

02-1846-CD
GARY CONRAD, et al. vs. TED DAISHER, et al

GARY CONRAD, t/d/b/a
CONRAD LUMBER COMPANY,

Plaintiff,
v.

TED DAISHER and IRENE KURTZ,
Defendants.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY

NO. 2002-1846-CV

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 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 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.

David S. Meholic, Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830

FILED

NOV 25 2002 *2002*
6/12:25 PM
William A. Shaw
Prothonotary *10* *65-*

5 days to answer

GARY CONRAD, t/d/b/a
CONRAD LUMBER COMPANY,

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

Plaintiff,

v.

EQUITY

TED DAISHER and IRENE KURTZ,

NO. _____

Defendants.

COMPLAINT

AND NOW, comes Plaintiff, Gary Conrad, t/d/b/a Conrad Lumber Company, by and through their attorneys, Robert S. Muir, Esquire and Mary Margaret Foradora, Esquire, and files the following Complaint, and in support thereof, avers as follows:

1. Plaintiff, Gary Conrad, t/d/b/a Conrad Lumber Company, is an adult individual who resides at RD #1, Box 47, Punxsutawney, Pennsylvania, 15767.
2. Defendant, Ted Daisher, is an adult individual with a last known address of 6484 Mayfair, Taylor, Michigan, 48180.
3. Defendant, Irene Kurtz, is an adult individual who resides at Route 2, Box 142, Crescent City, Florida, 32112.
4. Defendants, Ted Daisher and Irene Kurtz, are each owners of an undivided one-half interest in a 113 acre property situate in Bell Township, Clearfield County, Pennsylvania, by virtue of a deed dated September 17, 1979, and recorded in Deed Book Volume 1473, Page 526, in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania, and by virtue of a deed dated August ___, 1989, and recorded in Deed Book Volume 1298, Page 322, in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania. Attached hereto and made a part hereof are true and correct copies of each Deed marked as Exhibits 1 and 2, respectfully.

5. On or about August 28, 1993, Plaintiff and Defendants entered into an Article of Agreement whereby Plaintiff paid the sum of \$29,140.00 to Defendants for the right, title and interest in and to all of the timber situate upon Defendants' property. Attached hereto and marked as Exhibit 3 is a true and correct copy of the Article of Agreement.

6. Pursuant to the Agreement, Plaintiff was provided with a period of five (5) years from August 28, 1993, to cut and remove said timber.

7. Due to a partnership dispute between Plaintiff and his brother, Douglas Conrad, which extended through the 1990's and beyond, Plaintiff was unable to remove said timber within the five (5) year period as required by the Agreement.

8. However, Plaintiff paid to Defendants the sum of \$2,000.00 each for an extension of the original Agreement through August, 2002. Attached hereto and made a part hereof as Exhibit 4 is true and correct copy of said extension.

9. Defendant Daisher verbally agreed to provide additional extensions to Plaintiff should Plaintiff fail to remove the timber in a timely manner.

10. As of August 31, 2002, Plaintiff failed to remove a significant portion of the timber under the timber sale Agreement.

11. On or about August 8, 2002, Defendant, Irene Kurtz, owner of an undivided one-half interest of the subject property, executed another extension to Plaintiff for a period of three (3) months, through the end of November, 2002, upon the payment of \$500.00 which was paid to Defendant, Irene Kurtz. Attached hereto and made a part hereof as Exhibit 5 is true and correct copy of said extension.

12. Defendant, Ted Daisher, has refused to permit Plaintiff on the property to complete the logging operations in violation of his prior verbal agreement to do so and further requested that Plaintiff remove all of his equipment under threat of trespass by

letter dated October 9, 2002. Attached hereto and made a part hereof as Exhibit 6 is a copy of said letter.

13. If Defendant, Ted Daisher, is not enjoined from denying Plaintiff access to the property for purposes of logging, such conduct will deprive Plaintiff of substantial rights which Plaintiff possesses, and these rights are not redressable by damages.

14. If Defendant, Ted Daisher, is not enjoined from denying Plaintiff access to the property for the purpose of fulfilling the terms of the contract, such actions will result in a forfeiture of all the consideration paid to Defendants and such action will further result in the wasting and diminution of valuable assets which will cause Plaintiff substantial damages which will be difficult, if not impossible, to ascertain.

15. If Defendant, Ted Daisher, is not enjoined from the conduct hereinabove described, the status quo will not be preserved. To the contrary, an Injunction barring Defendant Ted Daisher's conduct will preserve the status quo by returning the parties to their original positions as contemplated by the extension granted to Plaintiff by Defendant, and the verbal agreement to extend by Defendant Daisher.

16. The Plaintiff does not have an adequate remedy at law to address the impending harm from the threat and conduct of Defendants, as the damage to the Plaintiff and the Plaintiff's rights cannot be adequately measured in damages.

17. Defendants will not suffer any injury or prejudice if they are enjoined from denying Plaintiff access to the property for the purpose of finishing the timber operations since, Defendants have received in excess of \$33,640.00 for virgin timber which remains virtually untouched.

18. If the Injunction is not granted, Defendants will be unjustly enriched and a forfeiture will have been committed.

19. As a result of the Defendants' conduct, Plaintiff suffered the following damages:

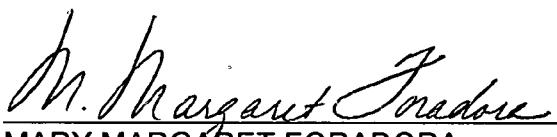
- A. The loss of revenue, the amount of which is unascertainable at the present time;
- B. A forfeiture in the amount of \$33,640.00; and
- C. Attorney fees and costs of suit.

20. As a result of the Defendant's conduct, Defendants have been unjustly enriched..

WHEREFORE, Plaintiffs request judgment in his favor and against Defendants.

Respectfully submitted:


ROBERT S. MUIR
Attorney for Plaintiff
936 Philadelphia Street
Indiana, PA 15701


MARY MARGARET FORADORA
Attorney for Plaintiff
1110 Pershing Avenue
Brockway, PA 15824

THIS DEED ,

MADE the 17th day of September, in the year nineteen
hundred seventy-nine,

BETWEEN KATHRYN MOWERY, of 6009 Jackson, Taylor, Michigan, party of
the first part, hereinafter called the Grantor, and

TED DAISHER, of 6484 Mayfair, Taylor, Michigan, party of the second
part, hereinafter called the Grantee,

WITNESSETH, That in consideration of the sum of One Dollar (\$1.00)
in hand paid, the receipt whereof is hereby acknowledged, the said grantor
does hereby grant and convey, sell and confirm unto the said grantees, his
heirs and assigns,

ALL her right, title and interest in and to all that certain
tract or parcel of land situated in Bell Township, Clearfield County, Pennsyl-
vania, bounded and described as follows:

BEGINNING at a stone common corner of land of Mary Housel,
Jefferson Sunderlin, and Frank Miller, thence by land of said
Frank Miller, North fifty three degrees and fifty minutes East
one hundred seventy seven and two-tenth perches to post and stones
thence by land of J. R. McGee and F. M. Cardon North thirty six
degrees twenty five minutes West one hundred two and three tenth
perches to a post (now stone in small Cemetery). Thence by land
of Foster Beatty South fifty three degrees fifty minutes West one
hundred seventy seven and four-tenth Perches to a post; Thence by
land of Wm. Remaley and Mary Housel South thirty six and one-half
degrees East one hundred two and three-tenth Perches to the place
of beginning, containing one hundred thirteen acres and seventy-
eight Perches.

RESERVING nevertheless all the coal lying and being in, upon
and under the above described tract or piece of land with the right
of ingress, egress and regress for mining and removing said coal as
stipulated in an article of agreement for said coal made the 28th
day of September A.D. 1905, with one Charles E. Fowler, of Pittston,
Luzerne County, Pennsylvania, Reserving also to the grantor, his
heirs and assigns all the fire clay and other minerals with the
right of ingress, egress and regress to prospect or dig for, to
mine and remove the same and erect necessary plant thereto without
any liability to grantee, his heirs and assigns for damage to
surface, including water, on account of such digging or prospecting
for, mining and removing all the clay and other minerals including
all the pillars left for supporting the surface.

BEING the same premises which Ellsworth Daisher, widower, Lucy
Zimmerman and Lewis Zimmerman, her husband, Mabel Wensel and Clarence
Wensel, her husband, Tillie Tuech and Emil Tuech, her husband,

This is parent to child and therefore tax exempt. T.D.

ROBERT H. ORLOWSKI
ATTORNEY AT LAW
80700 ECONNE ROAD
TAYLOR, MICH. 48180
388-5880

Bertha Holland and Vere Holland, her husband, Ruby Smith and Albert Smith, her husband, Nellie Miller and Dan Miller, her husband, Blain Daisher and Marie Daisher, his wife, and Ord Daisher, single, conveyed to Kathryn Mowrey and Leroy Daisher, by Deed dated October 23, 1944 and recorded in Deed Book 368, page 422, Clearfield County Records

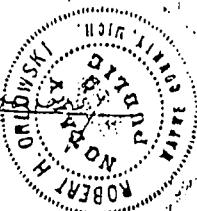
IN WITNESS WHEREOF, said grantor has hereunto set her hand and seal the day and year first above written.

WITNESSED:

Robert H. Orlowski
Robert H. Orlowski

Nancy U. Uram
Nancy U. Uram

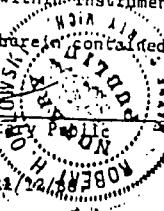
Kathryn Mowrey
KATHRYN MOWREY



STATE OF MICHIGAN)
COUNTY OF WAYNE) 88

On this 17th day of September, A.D. 1979, before me, a notary public in and for said County, personally appeared KATHRYN MOWERY, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purpose therein contained.

Robert H. Orlowski
Robert H. Orlowski, Notary Public
Wayne County, Michigan
My commission expires 11/22/96



CLEARFIELD COUNTY
ENTERED OF RECORD
TIME 9:25 AM 7-21-92
BY Les Daisher
FEES 13.50

Karen L. Starck, Recorder

STATE OF PENNSYLVANIA: 88
COUNTY OF CLEARFIELD: 88
RECORDED in the Recorders Office in and for said
County in Deeds and Records Book No. 1473

Page 576 etc.

WITNESS my hand and seal of office this
22nd day of July, 1992 A.D. 1992

Karen L. Starck Recorder
BY COMMISSION
First Monday in January, 1996

ROBERT H. ORLOWSKI
ATTORNEY AT LAW
50700 CORBE ROAD
TAYLOR, MICH. 48178
588-8880

Entered of Record July 22 1992, 9:25 AM, Karen L. Starck, Recorder

VOL 1298-322

WARRANTY DEED - 1906

PLANKERHORN CO., WILLIAMSPORT, PA.

County Parcel No. _____

This Deed,
NS

MADE the _____ day of August

in the year nineteen hundred and Eighty Nine

BETWEEN Blain Daisher, of the Township of Bell, County of Clearfield, and the State of Pennsylvania, Party of the First Part, hereinafter called the GRANTOR

A
N
D

Irene Kurtz, of the Boro of Mahaffey, County of Clearfield, and the State of Pennsylvania, Party of the Second Part, hereinafter called the GRANTEE

WITNESSETH, That in consideration of One dollar (\$1.00)

Dollar,

In hand paid, the receipt whereof is hereby acknowledged, the said grantor do hereby grant and convey to the said grantee .

ALL that certain one-half interest in a tract or parcel of land situated in the Township of Bell, County of Clearfield and State of Pennsylvania, bounded and described as follows:

Beginning at a Stone common corner of land of Mary Housel, Jefferson Sunderlin and Frank Miller; thence by land of said Frank Miller North 51 degrees, 50 Minutes East one hundred seventy seven and two tenths (177.2) Perches to Posts and Stones; thence by land of J.R. McGee and F.M. Cordon North 36 Degrees 23 minutes West one hundred two and three tenths (102.3) Perches to a Post (Now Stone in small Cemetery); thence by land of Foster Beatty South 53 degrees 50 minutes West one hundred seventy seven and four-tenths (177.4) Perches to a Post; thence by land of William Remaley and Mary Housel South 36 $\frac{1}{2}$ degrees East one hundred two and three-tenths (102.3) Perches to Stone Corner and place of beginning. Containing one hundred thirteen acres and seventy eight Perches.

RESERVING nevertheless, all the coal lying and being in, upon and under the above described tract or piece of land with the right of ingress, egress, and regress for mining and removal of said coal as stipulated in an Article of Agreement for said coal made the 28th day of September A.D. 1905, with one Charles Fowler of Pittston, Luzerne County, Pennsylvania. Reserving also to the Grantor, their heirs and assigns as previously provided in line of title all fire clay and other minerals with the right of ingress, egress, and regress, to prospect or dig for, mine and remove same and erect thereto the necessary plant or plants without any liability to Grantee his heirs or assigns for damage to surface, including water, on account of such digging for, mining and removing all the clay and other minerals including all the Pillars left for supporting the surface.

Being the same premises which Ellsworth Daisher conveyed to Elizabeth Daisher by Deed dated November 20, 1930 and recorded at Clearfield in Deed Book No. 297, Page 544, and said Elizabeth Daisher having died intestate on September 26, 1944, leaving to survive her a husband, Ellsworth Daisher and ten children, and the said Ellsworth Daisher with Lucy Zimmerman and Lewis Zimmerman, her husband, Mable Wensel and Clarence Wensel, her husband, Tillie Tuch and Paul Tuch, her husband, Bertha Holland and Vere Holland, her husband, Ruby Smith and Albert Smith, her husband, Nellie Miller and Dan Miller, her husband, Blain Daisher and Mabel Daisher, his wife, and Blain Daisher as Guardian for Ord Daisher, a minor conveyed the same to the two remaining heirs of said Elizabeth Daisher, Kathryn Mowery and Leroy Daisher, recorded at Clearfield in Deed Book No. 368, Page 422, and said Leroy Daisher and Sarah Louise Daisher, his wife, conveyed an undivided one-half interest to Mabel Wensel by Deed dated June 27, 1949, at Clearfield in Deed Book No. 407, Page 78, and Mabel Wensel conveyed her one-half interest by Deed dated July 24, 1950, recorded at Clearfield in Deed Book No. 407, Page 80.

Conveyance from Father to Daughter.

NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1960", I/we, the undersigned grantee/grantees, hereby certify that I/we know and understand that I/we may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal. I/we further certify that this certification is in a color contrasting with that in the deed proper and is printed in twelve point type preceded by the word "notice" printed in twenty-four point type.

Witness:

Grace Daisher

This day of

THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. (This Notice is set forth pursuant to Act No. 255, approved September 10, 1963, as amended.)

Aug 28 98

ext

800

2002

Article of Agreement

THIS AGREEMENT made and entered into this 28 day of AUGUST, A.D. 1993 2002
between IRENE KURTZ AND
TED DAISTER

IRENE
4533

TED
K# 4532

of the township of
MARGARETTA and TAYLOR County of ELIZA and WAYNE
and State of OHIO and MICHIGAN
CONRAD LUMBER CO
R.D. #1 Box 47
PUNXSUTAWNEY, PA 15767
party of the second part.

per PA first part, and
OFFICE 814-938-3840
GARY 814-938-3840
MEL & IRENE 419-621-1404
TED 313-388-7473

WITNESSETH, that the said part of the first part, for and in consideration of the sum of \$39,140
TWENY NINE THOUSAND ONE HUNDRED AND
FOURTY

Dollar, the receipt hereof is hereby acknowledged, do, by these
presents grant, bargain and sell to the said CONRAD LUMBER CO, all the timber of
whatever kind standing, lying or being upon all that certain tract of land situated in the township of
BELL County of CLEARFIELD

and State of PA bounded and described as follows, to-wit:
On the North IRWIN
On the East MILLERS
On the West BEATTY, HOCH & SMITH
On the South BRACKEN & HOCH

CONTAINING 114 acres, more or less.

ALL TIMBER 14" DBH AND LARGER
CONRAD LUMBER WILL ABIDE BY DER.
REGULATIONS WHEN REMOVING TIMBER AND ANY
OTHER PROBLEM CAUSED BY TIMBER REMOVAL

The said timber to be cut and removed at the expense of the said CONRAD LUMBER CO
who with his employees, workmen and equipment is to have free ingress and egress into and over any portion
of said land for such purposes, and also the like liberty to cut, saw and convert all or so many of said trees
as he may think proper into lumber upon the premises, and ~~to have the right to~~ ~~to have the right to~~ ~~to have the right to~~
~~and other necessary buildings for the purpose of~~ ~~and other necessary buildings for the purpose of~~ ~~and other necessary buildings for the purpose of~~
marketing and preparing the said timber for market
with the further right to pile said timber on the premises and to make roads necessary for the purpose of
haling the timber or manufactured lumber or bark off the said premises.

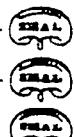
It is understood and agreed, however, by and between the parties hereto that the said party shall have
a period of 5 years from this date in which to cut and remove the said timber, and at the expiration
of said time he may remove all his improvements from said premises.

It is understood by and between the parties hereto that the provisions of this contract are extended to
the heirs, executors, administrators and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year
aforesaid.

Signed, Sealed and Delivered
in the presence of

Irene Kurtz
Ted Daister
Conrad Lumber



Extend this contract thus Aug 2002
PAID \$2000 check #8372
(Two thousand) Ted Daisner

~~check~~ paid \$2000- check # 8371
(Two thousand)

please sign here Irene Kurtz
IRENE KURTZ

August 8, 2002

I, the undersigned, grant Conrad Lumber a three (3) month extension to this contract to expire at the end of November 2002 for the amount of \$500.00 (five hundred dollars).

A handwritten signature in black ink, appearing to read "Steven Kutz", is written over a horizontal line.

HANAK, GUIDO and TALADAY
Attorneys at Law

Robert M. Hanak
Anthony S. Guido
Matthew B. Taladay

Nicole Hanak Bankovich
Jeffrey S. DuBois

Telephone: (814) 371-7768
Fax: (814) 371-1974

498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

October 9, 2002

Gary Conrad
R.D. #1, Box 117
Fawn:utawney, PA 15767

Re: Daisher and Kurtz Property

Dear Mr. Conrad:

Pursuant to our recent telephone conversations, please be advised that my office represents the interests of Ted Daisher, who owns an undivided 50% interest in the 113 acre property located in Bell Township, Clearfield County, Pennsylvania.

As we discussed, pursuant to any timbering by you on the subject property, Mr. Daisher was not aware nor did he consent to any extension of time for you to remove timber from said property. The original agreement is from 1992 and Mr. Daisher, along with Irene Kurtz, have given several extensions thereto.

It is Mr. Daisher's current belief, however, that enough extensions have been given, and he no longer desires for any extensions. This letter hereby serves as a final termination of the previous agreements he had with you. As I had relayed to you, because of the fact that he has an undivided 50% interest in the entire 113 acre subject property, it is absolutely necessary for any document to have his consent and signature. Because of fact Mr. Daisher no longer wishes to continue this and felt that it has been going on for an excessive period of time, any timbering on the property must now stop. Additionally, should you have any equipment remaining on the property, we would demand at this time that all equipment be immediately removed.

Finally, since no extensions were granted, any timber, which is lying on the ground or still standing, would still be the property of Mr. Daisher and Ms. Kurtz and any removal of any timber,

Page 2
October 9, 2002

whether standing or already fallen, would be considered a trespass action to which the owners would seek full legal recourse.

If you should have any questions in this regard, please feel free to contact me.

Thank you for your attention to this matter.

Sincerely,



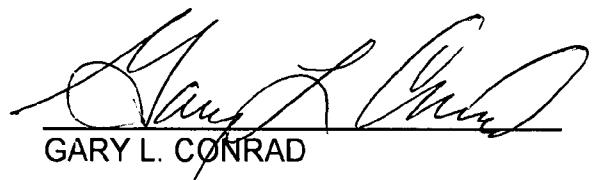
Jeffrey S. DuBois

JSJ/bab
cc: Ted Daisher

VERIFICATION

I verify that the averments contained in the foregoing Complaint are true and correct to the best of my knowledge, information and belief.

This Verification is made subject to the penalties of 18 Pa. C.S.A., §4904, relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.



GARY L. CONRAD

November 22, 2002

ROBERT S. MUIR
ATTORNEY AT LAW
936 PHILADELPHIA STREET, SUITE 101
INDIANA, PENNSYLVANIA 15701

GARY CONRAD, t/d/b/a
CONRAD LUMBER COMPANY,

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

Petitioner,
v.

EQUITY

TED DAISHER and IRENE KURTZ,
Respondents.

NO. 2002-1846-cp

ORDER OF COURT

AND NOW, this _____ day of November, 2002, upon consideration of the Petitioner's Complaint in Equity and Petition for Preliminary Injunction, this Court having determined that (a) the Petitioner will suffer irreparable harm if the requested relief is not immediately granted without further notice and without a hearing; (b) the Petitioner does not have an adequate remedy at law; and (c) greater injury will be inflicted upon the Petitioner by a denial of temporary injunctive relief than will be inflicted upon the Respondents by the granting of such relief, IT IS HEREBY ORDERED AND DIRECTED that the Respondents, their servants, agents, and employees, are hereby preliminarily enjoined from (i) obstructing or in any way restricting Petitioner's right to remove timber from the subject property, (ii) denying Petitioner the opportunity to continue his timber operation for a period of _____ days.

A hearing pertaining to the continuance of the Preliminary Injunction will be held on the _____ day of November, 2002, at _____ o'clock, ____ M., in Courtroom No. _____ of the Clearfield County Courthouse, Clearfield, Pennsylvania, pursuant to Pa. R.C.P. 1531(d).

This Order is conditioned upon the filing by the Petitioner with the Prothonotary of this Court a sum (bond) in legal tender in the amount of \$_____.

BY THE COURT:

J.

GARY CONRAD, t/d/b/a
CONRAD LUMBER COMPANY,

Petitioner,
v.

TED DAISHER and IRENE KURTZ,

Respondents.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY

NO. 2002-1846-CO

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

NOV 25 2002

Attest:

Will A. Shaw
Prothonotary//
Clerk of Courts

PETITION FOR PRELIMINARY INJUNCTION

AND NOW, comes Petitioner, Gary Conrad, t/d/b/a Conrad Lumber Company, by and through their attorneys, Robert S. Muir, Esquire and Mary Margaret Foradora, Esquire, and files the following Petition for Preliminary Injunction, and in support thereof, avers as follows:

1. Petitioner, Gary Conrad, t/d/b/a Conrad Lumber Company, is an adult individual who resides at RD #1, Box 47, Punxsutawney, Pennsylvania, 15767.
2. Respondent, Ted Daisher, is an adult individual with a last known address of 6484 Mayfair, Taylor, Michigan, 48180.
3. Respondent, Irene Kurtz, is an adult individual who resides at Route 2, Box 142, Crescent City, Florida, 32112.
4. Respondents, Ted Daisher and Irene Kurtz, are each owners of an undivided one-half interest in a 113 acre property situate in Bell Township, Clearfield County, Pennsylvania, by virtue of a deed dated September 17, 1979, and recorded in Deed Book Volume 1473, Page 526, in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania, and by virtue of a deed dated August ___, 1989, and recorded in Deed Book Volume 1298, Page 322, in the Office of the Recorder of Deeds of Clearfield County,

RECD

NOV 25 2002
012101ma
William A. Shaw
Prothonotary
S (CERT TO ATT)

Pennsylvania. Attached hereto and made a part hereof are true and correct copies of each Deed marked as Exhibits 1 and 2, respectfully.

5. On or about August 28, 1993, Petitioner and Respondents entered into an Article of Agreement whereby Petitioner paid the sum of \$29,140.00 to Respondents for the right, title and interest in and to all of the timber situate upon Respondents' property. Attached hereto and marked as Exhibit 3 is a true and correct copy of the Article of Agreement.

6. Pursuant to the Agreement, Petitioner was provided with a period of five (5) years from August 28, 1993, to cut and remove said timber.

7. Due to a partnership dispute between Petitioner and his brother, Douglas Conrad, which extended through the 1990's and beyond, Petitioner was unable to remove said timber within the five (5) year period as required by the Agreement.

8. However, Petitioner paid to Respondents the sum of \$2,000.00 each for an extension of the original Agreement through August, 2002. Attached hereto and made a part hereof as Exhibit 4 is true and correct copy of said extension.

9. Respondent Daisher verbally agreed to provide additional extensions to Petitioner should Petitioner fail to remove the timber in a timely manner.

10. As of August 31, 2002, Petitioner failed to remove a significant portion of the timber under the timber sale Agreement.

11. On or about August 8, 2002, Respondent, Irene Kurtz, owner of an undivided one-half interest of the subject property, granted another extension to Petitioner for a period of three (3) months, through the end of November, 2002, upon the payment of \$500.00 which was paid to Respondent, Irene Kurtz. Attached hereto and made a part

hereof as Exhibit 5 is true and correct copy of said extension.

12. Respondent, Ted Daisher, has refused to permit Petitioner on the property to complete the logging operations in violation of his prior verbal agreement to do so and further requested that Petitioner remove all of his equipment under threat of trespass by letter dated October 9, 2002. Attached hereto and made a part hereof as Exhibit 6 is a copy of said letter.

13. If Respondent, Ted Daisher, is not enjoined from denying Petitioner access to the property for purposes of logging, such conduct will deprive Petitioner of substantial rights which Petitioner possesses, and these rights are not redressable by damages.

14. If Respondent, Ted Daisher, is not enjoined from denying Petitioner access to the property for the purpose of fulfilling the terms of the contract, such actions will result in a forfeiture of all the consideration paid to Respondents and such action will further result in the wasting and diminution of valuable assets which will cause Petitioner substantial damages which will be difficult, if not impossible, to ascertain.

15. If Respondent, Ted Daisher, is not enjoined from the conduct hereinabove described, the status quo will not be preserved. To the contrary, an Injunction barring Respondent Ted Daisher's conduct will preserve the status quo by returning the parties to their original positions as contemplated by the extension granted to Petitioner by Respondent, Irene Kurtz, and the verbal agreement to extend by Respondent Daisher.

16. The Petitioner does not have an adequate remedy at law to address the impending harm from the threat and conduct of Respondents, as the damage to the Petitioner and the Petitioner's rights cannot be adequately measured in damages.

17. Respondents will not suffer any injury or prejudice if they are enjoined from

denying Petitioner access to the property for the purpose of finishing the timber operations since Respondents have received in excess of \$33,640.00 for virgin timber which remains virtually untouched.

18. If the Injunction is not granted, Respondents will be unjustly enriched and a forfeiture will have been committed.

WHEREFORE, the Petitioner respectfully requests this Court enter an Order:

A. Granting a Preliminary Injunction to preserve the status quo by restraining and enjoining Respondents, together with their agents, servants and employees, from obstructing or in any way restricting Petitioner's right to remove timber from the subject property;

B. Granting an extension of time to Petitioner for an additional sixty (60) day period due to the actions of Respondent, Ted Daisher, in not permitting Petitioner to continue his timber operation in a timely fashion as previously authorized by Respondents;

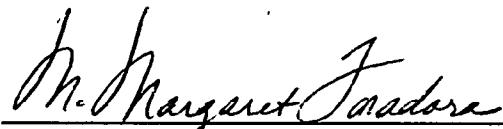
C. Awarding the Petitioner costs and expenses incurred in pursuing this matter; and

D. Granting such other and further relief as this Court deems just and proper.

Respectfully submitted:



ROBERT S. MUIR
Attorney for Petitioner
936 Philadelphia Street
Indiana, PA 15701



MARY MARGARET FORADORA
Attorney for Petitioner
1110 Pershing Avenue
Brockway, PA 15824

THIS DEED ,

MADE the 17th day of September, in the year nineteen
hundred seventy-nine,

BETWEEN KATHRYN MOWERY, of 6009 Jackson, Taylor, Michigan, party of
the first part, hereinafter called the Grantor, and

TED DAISHER, of 6484 Mayfair, Taylor, Michigan, party of the second
part, hereinafter called the Grantee,

WITNESSETH, That in consideration of the sum of One Dollar (\$1.00)
in hand paid, the receipt whereof is hereby acknowledged, the said grantor
does hereby grant and convey, sell and confirm unto the said grantee, his
heirs and assigns,

ALL her right, title and interest in and to all that certain
tract or parcel of land situated in Bell Township, Clearfield County, Pennsyl-
vania, bounded and described as follows:

BEGINNING at a stone common corner of land of Mary Housel,
Jefferson Sunderlin, and Frank Miller, thence by land of said
Frank Miller, North fifty three degrees and fifty minutes East
one hundred seventy seven and two-tenth perches to post and stones
thence by land of J. R. McGee and F. M. Cardon North thirty six
degrees twenty five minutes West one hundred two and three tenth
perches to a post (now stone in small Cemetery). Thence by land
of Foster Beatty South fifty three degrees fifty minutes West one
hundred seventy seven and four-tenth Perches to a post; - Thence by
land of Wm. Remaley and Mary Housel South thirty six and one-half
degrees East one hundred two and three-tenth Perches to the place
of beginning, containing one hundred thirteen acres and seventy-
eight Perches.

RESERVING nevertheless all the coal lying and being in, upon
and under the above described tract or piece of land with the right
of ingress, egress and regress for mining and removing said coal as
stipulated in an article of agreement for said coal made the 28th
day of September A.D. 1905, with one Charles E. Fowler, of Pittston,
Luzerne County, Pennsylvania, Reserving also to the grantor, his
heirs and assigns all the fire clay and other minerals with the
right of ingress, egress and regress to prospect or dig for, to
mine and remove the same and erect necessary plant thereto without
any liability to grantee, his heirs and assigns for damage to
surface, including water, on account of such digging or prospecting
for, mining and removing all the clay and other minerals including
all the pillars left for supporting the surface.

BEING the same premises which Ellsworth Daisher, widower, Lucy
Zimmerman and Lewis Zimmerman, her husband, Mabel Wensel and Clarence
Wensel, her husband, Tillie Tuech and Emil Tuech, her husband,

This is parent to child and therefore tax exempt. T. D.

ROBERT H. ORLOWSKI
ATTORNEY AT LAW
20700 ECONOMY ROAD
TAYLOR, MICH. 48198
386-2860

Bertha Holland and Vere Holland, her husband, Ruby Smith and Albert Smith, her husband, Nellie Miller and Dan Miller, her husband, Blain Daisher and Marie Daisher, his wife, and Ord Daisher, single, conveyed to Kathryn Mowrey and Leroy Daisher, by Deed dated October 23, 1944 and recorded in Deed Book 368, page 422, Clearfield County Records

IN WITNESS WHEREOF, said grantor has hereunto set her hand and seal the day and year first above written.

WITNESSED:

Robert H. Orlowski
Robert H. Orlowski

Nancy U. Uram
Nancy U. Uram

Kathryn Mowrey
KATHRYN MOWREY



STATE OF MICHIGAN)
COUNTY OF WAYNE) 88
COUNTY OF WAYNE)

On this 17th day of September, A.D. 1979, before me, a notary public in and for said County, personally appeared KATHRYN MOWERY, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purpose therein contained.

Robert H. Orlowski
Robert H. Orlowski, Notary Public
Wayne County, Michigan
My commission expires 11/22/1996

11/22/1996

CLEARFIELD COUNTY
ENTERED OF RECORD
TIME 9:25 AM 7-21-91
BY Lea Daisher
FEES 13.50
Karen L. Starck, Recorder

STATE OF PENNSYLVANIA: 88
COUNTY OF CLEARFIELD: 88
RECORDED in the Recorders Office in and for said
County in Deeds and Records Book No. 1473
Page 526 etc.

WITNESSETH my hand and seal of office this
22 day of July, 1991 A.D. 19 91

Robert H. Orlowski
Robert H. Orlowski, Recorder

My commission expires
July 21, 1996
First Monday in January, 1996

Entered of Record July 21 1991, 9:25 AM, Karen L. Starck, Recorder

ROBERT H. ORLOWSKI
ATTORNEY AT LAW
10700 CORSE ROAD
TAYLOR, MICH. 48178
686-8880

VOL 1298 PAGE 322

WARRANTY DEED - 1900

PLANKEDHORN CO., WILLIAMSPORT, PA.

County Parcel No. _____

This Deed,
NIS

MADE the _____ day of August

in the year nineteen hundred and Eighty Nine

BETWEEN Blain Daisher, of the Township of Bell, County of Clearfield, and the State of Pennsylvania, Party of the First Part, hereinafter called the GRANTOR

A
N
D

Irene Kurtz, of the Boro of Mahaffey, County of Clearfield, and the State of Pennsylvania, Party of the Second Part, hereinafter called the GRANTEE

WITNESSETH, That in consideration of One dollar (\$1.00)

Dollars,

in hand paid, the receipt whereof is hereby acknowledged, the said grantor do hereby grant and convey to the said grantee .

ALL that certain one-half interest in a tract or parcel of land situated in the Township of Bell, County of Clearfield and State of Pennsylvania, bounded and described as follows:

Beginning at a Stone common corner of land of Mary Housel, Jefferson Sunderlin and Frank Miller; thence by land of said Frank Miller North 51 degrees, 50 Minutes West one hundred seventy seven and two tenths (177.2) Perches to Posts and Stones; thence by land of J.R. McCue and F.M. Carlton North 36 Degrees 25 minutes West one hundred two and three tenths (102.3) Perches to a Post (Now Stone in small Cemetery); thence by land of Foster Beatty South 53 degrees 50 minutes West one hundred seventy seven and four-tenths (177.4) Perches to a Post; thence by land of William Renaley and Mary Housel South 36 $\frac{1}{2}$ degrees East one hundred two and three-tenths (102.3) Perches to Stone Corner and place of beginning. Containing one hundred thirteen acres and seventy eight Perches.

RESERVING nevertheless, all the coal lying and being in, upon and under the above described tract or piece of land with the right of ingress, egress, and regress for mining and removal of said coal as stipulated in an Article of Agreement for said coal made the 28th day of September A.D. 1905, with one Charles Fowler of Pittston, Luzerne County, Pennsylvania. Reserving also to the Grantor, their heirs and assigns as previously provided in line of title all fire clay and other minerals with the right of ingress, egress, and regress, to prospect or dig for, mine and remove same and erect thereto the necessary plant or plants without any liability to Grantee his heirs or assigns for damage to surface, including water, on account of such digging for, mining and removing all the clay and other minerals including all the Pillars left for supporting the surface.

Being the same premises which Ellsworth Daisher conveyed to Elizabeth Daisher by Deed dated November 20, 1930 and recorded at Clearfield in Deed Book No. 297, Page 544, and said Elizabeth Daisher having died intestate on September 26, 1944, leaving to survive her a husband, Ellsworth Daisher and ten children, and the said Ellsworth Daisher with Lucy Zimmerman and Lewis Zimmerman, her husband, Mable Wensel and Clarence Wensel, her husband, Tillie Tuch and Paul Tuch, her husband, Bertha Holland and Vere Holland, her husband, Ruby Smith and Albert Smith, her husband, Nellie Miller and Dan Miller, her husband, Blain Daisher and Marie Daisher, his wife, and Blain Daisher as Guardian for Ord Daisher, a minor conveyed the same to the two remaining heirs of said Elizabeth Daisher, Kathryn Mowery and Leroy Daisher, recorded at Clearfield in Deed Book No. 358, Page 422, and said Leroy Daisher and Sarah Louise Daisher, his wife, conveyed an undivided one-half interest to Mabel Wensel by Deed dated June 27, 1949, at Clearfield in Deed Book No. 407, Page 78, and Mabel Wensel conveyed her one-half interest by Deed dated July 24, 1950, recorded at Clearfield in Deed Book No. 407, Page 80.

Conveyance from Father to Daughter.

NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1960", I/we, the undersigned grantee/grantees, hereby certify that I/we know and understand that I/we may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal. I/we further certify that this certification is in a color contrasting with that in the deed proper and is printed in twelve point type preceded by the word "notice" printed in twenty-four point type.

Witness:

Charles Daisher

This day of

THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL, AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. (This Notice is set forth pursuant to Act No. 255, approved September 10, 1960, as amended.)

Article of Agreement

AUG 28 98

EX+

(initials)

2002

THIS AGREEMENT made and entered into this 28 day of AUGUST A.D. 1993
between IRENE KURTZ AND
TED DAISTER

IRENE
(# 4533)

TED
K# 4532

MARGARETTA and JAYLOR County of ELIZA and WAYNE
and State of OHIO and MICHIGAN

CONRAD LUMBER CO

R.D. #1 BOX 47

PUNXSUTAWNEY, PA 15767

party of the second part.

part of the township of

part of the first part, and

OFFICE 814-938-3840

GARY 814-938-3840

MEL & IRENE 419-621-1404

TEO 313-388-7473

5840

WITNESSETH, that the said party of the first part, for and in consideration of the sum of \$39,140

TWENTY NINE THOUSAND ONE HUNDRED AND
FORTY

Dollars, the receipt hereof is hereby acknowledged, do by these
presents grant, bargain and sell to the said CONRAD LUMBER CO all the timber of
whatever kind standing, lying or being upon all that certain tract of land situated in the township of

BELL

County of CLEARFIELD

and State of PA

bounded and described as follows, to-wit:

On the North IRWIN

On the East MILLERS

On the West BEATY, HOCH & SMITH

On the South BRACKEN & HOCH

CONTAINING 114 acres, more or less.

ALL TIMBER 14" DBH AND LARGER
CONRAD LUMBER WILL ABIDE BY DER.

REGULATIONS WHEN REMOVING TIMBER AND ANY
OTHER PROBLEM CAUSED BY TIMBER REMOVAL

The said timber to be cut and removed at the expense of the said CONRAD LUMBER CO
who with his employees, workmen and equipment is to have free ingress and egress into and over any portion
of said land for such purposes, and also the like liberty to cut, saw and convert all or so many of said trees
as he may think proper into lumber upon the premises, and for other purposes to have the right of pre-emption
and other necessary buildings and purposes of manufacturing and preparing the said lumber for market
with the further right to pile said lumber on the premises and to make roads necessary for the purpose of
haling the lumber or manufactured lumber or bark off the said premises.

It is understood and agreed, however, by and between the parties hereto that the said party shall have
a period of 5 years from this date in which to cut and remove the said lumber, and at the expiration
of said time he may remove all his improvements from said premises.

It is understood by and between the parties hereto that the provisions of this contract are extended to
the heirs, executors, administrators and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year
aforesaid.

Signed, Sealed and Delivered
in the presence of

Irene Kurtz
Ted Daister
George J. Conrad



Extend this contract thru Aug 2002

PAID \$2000 check # 8372

(Two thousand)

Ted Daisner

~~date~~ paid \$ 2000 - check # 8371

(Two thousand)

please sign here Irene Kurtz
IRENE KURTZ

August 8, 2002

I, the undersigned, grant Conrad Lumber a three (3) month extension to this contract to expire at the end of November 2002 for the amount of \$500.00 (five hundred dollars).

A handwritten signature in black ink, appearing to read "Dennis Kutz", is written over a horizontal line.

HANAK, GUIDO and TALADAY
Attorneys at Law

Robert M. Hanak
Anthony S. Guido
Matthew B. Taladay

Nicole Hanak Bankovich
Jeffrey S. DuBois

Telephone: (814) 371-7768
Fax: (814) 371-1974

498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

October 9, 2002

Gary Conrad
R.D. #1, Box 117
Frankfort, PA 15767

Re: Daisher and Kurtz Property

Dear Mr. Conrad:

Pursuant to our recent telephone conversations, please be advised that my office represents the interests of Ted Daisher, who owns an undivided 50% interest in the 113 acre property located in Bell Township, Clearfield County, Pennsylvania.

As we discussed, pursuant to any timbering by you on the subject property, Mr. Daisher was not aware nor did he consent to any extension of time for you to remove timber from said property. The original agreement is from 1992 and Mr. Daisher, along with Irene Kurtz, have given several extensions thereto.

It is Mr. Daisher's current belief, however, that enough extensions have been given, and he no longer desires for any extensions. This letter hereby serves as a final termination of the previous agreements he had with you. As I had relayed to you, because of the fact that he has an undivided 50% interest in the entire 113 acre subject property, it is absolutely necessary for any document to have his consent and signature. Because of fact Mr. Daisher no longer wishes to continue this and felt that it has been going on for an excessive period of time, any timbering on the property must now stop. Additionally, should you have any equipment remaining on the property, we would demand at this time that all equipment be immediately removed.

Finally, since no extensions were granted, any timber, which is lying on the ground or still standing, would still be the property of Mr. Daisher and Ms. Kurtz and any removal of any timber,

Page 2
October 9, 2002

whether standing or already fallen, would be considered a trespass action to which the owners would seek full legal recourse.

If you should have any questions in this regard, please feel free to contact me.

Thank you for your attention to this matter.

Sincerely,



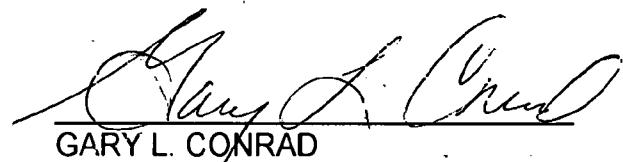
Jeffrey S. DuBois

JSD/bab
cc: Ted Daisher

VERIFICATION

I verify that the averments contained in the foregoing Petition for Preliminary Injunction are true and correct to the best of my knowledge, information and belief.

This Verification is made subject to the penalties of 18 Pa. C.S.A., §4904, relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.



GARY L. CONRAD

November
22, 2002

ROBERT S. MUIR
ATTORNEY AT LAW
936 PHILADELPHIA STREET, SUITE 101
INDIANA, PENNSYLVANIA 15701

IN THE COURT OF COMMON PLEAS

FILED

OF CLEARFIELD COUNTY, PENNSYLVANIA NOV 25 2002

CIVIL DIVISION

GARY CONRAD t/d/b/a CONRAD :
LUMBER COMPANY :

-vs-

: No. 02-18460-CD

TED DAISHER and IRENE KURTZ :

William A. Shaw
Prothonotary

O R D E R

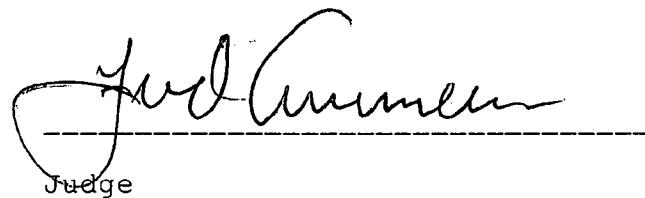
NOW, this 25th day of November, 2002, upon consideration of the Petitioner's Complaint In Equity and Petition for Preliminary Injunction, this Court having determined that (a) the Petitioner will suffer irreparable harm if requested relief is not immediately granted without further notice and without a hearing; (b) Petitioner does not have an adequate remedy at law; and (c) greater injury will be inflicted upon the Petitioner by a denial of temporary injunctive relieve than will be inflicted upon the Respondents by the granting of such relief, IT IS HEREBY ORDERED AND DIRECTED that the Respondents are hereby enjoined from removing timber on the subject property or contracting with any other individual, firm, corporation or other entity to remove any timber on the subject premises.

A hearing pertaining to the continuance of the preliminary injunction will be held on the 19th day of ^{FSK} December, 2002, at 9:00 a.m., Courtroom No. 1, Clearfield

County Courthouse, Clearfield, Pennsylvania, pursuant to Rule
PA R.C.P. 1531(d).

This Order is conditioned upon the filing by the
Petitioner with the Prothonotary of this Court a bond in
legal tender in the amount of \$ 5000.00
PSA

BY THE COURT,



Judge

FILED

NOV 15 2002 4CC
NOV 25 2002 Amy Muir

William A. Shaw
Prothonotary

Date: 12/03/2002

Clearfield County Court of Common Pleas

User: BANDERSON

Time: 09:18 AM

Page 1 of 1

ROA Report

Case: 2002-01846-CD

Current Judge: No Judge

Gary Conrad, Conrad Lumber Company vs. Ted Daisher, Irene Kurtz

Civil Other

Date	Judge
11/25/2002	No Judge
Filing: Civil Complaint Paid by: Muir, Robert Receipt number: 1851796 Dated: 11/25/2002 Amount: \$85.00 Check. 5 Cert. to Atty. Petition for Preliminary Injunction, filed by Atty. Muir 2 Cert. to Atty. w/o Order signed and 3 Cert. to Atty. ORDER, NOW, this 25th day of November, 2002, re: Petitioner's Complaint In Equity and Petition For Preliminary Injunction. Respondents Are hereby Enjoined From Removing Timber, etc. Hearing pertaining to the continuance of the Preliminary Injunction will be heard on the 19th day of Dec., 2002, at 9:00 a.m. This Order is conditioned upon the filing by the Petitioner with the Prothonotary of this Court a bond in legal tender in the amount of \$5,000.00. by the Court, s/FJA,J. 4 cc Atty Muir	No Judge
	No Judge

FILED

DEC 03 2002

11:30 a.m.

William A. Shaw

Prothonotary/Clerk of Courts

Date: 12/03/2002

Clearfield County Court of Common Pleas

User: BANDERSON

Time: 09:18 AM

ROA Report

Page 1 of 1

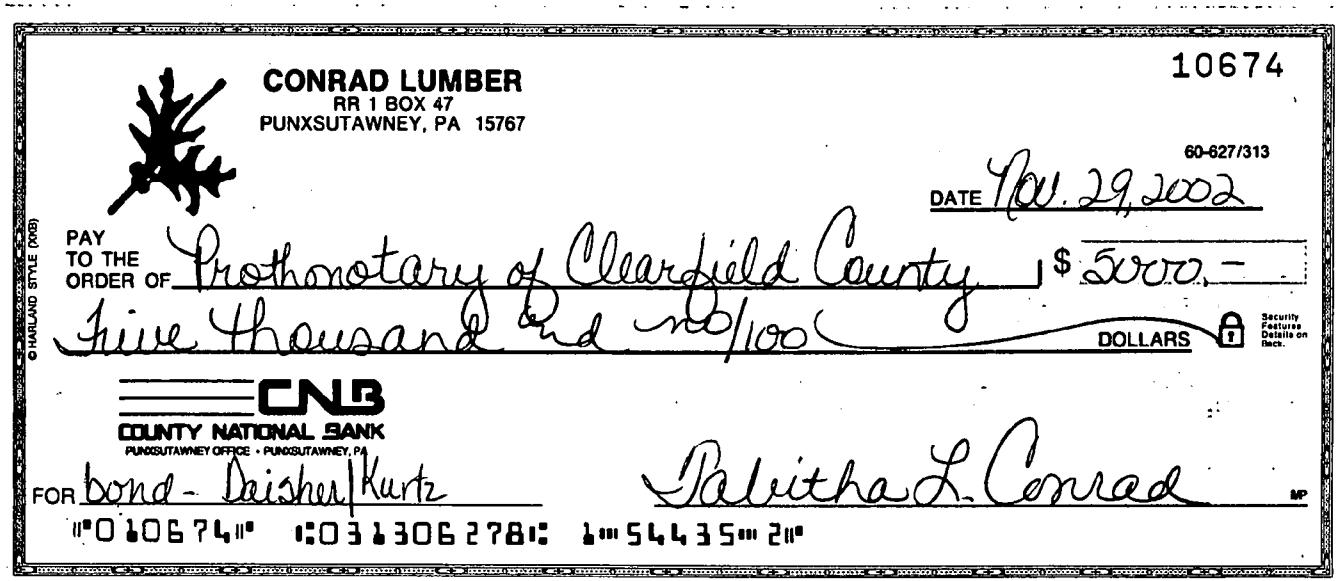
Case: 2002-01846-CD

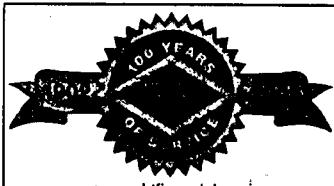
Current Judge: No Judge

Gary Conrad, Conrad Lumber Company vs. Ted Daisher, Irene Kurtz

Civil Other

Date	Judge
11/25/2002	Filing: Civil Complaint Paid by: Muir, Robert Receipt number: 1851796 No Judge
	Dated: 11/25/2002 Amount: \$85.00 Check. 5 Cert. to Atty. No Judge
	Petition for Preliminary Injunction, filed by Atty. Muir 2 Cert. to Atty. w/o Order signed No Judge
	and 3 Cert. to Atty.
	ORDER, NOW, this 25th day of November, 2002, re: Petitioner's Complaint In Equity and Petition For Preliminary Injunction. Respondents Are hereby Enjoined From Removing Timber, etc. Hearing pertaining to the continuance of the Preliminary Injunction will be heard on the 19th day of Dec., 2002, at 9:00 a.m. This Order is conditioned upon the filing by the Petitioner with the Prothonotary of this Court a bond in legal tender in the amount of \$5,000.00. by the Court, s/FJA,J. 4 cc Atty Muir No Judge





www.cbtfinancial.com

TRANSACTION RECEIPT

THIS IS YOUR CHECKING ACCOUNT DEPOSIT
RECEIPT UNLESS OTHERWISE INDICATED

ALWAYS OBTAIN A REGISTERED RECEIPT WHEN MAKING A DEPOSIT

THIS RECEIPT IS ISSUED SUBJECT TO AUDIT OF DEPOSIT AND ALL ITEMS
WHICH ARE CREDITED SUBJECT TO FINAL PAYMENT.

BANK SYMBOL, TRANSACTION NUMBER, DATE AND AMOUNT OF DEPOSIT ARE SHOWN BELOW

SAVINGS

LOANS

02-1846-CD

Central U. D. 1414

005CBT 1207120302#0240 \$5000.00 D

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

GARY CONRAD, t/d/b/a CONRAD
LUMBER COMPANY,
Plaintiff

vs.

TED DAISHER and IRENE
KURTZ,
Defendants

No. 02-1846-CD

Type of Pleading:

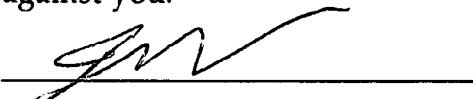
**ANSWER TO PLAINTIFF'S
COMPLAINT AND NEW
MATTER**

Filed on behalf of:
TED DAISHER

Counsel of Record for
This Party:

Jeffrey S. DuBois
Supreme Court No. 62074
Hanak, Guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

You are hereby notified to plead
to the within pleading within
twenty (20) days hereof or a
default judgment may be entered
against you.



FILED

DEC 17 2002

William A. Shaw
Prothonotary

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

GARY CONRAD, t/d/b/a :
CONRAD LUMBER COMPANY, :
Plaintiff :
vs. :
No. 2002-1846- C.D.
TED DAISHER and IRENE :
KURTZ, :
Defendants :

**ANSWER TO PLAINTIFF'S COMPLAINT
AND NEW MATTER**

AND NOW, comes the Defendant, TED DAISHER, by and through his attorneys, HANAK, GUIDO AND TALADAY, who files this Answer to Plaintiff's Complaint and New Matter, and in support thereof avers the following:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted in part and denied in part. It is admitted the parties entered into a contract, but it is denied it was for all the timber, but only for timber fourteen (14") inches and larger.
6. Admitted.
7. Defendant is without sufficient information to form a belief as to the truth or falsity of the averments contained in Paragraph 7 of Plaintiff's Complaint and strict proof thereof is demanded at trial. By

way of further answer, said allegations are irrelevant to the present course of action and cannot be used as an excuse by Plaintiff.

8. Admitted.

9. Denied. It is denied Defendant, TED DAISHER, ever verbally agreed to provide additional extensions beyond that of August, 2002, to Plaintiff.

10. Defendant is without sufficient information to form a belief as to the truth or falsity of the averments contained in Paragraph 10 of Plaintiff's Complaint and strict proof thereof is demanded at trial. By way of further answer, the same is immaterial as by August 31, 2002, all contact with Plaintiff was terminated.

11. These allegations do not pertain to Defendant, TED DAISHER, and Defendant is without sufficient information to form a belief as to the truth or falsity of the averments contained in Paragraph 11 of Plaintiff's Complaint and strict proof thereof is demanded at trial.

12. Admitted in part and denied in part. It is admitted that Defendant, TED DAISHER, has refused to allow Plaintiff onto his property for logging purposes. Defendant, TED DAISHER, has done this as the property is his property and Plaintiff does not have a right to be on said property, as his extensions expired in August of 2002. By way of further answer, as set forth herein, Defendant, TED DAISHER, denies that he ever gave any verbal agreement to Plaintiff for any extension and on the contrary, he has related to the Plaintiff on numerous occasions that he would not grant any further extensions.

By way of further answer, in proof of this and in enforcement of his ownership rights, he did have the undersigned execute a letter, Plaintiff's Exhibit "6", to Plaintiff dated October 9, 2002.

13. Denied. It is denied that if Plaintiff is denied access to Defendant's property, Plaintiff would be deprived of substantial rights, as there would be no such deprivation as Plaintiff had five (5) years to retrieve the logs under the original contract and an additional four (4) years upon extension. As a consequence, any failure to retrieve all the logs in this case would be solely the fault and responsibility of Plaintiff and not Defendant, TED DAISHER.

14. Denied. If Plaintiff is denied access to Defendant's property, such actions will not result in forfeiture, nor will they result in a wasting or diminution of value assets causing Plaintiff substantial damages for, as is set forth herein, all the above actions were the cause and fault of Plaintiff, and not Defendant, as Plaintiff has had more than ample time to complete the contract.

15. Denied. It is denied that the status quo needs to be preserved in this particular case and it is also denied that Plaintiff has met his high burden to achieve the issuance of an injunction. As set forth herein, prior to August of 2002, nine (9) years after the contract was entered into, Defendant had in no way interfered or hampered Plaintiff's progress and the only reasons Plaintiff has not completed the contract with respect to his part or removed the timber are solely the cause of the Plaintiff and not Defendant, TED DAISHER. Consequently, Plaintiff is not entitled to an injunction.

16. No response pleading is required as the same is a conclusion of law. To the extent an answer is required, Plaintiff is not entitled to any kind of remedy as Plaintiff fails to set forth a cause of action.

17. Denied. It is denied Defendant will not suffer any injury or prejudice by the issuance of an injunction, as Defendant will be precluded from the free and interrupted use of his property and will consequently be severely prejudiced. By way of further answer, the monies received by Defendant were received as fair consideration for the benefit conferred to Plaintiff.

18. Denied. It is denied Defendant will be unjustly enriched if the injunction is not granted, and on the contrary, Plaintiff will be unjustly enriched by an injunction. By way of further answer, as set forth herein, no forfeiture has been or will be committed in this case.

19. Denied. It is denied that Plaintiff has suffered any damages in this case as a result of Defendant's conduct, and any damages suffered by Plaintiff, to which Defendant alleges there are none, have been the sole cause of Plaintiff and not Defendant.

20. Denied. It is denied that Defendant has been unjustly enriched.

WHEREFORE, Defendant, TED DAISHER, respectfully requests this Honorable Court to award judgment in its favor and against Plaintiff and to dismiss Plaintiff's Complaint in its entirety.

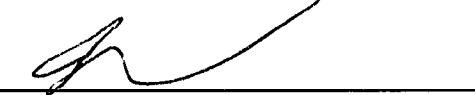
NEW MATTER

21. Paragraphs 1 through 20 are herein incorporated by reference as though set forth at length.
22. As set forth herein, Defendant, TED DAISHER, at no time gave an additional extension to Plaintiff for the removal of timber.
23. As a consequence, as of the end of August, 2002, any and all contracts and extensions between Plaintiff and Defendant had ceased and had become null and void.
24. Therefore, Plaintiff did not have a right to any of the aforementioned property after the end of August, 2002.
25. Moreover, contrary to what is set forth by Plaintiff in his Complaint, Plaintiff has had more than ample time to complete said contract, as Plaintiff has had nine (9) years since the date of the original contract.
26. Such an amount of time is more than sufficient time for Plaintiff to complete the contract, and vastly longer than the average timber contract.
27. Hence, Plaintiff is estopped from asserting any right or action against Defendant, TED DAISHER, as Plaintiff has failed to be diligent in his efforts in completing the contract.
28. Finally, Plaintiff's allegation in this case is an alleged oral extension granted by Defendant, TED DAISHER, to Plaintiff.
29. It is undisputed in this case that the matters in question deal with real property.

30. As a consequence, Plaintiff is bound by the Statute of Frauds and any alleged agreement or extension must be in writing and signed, therefore, Plaintiff's case should be dismissed because of failure to comply with the Statute of Frauds.

WHEREFORE, Defendant, TED DAISHER, respectfully requests this Honorable Court to award judgment in his favor and against Plaintiff and dismiss Plaintiff's Complaint and Injunction in their entirety.

Respectfully submitted,



Jeffrey S. DuBois
Attorney for Defendant, Ted Daisher

VERIFICATION

I, JEFFREY S. DUBOIS, hereby verify that the statements contained in the foregoing ANSWER TO PLAINTIFF'S COMPLAINT AND NEW MATTER are correct to the best of my personal knowledge or information and belief.

At the time of the signing of this Verification, Defendant was out of the jurisdiction and unavailable. The undersigned has sufficient knowledge to sign this Verification as I am counsel for Defendant and possess a detailed knowledge of the case.

This statement and verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.



Jeffrey S. DuBois
Attorney for Ted Daisher

CERTIFICATE OF SERVICE

I do hereby certify that on the 17th day of Dec, 2002, I mailed a copy of the within Answer to Plaintiff's Complaint and New Matter, by first class mail, postage prepaid, to the following:

Robert S. Muir, Esq.
936 Philadelphia Street
Indiana, PA 15701

Mary Margaret Foradora
1110 Pershing Avenue
Brockway, PA 15824



Jeffrey S. DuBois

FILED

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01/10:30 AM

DEC 17 2002

Attn: Dubois

ES

REK

William A. Shaw
Prothonotary

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

GARY CONRAD, t/d/b/a CONRAD
LUMBER COMPANY,
Plaintiff

vs.

TED DAISHER and IRENE
KURTZ,
Defendants

No. 02-1846-CD

Type of Pleading:

**ANSWER TO PLAINTIFF'S
PETITION FOR
PRELIMINARY INJUNCTION**

Filed on behalf of:
TED DAISHER

Counsel of Record for
This Party:

Jeffrey S. DuBois
Supreme Court No. 62074
Hanak, Guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801

FILED

DEC 17 2002

William A. Shaw
Prothonotary

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

GARY CONRAD, t/d/b/a
CONRAD LUMBER COMPANY,
Petitioner

vs.

No. 2002-1846- C.D.

TED DAISHER and IRENE
KURTZ,
Respondents

**ANSWER TO PLAINTIFF'S
PETITION FOR PRELIMINARY INJUNCTION**

AND NOW, comes the Respondent, TED DAISHER, by and through his attorneys, HANAK, GUIDO AND TALADAY, who files this Answer to Petitioner's Petition for Preliminary Injunction, and in support thereof avers the following:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted in part and denied in part. It is admitted the parties entered into a contract, but it is denied it was for all the timber, but only for timber fourteen (14") inches and larger.
6. Admitted.
7. Respondent is without sufficient information to form a belief as to the truth or falsity of the averments contained in Paragraph 7 of Petitioner's Petition and strict proof thereof is demanded at trial. By

way of further answer, said allegations are irrelevant to the present course of action and cannot be used as an excuse by Plaintiff.

8. Admitted.

9. Denied. It is denied Respondent, TED DAISHER, ever verbally agreed to provide additional extensions beyond that of August, 2002, to Petitioner.

10. Respondent is without sufficient information to form a belief as to the truth or falsity of the averments contained in Paragraph 10 of Petitioner's Petition and strict proof thereof is demanded at trial. By way of further answer, the same is immaterial as by August 31, 2002, all contact with Petitioner was terminated.

11. These allegations do not pertain to Defendant, TED DAISHER, and Respondent is without sufficient information to form a belief as to the truth or falsity of the averments contained in Paragraph 11 of Petitioner's Petition and strict proof thereof is demanded at trial.

12. Admitted in part and denied in part. It is admitted that Respondent, TED DAISHER, has refused to allow Petitioner onto his property for logging purposes. Respondent, TED DAISHER, has done this as the property is his property and Petitioner does not have a right to be on said property, as his extensions expired in August of 2002. By way of further answer, as set forth herein, Respondent, TED DAISHER, denies that he ever gave any verbal agreement to Petitioner for any extension and on the contrary, he has related to the Petitioner on numerous occasions that he would not grant any further extensions.

By way of further answer, in proof of this and in enforcement of his ownership rights, he did have the undersigned execute a letter, Petitioner's Exhibit "6", to Petitioner dated October 9, 2002.

13. Denied. It is denied that if Petitioner is denied access to Respondent's property, Petitioner would be deprived of substantial rights, as there would be no such deprivation as Petitioner had five (5) years to retrieve the logs under the original contract and an additional four (4) years upon extension. As a consequence, any failure to retrieve all the logs in this case would be solely the fault and responsibility of Petitioner and not Respondent, TED DAISHER.

14. Denied. If Petitioner is denied access to Respondent's property, such actions will not result in forfeiture, nor will they result in a wasting or diminution of value assets causing Petitioner substantial damages, for as is set forth herein, all the above actions were the cause and fault of Petitioner, and not Respondent, as Petitioner has had more than ample time to complete the contract.

15. Denied. It is denied that the status quo needs to be preserved in this particular case and it is also denied that Petitioner has met his high burden to achieve the issuance of an injunction. As set forth herein, prior to August of 2002, nine (9) years after the contract was entered into, Respondent had in no way interfered or hampered Petitioner's progress and the only reasons Petitioner has not completed the contract with respect to his part or removed the timber, are solely the cause of the Petitioner and not Respondent,

TED DAISHER. Consequently, Petitioner is not entitled to an injunction.

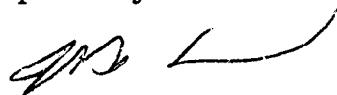
16. No responsive pleading is required as the same is a conclusion of law. To the extent an answer is required, Petitioner is not entitled to any kind of remedy as Petitioner fails to set forth a cause of action.

17. Denied. It is denied Respondent will not suffer any injury or prejudice by the issuance of an injunction, as Respondent will be precluded from the free and interrupted use of his property and will consequently be severely prejudiced. By way of further answer, the monies received by Respondent were received as fair consideration for the benefit conferred to Petitioner.

18. Denied. It is denied Respondent will be unjustly enriched if the injunction is not granted, and on the contrary, Petitioner will be unjustly enriched by an injunction. By way of further answer, as set forth herein, no forfeiture has been or will be committed in this case.

WHEREFORE, Respondent, TED DAISHER, respectfully requests this Honorable Court to dismiss Petitioner's Petition for Injunction in its entirety as Petitioner has wholly failed to meet the high burden and requirements necessary for the issuance of an injunction. Respondent therefore asks that the same be dismissed in its entirety.

Respectfully submitted,



Jeffrey S. DuBois
Attorney for Respondent, Ted Daisher

CERTIFICATE OF SERVICE

I do hereby certify that on the 17 day of Dec, 2002, I mailed a copy of the within Answer to Plaintiff's Petition for Preliminary Injunction, by first class mail, postage prepaid, to the following:

Robert S. Muir, Esq.
936 Philadelphia Street
Indiana, PA 15701

Mary Margaret Foradora
1110 Pershing Avenue
Brockway, PA 15824



Jeffrey S. DuBois

VERIFICATION

I, JEFFREY S. DUBOIS, hereby verify that the statements contained in the foregoing ANSWER TO PLAINTIFF'S PETITION FOR PRELIMINARY INJUNCTION are correct to the best of my personal knowledge or information and belief.

At the time of the signing of this Verification, Defendant was out of the jurisdiction and unavailable. The undersigned has sufficient knowledge to sign this Verification as I am counsel for Defendant and possess a detailed knowledge of the case.

This statement and verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.



Jeffrey S. DuBois
Attorney for Ted Daisher

FILED

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Atty Dubois

William A. Shaw
Prothonotary

EAST

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

GARY CONRAD, t/d/b/a
CONRAD LUMBER COMPANY,
Plaintiff

vs.

No. 2002-1846- C.D.

TED DAISHER and IRENE
KURTZ,
Defendants

ACCEPTANCE OF SERVICE

I do hereby accept service of the Complaint filed in the above captioned matter on behalf of the Defendants, TED DAISHER and IRENE KURTZ.



Jeffrey S. DuBois
Pa. I.D. No. 62074
Hanak, Guido and Taladay
498 Jeffers Street
P. O. Box 487
DuBois, PA 15801
(814) 371-7768

FILED

DEC 19 2002

William A. Shaw
Prothonotary

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

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JAN 21 2003

GARY CONRAD, t/d/b/a
CONRAD LUMBER COMPANY,
Plaintiff

vs.

TED DAISHER and IRENE
KURTZ,
Defendants

William A. Shaw
Prothonotary

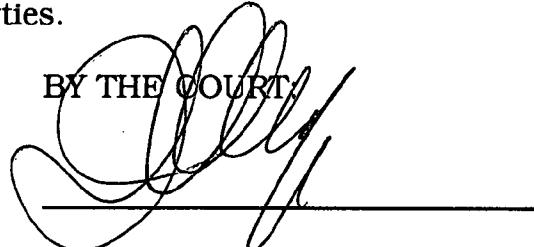
No. 2002-1846- C.D.

ORDER OF COURT

AND NOW, this 20th day of January, 2003, after hearing on Plaintiff's Petition for a Preliminary Injunction, and after an agreement of the parties as to certain terms, IT IS HEREBY ORDERED AS FOLLOWS:

1. Plaintiff shall have a period of three (3) months, beginning January 6, 2003, to re-enter upon Defendants' property in Bell Township, Clearfield County, Pennsylvania, to remove timber thereon.
2. Plaintiff shall only remove timber sixteen (16') inches D.B.H. and larger.
3. In consideration of Defendants granting Plaintiff said extension, the Plaintiff shall pay to Defendants the amount of Five Thousand and 00/100 (\$5,000.00) Dollars.
4. At the end of the three months, specifically April 6, 2003, or soon thereafter, Plaintiff shall reclaim the subject property to the reasonable satisfaction of the parties.

BY THE COURT



FILED 3cc

10/10/08
JAN 21 2008
Attn: DuBois

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GARY CONRAD t/d/b/a
CONRAD LUMBER COMPANY, : NO. 02-1846-C D

Plaintiff :
:

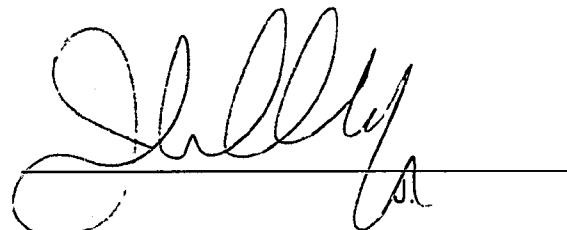
v. : CIVIL DIVISION

TED DAISHER and IRENE KURTZ :
:

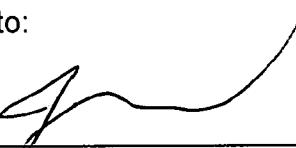
Defendants :
:

ORDER OF COURT

AND NOW, this 12th day of Nov. 2003, the Court having been informed that the parties consent to the release of the court imposed bond of \$5,000.00 to the Plaintiff, it is hereby ordered, adjudged and decreed that the Prothonotary of this Court is directed to forward a check payable to Plaintiff in the amount of \$5,000.00 representing the full bond paid into the Court pursuant to the Order of this Court dated November 25, 2002.



Consented to:



Jeffrey S. DuBois, Attorney for Defendants

Robert S. Muir, Attorney for Plaintiff

FILED

NOV 12 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GARY CONRAD t/d/b/a
CONRAD LUMBER COMPANY,

NO. 02-1846-C D

Plaintiff

v.

CIVIL DIVISION

TED DAISHER and IRENE KURTZ

Defendants

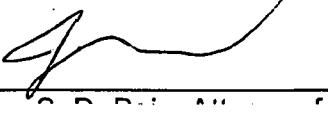
ORDER OF COURT

AND NOW, this 12th day of Nov. 2003, the Court having been informed that the parties consent to the release of the court imposed bond of \$5,000.00 to the Plaintiff, it is hereby ordered, adjudged and decreed that the Prothonotary of this Court is directed to forward a check payable to Plaintiff in the amount of \$5,000.00 representing the full bond paid into the Court pursuant to the Order of this Court dated November 25, 2002.

BY THE COURT:

President Judge

Consented to:


GARY CONRAD

1172

CLEARFIELD COUNTY PROTHONOTARY 7-83
Wm. A. Shaw
ESCROW ACCOUNT
P.O. BOX 549
CLEARFIELD, PA 16830

60-629/313

Nov. 13, 2003

PAY
TO THE
ORDER OF GARY CONRAD

\$ 5,000.00

DOLLARS

FIVE THOUSAND AND NO/100



Main Office
11 North 2nd Street
Clearfield, PA 16830

FOR 2002-1846-C D Conrad vs Daisher

IMMA



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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GARY CONRAD t/d/b/a
CONRAD LUMBER COMPANY,

NO. 02-1846-C D

Plaintiff

v.

CIVIL DIVISION

TED DAISHER and IRENE KURTZ

Defendants

ORDER OF COURT

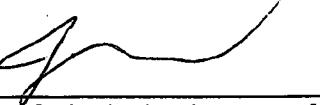
AND NOW, this 12th day of Nov. 2003, the Court having been informed that the parties consent to the release of the court imposed bond of \$5,000.00 to the Plaintiff, it is hereby ordered, adjudged and decreed that the Prothonotary of this Court is directed to forward a check payable to Plaintiff in the amount of \$5,000.00 representing the full bond paid into the Court pursuant to the Order of this Court dated November 25, 2002.

BY THE COURT:

President Judge

COPY

Consented to:



1172

CLEARFIELD COUNTY PROTHONOTARY 7-83
William A. Shaw
ESCROW ACCOUNT
P.O. BOX 549
CLEARFIELD, PA 16830

60-629/313

Nov. 13, 2003

PAY
TO THE
ORDER OF GARY CONRAD

\$ 5,000. -

DOLLARS

FIVE THOUSAND AND NO/100



Main Office
11 North 2nd Street
Clearfield, PA 16830

FOR 2002-1846-C0 Conrad vs Daisher

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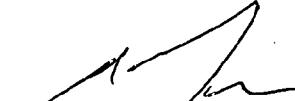
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

GARY CONRAD t/d/b/a
CONRAD LUMBER COMPANY : NO. 02-1846-C D
v. : CIVIL DIVISION
TED DAISHER and IRENE KURTZ :
:

PRAECIPE TO SETTLE, DISCONTINUE AND END

TO THE HONORABLE WILLIAM A. SHAW, PROTHONOTARY:

Please mark the record as to the within case settled, discontinued, and ended.



ROBERT S. MUIR, ESQUIRE
Attorney for Plaintiff
936 Philadelphia Street
Indiana, PA 15701
(724) 349-6020

Date: November 7, 2003

FILED

NOV 17 2003

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEVELAND COUNTY, OHIO

STAY DENIED BY

CLERK OF COURT

FILED NO
NOV 17 2003

cc
Disc to D.A.
copy to CIA

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

**Gary Conrad t/d/b/a
Conrad Lumber Company**

Vs. **No. 2002-01846-CD**
Ted Daisher and
Irene Kurtz

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 November 17, 2003, marked:

Settled, Discontinued and Ended

Filing fees in the sum of \$85.00 have been paid in full by Robert S. Muir, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 17th day of November A.D. 2003.

William A. Shaw, Prothonotary