

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-

ROBERT LUCHINI,
Defendant

*

*

*

*

*

Docket No. 03- -CD

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.

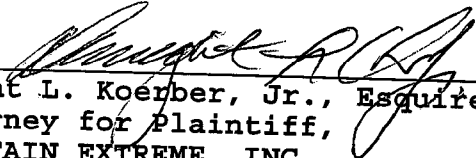
(d) Costs and legal fees.

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	cc
VEHICLE TRADED				425	cc
				5425	cc
				2100	cc
Trade 1998 42125 via JYACE01C5W A004907					
PARTS AND ACCESSORIES					
SUB TOTAL					
TAX					
TOTAL					
				11	
				3325	cc
				199	50
DOCUMENTARY CHARGE		TEMP. LICENSE	TRANSFER	TITLE	LIEN FEE
					53
					53
TOTAL CASH DELIVERED PRICE				3579	50
S E T T L E M E N T	CASH DEPOSIT SUBMITTED WITH ORDER				
	ALLOWANCE FOR TRADE-IN AS APPRAISED				
	LESS BALANCE OWING TO -				
	DESCRIPTION OF TRADE-IN				
	YEAR	MAKE	MODEL	TYPE	NET EQUITY
	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

STREET ADDRESS 369 South Keusey

CITY & STATE Keusey PA ZIP 15846

APPROVED

DEALER OR AUTHORIZED REPRESENTATIVE

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

MV-1 (3-97)

1 BUREAU OF MOTOR VEHICLES

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

MOUNTAIN EXTREME, INC.,
Plaintiff

-vs-

ROBERT LUCHINI,
Defendant

COMPLAINT

Law Office

DWIGHT L. KOERBER, JR.

ATTORNEY - AT - LAW

110 NORTH SECOND STREET

P. O. Box 1920

CLEARFIELD, PENNSYLVANIA 16830

500
Aug Koerber

01235871

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.
<u>\$ 64.97</u>	

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
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, 20 03 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

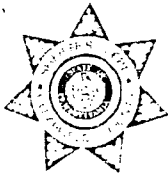
day of February A.D. 20 02

Sylvia H. Kronenwetter
Deputy Prothonotary

My Commission Expires
January 5, 2004

So answers,

Thomas C. Korte
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

DOCUMENT TO BE SERVED:
COMPLAINT

ROBERT LUCHINI

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-

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 A. Brown
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

N O T I C E

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action 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-

ROBERT LUCHINI,
Defendant

*

*

*

*

*

Docket No. 03- -CD

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.

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	cc		
VEHICLE TRADED					425.	cc		
					5425.	cc		
					2100	cc		
Trade 1998 42125 in JYACF01C5W A004907								
PARTS AND ACCESSORIES								
SUB TOTAL								
TAX								
TOTAL								
					11			
					3325.	cc		
					199.	50		
					53	cc		
DOCUMENTARY CHARGE								
TEMP. LICENSE								
TRANSFER								
TITLE								
LIEN FEE								
REGISTRATION								
TOTAL CASH DELIVERED PRICE					3579.	50		
SETTLEMENT	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.

Emilio Estrella

SALESMAN

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

DEALER OR AUTHORIZED REPRESENTATIVE

SIGNED _____ PURCHASER

STREET ADDRESS 369 South Keweenaw

CITY & STATE Keusey 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 : JYACE01C5WA004907

TITLE DATE : 04/03/98

REGISTRATION EXPIRY DATE:

BODY TYPE : ORV

MAKE : YAMAHA

ODOMETER READING :

*

MODEL :

*EXEMPT BY FED LAW

RENEWAL WID :

DUPLICATE TITLE COUNT : 0

PREVIOUS TAG :

VEHICLE YEAR : 1998

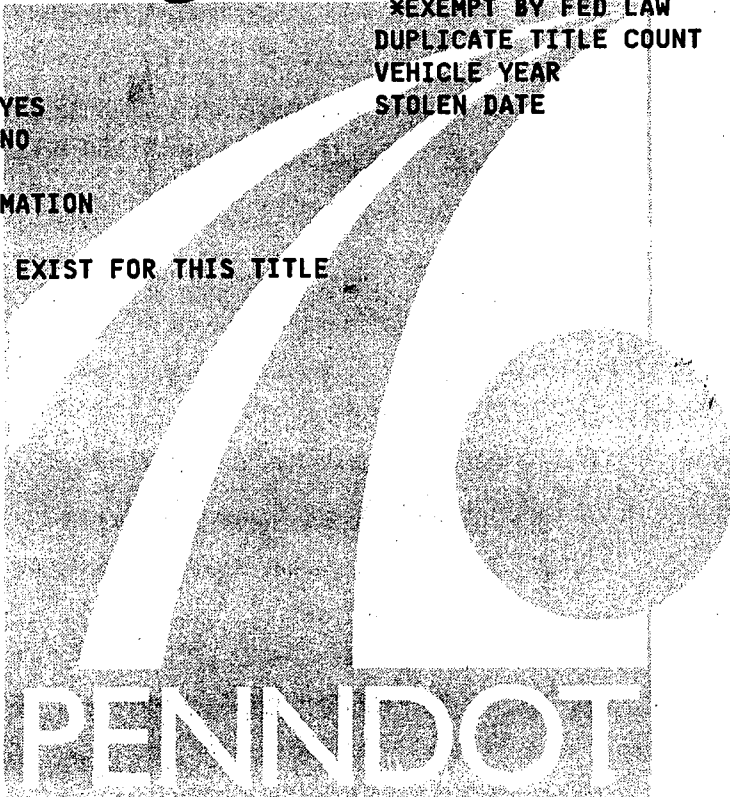
LIENS : YES

STOLEN DATE :

STOPS : NO

TITLE BRAND INFORMATION

NO TITLE BRANDS EXIST FOR THIS TITLE



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 AND	
MAKE OF VEHICLE YAMAHA		VEHICLE IDENTIFICATION NUMBER (VIN) IF TRACING REQUIRED TAPE SECURELY TO REVERSE OF THIS COPY JYACE01C5WA004907		BODY TYPE (SDN. TK. BUS, ETC.) DRV	MODEL YEAR 98
GROSS VEHICLE RATING		FUEL	DIN/MECHANIC #	AUTHORIZED NOTARY PUBLIC OR CERTIFIED INSPECTION MECHANIC (PRINT NAME)	
CHECK THE APPROPRIATE BOX IF THE VEHICLE IS TO BE USED FOR THE FOLLOWING PURPOSES: TAXI OR A POLICE VEHICLE (APPLICABLE)		I certify that I have verified that a proper tracing cannot be recorded and that the above VIN is correct.		TAXABLE AMOUNT	
LAST NAME (OR FULL BUSINESS NAME)		FIRST NAME	ADDRESS INITIAL	DEALER'S NUMBER (IF APPLICABLE)	X 6% (0.06) SALES TAX X 7% (0.07) (See note on reverse)
MARTIN JAMIE				DATE ACQUIRED/ PURCHASED 02-19-98	LESS TAX CREDIT
STREET		CITY	COUNTY	STATE	ZIP
62930 AULT 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 <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.)					(A. Exemption Reason Code (must be a number from 1 to 25 or 0) 1B. EXEMPTION NO.
NOTE: IF THE VEHICLE IS BEING LEASED CHECK THIS BLOCK <input type="checkbox"/> IF BLOCK IS CHECKED, COMPLETE AND ATTACH FORM MV-1L.					
<input type="checkbox"/> REFLECTS THE AMOUNT OF MILEAGE IN EXCESS OF ITS MECHANICAL LIMITS		<input type="checkbox"/> IS NOT THE ACTUAL MILEAGE WARNING: ODOMETER DISCREPANCY		ODOMETER READING Exempt	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.					LIEN FEE
1ST LIEN DATE: 02-19-98 → IF NO LIEN, CHECK <input type="checkbox"/>		2ND LIEN DATE:		→ IF NO LIEN, CHECK <input type="checkbox"/>	
1ST LIENHOLDER: NATIONAL CITY BANK of PA		2ND LIENHOLDER:		REGISTRATION OR PROCESSING FEE	
STREET: 6750 Miller Rd.		STREET:		Fee Exempt Number as assigned by the Bureau	
CITY: Brecksville OH 44141		CITY:		5. DUPLICATE REG. FEE	
FINANCIAL INSTITUTION NUMBER		FINANCIAL INSTITUTION NUMBER		NO. OF CARDS	
MAKE OF VEHICLE		VIN		MODEL YEAR	
BODY TYPE (SDN. BUS, TK, ETC.)		CONDITION OF VEHICLE		GOOD <input type="checkbox"/> FAIR <input type="checkbox"/> POOR <input type="checkbox"/>	
PASSENGER TAXI/BUS		PASSENGER <input type="checkbox"/> TAXI <input type="checkbox"/> LIMOUSINE <input type="checkbox"/> SCHOOL BUS <input type="checkbox"/> MASS TRANSIT <input type="checkbox"/> OTHER BUS <input type="checkbox"/>		SEATING CAPACITY	
MOTORCYCLE		CYLINDER CAPAC. <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		BRAKE HORSEPOWER <input type="checkbox"/> 16 TO <input type="checkbox"/> 50 <input checked="" type="checkbox"/> OVER 50	
MOTOR DRIVEN CYCLE		OPERABLE <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	
MOPED		AUTOMATIC TRANSMISSION <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		DESIGNATED FOR ROAD USE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
MOTOR HOME		CHASSIS MFR.		BODY MAKE	
TRAILER		NUMBER OF AXLES		REQ. REGISTERED GROSS WT. (INCLUDING LOAD)	
SUN OF GAWPS		UNLADEN WT. (EMPTY)		GROSS COMBINATION WT. RATING	
TRUCK		REQ. REGISTERED GROSS COMBINATION WT.		GROSS COMBINATION WT. RATING	
TRUCK TRACTOR		REQ. REGISTERED GROSS COMBINATION WT.		GROSS COMBINATION WT. RATING	
EQUIPMENT OF HUSBANDRY OR SPECIAL MOBILE EQUIPMENT		COMPLETE AND ATTACH FORM MV-180			
ORIGINAL PLATE <input checked="" 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	
<input type="checkbox"/> EXCHANGE PLATE TO BE ISSUED BY BUREAU		REASON FOR REPLACEMENT		LOST <input type="checkbox"/> STOLEN <input type="checkbox"/> DEFACED <input type="checkbox"/> NEVER REC'D (LOST IN MAIL)	
<input type="checkbox"/> TEMPORARY PLATE ISSUED BY FULL AGENT		PLATE NO.		EXPIRES	
Exempt		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)		SIGN HERE		RELATIONSHIP TO APPLICANT	
Exempt		Not Regis			
TEMP. PLATE NO.		POLICY NO. (OR ATTACH BINDER)		POLICY EFFECTIVE DATE	
INSURANCE COMPANY NAME		ISSUING AGENT (PRINT NAME)		AGENT NO.	
		BENTLEY YAMAHA & SUZUKI, INC.		87-1253	
ISSUING AGENT INFORMATION		ISSUING AGENT SIGNATURE		TELEPHONE NO.	
		Evelyn Bentley		412/746-7100	
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.		WE ACKNOWLEDGE THAT WE MAY LOSE MY/OUR OPERATING PRIVILEGE(S) 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, I AM/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.			
SIGNED AND WORK TO BEFORE ME		NO 02 DAY 19 YEAR 98		SIGNATURE OF INDIVIDUAL OR AUTHORIZED SIGNER	
Matthew E. [Signature]		SIGNATURE OF CO-OWNER/TITLE OF AUTHORIZED SIGNER			
SEAL		TELEPHONE NO. 414/86-2767		MESSENGER NUMBER:	
NOTARY PUBLIC STATE OF OHIO COMMISSION NO. [blank] EXPIRATION DATE [blank]					

Brent

RAK - 1-866-622-4257

3200 1-440-526-1188

Settlement date

<p>1. NAME OF PARTY TO WHOM THIS CERTIFICATE IS ISSUED</p>	<p>Jamie Martin 62930 Avit Rd. Belmont OH 43718 Renita Martin & Suzanne <i>871253 Evelyn Roth</i> Notary Seal Matthew E. Luzzo, Notary Public Cincinnati, Ohio, Washington County My Commission Expires Jan. 31, 2000 Member, Pennsylvania Association of Notaries</p>
<p>2. DATE OF CERTIFICATE</p>	<p>19 FEB 98 March 8, 1998 Notary Public</p>
<p>3. STATE OF CERTIFICATE</p>	<p>OHIO</p>
<p>4. COUNTY OF CERTIFICATE</p>	<p>Washington</p>
<p>5. ADDRESS OF PARTY TO WHOM THIS CERTIFICATE IS ISSUED</p>	<p>62930 Avit Rd. Belmont OH 43718</p>
<p>6. SIGNATURE OF PARTY TO WHOM THIS CERTIFICATE IS ISSUED</p>	<p>Matthew E. Luzzo Notary Public Cincinnati, Ohio, Washington County My Commission Expires Jan. 31, 2000 Member, Pennsylvania Association of Notaries</p>

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 J. [Signature]
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-

ROBERT LUCHINI,
Defendant

*

*

*

*

*

Docket No. 03- -CD

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 Zantzy G.M.

DATE:

1-17-03

APPENDIX A

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

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

PURCHASER'S

NAME Robert Luchini

DATE 7/1/01

PLEASE ENTER MY ORDER FOR ONE

☒ NEW ☐ USED ☐ DEMO AS FOLLOWS:

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 364 South Keisey

CITY & STATE Kearney 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 : JYACE01C5WA004907

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 AND	
MAKE OF VEHICLE YAMAHA		VEHICLE IDENTIFICATION NUMBER (VIN) IF THACMG REQUIRED TAPE SECURELY TO REVERSE OF THIS COP JYACE01C5W004907		BODY TYPE (SDN, TK, BUS, ETC.) DRV	
GROSS VEHICLE WEIGHT RATING		FUEL		MODEL YEAR 98	
CHECK THE APPROPRIATE BOX IF THE VEHICLE IS TO BE USED ON PUBLIC HIGHWAYS OR AS A TAXI, OR A SCHOOL BUS, OR A PUBLIC UTILITY VEHICLE.		DIN/MECHANIC #		AUTHORIZED NOTARY PUBLIC OR CERTIFIED INSPECTION MECHANIC (PRINT NAME)	
I certify that I have verified that a proper reading cannot be secured and that the above VIN is correct.		SIGN HERE		PURCHASE PRICE (See note on reverse) LESS TRADE-IN TAXABLE AMOUNT	
LAST NAME (OR FULL BUSINESS NAME)		FIRST NAME		DEALER'S NUMBER (IF APPLICABLE)	
MARTIN JAMIE				02-19-98	
STREET		CITY		STATE	
62930 AULT RD. BELLEFONT		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 <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.)		1A. Exemption Reason Code (must be a number from 1 to 26 or 0)		1B. EXEMPTION NO.	
NOTE: IF THE VEHICLE IS BEING LEASED CHECK THIS BLOCK <input type="checkbox"/> IF BLOCK IS CHECKED, COMPLETE AND ATTACH FORM MV-11.		IS NOT THE ACTUAL MILEAGE OF ITS MECHANICAL LIMITS		ODOMETER READING	
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.		IS NOT THE ACTUAL MILEAGE OF ITS MECHANICAL LIMITS		Exempt TENTHS	
1ST LIEN DATE: 02-19-98 → IF NO LIEN, CHECK <input type="checkbox"/>		2ND LIEN DATE: → IF NO LIEN, CHECK <input type="checkbox"/>		2. TITLE FEE	
1ST LIEN HOLDER: NATIONAL CITY BANK of PA		2ND LIEN HOLDER:		3. LIEN FEE	
STREET: 6750 Miller Rd.		STREET:		4. REGISTRATION OR PROCESSING FEE	
CITY: Brecksville OH 44141		CITY:		Fee Exempt Number as assigned by the Bureau	
FINANCIAL INSTITUTION NUMBER		FINANCIAL INSTITUTION NUMBER		5. DUPLICATE REG. FEE	
MAKE OF VEHICLE		VIN		NO. OF CARDS	
BODY TYPE (SDN, BUS, TK, ETC.)		CONDITION OF VEHICLE: <input type="checkbox"/> GOOD <input type="checkbox"/> FAIR <input type="checkbox"/> POOR		6. TRANSFER FEE	
PASSENGER TAXI/BUS		PASSENGER <input type="checkbox"/> TAXI <input type="checkbox"/> LIMOUSINE <input type="checkbox"/> SCHOOL BUS <input type="checkbox"/> MASS TRANSIT <input type="checkbox"/> OTHER BUS <input type="checkbox"/>		7. INCREASE FEE	
CYLINDER CAPACITY 6000 OR LESS		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		8. REPLACEMENT FEE	
OPERABLE PEDALS		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		9. TOTAL PAID (ADD 1 THRU 8) Send One Check In This Amount	
AUTOMATIC TRANSMISSION		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>			
MAX. DESIGN SPEED 25 MPH OR LESS		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>			
DESIGN DAILY REID FOR ROAD USE		YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>			
CHASSIS MFR.		BODY MAKE			
NUMBER OF AXLES		REQ. REGISTERED GROSS WT. (INCLUDING LOAD)			
SUM OF GAWPS		UNL. ADEN/V. (EMPTY)			
REQ. REGISTERED GROSS COMBINATION WT.		GROSS COMBINATION WT. RATING			
IMPLEMNT OF HUSBANDRY OR SPECIAL MOBILE EQUIPMENT		COMPLETE AND ATTACH FORM MV-190			
ORIGINAL PLATE <input checked="" 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	
<input type="checkbox"/> EXCHANGE PLATE TO BE ISSUED BY BUREAU		PLATE NO.		REASON FOR REPLACEMENT	
<input type="checkbox"/> TEMPORARY PLATE ISSUED BY FULL AGENT		EXPIRES		<input type="checkbox"/> LOST <input type="checkbox"/> STOLEN <input type="checkbox"/> DEFACED <input type="checkbox"/> NEVER REC'D (LOST IN MAIL)	
Exempt		Month Year		NOTE: IF "NEVER RECEIVED" block is checked, applicant must complete Form MV-44.	
TEMP. PLATE NO.		TRANSFERRED FROM TITLE NO.		VIN	
INSURANCE COMPANY NAME		SIGNATURE OF PERSON FROM WHOM PLATE IS BEING TRANSFERRED (IF OTHER THAN APPLICANT)		SIGN HERE	
		POLICY NO. (OR ATTACH BINDER)		POLICY EFFECTIVE DATE	
		POLICY EXPIRATION DATE		RELATIONSHIP TO APPLICANT	
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 (PRINT NAME)	
				BENTLEY YAMAHA & SUZUKI, INC.	
				AGENT NO. 87-1253	
				ISSUING AGENT SIGNATURE	
				Bentley	
				TELEPHONE NO. 412/746-7100	
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.		SUBSCRIBED AND SIGNED TO BEFORE ME		SIGNATURE OF INDIVIDUAL OR AUTHORIZED SIGNER	
		NO. 02 DAY 19 YEAR 98		Jamie Martin	
SEAL AND APPLICATION FOR TITLE		SIGNATURE OF PERSON ADMINISTERING OATH		SIGNATURE OF CO-OWNER/TITLE OF AUTHORIZED SIGNER	
SEAL		SIGNATURE OF NOTARY PUBLIC		TELEPHONE NO. 414/86-2767	
				MESSENGER NUMBER:	

1. BUREAU OF MOTOR VEHICLES

RAH - 1-866-622-4257
 1-440-526-1188
 3200
 Sales date

DISTRICT OF COLUMBIA	<p>Notary Public Seal Matthew G. Lessor, Notary Public Commission of Rock Washington County My Commission Expires Jan. 31, 2000 Member Pennsylvania Association of Notaries</p>
DISTRICT OF COLUMBIA	<p>Jamie Martin 62930 Avit Rd. Bellemont OH 43716 871253 Evelyn Smith 19 FEB 98 March 1, 1998</p>
DISTRICT OF COLUMBIA	<p>Notary Public Seal Matthew G. Lessor, Notary Public Commission of Rock Washington County My Commission Expires Jan. 31, 2000 Member Pennsylvania Association of Notaries</p>
DISTRICT OF COLUMBIA	<p>Notary Public Seal Matthew G. Lessor, Notary Public Commission of Rock Washington County My Commission Expires Jan. 31, 2000 Member Pennsylvania Association of Notaries</p>
DISTRICT OF COLUMBIA	<p>Notary Public Seal Matthew G. Lessor, Notary Public Commission of Rock Washington County My Commission Expires Jan. 31, 2000 Member Pennsylvania Association of Notaries</p>
DISTRICT OF COLUMBIA	<p>Notary Public Seal Matthew G. Lessor, Notary Public Commission of Rock Washington County My Commission Expires Jan. 31, 2000 Member Pennsylvania Association of Notaries</p>
DISTRICT OF COLUMBIA	<p>Notary Public Seal Matthew G. Lessor, Notary Public Commission of Rock Washington County My Commission Expires Jan. 31, 2000 Member Pennsylvania Association of Notaries</p>

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

David S. Meholick, 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

VS.

THOMPSON YAMAHA, now known as
CLARION CYLES,
Additional Defendant

No. 03 – 102 - C.D.

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, Shippensburg, 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.

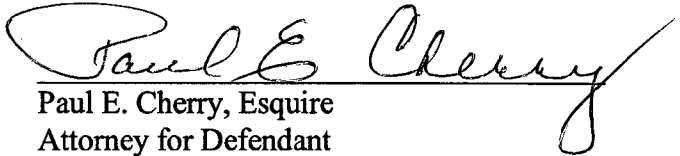
WHEREFORE, Defendant, ROBERT LUCHINI, demands:

- 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, Esquire
Attorney for Defendant

COMMONWEALTH OF PENNSYLVANIA

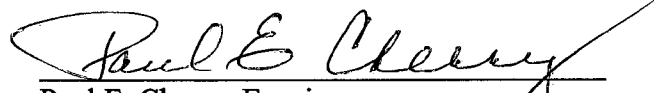
:

: ss.

COUNTY OF CLEARFIELD

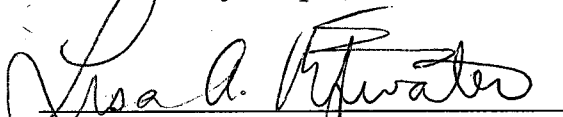
:

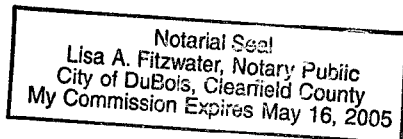
PAUL E. CHERRY, Esquire, being duly sworn according to law deposes and says that he is the attorney for Defendant, ROBERT LUCHINI, in the foregoing action; that the facts set forth in the foregoing Answer to Complaint and New Matter Joining an Additional Defendant are true and correct based upon information 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.


Notary Public



Apr 07 03 07:00a

PRUDENTIAL

(814) 834-7873

P.2

07/17/2001 15:00 FAX 8147645884

THOMPSON MOTORSP

001

Thompson Yamaha

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

SALES DEPARTMENT INVOICE

Finalize Deal

Receipt # 97014001
Receipt Date: 10/6/99

Cashier: Rod Thompson

Received From: LUCINI, ROBERT J
369 S. KERSEY RD
KERSEY, PA 15045-9647
0149858767

Deal Sheet # 00001100

Yr 98 Make: YAMAHA Model: YZ125 Stock: DV4907 VIN: JYACE01C5H0004907

Pymt Meth	Amount	Comments/Reference	Charge to A/R Account
Trade Equ.	3,861.51	Automatic Entry	
Check	371.00	PEPS CR 200	

Thank you for your business!

Wednesday, October 6th, 1999 3:37 pm



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

SALES PERSON

DATE

DEALERSHIP

TRADE IN DATA

YEAR

MAKE

97 YAMAHA

MODEL 42125

COLOR BL/WL

VIN 24439DA01VA182834

OTHER

WHERE FINANCED?

WHEN?

PRESENT PAYMENT

BALANCE OWED

WHERE PURCHASED

NEW USED

TRADE IN CONDITION

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

APPRAISING MANAGER

APPRAISED TRADE VALUE

CUSTOMER DATA

CUSTOMER'S NAME

Robert U. Lukini

STREET

369 S. Kersay RD

CITY

KERSAY, PA

ZIP

15846-9647

HOME PHONE

WORK PHONE

914-385-8767

SOCIAL SECURITY NUMBER

HOW DID CUSTOMER HEAR ABOUT US?

PARTS (part + 15%) OK

DESIRED EQUIPMENT

MODEL INTERESTED IN

STOCK #

YEAR

98

MAKE

YAMAHA

MODEL

42125

BODY STYLE

COLOR

BL/WL

VIN #

SELLING PRICE

3895

TRADE VALUE

3545

DIFFERENCE

350

21

371 = 21

21 TAX
371 = 21
350 = 21

EXACT DELIVERY DATE

DOWN PAYMENT

DESIRED PAYMENTS

			<p>FILED</p> <p>APR 10 2003</p> <p>William A. Shaw Prothonotary</p>	<p><i>Cherry & Cherry</i> 23 EAST PARK AVENUE DUBOIS, PENNSYLVANIA 15801</p>
--	--	--	--	--

cc Atty Paul Cherry
9/25

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

MOUNTAIN EXTREME, INC.,
Plaintiff

v.

ROBERT LUCHINI,
Defendant

v.

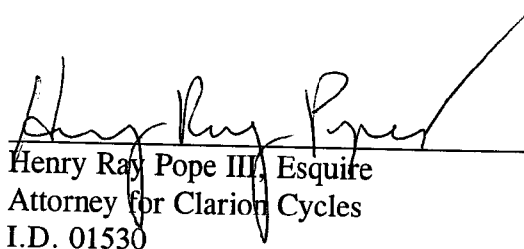
THOMPSON YAMAHA, now known as
CLARION CYCLES,
Additional Defendant :

No. 03 - 102 - CD

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 Praecipe for Appearance on the following by First Class U.S. Mail, postage prepaid:

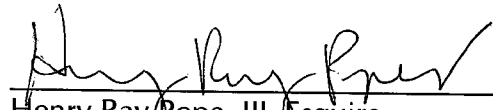
Paul E. Cherry, Esquire
Cherry & Cherry
23 East Park Avenue
DuBois, PA 15801

(Attorney for Defendant)

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

(Attorney for Plaintiff)

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


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

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.

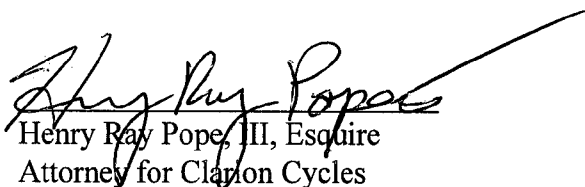
7. Denied, and in further answer thereto Clarion Cycles incorporates its answers set forth in Paragraphs 1 through 4, above, as its answer to Paragraph 7 of Defendant's New Matter.

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.

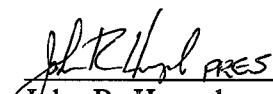
Respectfully submitted,


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:  PRES
John R. Huegel

Date: MAY 21, 2003

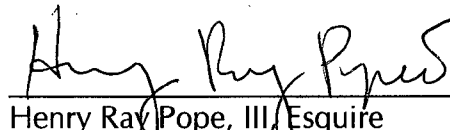
CERTIFICATE OF SERVICE

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 (Attorney for Defendant)
Cherry & Cherry
23 East Park Avenue
DuBois, PA 15801

Dwight Koerber, Esquire (Attorney for Plaintiff)
P. O. Box 1320
Clearfield, PA 16830

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



Henry Ray Pope, III, Esquire
Attorney for Clarion Cycles

JOHN SMITH & SONS INC.
Baltimore

William A. Shaw
Prothonotary

FILED
NO
MAY 29 2003
cc

In The Court of Common Pleas of Clearfield County, Pennsylvania

MOUNTAIN EXTREME, INC.

VS.

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

ANSWER TO COMPLAINT AND NEW MATTER JOINING ADDITIO

Sheriff Docket # 13984

03-102-CD

SHERIFF RETURNS

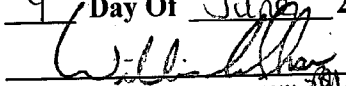
NOW APRIL 30, 2003, WILLIAM PECK, SHERIFF OF CLARION COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN ANSWER TO COMPLAINT & NEW MATTER JOINING ADDITIONAL DEFENDANT ON THOMPSON YAMAHA n/k/a CLARION CYCLES, DEFENDANT.

NOW MAY 8, 2003 SERVED THE WITHIN COMPLAINT & NEW MATTER JOINING 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

019:16:4H
JUN 09 2003
RED

William A. Shaw
Prothonotary

AFFIDAVIT OF SERVICE

IN THE COURT OF COMMON PLEAS
OF CLARION COUNTY

MOUNTAIN EXTREME, INC.
VERSUS

No. 03-102-CD

THOMPSON YAMAHA, NOW KNOWN AS CLARION CYCLES

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 AM

served the within ANSWER TO COMPLAINT & NEW MATTER JOINING
ADDITIONAL DEFENDANT

on 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 CYCLES

and handing to and leaving with JOHN HUEGEL, NEW OWNER AND ADULT
IN CHARGE the

certified copy of the within ANSWER TO COMPLAINT & NEW MATTER
JOINING ADDITIONAL DEFENDANT received from

THE CLEARFIELD COUNTY SHERIFF'S OFFICE.

So Answers

Deputy

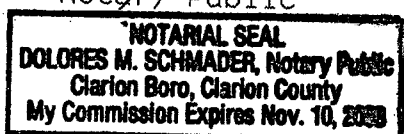
William H. Puck III
Sheriff of Clarion County

Sworn to and subscribed before me this

12th day of May A.D. 2003

Dolores M. Schmader

Notary Public





Sheriff's Office Clearfield County

OFFICE (814) 765-2641 EXT. 5986
AFTER 4:00 P.M. (814) 765-1533
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
Pg 13984

MOUNTAIN EXTREME INC.

VS

ROBERT LUCHINI

VS

THOMPSON YAMAHA n/k/a CLARION CYCLES

TERM & NO. 03-102-CD

DOCUMENT TO BE SERVED:

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 deputize 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,

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

*

*

*

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 400

8:51 AM
JUL 30 2003
Dkt
Atty 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

*

*

*

*

*

*

*

*

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

*

*

*

*


*

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 No cc
0/2:57:44
AUG 19 2003 QRS

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.

ROBERT LUCHINI
Defendant

THOMPSON YAMAHA, now
known as CLARION CYCLES,
Additional Defendant

:
:
:
: No. 03 - 102 - C.D.
:
:
:
:
:
:

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.

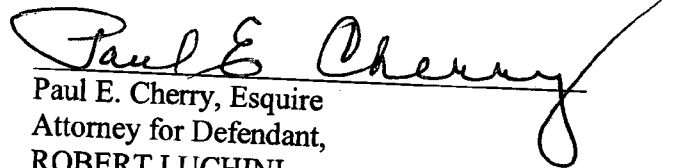
8. Denied. On the contrary, a Motion for Judgment on the Pleadings may only be granted where there are no material facts at issue and in the present case, the issue of whether Defendant or Additional Defendant is liable to Plaintiff is a matter still in controversy, therefore, Plaintiff's Motion for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

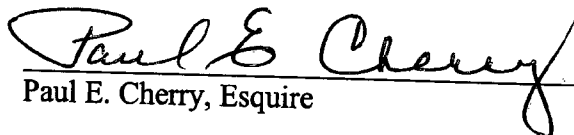

Paul E. Cherry, Esquire
Attorney for Defendant,
ROBERT LUCHINI

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CLEARFIELD

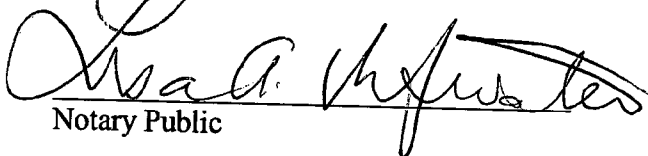
:
: SS.
:

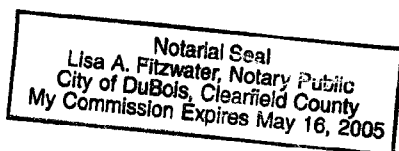
PAUL E. CHERRY, Esquire, being duly sworn according to law deposes and says that he is the attorney for Defendant in the foregoing action; that the facts set forth in the foregoing Defendant's Answer to Motion for Judgment on the Pleadings are true and correct based upon information received from the 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, Esquire

Sworn to and subscribed before

me this 5th day of September, 2003.


Notary Public



			<p>FILED NO CC M 10:41 AM SEP 08 2003 EPA</p> <p>William A. Shaw Prothonotary/Clerk of Courts</p>	<p><i>Cherry & Cherry</i> 23 EAST PARK AVENUE DUBOIS, PENNSYLVANIA 15801</p>
--	--	--	--	--

**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:
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

*

*

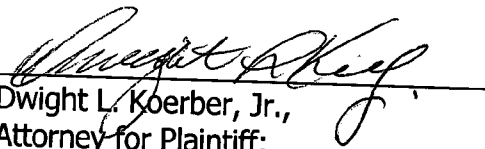
PRAECIPE TO DISCONTINUE

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

*

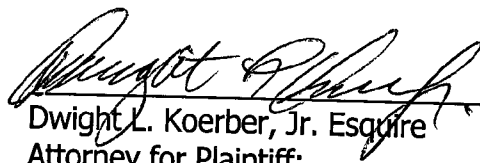
*

CERTIFICATE OF SERVICE

I certify that on this 13th day of November, 2003, a copy of the foregoing Praecipe 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

PRAECIPE TO DISCONTINUE

FILED
03:05 PM
NOV 13 2003

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

4cc
Atty Koerber
1 copy to C/A
KRS

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