

03-744-CD
GEORGE A. BANEY, et al vs ALBERT LLOYD BANEY, JR., et al

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

GEORGE A. BANEY and
MARGARET I. BANEY,
Plaintiffs

vs.

ALBERT LLOYD BANEY, JR.,
LAURA E. BANEY and
MICHAEL BANEY,
Defendants

03- 744 - CD

Type of Case: Civil

Type of Pleading: Complaint in
Equity

Filed on behalf of: Plaintiffs

Counsel of Record for this Party:
Andrew P. Gates, Esquire

Supreme Court No.: 36604

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, Pennsylvania 16830
(814) 765-1766

FILED

MAY 16 2003

William A. Shaw
Prothonotary

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

GEORGE A. BANEY and	:		
MARGARET I. BANEY,	:		
Plaintiffs	:	03-	- CD
	:		
vs.	:		
	:	IN EQUITY	
ALBERT LLOYD BANEY, JR.,	:		
LAURA E. BANEY and MICHAEL	:		
BANEY,	:		
Defendants	:		

NOTICE TO DEFEND

YOU have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

DAVID MEHOLICK, COURT ADMINISTRATOR
Clearfield County Court House
Clearfield, PA 16830
(814) 765-2641

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

GEORGE A. BANEY and	:		
MARGARET I. BANEY,	:		
Plaintiffs	:	03-	- CD
	:		
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	:	IN EQUITY	
ALBERT LLOYD BANEY, JR.,	:		
LAURA E. BANEY and MICHAEL	:		
BANEY,	:		
Defendants	:		

COMPLAINT IN EQUITY

NOW COMES, Plaintiffs, George A. Baney and Margaret I. Baney, by their attorneys, Gates & Seaman, who assert the following cause of action and in support thereof aver the following:

1. Plaintiff, George A. Baney, is an adult individual residing in Lawrence Township, Clearfield County, Pennsylvania with a mailing address of 345 Baney Road, Clearfield, Pennsylvania 16830.

2. Plaintiff, Margaret I. Baney, is an adult individual who is at all times relevant to these proceedings has been intermarried with Plaintiff, George A. Baney, and likewise resides in Lawrence Township, Clearfield County, Pennsylvania with a mailing address of 345 Baney Road, Clearfield, Pennsylvania 16830.

3. Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, husband and wife, are adult individuals who reside in

Lawrence Township, Clearfield County, Pennsylvania with a mailing address of 305 Baney Road, Clearfield, Pennsylvania 16830.

4. Defendant, Michael Baney, is an adult individual residing in Lawrence Township, Clearfield County, Pennsylvania, with a mailing address of 339 Baney Road, Clearfield, Pennsylvania 16830.

5. By virtue of a deed from Arietta Baney, widow, dated October 12, 1979 and appearing of record in Clearfield County Deed Book 788, Page 432, Arietta Baney and her son, Defendant Albert Lloyd Baney, as joint tenants with the right of survivorship became vested with a parcel containing 2.5 acres situate in Lawrence Township, Clearfield County, Pennsylvania, which bounds Baney Road (formerly referred to as Township Route T-613) on the West. A photocopy of the aforementioned deed is attached hereto and made a part hereof as Exhibit "A".

6. By virtue of a deed from his mother, Arietta Baney, dated February 14, 1984 and appearing of record in Clearfield County Deeds and Records Book 931, Page 392, Defendant Albert Lloyd Baney, Jr. became vested with sole ownership of the aforementioned 2.5 acre parcel. A photocopy of the aforementioned deed is attached hereto and made a part hereof as Exhibit "B".

7. By deed dated August 5, 1992 and appearing of record in Clearfield County Deeds and Records Book 1476, Page 355, Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, his wife, granted and conveyed unto Plaintiffs, George A. Baney and Margaret I. Baney, his wife, a 0.5 acre parcel that came out of the 2.5 acre parcel identified in the preceding paragraph. Attached hereto and made a part hereof as Exhibit "C" is a photocopy of the aforementioned deed.

8. The aforementioned 0.5 acre parcel of Plaintiffs, identified in the preceding paragraph, does not border a public road and no provision was made in the aforementioned deed providing the Grantees (Plaintiffs herein) access to said premises off of a public road. By way of illustration, attached hereto and made a part hereof as Exhibit "D" is a blown up portion of the Clearfield County Assessment Map wherein Defendants' larger parcel is identified by Clearfield County Assessment Map Number 123-L7-34 while Plaintiffs' 0.5 acre parcel is identified by Clearfield County Assessment Map Number 123-L7-103, with both parcels being colored in yellow on the aforementioned Exhibit.

9. At the present time, Plaintiffs reside on their 0.5 acre parcel, in a double wide manufactured home which they had installed on said parcel in 1993, at their sole expense.

10. As of August 5, 1992, being the date of the deed from Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, his wife, to Plaintiffs, the northeast quadrant of said Defendants 2.5 acre parcel was accessed by an existing earthen road approximately twenty (20) feet in width which leads off of Baney Road, (formerly known as Township Route T-613) running first in a generally westerly direction then forking into two (2) separate earthen roads, having the same uniform width of twenty (20) feet, with the first thereof curving significantly to the north and then northeast, while the second thereof continues in a generally westerly direction.

11. The lengths of the three (3) earthen roads identified in the preceding paragraph are as follows:

- (i) from Baney Road to location of fork in road, approximately one hundred (100) feet;
- (ii) for earthen road beginning at fork and curving in a generally north and then northeasterly direction, approximately sixty (60') feet; and
- (iii) for earthen road beginning at fork and continuing on in a generally westerly direction, approximately seventy-six (76') feet.

12. At the termination point of the aforementioned earthen road described in the preceding paragraph, as curving to the north and then northeast, Defendant Albert Lloyd Baney,

Jr. had constructed a "tripod" from existing trees and other accessories which "tripod" has always been utilized by Plaintiffs and Defendants to do engine work on their various motor vehicles, including use of the same to extract motors from said motor vehicles.

13. During calender year 1981, when the aforementioned 2.5 acre parcel was owned jointly by Arietta Baney and Defendant, Albert Lloyd Baney, with the permission of the then owners, Plaintiffs purchased and installed at their sole expense, a trailer in nearly the same location as their current residence, and have continuously resided on said parcel for approximately twenty-two (22) years.

14. Contemporaneously with the purchase and installation of the trailer referred to in the preceding paragraph, Plaintiffs, with the permission of the then owners, installed at their sole expense an on site septic system for use in conjunction with their trailer, which septic system includes a four (4") inch sewer line Plaintiffs' installed from their home site to the northeast quadrant of Defendants Albert Lloyd Baney's present two (2) acre parcel where said sewer line terminates at the location of said septic system's "leach bed".

15. Plaintiffs' have continuously utilized said on lot septic system from 1981 to the present.

16. On or about the summer of 1984, with the permission and full knowledge of Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, Plaintiffs at their sole expense, constructed, built and extended the earthen roadway a distance of approximately seventy-six (76) feet so that the same traversed on to what is now their 0.5 acre parcel for purposes of providing a means of motor vehicle access for said property to a public road, (i.e. Baney Road).

17. Since approximately 1984, Plaintiffs have maintained and continued to improve the entire length of said earthen roadway, as extended, by building the same up and otherwise installing gravel over a large portion thereof.

18. On or about May 2002, Plaintiffs, at their sole expense, constructed at the end of the extended earthen roadway a garage consisting of a metal pole building into which they park and store their personal vehicles.

19. Plaintiffs sole source of motor vehicle access from their residence property to a public road is over the aforementioned earthen road, as extended by them, which Plaintiffs have used continuously to date.

20. Since neither Plaintiffs' 0.5 acre or the remaining 2.0 acre parcel of Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, his wife, have access to public water, the dwellings of both Plaintiffs and said Defendants utilize

well water to supply potable water to said residences for personal use.

21. On or about January 1987, a well was drilled at Plaintiffs' sole expense, on what is now Plaintiffs' 0.5 acre parcel for purposes of supplying drinking water not only to Plaintiffs' homesite but also to an additional residential homesite also situate on said Defendants' remaining 2.0 acre parcel which homesite is situate along the extreme eastern boundary of the remaining lands of Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, and which consists of a trailer and garage presently being utilized by Defendant, Michael Baney.

22. In order that Plaintiffs' residence would have use of the well water, Plaintiffs, with the approval, acquiescence and knowledge of Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, extended the existing piping from the aforementioned well, to its then terminus point at the residential structure currently being occupied by Defendant, Michael Baney, and then extended the same until it reached Plaintiffs' residential structure and which Plaintiffs have continuously used as their sole water source.

23. In 1992, after the extension of the aforementioned well water line, Plaintiffs with the permission of Defendants, Albert Lloyd Baney and Laura E. Baney, and at

their sole expense, installed a filtration system in the basement of the residential structure currently occupied by Defendant, Michael Baney, in order to provide better quality potable water to their residence.

24. Since 1992 a total of three different filtration systems have been installed, all at the sole expense of Plaintiffs.

25. Defendant, Michael Baney, moved into his present residence in 1997, being the former residence of his grandmother, Arietta Baney, which residence and accompanying garage are situate along Baney Road and to the immediate South of the earthen road described in Paragraphs 10 and 11 hereof.

26. Commencing on or about April, 2002, Defendant Michael Baney has continually interfered with Plaintiffs' continuing use of the aforementioned earthen roadway, which interference has included:

- (i) laying railroad ties along one side of said earthen roadway, both as it leads to Plaintiffs residence property and as it leads to the "tripod", which effectively has narrowed the usable roadway, particularly Plaintiffs ability to turn their motor vehicles around in that portion of the roadway leading to the "tripod" so as to be able to back their vehicles into their garage on the residence

property;

- (ii) parking one or more of his motor vehicles so as to block Plaintiffs use of portions of the aforementioned earthen roadway;
- (iii) has erected signs intended to decrease Plaintiffs use of portions of the aforementioned earthen roadway;
- (iv) has otherwise "torn up" portions of the earthen roadway as it runs past his residence which effectively has narrowed the useable roadway for the sole purpose of causing Plaintiffs greater difficulty in utilizing said earthen roadway for access to their residence property; and
- (v) has otherwise verbally threatened Plaintiffs that it is his intention at some future time to completely deny them access to their residence property by use of the aforementioned earthen roadway.

27. The conduct of Defendant Michael Baney, as set forth in the preceding paragraph has otherwise been done in the presence of Defendants, Albert Lloyd Baney, Jr. and/or Laura E. Baney, or is otherwise known by them, and said Defendants have done nothing to protect Plaintiffs' use of the aforementioned earthen roadway.

28. On May 7, 2003, when Plaintiffs were measuring the width and length of the aforementioned earthen roadway

which they have utilized for access to their residence property, they were both confronted by Defendants, Albert Lloyd Baney, Jr. and Michael Baney, and were left with the impression that it was said Defendants' intention to continue to interfere with Plaintiffs use of the aforementioned earthen roadway and furthermore that Defendant, Michael Baney, also threatened to disallow Plaintiffs access to their water filtration system situate in the basement of his residence and further threatened that the same must be removed within ten (10) days or he would lock the basement door thereby denying Plaintiffs access to said filtration system and further leaving Plaintiffs to believe that said Defendant will cut off their water supply at said location.

29. Plaintiffs believe and therefor aver that although their deed is silent about them being granted accompanying easement rights to be utilized in conjunction with their residence property, that the course of conduct leading up to and after their taking title to their residence property has created either an easement by implication and/or an easement by necessity over the entire length of said earthen roadway, as extended to their property and also that portion of the earthen road leading to the "tripod".

30. Plaintiffs believe and therefore aver that while not set forth in their deed, by virtue of their actions and the

actions of the Defendants both prior and after Plaintiff taking title to their 0.5 acre parcel, an easement by implication and/or necessity has been created for their continuing use of the existing septic system including a right of way for the existing four inch sewer pipe as it leads from their residence property unto real estate of Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, and their continuing use of the leach bed also situate on said Defendants' real estate.

31. Plaintiffs believe and therefore aver that by virtue of their actions and those of Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, his wife, that to the extent water line piping and other accessories supplying potable water to Plaintiffs' residence are actually situate on real estate still titled in the name of said Defendants, either an easement by implication and/or an easement by necessity has been created and that Plaintiffs are therefore entitled to have continuing use of said piping and accessories (i.e. water filtration system) and an easement at its present location free from interference from any of the Defendants.

WHEREFORE, Plaintiffs pray that:

(A) this Honorable Court determine that Plaintiffs have either a non-exclusive easement by implication and/or an non-exclusive easement by necessity over the entire length and width of the existing earthen road leading in a generally

westerly direction from Baney Road until the same accesses their 0.5 acre parcel and likewise have a non-exclusive easement either by implication and/or necessity over that portion of the existing earthen drive which swings to the north and then northeast at its present existing width until the same terminates at the existing "tripod";

(B) this Honorable Court determine that Plaintiffs have either a easement by implication and/or easement by necessity and/or a vested property right to continue to utilize free from interference from any of the Defendants, the existing septic system benefiting their residence including the existing location of the existing four inch sewer pipe and a sewer easement of ten (10) feet in width at the present location of said sewer pipe until it reaches the present location of the present leach bed and a further continuing easement by implication, and/or easement by necessity and/or a vested property right of continuing use in discharging their sewage into the existing leach bed;

(C) this Honorable Court determine that Plaintiffs have a continuing easement by implication and/or easement by necessity and/or other legally protected right to utilize the existing water line piping, filtration system and accessories, which leads from the well situate on their 0.5 acre parcel through a portion of the property of Defendants, Albert Lloyd Baney, Jr.

and Laura E. Baney, before again entering Plaintiffs real estate, free of interference from any of the Defendants, for purposes of Plaintiffs continuing to receive potable water from the aforementioned well;

(D) That all Defendants be permanently enjoined from:

- (i) interfering in any fashion with Plaintiffs' use and enjoyment of the existing earthen roadway providing access to their residence property from Baney Road and also that portion of the earthen roadway leading to the north/northeast and which provides access to the "tripod";
- (ii) interfering with Plaintiffs' continuing use of the existing septic system and accompanying easement at the location of the existing four (4") inch sewer pipe as it leads from Plaintiffs' residence property to the existing leach bed situate on Defendants' property, including the continuing right to discharge sewage from Plaintiffs' residence property through said existing leach bed;
- (iii) interfering with Plaintiffs' continuing use of the existing water line piping and other accessories located on the real estate of Defendants, Albert Lloyd Baney, Jr. and Laura E.

Baney, his wife, and which supplies potable water to Plaintiffs' residence from the well which is presently situate on Plaintiffs' 0.5 acre parcel; and

(iv) interfering with Plaintiffs' peaceful possession and quiet enjoyment of their 0.5 acre residence property.

(E) grant such other relief as may be just and proper, including the awarding of money damages to Plaintiffs should Defendants' activities interfere or hamper Plaintiffs rights as determined by this Honorable Court.

Respectfully submitted,

GATES & SEAMAN

By:



Andrew P. Gates, Esquire,
Attorney for Plaintiffs

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, Pennsylvania 16830
(814) 765-1766

WARRANTY DEED

Printed on Plankenhorns 100% Linen Record Paper

VOL 788 PAGE 432

This Deed,

MADE the 12th day of OCTOBER
in the year nineteen hundred and seventy-nine (1979).

BETWEEN ARIETTA BANEY, widow, of the Township of Lawrence, Clearfield County, Pennsylvania, Party of the first part, hereinafter called the Grantor,

A N D

ARIETTA BANEY, widow, and ALBERT LLOYD BANEY, JR., both of the Township of Lawrence, Clearfield County, Pennsylvania, Parties of the second, hereinafter called the Grantees.

WITNESSETH, That in consideration of One and no/100 -----

----- Dollars,
in hand paid, the receipt whereof is hereby acknowledged, the said grantor does hereby grant and convey to the said grantees,

ALL that certain piece, parcel or tract of land situate in Lawrence Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a spike in the Southeastern corner of the property herein conveyed; thence by land now or formerly of R.A. Stewart North 83° 30' West 391.7 feet to a stake on line of land now of Walter Thorp; thence by Walter Thorp North 29° 33' West 77 feet to a stake; thence North 27° 45' East 168 feet to a electrical pole thence North 74° 31' East 447 feet to a telephone pole; thence South 81° 50' East 36 feet to a spike; thence to a spike in line of land now or formerly of E.W. Spencer Estate; thence by line of land of Spencer Estate South 7° 5' West 376 feet to a spike and place of beginning. Containing 2.5 acres.

BEING a portion of the same premises conveyed to Albert Baney, Sr. and Arietta Baney, his wife, by deed dated December 12, 1952, and recorded in Deed Book 437 at page 121. Upon Albert Baney's death, property went to his wife, Arietta Baney, by matter of law.

AND the said grantor will SPECIALLY WARRANT AND FOREVER DEFEND the property hereby conveyed.

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

Scaled and delivered in the presence of

Vicki Lee Nelson

Arietta Baney

(SEAL)

(SEAL)

(SEAL)

(SEAL)

(SEAL)

(SEAL)

CERTIFICATE OF RESIDENCE

I hereby certify, that the precise residence of the grantee is as follows:
RD#2, Box 251, Clearfield, PA

Richard H. Baney
Attorney or Agent for Grantee

Commonwealth of Pennsylvania

SS:

County of Clearfield

On this, the 12th day of October, 1979, before me, a notary public, the undersigned officer, personally appeared Arietta Baney known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and

Vicki Lee Nelson
VICKI LEE NELSON, Notary Public
Clearfield, Clearfield Co., Pa.
My Commission Expires May 2, 1983

Commonwealth of Pennsylvania

SS:

County of

On this, the day of 19, before me

the undersigned officer, personally appeared known to me (or satisfactorily proven) to be the person whose name subscribed to the within instrument, and acknowledged that executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and

seal.

CLEARFIELD CO. SS
ENTERED OF RECORD 10-16-79

My Commission Expires

Time 10:07 A.M.
By *Cecil A. Burns*
Cecil A. Burns, Recorder

9966

VOL 931 PAGE 392

This Deed,

MADE the 14th day of February
in the year nineteen hundred and eighty-four (1984)

BETWEEN ARIETTA BANEY, widow, of the Township of Lawrence,
Clearfield County, Pennsylvania, party of the first part, hereinafter
called the Grantor,

AND

ALBERT LLOYD BANEY, JR., of the Township of Lawrence, Clearfield,
County, Pennsylvania, Party of the second part, hereinafter called
the Grantee

WITNESSETH, That in consideration of \$1.00
ONE and 00/100-----

Dollars,

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

ALL that certain piece, parcel or tract of land situate in
Lawrence Township, Clearfield County, Pennsylvania, bounded and
described as follows:

BEGINNING at a spike in the Southeastern corner of the property
herein conveyed; thence by land now or fo-merly of R. A. Stewart,
North 83 degrees, 30 minutes West, 391.7 feet to a stake on line
of land now of Walter Thorp; thence by Walter Thorp North 29
degrees, 33 minutes West, 77 feet to a stake; thence North 27
degrees, 45 minutes East, 168 feet to an electrical pole; thence
North 74 degrees, 31 minutes East, 447 feet to a telephone pole;
thence South 81 degrees, 50 minutes East, 36 feet to a spike;
thence to a spike in line of land now or formerly of E. W. Spencer
Estate; thence by line of land of Spencer Estate, South 70 degrees,
5 minutes West, 376 feet to a spike and place of beginning.

CONTAINING 2.5 acres.

BEING the same premises conveyed to Arietta Baney and Albert Lloyd
Baney, Jr., by Deed dated October 12, 1979 and recorded in Deed
Book 788, Page 432 in the Recorder's Office, Clearfield County,
Pennsylvania.

This is a conveyance from parent to child.

EXHIBIT "B"

Deed

Made the 5th day of August 1992

Between Albert Lloyd Baney, Jr. and Laura E. Baney, Husband and Wife,
of R.D. #2, Box 251, Clearfield, PA. 16830

(hereinafter called "Grantor")
And George A. Baney and Margaret I. Baney, Husband and Wife,
of R.D. #2, Box 251, Clearfield, PA. 16830 as Tenants by the
Entireties.

(hereinafter called "Grantee")
Witnesseth, That in consideration of (\$1.00) One

Dollars,
in hand paid, the receipt whereof is hereby acknowledged, Grantors do hereby grant and convey to
Grantee THIS IS A CONVEYANCE FROM PARENTS TO SON AND DAUGHTER-IN-LAW

All that certain piece, parcel or tract of land situate in Lawrence Township,
Clearfield County, Pennsylvania, bounded and described as follows:

Beginning at a post on land of Albert Baney, Jr. being the South East
corner of the lot herein conveyed thence by residue of Albert Baney,
Jr. land S 79° 30' W 286 ft. to post; thence along Albert Baney, Jr.
property line, of which this is a part, N 27° 45' E 123 ft. to an electric
pole corner and N 74° 31' E 203 ft. to post; thence by residue at Albert
Baney, Jr. land S 14° 15' E 114 ft. to post and the place of beginning.

Containing 0.5 Acre

BEING a portion of that premises conveyed to Albert Lloyd Baney, Jr.
by Deed of Arietta Baney, widow dated February 14, 1984 which was
recorded February 17, 1984 in the Office of the Register and Recorder
of Clearfield County in Deed and Record Volume 931 at Page 392.

NTS

CLEARFIELD COUNTY
ENTERED FOR RECORD
TIME 1:20 PM 8-5-92
BY Contr. Rec. III
FEES 13.50
Karen L. Starck, Recorder

I hereby CERTIFY that this document
is recorded in the Recorder's Office of
Clearfield County, Pennsylvania.







Karen L. Starck
Karen L. Starck
Recorder of Deeds

Grantors covenant that it will warrant* specially the property hereby conveyed.

NOTICE—THIS DOCUMENT MAY NOT (DOES NOT) SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE (HAVE) THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. [This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P. L. 984, as amended.]

In Witness Whereof, said Grantors have hereunto set their hands and seals the day and year first above written.

Sealed and Delivered in the Presence of

Albert Lloyd Baney, Jr.
Albert Lloyd Baney, Jr. 
Laura E. Baney
Laura E. Baney 



NOTICE THE UNDERSIGNED, AS EVIDENCED BY THE SIGNATURE(S) TO THIS NOTICE AND THE ACCEPTANCE AND RECORDING OF THIS DEED, (IS, ARE) FULLY COGNIZANT OF THE FACT THAT THE UNDERSIGNED MAY NOT BE OBTAINING THE RIGHT OF PROTECTION AGAINST SUBSIDENCE, AS TO THE PROPERTY HEREIN CONVEYED, RESULTING FROM COAL MINING OPERATIONS AND THAT THE PURCHASED PROPERTY, HEREIN CONVEYED, MAY BE PROTECTED FROM DAMAGE DUE TO MINE SUBSIDENCE BY A PRIVATE CONTRACT WITH THE OWNERS OF THE ECONOMIC INTEREST IN THE COAL. THIS NOTICE IS INSERTED HEREIN TO COMPLY WITH THE BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT OF 1966.

WITNESS:

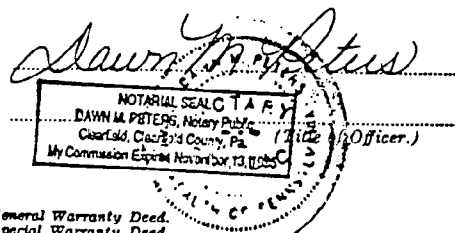
Commonwealth of Pennsylvania }
County of Clearfield } ss.

On this the 5th day of July, A.D. 1992,
before me Dawn M. Peters the undersigned officer, personally appeared

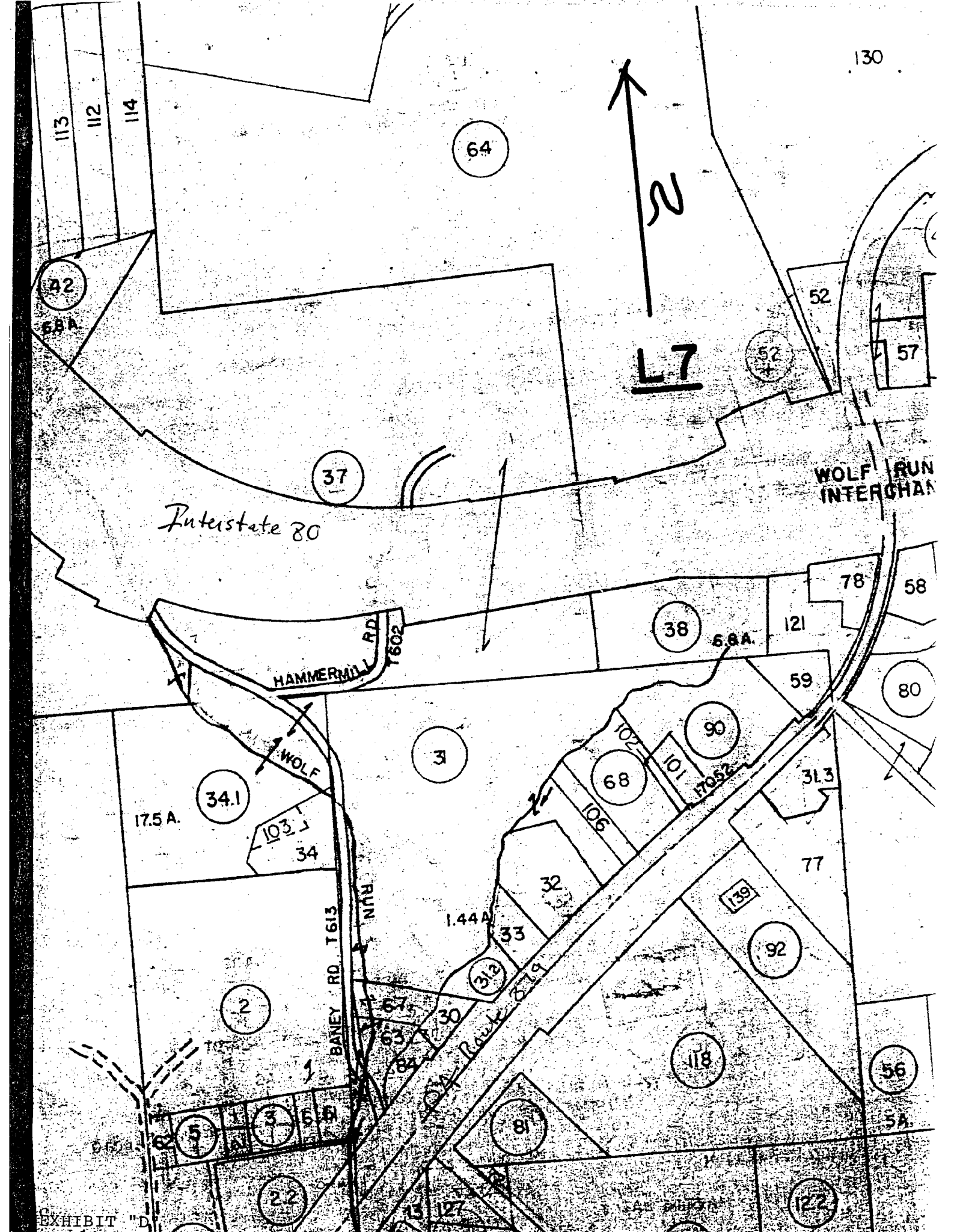
Albert Lloyd Baney, Jr. and Laura E. Baney known to me
(or satisfactorily proven) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

My commission expires



NOTE—Insertion of word "Generally" effects a General Warranty Deed.
Insertion of word "Specially" effects a Special Warranty Deed.
Act of Assembly, Pennsylvania, April 1, 1909, Section 4 and 5.



VERIFICATION

The undersigned, GEORGE A. BANEY and MARGARET I. BANEY, his wife, verify that they are the Plaintiffs in the within action, and that the statements made in the foregoing Complaint in Equity are true and correct to the best of their knowledge, information and belief. The undersigned understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: May 15, 2003

George A. Baney
George A. Baney

Date: May 15, 2003

Margaret I. Baney
Margaret I. Baney

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

03-
-CD
EQUITY ACTION

GEORGE A. BANEY and
MARGARET I. BANEY,
Plaintiffs

vs.

ALBERT LLOYD BANEY, JR.,
LAURA E. BANEY and
MICHAEL BANEY,
Defendants

COMPLAINT

*Rec'd
#81-*
NOV 1 1988
0/11:40 a.m.
Shaw
Prothonotary

LAW OFFICES
GATES & SEAMAN
2 NORTH FRONT STREET
P.O. BOX 846
CLEARFIELD, PA. 16830

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

GEORGE A. BANEY and
MARGARET I. BANEY,
Plaintiffs

vs.

ALBERT LLOYD BANEY, JR.,
LAURA E. BANEY and
MICHAEL BANEY,
Defendants

03- 744 -CD

Type of Case: Civil

Type of Pleading: Petition for
Preliminary Injunction to
enjoin Defendants from (1)
interfering with Plaintiffs'
use of the existing twenty foot
wide earthen drive providing access
to Plaintiffs' residence property
from Baney Road and also that
portion of earthen drive leading
off said earthen drive providing
access to the existing "tripod";
(2) from interfering with
Plaintiffs continuing use of the
existing septic system providing
sewage discharge capabilities to
their current residence; (3)
interfering with any and all
piping, filtration systems and
other accessories proving potable
water to Plaintiffs' residence from
the well situate on Plaintiffs'
premises specifically including all
piping, other accessories and
improvements located on the real
estate of defendants; and (4)
Defendants going on or otherwise
interfering with Plaintiffs
peaceful possession and quiet
enjoyment of their family residence

Filed on behalf of: Plaintiffs

Counsel of Record for this Party:
Andrew P. Gates, Esquire

Supreme Court No.: 36604

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, Pennsylvania 16830
(814) 765-1766

FILED

MAY 16 2003

William A. Shaw
Prothonotary

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

GEORGE A. BANEY and	:		
MARGARET I. BANEY,	:		
Plaintiffs	:	03-	- CD
	:		
vs.	:		
	:	IN EQUITY	
ALBERT LLOYD BANEY, JR.,	:		
LAURA E. BANEY and MICHAEL	:		
BANEY,	:		
Defendants	:		

PETITION FOR PRELIMINARY INJUNCTION TO ENJOIN DEFENDANTS FROM (1) INTERFERING WITH PLAINTIFFS USE OF THE EXISTING TWENTY FOOT WIDE EARTHEN DRIVE PROVIDING ACCESS TO PLAINTIFFS' RESIDENCE PROPERTY FROM BANEY ROAD AND ALSO THAT PORTION OF EARTHEN DRIVE LEADING OFF SAID EARTHEN DRIVE PROVIDING ACCESS TO THE EXISTING "TRIPOD"; (2) FROM INTERFERING WITH PLAINTIFFS CONTINUING USE OF THE EXISTING SEPTIC SYSTEM PROVIDING SEWAGE DISCHARGE CAPABILITIES TO THEIR CURRENT RESIDENCE; (3) INTERFERING WITH ANY AND ALL PIPING, FILTRATION SYSTEMS AND OTHER ACCESSORIES PROVING POTABLE WATER TO PLAINTIFFS RESIDENCE FROM THE WELL SITUATE ON PLAINTIFFS PREMISES SPECIFICALLY INCLUDING ALL PIPING, OTHER ACCESSORIES AND IMPROVEMENTS LOCATED ON THE REAL ESTATE OF DEFENDANTS; AND (4) DEFENDANTS GOING ON OR OTHERWISE INTERFERING WITH PLAINTIFFS PEACEFUL POSSESSION AND QUIET ENJOYMENT OF THEIR FAMILY RESIDENCE

Plaintiffs, George A. Baney and Margaret I. Baney, hereinafter called Petitioners, through their undersigned counsel, hereby petition this Honorable Court requesting the issuance of a Preliminary Injunction pursuant to PA R.C.P. 1531 and in support thereof allege the following:

1. Petitioners have contemporaneously herewith filed a verified Complaint in Equity with the Prothonotary of Clearfield County, a true and correct copy of which is attached hereto and made a part hereof as Exhibit "1".

2. Plaintiffs/Petitioners brought their Complaint seeking permanent injunctive relief against all three Defendants for purposes of enjoining all three Defendants from interfering with and/or hampering their use of the (i) existing earthen road which provides the sole public access to their residence property from a public road, namely Baney Road; (ii) existing on lot septic system which benefits their residence and which piping crosses onto real estate of Defendants to the leach bed also situate on Defendants' real estate; (iii) from interfering with Plaintiffs use of all piping and other accessories which provide potable water to their residence property from the well drilled on Plaintiffs' real estate but which piping and other accessories are partially situate on Defendants' real estate; and (iv) Plaintiffs' peaceful possession and quiet enjoyment of their family residence.

3. Petitioners, by virtue of the actions of the parties spelled out in great detail in their Complaint, assert they have legally enforceable easements and/or rights of way which could be classified as either easements by implication and/or easements by necessity.

4. The relief requested by Petitioners is necessary to prevent them from suffering immediate and irreparable harm which will occur if:

(i) Defendants are allowed to continue to interfere

with Plaintiffs' continuing use of the existing earthen roadway which provides the sole access to their residence property from a public road;

(ii) Defendants are allowed to interfere or hamper Plaintiffs' continuing usage of the septic system providing sewage service to their residence;

(iii) the Defendants are allowed to interfere, hamper or cut off Plaintiffs' water supply from the well situate on their property, by virtue of interfering with or not allowing Plaintiffs' access to that portion of the piping and other improvements (i.e. water filtration system) situate on Defendants' real estate but which ultimately leads and supplies potable water to Plaintiffs' residence.

5. Your Petitioners have no adequate remedy at law while Defendants will not suffer any damage if said relief is granted since the relief requested will do nothing more than give judicial recognition to the rights and course of dealings that have existed between the parties relative to Plaintiffs' use of said earthen roadway, and Plaintiffs' use of the septic system and supply of water which benefits their residence.

6. By granting Petitioners requested relief the same will restore Plaintiffs and Defendants to the same status as existed immediately prior to Defendant Michael Baney's course of conduct, which has interfered and hampered Petitioners'

continuing use of the aforementioned earthen roadway and his threatened interference with Petitioners' continuing use of the distribution set up which supplies potable water to their residence.

7. By failing to enjoin the Defendants, greater injury will result to the Petitioners than would any corresponding injuries to Defendants should this court enter an injunction.

8. The issuance of the requested Preliminary Injunction will not be contrary to any public interest since the only parties involved are individuals and the subject matter of Plaintiffs' Complaint has no bearing whatsoever on the general public.

WHEREFORE, Petitioners/Plaintiffs request that this Honorable Court:

A. (i) issue a Rule to Show Cause why a Preliminary Injunction should not be granted against all Defendants which precludes Defendants, Albert Lloyd Baney, Jr., Laura E. Baney and Michael Baney, from interfering with and/or otherwise hampering Plaintiffs' continuing use of the existing earthen roadway, their continuing use of the septic system, sewage piping and leach bed providing sewage disposal services to their residence, and their continuing use of the water piping and other accessories that supplies potable water to Plaintiffs' residence; and

(ii) enjoins all Defendants from going on or otherwise interfering with Plaintiffs' peaceful possession and quiet enjoyment of their family residence property; and

B. After hearing issue a Preliminary Injunction Order in the form attached to this Petition.

Respectfully submitted,

GATES & SEAMAN

By:



Andrew P. Gates, Esquire,
Attorney for Petitioners/Plaintiffs

GATES & SEAMAN

Attorneys at law

Two North Front Street

P. O. Box 846

Clearfield, Pennsylvania 16830

(814) 765-1766

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

GEORGE A. BANEY and	:		
MARGARET I. BANEY,	:		
Plaintiffs	:	03-	- CD
	:		
vs.	:		
	:	IN EQUITY	
ALBERT LLOYD BANEY, JR.,	:		
LAURA E. BANEY and MICHAEL	:		
BANEY,	:		
Defendants	:		

NOTICE TO DEFEND

YOU have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

DAVID MEHOLICK, COURT ADMINISTRATOR
Clearfield County Court House
Clearfield, PA 16830
(814) 765-2641

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

GEORGE A. BANEY and
MARGARET I. BANEY,
Plaintiffs

vs.

ALBERT LLOYD BANEY, JR.,
LAURA E. BANEY and MICHAEL
BANEY,
Defendants

:
:
: 03- - CD
:
:
: IN EQUITY
:
:
:

COMPLAINT IN EQUITY

NOW COMES, Plaintiffs, George A. Baney and Margaret I. Baney, by their attorneys, Gates & Seaman, who assert the following cause of action and in support thereof aver the following:

1. Plaintiff, George A. Baney, is an adult individual residing in Lawrence Township, Clearfield County, Pennsylvania with a mailing address of 345 Baney Road, Clearfield, Pennsylvania 16830.

2. Plaintiff, Margaret I. Baney, is an adult individual who is at all times relevant to these proceedings has been intermarried with Plaintiff, George A. Baney, and likewise resides in Lawrence Township, Clearfield County, Pennsylvania with a mailing address of 345 Baney Road, Clearfield, Pennsylvania 16830.

3. Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, husband and wife, are adult individuals who reside in

Lawrence Township, Clearfield County, Pennsylvania with a mailing address of 305 Baney Road, Clearfield, Pennsylvania 16830.

4. Defendant, Michael Baney, is an adult individual residing in Lawrence Township, Clearfield County, Pennsylvania, with a mailing address of 339 Baney Road, Clearfield, Pennsylvania 16830.

5. By virtue of a deed from Arietta Baney, widow, dated October 12, 1979 and appearing of record in Clearfield County Deed Book 788, Page 432, Arietta Baney and her son, Defendant Albert Lloyd Baney, as joint tenants with the right of survivorship became vested with a parcel containing 2.5 acres situate in Lawrence Township, Clearfield County, Pennsylvania, which bounds Baney Road (formerly referred to as Township Route T-613) on the West. A photocopy of the aforementioned deed is attached hereto and made a part hereof as Exhibit "A".

6. By virtue of a deed from his mother, Arietta Baney, dated February 14, 1984 and appearing of record in Clearfield County Deeds and Records Book 931, Page 392, Defendant Albert Lloyd Baney, Jr. became vested with sole ownership of the aforementioned 2.5 acre parcel. A photocopy of the aforementioned deed is attached hereto and made a part hereof as Exhibit "B".

7. By deed dated August 5, 1992 and appearing of record in Clearfield County Deeds and Records Book 1476, Page 355, Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, his wife, granted and conveyed unto Plaintiffs, George A. Baney and Margaret I. Baney, his wife, a 0.5 acre parcel that came out of the 2.5 acre parcel identified in the preceding paragraph. Attached hereto and made a part hereof as Exhibit "C" is a photocopy of the aforementioned deed.

8. The aforementioned 0.5 acre parcel of Plaintiffs, identified in the preceding paragraph, does not border a public road and no provision was made in the aforementioned deed providing the Grantees (Plaintiffs herein) access to said premises off of a public road. By way of illustration, attached hereto and made a part hereof as Exhibit "D" is a blown up portion of the Clearfield County Assessment Map wherein Defendants' larger parcel is identified by Clearfield County Assessment Map Number 123-L7-34 while Plaintiffs' 0.5 acre parcel is identified by Clearfield County Assessment Map Number 123-L7-103, with both parcels being colored in yellow on the aforementioned Exhibit.

9. At the present time, Plaintiffs reside on their 0.5 acre parcel, in a double wide manufactured home which they had installed on said parcel in 1993, at their sole expense.

10. As of August 5, 1992, being the date of the deed from Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, his wife, to Plaintiffs, the northeast quadrant of said Defendants 2.5 acre parcel was accessed by an existing earthen road approximately twenty (20) feet in width which leads off of Baney Road, (formerly known as Township Route T-613) running first in a generally westerly direction then forking into two (2) separate earthen roads, having the same uniform width of twenty (20) feet, with the first thereof curving significantly to the north and then northeast, while the second thereof continues in a generally westerly direction.

11. The lengths of the three (3) earthen roads identified in the preceding paragraph are as follows:

- (i) from Baney Road to location of fork in road, approximately one hundred (100) feet;
- (ii) for earthen road beginning at fork and curving in a generally north and then northeasterly direction, approximately sixty (60') feet; and
- (iii) for earthen road beginning at fork and continuing on in a generally westerly direction, approximately seventy-six (76') feet.

12. At the termination point of the aforementioned earthen road described in the preceding paragraph, as curving to the north and then northeast, Defendant Albert Lloyd Baney,

Jr. had constructed a "tripod" from existing trees and other accessories which "tripod" has always been utilized by Plaintiffs and Defendants to do engine work on their various motor vehicles, including use of the same to extract motors from said motor vehicles.

13. During calender year 1981, when the aforementioned 2.5 acre parcel was owned jointly by Arietta Baney and Defendant, Albert Lloyd Baney, with the permission of the then owners, Plaintiffs purchased and installed at their sole expense, a trailer in nearly the same location as their current residence, and have continuously resided on said parcel for approximately twenty-two (22) years.

14. Contemporaneously with the purchase and installation of the trailer referred to in the preceding paragraph, Plaintiffs, with the permission of the then owners, installed at their sole expense an on site septic system for use in conjunction with their trailer, which septic system includes a four (4") inch sewer line Plaintiffs' installed from their home site to the northeast quadrant of Defendants Albert Lloyd Baney's present two (2) acre parcel where said sewer line terminates at the location of said septic system's "leach bed".

15. Plaintiffs' have continuously utilized said on lot septic system from 1981 to the present.

16. On or about the summer of 1984, with the permission and full knowledge of Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, Plaintiffs at their sole expense, constructed, built and extended the earthen roadway a distance of approximately seventy-six (76) feet so that the same traversed on to what is now their 0.5 acre parcel for purposes of providing a means of motor vehicle access for said property to a public road, (i.e. Baney Road).

17. Since approximately 1984, Plaintiffs have maintained and continued to improve the entire length of said earthen roadway, as extended, by building the same up and otherwise installing gravel over a large portion thereof.

18. On or about May 2002, Plaintiffs, at their sole expense, constructed at the end of the extended earthen roadway a garage consisting of a metal pole building into which they park and store their personal vehicles.

19. Plaintiffs sole source of motor vehicle access from their residence property to a public road is over the aforementioned earthen road, as extended by them, which Plaintiffs have used continuously to date.

20. Since neither Plaintiffs' 0.5 acre or the remaining 2.0 acre parcel of Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, his wife, have access to public water, the dwellings of both Plaintiffs and said Defendants utilize

well water to supply potable water to said residences for personal use.

21. On or about January 1987, a well was drilled at Plaintiffs' sole expense, on what is now Plaintiffs' 0.5 acre parcel for purposes of supplying drinking water not only to Plaintiffs' homesite but also to an additional residential homesite also situate on said Defendants' remaining 2.0 acre parcel which homesite is situate along the extreme eastern boundary of the remaining lands of Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, and which consists of a trailer and garage presently being utilized by Defendant, Michael Baney.

22. In order that Plaintiffs' residence would have use of the well water, Plaintiffs, with the approval, acquiescence and knowledge of Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, extended the existing piping from the aforementioned well, to its then terminus point at the residential structure currently being occupied by Defendant, Michael Baney, and then extended the same until it reached Plaintiffs' residential structure and which Plaintiffs have continuously used as their sole water source.

23. In 1992, after the extension of the aforementioned well water line, Plaintiffs with the permission of Defendants, Albert Lloyd Baney and Laura E. Baney, and at

their sole expense, installed a filtration system in the basement of the residential structure currently occupied by Defendant, Michael Baney, in order to provide better quality potable water to their residence.

24. Since 1992 a total of three different filtration systems have been installed, all at the sole expense of Plaintiffs.

25. Defendant, Michael Baney, moved into his present residence in 1997, being the former residence of his grandmother, Arietta Baney, which residence and accompanying garage are situate along Baney Road and to the immediate South of the earthen road described in Paragraphs 10 and 11 hereof.

26. Commencing on or about April, 2002, Defendant Michael Baney has continually interfered with Plaintiffs' continuing use of the aforementioned earthen roadway, which interference has included:

- (i) laying railroad ties along one side of said earthen roadway, both as it leads to Plaintiffs residence property and as it leads to the "tripod", which effectively has narrowed the usable roadway, particularly Plaintiffs ability to turn their motor vehicles around in that portion of the roadway leading to the "tripod" so as to be able to back their vehicles into their garage on the residence

property;

- (ii) parking one or more of his motor vehicles so as to block Plaintiffs use of portions of the aforementioned earthen roadway;
- (iii) has erected signs intended to decrease Plaintiffs use of portions of the aforementioned earthen roadway;
- (iv) has otherwise "torn up" portions of the earthen roadway as it runs past his residence which effectively has narrowed the useable roadway for the sole purpose of causing Plaintiffs greater difficulty in utilizing said earthen roadway for access to their residence property; and
- (v) has otherwise verbally threatened Plaintiffs that it is his intention at some future time to completely deny them access to their residence property by use of the aforementioned earthen roadway.

27. The conduct of Defendant Michael Baney, as set forth in the preceding paragraph has otherwise been done in the presence of Defendants, Albert Lloyd Baney, Jr. and/or Laura E. Baney, or is otherwise known by them, and said Defendants have done nothing to protect Plaintiffs' use of the aforementioned earthen roadway.

28. On May 7, 2003, when Plaintiffs were measuring the width and length of the aforementioned earthen roadway

which they have utilized for access to their residence property, they were both confronted by Defendants, Albert Lloyd Baney, Jr. and Michael Baney, and were left with the impression that it was said Defendants' intention to continue to interfere with Plaintiffs use of the aforementioned earthen roadway and furthermore that Defendant, Michael Baney, also threatened to disallow Plaintiffs access to their water filtration system situate in the basement of his residence and further threatened that the same must be removed within ten (10) days or he would lock the basement door thereby denying Plaintiffs access to said filtration system and further leaving Plaintiffs to believe that said Defendant will cut off their water supply at said location.

29. Plaintiffs believe and therefor aver that although their deed is silent about them being granted accompanying easement rights to be utilized in conjunction with their residence property, that the course of conduct leading up to and after their taking title to their residence property has created either an easement by implication and/or an easement by necessity over the entire length of said earthen roadway, as extended to their property and also that portion of the earthen road leading to the "tripod".

30. Plaintiffs believe and therefore aver that while not set forth in their deed, by virtue of their actions and the

actions of the Defendants both prior and after Plaintiff taking title to their 0.5 acre parcel, an easement by implication and/or necessity has been created for their continuing use of the existing septic system including a right of way for the existing four inch sewer pipe as it leads from their residence property unto real estate of Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, and their continuing use of the leach bed also situate on said Defendants' real estate.

31. Plaintiffs believe and therefore aver that by virtue of their actions and those of Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, his wife, that to the extent water line piping and other accessories supplying potable water to Plaintiffs' residence are actually situate on real estate still titled in the name of said Defendants, either an easement by implication and/or an easement by necessity has been created and that Plaintiffs are therefore entitled to have continuing use of said piping and accessories (i.e. water filtration system) and an easement at its present location free from interference from any of the Defendants.

WHEREFORE, Plaintiffs pray that:

(A) this Honorable Court determine that Plaintiffs have either a non-exclusive easement by implication and/or an non-exclusive easement by necessity over the entire length and width of the existing earthen road leading in a generally

westerly direction from Baney Road until the same accesses their 0.5 acre parcel and likewise have a non-exclusive easement either by implication and/or necessity over that portion of the existing earthen drive which swings to the north and then northeast at its present existing width until the same terminates at the existing "tripod";

(B) this Honorable Court determine that Plaintiffs have either a easement by implication and/or easement by necessity and/or a vested property right to continue to utilize free from interference from any of the Defendants, the existing septic system benefiting their residence including the existing location of the existing four inch sewer pipe and a sewer easement of ten (10) feet in width at the present location of said sewer pipe until it reaches the present location of the present leach bed and a further continuing easement by implication, and/or easement by necessity and/or a vested property right of continuing use in discharging their sewage into the existing leach bed;

(C) this Honorable Court determine that Plaintiffs have a continuing easement by implication and/or easement by necessity and/or other legally protected right to utilize the existing water line piping, filtration system and accessories, which leads from the well situate on their 0.5 acre parcel through a portion of the property of Defendants, Albert Lloyd Baney, Jr.

and Laura E. Baney, before again entering Plaintiffs real estate, free of interference from any of the Defendants, for purposes of Plaintiffs continuing to receive potable water from the aforementioned well;

(D) That all Defendants be permanently enjoined from:

- (i) interfering in any fashion with Plaintiffs' use and enjoyment of the existing earthen roadway providing access to their residence property from Baney Road and also that portion of the earthen roadway leading to the north/northeast and which provides access to the "tripod";
- (ii) interfering with Plaintiffs' continuing use of the existing septic system and accompanying easement at the location of the existing four (4") inch sewer pipe as it leads from Plaintiffs' residence property to the existing leach bed situate on Defendants' property, including the continuing right to discharge sewage from Plaintiffs' residence property through said existing leach bed;
- (iii) interfering with Plaintiffs' continuing use of the existing water line piping and other accessories located on the real estate of Defendants, Albert Lloyd Baney, Jr. and Laura E.

Baney, his wife, and which supplies potable water to Plaintiffs' residence from the well which is presently situate on Plaintiffs' 0.5 acre parcel; and

(iv) interfering with Plaintiffs' peaceful possession and quiet enjoyment of their 0.5 acre residence property.

(E) grant such other relief as may be just and proper, including the awarding of money damages to Plaintiffs should Defendants' activities interfere or hamper Plaintiffs rights as determined by this Honorable Court.

Respectfully submitted,

GATES & SEAMAN

By:



Andrew P. Gates, Esquire,
Attorney for Plaintiffs

GATES & SEAMAN
Attorneys at law
Two North Front Street
P. O. Box 846
Clearfield, Pennsylvania 16830
(814) 765-1766

WARRANTY DEED

Printed on Plankenborns 100% Linen Record Paper

VOL 788 PAGE 432

This Deed,

MADE the 12th day of OCTOBER
in the year nineteen hundred and seventy-nine (1979).

BETWEEN ARIETTA BANEY, widow, of the Township of Lawrence, Clearfield County, Pennsylvania, Party of the first part, hereinafter called the Grantor,

A N D

ARIETTA BANEY, widow, and ALBERT LLOYD BANEY, JR., both of the Township of Lawrence, Clearfield County, Pennsylvania, Parties of the second, hereinafter called the Grantees.

WITNESSETH, That in consideration of One and no/100 ----- Dollars,
in hand paid, the receipt whereof is hereby acknowledged, the said grantor does hereby grant and convey to the said grantees,

ALL that certain piece, parcel or tract of land situate in Lawrence Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a spike in the Southeastern corner of the property herein conveyed; thence by land now or formerly of R.A. Stewart North 83° 30' West 391.7 feet to a stake on line of land now of Walter Thorp; thence by Walter Thorp North 29° 33' West 77 feet to a stake; thence North 27° 45' East 168 feet to a electrical pole thence North 74° 31' East 447 feet to a telephone pole; thence South 81° 50' East 36 feet to a spike; thence to a spike in line of land now or formerly of E.W. Spencer Estate; thence by line of land of Spencer Estate South 7° 5' West 376 feet to a spike and place of beginning. Containing 2.5 acres.

BEING a portion of the same premises conveyed to Albert Baney, Sr. and Arietta Baney, his wife, by deed dated December 12, 1952, and recorded in Deed Book 437 at page 121. Upon Albert Baney's death, property went to his wife, Arietta Baney, by matter of law.

AND the said grantor will SPECIALLY WARRANT AND FOREVER DEFEND the property hereby conveyed.

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

Sealed and delivered in the presence of

Vicki Lee Nelson

Arietta Baney

Arietta Baney (SEAL)

(SEAL)

(SEAL)

(SEAL)

(SEAL)

(SEAL)

CERTIFICATE OF RESIDENCE

I hereby certify, that the precise residence of the grantee is RD#2, Box 251, Clearfield, PA

Richard H. Nelson

Attorney or Agent for Grantee

Commonwealth of Pennsylvania

County of Clearfield } SS:

On this, the 12th day of October, 1979, before me, a notary public, the undersigned officer, personally appeared Arietta Baney known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and

Vicki Lee Nelson
VICKI LEE NELSON, Notary Public
Clearfield, Clearfield Co., Pa.
My Commission Expires May 2, 1983

Commonwealth of Pennsylvania

County of } SS:

On this, the day of 19, before me the undersigned officer, personally appeared known to me (or satisfactorily proven) to be the person whose name subscribed to the within instrument, and acknowledged that executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and

CLEARFIELD CO. SS
ENTERED OF RECORD 10-16-79

My Commission Expires

File 10-07 P. 711
By Vicki Lee Nelson, Notary
For Cecil A. Burns, Recorder

9966

This Deed,

MADE the 14th day of February
in the year nineteen hundred and eighty-four (1984)

BETWEEN ARIETTA BANEY, widow, of the Township of Lawrence,
Clearfield County, Pennsylvania, party of the first part, hereinafter
called the Grantor,

AND

ALBERT LLOYD BANEY, JR., of the Township of Lawrence, Clearfield,
County, Pennsylvania, Party of the second part, hereinafter called
the Grantee

WITNESSETH, That in consideration of \$1.00
ONE and 00/100-----

Dollars,

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

ALL that certain piece, parcel or tract of land situate in
Lawrence Township, Clearfield County, Pennsylvania, bounded and
described as follows:

BEGINNING at a spike in the Southeastern corner of the property
herein conveyed; thence by land now or fo-merly of R. A. Stewart,
North 83 degrees, 30 minutes West, 391.7 feet to a stake on line
of land now of Walter Thorp; thence by Walter Thorp North 29
degrees, 33 minutes West, 77 feet to a stake; thence North 27
degrees, 45 minutes East, 168 feet to an electrical pole; thence
North 74 degrees, 31 minutes East, 447 feet to a telephone pole;
thence South 81 degrees, 50 minutes East, 36 feet to a spike;
thence to a spike in line of land now or formerly of E. W. Spencer
Estate; thence by line of land of Spencer Estate, South 70 degrees,
5 minutes West, 376 feet to a spike and place of beginning.

CONTAINING 2.5 acres.

BEING the same premises conveyed to Arietta Baney and Albert Lloyd
Baney, Jr., by Deed dated October 12, 1979 and recorded in Deed
Book 788, Page 432 in the Recorder's Office, Clearfield County,
Pennsylvania.

This is a conveyance from parent to child.

Deed

Made the 5th day of August 1992

Between Albert Lloyd Baney, Jr. and Laura E. Baney, Husband and Wife,
of R.D. #2, Box 251, Clearfield, PA. 16830

(hereinafter called "Grantor")
And George A. Baney and Margaret I. Baney, Husband and Wife,
of R.D. #2, Box 251, Clearfield, PA. 16830 as Tenants by the
Entireties.

(hereinafter called "Grantee")
Witnesseth, That in consideration of (\$1.00) One

Dollars,
in hand paid, the receipt whereof is hereby acknowledged, Grantors do hereby grant and convey to
Grantee THIS IS A CONVEYANCE FROM PARENTS TO SON AND DAUGHTER-IN-LAW

All that certain piece, parcel or tract of land situate in Lawrence Township,
Clearfield County, Pennsylvania, bounded and described as follows:

Beginning at a post on land of Albert Baney, Jr. being the South East
corner of the lot herein conveyed thence by residue of Albert Baney,
Jr. land S 79° 30' W 286 ft. to post; thence along Albert Baney, Jr.
property line, of which this is a part, N 27° 45' E 123 ft. to an electric
pole corner and N 74° 31' E 203 ft. to post; thence by residue at Albert
Baney, Jr. land S 14° 15' E 114 ft. to post and the place of beginning.

Containing 0.5 Acre

BEING a portion of that premises conveyed to Albert Lloyd Baney, Jr.
by Deed of Arietta Baney, widow dated February 14, 1984 which was
recorded February 17, 1984 in the Office of the Register and Recorder
of Clearfield County in Deed and Record Volume 931 at Page 392.

NTS

CLEARFIELD COUNTY
ENTERED OF RECORD
TIME 1:20 PM 8-5-92
BY CLARK REC. III
FEES 13.00
Karen L. Starck, Recorder

I hereby CERTIFY that this document
is recorded in the Recorder's Office of
Clearfield County, Pennsylvania.







Karen L. Starck
Karen L. Starck
Recorder of Deeds

Grantors covenant that it will **WARRANT*** specially the property hereby conveyed.

NOTICE—THIS DOCUMENT MAY NOT (DOES NOT) SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE (HAVE) THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. [This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P. L. 984, as amended.]

In Witness Whereof, said Grantors have hereunto set their hands and seals the day and year first above written.

Sealed and Delivered in the Presence of

Albert Lloyd Baney, Jr.
Albert Lloyd Baney, Jr. 
Laura E. Baney
Laura E. Baney 



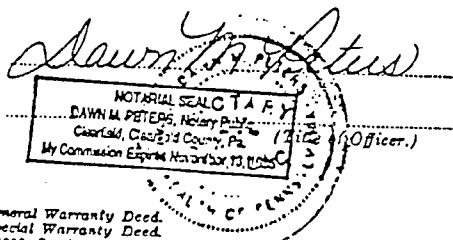
NOTICE THE UNDERSIGNED, AS EVIDENCED BY THE SIGNATURE(S) TO THIS NOTICE AND THE ACCEPTANCE AND RECORDING OF THIS DEED, (IS, ARE) FULLY COGNIZANT OF THE FACT THAT THE UNDERSIGNED MAY NOT BE OBTAINING THE RIGHT OF PROTECTION AGAINST SUBSIDENCE, AS TO THE PROPERTY HEREIN CONVEYED, RESULTING FROM COAL MINING OPERATIONS AND THAT THE PURCHASED PROPERTY, HEREIN CONVEYED, MAY BE PROTECTED FROM DAMAGE DUE TO MINE SUBSIDENCE BY A PRIVATE CONTRACT WITH THE OWNERS OF THE ECONOMIC INTEREST IN THE COAL. THIS NOTICE IS INSERTED HEREIN TO COMPLY WITH THE BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT OF 1966.

WITNESS:

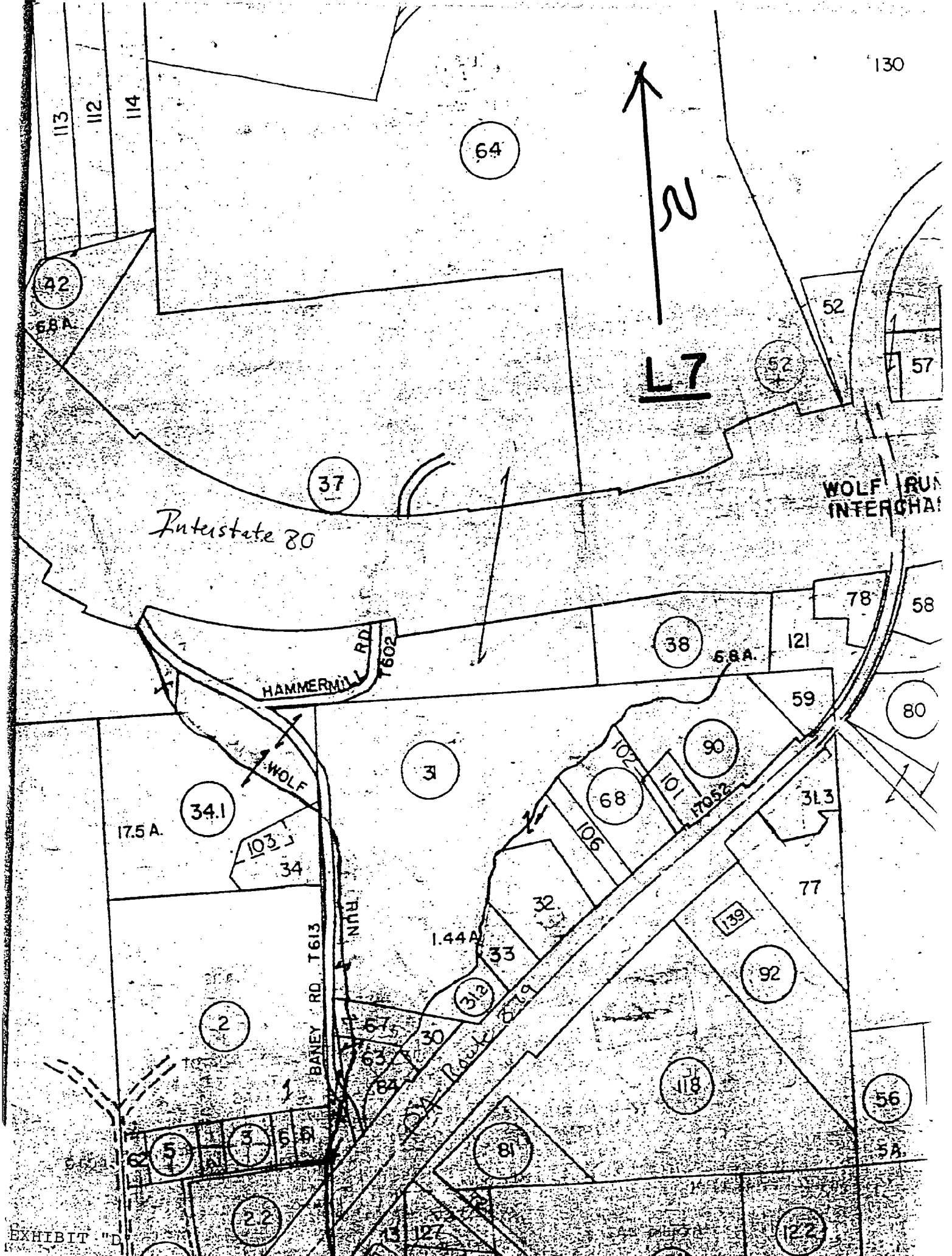
Commonwealth of Pennsylvania } ss.
County of Clearfield

On this the 5th day of July, A.D. 1992,
before me Dawn M. Peters the undersigned officer, personally appeared
Albert Lloyd Baney, Jr. and Laura E. Baney known to me
(or satisfactorily proven) to be the persons whose names are subscribed to the within instrument
and acknowledged that they executed the same for the purposes therein contained.
In Witness Whereof, I hereunto set my hand and official seal.

My commission expires



NOTE—Insertion of word "Generally" effects a General Warranty Deed.
Insertion of word "Specially" effects a Special Warranty Deed.
Act of Assembly, Pennsylvania, April 1, 1909, Section 4 and 5.



VERIFICATION

The undersigned, GEORGE A. BANEY and MARGARET I. BANEY, his wife, verify that they are the Plaintiffs in the within action, and that the statements made in the foregoing Complaint in Equity are true and correct to the best of their knowledge, information and belief. The undersigned understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: May 15, 2003

George A. Baney
George A. Baney

Date: May 15, 2003

Margaret I. Baney
Margaret I. Baney

VERIFICATION

The undersigned, GEORGE A. BANEY and MARGARET I. BANEY, his wife, verify that they are the Plaintiffs in the within action, and that the statements made in the foregoing Petition for Preliminary Injunction are true and correct to the best of their knowledge, information and belief. The undersigned understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Date: May 15, 2003

George A. Baney
George A. Baney

Date: May 15, 2003

Margaret I. Baney
Margaret I. Baney

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

GEORGE A. BANEY and
MARGARET I. BANEY,
Plaintiffs

vs.

ALBERT LLOYD BANEY, JR.,
LAURA E. BANEY and MICHAEL
BANEY,
Defendants

:
:
: 03- 744 - CD
:
:
: IN EQUITY
:
:
:

RULE

AND NOW, this 16th day of May, 2003, upon
consideration of the verified Complaint in Equity in this Action
and the accompanying Petition for Preliminary Injunctive Relief,
IT IS HEREBY ORDERED that:

(1) Defendants Albert Lloyd Baney, Jr., Laura E. Baney
and Michael Baney, are to show cause before this Honorable Court
on the 29 Day of May, 2003 at 2:00 o'clock
P.M. in Court Room Number 1, in Clearfield County
Courthouse, Clearfield Pennsylvania why a Preliminary Injunction
should not be issued providing the relief requested by
Plaintiffs; and

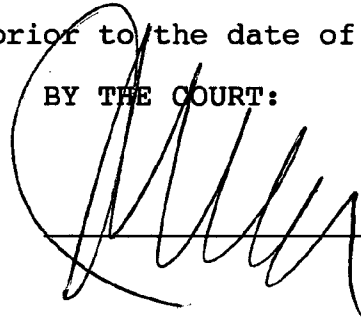
(2) Plaintiffs shall cause copies of this Rule to Show
Cause, the Complaint in Equity, and the Petition for Preliminary
Injunctive Relief, with its accompanying pages be served upon all
Defendants at least _____ days prior to the date of the hearing.

FILED

MAY 16 2003

William A. Shaw
Prothonotary

BY THE COURT:



Judge

FILED

Of 3:56 PM
MAY 16 2003

3cc

Att'y Gates

William A. Shaw
Prothonotary

WAS

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

GEORGE A. BANEY and	:		
MARGARET I. BANEY,	:		
Plaintiffs	:	03-	- CD
	:		
vs.	:		
	:	IN EQUITY	
ALBERT LLOYD BANEY, JR.,	:		
LAURA E. BANEY and MICHAEL	:		
BANEY,	:		
Defendants	:		

ORDER

AND NOW, this _____ day of _____, 2003, upon consideration of Plaintiffs' Petition for Preliminary Injunctive Relief, and the Court having determined after hearing that:

1. Plaintiffs will suffer irreparable harm if the requested relief is not granted;
2. The Plaintiffs do not have an adequate remedy at law;
3. That greater injury will be inflicted upon Plaintiffs by denial of the requested relief than will be inflicted upon Defendants by granting of such relief; and
4. Plaintiffs are likely to prevail on the merits, IT IS HEREBY ORDERED, and DECREED that Defendants Albert Lloyd Baney, Jr., Laura E. Baney and Michael Baney are forthwith:
 - A. Enjoined from interfering with and/or in any way hampering Plaintiffs' continuing use of the earthen roadway leading off Baney Road and leading to Plaintiffs' residence

property, also including that portion of the earthen road which swings to the north and then northeast and provides motor vehicle access to the "tripod" and the Plaintiffs' leach bed.

Furthermore, Defendant Michael Baney, is directed to remove all railroad ties and any other impediments he placed within the boundaries of said twenty (20') foot earthen roadway;

B. Enjoined from interfering in any way and/or hampering Plaintiffs' continuing use of the septic system providing sewage discharge services to Plaintiffs' residence, including all piping leading from Plaintiffs' residence to the leach bed situate on real estate of Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney;

C. Enjoined from interfering in any way and/or otherwise hampering Plaintiffs' use of and access to all piping and accessories (i.e. filtration system) supplying potable well water from the well situate on Plaintiffs' real estate which improvements travel through a portion of Defendants property before said piping again enters Plaintiffs' real estate and services Plaintiffs' residence;

D. Enjoined from going on or otherwise interfering with Plaintiffs' peaceful possession and quiet enjoyment of their residence property consisting of 0.5 acre situate in Lawrence Township, Clearfield County, Pennsylvania as described in Clearfield County Deeds and Records Book 1476, Page 355;

E. This Order shall remain in full force and effect until such time as modified or vacated by this Court; and

F. This Order is conditioned upon Plaintiffs' filing an improved Bond or legal tender of the United States with the Prothonotary in the amount of \$_____.

BY THE COURT:

Judge

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW
03-
-CD
IN EQUITY

GEORGE A. BANEY and
MARGARET I. BANEY,
Plaintiffs

vs.

ALBERT LLOYD BANEY, JR.,
LAURA E. BANEY and
MICHAEL BANEY,
Defendants

PETITION FOR PRELIMINARY
INJUNCTION, RULE & ORDER

0/11-40
Prothonotary

LAW OFFICES
GATES & SEAMAN
2 NORTH FRONT STREET
P.O. BOX 846
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

GEORGE A. BANEY and :
MARGARET I. BANEY :
VS. : NO. 03-744-CD
ALBERT LLOYD BANEY, JR., :
LAURA BANEY and MICHAEL BANEY :

O R D E R

NOW, this 29th day of May, 2003, this being the day and date set for hearing into the above-captioned Petition for Preliminary Injunction; upon agreement of the parties, it is the ORDER of this Court that counsel for Plaintiffs and Defendants shall forthwith proceed to prepare an agreement disposing of the issues contained in said complaint, pending which neither party shall interfere with the rights of the other to use the present unpaved roads, the septic system and/or the water filtration plant.

BY THE COURT,



President Judge

FILED

MAY 29 2003

William A. Shaw
Prothonotary

FILED

2cc Atty Gates

11/01 3:52 PM 1cc Albert & Laura Boney

MAY 29 2003

305 Boney Road

Clearfield, PA 16830

William A. Shaw
Prothonotary

1cc

Michael Boney

339 Boney Road

Clearfield, PA 16830

In The Court of Common Pleas of Clearfield County, Pennsylvania

BANEY, GEORGE A. & MARGARET I.

VS.

BANEY, ALBERT LLOYDE JR., LAURA E. & MICHAEL

Sheriff Docket #

14069

03-744-CD

COMPLAINT IN EQUITY; PETITION FOR PRELIMINARY INJUNCT

SHERIFF RETURNS

NOW MAY 21, 2003 AT 11:57 AM SERVED THE WITHIN COMPLAINT IN EQUITY; PETITION FOR PRELIMINARY INJUNCTION & RULE ON ALBERT LLOYD BANEY, JR., DEFENDANT AT RESIDENCE, 305 BANEY ROAD, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO ALBERT LLOYD BANEY, JR. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN EQUITY; PETITION FOR PRELIMINARY INJUNCTION & RULE AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: MCCLEARY

NOW MAY 21, 2003 AT 11:57 AM SERVED THE WITHIN COMPLAINT IN EQUITY; PETITION FOR PRELIMINARY INJUNCTION & RULE ON LAURA E. BANEY, DEFENDANT AT RESIDENCE, 305 BANEY ROAD, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO LAURA E. BANEY A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN EQUITY; PETITION FOR PRELIMINARY INJUNCTION & RULE AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: MCCLEARY

NOW MAY 21, 2003 AT 2:05 PM SERVED THE WITHIN COMPLAINT IN EQUITY; PETITION FOR PRELIMINARY INJUNCTION & RULE ON MICHAEL BANEY, DEFENDANT AT EMPLOYMENT, FULLINGTON BUS CO., 316 EAST CHERRY ST., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO MICHAEL BANEY A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN EQUITY; PETITION FOR PRELIMINARY INJUNCTION & RULE AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: MCCLEARY

Return Costs

Cost	Description
32.37	SHERIFF HAWKINS PAID BY: ATTY CK# 33205
30.00	SURCHARGE PAID BY: ATTY CK# 33204

Sworn to Before Me This

2nd Day Of June 2003

FILED

JUN 02 2003

01:35 p.m.
William A. Shaw
Prothonotary

So Answers,

Chester A. Hawkins
by Mark H. Harris

Chester A. Hawkins

Sheriff

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

GEORGE A. BANEY and	:	
MARGARET I. BANEY,	:	
Plaintiffs	:	03- 744 - CD
	:	
vs.	:	
	:	IN EQUITY
ALBERT LLOYD BANEY, JR.,	:	
LAURA E. BANEY and MICHAEL	:	
BANEY,	:	
Defendants	:	

ORDER

NOW, this 4 day of Aug, 2003, in
accordance with this Court's Order of May 29, 2003, and upon the
agreement of the parties as evidenced by their signatures at the
end of this Order, it is hereby ORDERED, ADJUDGED and DECREED as
follows:

1. Plaintiffs, George A. Baney and Margaret I. Baney,
his wife, their heirs, personal representatives, successors and
assigns, have a non-exclusive perpetual easement by implication
over the entire length (being approximately 178.0 feet) and width
(20.0 feet) of an existing earthen road leading in a generally
westerly direction from Baney Road through the real estate
presently owned by Defendants, Albert Lloyd Baney, Jr. and Laura
E. Baney, (being identified by Clearfield County Assessment Map
Number 123-L7-34) until the same accesses Plaintiffs' real estate
identified by Clearfield County Assessment Map Number 123-L7-103.
The parties will keep said easement free of obstructions over its
entire length and width.

2. Plaintiffs, George A. Baney and Margaret I. Baney, his wife, their heirs, personal representatives, successors and assigns, have a non-exclusive perpetual easement by implication over that portion of the existing earthen drive which swings to the north and then northeast off the existing earthen drive identified in the preceding paragraph for its entire length (approximately 61.0 feet) and existing width (20.0 feet) until the same terminates at the existing "tripod". The parties will keep said easement free of obstructions over its entire length and width.

3. Should Plaintiffs decide to sell their residential real estate identified by Clearfield County Assessment Map No. 123-L7-103, Defendants shall have the right to alter the exact location of the "turn around easement", provided the alternative location of this easement is acceptable to the prospective purchasers of Plaintiffs' residential real estate.

4. Plaintiffs, George A. Baney and Margaret I. Baney, his wife, their heirs, personal representatives, successors and assigns, have a perpetual easement by implication to continue to utilize the existing septic system benefiting their residence property identified by Clearfield County Assessment Map Number 123-L7-103, including the existing location of the existing four inch sewer pipe, and a perpetual sewer easement of ten (10) feet in width for purposes of repairing, replacing and maintaining the

existing sewer line until it reaches the location of the present leach bed and a further perpetual easement by implication to discharge their sewage into the existing leach bed. Plaintiffs, George A. Baney and Margaret I. Baney, their heirs, personal representatives, successors and assigns, hereby indemnify Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, their heirs, personal representatives, successors and assigns for all costs or claims of any nature associated with the use, operation and maintenance of the aforementioned septic line, leach field and septic system.

5. Plaintiffs, George A. Baney and Margaret I. Baney, his wife, their heirs, personal representatives, successors and assigns, have a continuing perpetual easement by implication to utilize the existing water line piping, filtration system and accessories, at its present location and which leads from the well situate on their residence property identified by Clearfield County Assessment Map Number 123-L7-103 through a portion of the real estate of Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, identified by Clearfield County Assessment Map Number 123-L7-34, which again enters Plaintiffs' aforementioned real estate, free of interference from any of the Defendants, for purposes of Plaintiffs' continuing to receive potable water from the aforementioned well. Said water line piping easement shall be ten (10) feet in width (5.0 feet on either side of centerline of

the existing water line) for purposes of repair, replacement and maintenance. This easement includes the right of continuing access to the existing filtration system situate in the basement of the residence presently occupied by Defendant, Michael Baney. This water line easement will terminate upon the earlier of: (i) Plaintiffs removal of the existing filtration system and accessories from the residence occupied by Defendant, Michael Baney, or (ii) Seventy-five (75) days from the date of this Order, and thereafter all easements set forth in this Paragraph 5 shall end and be terminated for all time;

6. Plaintiffs shall be solely responsible for all costs associated with the use and operation of the aforementioned sewer line and the leach bed. Plaintiffs also will be solely responsible for all costs associated with the use and operation of the aforementioned water line piping and accessories providing potable water to their residence property identified by Clearfield County Assessment Map Number 123-L7-103;

7. Plaintiffs use of the leach bed existing on the real estate owned by Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, shall be limited to its present location and cannot be expanded without the express written consent of Defendants, Albert Lloyd Baney, Jr. and Laura E. Baney, their heirs, personal representatives, successors and assigns.

8. All Plaintiffs and all Defendants agree not to interfere with the peaceful possession and quiet enjoyment of the real estate either owned or occupied by the other parties.

9. The operative terms of Paragraphs 1 through 8 hereof, shall be binding upon and shall inure to the benefit of all heirs, personal representatives, successors and assigns of both the Plaintiffs and the Defendants to these proceedings.

BY THE COURT:




President Judge

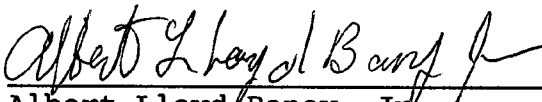
Reviewed and agreed to by:



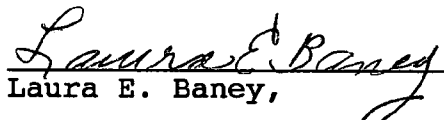
George A. Baney




Margaret I. Baney,
Plaintiffs



Albert Lloyd Baney, Jr.



Laura E. Baney,



Michael Baney
Defendants

FILED

AUG 04 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PA
CIVIL ACTION - LAW
No. 03-744-CD
IN EQUITY

GEORGE A. BANEY and
MARGARET I. BANEY,
Plaintiffs

vs.

ALBERT LLOYD BANEY, JR.,
LAURA E. BANEY and MICHAEL
BANEY,
Defendants

ORDER

FILED

0 11:25 AM

AUG 04 2003

File

3 acts Atty.

William A. Shaw
Prothonotary

LAW OFFICES
GATES & SEAMAN
2 NORTH FRONT STREET
P.O. BOX 846
CLEARFIELD, PA. 16830