

03-102-CD
MOUNTAIN EXTREME, INC. vs. ROBERT LUCHINI

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

MOUNTAIN EXTREME, INC.,
Plaintiff

-vs-

ROBERT LUCHINI,
Defendant

* Docket No. 03-102-CD

Type of pleading:
COMPLAINT

Filed on behalf of:
PLAINTIFF, Mountain
Extreme, Inc.

Counsel of record for
this party:

Dwight L. Koerber, Jr.,
Esquire
PA I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED

JAN 24 2003

William A. Shaw
Prothonotary

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

MOUNTAIN EXTREME, INC.,
Plaintiff

-vs-

ROBERT LUCHINI,
Defendant

* Docket No. 03- -CD

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 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 within twenty (20) days. 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 relief claimed in the complaint by the plaintiff.

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. MEHOLICK, COURT ADMINISTRATOR
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 5982

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

MOUNTAIN EXTREME, INC.,
Plaintiff

*

*

-vs-

*

Docket No. 03- -CD

ROBERT LUCHINI,
Defendant

*

*

COMPLAINT

COMES NOW, Plaintiff Mountain Extreme, Inc., by and through its attorney, Dwight L. Koerber, Jr., Esquire, and files the within Complaint against Defendant Robert Luchini. In support thereof, plaintiff avers and shows as follows:

1. Plaintiff is Mountain Extreme, Inc., a Pennsylvania corporation with its principal place of business at R. D. 1, Box 4D, Rockton, PA 15856.
2. Defendant is Robert Luchini, an individual who resides at 369 South Kersey Street, Kersey, PA 15846.
3. Plaintiff is a Yamaha dealership, and is in the business of buying and selling new and used motorcycles, four-wheelers, snowmobiles and other such recreational vehicles.
4. On July 1, 2001, plaintiff and defendant entered into an agreement at plaintiff's offices in Rockton, Clearfield County, Pennsylvania, whereby defendant traded in a 1998 YZ 125 Yamaha

motorcycle as part of his purchase of a new 2001 YZ 250F motorcycle.

5. Attached hereto as Appendix A is a true and correct copy of the sales invoice in question.

6. In conjunction with the trade in of his 1998 YZ 125 motorcycle, defendant represented that he held ownership of the vehicle, and that it was free and clear of liens and encumbrances.

7. In reliance upon the representations of defendant that he held title to the vehicle he was trading in and that it was free and clear of liens and encumbrances, plaintiff moved forward with the transaction of July 1, 2001, whereby it gave defendant credit for his 1998 YZ 125 motorcycle and deducted it from the purchase price.

8. Through subsequent inquiries, plaintiff learned that defendant did not hold title to the vehicle in question.

9. Through subsequent inquiries, plaintiff learned that defendant not only did not hold title to the vehicle in question, but there was a lien against the said vehicle in favor of National City Bank.

10. Attached hereto as Appendix B is documentation furnished by the Pennsylvania Department of Transportation showing that the 1998 YZ 125 Yamaha which defendant represented that he owned is in fact titled in the name of a person named

Jamie Martin and that the said vehicle is subject to an encumbrance in favor of National City Bank.

11. By virtue of the fact that he does not hold title to the 1998 YZ 125 motorcycle that he sold as a trade in to plaintiff, and by virtue of the fact that there is an encumbrance against it, defendant has breached the representations and terms of the July 1, 2001 transaction between the parties.

12. Because of defendant's failure to furnish good and marketable title to the vehicle that he has traded in to plaintiff, plaintiff has suffered economic harm and damage. That damage consists of the following:

(a) Inability to furnish title to the subsequent purchaser of the 1998 YZ 125 Yamaha motorcycle which plaintiff sold to an individual named Barry Shirey, with such sale being conditioned upon plaintiff furnishing to Mr. Shirey good and marketable title.

(b) The economic harm which plaintiff has incurred is the fair market value of the 1998 YZ 125 Yamaha motorcycle which it sold to Barry Shirey for \$2,700.00.

(c) Registration fees covering the Barry Shirey transaction in the amount of \$196.50.

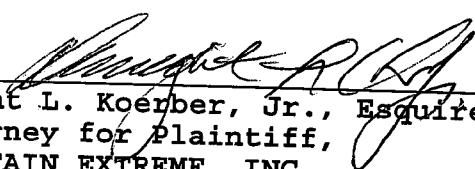
(d) Costs and legal fees.

13. Plaintiff has made demand of defendant, requiring that he take all due steps necessary to obtain legal title to the 1998 YZ 125 Yamaha motorcycle that he traded/sold to plaintiff, but defendant has failed and refused to do so.

WHEREFORE, plaintiff prays that judgment be entered in its

favor in the amount of \$2,869.50, plus interest from July 1, 2001, costs of suit, and attorney's fees.

Respectfully submitted,

By: 
Dwight L. Koerber, Jr., Esquire
Attorney for Plaintiff,
MOUNTAIN EXTREME, INC.

VERIFICATION

I certify that the statements made in the foregoing Complaint 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.

Earl Frantz G.M.

DATE: 1-17-03

APPENDIX A

Attached hereto is a true and correct copy of the sales invoice entered into.

MOUNTAIN EXTREME, Inc.

Main Location: RD1 Box 4D, Rockton, PA 15856 • 814-583-7030
 Branch Location: RR8 Box 78, DuBois, PA 15801 • 814-375-4910

SPECIAL ORDERS 50% DOWN
 NO RETURN ON ELECTRONIC PARTS
 25% RESTOCKING FEE ON RETURN ORDERS
 PAST DUE ACCTS. 1.5% MONTHLY
 \$20 RETURNED CHECK FEE.

PURCHASER'S
NAME

Robert Luchini

DATE 7/1/01

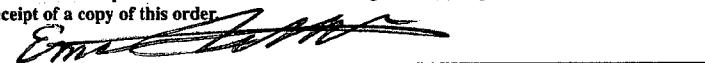
PLEASE ENTER MY ORDER FOR ONE _____ NEW USED DEMO AS FOLLOWS:

YEAR 2001	MAKE Yamaha	MODEL OR SERIES YZ250F	BODY TYPE	COLOR Blue	TRIM
V.I.N. JYACG10CX1A003262		STOCK NO.		TO BE DELIVERED ON OR ABOUT	
CASH PRICE OF VEHICLE				5000	00
VEHICLE TRADED				425.	00
				5425.	00
				2100	00
				Trade 1998 YZ125	
				VIN JYACE01CSW A004907	
				PAIC #148	
SUB TOTAL				11	
TAX				00	
TOTAL				3325.	
DOCUMENTARY CHARGE		TEMP. LICENSE	TRANSFER	TITLE	LIEN FEE
					REGISTRATION
					TOTAL CASH DELIVERED PRICE
					3579.50
S CASH DEPOSIT SUBMITTED WITH ORDER					
E ALLOWANCE FOR TRADE-IN AS APPRAISED					
T LESS BALANCE OWING TO -					
L DESCRIPTION OF TRADE-IN				NET EQUITY	
M YEAR		MAKE	MODEL	TYPE	
V.I.N.		LICENSE NO.	TITLE NO.	TOTAL CREDITS	
				UNPAID CASH BALANCE DUE ON DELIVERY	

ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALER'S, AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. UNLESS DEALER FURNISHES BUYER WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF, DEALER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE: (A) ON ALL GOODS AND SERVICES SOLD BY DEALER, AND (B) ON ALL USED VEHICLES WHICH ARE HEREBY SOLD "AS IS - NOT EXPRESSLY WARRANTED OR GUARANTEED."

IF THIS AGREEMENT IS FOR A USED VEHICLE, THE INFORMATION YOU SEE ON THE (FEDERAL TRADE COMMISSION) WINDOW FORM IS PART OF THIS AGREEMENT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

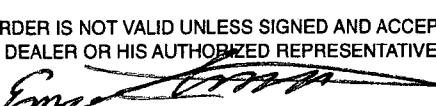
The front and back of this Order comprise the entire agreement affecting this purchase and no other agreement or understanding of any nature concerning same has been made or entered into, or will be recognized. I hereby certify that no credit has been extended to me for the purchase of this motor vehicle except as appears in writing on the face of this agreement. I have read the matter printed on the back hereof and agree to it as a part of this order the same as if it were printed above my signature. I certify that I am of legal age, and hereby acknowledge receipt of a copy of this order.

 SIGNED _____ PURCHASER _____

SALESMAN

THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED
BY DEALER OR HIS AUTHORIZED REPRESENTATIVE

APPROVED

 DEALER OR AUTHORIZED REPRESENTATIVE

STREET ADDRESS 369 South Kenvsey
 CITY & STATE Kenvsey PA ZIP 15846
 BUS. PHONE _____ RES. PHONE 885-8767

ADDITIONAL TERMS AND CONDITIONS

1. As used in this Order the terms (a) "Dealer" shall mean the authorized Dealer to whom this Order is addressed and who shall become a party hereto by its acceptance hereof, (b) "Purchaser" shall mean the party executing this Order as such on the face hereof, and (c) "Manufacturer" shall mean the Corporation that manufactured the vehicle or chassis, it being understood by Purchaser and Dealer that Dealer is in no respect the agent of Manufacturer, that Dealer and Purchaser are the sole parties to this Order and that reference to Manufacturer herein is for the purpose of explaining generally certain contractual relationships existing between Dealer and Manufacturer with respect to new motor vehicles.
2. Manufacturer has reserved the right to change the price to Dealer of new motor vehicles without notice. In the event the price to Dealer of new motor vehicles of the series and body type ordered hereunder is changed by Manufacturer prior to delivery of the new motor vehicle ordered hereunder to Purchaser, Dealer reserves the right to change the cash delivered price of such motor vehicle to Purchaser accordingly. If such cash delivered price is increased by Dealer, Purchaser may, if dissatisfied therewith, cancel this Order.
3. If the used motor vehicle which has been traded in as a part of the consideration for the motor vehicle ordered hereunder is not be delivered to Dealer until delivery to Purchaser of such motor vehicle, the used motor vehicle shall be reappraised at that time and such reappraised value shall determine the allowance made for such used motor vehicle. If such reappraised value is lower than the original allowance therefor shown on the front of this Order, Purchaser may, if dissatisfied therewith, cancel this Order, provided, however, that such right to cancel is exercised prior to the delivery of the motor vehicle ordered hereunder to the Purchaser and surrender of the used motor vehicle to Dealer.
4. Purchaser agrees to deliver to Dealer satisfactory evidence of title to any used motor vehicle traded in as a part of the consideration for the motor vehicle ordered hereunder at the time of delivery of such used motor vehicle to Dealer. Purchaser warrants any such used motor vehicle to be his property free and clear of all liens and encumbrances except as otherwise noted herein.
5. Manufacturer has reserved the right to change the design of any new motor vehicle, chassis, accessories or parts thereof at any time without notice and without obligation to make the same or any similar change upon any motor vehicle, chassis, accessories or parts thereof previously purchased by or shipped to Dealer or being manufactured or sold in accordance with Dealer's orders. Correspondingly, in the event of any such change by Manufacturer, Dealer shall have no obligation to Purchaser to make the same or any similar change in any motor vehicle, chassis, accessories or parts thereof covered by this Order either before or subsequent to delivery thereof to Purchaser.
6. Dealer shall not be liable for failure to deliver or delay in delivering the motor vehicle covered by this Order where such failure or delay is due, in whole or in part, to any cause beyond the control or without the fault or negligence of Dealer.
7. The price for the motor vehicle specified on the face of this Order includes reimbursement for Federal Excise taxes, but does not include sales taxes, use taxes or occupational taxes based on sales volume, (Federal, State or Local) unless expressly so stated. Purchaser assumes and agrees to pay, unless prohibited by law, any such sales, use or occupational taxes imposed on or applicable to the transaction covered by this Order, regardless of which party may have primary tax liability therefor.
8. **FACTORY WARRANTY: ANY WARRANTY ON ANY NEW VEHICLE OR USED VEHICLE STILL SUBJECT TO A MANUFACTURER'S WARRANTY IS THAT MADE BY THE MANUFACTURER ONLY. THE SELLER HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
9. **USED VEHICLE WHETHER OR NOT SUBJECT TO MANUFACTURER'S WARRANTY: UNLESS A SEPARATE WRITTEN INSTRUMENT SHOWING THE TERMS OF ANY DEALER WARRANTY OR SERVICE CONTRACT IS FURNISHED BY DEALER TO BUYER, THIS VEHICLE IS SOLD "AS IS" NOT EXPRESSLY WARRANTED OR GUARANTEED", AND THE SELLER HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
10. **PURCHASER SHALL NOT BE ENTITLED TO RECOVER FROM DEALER ANY CONSEQUENTIAL DAMAGES, DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS, OR INCOME, OR ANY OTHER INCIDENTAL DAMAGES.**
11. The Purchaser, before or at the time of delivery of the motor vehicle covered by this Order will execute such forms of agreement or documents as may be required by the terms and conditions of payment indicated on the front of the order.

APPENDIX B

Attached hereto is documentation from the Pennsylvania
Department of Transportation.

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
VEHICLE RECORD ABSTRACT

1/04/02

PAGE 1

020040710000217 002

OWNER : JAMIE MARTIN
6750 MILLER RD
BRECKSVILLE OH 43718

LESSEE : NONE

TITLE NUMBER : 51858649
TAG NUMBER :
VIN : JYACE01CSWA004907
MAKE : YAMAHA
MODEL :
RENEWAL WID :
PREVIOUS TAG :
LIENS : YES
STOPS : NO

it's a zero, not a c.
TITLE DATE : 04/03/98
REGISTRATION EXPIRY DATE:
BODY TYPE : ORV
ODOMETER READING : *
*EXEMPT BY FED LAW
DUPLICATE TITLE COUNT : 0
VEHICLE YEAR : 1998
STOLEN DATE :
*

TITLE BRAND INFORMATION

NO TITLE BRANDS EXIST FOR THIS TITLE

PENNDOT

ADDRESS CORRESPONDENCE TO:
DEPARTMENT OF TRANSPORTATION
VEHICLE RECORD SERVICES
PO BOX 68691
HARRISBURG, PA 17106-8691

INFORMATION: (7:00 AM TO 9:00 PM)
IN STATE 1-800-932-4600
OUT-OF-STATE 717-391-6190
TDD IN STATE 1-800-228-0676
TDD OUT-OF-STATE 717-391-6191
WWW.DOT.STATE.PA.US

NO. 0498702

MV-1 (3-97)

MAKE OF VEHICLE

YAMAHA

GROSS VEHICLE WT.

RATING

CHECK THE APPROPRIATE BLOCK IF THE VEHICLE
IS TO BE USED ONLY FOR PERSONAL USE AND
TAXED ON A PERSONAL PLATE OR IF APPLICABLE
LAST NAME FOR PURCHASED'S NAME.MARTIN JAMIE
CO-PURCHASED

STREET

62930 NULT RD. BELLEMONT OH 43718

NOTE: If a co-purchaser other than your spouse is listed and you want the title to be listed as "Joint Tenants With Right of Survivorship" (On death of one owner, title goes to surviving owner.) CHECK HERE Otherwise, the title will be issued as "Tenants in Common" (On death of one owner interest of deceased owner goes to his/her heirs or estate).NOTE: If the vehicle is being leased, CHECK THIS BLOCK IF BLOCK IS CHECKED, COMPLETE AND ATTACH FORM MV-11.

WARNING: FEDERAL AND STATE LAWS REQUIRE THAT YOU STATE THE MILEAGE IN CONNECTION WITH THE TRANSFER OF OWNERSHIP. FAILURE TO COMPLETE OR PROVIDING A FALSE STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT.

1ST LIEN DATE: 02-19-98 → IF NO LIEN, CHECK

1ST LIENHOLDER: NATIONAL CITY BANK of PA

STREET: 6750 Miller Rd.

CITY: Brecksville OH 44141 ZIP:

FINANCIAL INSTITUTION NUMBER:

MAKE OF VEHICLE: YIN.

BODY TYPE (SUV, BUS, ETC):

PASSENGER TAXIBUS

MOTORCYCLE, MOTOR DRIVEN CYCLE, MOPED

MOTOR HOME

TRAILER, VEHICLES BELOW

TRUCK, TRACTOR

IMPLEMENT OF HUSBANDRY OR SPECIAL MOBILE EQUIPMENT

ORIGINAL PLATE Check One

PLATE TO BE ISSUED BY BUREAU (PROOF OF INSURANCE MUST BE ATTACHED).

EXCHANGE PLATE TO BE ISSUED BY BUREAU

TEMPORARY PLATE ISSUED BY FULL AGENT

TEMPORARY PLATE NO.

INSURANCE COMPANY NAME

CERTIFY THAT ON MONTH 02 DAY 19 YEAR 98

I HAVE CHECKED TO DETERMINE THAT THE VEHICLE IS INSURED AND ISSUED TEMPORARY REGISTRATION TO THE ABOVE APPLICANT, IN

COMPLIANCE WITH ALL APPLICABLE PROVISIONS OF THE VEHICLE CODE

AND DEPARTMENT REGULATIONS.

CURRENTLY REGISTERED VEHICLE FOR THE PERIOD OF REGISTRATION. I FURTHER ACKNOWLEDGE THAT I WE MAY BE SUBJECT TO A FINE NOT EXCEEDING \$5,000 AND IMPRISONMENT OF NOT MORE THAN TWO (2) YEARS FOR ANY FALSE STATEMENT MADE ON THIS FORM, AND I WE CERTIFY THAT I WE HAVE EXAMINED AND SIGNED THIS FORM AFTER ITS COMPLETION; AND, THAT, IF AN EXEMPTION FROM PAYMENT OF SALES TAX IS CLAIMED, I AM WE AUTHORIZED TO CLAIM THIS EXEMPTION. I WE

SUBSCRIBED AND SWORN TO BEFORE ME: MO. 02 DAY 19 YEAR 98

S. BENTLEY, PERSON ADMINISTERING OATH

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
Docket No. 03-
-CD

MOUNTAIN EXTREME, INC.,
Plaintiff

-vs-

ROBERT LUCHINI,
Defendant

COMPLAINT

5cc
12/35/88
Dwight Koerber
Atty Koerber

Law Office

DWIGHT L. KOERBER, JR.
ATTORNEY - AT - LAW
110 NORTH SECOND STREET
P. O. BOX 1320
CLEARFIELD, PENNSYLVANIA 16830

In The Court of Common Pleas of Clearfield County, Pennsylvania

MOUNTAIN EXTREME, INC.

Sheriff Docket # 13583

03-102-CD

VS.

LUCHINI, ROBERT

COMPLAINT

SHERIFF RETURNS

NOW JANUARY 27, 2003, THOMAS KONTES, SHERIFF OF ELK COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON ROBERT LUCHINI, DEFENDANT.

NOW FEBRUARY 4, 2003 SERVED THE WITHIN COMPLAINT ON ROBERT LUCHINI, DEFENDANT BY DEPUTIZING THE SHERIFF OF ELK COUNTY. THE RETURN OF SHERIFF KONTES IS HERETO ATTACHED AND MADE A PART OF THIS RETURN.

Return Costs

Cost	Description
------	-------------

27.97	SHFF. HAWKINS PAID BY: ATTY.
27.00	SHFF. KONTES PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

\$ 64.97

Sworn to Before Me This

21st Day Of March 2003

William A. Shaw

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

So Answers,

Chester A. Hawkins
by Mauler Harris
Chester A. Hawkins
Sheriff

13583

Affidavit of Service

Mountain Extreme, Inc.

vs.

Robert Luchini

No. 102 Term, 20 03

Returnable within _____ days
from date of service hereof.

NOW February 4, 2003 at 12:46 o'clock P.M.

served the within Complaint on Robert Luchini of 369 S.

Kersey St., Kersey, Elk County, PA

at Elk County Sheriff's Office, Elk County Courthouse, 240 Main Street, Ridgway, Elk County, PA

by handing to him

a true and attested copy of the original Complaint and made known to him the contents thereof. Sheriff's Costs - \$27.00 PAID

Sworn to before me this 6th

day of February A.D. 20 02

Sylvia H. Kronawetter
Deputy Prothonotary

My Commission Expires
January 5, 2004

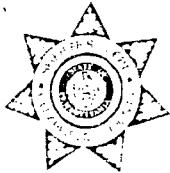
118.11-010

So answers,

Thomas C. Kotter
Earl C. Pontious

Sheriff

Deputy



Sheriff's Office Clearfield County

OFFICE (814) 765-2641
AFTER 4:00 P.M. (814) 765-1533

CLEARFIELD COUNTY FAX
(814) 765-5915

CHESTER A. HAWKINS
SHERIFF

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

Robert Snyder
CHIEF DEPUTY
Cynthia Aughenbaugh
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK
PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MOUNTAIN EXTREME INC

TERM & NO. 03-102-CD

VS

ROBERT LUCHINI

DOCUMENT TO BE SERVED:
COMPLAINT

SERVE BY: 2/23/03

MAKE REFUND PAYABLE TO: DWIGHT L. KOERBER Jr., Attorney

SERVE: ROBERT LUCHINI

ADDRESS: 369 South Kersey St., Kersey, Pa. 15846

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF ELK COUNTY Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this

27th Day of January 2003.

Respectfully,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY

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

MOUNTAIN EXTREME, INC.,
Plaintiff

-vs-

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Type of pleading:
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Filed on behalf of:
PLAINTIFF, Mountain
Extreme, Inc.

Counsel of record for
this party:

Dwight L. Koerber, Jr.,
Esquire
PA I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

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

JAN 24 2003

Attest.

William A. Brown
Prothonotary/
Clerk of Courts

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

MOUNTAIN EXTREME, INC.,
Plaintiff

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DAVID S. MEHOLICK, COURT ADMINISTRATOR
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 5982

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Docket No. 03-

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Jamie Martin and that the said vehicle is subject to an encumbrance in favor of National City Bank.

11. By virtue of the fact that he does not hold title to the 1998 YZ 125 motorcycle that he sold as a trade in to plaintiff, and by virtue of the fact that there is an encumbrance against it, defendant has breached the representations and terms of the July 1, 2001 transaction between the parties.

12. Because of defendant's failure to furnish good and marketable title to the vehicle that he has traded in to plaintiff, plaintiff has suffered economic harm and damage. That damage consists of the following:

(a) Inability to furnish title to the subsequent purchaser of the 1998 YZ 125 Yamaha motorcycle which plaintiff sold to an individual named Barry Shirey, with such sale being conditioned upon plaintiff furnishing to Mr. Shirey good and marketable title.

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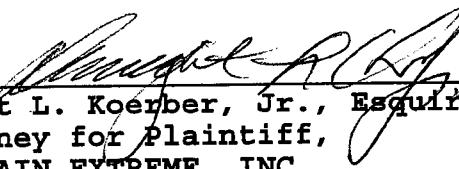
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Respectfully submitted,

By: 
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Attorney for Plaintiff,
MOUNTAIN EXTREME, INC.

VERIFICATION

I certify that the statements made in the foregoing Complaint 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.

Earl Frank G.M.

DATE: 1-17-03

APPENDIX A

Attached hereto is a true and correct copy of the sales invoice entered into.

MOUNTAIN EXTREME, Inc.

Main Location: RD1 Box 4D, Rockton, PA 15856 • 814-583-7030
 Branch Location: RR8 Box 78, DuBois, PA 15801 • 814-375-4910

SPECIAL ORDERS 50% DOWN
 NO RETURN ON ELECTRONIC PARTS
 25% RESTOCKING FEE ON RETURN ORDERS
 PAST DUE ACCTS. 1.5% MONTHLY
 \$20 RETURNED CHECK FEE.

PURCHASER'S
NAME

Robert Luchini

DATE

7/1/01

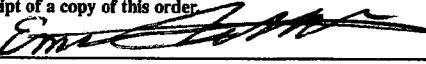
PLEASE ENTER MY ORDER FOR ONE NEW USED DEMO AS FOLLOWS:

YEAR 2001	MAKE Yamaha	MODEL OR SERIES YXR250F	BODY TYPE	COLOR Blue	TRIM
V.I.N. JYACG10CX1A003262		STOCK NO.	TO BE DELIVERED ON OR ABOUT		
CASH PRICE OF VEHICLE				5000	00
VEHICLE TRADED			R4 Pipe	425.	00
				5425.	00
				2100	00
PARTS AND ACCESSORIES		Trade 1998 42125 Un JYACE01CSWAD04907			
SUB TOTAL		<u>Trade</u> #148			
TAX					
TOTAL		11			
				TOTAL	3325.00
				TAX	199.50
DOCUMENTARY CHARGE		TEMP. LICENSE	TRANSFER	TITLE	LIEN FEE
					REGISTRATION
					55.00
				TOTAL CASH DELIVERED PRICE	
				3579.50	
SETLEMENT	CASH DEPOSIT SUBMITTED WITH ORDER				
	ALLOWANCE FOR TRADE-IN AS APPRAISED				
	LESS BALANCE OWING TO -				
	DESCRIPTION OF TRADE-IN				NET EQUITY
	YEAR	MAKE	MODEL	TYPE	TOTAL CREDITS
	V.I.N.		LICENSE NO.	TITLE NO.	UNPAID CASH BALANCE DUE ON DELIVERY

ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALER'S, AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. UNLESS DEALER FURNISHES BUYER WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF, DEALER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE: (A) ON ALL GOODS AND SERVICES SOLD BY DEALER, AND (B) ON ALL USED VEHICLES WHICH ARE HEREBY SOLD "AS IS - NOT EXPRESSLY WARRANTED OR GUARANTEED."

IF THIS AGREEMENT IS FOR A USED VEHICLE, THE INFORMATION YOU SEE ON THE (FEDERAL TRADE COMMISSION) WINDOW FORM IS PART OF THIS AGREEMENT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

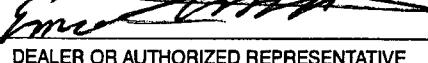
The front and back of this Order comprise the entire agreement affecting this purchase and no other agreement or understanding of any nature concerning same has been made or entered into, or will be recognized. I hereby certify that no credit has been extended to me for the purchase of this motor vehicle except as appears in writing on the face of this agreement. I have read the matter printed on the back hereof and agree to it as a part of this order the same as if it were printed above my signature. I certify that I am of legal age, and hereby acknowledge receipt of a copy of this order.



SALESMAN

THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED
BY DEALER OR HIS AUTHORIZED REPRESENTATIVE

APPROVED



DEALER OR AUTHORIZED REPRESENTATIVE

SIGNED _____ PURCHASER _____

STREET ADDRESS 369 South Kewsey

CITY & STATE Kewsey PA ZIP 15846

BUS. PHONE _____ RES. PHONE 885-8767

ADDITIONAL TERMS AND CONDITIONS

1. As used in this Order the terms (a) "Dealer" shall mean the authorized Dealer to whom this Order is addressed and who shall become a party hereto by its acceptance hereof, (b) "Purchaser" shall mean the party executing this Order as such on the face hereof, and (c) "Manufacturer" shall mean the Corporation that manufactured the vehicle or chassis, it being understood by Purchaser and Dealer that Dealer is in no respect the agent of Manufacturer, that Dealer and Purchaser are the sole parties to this Order and that reference to Manufacturer herein is for the purpose of explaining generally certain contractual relationships existing between Dealer and Manufacturer with respect to new motor vehicles.

2. Manufacturer has reserved the right to change the price to Dealer of new motor vehicles without notice. In the event the price to Dealer of new motor vehicles of the series and body type ordered hereunder is changed by Manufacturer prior to delivery of the new motor vehicle ordered hereunder to Purchaser, Dealer reserves the right to change the cash delivered price of such motor vehicle to Purchaser accordingly. If such cash delivered price is increased by Dealer, Purchaser may, if dissatisfied therewith, cancel this Order.

3. If the used motor vehicle which has been traded in as a part of the consideration for the motor vehicle ordered hereunder is not be delivered to Dealer until delivery to Purchaser of such motor vehicle, the used motor vehicle shall be reappraised at that time and such reappraised value shall determine the allowance made for such used motor vehicle. If such reappraised value is lower than the original allowance therefor shown on the front of this Order, Purchaser may, if dissatisfied therewith, cancel this Order, provided, however, that such right to cancel is exercised prior to the delivery of the motor vehicle ordered hereunder to the Purchaser and surrender of the used motor vehicle to Dealer.

4. Purchaser agrees to deliver to Dealer satisfactory evidence of title to any used motor vehicle traded in as a part of the consideration for the motor vehicle ordered hereunder at the time of delivery of such used motor vehicle to Dealer. Purchaser warrants any such used motor vehicle to be his property free and clear of all liens and encumbrances except as otherwise noted herein.

5. Manufacturer has reserved the right to change the design of any new motor vehicle, chassis, accessories or parts thereof at any time without notice and without obligation to make the same or any similar change upon any motor vehicle, chassis, accessories or parts thereof previously purchased by or shipped to Dealer or being manufactured or sold in accordance with Dealer's orders. Correspondingly, in the event of any such change by Manufacturer, Dealer shall have no obligation to Purchaser to make the same or any similar change in any motor vehicle, chassis, accessories or parts thereof covered by this Order either before or subsequent to delivery thereof to Purchaser.

6. Dealer shall not be liable for failure to deliver or delay in delivering the motor vehicle covered by this Order where such failure or delay is due, in whole or in part, to any cause beyond the control or without the fault or negligence of Dealer.

7. The price for the motor vehicle specified on the face of this Order includes reimbursement for Federal Excise taxes, but does not include sales taxes, use taxes or occupational taxes based on sales volume, (Federal, State or Local) unless expressly so stated. Purchaser assumes and agrees to pay, unless prohibited by law, any such sales, use or occupational taxes imposed on or applicable to the transaction covered by this Order, regardless of which party may have primary tax liability therefor.

8. FACTORY WARRANTY: ANY WARRANTY ON ANY NEW VEHICLE OR USED VEHICLE STILL SUBJECT TO A MANUFACTURER'S WARRANTY IS THAT MADE BY THE MANUFACTURER ONLY. THE SELLER HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

USED VEHICLE WHETHER OR NOT SUBJECT TO MANUFACTURER'S WARRANTY: UNLESS A SEPARATE WRITTEN INSTRUMENT SHOWING THE TERMS OF ANY DEALER WARRANTY OR SERVICE CONTRACT IS FURNISHED BY DEALER TO BUYER, THIS VEHICLE IS SOLD "AS IS - NOT EXPRESSLY WARRANTED OR GUARANTEED", AND THE SELLER HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9. PURCHASER SHALL NOT BE ENTITLED TO RECOVER FROM DEALER ANY CONSEQUENTIAL DAMAGES, DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS, OR INCOME, OR ANY OTHER INCIDENTAL DAMAGES.

10. The Purchaser, before or at the time of delivery of the motor vehicle covered by this Order will execute such forms of agreement or documents as may be required by the terms and conditions of payment indicated on the front of the order.

APPENDIX B

Attached hereto is documentation from the Pennsylvania Department of Transportation.

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

VEHICLE RECORD ABSTRACT

1/04/02

PAGE 1

020040710000217 002

OWNER : JAMIE MARTIN
 6750 MILLER RD
 BRECKSVILLE OH 43718

LESSEE : NONE

TITLE NUMBER : 51858649
 TAG NUMBER :
 VIN : JYACE01CSWA004907
 MAKE : YAMAHA
 MODEL :
 RENEWAL WID :
 PREVIOUS TAG :
 LIENS : YES
 STOPS : NO

TITLE DATE : 04/03/98
 REGISTRATION EXPIRY DATE:
 BODY TYPE : ORV
 ODOMETER READING : *
 *EXEMPT BY FED LAW
 DUPLICATE TITLE COUNT : 0
 VEHICLE YEAR : 1998
 STOLEN DATE :

TITLE BRAND INFORMATION

NO TITLE BRANDS EXIST FOR THIS TITLE

PENNDOT

ADDRESS CORRESPONDENCE TO:
 DEPARTMENT OF TRANSPORTATION
 VEHICLE RECORD SERVICES
 PO BOX 68691
 HARRISBURG, PA 17106-8691

INFORMATION: (7:00 AM TO 9:00 PM)
 IN STATE 1-800-932-4600
 OUT-OF-STATE 717-391-6190
 TDD IN STATE 1-800-228-0676
 TDD OUT-OF-STATE 717-391-6191
 WWW.DOT.STATE.PA.US

NO. 0498702

MV-1 (3-97)

				I. TAX AMT				
A. MAKE OF VEHICLE YAMAHA		VEHICLE IDENTIFICATION NUMBER (VIN) IF TRACING REQUIRED TAPE SECURELY TO REVERSE OF THIS CARD JYACE01C5WA004907		BODY TYPE (SDN. T.K. OR ETC.) DRV	MODEL YEAR 98	PURCHASE PRICE (See note on reverse)		
GROSS VEHICLE WT. RATING		FUEL <input type="checkbox"/> GASOLINE <input type="checkbox"/> DIESEL <input type="checkbox"/> ELECTRIC	DIN/MECHANIC # 1111111111111111	AUTHORIZED NOTARY PUBLIC OR CERTIFIED INSPECTION MECHANIC (PRINT NAME) BRUNNIE				
C. CHECK THE APPROPRIATE BOXES IF THE VEHICLE IS TO BE USED AS A SPARE OR AS A TOW OR UTILITY VEHICLE. (PRINT NAME)				I certify that I have verified that a log-on tracing cannot be recorded and that the above VIN is correct.				
B. LAST NAME AND FULL BUSINESS NAME MARTIN JAMES CO-PURCHASER				1. FIRST NAME JAMES	2. MIDDLE INITIAL M	3. DEALER ID NUMBER (IF APPLICABLE)	4. TAXABLE AMOUNT X 6% (16%) SALES TAX X 7% (17%) (See note on reverse)	
STREET 62930 AULT RD. BELLEMONT OH 43718				5. CITY BELLEMONT	6. COUNTY OHIO	7. STATE OH	8. ZIP 43718	
NOTE: If a co-purchaser other than your spouse is listed and you want the title to be listed as "Joint Tenants With Right of Survivorship" (On death of one owner, title goes to surviving owner.) CHECK HERE <input type="checkbox"/> Otherwise, the title will be issued as "Tenants in Common" (On death of one owner, interest of deceased owner goes to his/her heirs or estate.).				DATE ACQUIRED/ PURCHASED 02-19-98				
NOTE: IF THE VEHICLE IS BEING LEASED CHECK THIS BLOCK <input type="checkbox"/> IF BLOCK IS CHECKED, COMPLETE AND ATTACH FORM MV-1L				LESS TAX CREDIT				
D. REFLECTS THE AMOUNT OF MILEAGE IN EXCESS OF ITS MECHANICAL LIMITS				1. IS NOT THE ACTUAL MILEAGE WARNING: ODOMETER DISCREPANCY	ODOMETER READING Exempt			
WARNING: FEDERAL AND STATE LAW REQUIRE THAT YOU STATE THE MILEAGE IN CONNECTION WITH THE TRANSFER OF OWNERSHIP. FAILURE TO COMPLETE OR PROVIDING A FALSE STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT				TENTS			2. TITLE FEE	
1ST LIEN DATE: 02-19-98 → IF NO LIEN, CHECK <input type="checkbox"/>				2ND LIEN DATE: <input type="checkbox"/>	→ IF NO LIEN CHECK <input type="checkbox"/>			
1ST LIENHOLDER: NATIONAL CITY BANK of PA				2ND LIENHOLDER: <input type="checkbox"/>	3. LIEN FEE			
STREET: 6750 Miller Rd.				STREET: <input type="checkbox"/>	4. REGISTRATION OR PROCESSING FEE			
CITY: Brecksville OH 44141				CITY: <input type="checkbox"/>	STATE: <input type="checkbox"/>	ZIP: <input type="checkbox"/>	Fee Exempt Number as assigned by the Bureau	
FINANCIAL INSTITUTION NUMBER				5. DUPLICATE REG. FEE NO. OF CARDS				
E. MAKE OF VEHICLE YAMAHA				6. TRANSFER FEE				
BODY TYPE (SDN. T.K. ETC.)				7. INCREASE FEE				
PASSENGER TAXIBUS PASSENGER <input type="checkbox"/> AX: <input type="checkbox"/> LIMOUSINE <input type="checkbox"/> SCHOOL BUS <input type="checkbox"/> MASS TRANS <input type="checkbox"/> OTHER BUS <input type="checkbox"/> SEATING CAPACITY				8. REPLACEMENT FEE				
CYLINDER CAPACITY CC OR LESS OPERABLE PEDALS AUTOMATIC TRANSMISSION				YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> BRAKE <input type="checkbox"/> FOR <input type="checkbox"/> 16 TO <input type="checkbox"/> OVER 50 25 MPH OR LESS <input type="checkbox"/> YES <input type="checkbox"/> NO DESIGN ALTERED FOR ROAD USE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	9. TOTAL PAID (ADD 1 THRU 8) Send One Check In This Amount			
MOTOR HOME CHASSIS MFR:				10. BODY MAKE				
TRAILER & VEHICLES NUMBER OF AXLES SUN OF GAWRS:				11. REG. REGISTERED GROSS WT. (INCLUDING LOAD) UNLADEN WT. (EMPTY)	12. POLICY NUMBER			
TRUCK TRACTOR REG. REGISTERED GROSS COMBINATION WT.				13. GROSS COMBINATION WT. RATING	14. POLICY EXPIRATION DATE			
15. ELEMENT OF HUSBANDRY OR SPECIAL MOBILE EQUIPMENT				16. SIGNATURE OF PERSON FROM WHOM PLATE IS BEING TRANSFERRED IF OTHER THAN APPLICANT:				
6. ORIGINAL PLATE <input type="checkbox"/> Check One <input type="checkbox"/> PLATE TO BE ISSUED BY BUREAU (PROOF OF INSURANCE MUST BE ATTACHED) <input type="checkbox"/> EXCHANGE PLATE TO BE ISSUED BY BUREAU <input type="checkbox"/> TEMPORARY PLATE ISSUED BY FULL AGENT				17. SIGNATURE REASON FOR REPLACEMENT TRANSFER OF PREVIOUSLY ISSUED PLATE TRANSFER & REPLACEMENT OF PLATE NO. <input type="checkbox"/> LOST <input type="checkbox"/> STOLEN <input type="checkbox"/> DEFACED <input type="checkbox"/> NEVER REC'D (LOST IN MAIL)				
7. ISSUING AGENT INFORMATION CERTIFY THAT ON MONTH 02 DAY 19 YEAR 98 I HAVE CHECKED TO DETERMINE THAT THE VEHICLE IS INSURED AND ISSUED TEMPORARY REGISTRATION TO THE ABOVE APPLICANT. IN COMPLIANCE WITH ALL APPLICABLE PROVISIONS OF THE VEHICLE CODE AND DEPARTMENT REGULATIONS.				18. ISSUING AGENT (PRINT NAME) BENTLEY YAMAHA & SUZUKI, INC. AGENT NO. 87-1253 ISSUING AGENT SIGNATURE Ember Bentley TELEPHONE NO. 412/746-7100				
19. I/we acknowledge that I/we may lose my/our operating privilege(s) or vehicle registration(s) for failure to maintain financial responsibility on the currently registered vehicle for the period of registration. I/we further acknowledge that I/we may be subject to a fine not exceeding \$5,000 and imprisonment of not more than two (2) years for any false statement that I/we make on this form, and I/we certify that I/we have examined and signed this form after its completion; and, that, if an exemption from payment of sales tax is claimed, I am/we are authorized to claim this exemption. I/we further certify that all statements herein are true and correct and make application for certificate of title for the vehicle described in block A. SIGNATURE OF INDIVIDUAL OR AUTHORIZED SIGNER				20. SIGNATURE OF CO-OWNER/TITLE OF AUTHORIZED SIGNER				
21. SEAL				22. TELEPHONE NO. 1-14686-2767 MESSENDER NUMBER:				
23. SIGNATURE OF PERSON ADMINISTERING OATH S. James Martin								
24. BUREAU OF MOTOR VEHICLE								

STATE OF PENNSYLVANIA - CERTIFICATE OF TITLE
This is to certify that the following information is true and correct to the best of my knowledge and belief at the time of delivery, and this vehicle is not subject to any prior claim or encumbrance.
NOT VISIBLE - RECEIVED AND TRANSFERRED THE VEHICLE DUE TO
THE INFORMATION CONTAINED IN THIS CERTIFICATE TO:

JAMIE MARTIN

62930 AVIT RD. Bellmont OH 43718

RENTAL PERSONAL PROPERTY 871253 Evelyn Bradley

Notary Seal
Matthew E. Luzzo, Notary Public
Canonsburg
Boro, Washington County
My Commission Expires Jan. 31, 2000
Member, Pennsylvania Association of Notaries

19 FEB 1998
March 1, 2000
Notary Public

STATE OF PENNSYLVANIA - CERTIFICATE OF TITLE
This is to certify that the following information is true and correct to the best of my knowledge and belief at the time of delivery, and this vehicle is not subject to any prior claim or encumbrance.
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RENTAL PERSONAL PROPERTY 871253 Evelyn Bradley

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Notary Public

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THE INFORMATION CONTAINED IN THIS CERTIFICATE TO:

RENTAL PERSONAL PROPERTY 871253 Evelyn Bradley

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RENTAL PERSONAL PROPERTY 871253 Evelyn Bradley

Notary Seal
Matthew E. Luzzo, Notary Public
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My Commission Expires Jan. 31, 2000
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19 FEB 1998
Notary Public

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

MOUNTAIN EXTREME, INC.,
Plaintiff

-vs-

ROBERT LUCHINI,
Defendant

* Docket No. 03-102-CD

Type of pleading:
COMPLAINT

Filed on behalf of:
PLAINTIFF, Mountain
Extreme, Inc.

Counsel of record for
this party:

Dwight L. Koerber, Jr.,
Esquire
PA I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

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

JAN 24 2003

Attest:

William L. Davis
Prothonotary
Clerk of Courts

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

MOUNTAIN EXTREME, INC.,
Plaintiff

-vs-

ROBERT LUCHINI,
Defendant

*

*

*

*

Docket No. 03- -CD

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 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 within twenty (20) days. 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 relief claimed in the complaint by the plaintiff.

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. MEHOLICK, COURT ADMINISTRATOR
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 5982

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

MOUNTAIN EXTREME, INC.,
Plaintiff

*

*

-vs-

*

Docket No. 03-

-CD

ROBERT LUCHINI,
Defendant

*

*

COMPLAINT

COMES NOW, Plaintiff Mountain Extreme, Inc., by and through its attorney, Dwight L. Koerber, Jr., Esquire, and files the within Complaint against Defendant Robert Luchini. In support thereof, plaintiff avers and shows as follows:

1. Plaintiff is Mountain Extreme, Inc., a Pennsylvania corporation with its principal place of business at R. D. 1, Box 4D, Rockton, PA 15856.
2. Defendant is Robert Luchini, an individual who resides at 369 South Kersey Street, Kersey, PA 15846.
3. Plaintiff is a Yamaha dealership, and is in the business of buying and selling new and used motorcycles, four-wheelers, snowmobiles and other such recreational vehicles.
4. On July 1, 2001, plaintiff and defendant entered into an agreement at plaintiff's offices in Rockton, Clearfield County, Pennsylvania, whereby defendant traded in a 1998 YZ 125 Yamaha

motorcycle as part of his purchase of a new 2001 YZ 250F motorcycle.

5. Attached hereto as Appendix A is a true and correct copy of the sales invoice in question.

6. In conjunction with the trade in of his 1998 YZ 125 motorcycle, defendant represented that he held ownership of the vehicle, and that it was free and clear of liens and encumbrances.

7. In reliance upon the representations of defendant that he held title to the vehicle he was trading in and that it was free and clear of liens and encumbrances, plaintiff moved forward with the transaction of July 1, 2001, whereby it gave defendant credit for his 1998 YZ 125 motorcycle and deducted it from the purchase price.

8. Through subsequent inquiries, plaintiff learned that defendant did not hold title to the vehicle in question.

9. Through subsequent inquiries, plaintiff learned that defendant not only did not hold title to the vehicle in question, but there was a lien against the said vehicle in favor of National City Bank.

10. Attached hereto as Appendix B is documentation furnished by the Pennsylvania Department of Transportation showing that the 1998 YZ 125 Yamaha which defendant represented that he owned is in fact titled in the name of a person named

Jamie Martin and that the said vehicle is subject to an encumbrance in favor of National City Bank.

11. By virtue of the fact that he does not hold title to the 1998 YZ 125 motorcycle that he sold as a trade in to plaintiff, and by virtue of the fact that there is an encumbrance against it, defendant has breached the representations and terms of the July 1, 2001 transaction between the parties.

12. Because of defendant's failure to furnish good and marketable title to the vehicle that he has traded in to plaintiff, plaintiff has suffered economic harm and damage. That damage consists of the following:

(a) Inability to furnish title to the subsequent purchaser of the 1998 YZ 125 Yamaha motorcycle which plaintiff sold to an individual named Barry Shirey, with such sale being conditioned upon plaintiff furnishing to Mr. Shirey good and marketable title.

(b) The economic harm which plaintiff has incurred is the fair market value of the 1998 YZ 125 Yamaha motorcycle which it sold to Barry Shirey for \$2,700.00.

(c) Registration fees covering the Barry Shirey transaction in the amount of \$196.50.

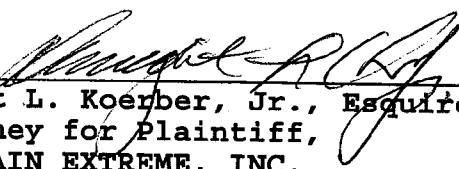
(d) Costs and legal fees.

13. Plaintiff has made demand of defendant, requiring that he take all due steps necessary to obtain legal title to the 1998 YZ 125 Yamaha motorcycle that he traded/sold to plaintiff, but defendant has failed and refused to do so.

WHEREFORE, plaintiff prays that judgment be entered in its

favor in the amount of \$2,869.50, plus interest from July 1, 2001, costs of suit, and attorney's fees.

Respectfully submitted,

By: 
Dwight L. Koerber, Jr., Esquire
Attorney for Plaintiff,
MOUNTAIN EXTREME, INC.

VERIFICATION

I certify that the statements made in the foregoing Complaint 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.

Carl Frank G.M.

DATE: 1-17-03

APPENDIX A

Attached hereto is a true and correct copy of the sales invoice entered into.

MOUNTAIN EXTREME, Inc.

Main Location: RD1 Box 4D, Rockton, PA 15856 • 814-583-7030
 Branch Location: RR8 Box 78, DuBois, PA 15801 • 814-375-4910

SPECIAL ORDERS 50% DOWN
 NO RETURN ON ELECTRONIC PARTS
 25% RESTOCKING FEE ON RETURN ORDERS
 PAST DUE ACCTS. 1.5% MONTHLY
 \$20 RETURNED CHECK FEE.

PURCHASER'S
NAME

Robert Luchini

DATE 7/1/01

PLEASE ENTER MY ORDER FOR ONE

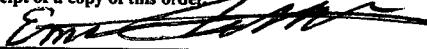
NEW USED DEMO AS FOLLOWS:

YEAR 2001	MAKE Yamaha	MODEL OR SERIES YX250F	BODY TYPE	COLOR Blue	TRIM
V.I.N. JYACG100CX1A003262	STOCK NO.		TO BE DELIVERED ON OR ABOUT		
CASH PRICE OF VEHICLE			5000		00
VEHICLE TRADED			R4 Pro		425.00
			5425.00		00
			2100		00
Trade 1998 42125 in JYACE01C5WAD004907					
PAID					
SUB TOTAL #148					
TAX					
TOTAL			11		
			TOTAL 3325.00		00
			TAX 199.50		50
DOCUMENTARY CHARGE			55		00
			TOTAL CASH DELIVERED PRICE 3579.50		
S CASH DEPOSIT SUBMITTED WITH ORDER					
E ALLOWANCE FOR TRADE-IN AS APPRAISED					
T LESS BALANCE OWING TO -					
M DESCRIPTION OF TRADE-IN				NET EQUITY	
E YEAR MAKE MODEL TYPE				TOTAL CREDITS	
M V.I.N. LICENSE NO. TITLE NO.				UNPAID CASH BALANCE DUE ON DELIVERY	

ALL WARRANTIES, IF ANY, BY A MANUFACTURER OR SUPPLIER OTHER THAN DEALER ARE THEIRS, NOT DEALER'S, AND ONLY SUCH MANUFACTURER OR OTHER SUPPLIER SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. UNLESS DEALER FURNISHES BUYER WITH A SEPARATE WRITTEN WARRANTY OR SERVICE CONTRACT MADE BY DEALER ON ITS OWN BEHALF, DEALER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE: (A) ON ALL GOODS AND SERVICES SOLD BY DEALER, AND (B) ON ALL USED VEHICLES WHICH ARE HEREBY SOLD "AS IS - NOT EXPRESSLY WARRANTED OR GUARANTEED."

IF THIS AGREEMENT IS FOR A USED VEHICLE, THE INFORMATION YOU SEE ON THE (FEDERAL TRADE COMMISSION) WINDOW FORM IS PART OF THIS AGREEMENT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

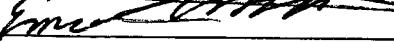
The front and back of this Order comprise the entire agreement affecting this purchase and no other agreement or understanding of any nature concerning same has been made or entered into, or will be recognized. I hereby certify that no credit has been extended to me for the purchase of this motor vehicle except as appears in writing on the face of this agreement. I have read the matter printed on the back hereof and agree to it as a part of this order the same as if it were printed above my signature. I certify that I am of legal age, and hereby acknowledge receipt of a copy of this order.



SALESMAN

THIS ORDER IS NOT VALID UNLESS SIGNED AND ACCEPTED
BY DEALER OR HIS AUTHORIZED REPRESENTATIVE

APPROVED



DEALER OR AUTHORIZED REPRESENTATIVE

SIGNED

PURCHASER

STREET ADDRESS 369 South Kewsey

CITY & STATE Kewsey PA ZIP 15846

BUS. PHONE

RES. PHONE 885-8767

ADDITIONAL TERMS AND CONDITIONS

1. As used in this Order the terms (a) "Dealer" shall mean the authorized Dealer to whom this Order is addressed and who shall become a party hereto by its acceptance hereof, (b) "Purchaser" shall mean the party executing this Order as such on the face hereof, and (c) "Manufacturer" shall mean the Corporation that manufactured the vehicle or chassis, it being understood by Purchaser and Dealer that Dealer is in no respect the agent of Manufacturer, that Dealer and Purchaser are the sole parties to this Order and that reference to Manufacturer herein is for the purpose of explaining generally certain contractual relationships existing between Dealer and Manufacturer with respect to new motor vehicles.
2. Manufacturer has reserved the right to change the price to Dealer of new motor vehicles without notice. In the event the price to Dealer of new motor vehicles of the series and body type ordered hereunder is changed by Manufacturer prior to delivery of the new motor vehicle ordered hereunder to Purchaser, Dealer reserves the right to change the cash delivered price of such motor vehicle to Purchaser accordingly. If such cash delivered price is increased by Dealer, Purchaser may, if dissatisfied therewith, cancel this Order.
3. If the used motor vehicle which has been traded in as a part of the consideration for the motor vehicle ordered hereunder is not be delivered to Dealer until delivery to Purchaser of such motor vehicle, the used motor vehicle shall be reappraised at that time and such reappraised value shall determine the allowance made for such used motor vehicle. If such reappraised value is lower than the original allowance therefor shown on the front of this Order, Purchaser may, if dissatisfied therewith, cancel this Order, provided, however, that such right to cancel is exercised prior to the delivery of the motor vehicle ordered hereunder to the Purchaser and surrender of the used motor vehicle to Dealer.
4. Purchaser agrees to deliver to Dealer satisfactory evidence of title to any used motor vehicle traded in as a part of the consideration for the motor vehicle ordered hereunder at the time of delivery of such used motor vehicle to Dealer. Purchaser warrants any such used motor vehicle to be his property free and clear of all liens and encumbrances except as otherwise noted herein.
5. Manufacturer has reserved the right to change the design of any new motor vehicle, chassis, accessories or parts thereof at any time without notice and without obligation to make the same or any similar change upon any motor vehicle, chassis, accessories or parts thereof previously purchased by or shipped to Dealer or being manufactured or sold in accordance with Dealer's orders. Correspondingly, in the event of any such change by Manufacturer, Dealer shall have no obligation to Purchaser to make the same or any similar change in any motor vehicle, chassis, accessories or parts thereof covered by this Order either before or subsequent to delivery thereof to Purchaser.
6. Dealer shall not be liable for failure to deliver or delay in delivering the motor vehicle covered by this Order where such failure or delay is due, in whole or in part, to any cause beyond the control or without the fault or negligence of Dealer.
7. The price for the motor vehicle specified on the face of this Order includes reimbursement for Federal Excise taxes, but does not include sales taxes, use taxes or occupational taxes based on sales volume, (Federal, State or Local) unless expressly so stated. Purchaser assumes and agrees to pay, unless prohibited by law, any such sales, use or occupational taxes imposed on or applicable to the transaction covered by this Order, regardless of which party may have primary tax liability therefor.
8. **FACTORY WARRANTY: ANY WARRANTY ON ANY NEW VEHICLE OR USED VEHICLE STILL SUBJECT TO A MANUFACTURER'S WARRANTY IS THAT MADE BY THE MANUFACTURER ONLY. THE SELLER HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- USED VEHICLE WHETHER OR NOT SUBJECT TO MANUFACTURER'S WARRANTY: UNLESS A SEPARATE WRITTEN INSTRUMENT SHOWING THE TERMS OF ANY DEALER WARRANTY OR SERVICE CONTRACT IS FURNISHED BY DEALER TO BUYER, THIS VEHICLE IS SOLD "AS IS - NOT EXPRESSLY WARRANTED OR GUARANTEED", AND THE SELLER HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
9. PURCHASER SHALL NOT BE ENTITLED TO RECOVER FROM DEALER ANY CONSEQUENTIAL DAMAGES, DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS, OR INCOME, OR ANY OTHER INCIDENTAL DAMAGES.
10. The Purchaser, before or at the time of delivery of the motor vehicle covered by this Order will execute such forms of agreement or documents as may be required by the terms and conditions of payment indicated on the front of the order.

APPENDIX B

Attached hereto is documentation from the Pennsylvania Department of Transportation.

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

VEHICLE RECORD ABSTRACT

1/04/02

PAGE 1

020040710000217 002

OWNER : JAMIE MARTIN
6750 MILLER RD
BRECKSVILLE OH 43718

LESSEE : NONE

TITLE NUMBER : 51858649
TAG NUMBER :
VIN : JYACE01CSWA004907

MAKE : YAMAHA
MODEL :
RENEWAL WID :
PREVIOUS TAG :
LIENS : YES
STOPS : NO

TITLE DATE : 04/03/98
REGISTRATION EXPIRY DATE:
BODY TYPE : ORV
ODOMETER READING : *
*EXEMPT BY FED LAW
DUPLICATE TITLE COUNT : 0
VEHICLE YEAR : 1998
STOLEN DATE :

TITLE BRAND INFORMATION

NO TITLE BRANDS EXIST FOR THIS TITLE

PENNDOT

ADDRESS CORRESPONDENCE TO:
DEPARTMENT OF TRANSPORTATION
VEHICLE RECORD SERVICES
PO BOX 68691
HARRISBURG, PA 17106-8691

INFORMATION: (7:00 AM TO 9:00 PM)
IN STATE 1-800-932-4600
OUT-OF-STATE 717-391-6190
TDD IN STATE 1-800-228-0676
TDD OUT-OF-STATE 717-391-6191
WWW.DOT.STATE.PA.US

NO. 0498702

MV-1 (3-97)

MAKE OF VEHICLE YAMAHA	VEHICLE IDENTIFICATION NUMBER (VIN) IF TRADING JYACE01CSWA004907	BODY TYPE (SDN. TK. BUS, ETC) DRV	MODEL YEAR 98	I. TAX AMT PURCHASE PRICE (See note on reverse)
GROSS VEHICLE WT. RATING 1500	FUEL DIESEL	DIN/MECHNIC # ELECTRIC	AUTHORIZED NOTARY PUBLIC OR CERTIFIED INSPECTION MECHANIC (PRINT NAME) RICH HENKE	LESS TRADE-IN

CHECK THE APPROPRIATE BOX IF THE VEHICLE IS TO BE USED AS A PERSONAL VEHICLE AS A TAXI OR AS A TRADE VEHICLE IF AVAILABLE.	I certify that I have verified that a logbook trading cannot be required and that the above VIN is correct.	TAXABLE AMOUNT
--	---	-------------------

B. LAST NAME FOR FULL BUSINESS NAME MARTIN JANIE		FIRST NAME JANIE	MIDDLE INITIAL 	DEALER ID NUMBER (IF APPLICABLE)	X 6% (LOG) SALES TAX X 7% (.07) (See note on reverse)
CO-PURCHASER				DATE ACQUIRED/ PURCHASED 02-19-98	LESS TAX CREDIT

STREET 62930 RULT RD. BELLEMONT OH 43718	CITY BELLEMONT	COUNTY OHIO	STATE OH	ZIP 43718	1. SALES TAX DUE
--	--------------------------	-----------------------	--------------------	---------------------	---------------------

NOTE: If a co-purchaser other than your spouse is listed and you want the title to be listed as "Joint Tenants With Right of Survivorship" (On death of one owner, title goes to surviving owner.) CHECK HERE <input checked="" type="checkbox"/> Otherwise, the title will be issued as "Tenants in Common" (On death of one owner, interest of deceased owner goes to his/her heirs or estate.).					1A. Exemption Reason Code (must be a number from 1 to 26 or 0)
NOTE: IF THE VEHICLE IS BEING LEASED, CHECK THIS BLOCK <input type="checkbox"/> IF BLOCK IS CHECKED, COMPLETE AND ATTACH FORM MV-1L					1B. EXEMPTION NO.

<input type="checkbox"/> REFLECTS THE AMOUNT OF MILEAGE IN EXCESS OF ITS MECHANICAL LIMITS	<input type="checkbox"/> IS NOT THE ACTUAL MILEAGE WARNING: ODOMETER DISCREDIBLE	ODOMETER READING EXEMPT	2. TITLE FEE
---	--	-----------------------------------	-----------------

WARNING: FEDERAL AND STATE LAWS REQUIRE THAT YOU STATE THE MILEAGE IN CONNECTION
WITH THE TRANSFER OF OWNERSHIP. FAILURE TO COMPLETE OR PROVIDING A FALSE
STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT

1ST LIEN DATE: 02-19-98	→ IF NO LIEN, CHECK <input type="checkbox"/>	2ND LIEN DATE: 	→ IF NO LIEN CHECK <input type="checkbox"/>	3. LIEN FEE
--------------------------------	--	------------------------	---	----------------

1ST LIENHOLDER: NATIONAL CITY BANK of PA	2ND LIENHOLDER: 	4. REGISTRATION OR PROCESSING FEE
---	-------------------------	--------------------------------------

STREET: 6750 Miller Rd.	CITY: Brecksville OH 44141	STATE: OH	ZIP: 44141	Fee Exempt Number as assigned by the Bureau
--------------------------------	-----------------------------------	------------------	-------------------	--

FINANCIAL INSTITUTION NUMBER	FINANCIAL INSTITUTION NUMBER	5. DUPLICATE REG. FEE
------------------------------	------------------------------	--------------------------

MAKE OF VEHICLE	VIN	MODEL YEAR	6. NO. OF CARDS
-----------------	-----	------------	-----------------

BODY TYPE (SDN, BUS, TK, ETC)	CONDITION OF VEHICLE: <input type="checkbox"/> GOOD <input type="checkbox"/> FAIR <input type="checkbox"/> POOR	7. TRANSFER FEE
-------------------------------	---	--------------------

PASSENGER TAXIBUS	PASSENGER: <input type="checkbox"/> AX: <input type="checkbox"/> LIMOUSINE <input type="checkbox"/> SCHOOL BUS <input type="checkbox"/> MASS TRANSIT BUS <input type="checkbox"/> OTHER BUS SEATING CAPACITY: <input type="checkbox"/> 10 OR LESS <input type="checkbox"/> 11 TO 16 TO OVER 50	8. INCREASE FEE
-------------------	---	--------------------

MOTORCYCLE MOTOR DRIVEN CYCLE MOPED	CYLINDER CAPACITY: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO HORSEPOWER: <input type="checkbox"/> LEISURE <input type="checkbox"/> 5.0 OPERABLE PEDALS: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO MAX DESIGN SPEED: <input type="checkbox"/> 25 MPH OR LESS <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO AUTOMATIC TRANSMISSION: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO DESIGN/ADAPTED FOR ROAD USE: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	9. REPLACEMENT FEE
---	--	-----------------------

MOTOR HOME	CHASSIS MFR.	BODY MAKE	10. TOTAL PAID (ADD 1 THRU 9) Send One Check In This Amount
------------	--------------	-----------	--

TRAILER & VEHICLES BELOW	NUMBER OF AXLES	REQ. REGISTERED GROSS WT. (INCLUDING LOAD)
-----------------------------	-----------------	--

TRAILER & VEHICLES BELOW	SUM OF GAW'S:	UNL. LOAD WT. (EMPTY)
-----------------------------	---------------	-----------------------

TRACTOR	REQ. REGISTERED GROSS COMBINATION WT.	GROSS COMBINATION WT. RATING
---------	---------------------------------------	------------------------------

IMPLEMENT OF HUSBANDRY OR SPECIAL MOBILE EQUIPMENT → COMPLETE AND ATTACH FORM MV-190

G. ORIGINAL PLATE <input type="checkbox"/> Check One	<input type="checkbox"/> TRANSFER OF PREVIOUSLY ISSUED PLATE	<input type="checkbox"/> TRANSFER & RENEWAL OF PLATE
--	--	--

<input type="checkbox"/> PLATE TO BE ISSUED BY BUREAU (PROOF OF INSURANCE MUST BE ATTACHED)	<input type="checkbox"/> TRANSFER & REPLACEMENT OF PLATE	<input type="checkbox"/> TRANSFER OF PLATE & REPLACEMENT OF STICKER
---	--	--

PLATE NO.	REASON FOR REPLACEMENT		
-----------	------------------------	--	--

EXPIRES	<input type="checkbox"/> LOST	<input type="checkbox"/> STOLEN	<input type="checkbox"/> DEFACED
---------	-------------------------------	---------------------------------	----------------------------------

Month	Year	NOTE: If "NEVER RECEIVED" block is checked, applicant must complete Form MV-44.
-------	------	---

TRANSFERRED FROM TITLE NO.	VIN
----------------------------	-----

SIGNATURE OF PERSON FROM WHOM PLATE IS BEING TRANSFERRED (IF OTHER THAN APPLICANT):	<i>Regis</i>	RELATIONSHIP TO APPLICANT
---	--------------	---------------------------

TEMP. PLATE NO.	POLICY NO. (OR ATTACH BINDER)	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE
-----------------	----------------------------------	--------------------------	---------------------------

INSURANCE COMPANY NAME	ISSUING AGENT (PRINT NAME) BENTLEY YAMAHA & SUZUKI, INC.	AGENT NO. 87-1253
------------------------	--	-----------------------------

ISSUING AGENT INFORMATION	CERTIFY THAT ON MONTH 02 DAY 19 YEAR 98 , I HAVE CHECKED TO DETERMINE THAT THE VEHICLE IS INSURED AND ISSUED TEMPORARY REGISTRATION TO THE ABOVE APPLICANT, IN COMPLIANCE WITH ALL APPLICABLE PROVISIONS OF THE VEHICLE CODE AND DEPARTMENT REGULATIONS.	ISSUING AGENT SIGNATURE <i>Emely Bentley</i>	TELEPHONE NO. 412/746-7100
---------------------------------	---	---	--------------------------------------

WE ACKNOWLEDGE THAT WE MAY LOSE OUR OPERATING PRIVILEGE(S) OR VEHICLE REGISTRATIONS FOR FAILURE TO MAINTAIN FINANCIAL RESPONSIBILITY ON THE CURRENTLY REGISTERED VEHICLE FOR THE PERIOD OF REGISTRATION. WE FURTHER ACKNOWLEDGE THAT WE MAY BE SUBJECT TO A FINE NOT EXCEEDING \$5,000 AND IMPRISONMENT OF NOT MORE THAN TWO (2) YEARS FOR ANY FALSE STATEMENT THAT WE MAKE ON THIS FORM, AND WE CERTIFY THAT WE HAVE EXAMINED AND SIGNED THIS FORM AFTER ITS COMPLETION; AND, THAT, IF AN EXEMPTION FROM PAYMENT OF SALES TAX IS CLAIMED, WE ARE AUTHORIZED TO CLAIM THIS EXEMPTION. WE FURTHER CERTIFY THAT ALL STATEMENTS HEREIN ARE TRUE AND CORRECT AND MAKE APPLICATION FOR CERTIFICATE OF TITLE FOR THE VEHICLE DESCRIBED IN BLOCK A.
--

SUBSCRIBED AND SWORN TO BEFORE ME: NO. 02 DAY 19 YEAR 98	SIGNATURE OF INDIVIDUAL OR AUTHORIZED SIGNER
--	--

IN THE PRESENCE OF PERSON ADMINISTERING OATH	SIGNATURE OF CO-OWNER/TITLE OF AUTHORIZED SIGNER
--	--

S E A L	TELEPHONE NO. 519686-2767	MESSENDER NUMBER:
---------	----------------------------------	-------------------

SIGNATURE OF PERSON SIGNING NOTARY CERTIFYING COPY, WHICH IS TRUE
--

1. BUREAU OF MOTOR VEHICLE 2. STATE OF OHIO 3. CITY OF CLEVELAND 4. COUNTY OF CUYAHOGA 5. STATE OF OHIO 6. CITY OF CLEVELAND 7. COUNTY OF CUYAHOGA
--

RECEIVED IN THE CITY OF CINCINNATI, OHIO. The following information is contained in the record of this document. The record is not to be altered or destroyed and may not be removed from the office of the Clerk of Courts. The record is to be maintained in the office of the Clerk of Courts and is to be available to any person who first signs to receive or transmits this vehicle document.

Jamie Martin

62930 AVIT RD. Bellmont OH 43718

RENTAL VEHICLE, SUBDUED

871253 Evelyn Roth

Notary Seal

Matthew E. Lazear, Notary Public
Cincinatti, Ohio, Washington County
My Commission Expires: Jan. 31, 2000

Member Pennsylvania Association of Notaries

No Bonds

Declarant says that the statements set
forth in this document are true and accurate.

19 FEB 1998

Notary Public

No Testimony

10
Notary Public

No Testimony

19
Notary Public

No Testimony

18
Notary Public

No Testimony

19
Notary Public

No Testimony

20
Notary Public

Feb 19
1998
Notary Seal
Matthew E. Lazear, Notary Public
Cincinatti, Ohio, Washington County
My Commission Expires: Jan. 31, 2000
Member Pennsylvania Association of Notaries

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

MOUNTAIN EXTREME, INC.,
Plaintiff

vs.

ROBERT LUCHINI,
Defendant

vs.

THOMPSON YAMAHA, now known as
CLARION CYCLES,
Additional Defendant

: No. 03 - 102 - CD
:
: Type of Case: CIVIL
:
: Type of Pleading: ANSWER TO
: COMPLAINT AND NEW MATTER
: JOINING ADDITIONAL DEFENDANT
:
: Filed on Behalf of: DEFENDANT
:
: Counsel of Record for This Party:
: PAUL E. CHERRY, ESQ
:
: Supreme Court No. 42945
:
: CHERRY & CHERRY
: 23 East Park Avenue
: DuBois, PA 15801
: (814) 371-3288

FILED

APR 10 2003

William A. Shaw
Prothonotary

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

MOUNTAIN EXTREME, INC.,
Plaintiff

vs.

ROBERT LUCHINI,
Defendant

: No. 03 - 102 - C.D.

vs.

THOMPSON YAMAHA, now known as
CLARION CYLES,
Additional 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 Answer to Complaint and New Matter Joining Additional Defendant and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Amended Complaint or for any other claim or relief requested by the Plaintiffs. 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
(814) 765-2641 Ext. 5982

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

MOUNTAIN EXTREME, INC.,	:
Plaintiff	:
vs.	:
ROBERT LUCHINI,	:
Defendant	No. 03 - 102 - C.D.
vs.	:
THOMPSON YAMAHA, now known as	:
CLARION CYLES,	:
Additional Defendant	:

ANSWER TO COMPLAINT

AND NOW, comes the Defendant, ROBERT LUCHINI, by and through his attorneys, CHERRY & CHERRY, who file the following Answer to Complaint and in support thereof aver the following;

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted. By way of further answer, Defendant believed that he did hold ownership of said vehicle and that it was free and clear of liens and encumbrances as a result of the assurances he was offered when he purchased the vehicle from Additional Defendant, THOMPSON YAMAHA, now known as CLARION CYCLES.

7. Denied. The allegations contained in Paragraph 7 of Plaintiff's Complaint are conclusions of law to which no responsive pleading is required under the Pennsylvania Rules of Civil Procedure and the same, therefore, are denied.

8. Admitted. By way of further answer, Defendant believed that he did hold legal title to the vehicle in question when he entered into the sales agreement with Plaintiff.

9. Admitted. By way of further answer, Defendant believed that he did hold legal title to the vehicle in question and that there were no liens against said vehicle with any bank when he entered into the sales agreement with Plaintiff based upon the assurances he was offered when he purchased the vehicle from Additional Defendant, THOMPSON YAMAHA, now known as CLARION CYCLES.

10. Admitted in part and denied in part. It is admitted that the documentation from the Pennsylvania Department of Transportation shows that the vehicle is in fact titled to another individual and that there is a lien against said vehicle. It is denied, however, that Defendant knew that he did not own legal title to the vehicle or that the vehicle was subject to a lien with National City Bank. On the contrary, Defendant purchased the vehicle from Additional Defendant on October 6, 1999, and was assured that he held clear title and that there were no liens. Further, Additional Defendant advised Defendant that off road vehicles did not need to be titled.

11. Denied. The allegations contained in Paragraph 11 of Plaintiff's Complaint are conclusions of law to which no responsive pleading is required under the Pennsylvania Rules of Civil Procedure and the same, therefore, are denied.

12. (a) The allegations contained in Paragraph 12(a) of Plaintiff's Complaint are conclusions of law to which no responsive pleading is required under the Pennsylvania Rules of Civil Procedure and the same, therefore, are denied;

(b) The allegations contained in Paragraph 12(b) of Plaintiff's Complaint are conclusions of law to which no responsive pleading is required under the Pennsylvania Rules of Civil Procedure and the same, therefore, are denied;

(c) The allegations contained in Paragraph 12(c) of Plaintiff's Complaint are conclusions of law to which no responsive pleading is required under the Pennsylvania Rules of Civil Procedure and the same, therefore, are denied; and

(d) Admitted in part and denied in part. It is admitted that Plaintiff is entitled to in the event that a verdict is recovered by Plaintiff against Defendant, that Plaintiff is entitled to costs. It is denied, however, that Plaintiff is entitled to legal fees. On the contrary, 42 C.S.A. 2503 sets forth the circumstances in which reasonable counsel fees shall be awarded. By way of further answer, the July 1, 2001 Sales Agreement does not specify an award for legal fees in the event of a contract breach.

13. Admitted in part and denied in part. It is admitted that Plaintiff has made demand of Defendant that Defendant take steps to obtain legal title to the vehicle. It is denied, however, that Defendant has refused to do so.

WHEREFORE, Defendant, ROBERT LUCHINI, demands that judgment be entered in his favor and against Plaintiff, MOUNTAIN EXTREME, INC., with prejudice.

NEW MATTER JOINING AN ADDITIONAL DEFENDANT

Defendant, ROBERT LUCHINI, asserts this new matter pursuant to Pa. R.C.P. No. 2252(d) and joins Defendant, THOMPSON YAMAHA now known as CLARION CYCLES, as an Additional Defendant in this action on the following basis:

1. Additional Defendant, THOMPSON YAMAHA now known as CLARION CYCLES, is business operating under the laws of the Commonwealth of Pennsylvania and has a place of business at 20030 Paint Blvd., P.O. Box 140, Shippenville, Clarion County, Pennsylvania, 16254.

2. On October 6, 1999, Additional Defendant sold to Defendant, a 1998 YZ 125 Yamaha Motorcycle, VIN JYACE01C5WA0043907. A true and correct copy of the Sales Department Invoice is attached hereto and made a part hereof as Exhibit "A".

3. At the time Defendant purchased the vehicle, Additional Defendant warranted, both expressly and impliedly, that Defendant had title to the vehicle and that there were no liens against the vehicle.

4. At the time Defendant purchased the vehicle, Additional Defendant advised Defendant that it was not necessary to obtain a Pennsylvania Vehicle Title as he was purchasing an off-road vehicle.

5. Additional Defendant breached the aforesaid warranties, both express and implied, by selling Defendant a vehicle which was titled to a Jamie Martin of 6750 Miller Road, Brecksville, OH 43718, and which had a lien held by National City Bank of PA.

6. If Plaintiff establishes that they suffered injuries and damages as alleged in their Complaint, which allegations answering Defendant denies, said injuries and damages were caused solely by the negligence, recklessness and carelessness of Additional Defendant, their agents, servants, workmen and/or employees, by their acts and/or omissions in selling to Defendant a 1998 YZ 125 Yamaha Motorcycle, VIN JYACE01C5WA0043907, on October 6, 1999, which was titled in the name of Jamie Martin, 6750 Miller Road, Brecksville, OH 43718, which also shows a lien to National City Bank of PA.

7. As a result of the aforesaid actions and/or omissions, Additional Defendant, THOMPSON YAMAHA now known as CLARION CYCLES, is solely liable to Plaintiff for any alleged damages they may have suffered.

8. If as a result of the matters alleged in Plaintiff's Complaint, Defendant is held liable to Plaintiff for all or part of such damages as they may have sustained, Additional Defendant is the party primarily for such damages and is liable over to Defendant by way of contribution and/or indemnification, for all such damages as may be required to pay to Plaintiff.

9. In the alternative, if as a result of the matters alleged in Plaintiff's Complaint, Defendant is held liable to Plaintiff for all or part of such damages as Plaintiff may have sustained, Additional Defendant is jointly and/or severally liable to Plaintiff based upon the foregoing allegations for such damages and liable over to Defendant by way of contribution for all such damages Defendant may be required to pay to Plaintiff.

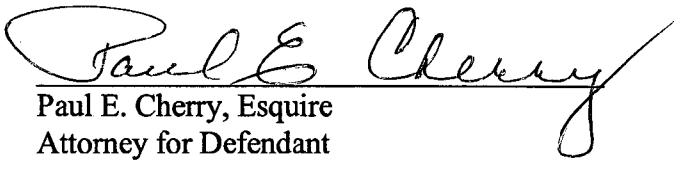
WHEREFORE, Defendant, ROBERT LUCHINI, demands:

- a. Judgment that, if there is any liability to Plaintiff, Additional Defendant, THOMPSON YAMAHA, now known as CLARION CYCLES, is solely liable over to Plaintiff;
- b. In the event that a verdict is recovered by Plaintiff against Defendant, ROBERT LUCHINI, that Defendant may have judgement over and against Additional Defendant, THOMPSON YAMAHA now known as CLARION CYCLES, by way of indemnification and/or contribution for the amount recovered by Plaintiff against Defendant, together with costs; and

c. Judgment in his favor and against Additional Defendant, THOMPSON YAMAHA, now known as CLARION CYCLES, for attorney fees pursuant to 42 Pa.C.S.A. §2503 (9) due to the bad faith of Additional Defendant in selling Defendant the aforesaid vehicle which was titled to another individual and which also had a lien against it.

Respectfully submitted,

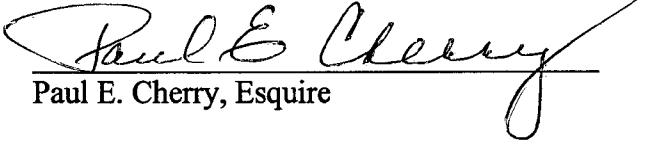
CHERRY & CHERRY



Paul E. Cherry
Paul E. Cherry, Esquire
Attorney for Defendant

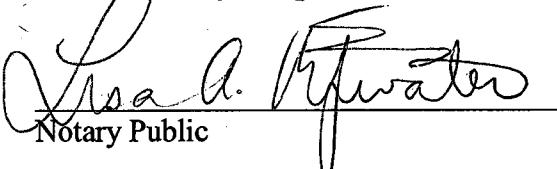
COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF CLEARFIELD :
:

PAUL E. CHERRY, Esquire, being duly sworn according to law deposes and says that he is the attorney for Defendant, ROBERT LUCHINI, in the foregoing action; that the facts set forth in the foregoing Answer to Complaint and New Matter Joining an Additional Defendant are true and correct based upon information received from the Defendant and after his own diligent inquiry, and that an Affidavit of the Defendant can be supplied at a later date upon request.


Paul E. Cherry, Esquire

Sworn to and subscribed before

me this 10th day of April, 2003.


Lisa A. Fitzwater
Notary Public

Notarial Seal
Lisa A. Fitzwater, Notary Public
City of DuBois, Clearfield County
My Commission Expires May 16, 2005

Apr 07 03 07:00a PRUDENTIAL
07/17/2001 15:00 FAX 8147645884

THOMPSON MOTORSP

(814)834-7873

P.2

001

Thompson Yamaha

RD 3 BOX 74C
Clinton, PA 16214
(814)-764-5888

SALES DEPARTMENT INVOICE

Finalize Deal

Receipt # 97014001
Receipt Date: 10/6/99

Cashier: Rod Thompson

Received From: LUCHINI, ROBERT J
369 S. KERSEY RD
KERSEY, PA 15045-9647
0148858767

Deal Sheet # 00000100

Yr: 98 Make: YAMAHA Model: YZF25 Stock: UV4907 VIN: JYACEN1C5WH004907

Paynt Meth	Amount	Couants/Refrence	Charge to A/R Account
Trade Equ.	3,661.51	Automatic Entry	
Check	371.00	PCRS CK 209	

Thank you for your business!

Wednesday, October 6th, 1999 3:37 pm

THOMPSON

YAMAHA

RD#3 Box 74 C
Rte. 322 East of Clarion
Clarion, PA 16214
(814) 764-5888
Fax (814) 764-5884

SALES PERSON

Bob

DATE

10/6/99

DEALERSHIP

TRADE IN DATA

YEAR 97
MODEL YZ125
COLOR BL/WL.
VIN# 2Y4B39DA04VA182834
OTHER

CUSTOMER DATA

CUSTOMER'S NAME Bobert L. Lubini
STREET 369 S. Kersay RD
CITY KERSAY, PA
ZIP 15846-9647
HOME PHONE 943-845-8767
WORK PHONE 943-845-8767
SOCIAL SECURITY NUMBER

MODEL INTERESTED IN

STOCK #

YEAR 98
MODEL YZ125
BODY STYLE BL/WL.
COLOR BL/WL.
VIN#

WHERE FINANCED? WHEN?

PRESENT PAYMENT

BALANCE OWED

WHERE PURCHASED NEW USED

SELLING PRICE

3895

TRADE VALUE

3545

DIFFERENCE

350

21

371

Parts Cost 1540 Desired Equipment

3545

350

21

371

1540

350

TRADE IN CONDITION

	OK	COST		OK	COST
PLASTIC			BEARINGS		
FRAME			FRONT END		
			STEERING		
BUMPERS			SPRINGS		
GLASS			SHOCKS/ STRUTS		
SEAT			BRAKES		
CARPETS			BATTERY		
TIREB			IGNITION		
ENGINE			MUFFLER		
SPROCKETS			EXHAUST		
CLUTCH			LIGHTS		
U-JOINTS			DETAIL		
REAR END			OTHER		
STARTER					
			RECON TOTAL	\$	

APPRaisal MANAGER

EXACT DELIVERY DATE

APPRaised TRADE VALUE

DOWN PAYMENT

DESIRED PAYMENTS

Atty Paul Cherry
cc
FEB 12 2003

FILED
10:58 AM
APR 10 2003

William A. Shaw
Fraternality

Cherry & Cherry
23 EAST PARK AVENUE
DUBOIS, PENNSYLVANIA 15801

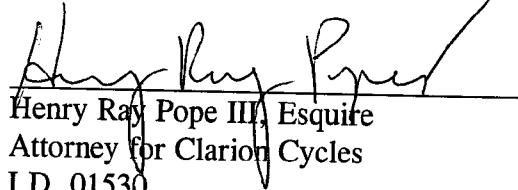
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
Civil Action - Law

MOUNTAIN EXTREME, INC., :
Plaintiff :
v. :
ROBERT LUCHINI, :
Defendant : No. 03 - 102 - CD
v. :
THOMPSON YAMAHA, now known as :
CLARION CYCLES, :
Additional Defendant :

PRAECIPE FOR APPEARANCE

TO THE PROTHONOTARY:

Please enter my appearance in the above captioned case as attorney for Additional
Defendant Clarion Cycles.


Henry Ray Pope III, Esquire
Attorney for Clarion Cycles
I.D. 01530
Pope and Drayer
Ten Grant Street
Clarion, PA 16214
814-226-5700

Date: May 27, 2003

FILED

MAY 29 2003

William A. Shaw
Prothonotary

CERTIFICATE OF SERVICE

I, Henry Ray Pope III, did on the date of this Certificate, serve a true and correct copy of the foregoing Praeclipe for Appearance on the following by First Class U.S. Mail, postage prepaid:

Paul E. Cherry, Esquire
Cherry & Cherry
23 East Park Avenue
DuBois, PA 15801

Dwight Koerber, Esquire
P. O. Box 1320
Clearfield, PA 16830

IN WITNESS WHEREOF, I have signed this Certificate this 27th day of May, 2003.

Henry Ray Pope
Henry Ray Pope, III, Esquire
Attorney for Clarion Cycles

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
Civil Action

MOUNTAIN EXTREME, INC.,
Plaintiff

No. 03 - 102 - CD

ROBERT LUCHINI,
Defendant

Type of Pleading:
Answer to New Matter Joining
an Additional Defendant

v.
THOMPSON YAMAHA, now known as
CLARION CYCLES,
Additional Defendant

Filed On Behalf Of:
Clarion Cycles

Counsel of Record for this Party:

Henry Ray Pope III, Esq.
Supreme Court No. 01530
POPE AND DRAYER
Ten Grant Street
Clarion, PA 16214
814-226-5700

FILED

MAY 29 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
Civil Action

MOUNTAIN EXTREME, INC.,	:	
Plaintiff	:	
	:	
v.	:	No. 03 - 102 - CD
	:	
ROBERT LUCHINI,	:	
Defendant	:	
	:	
v.	:	
	:	
THOMPSON YAMAHA, now known as	:	
CLARION CYCLES,	:	
Additional Defendant	:	

ANSWER TO NEW MATTER
JOINING AN ADDITIONAL DEFENDANT

AND NOW comes Clarion Cycles, by its attorney, Henry Ray Pope, III, of the law firm of Pope and Drayer, and files this Answer to the New Matter filed against Clarion Cycles by the above captioned original Defendant and in connection therewith submits the following:

1. The facts set forth in Paragraph 1 of Defendant's New Matter are denied in that Thompson Yamaha is not the same entity as Clarion Cycles nor did Clarion Cycles ever do business as Thompson Yamaha. Clarion Cycles is a registered fictitious name which is owned by Rexford Industries, Inc. No one interested in Rexford Industries, Inc., either as a director, officer or shareholder, ever had any interest in Thompson Yamaha.
2. Denied, in the Clarion Cycles did not sell the identified motorcycle to Defendant.
3. Denied, in that Clarion Cycles did not make any warranty to Defendant.
4. Denied, in that Clarion Cycles never made any representations to Defendant

including but not limited to the representation set forth in Paragraph 4 of Defendant's New Matter.

5. Denied, and in further answer thereto Clarion Cycles incorporates its answers set forth in Paragraphs 1 through 4, above, as its answer to Paragraph 5 of Defendant's New Matter.

6. Denied, and in further answer thereto Clarion Cycles incorporates its answers set forth in Paragraphs 1 through 4, above, as its answer to Paragraph 6 of Defendant's New Matter.

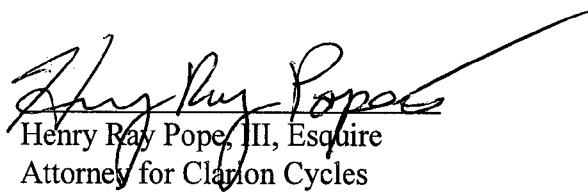
7. Denied, and in further answer thereto Clarion Cycles incorporates its answers set forth in Paragraphs 1 through 4, above, as its answer to Paragraph 7 of Defendant's New Matter.

8. The averment set forth in Paragraph 8 constitutes a legal conclusion and, therefore, no answer is required. In further answer thereto, Clarion Cycles asserts that it did not sell a vehicle to Defendant, made no representations to Defendant, and is not liable to Defendant for the damages claimed by Defendant against Clarion Cycles.

9. The averment set forth in Paragraph 9 constitutes a legal conclusion and, therefore, no answer is required. In further answer thereto, Clarion Cycles asserts that it did not sell a vehicle to Defendant, made no representations to Defendant, and is not liable to Defendant for the damages claimed by Defendant against Clarion Cycles.

WHEREFORE, Clarion Cycles requests your Honorable Court to enter judgment in favor of Clarion Cycles and against Defendant Robert Luchini, together with costs of suit.

Respectfully submitted,



Henry Ray Pope, III, Esquire
Attorney for Clarion Cycles

VERIFICATION

The undersigned says that the averments contained in the foregoing Answer to which this Verification is attached are true and correct to the best of his knowledge, information and belief. The undersigned further states that he understands that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

CLARION CYCLES

By: 
John R. Huegel

Date: May 21, 2003

CERTIFICATE OF SERVICE

I, Henry Ray Pope III, did on the date of this Certificate, serve a true and correct copy of the foregoing Answer to New Matter on the following by First Class U.S. Mail, postage prepaid:

Paul E. Cherry, Esquire
Cherry & Cherry
23 East Park Avenue
DuBois, PA 15801

Dwight Koerber, Esquire
P. O. Box 1320
Clearfield, PA 16830

IN WITNESS WHEREOF, I have signed this Certificate this 27 day of May, 2003.

Henry Ray Pope
Henry Ray Pope, III, Esquire
Attorney for Clarion Cycles

DEPARTMENT OF STATE
WASHDC

FILED
MAY 29 2003
NO. 65-11163
SAC
FBI

William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

MOUNTAIN EXTREME, INC.

VS.

LUCHINI, ROBERT -VS- THOMPSON YAMAHA n/k/a CLARION CYCLES

Sheriff Docket #

13984

03-102-CD

ANSWER TO COMPLAINT AND NEW MATTER JOINING ADDITIO

SHERIFF RETURNS

NOW APRIL 30, 2003, WILLIAM PECK, SHERIFF OF CLARION COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN ANSWER TO COMPLAINT & NEW MATTER JOINING ADDITIONAL DEFENDANT ON THOMPSON YAMAHA n/k/a CLARION CYCLES, DEFENDANT.

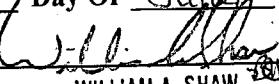
NOW MAY 8, 2003 SERVED THE WITHIN COMPLAINT & NEW MATTER JOINNG ADDITIONAL DEFENDANT ON THOMPSON YAMAHA n/k/a CLARION CYCLES, DEFENDANT BY DEPUTIZING THE SHERIFF OF CLARION COUNTY. THE RETURN OF SHERIFF PECK IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATNG THAT HE SERVED JOHN GUEGEL, NEW OWNER & ADULT IN CHARGE.

Return Costs

Cost	Description
27.74	SHERIFF HAWKINS PAID BY: ATTY CK# 6150
10.00	SURCHARGE PAID BY: ATTY CK# 6151
35.50	CLARION CO. SHFF. PAID BY: ATTY

Sworn to Before Me This

9th Day Of June 2003


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

So Answers,


Chester A. Hawkins
Sheriff

FILED

01916841
JUN 09 2003
FCD

William A. Shaw
Prothonotary

AFFIDAVIT OF SERVICE

IN THE COURT OF COMMON PLEAS
OF CLARION COUNTY

MOUNTAIN EXTREME, INC.

VERSUS

THOMPSON YAMAHA, NOW KNOWN AS CLARION CYCLES

No. 03-102-CD

COMMONWEALTH of PENNSYLVANIA
COUNTY OF CLARION

Before me, the undersigned, personally appeared

DEPUTY DOUG SLAGLE

who being duly sworn according to law, deposes and says that on
the 8TH of MAY, 2003 at 11:20 AMserved the within ANSWER TO COMPLAINT & NEW MATTER JOINING
ADDITIONAL DEFENDANTon the within named THOMPSON YAMAHA, NOW KNOWN AS CLARION CYCLES
at THEIR place of

30030 PAINT BOULEVARD, SHIPPENVILLE, PA 16254

Clarion County, Pennsylvania, by making known the contents to
THOMPSON YAMAHA, NOW KNOWN AS CLARION CYCLESand handing to and leaving with JOHN HUEGEL, NEW OWNER AND ADULT
IN CHARGE thecertified copy of the within ANSWER TO COMPLAINT & NEW MATTER
JOINING ADDITIONAL DEFENDANT received from

THE CLEARFIELD COUNTY SHERIFF'S OFFICE.

So Answers

Deputy

Sheriff of Clarion County

Sworn to and subscribed before me this

12th day of May A.D. 2003

Dolores M. Schmader

Notary Public

NOTARIAL SEAL
DOLORES M. SCHMADER, Notary Public
Clarion Boro, Clarion County
My Commission Expires Nov. 10, 2008



CHESTER A. HAWKINS
SHERIFF

Sheriff's Office Clearfield County

OFFICE (814) 765-2641 EXT. 5986
AFTER 4:00 P.M. (814) 765-1533
FAX (814) 765-5915

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

ROBERT SNYDER
CHIEF DEPUTY

CYNTHIA AUGHENBAUGH
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
Pg 13984

MOUNTAIN EXTREME INC.

TERM & NO. 03-102-CD

VS

DOCUMENT TO BE SERVED:

ROBERT LUCHINI
VS
THOMPSON YAMAHA n/k/a CLARION CYCLES

ANSWER TO COMPLAINT & NEW MATTER
JOINING ADDITIONAL DEFENDANT

SERVE BY: 05/10/2003

MAKE REFUND PAYABLE TO: CHERRY & CHERRY, ATTYS.

SERVE: THOMPSON YAMAHA now known as CLARION CYCLES

ADDRESS: 30030 PAINT BLVD, PO BOX 140, SHIPPENVILLE, PA. 16254

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby depelize the SHERIFF OF CLARION COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this 30th Day of APRIL 2003

Respectfully,

A handwritten signature in black ink, appearing to read "Chester A. Hawkins".

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY

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

MOUNTAIN EXTREME, INC.,
Plaintiff

-vs-

ROBERT LUCHINI,
Defendant

-vs-

THOMPSON YAMAHA, now
known as CLARION CYCLES,
Additional Defendant

*

*

*

*

*

*

Docket No. 03-102-CD

Type of pleading:
MOTION FOR JUDGMENT ON
THE PLEADINGS

Filed on behalf of:
PLAINTIFF, Mountain
Extreme, Inc.

Counsel of record for
this party:

Dwight L. Koerber, Jr.,
Esquire
PA I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
814-765-9611

FILED

JUL 30 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

MOUNTAIN EXTREME, INC.,
Plaintiff

-vs-

ROBERT LUCHINI,
Defendant

-vs-

THOMPSON YAMAHA, now
known as CLARION CYCLES,
Additional Defendant

*

*

Docket No. 03-102-CD

*

*

*

*

RULE RETURNABLE ORDER

AND NOW, this _____ day of _____, 2003, upon
consideration of the Motion for Judgment on the Pleadings filed by
plaintiff, IT IS THE ORDER AND DECREE of this Court that DEFENDANT
ROBERT LUCHINI show cause why the Motion should not be granted.

RULE RETURNABLE the _____ day of _____, 2003 for
filing written response.

BY THE COURT:

J.

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

MOUNTAIN EXTREME, INC.,
Plaintiff

-vs-

ROBERT LUCHINI,
Defendant

-vs-

THOMPSON YAMAHA, now
known as CLARION CYCLES,
Additional Defendant

*

*

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Docket No. 03-102-CD

MOTION FOR JUDGMENT ON THE PLEADINGS

COMES NOW, Plaintiff Mountain Extreme, Inc., by and through its attorney, Dwight L. Koerber, Jr., Esquire, and files the within Motion for Judgment on the Pleadings, under Pa.R.C.P. 1034. In support thereof, plaintiff avers and shows as follows:

1. In this proceeding, plaintiff seeks a monetary judgment in the amount of \$2,869.50 against Defendant Robert Luchini because the motorcycle which defendant traded in on a new purchase from plaintiff had a defective title (was not owned by defendant) and was subject to a lien encumbering the title.

2. Defendant has filed an Answer to the Complaint and has set forth as his defense that (a) he did not intentionally fail to give good and marketable title to a vehicle that he traded in, and (b)

he stated that the liability for the damages that are now claimed rests with a third party, to wit: Thompson Yamaha, known as Clarion Cycles.

3. Defendant has joined Thompson Yamaha, now known as Clarion Cycles, as an Additional Defendant.

4. Additional Defendant Clarion Cycles has filed an Answer to the New Matter joining it as an Additional Defendant, denying that it is legally responsible for the claims that the defendant has asserted against it, asserting that it is an entirely new and different business from that which had originally sold defendant his motorcycle.

5. As matters now stand, defendant has admitted in his Answer and New Matter the following:

(a) That the trade in of the 1998 YZ 125 Yamaha did occur (paragraph 4 of Complaint and paragraph 4 of Answer).

(b) That the trade in of the subject vehicle was made with the representation that defendant was the owner of the vehicle and that it was free and clear of liens and encumbrances (paragraph 6 of Complaint and paragraph 6 of Answer).

(c) That as a matter of fact, defendant did not hold title to the vehicle that it traded in (paragraph 8 of Complaint and paragraph 8 of Answer).

(d) That in addition to not holding title to the property, which defendant traded in, the vehicle in question is subject to certain liens and encumbrances (paragraphs 9 and 10 of Answer).

(e) That defendant has asserted as a defense the

statement that he did not know that title to the vehicle traded in was defective and that he did not know that it was encumbered (paragraphs 9 and 10 of defendant's Answer).

6. Defendant has set forth the affirmative defense of a third party being responsible for its inability to present title to the vehicle that it traded in, pointing to Thompson Yamaha, known as Clarion Cycles, as the responsible party. This affirmative defense, which is being contested by Additional Defendant, does not prevent plaintiff from receiving the relief that it is seeking through the Complaint it filed with the Court.

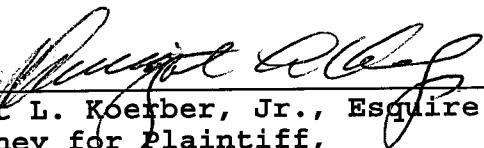
7. Accordingly, it is plaintiff's position that it is entitled to judgment as a matter of law, based upon the pleadings that have been filed herein.

8. Pursuant to the provisions of Pa.R.C.P. 1034, plaintiff is entitled to judgment on the pleadings.

9. In the event that it is deemed that defendant is contesting the amount of damages, plaintiff is entitled to judgment on the issue of liability.

WHEREFORE, plaintiff prays that judgment or partial judgment be entered in its favor and against defendant in this matter.

Respectfully submitted,

By: 
Dwight L. Koerber, Jr., Esquire
Attorney for Plaintiff,
MOUNTAIN EXTREME, INC.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
Docket No. 03-102-CD

MOUNTAIN EXTREME, INC.,
Plaintiff

-vs-

ROBERT LUCHINI,
Defendant

-vs-

THOMPSON YAMAHA, now known as
CLARION CYCLES,
Additional Defendant

MOTION FOR JUDGMENT
ON THE PLEADINGS

FILED 4cc
18-51401-AH
JUL 30 2003
Dwight Koerber

William A. Shaw
Prothonotary/Clerk of Courts

LAW OFFICE

DWIGHT KOERBER, JR.
ATTORNEY-AT-LAW
110 NORTH SECOND STREET
P. O. BOX 1320
CLEARFIELD, PENNSYLVANIA 16830

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

MOUNTAIN EXTREME, INC.,
Plaintiff

-vs-

ROBERT LUCHINI,
Defendant

-vs-

THOMPSON YAMAHA, now
known as CLARION CYCLES,
Additional Defendant

*

*

*

*

*

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*

Docket No. 03-102-CD

Type of pleading:
CERTIFICATE OF SERVICE

Filed on behalf of:
PLAINTIFF, Mountain
Extreme, Inc.

FILED

AUG 19 2003

William A. Shaw
Prothonotary/Clerk of Courts

Counsel of record for
this party:

Dwight L. Koerber, Jr.,
Esquire
PA I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
814-765-9611

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

*
MOUNTAIN EXTREME, INC.,
Plaintiff

-vs-

ROBERT LUCHINI,
Defendant

-vs-

THOMPSON YAMAHA, now
known as CLARION CYCLES,
Additional Defendant

* Docket No. 03-102-CD

*

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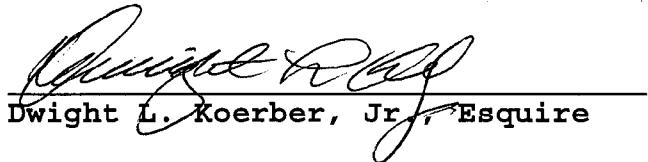
*

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of August, 2003, a certified copy of the Motion for Judgment on the Pleadings filed on behalf of plaintiff was served by United States First Class Mail upon the following:

Paul E. Cherry, Esquire
CHERRY AND CHERRY LAW OFFICES
23 East Park Avenue, Suite #1
DuBois, PA 15801

Henry Ray Pope, III, Esquire
POPE AND DRAYER
Ten Grant Street
Clarion, PA 16214


Dwight L. Koerber, Jr., Esquire

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
Docket No. 03-102-CD

MOUNTAIN EXTREME, INC.,
Plaintiff

-vs-

ROBERT LUCHINI,
Defendant

-vs-

THOMPSON YAMAHA, now known as
CLARION CYCLES,
Additional Defendant

CERTIFICATE OF SERVICE

FILED
12/5/03
AUG 19 2003
KJ

William A. Shaw
Prothonotary/Clerk of Courts

LAW OFFICE

DWIGHT KOERBER, JR.
ATTORNEY-AT-LAW
110 NORTH SECOND STREET
P. O. BOX 1320
CLEARFIELD, PENNSYLVANIA 16830

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

MOUNTAIN EXTREME, INC.,
Plaintiff

vs.

ROBERT LUCHINI,
Defendant

vs.

THOMPSON YAMAHA, now
known as CLARION CYCLES,
Additional Defendant

: No. 03 - 102 C.D.
:
: Type of Case: CIVIL
:
: Type of Pleading: PLAINTIFF'S
: ANSWERS TO MOTION FOR
: JUDGMENT ON THE PLEADINGS
:
: Filed on Behalf of: DEFENDANT
:
: Counsel of Record for This Party:
: PAUL E. CHERRY, ESQ
:
: Supreme Court No. 42945
:
: CHERRY & CHERRY
: 23 East Park Avenue
: DuBois, PA 15801
: (814) 371-3288

FILED

SEP 08 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

MOUNTAIN EXTREME, INC.,
Plaintiff

vs.

No. 03 - 102 - C.D.

ROBERT LUCHINI

Defendant

THOMPSON YAMAHA, now
known as CLARION CYCLES,

Additional Defendant

DEFENDANT'S ANSWERS TO MOTION FOR JUDGMENT ON THE PLEADINGS

AND NOW, comes the Defendant, ROBERT LUCHINI, by and through his attorneys, CHERRY & CHERRY, who files the following Defendant's Answers to Motion for Judgment on the Pleading, and in support thereof aver the following;

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted,
5. (a) Admitted.

(b) Admitted. By way of further answer, Defendant made the representation that he was the owner of the vehicle and that it was free and clear of liens and encumbrances because he was assured of the same when the vehicle was purchased.

(c) Admitted. By way of further answer, Defendant was assured that he was the owner of the vehicle when he purchased it.

(d) Admitted.

(e) Admitted.

6. Admitted in part and denied in part. It is admitted that Defendant has asserted the affirmative defense that Additional Defendant is responsible for the inability of Defendant to present clear title to the vehicle in question. It is denied that this affirmative defense, which is being contested by Additional Defendant, does not prevent Plaintiff from receiving the relief requested in its Complaint. On the contrary, the issue of whether Defendant or Additional Defendant is liable to Plaintiff is a matter still in controversy, therefore, Plaintiff's Motion for Judgment on the Pleadings should be denied.

7. Denied. On the contrary, the issue of whether Defendant or Additional Defendant is liable to Plaintiff is a matter still in controversy, therefore, Plaintiff's Motion for Judgment on the Pleadings should be denied.

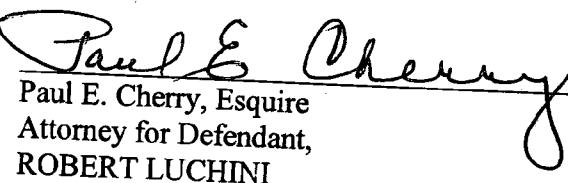
8. Denied. On the contrary, a Motion for Judgment on the Pleadings may only be granted where there are no material facts at issue and in the present case, the issue of whether Defendant or Additional Defendant is liable to Plaintiff is a matter still in controversy, therefore, Plaintiff's Motion for Judgment on the Pleadings should be denied.

9. Admitted in part and denied in part. It is admitted that Plaintiff is entitled to damages in the amount of \$2,869.50 which was the trade in value of said vehicle. By way of further answer, said damages are the responsibility of the Additional Defendant who sold Defendant the vehicle with the assurances that the vehicle was properly titled and that there were no liens or encumbrances against it. It is denied, however, that Plaintiff is entitled to attorney fees as requested in their Complaint. On the contrary, the Sales Invoice between the parties dated July 1, 2001, does not afford Plaintiff the right to seek attorney fees.

WHEREFORE, Defendant, ROBERT LUCHINI, requests that your Honorable Court deny Plaintiff's Motion for Judgment on the Pleadings.

Respectfully submitted,

CHERRY & CHERRY



Paul E. Cherry

Paul E. Cherry, Esquire
Attorney for Defendant,
ROBERT LUCHINI

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF CLEARFIELD : ss.
:

PAUL E. CHERRY, Esquire, being duly sworn according to law deposes and says that he is the attorney for Defendant in the foregoing action; that the facts set forth in the foregoing Defendant's Answer to Motion for Judgment on the Pleadings are true and correct based upon information received from the Defendant and after his own diligent inquiry, and that an Affidavit of the Defendant can be supplied at a later date upon request.

Paul E. Cherry
Paul E. Cherry, Esquire

Sworn to and subscribed before

me this 5th day of September, 2003.

Lisa A. Fitzwater
Notary Public



FILED NO
M 10:47 AM
SEP 08 2003
EPA
cc

William A. Shaw
Prothonotary/Clerk of Courts

Cherry & Cherry
23 EAST PARK AVENUE
DUBOIS, PENNSYLVANIA 15801

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

MOUNTAIN EXTREME, INC.,
Plaintiff

*

-VS-

DOCKET NO. 03-102-CD

ROBERT LUCHINI,
Defendant

*

-VS-

*

THOMPSON YAMAHA, now
known as CLARION CYCLES,
Additional Defendant

*

*

Type of Pleading:
PRAECIPE TO DISCONTINUE

Filed on Behalf of:

Plaintiff:

Mountain Extreme, Inc.

Counsel of Record for
This Party:

Dwight L. Koerber, Jr.,
Esquire
PA I.D. No. 16332

110 North Second Street
P.O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED

NOV 13 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

MOUNTAIN EXTREME, INC., *
Plaintiff

-vs-

DOCKET NO. 03-102-CD

ROBERT LUCHINI, *
Defendant *

-vs-

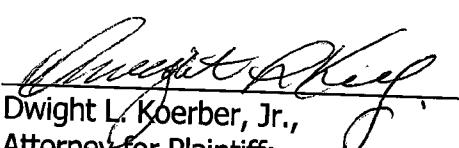
THOMPSON YAMAHA, now *
known as CLARION CYCLES, *
Additional Defendant *

PRAECIPE TO DISCONTINUE

TO: WILLIAM A. SHAW, PROTHONOTARY
COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
1 North Second Street
Clearfield, PA 16830

Please mark the docket in the above-referenced case as satisfied and discontinued with prejudice.

Respectfully submitted,

By: 
Dwight L. Koerber, Jr.,
Attorney for Plaintiff:
Mountain Extreme, Inc.

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

MOUNTAIN EXTREME, INC.,
Plaintiff

*

-VS-

DOCKET NO. 03-102-CD

ROBERT LUCHINI,
Defendant

*

-VS-

*

THOMPSON YAMAHA, now
known as CLARION CYCLES,
Additional Defendant

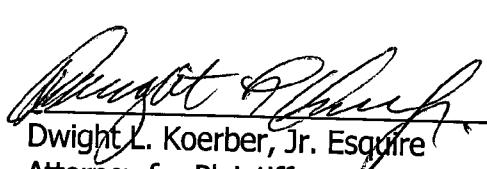
*

CERTIFICATE OF SERVICE

I certify that on this 13th day of November, 2003, a copy of the foregoing Praecept
to Discontinue was served by United States First Class Mail upon counsel for Defendants
at the following:

Paul E. Cherry, Esquire
CHERRY & CHERRY LAW OFFICES
23 East Park Avenue, Suite #1
DuBois, PA 15801

Henry Ray Pope, III, Esquire
POPE AND DRAYER
Ten Grant Street
Clarion, PA 16214


Dwight L. Koerber, Jr. Esquire
Attorney for Plaintiff:
Mountain Extreme, Inc.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
DOCKET NO: 03-102-CD

Mountain Extreme, Inc.

-vs-

Robert Luchini

-vs-

Thompson Yamaha, now known as
Clarion Cycles

PRAECLipe TO DISCONTINUE

FILED
01/13/05
NOV 13 2003
Amy Koerber
William A. Shaw
Prothonotary/Clerk of Courts
1 copy to clia
FEB 13 2003

LAW OFFICE

DWIGHT KOERBER, JR.

ATTORNEY-AT-LAW

110 NORTH SECOND STREET

P. O. BOX 1320

CLEARFIELD, PENNSYLVANIA 16830

COPY

**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA**

CIVIL DIVISION

Mountain Extreme, Inc.

Vs. **No. 2003-00102-CD**
Robert Luchini

Vs.

**Thompson Yamaha, now known as
Clarion Cycles, Additional Defendant**

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 13, 2003, marked:

Satisfied and Discontinued with Prejudice

Record costs in the sum of \$85.00 have been paid in full by Dwight L. Koerber, Jr., Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 13th day of November A.D. 2003.

William A. Shaw, Prothonotary