principal that has not been paid and all the interest that I owe on that amount. The date must be at least 30 days after the date on which the notice is delivered or mailed to me.

**(D) No Waiver By Note Holder**

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

Exhibit "C"

**(E) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

**7. GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

**8. OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each of us is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety, or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

**9. WAIVERS**

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

**10. UNIFORM SECURED NOTE**

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

**Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. This notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

  
\_\_\_\_\_  
THERESA S. VIDA (Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
(Seal)  
-Borrower

*[Sign Original Only]*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANK J. FERRIS,

Plaintiff

Vs.

THERESA S. VIDA,

Defendant

CIVIL DIVISION

No. 02 - 1049 - CD

REPLY TO NEW MATTER/ANSWER  
TO COUNTERCLAIM/NEW MATTER

Filed on Behalf of:

Plaintiff, FRANK J. FERRIS

Counsel of Record for This  
Party:

JOSEPH COLAVECCHI, ESQUIRE  
Pa. I.D. #06810

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

814/765-1566

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

**FILED**

SEP 03 2002

William A. Shaw  
Prothonotary

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

FRANK J. FERRIS,

Plaintiff : No. 02 - 1049 - CD

Vs.

THERESA S. VIDA,

Defendant :

NOTICE

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 New Matter 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 New Matter 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  
Second and Market Streets  
Clearfield, PA 16830  
Phone 814/765-2641 Ex. 5982

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 DIVISION

FRANK J. FERRIS,

Plaintiff : No. 02 - 1049 - CD

Vs.

THERESA S. VIDA,

Defendant :

***REPLY TO NEW MATTER***

NOW COMES, the Plaintiff, Frank J. Ferris, who, through his attorney, Joseph Colavecchi, Esquire, files his Reply to the New Matter of the Defendant and respectfully avers as follows:

7. This does not require a reply.
8. Denied. On the contrary, Plaintiff and Defendant went together in purchasing the subject premises and agreed that the property would be placed in both names.
9. Denied. There is no Agreement of Sale attached to the Complaint. Any Agreement of Sale is solely in the possession of Defendant and strict proof of said Agreement of Sale is demanded at the trial of this case.
10. Denied. The mortgage commitment letter shows a date of July 26, 1995, and the HUD Statement shows August 1, 1995, as the date of closing. This would be a period of one week. It is further alleged on information and belief that Defendant fully

employed at the time of the closing and voluntarily left her employment with Howe's Leather Company in March 1996.

11. Denied. On the contrary, Gregg Ferris was not expelled from the St. Marys Area School District. His mother resided in Treasure Lake and he had friends in the DuBois Area School District. Defendant invited him to reside with her so that Gregg Ferris could attend the DuBois Area School. Plaintiff, although invited by Defendant to reside with her, was not residing with Defendant at that time.

12. Denied. On the contrary, the \$5,000 issued by Frank Ferris was part of the down payment and intended to be part of the consideration for he and Defendant purchasing the property and placing it in joint names.

13. Denied. On the contrary, Plaintiff and Defendant had agreed from the beginning that the property would be purchased by them and placed into both names and that it would constitute a partnership involving the ownership of the property.

14. Denied. On the contrary, as set out above, Plaintiff and Defendant entered into an agreement to purchase the property as partners and to hold it in both names. A copy of the Settlement Statement evidencing that Plaintiff was one of the purchasers is attached hereto and marked Exhibit "A".

15. Denied. On the contrary, Plaintiff paid \$5,000 cash as set out by Defendant in Paragraph 12, and Plaintiff gave an

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CLEARFIELD, PA

additional \$6,950 at the closing, said check having been written to David Hopkins, as attorney and closing agent. This was part of the agreement between Plaintiff and Defendant to buy the property as partners and to hold title as partners.

16. Denied. On the contrary, as set out above, the agreement between Plaintiff and Defendant was that they would purchase the property together and own it in both names. There was no mistake in placing Plaintiff's name on the deed and mortgage. In any event, the property has been in both names since August 1995 which is more than seven years ago and Defendant has taken no steps to have Plaintiff's name removed from the deed.

17. Admitted.

18. This does not require a reply. This was answered as set out above.

19. Denied. The personal relationship between Plaintiff and Defendant was serious from the beginning. Plaintiff refrained from moving into Defendant's home since he did not feel it would be proper because of the young children.

20. Denied. On the contrary, Plaintiff agreed with Defendant from the beginning that he would pay the real estate taxes on the property for all of the time that they owned it.

21. Denied. On the contrary, Plaintiff from the beginning paid Defendant whatever amount she requested to pay for the expenses of his son staying in the home. Plaintiff did not

actually move in and become a resident in the home until approximately September 1996. Plaintiff had a regular pattern of contributing for the care of his son and paying the real estate taxes as per their agreement.

22. Denied. On the contrary, Plaintiff paid his share of all living expenses both when his son lived there and when he resided in the property. He paid the directly to Defendant, the amounts when she requested the payments.

23. Denied for the reasons as set forth above.

24. Denied. On the contrary, as set out above and as the record shows, Plaintiff was a one-half owner of the premises and this is in accordance with the agreement between Plaintiff and Defendant from the beginning and prior to the closing itself and as shown by the funds contributed by Plaintiff at the time of the closing and all of his actions after the closing.

25. Denied. On the contrary, Plaintiff would pay funds to Defendant on a periodic basis as she requested them. There is a clear pattern of Plaintiff making payments to Defendant on numerous occasions. When Defendant voluntarily quit her job, Plaintiff paid the full amount of the mortgage directly to Defendant who then made the mortgage payments from Plaintiff's funds.

26. Denied. Gregg Ferris graduated in June 1997. This had nothing to do with the partnership involving Plaintiff and Defendant in connection with the ownership of the property.

27. Denied. Plaintiff's son graduated in June of 1997. Plaintiff has always maintained his principal residence in St. Marys.

28. Denied for the reasons as set forth above. At no time did Defendant ever take any steps to have Plaintiff's name removed from the deed.

29. Denied. On the contrary, Plaintiff and Defendant own the property as equal partners.

30. Denied for the reasons as set forth above.

31. Denied for the reasons as set forth above.

Wherefore, Plaintiff asks that the New Matter of the Defendant be dismissed and that judgment be entered in favor of Plaintiff and that an Order of Partition be issued awarding the property to Plaintiff and Defendant in equal shares.

**ANSWER TO COUNTERCLAIM**

**COUNT I**

Plaintiff, through his attorney, Joseph Colavecchi, Esquire, files his Answer to the Counterclaim of Theresa S. Vida and respectfully avers as follows:

32. This does not require an answer.

33. Denied for all of the reasons as set forth above.

34. Denied for all of the reasons as set forth above.

35. Denied for all of the reasons as set forth above.

36. Denied for all of the reasons as set forth above.

37. Denied for all of the reasons as set forth above.

WHEREFORE, Frank J. Ferris asks that the Counterclaim be dismissed and that judgment be entered in his favor together with interest and costs.

*COUNT II*

Frank J. Ferris files his Answer to Count II of the Counterclaim and respectfully avers as follows:

38. This does not require an Answer.

39. Denied for all of the reasons as set forth above.

40. Denied for all of the reasons as set forth above. Plaintiff and Defendant are equal partners in the ownership of this property.

41. Denied. On the contrary and as set out above, Plaintiff has been making a regular series of payments to Defendant in accordance with their agreement, holding this property as partners.

42. Denied for all of the reasons as set forth above.

WHEREFORE, Plaintiff asks that the claim of Theresa S. Vida be dismissed and that judgment be entered in favor of Plaintiff together with interest and costs and also that the property be partitioned and sold and that the net proceeds be divided equally between Plaintiff and Defendant.

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

**NEW MATTER**

Frank J. Ferris, through his attorney Joseph Colavecchi, Esquire, files his New Matter to Defendant's Counterclaim and respectfully avers as follows:

43. Plaintiff asserts the Statute of Frauds concerning the conveyance of the real estate. Any oral defenses would have merged in the deed.

44. Plaintiff raises the defense of estoppel setting out that Defendant is estopped from asserting that she is not an equal partner in holding the property since the deed speaks for itself and the deed has been in effect for more than seven years.

45. Plaintiff raises the defense of the Parole Evidence Rule. The deed speaks for itself and any oral attempt to vary it would be barred by the Parole Evidence Rule.

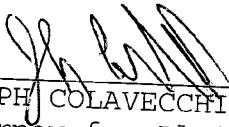
46. Plaintiff raises the defense of the Statute of Limitations. Said Statute of Limitations would be four years and at the most six years. It has been seven years since the deed conveying the property to Plaintiff and Defendant in equal shares was entered into and placed of record.

47. Plaintiff raises the defense of Laches because of Defendant's failure to act.

WHEREFORE, Plaintiff asks that the Answer, New Matter and Counterclaim of the Defendant, Theresa S. Vida, be dismissed and

that an Order of Partition be issued directing that the property be divided equally between Plaintiff and Defendant.

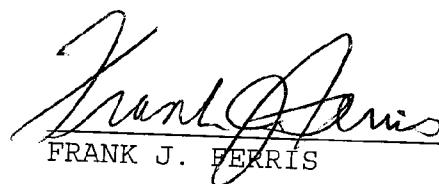
Respectfully submitted,

  
JOSEPH COLAVECCHI, ESQUIRE  
Attorney for Plaintiff

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

VERIFICATION

I verify that the statements made in this Answer 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.



FRANK J. FERRIS

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, PENNA.  
CIVIL DIVISION  
No. 02 - 1049 - CD

FRANK J. FERRIS,

Plaintiff

vs.

THERESA S. VIDA,

Defendant

REPLY TO NEW MATTER/ANSWER  
TO COUNTERCLAIM/NEW MATTER

FILED  
01/3/2002  
SEP 03 2002

William A. Shaw  
Prothonotary

200  
Attn: Colavecchi

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANK J. FERRIS,

CIVIL ACTION

Plaintiff

No. 02 - 1049 - CD

vs.

MOTION BY PLAINTIFF FOR  
JUDGMENT ON THE PLEADINGS

THERESA S. VIDA,

Filed on behalf of:

Defendant

Plaintiff, FRANK J. FERRIS

Counsel of Record for  
Said Party:

JOSEPH COLAVECCHI, ESQUIRE  
PA I.D. 06810

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

814/765-1566

FILED

OCT 04 2002

011237/w  
William A. Shaw  
Prothonotary

3 copy to Atty

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

FRANK J. FERRIS, :  
Plaintiff :  
:  
vs. : No. 02 - 1049 - CD  
:  
THERESA S. VIDA, :  
Defendant :

MOTION BY PLAINTIFF FOR JUDGMENT  
ON THE PLEADINGS

The above-named Plaintiff hereby moves the Court for its Order directing judgment for Plaintiff on the Pleadings in favor of Plaintiff and against Defendant directing Partition of the real estate described in the Complaint owned fifty percent by Plaintiff and fifty percent by Defendant, and asks that costs be assessed against Defendant together with attorney's fees.

This Motion is made on the grounds that Defendant's Answer and Counterclaim filed herein does not constitute and represent a valid or meritorious defense to Plaintiff's Complaint as more particularly shown in the memorandum of points and authority appended hereto.

  
JOSEPH COLAVECCHI, ESQUIRE  
Attorney for Plaintiff

10/4/85  
DATE

WY

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION  
No. 02 - 1049 - CD

FRANK J. FERRIS,  
PLAINTIFF

VS.  
THERESA S. VIDA,  
PLAINTIFF

DEFENDANT

MOTION BY PLAINTIFF FOR  
JUDGMENT ON THE PLEADINGS

COLAVECCHI  
RYAN & COLAVECCHI

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

FILED

OCT 04 2002

William A. Shaw  
Prothonotary

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

FRANK J. FERRIS, CIVIL DIVISION  
Plaintiff,

vs. No. 02-1049-CD

THERESA S. VIDA, CERTIFICATE OF SERVICE  
Defendant.

Filed on Behalf of:

Frank J. Ferris, Plaintiff

Counsel of Record For This Party:

JOSEPH COLAVECCHI, ESQUIRE  
Pa. I. D. No. 06810

Colavecchi, Ryan & Colavecchi  
221 East Market Street  
P. O. Box 131  
Clearfield, PA 16830  
Phone: 814/765-1566

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

FILED

DLG 03 2002

William A. Shaw  
Prothonotary

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

FRANK J. FERRIS, :  
Plaintiff, :  
:  
vs. : No. 02-1049-CD  
:  
THERESA S. VIDA, :  
Defendant. :  
:

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on December 3, 2002, a true and correct copy of the Reply Brief on behalf of Frank J. Ferris in the above matter was served on the following by depositing said copy in the United States mail, first class, postage prepaid, addressed as follows:

Toni M. Cherry, Esquire  
Gleason, Cherry & Cherry, LLP  
1 N. Franklin Street  
P.O. Box 505  
DuBois, PA 15801

DATE: 12/03/02

BY:

  
JOSEPH COLAVECCHI, ESQUIRE  
Attorney for Plaintiff  
221 East Market Street  
P. O. Box 131  
Clearfield, PA 16830  
814/765-1566

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

FRANK J. FERRIS,

Plaintiff,

vs.

THERESA S. VIDA,

Defendant.

No. 02-1049-CD

CERTIFICATE OF SERVICE

Filed on behalf of Plaintiff:  
Counsel of Record for This Party:

Joseph Colavecchi Esquire

**RYAN & COLAVECCHI**

ATTORNEYS AT LAW

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100  
C/3 35381  
E. A. Colavecchi

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

FRANK J. FERRIS

-vs-

: No. 02 - 1049 - CD

THERESA S. VIDA

ORDER

NOW, this 27<sup>th</sup> day of December, 2002, following argument into Motion for Judgment on the Pleadings filed on behalf of the Plaintiff above-named, it is the ORDER of this Court that said matter shall be and is hereby continued pending hearing by this Court under Pennsylvania Rule of Civil Procedure 1557 to determine the necessity of a partition and the relative interest of the two parties in and to the subject premises.

By the Court,

President Judge

FILED

DEC 27 2002

William A. Shaw  
Prothonotary

**FILED**

cc Atty Colarechi

013:50 AM 100 Atty T. Cherry  
DEC 27 2002

William A. Shaw  
Prothonotary

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

FRANK J. FERRIS

:

VS.

: NO. 02-1049-CD

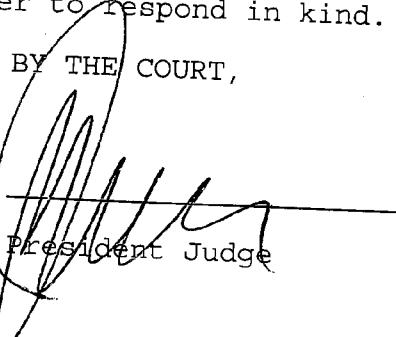
THERESA S. VIDA

:

O R D E R

NOW, this 3rd day of April, 2003, following conclusion of evidentiary hearing in the above-captioned matter, it is the ORDER of this Court that counsel for Plaintiff file a Findings of Fact, Conclusions of Law and Memorandum of Law with this Court within thirty (30) days from this date, and Defendant given thirty (30) days thereafter to respond in kind.

BY THE COURT,

  
President Judge

**FILED**

APR 04 2003

William A. Shaw  
Prothonotary

FILED

1cc Amy Colavocchi  
04/09/2003  
1cc Amy T. Cherry  
APR 04 2003

William A. Shaw  
Prothonotary

(P)

~~15503~~

D-10493

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

FRANK J. FERRIS

VS.

THERESA S. VIDA

: NO. 02-1049-CD

:

ORDER

NOW, this 3rd day of April, 2003, following conclusion of evidentiary hearing in the above-captioned matter, it is the ORDER of this Court that counsel for Plaintiff file a Findings of Fact, Conclusions of Law and Memorandum of Law with this Court within thirty (30) days from this date, and Defendant given thirty (30) days thereafter to respond in kind.

BY THE COURT,

---

President Judge

In The Court of Common Pleas of Clearfield County, Pennsylvania

FERIS, FRANK J.

VS.

VIDA, THERESA S.

Sheriff Docket # 13838

02-1049-CD

**SUBPEONA TO ATTEND AND TESTIFY**

**SHERIFF RETURNS**

NOW MARCH 31, 2003 AT 2:10 PM EST SERVED THE WITHIN SUBPOENA TO ATTEND & TESTIFY ON DAVID J. HOPKINS, ESQ./DEFENDANT AT EMPLOYMENT, 900 BEAVER DR., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO DAVID J. HOPKINS, ESQ./DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL SUBPOENA TO ATTEND & TESTIFY AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: RYEN

**Return Costs**

Cost	Description
30.72	SHFF. HAWKINS PD. BY: ATTY.

Sworn to Before Me This

10 Day Of April 2003  
William A. Shaw

So Answers,

*Chester A. Hawkins*  
*by Mandy Harr*  
Chester A. Hawkins  
Sheriff

**FILED**

APR 10 2003

William A. Shaw  
Prothonotary

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

FRANK J. FERRIS,  
Plaintiff

v.

THERESA S. VIDA,  
Defendant

No. 02-1049 - CD

**FILED**

JUL 21 2003

William A. Shaw  
Prothonotary

**OPINION AND ORDER**

Plaintiff, Frank J. Ferris filed this action in equity on July 2, 2002, asking this Court to find that he is the 50% owner of the premises located at Section 2, Santa Cruz, Lot 14, in the Treasure Lake subdivision of Sandy Township, Clearfield County, Pennsylvania, and thus to direct partition of the same. Plaintiff bases his claim on a deed dated August 1, 1995 conveying the subject premises to him and Defendant, Theresa S. Vida, as tenants in common. Defendant's answer denies that Plaintiff had any interest in the subject premises, and in New Matter and Counterclaims requests the imposition of a resulting or constructive trust. Thereafter, Plaintiff filed a motion for judgment on the pleadings alleging first, that the Statute of Frauds prevented Defendant from introducing parol evidence to establish a constructive trust, and second, that the claim for a constructive trust was barred by the Statute of Limitations. On December 27, 2002, this Court Ordered that the matter be continued pending hearing by this Court under Pennsylvania Rule of Civil Procedure 1557 to determine the necessity of a partition and the relative interest of the parties in the subject premises. Following a trial held on April 3, 2003, this Court directed that Proposed Findings of Fact, Conclusions of Law and Memorandums in support thereof be filed. Both parties have submitted the same, and the matter is now before this Court for decision.

***Findings of Fact***

1. By deed dated August 1, 1995, and recorded in the Offices of the Register and Recorder of Deeds of Clearfield County in Vol. 1693, page 368, Defendant and Plaintiff are listed as tenants in common in premises described therein as Section 2 "Santa Cruz", Lot 14, in the Treasure Lake Subdivision of Sandy Township, Clearfield County.
2. That the total purchase price of the premises is \$95,000.00 with a total amount of \$97,553.38 payable at time of closing when real estate taxes, Treasure Lake Property Owners Assessments and settlement charges were assessed. (See Plaintiff's Exhibit 263, HUD Settlement Statement)
3. Of the total amount of \$97,553.38, \$6,950.00 was paid by Plaintiff at time of settlement and the balance of the total amount due was paid by Defendant, by payment of the \$500.00 down-payment, the sum of \$23,879.53 at closing and the payment of all monthly mortgage payments.
4. That the Promissory Note (the "Note") accompanying the mortgage is in the sole name of THERESA S. VIDA, and that Plaintiff refused to execute the same. (Defendant's Exhibit "E").
5. That any money paid by Plaintiff to Defendant after the time of the closing was to reimburse Defendant for the living expenses of Defendant and his son.
6. That for the period of time that he lived in the premises from December of 1997 to December 2001, Plaintiff contributed toward the monthly living expenses such as utilities and groceries.
7. That Plaintiff made no further contributions toward living expenses after vacating the premises in December of 2001.

***Opinion***

***I. Statute of Limitations***

Defendant has argued that any interest held by Plaintiff in the subject property is held in a resulting trust for her benefit. In opposition to her claim, Plaintiff asserts that Defendant is barred by the statute of limitations from maintaining an action to enforce a resulting trust, pointing to 42 Pa. C.S.A. § 5526. Section 5526 provides that an action in equity of redemption

or for any implied or resulting trust as to real property must be brought within five years. Plaintiff asserts that because the deed is dated August 1, 1995, the statute of limitations for bringing this action would have expired in August 2000. Further, he states that even applying the discovery rule to toll the statute, Defendant's discovery that the deed reflected a tenancy in common took place in February 1996, and thus the action would have had to be commenced by February 2002. As such, Plaintiff argues that Defendant is barred by the statute of limitations from asserting a claim for a resulting trust.

Contrary to this argument, the Court finds that under existing law, the statute of limitations applicable in this case has been tolled by Defendant's possession of the subject premises. In Zahorsky v. Leschinsky, 394 Pa. 368, 374, 147 A.2d 362, 366 (1959), the Pennsylvania Supreme Court directed that "possession of the premises by the beneficiary of a resulting trust in real estate tolls the operation of the statute for so long as such possession continues . . ." Defendant has been in possession of the real estate in question since the time of the issuance of the deed in August of 1995 and continues to be in possession. As such, under existing law, the statute of limitations has been tolled, and Defendant is not time barred from raising her claim for a resulting trust.

## ***II. Statute of Frauds***

Next, Plaintiff asserts that the statute of frauds bars the Defendant from asserting the existence of a resulting trust. The Court disagrees, and notes that both statutory and common law provide that proof of the existence of a constructive or resulting trust is exempted from the statute of frauds. *See* 33 Pa. C.S. §2 (statute of frauds does not apply to a conveyance of land in which a trust arises "by implication or construction of law"); Hamburg v. Barsky, 355 Pa. 462, 465, 50 A.2d 345, 346 (1947); Semenza v. Alfano, 443 Pa. 201, 204, 279 A.2d 29, 31

(1971)(statute of frauds exempts from its coverage resulting trusts or trusts implied in law); Hermann v. Henderson, 353 Pa. 39, 40, 44 A.2d 254, 255 (1945). Moreover, parol evidence may be admissible to show the circumstances under which a resulting trust may have arisen. Geyer v. Thomas, 364 Pa. 242, 243, 72 A.2d 89, 90 (1950); Potoczny v. Dydek, 192 Pa. Super. 550, 561, 162 A.2d 70, 76 (1960).

The case of Potoczny v. Dydek, 192 Pa. Super. 550, 561, 162 A.2d 70, 76 (1960), is illustrative. In that case, plaintiff and defendant negotiated with a third party for the purchase of a farm, and agreed between themselves that the plaintiff would own one-third of the property while the defendant would own two-thirds. The third party entered into a written sale agreement with plaintiff and defendant for the sale of the property, and required a down payment of \$500. Plaintiff paid \$150 of the down payment, and defendant paid the remaining \$350. The sale agreement did not designate the varying ownership interests of plaintiff and defendant. Plaintiff and defendant subsequently met with an attorney and decided that plaintiff would transfer his entire interest under the sale agreement to defendant; that defendant would pay the balance of the amount owed thereunder; and that after defendant received a deed for the entire premises, plaintiff would pay to defendant one-third of the consideration paid under the sales agreement less plaintiff's downpayment and defendant would deed over one-third of the parcel to plaintiff. Contrary to this understanding, the third party delivered a deed to the entire parcel to defendant, and defendant refused to transfer the one-third interest to plaintiff. Plaintiff filed a complaint in equity, and following hearing, the chancellor determined that the conveyance from the third party to defendant created a resulting trust held by defendant for the benefit of plaintiff in one-third of the real estate. Defendant appealed, alleging that the

testimony of plaintiff and his witnesses violated the parol evidence rule. The Court disagreed, and affirmed the order of the chancellor in equity, finding that

The agreement was made as a temporary expedient to bind the contract between [the third party] on the one hand and [plaintiff] and [defendant] on the other. The evidence conclusively shows, however, that the writing in question was not intended to, and did not properly, state the full agreement between [plaintiff] and [defendant].

Consequently, it was permissible to receive parol testimony explaining and supplementing the agreement . . . It is well settled that an oral agreement is not superseded or invalidated by a subsequent or contemporaneous integration, if the oral agreement is not consistent with the integrated contract, and is such an agreement as might naturally be made separately by parties situated as were the parties to the written contract . . . the test to determine whether the alleged parol agreement comes within the field embraced by the written one is to compare the two and determine whether parties, situated as were the ones to the contract, would naturally and normally include the one in the other. Applying such test to the case at bar, we have two parties making a tentative division of a farm, as yet not purchased. In their negotiations with the seller, and at a time when the arrangements between themselves was not completed, it was only natural that they would express the agreement of sale in the broad terms in which we find it here . . . It is also well settled that a written agreement may be modified by a subsequent oral agreement and proof thereof be offered without violating the parol evidence rule . . . In the instant case, the written agreement was executed on June 1, 1956. Yet, the final agreement between [plaintiff] and [defendant] was not made until August 30, 1956, when the parties met in the office of [the attorney]. . . [The attorney] testified in detail with regard to the discussion in his office and the terms of the final agreement, consented to by all the parties. As evidencing a subsequent parol agreement, this testimony, as well as that of [plaintiff] to the same effect, was fully admissible.

Potoczny, 192 Pa. Super. at 558-59, 162 A.2d at 74-75.

Similarly, in the case at hand, while the deed and mortgage were made in the names of both Plaintiff and Defendant, the evidence in the case indicates that the execution of these documents in joint names was likewise a “temporary expedient” necessary to secure the purchase of the Treasure Lake house, and did not set forth the full agreement between Plaintiff and Defendant. As such, parol testimony is necessary and appropriate to fully explain the terms of the agreement between these parties.

The Court finds that Defendant provided credible testimony as to the existence of an oral agreement or understanding between Plaintiff and Defendant which supplements or explains the mortgage and deed upon which Plaintiff's name appears as a co-tenant. As such, the Court finds that this testimony and evidence is not barred by the parol evidence rule from consideration in connection with Defendant's claim regarding the existence of a resulting trust.

### ***III. Resulting Trusts***

The Superior Court has defined the equitable construct of a resulting trust<sup>1</sup> as follows:

a relationship with respect to property subjecting the person by whom the title to the property is held to an equitable duty to convey it to another on the ground that his acquisition or retention of the property is wrongful and that he would be unjustly enriched if he were permitted to retain the property.

City of Philadelphia v. Heinel Motors, 142 Pa. Super. 493, 494, 16 A.2d 761, 765 (1941), quoting Restatement, Trusts 2d Ed., §1(e). A resulting trust will exist whenever one holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if her were permitted to retain it. Mellon Nat'l Bank & Trust Co. v. Esler, 357 Pa. 525, 528-29, 55 A.2d 327, 328 (1947). Under Pennsylvania law, where a person to whom property is transferred advances the purchase price, or a part thereof, a resulting trust arises in favor of the person advancing the purchase price. As stated by the Superior Court

Where a transfer of property is made to one person and a part of the purchase price is paid by another, a resulting trust arises in favor of the person by whom such payment is made in such proportion as the part paid by him bears to the total purchase price.

Potoczny, 192 Pa. Super. at 562, 162 A.2d at 76, quoting Restatement Trusts 2d, Section 454.

---

<sup>1</sup> Defendant, in her pleadings, requested the imposition of a constructive trust as opposed to a resulting trust. However, in her brief, Defendant indicated that this request was erroneous and that she seeks a resulting trust.

As such, in Potoczny, the Superior Court found that a resulting trust had arisen in favor of the plaintiff to the extent of the interest in the real estate for which he had provided a down payment and which he had proven by parol evidence that he intended to purchase, and ordered the defendant to execute and deliver a deed to the plaintiff for the portion of the real estate in exchange for the prorated purchase price to be paid by plaintiff. Id.

A constructive trust is not based upon the intention of the parties, but rather is a remedial device imposed by a court of equity to redress a wrong or to prevent unjust enrichment. *See Metzger v. Cruikshank*, 162 Pa. Super. 280, 284, 57 A.2d 703, 705 (1948). As such, a constructive trust may be imposed against one who has been unjustly enriched though he may be innocent of any act of wrongdoing. *See Dubin Paper Co. v. Ins. Co. of N. Am.*, 361 Pa. 68, 85-87, 63 A.2d 85, 93-95 (1949).

A party must establish the existence of a resulting trust by "clear, direct, precise and convincing" evidence. Policarpo v. Policarpo, 410 Pa. 543, 545, 189 A.2d 171, 172 (1963). In explaining this evidentiary standard, the Pennsylvania Supreme Court has stated that

the witnesses must be found to be credible, that the facts to which they testify are distinctly remembered and the details thereof narrated exactly and in due order, and that their testimony is so clear, direct, weighty, and convincing as to enable the jury to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.

Hughes v. Bailey, 202 Pa. Super. 263, 270-71, 195 A.2d 281, 286 (1963), *quoting, Broida, to Use of Day v. Travelers' Insurance Co.*, 316 Pa. 444, 448, 175 A.2d 492, 494 (1934).

However, only the testimony submitted by the party on whom such burden rests . . . weighed in the light of the attendant circumstances, should be considered by the court; its contradiction by witnesses for the opposing party is for the consideration of the jury." Id., *quoting Lucas v. Gibson*, 341 Pa. 427, 432, 19 A.2d 395, 398 (1941).

In the case at hand, the Court finds that the evidence and testimony submitted on Defendant's behalf clearly, directly, precisely and convincingly establishes the existence of a resulting trust. Credible testimony provided by Defendant supports the conclusion that an oral agreement existed between the parties wherein Plaintiff provided financial assistance to Defendant in exchange for a place for his son to live until he graduated from high school, with the intention that if things worked out in their personal relationship, Plaintiff would become a full owner in the property. Specifically, Defendant testified that the house was purchased so that Defendant could relocate from her apartment in Ridgeway to DuBois, and so that Plaintiff's son would have a place to live in DuBois so that he could attend school there. Evidence and testimony presented at trial also establishes that Defendant had obtained a bank commitment in her own name, had signed the sales agreement in her own name and had paid the deposit due at the time of the signing from her own funds. Defendant testified that Plaintiff only became involved in the transaction when the bank refused to proceed with the loan due to her unexpected unemployment. As a result, Plaintiff's name was placed on the deed as a means of securing the subject property and as an "advance" to Defendant for providing Plaintiff's son with a place to live while he completed high school in DuBois. Another factor supporting defendant's primary ownership of the subject property is the composition of the funds provided for the closing: the HUD Settlement Statement submitted into evidence at trial indicates that the purchase price of \$95,000 was comprised of \$500.00 paid by Defendant as a downpayment; a \$65,000.00 mortgage from Integra Bank, for which only Defendant signed the Note<sup>2</sup>; and the payment of funds at closing amounting to \$30,829.53, of which Defendant paid \$23,879.53.

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<sup>2</sup> Paragraph 12 of the Mortgage dated August 1, 1995, by and between Theresa S. Vida and Frank J. Ferris (Borrowers) and Integra Mortgage Company, provides that "Any Borrower who cosigns this [mortgage] but does not execute the Note . . . is not personally obligated to pay the sums secured by this [mortgage]."  
The testimony of both parties indicates that Plaintiff was unwilling to undertake an obligation for paying the monthly mortgage by putting his name on the Note.

The remaining \$6,950.00 was supplied by Plaintiff. Furthermore, subsequent to closing, Defendant paid almost all mortgage payments and Treasure Lake Property Owners' assessments, as well as all homeowner's insurance premiums and home repair bills. Plaintiff's contributions were limited to monthly checks written to Defendant to defray a portion of the monthly utility and grocery bills, as well as the payment of a portion of the real estate taxes, while Plaintiff and his son lived in this house<sup>3</sup>, and the purchase of some new furnishings for the house. These limited contributions do not support Plaintiff's contention that he was an equal owner of the subject real estate. Furthermore, Defendant testified that the parties had numerous arguments regarding Plaintiff's refusal to buy into the property. Notably, Plaintiff's monthly payments to Defendant ceased in December 2001 when he moved out of the house. This fact lends further credence to Defendant's argument that Plaintiff's financial assistance amounted to contributions toward living expenses incurred while Plaintiff and his son were in residence at Defendant's house.

The Court finds that the foregoing evidence supports Defendant's position that an oral agreement existed between Plaintiff and herself which supplemented the co-tenancy indicated on the face of the deed between herself and Plaintiff with respect to the subject real estate which was more akin to reimbursement to Defendant for room and board for Plaintiff and his son rather than to an undertaking of ownership. As such, the Court finds that Plaintiff has an equitable duty to convey his interest in the subject real estate to Defendant, because to hold otherwise would be to unjustly enrich Plaintiff by awarding him a one-half interest in this real estate for which he has not paid. Esler, 357 Pa. at 528-29, 55 A.2d at 328. Clearly, Defendant advanced most of the purchase price paid for the subject real estate by means of the down

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<sup>3</sup>Defendant's exhibits indicate that Plaintiff contributed the following sums to Defendant: \$4,507 in 1999; \$3,262 in 2000; \$3,000 in 2001; and nothing in 2002.

payment and mortgage payment, and as such, a resulting trust must arise in her favor. Potoczny, 192 Pa. Super. at 562, 162 A.2d at 76. However, as the Supreme Court directed in Zahorsky v. Leschinsky, 349 Pa. 368, 147 A.2d 362, Defendant is entitled to a resulting trust in this real estate only to the extent of her contribution as compared to the entire purchase price. As such, to be entitled to a resulting trust, Defendant must reimburse Plaintiff the sum of \$6,950.00 paid by Plaintiff at closing to restore the parties to the status quo.

WHEREFORE, the Court enters the following Order:

O R D E R

AND NOW this 21<sup>st</sup> day of July, 2003, upon consideration of the foregoing, it is hereby Ordered, Adjudged and Decreed that Defendant, Theresa S. Vida, Defendant, pay to Plaintiff, Frank J. Ferris, the sum of \$6,950 by certified or cashier's check within 60 (sixty) days of this Order. Upon receipt of such sum, this Court hereby Orders that a resulting trust for the benefit of Defendant, be imposed on Plaintiff's interest in the real estate located at Section 2, Santa Cruz, Lot 14, in the Treasure Lake subdivision of Sandy Township, Clearfield County, Pennsylvania, and that Plaintiff take all appropriate steps to transfer said interest to Defendant within 30 (thirty) days of receipt of the funds required to be paid herein.

By the Court,

John K. Reilly Jr.,  
President Judge

FILED  
1cc S. Colavocchi  
1cc T. Cherry  
101303811  
JUL 21 2003  
1cc Minikese  
Q  
William A. Shaw  
FBI  
FBI hanover