

03-994-CD  
LEZZER CASH & CARRY vs. BJR, INC. etal.

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

LEZZER CASH & CARRY of  
CURWENSVILLE, INC.,  
Plaintiff

vs.

BJR, INC. t/d/b/a  
CONSERVCO, successor to  
CONSERVCO, a partnership,  
and J.F. KANE, a/k/a  
JOSEPH F. KANE,  
individually,  
Defendants

No. 03- 994 -CD

Type of Case: Civil

Type of Pleading: COMPLAINT IN  
CONFESSION OF JUDGMENT

Filed on behalf of: Plaintiff

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

JUL 08 2003

William A. Shaw  
Prothonotary

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

LEZZER CASH & CARRY of  
CURWENSVILLE, INC.,  
Plaintiff

vs.

No. 03-

-CD

BJR INC., t/d/b/a CONSERVCO,  
successor to Conservco, a  
Partnership, and J.F. KANE, a/k/a  
JOSEPH F. KANE, individually,  
Defendants

COMPLAINT

Plaintiff files this Complaint pursuant to Pa. R.C.P.  
No. 2951(b) for judgment by confession and avers the following:

1. Plaintiff, LEZZER CASH & CARRY of CURWENSVILLE, INC., is a corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, which has its main office at Scofield Street, P. O. Box 217, Curwensville, Pennsylvania, 16833.

2. Defendant, BJR, Inc., t/d/b/a Conservco, successor to Conservco, a Partnership, is incorporated under the laws of the Commonwealth of Pennsylvania and said entity maintains an office and place of business at One Washington Avenue, Hyde, (Clearfield County), Pennsylvania 16843.

3. Defendant, J. F. KANE, a/k/a JOSEPH F. KANE, is an adult individual, who resides at 9 Gulich Avenue, Clearfield, Pennsylvania 16830.

4. Plaintiff is engaged in the business of selling and furnishing materials and building supplies to entities

involved in both residential and commercial construction.

5. Defendant, BJR, Inc., t/d/b/a Conservco, is in the business of both commercial and residential construction and as such is a regular purchaser of the materials and building supplies sold by Plaintiff.

6. Attached as Exhibit "A" is a true and correct copy of the entire Application for Business Credit and Non-Consumer Credit Agreement, between Plaintiff and Conservco, under which Plaintiff is currently providing a credit line to the Defendant BJR, Inc., t/d/b/a Conservco of \$30,000.00.

7. The Non-Consumer Credit Agreement entered into between Plaintiff and Conservco and J. F. Kane, a/k/a Joseph F. Kane, individually, and as a principal of Conservco included a companion Material Purchase Agreement which contains a confession of judgment provision which provides that if the account is not paid when due, then the undersigned, individually, and in his representative capacity on behalf of Conservco then authorized the confession of judgment against both Conservco and himself, individually, for the amount then due, plus interest on the unpaid balance at the rate of eighteen (18%) percent per annum, together with cost of suit and fifteen (15%) percent, attorney's commission. Attached as a portion of Exhibit "A" is the Material Purchase Agreement containing the signature of J. F. Kane, a/k/a Joseph F. Kane.

8. Plaintiff began extending credit to the Defendants, pursuant to the terms of the aforementioned Non-Consumer Credit Agreement, on or about January, 1989 and continued to do so until April 25, 2003.

9. The judgment to be entered hereunder by confession is not being entered against the Defendants, BJR, Inc. t/d/b/a Conservco, and J. F. Kane, a/k/a Joseph F. Kane, individually, in connection with a consumer credit transaction, nor does the same arise out of a retail installment sale, contract or account subject to the provisions of the "Goods and Services Installment Sale Act", as amended. (See 69 P.S. §1101 et seq).

10. Defendants' Non-Consumer Credit Agreement referred to in Paragraph 6 hereof has not been assigned by Plaintiff.

11. No judgment has been entered against the named Defendants in any court of record pursuant to the warrant of attorney provisions set forth in the aforementioned Material Purchase Agreement as referenced in Paragraph 7 hereof.

12. Defendants, BJR, Inc., t/d/b/a Conservco and J. F. Kane, a/k/a Joseph F. Kane, individually, are in default under the terms of the aforementioned Non-Consumer Credit Agreement and Material Purchase Agreement since they have not paid for the building materials and supplies purchased on

credit from Plaintiff for the period beginning December 27, 2002 and ending April 25, 2003 despite being billed for said items.

13. Pursuant to the Warrant of Attorney to Confess Judgment Authority as set forth in the aforementioned Material Purchase Agreement, Plaintiff demands judgment be entered against Defendants, BJR, Inc., t/d/b/a/ Conservco and J. F. Kane, a/k/a Joseph F. Kane, individually, for:

a.	Amounts due for credit purchases, including interest, due pursuant to the terms of the Non-Consumer Credit Agreement through April 25, 2003;	\$30,089.27
b.	Attorney's fees (at the rate of 15%) pursuant to the Warrant of Attorney appearing in said Material Purchase Agreement	\$ 4,513.39
	TOTAL	<hr/> \$34,602.66
c.	Plus Interest at the rate of 18% per annum on the unpaid principal balance from April 30, 2003	

WHEREFORE, Plaintiff, Lezzer Cash & Carry of Curwensville, Inc., demands judgment in its favor in the sum of \$34,602.66 be entered against Defendants, BJR, Inc., t/d/b/a Conservco and J. F. Kane, a/k/a Joseph F. Kane, individually, as authorized by the Warrant of Attorney appearing in the aforementioned Material Purchase Agreement, plus costs and interest under the terms of the aforementioned Non-Consumer Credit Agreement at the rate of 18% per annum on the unpaid

balance from April 30, 2003 to date judgment entered and thereafter at the statutory rate.

GATES & SEAMAN



---

Andrew P. Gates, Esquire  
Attorney for Plaintiff

Date: July 3, 2003

Two North Front Street  
P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766



**CASH & CARRY**

LUMBER & BUILDING MATERIALS CENTERS

Scofield Street  
CURWENSVILLE, PA. 16833  
(814) 236-0220

Shaffer Road  
DuBOIS, PA. 15801  
(814) 371-9311

1260 Wayne Avenue  
INDIANA, PA. 15701  
(412) 349-2281

E. Butler Road  
BUTLER, PA. 16001  
(412) 282-3100

Chad Road  
R.D. 2, Box 291  
MUNCY, PA. 17756  
(717) 546-8026

2350 E. College Avenue  
STATE COLLEGE, PA. 16801  
(814) 237-3511

## APPLICATION FOR BUSINESS CREDIT

AND

## NON-CONSUMER CREDIT AGREEMENT

The undersigned hereby applies to Lezzer's for the establishment of a business credit account on the terms and conditions provided fore herein, and represents and warrants the following credit information to be true, accurate and complete.

Any credit extended will be in reliance on the statement hereon, which I/We certify are correct and complete. If any part of this application is incorrect or incomplete, then you may declare my total indebtedness immediately due and payable.

### TERMS OF CREDIT

I/We, for and in consideration of goods received or to be received

do hereby promise to pay Lezzer's the following:

- 1) The balance shown on the monthly statement in full before the next month's billing date.
- 2) Service charges of 1 1/2% PER MONTH or 18% PER ANNUM on the amount of the open trade account which is 30 days past due.
- 3) The entire balance of the open trade account, at the option Lezzer's, should any part of the trade account become past due.
- 4) All costs and expenses, including attorney's fees reasonably incurred in collecting the open trade account or any part thereof.
- 5) Application must be signed by husband and wife. If firm is a corporation, officers and their spouse must sign the application.

Depending on the type of business you operate, complete Section 1, 2 or 3 on the following page. FILL OUT ONE SECTION ONLY THEN CONTINUE

TO FILL OUT THE REMAINDER OF THIS APPLICATION. Attach additional sheets as necessary to fully answer each question.

(CUSTOMER COPY)

EXHIBIT "A"



## STATEMENT OF CREDIT POLICY

(Customer Copy)

When you charge your purchases at Lezzer's your bill will be sent at the end of the month. If you keep your account current, no FINANCE CHARGE will be added. To keep your account current and to avoid any FINANCE CHARGE, you must pay the balance shown on your monthly statement in full before the next month's billing date. The FINANCE CHARGE is computed by a "Periodic Rate" of  $1\frac{1}{2}\%$  PER MONTH which is an ANNUAL RATE of 18% applied to the previous balance after deduction of any payments, returns and credits.

If Lezzer's is forced to take legal action to collect an account, the customer will be liable for all costs and expenses reasonably incurred in collecting the account. If the account remains unpaid for sixty (60) days, a mechanics lien will be filed to secure payment of debt.

## INDIVIDUALS AND SOLE PROPRIETORSHIPS

## SECTION 1

BUSINESS NAME \_\_\_\_\_  
 BUSINESS ADDRESS \_\_\_\_\_  
 NO. OF YEARS IN BUSINESS \_\_\_\_\_ PHONE NO. (\_\_\_\_) \_\_\_\_\_  
 INDIVIDUALS NAME \_\_\_\_\_ SOCIAL SECURITY NO. \_\_\_\_\_  
 DATE OF BIRTH \_\_\_\_\_  
 SPOUSE'S NAME \_\_\_\_\_ SOCIAL SECURITY NO. \_\_\_\_\_  
 DATE OF BIRTH \_\_\_\_\_  
 HOME ADDRESS \_\_\_\_\_ PHONE NO. (\_\_\_\_) \_\_\_\_\_  
 CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_  
 YOUR EMPLOYER \_\_\_\_\_ SPOUSE'S EMPLOYER \_\_\_\_\_  
 EMPLOYERS ADDRESS \_\_\_\_\_ EMPLOYERS ADDRESS \_\_\_\_\_  
 POSITION \_\_\_\_\_ POSITION \_\_\_\_\_  
 LENGTH OF EMPLOYMENT \_\_\_\_\_ YRS. LENGTH OF EMPLOYMENT \_\_\_\_\_ YRS.  
 ANNUAL INCOME \_\_\_\_\_ ANNUAL INCOME \_\_\_\_\_  
 RESIDENCE TYPE: OWN/BUYING \_\_\_\_\_ RENT \_\_\_\_\_ BOARD \_\_\_\_\_  
 ARE THERE ANY UNSATISFIED JUDGEMENTS AGAINST YOU? YES \_\_\_\_\_ NO \_\_\_\_\_  
 HAVE YOU EVER DECLARED BANKRUPTCY? YES \_\_\_\_\_ NO \_\_\_\_\_

## SECTION 2: PARTNERSHIPS

NAME OF PARTNERSHIP: CONSERUCCO  
 BUSINESS ADDRESS 805 S 2ND  
 CITY CLEARFIELD STATE PA ZIP 16830 PHONE (814) 765 6725

GENERAL OR LIMITED PARTNERSHIP: \_\_\_\_\_

EMPLOYER I.D. NUMBER 25-1567276 NO. OF YEARS IN BUSINESS 8

LIST NAMES, ADDRESSES AND PHONE NUMBERS OF ALL PARTNERS. IF A LIMITED PARTNER, SO INDICATE.

NAME <u>JOSEPH KANE</u>	NAME <u>RICHARD WELSEL</u>
ADDRESS <u>805 S 2ND</u>	ADDRESS <u>399 CLEARFIELD ST.</u>
<u>CLEARFIELD PA</u>	<u>CLEARFIELD PA</u>
PHONE <u>765-6725</u>	PHONE <u>765-2055</u>
SOCIAL SECURITY NO. <u>164 36 9647</u>	SOCIAL SECURITY NO. <u>189 36 1356</u>

NAME _____	NAME _____
ADDRESS _____	ADDRESS _____
PHONE _____	PHONE _____
SOCIAL SECURITY NO. _____	SOCIAL SECURITY NO. _____

ARE THERE ANY UNSATISFIED JUDGEMENTS AGAINST YOU? YES \_\_\_\_\_ NO X  
 HAVE YOU EVER DECLARED BANKRUPTCY? YES \_\_\_\_\_ NO X

## SECTION 3: CORPORATIONS

NAME OF CORPORATION \_\_\_\_\_  
BUSINESS ADDRESS \_\_\_\_\_

PHONE NUMBER (\_\_\_\_) \_\_\_\_\_

DATE OF INCORPORATION \_\_\_\_\_  
EMPLOYER I.D. NUMBER \_\_\_\_\_

STATE OF INCORPORATION \_\_\_\_\_

LIST NAMES, ADDRESSES, PHONE NUMBERS AND SOCIAL SECURITY NUMBERS OF EACH OFFICER  
THE CORPORATION, INCLUDING THEIR SPECIFIC TITLES.NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_PHONE (\_\_\_\_) \_\_\_\_\_  
TITLE \_\_\_\_\_  
SOC. SEC. NO. \_\_\_\_\_NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_PHONE (\_\_\_\_) \_\_\_\_\_  
TITLE \_\_\_\_\_  
SOC. SEC. NO. \_\_\_\_\_NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_PHONE (\_\_\_\_) \_\_\_\_\_  
TITLE \_\_\_\_\_  
SOC. SEC. NO. \_\_\_\_\_NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_PHONE (\_\_\_\_) \_\_\_\_\_  
TITLE \_\_\_\_\_  
SOC. SEC. NO. \_\_\_\_\_

## SECTION 4: REQUEST FOR CREDIT

WHAT IS THE ESTIMATED COST OF THE PROJECT? MONTHLY CHARGES WILL \_\_\_\_\_

HOW MUCH CREDIT ARE YOU REQUESTING? VARY FROM \$0.00 TO \$20,000.00 \_\_\_\_\_

DO YOU PLAN TO GET A BANK LOAN? \_\_\_\_\_

IF YES NAME OF BANK \_\_\_\_\_

NAME OF LOAN OFFICER \_\_\_\_\_ PHONE (\_\_\_\_) \_\_\_\_\_

✓ ARE PURCHASE ORDERS REQUIRED TO CHARGE ? YES \_\_\_\_\_ NO X✓ IF NO, PLEASE LIST NAMES OF AUTHORIZED TO CHARGE : ALREADY PROVIDEDUNDER SEPARATE COVER

SECTION: 5

LEZZER CASH & CARRY INC.

TO BE FULLY COMPLETED BY ALL APPLICANTS

THE PRINCIPAL CHECKING ACCOUNT OF THE BUSINESS IS

BANK CNB  
OFFICE LOCATION MAIN OFFICE  
ACCOUNT NO. \_\_\_\_\_  
CONTACT PERSON MERRILL DUNLAP

THE PRINCIPAL LENDER TO THE BUSINESS IS.

LENDER CNB  
ADDRESS \_\_\_\_\_  
\_\_\_\_\_

TOTAL LOANS VARIES CONTACT PERSON M. DUNLAP  
DO THESE LOANS INCLUDE A LINE OF CREDIT? X IF YES, LIMIT OF LINE 50,000

PLEASE PROVIDE THE INFORMATION REQUESTED FOR THREE (3) MAJOR BUSINESS REFERENCES

BUSINESS NAME <u>E. M. Brown</u>	BUSINESS NAME <u>Wib Co</u>
CONTACT (NAME & TITLE) <u>Allen</u>	CONTACT (NAME & TITLE) _____
ADDRESS <u>767</u>	ADDRESS <u>P.O. Box 1754 Altoona</u>
PHONE NUMBER ( ) _____	PHONE NUMBER ( ) _____

BUSINESS NAME Cleopatra Free Value  
CONTACT (NAME & TITLE) Mike  
ADDRESS P.O. Box 767 Cleopatra Pa  
PHONE NUMBER ( ) \_\_\_\_\_

I/WE HAVE READ AND UNDERSTAND THE CREDIT TERMS SET FORTH HEREIN AND AUTHORIZE LEZZER'S TO OBTAIN INFORMATION FROM THE REFERENCES LISTED ON THIS APPLICATION OR BY CREDIT BUREAU REPORT.

SIGNATURE [Signature]  
SIGNATURE [Signature]

MATERIAL PURCHASE AGREEMENT

THE undersigned parties who are engaged in business under the trade name of \_\_\_\_\_ hereby contract with Lezzer Cash & Carry, Inc. to furnish materials and building supplies to them. In order to better assure delivery of said materials and supplies and to further secure credit therefore, the undersigned, both in their individual capacity and in their representatives capacity, set forth below, do agree that, in the event payment is not otherwise made for said materials and supplies, that they will make payment therefore when it is billed to them, in an amount of the balance due. If the said account is not paid when due, the undersigned individually, and in their representative capacity, do hereby authorize the Prothonotary or any attorney of any court of record of the United States to appear therein and with the statement filed, to confess judgement therein against them for the amount then due with interest on the unpaid balance at the rate of eighteen (18%) percent per annum together with costs of suit, release of errors, and with fifteen percent for attorneys and/or collection fees, hereby waiving all right of stay of execution, inquisition and appeal and the benefit of any and all laws now or hereafter to be passed, exempting real or personal property from levy and sale on execution and also waiving the benefit of the present or any further insolvent laws of any state of the United States and of the present or any further bankruptcy law of the United States.

WITNESS the signature of the parties hereto, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

INDIVIDUAL SIGNATURES

\_\_\_\_\_(SEAL) \_\_\_\_\_(SEAL)  
\_\_\_\_\_(SEAL) \_\_\_\_\_(SEAL)

CORPORATION SIGNATURE & TITLE

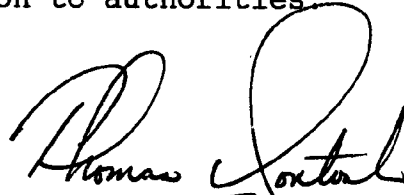
\_\_\_\_\_  
BY: \_\_\_\_\_(SEAL)  
Title  
\_\_\_\_\_  
BY: \_\_\_\_\_(SEAL)  
Title

PARTNERSHIP SIGNATURE & TITLE

*J. F. Lane*  
*Richard A. Nelson*  
BY: PARTNER (SEAL)  
Title  
BY: PARTNER (SEAL)  
Title

V E R I F I C A T I O N

I, Thomas Yontosh, Corporate Credit Manager for LEZZER CASH & CARRY of CURWENSVILLE, INC., Plaintiff, verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I, the undersigned, understand that false statements made herein are subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

A handwritten signature in cursive script, appearing to read "Thomas Yontosh", written over a horizontal line.

Thomas Yontosh,  
Corporate Credit Manager for  
LEZZER CASH & CARRY of  
CURWENSVILLE, INC.

Date: \_\_\_\_\_

7/3/03

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PA  
No. 03-  
-CD  
CIVIL DIVISION

LEZZER CASH & CARRY OF  
CURRENTSVILLE, INC.,  
Plaintiff

VS.

BJR, Inc., t/d/b/a CONSERVCO,  
successor to Conservco, a  
Partnership and J. F. KANE,  
a/k/a JOSEPH F. KANE,  
individually,  
Defendants

COMPLAINT  
IN CONFESSION OF JUDGMENT

*William A. Shaw  
Prothonotary*

*0 41:46:54 p6 20 00  
100 0 0 503 acc + William A. Shaw*

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

OFFICE OF THE PROTHONOTARY  
CLEARFIELD COUNTY COURTHOUSE  
Clearfield, PA 16830

July 8, 2003

BJR, Inc., t/d/b/a  
Conservco  
One Washington Avenue  
Hyde, Pennsylvania 16843

Re: Lezzer Cash & Carry of Curwensville, Inc. vs.  
BJR, Inc., t/d/b/a CONSERVCO and J.F. KANE, a/k/a JOSEPH F.  
KANE, individually  
No. 03- 994 -CD

Dear Defendant:

Enclosed herewith is a certified true and correct copy  
of the Complaint in Confession of Judgment filed in this office on  
July 8, 2003, and the Statement of Judgment entered against you.

Very truly yours,



Office of the Prothonotary

enclosure



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

LEZZER CASH & CARRY of  
CURWENSVILLE, INC.,  
Plaintiff

vs.

No. 03- 994 -CD

BJR, Inc. t/d/b/a CONSERVCO,  
successor to Conservco, a  
Partnership and J.F. KANE, a/k/a  
JOSEPH F. KANE, individually,  
Defendants

TO: BJR, Inc., t/d/b/a Conservco  
One Washington Avenue  
Hyde, Pennsylvania 16843

Notice is given that a JUDGMENT in the above captioned  
matter has been entered against you in the amount of  
\$34,602.66 on July 8, 2003.

William A. Shaw, Prothonotary

By \_\_\_\_\_  
Deputy

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

LEZZER CASH & CARRY of  
CURWENSVILLE, INC.,  
Plaintiff

vs.

No. 03- 994 -CD

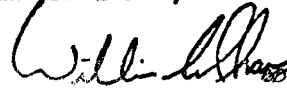
BJR, INC., t/d/b/a CONSERVCO,  
successor to Conservco, a  
Partnership, and J.F. KANE, a/k/a  
JOSEPH F. KANE, individually,  
Defendants

TO: J. F. Kane, a/k/a Joseph F. Kane  
9 Gulich Avenue  
Clearfield, Pennsylvania 16830

Notice is given that a JUDGMENT in the above captioned  
matter has been entered against you in the amount of  
\$34,602.66 on July 8, 2003.

William A. Shaw, Prothonotary

By



Deputy

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

LEZZER CASH & CARRY of  
CURWENSVILLE, INC.,  
Plaintiff

vs.

No. 03- -CD

BJR, INC., t/d/b/a CONSERVCO,  
successor to Conservco, a  
Partnership, and J.F. KANE, a/k/a  
JOSEPH F. KANE, individually,  
Defendants

CONFESSION OF JUDGMENT

Pursuant to the authority contained in the warrant of attorney, the original or a copy of which is attached to the complaint filed in this action, I appear for the Defendants and confess judgment in favor of the Plaintiff and against Defendants as follows:

a. Amounts due for credit purchases, \$30,089.27  
including interest, due pursuant  
to the terms of the Non-Consumer  
Credit Agreement through April 25,  
2003;

b. Attorney's fees (at the rate of 15%) \$ 4,513.39  
pursuant to the Warrant of Attorney  
appearing in said Material Purchase  
Agreement

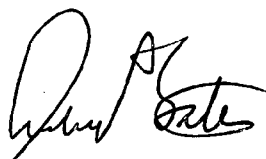
TOTAL \$34,602.66

c. Plus Interest at the rate of 18% per  
annum on the unpaid principal balance  
from April 30, 2003

FILED

JUL 08 2003

William A. Shaw  
Prothonotary

  
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY ,  
PENNSYLVANIA  
STATEMENT OF JUDGMENT

Lezzer Cash & Carry  
Plaintiff(s)

No.: 2003-00994-CD

Real Debt: \$34,602.66

Atty's Comm: \$

Costs: \$

Int. From: \$

Entry: \$20.00

Vs.

BJR, Inc  
Joseph F. Kane  
Conservco  
Defendant(s)

Instrument: Confession/Judgment

Date of Entry: July 8, 2003

Expires: July 8, 2008

Certified from the record this 8th day of July 2003

\_\_\_\_\_  
William A. Shaw, Prothonotary

\*\*\*\*\*

SIGN BELOW FOR SATISFACTION

Received on \_\_\_\_\_, \_\_\_\_\_, of defendant full satisfaction of this Judgment, Debt,  
Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

\_\_\_\_\_  
Plaintiff/Attorney

COPY

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

LEZZER CASH & CARRY of  
CURWENSVILLE, INC.,  
Plaintiff

vs.

BJR, INC. t/d/b/a  
CONSERVCO, successor to  
CONSERVCO, a partnership,  
and J.F. KANE, a/k/a  
JOSEPH F. KANE,  
individually,  
Defendants

No. 03-994- CD

Type of Case: Civil

Type of Pleading: PRAECIPE

Filed on behalf of: Plaintiff

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

NOV 09 2004

William A. Shaw  
Prothonotary/Clerk of Courts  
I want to say

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

LEZZER CASH & CARRY of  
CURWENSVILLE, INC.,  
Plaintiff

vs.

No. 03-994-CD

BJR INC., t/d/b/a CONSERVCO,  
successor to Conservco, a  
Partnership, and J.F. KANE, a/k/a  
JOSEPH F. KANE, individually,  
Defendants

**PRAECIPE FOR WRIT OF REVIVAL**

TO WILLIAM A. SHAW, PROTHONOTARY:

Please issue a Writ of Revival of Judgment entered on  
July 8, 2003 to Case No. 03-994-CD and index it in the Judgment  
Index against the Defendant, J. F. Kane, a/k/a Joseph F. Kane,  
only, in the amount of \$34,602.66, plus interest at the rate of  
18.0% per annum on unpaid principal from April 30, 2003.

GATES & SEAMAN

By:



Andrew P. Gates, Esquire  
Attorney for Plaintiff

Date: <sup>November</sup>~~October~~ 9, 2004

2 North Front Street  
P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

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

LEZZER CASH & CARRY of :  
CURWENSVILLE, INC., :  
Plaintiff :  
vs. : No. 03-994-CD  
BJR INC., t/d/b/a CONSERVCO, :  
successor to Conservco, a :  
Partnership, and J.F. KANE, a/k/a :  
JOSEPH F. KANE, individually, :  
Defendants :

**WRIT OF REVIVAL**

TO: J. F. KANE, a/k/a JOSEPH F. KANE, Defendant:

(1) You are notified that Plaintiff, LEZZER CASH & CARRY OF CURWENSVILLE, INC. has commenced a proceeding to revive and continue the lien and judgment entered to Case No. 03-994-CD.

(2) The Plaintiff claims that the amount now due and unpaid is the amount of \$34,602.66, plus interest at the rate of 18.0% per annum, on unpaid principal from April 30, 2003.

(3) You are required within twenty (20) days after service of this Writ to file an Answer or otherwise plead to the Writ. If you fail to do so, judgment of the revival will be entered.

BY:

\_\_\_\_\_  
William A. Shaw, Prothonotary

Date: November 9, 2004

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

LEZZER CASH & CARRY of  
CURWENSVILLE, INC.,  
Plaintiff

vs.

BJR, INC. t/d/b/a  
CONSERVCO, successor to  
CONSERVCO, a partnership, and  
J.F. KANE, a/k/a  
JOSEPH F. KANE, individually,  
Defendants

No. 03-994- CD

FILED

NOV 09 2004

William A. Shaw  
Prothonotary/Clerk of Courts

6 units to Att'y

PRAECIPE FOR WRIT OF EXECUTION UPON A CONFESSED JUDGEMENT

TO WILLIAM A. SHAW, PROTHONOTARY:

Issue writ of execution upon a judgment entered by confession in the above matter,

- (1) directed to the Sheriff of Clearfield County;
- (2) against J. F. Kane, a/k/a Joseph F. Kane, defendant; and
- (3) against \_\_\_\_\_, garnishee;
- (4) and index this writ
  - (a) against J. F. Kane, ,a/k/a Joseph F. Kane; and
  - (b) against \_\_\_\_\_ as garnishee,  
as a lis pendens against real property of the defendant  
in name of garnishee as follows: n/a

- (5) Amount due (as per judgment entered July 8, 2003) \$ 34,602.66  
Interest from April 30, 2003 at 18.0%  
per annum on unpaid principal balance \$ \_\_\_\_\_

[Costs to be added]

\$ \_\_\_\_\_

60.00 PROTHONOTARY

**TOTAL**

\$ \_\_\_\_\_



**Certification**

I certify that

- (a) This Praecipe is based upon a judgment entered by confession; and
- (b) Notice will be served at least thirty (30) days prior to the date of the Sheriff's Sale of real property pursuant to Rule 2958.2.

**GATES & SEAMAN**

By:



---

Andrew P. Gates, Attorney for Plaintiff,  
Lezzer Cash & Carry of Curwensville, Inc.

Date: November 9, 2004

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

LEZZER CASH & CARRY of : No. 03-994- CD  
CURWENSVILLE, INC., :  
Plaintiff :

vs. :

BJR, INC. t/d/b/a CONSERVCO, successor to :  
CONSERVCO, a partnership, and J.F. KANE, :  
a/k/a JOSEPH F. KANE, individually, :  
Defendants :

WRIT OF EXECUTION

COMMONWEALTH OF PENNSYLVANIA :  
: SS:  
COUNTY OF CLEARFIELD :

TO CHESTER HAWKINS, SHERIFF OF CLEARFIELD COUNTY:

To satisfy the judgment, interest and costs in the above matter you are directed  
to levy upon and sell the following described real property of Defendant, J. F. Kane,  
a/k/a Joseph F. Kane: See attached Exhibit "A"

Amount due (as per judgment :  
entered July 8, 2003, which : \$ 34,602.66  
includes interest through :  
April 30, 2003) :

Interest of \$18.0% per annum  
from April 30, 2003 to date of  
Sheriff's Sale:

\$ \_\_\_\_\_

SUBTOTAL

\$

[Costs to be added]

Prothonotary costs

\$

60.00

TOTAL

\$

Seal of the Court



Prothonotary costs

Date: November 9, 2004

iron pipe; thence South along the lands of Mark Fulmer South 14 degrees 43 minutes 47 seconds West 628.49 feet to an  $\frac{1}{2}$ " iron bolt; thence still along lands of Mark Fulmer South 24 degrees 53 minutes 28 seconds West 313.84 feet to a  $\frac{3}{4}$ " iron pipe; thence along lands of James and Helen Spencer North 46 degrees 50 minutes 17 seconds West 367.01 feet to the spike and place of beginning.

BEING the same premises wherein a twenty (20.0%) per cent interest vested in Joseph F. Kane by deed dated February 21, 1989 and appearing of record in Clearfield County Deeds and Records Book 1271, Page 3.

Said premises being further identified as 10.19 acres with Clearfield County Assessment Map No. 123-K8-7.

**Legal Description of Real Estate of Joseph F. Kane**

**PARCEL NO. 1**

ALL that property, together with the improvements erected thereon, located in Second Ward of Clearfield Borough, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin at the intersection of an alley and the southern side of Walnut Street; thence along said alley South twenty-five degrees thirty minutes West (S. 25° 30' W.) ninety-five and nine-tenths (95.9) feet to an iron pin on the line of land now or formerly of John R. Crago, et ux; thence along the Crago property North seventy-four degrees sixteen minutes West (N. 74° 16' W.) fifty-nine and two-tenths (59.2) feet to an iron pin on the line of land now or formerly of Francis R. Sughrue, et ux, being the common corner of the property described herein and the properties now or formerly of John R. Crago and Francis R. Sughrue; thence along the Sughrue property North one degree thirty minutes East (N. 1° 30' E.) seventy-three and three-tenths (73.3) feet to an iron pin on the south side of Walnut Street; thence along Walnut Street South eighty-eight degrees thirty minutes East (S. 88° 30' E.) ninety-six and six-tenths (96.6) feet to an iron spike at the corner of an alley and Walnut Street and the place of beginning.

BEING the same premises which vested in Joseph F. Kane by (i) deed dated February 7, 1995 and appearing of record in Clearfield County Deeds and Records Book 1659, Page 101; and (ii) Court Order dated July 23, 2004 filed in the matter of Grace J. Kane vs. Joseph F. Kane, Case No. 01-337-CD (Court of Common Pleas of Clearfield County, Pennsylvania).

Said premises further identified as Double House and Part Lot with Clearfield County Assessment Map No. 4.2-K8-223-21.1

**PARCEL NO. 2**

An undivided twenty (20.0%) per cent interest in all that certain piece or parcel of land, together with all improvements thereon, if any, situate in Lawrence Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a spike set in an earthen drive which separates the premises conveyed herein from the land of Joseph and Florence Evanko; thence N 36 degrees 55 minutes 58 seconds E 231.46 feet to a ¾" bolt; thence North along the land of Ralph and Dolly Lippert North 54 degrees 17 minutes 01 seconds West 221.50 feet to a ½" iron pipe; thence along the land of Whitford and Ethal Law North 13 degrees 36 minutes 59 seconds East 769.65 feet to a 1" iron pipe; thence along lands of Eugenia Leitzinger and Gerald Hatcher South 44 degrees 53 minutes 01 seconds East 594 feet to a 1 ¼"

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

LEZZER CASH & CARRY of  
CURWENSVILLE, INC.,

Plaintiff

vs.

BJR, INC. t/d/b/a CONSERVCO, successor to  
CONSERVCO, a partnership, and J.F. KANE,  
a/k/a JOSEPH F. KANE, individually,

Defendants

No. 03-994- CD

**FILED**

NOV 09 2004

6/3:20/04  
William A. Shaw

Prothonotary/Clerk of Courts

1 Case to Arr.

AFFIDAVIT PURSUANT TO RULE 3129.1

Lezzer Cash & Carry of Curwensville, Inc., Plaintiff in the above action, sets forth as of the date the Praecipe for the writ of execution was filed, the following information concerning the real property located in Clearfield Borough, Clearfield County, Pennsylvania (hereafter called "Parcel ONE") and Lawrence Township, Clearfield County, Pennsylvania (hereafter called "Parcel TWO"), with said parcel being further described in Exhibit "A", which is attached hereto and made a part hereof).

1. Name and address of Owner(s) or Reputed Owner(s):

Name

Address

A. PARCEL ONE:

J. F. Kane, a/k/a Joseph F. Kane

9 Gulich Avenue  
Clearfield, PA 16830

B. PARCEL TWO:

J. F. Kane a/k/a Joseph F. Kane

9 Gulich Avenue  
Clearfield, PA 16830

2. Name and address of Defendant(s):

Name

Address

PARCELS ONE and TWO:

J. F. Kane, a/k/a Joseph F. Kane

9 Gulich Avenue  
Clearfield, PA 16830

3. Name and last known address of every judgment creditor whose judgment is a record lien on the real property to be sold:

FOR PARCELS ONE AND TWO:

<u>Name</u>	<u>Address</u>
(a) Lezzer Cash & Carry of Curwensville, Inc.	Schofield Street, P. O. Box 217 Curwensville, PA 16833
(b) Clearfield Bank & Trust Company	11 North Second Street Clearfield, PA 16830
(c) Clearfield County Domestic Relations Section	230 East Market Street Clearfield, PA 16830

4. Name and address of last recorded holder of every mortgage of record:  
FOR PARCELS ONE AND TWO:

None

5. Name and address of every other person who has any record lien on the property:  
FOR PARCEL ONE:

<u>Name</u>	<u>Address</u>
Clearfield County Tax Claim Bureau	230 East Market Street Clearfield, PA 16830

FOR PARCEL TWO:

None

6. Name and address of every other person who has any record interest in the property and whose interest may be affected by the sale.

FOR PARCEL ONE:

<u>Name</u>	<u>Address</u>
Grace J. Kane	303 Elm Avenue Clearfield, PA 16830

FOR PARCEL TWO:

	<u>Name</u>	<u>Address</u>
1.	Peggy A. Amon	67 County Club Circle Clearfield, PA 16830
2.	Nicholas Santinocetto	123 Weaver Street Clearfield, PA 16830
3.	James A. Naddeo	204 West First Street Clearfield, PA 16830
4.	Samuel B. Yost	R. D. # 2, Box 111 Clearfield, PA 16830
5.	Jody P. Yost	R. D. # 2, Box 111 Clearfield, PA 16830
6.	Harry J. Salvatore	R. D. # 3, Clearfield, PA 16830

7. Name and address of every other person of whom the Plaintiff has knowledge who has any interest in the property which may be affected by the sale:

FOR PARCEL ONE:

- (a) Chris Crago, Tax Collector  
138 West Market Street  
Clearfield, Pennsylvania 16830
- (b) Northwest Savings Bank  
1200 Old Town Road  
Clearfield, PA 16830

FOR PARCEL TWO:

- (a) Hazel Shifter, Tax Collector  
105 Fulton Street  
Clearfield, PA 16830
- (b) Northwest Savings Bank  
1200 Old Town Road  
Clearfield, PA 16830

**Legal Description of Real Estate of Joseph F. Kane**

**PARCEL NO. 1**

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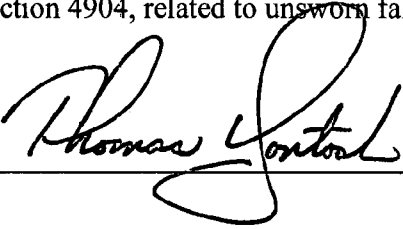


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**BEING** the same premises wherein a twenty (20.0%) per cent interest vested in Joseph F. Kane by deed dated February 21, 1989 and appearing of record in Clearfield County Deeds and Records Book 1271, Page 3.

Said premises being further identified as 10.19 acres with Clearfield County Assessment Map No. 123-K8-7.

The undersigned verifies that he is the corporate credit manager of Lezzer Cash & Carry of Curwensville, Inc. and as such he is authorized to make this verification on behalf of the Plaintiff named herein; and that the statements made herein are true and correct to the best of his personal knowledge or information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S. Section 4904, related to unsworn falsification to authority.

  
\_\_\_\_\_

Dated: 11/9/04

LF

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

LEZZER CASH & CARRY OF  
CURWENSVILLE, INC.,  
Plaintiff

Vs.

J.F. KANE, a/k/a  
JOSEPH F. KANE,  
Defendant

Nc. 03-0994-CD

**ORDER**

And now, this 8<sup>th</sup> day of December, 2004, it is the Order of the Court  
that argument on the attached Petition to Open Judgment in the above captioned matter has been  
scheduled for the 3 day of January, 2005, at 9:00 A.M. in  
Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.



FREDERIC J. AMMERMAN  
President Judge

66k **FILED**  
O 8:54/BA 2CC + Memo to Def.  
DEC 09 2004

William A. Shaw  
Prothonotary

CA

9 Gulich Avenue  
Clearfield, PA 16830  
(814) 765-6732

09:57 AM 100 to Wf.  
DEC 03 2004

William A. Shaw  
Prothonotary/Clerk of Courts

And now, this \_\_\_\_\_ day of \_\_\_\_\_, upon consideration of Defendant's  
Petition to Open Default Judgment and plaintiff's answer thereto, it is hereby ORDERED that  
the default judgment entered against defendant is opened.

**COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
Market Street  
Clearfield, PA 16830  
(814) 765 2641**

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

LEZZER CASH & CARRY OF  
CURWENSVILLE, INC.,  
Plaintiff

Vs.

J.F. KANE, a/k/a  
JOSEPH F. KANE,  
Defendant

No. 03-0994-CD

DEFENDANT'S PETITION TO OPEN DEFAULT JUDGEMENT

Defendant/Petitioner J.F. Kane, Appearing Pro Se, respectfully petitions this Court to open the default judgment entered upon praecipe of plaintiff, Lezzer Cash & Carry of Curwensville, Inc., and avers as follows:

1. Plaintiff commenced this action on July 8, 2003, by complaint in order to recover for credit purchases and attorney's fees. A copy of plaintiff's complaint is attached as Exhibit "A."

2. Through the mistake or oversight of his employees, the Defendant/Petitioner failed to plead to the original complaint within twenty days or to otherwise take steps to protect his interests.

3. Upon learning of the Writ of Revival of the aforementioned complaint, Defendant Petitioner promptly took steps to open the default judgment, and this petition to open has been promptly filed within 20 days of defendant's receipt of notice of the entry of Writ of Revival.

4. BJR, Inc. is solely responsible for the account and therefore the indebtedness. Plaintiff / Respondent acknowledged the change to corporation by changing billing documentation accordingly at the time of change.

- a. The purchases of the subject of the complaint were purchased by BJR, Inc.
- b. The purchases were not purchased by J.F. Kane personally.

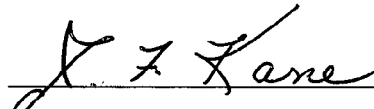
5. Plaintiff / Respondent has not proven facts that would entitle it to pierce the corporate veil.

6. The sales / purchase agreement is based on a partnership that was dissolved in 1996.

7. Defendant / Petitioner further avers that the sales / purchase agreement is unenforceable for the following reasons:

- a. The document does not contain a trade name.
- b. The document is not dated.
- c. The document is not witnessed.
- d. The document is not notarized.

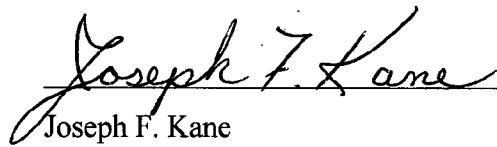
WHEREFORE, defendant petitioner J.F. KANE, a/k/a JOSEPH F. KANE respectfully requests that this Court open the default judgment entered by plaintiff LEZZER CASH & CARRY OF CURWENSVILLE, INC. in the above captioned matter and permit defendant/petitioner to plead to the complaint within twenty days thereafter.

  
\_\_\_\_\_  
J.F. KANE



### **VERIFICATION**

I, Joseph F. Kane, Defendant Petitioner, verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I, the undersigned, understand that false statements made herein are subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Joseph F. Kane

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

LEZZER CASH & CARRY of  
CURWENSVILLE, INC.,  
Plaintiff

vs.

BJR, INC. t/d/b/a  
CONSERVCO, successor to  
CONSERVCO, a partnership,  
and J.F. KANE, a/k/a  
JOSEPH F. KANE,  
individually,  
Defendants

No. 03- 994 -CD

Type of Case: Civil

Type of Pleading: COMPLAINT IN  
CONFESSION OF JUDGMENT

Filed on behalf of: Plaintiff

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

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

JUL 08 2003

Attest.

*William A. R.*  
Prothonotary/  
Clerk of Courts

Exhibit "A"

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

LEZZER CASH & CARRY of	:		
CURWENSVILLE, INC.,	:		
Plaintiff	:		
	:		
vs.	:	No. 03-	-CD
	:		
BJR INC., t/d/b/a CONSERVCO,	:		
successor to Conservco, a	:		
Partnership, and J.F. KANE, a/k/a	:		
JOSEPH F. KANE, individually,	:		
Defendants	:		

COMPLAINT

Plaintiff files this Complaint pursuant to Pa. R.C.P.  
No. 2951(b) for judgment by confession and avers the following:

1. Plaintiff, LEZZER CASH & CARRY of CURWENSVILLE, INC., is a corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, which has its main office at Scofield Street, P. O. Box 217, Curwensville, Pennsylvania, 16833.

2. Defendant, BJR, Inc., t/d/b/a Conservco, successor to Conservco, a Partnership, is incorporated under the laws of the Commonwealth of Pennsylvania and said entity maintains an office and place of business at One Washington Avenue, Hyde, (Clearfield County), Pennsylvania 16843.

3. Defendant, J. F. KANE, a/k/a JOSEPH F. KANE, is an adult individual, who resides at 9 Gulich Avenue, Clearfield, Pennsylvania 16830.

4. Plaintiff is engaged in the business of selling and furnishing materials and building supplies to entities

involved in both residential and commercial construction.

5. Defendant, BJR, Inc., t/d/b/a Conservco, is in the business of both commercial and residential construction and as such is a regular purchaser of the materials and building supplies sold by Plaintiff.

6. Attached as Exhibit "A" is a true and correct copy of the entire Application for Business Credit and Non-Consumer Credit Agreement, between Plaintiff and Conservco, under which Plaintiff is currently providing a credit line to the Defendant BJR, Inc., t/d/b/a Conservco of \$30,000.00.

7. The Non-Consumer Credit Agreement entered into between Plaintiff and Conservco and J. F. Kane, a/k/a Joseph F. Kane, individually, and as a principal of Conservco included a companion Material Purchase Agreement which contains a confession of judgment provision which provides that if the account is not paid when due, then the undersigned, individually, and in his representative capacity on behalf of Conservco then authorized the confession of judgment against both Conservco and himself, individually, for the amount then due, plus interest on the unpaid balance at the rate of eighteen (18%) percent per annum, together with cost of suit and fifteen (15%) percent, attorney's commission. Attached as a portion of Exhibit "A" is the Material Purchase Agreement containing the signature of J. F. Kane, a/k/a Joseph F. Kane.

8. Plaintiff began extending credit to the Defendants, pursuant to the terms of the aforementioned Non-Consumer Credit Agreement, on or about January, 1989 and continued to do so until April 25, 2003.

9. The judgment to be entered hereunder by confession is not being entered against the Defendants, BJR, Inc. t/d/b/a Conservco, and J. F. Kane, a/k/a Joseph F. Kane, individually, in connection with a consumer credit transaction, nor does the same arise out of a retail installment sale, contract or account subject to the provisions of the "Goods and Services Installment Sale Act", as amended. (See 69 P.S. §1101 et seq).

10. Defendants' Non-Consumer Credit Agreement referred to in Paragraph 6 hereof has not been assigned by Plaintiff.

11. No judgment has been entered against the named Defendants in any court of record pursuant to the warrant of attorney provisions set forth in the aforementioned Material Purchase Agreement as referenced in Paragraph 7 hereof.

12. Defendants, BJR, Inc., t/d/b/a Conservco and J. F. Kane, a/k/a Joseph F. Kane, individually, are in default under the terms of the aforementioned Non-Consumer Credit Agreement and Material Purchase Agreement since they have not paid for the building materials and supplies purchased on

credit from Plaintiff for the period beginning December 27, 2002 and ending April 25, 2003 despite being billed for said items.

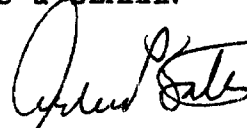
13. Pursuant to the Warrant of Attorney to Confess Judgment Authority as set forth in the aforementioned Material Purchase Agreement, Plaintiff demands judgment be entered against Defendants, BJR, Inc., t/d/b/a/ Conservco and J. F. Kane, a/k/a Joseph F. Kane, individually, for:

a.	Amounts due for credit purchases, including interest, due pursuant to the terms of the Non-Consumer Credit Agreement through April 25, 2003;	\$30,089.27
b.	Attorney's fees (at the rate of 15%) pursuant to the Warrant of Attorney appearing in said Material Purchase Agreement	\$ 4,513.39
TOTAL		<hr/> \$34,602.66
c.	Plus Interest at the rate of 18% per annum on the unpaid principal balance from April 30, 2003	

WHEREFORE, Plaintiff, Lezzer Cash & Carry of Curwensville, Inc., demands judgment in its favor in the sum of \$34,602.66 be entered against Defendants, BJR, Inc., t/d/b/a Conservco and J. F. Kane, a/k/a Joseph F. Kane, individually, as authorized by the Warrant of Attorney appearing in the aforementioned Material Purchase Agreement, plus costs and interest under the terms of the aforementioned Non-Consumer Credit Agreement at the rate of 18% per annum on the unpaid

balance from April 30, 2003 to date judgment entered and thereafter at the statutory rate.

GATES & SEAMAN



---

Andrew P. Gates, Esquire  
Attorney for Plaintiff

Date: July 3, 2003

Two North Front Street  
P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766



Scafield Street  
CURWENSVILLE, PA. 16833  
(814) 236-0220

Shaffer Road  
DuBOIS, PA. 15801  
(814) 371-9311

1260 Wayne Avenue  
INDIANA, PA. 15701  
(412) 349-2281

E. Butler Road  
BUTLER, PA. 16001  
(412) 282-3100

Chad Road  
R.D. 2, Box 291  
MUNCY, PA. 17756  
(717) 546-8026

2350 E. College Avenue  
STATE COLLEGE, PA. 16801  
(814) 237-3511

## APPLICATION FOR BUSINESS CREDIT

AND

## NON-CONSUMER CREDIT AGREEMENT

The undersigned hereby applies to Lezzer's for the establishment of a business credit account on the terms and conditions provided fore herein, and represents and warrants the following credit information to be true, accurate and complete.

Any credit extended will be in reliance on the statement hereon, which I/We certify are correct and complete. If any part of this application is incorrect or incomplete, then you may declare my total indebtedness immediately due and payable.

### TERMS OF CREDIT

I/We, for and in consideration of goods received or to be received

do hereby promise to pay Lezzer's the following:

- 1) The balance shown on the monthly statement in full before the next month's billing date.
- 2) Service charges of 1 1/2% PER MONTH or 18% PER ANNUM on the amount of the open trade account which is 30 days past due.
- 3) The entire balance of the open trade account, at the option Lezzer's, should any part of the trade account become past due.
- 4) All costs and expenses, including attorney's fees reasonably incurred in collecting the open trade account or any part thereof.
- 5) Application must be signed by husband and wife. If firm is a corporation, officers and their spouse must sign the application.

Depending on the type of business you operate, complete Section 1, 2 or 3 on the following page. FILL OUT ONE SECTION ONLY THEN CONTINUE

TO FILL OUT THE REMAINDER OF THIS APPLICATION. Attach additional sheets as necessary to fully answer each question.

(CUSTOMER COPY)

EXHIBIT "A"



## STATEMENT OF CREDIT POLICY

(Customer Copy)

When you charge your purchases at Lezzer's your bill will be sent at the end of the month. If you keep your account current, no FINANCE CHARGE will be added. To keep your account current and to avoid any FINANCE CHARGE, you must pay the balance shown on your monthly statement in full before the next month's billing date. The FINANCE CHARGE is computed by a "Periodic Rate" of  $1\frac{1}{2}\%$  PER MONTH which is an ANNUAL RATE of 18% applied to the previous balance after deduction of any payments, returns and credits.

If Lezzer's is forced to take legal action to collect an account, the customer will be liable for all costs and expenses reasonably incurred in collecting the account. If the account remains unpaid for sixty (60) days, a mechanics lien will be filed to secure payment of debt.

## INDIVIDUALS AND SOLE PROPRIETORSHIPS

## SECTION 1

BUSINESS NAME \_\_\_\_\_  
 BUSINESS ADDRESS \_\_\_\_\_  
 NO. OF YEARS IN BUSINESS \_\_\_\_\_ PHONE NO. (\_\_\_\_) \_\_\_\_\_  
 INDIVIDUALS NAME \_\_\_\_\_ SOCIAL SECURITY NO. \_\_\_\_\_  
 DATE OF BIRTH \_\_\_\_\_ SOCIAL SECURITY NO. \_\_\_\_\_  
 SPOUSE'S NAME \_\_\_\_\_  
 DATE OF BIRTH \_\_\_\_\_  
 HOME ADDRESS \_\_\_\_\_ PHONE NO. (\_\_\_\_) \_\_\_\_\_  
 CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_  
 YOUR EMPLOYER \_\_\_\_\_ SPOUSE'S EMPLOYER \_\_\_\_\_  
 EMPLOYERS ADDRESS \_\_\_\_\_ EMPLOYERS ADDRESS \_\_\_\_\_  
 POSITION \_\_\_\_\_ POSITION \_\_\_\_\_  
 LENGTH OF EMPLOYMENT \_\_\_\_\_ YRS. LENGTH OF EMPLOYMENT \_\_\_\_\_ YRS.  
 ANNUAL INCOME \_\_\_\_\_ ANNUAL INCOME \_\_\_\_\_  
 RESIDENCE TYPE: OWN/BUYING \_\_\_\_\_ RENT \_\_\_\_\_ BOARD \_\_\_\_\_  
 ARE THERE ANY UNSATISFIED JUDGEMENTS AGAINST YOU? YES \_\_\_\_\_ NO \_\_\_\_\_  
 HAVE YOU EVER DECLARED BANKRUPTCY? YES \_\_\_\_\_ NO \_\_\_\_\_

## SECTION 2: PARTNERSHIPS

NAME OF PARTNERSHIP: CONSERVO  
 BUSINESS ADDRESS 805 S 2ND  
 CITY CLEARFIELD STATE PA ZIP 16830 PHONE (814) 765 6725

GENERAL OR LIMITED PARTNERSHIP: \_\_\_\_\_

EMPLOYER I.D. NUMBER 25-1567276 NO. OF YEARS IN BUSINESS 8

LIST NAMES, ADDRESSES AND PHONE NUMBERS OF ALL PARTNERS. IF A LIMITED PARTNER, SO INDICATE.

NAME <u>JOSEPH KANE</u>	NAME <u>RICHARD WELSEL</u>
ADDRESS <u>805 S 2ND</u>	ADDRESS <u>399 CLEARFIELD ST.</u>
<u>CLEARFIELD PA</u>	<u>CLEARFIELD PA</u>
PHONE <u>765-6725</u>	PHONE <u>765-2055</u>
SOCIAL SECURITY NO. <u>164 36 9647</u>	SOCIAL SECURITY NO. <u>189 36 1356</u>
NAME _____	NAME _____
ADDRESS _____	ADDRESS _____
PHONE _____	PHONE _____
SOCIAL SECURITY NO. _____	SOCIAL SECURITY NO. _____

ARE THERE ANY UNSATISFIED JUDGEMENTS AGAINST YOU? YES \_\_\_\_\_ NO X  
 HAVE YOU EVER DECLARED BANKRUPTCY? YES \_\_\_\_\_ NO X

SECTION 3: CORPORATIONS

NAME OF CORPORATION \_\_\_\_\_  
 BUSINESS ADDRESS \_\_\_\_\_  
 PHONE NUMBER (\_\_\_\_) \_\_\_\_\_  
 DATE OF INCORPORATION \_\_\_\_\_ STATE OF INCORPORATION \_\_\_\_\_  
 EMPLOYER I.D. NUMBER \_\_\_\_\_  
 LIST NAMES, ADDRESSES, PHONE NUMBERS AND SOCIAL SECURITY NUMBERS OF EACH OFFICER  
 THE CORPORATION, INCLUDING THEIR SPECIFIC TITLES.

NAME _____ ADDRESS _____ PHONE (____) _____ TITLE _____ SOC. SEC. NO. _____	NAME _____ ADDRESS _____ PHONE (____) _____ TITLE _____ SOC. SEC. NO. _____
NAME _____ ADDRESS _____ PHONE (____) _____ TITLE _____ SOC. SEC. NO. _____	NAME _____ ADDRESS _____ PHONE (____) _____ TITLE _____ SOC. SEC. NO. _____

SECTION 4: REQUEST FOR CREDIT

WHAT IS THE ESTIMATED COST OF THE PROJECT? MONTHLY CHARGES WILL  
 HOW MUCH CREDIT ARE YOU REQUESTING? VARY FROM \$0.00 TO \$2,000.00  
 DO YOU PLAN TO GET A BANK LOAN? \_\_\_\_\_  
 IF YES NAME OF BANK \_\_\_\_\_  
 NAME OF LOAN OFFICER \_\_\_\_\_ PHONE (\_\_\_\_) \_\_\_\_\_

✓ ARE PURCHASE ORDERS REQUIRED TO CHARGE? YES \_\_\_\_\_ NO X

✓ IF NO, PLEASE LIST NAMES OF AUTHORIZED TO CHARGE : ALREADY PROVIDED  
UNDER SEPARATE COVER

SECTION: 5

LEZZER CASH & CARRY INC.

TO BE FULLY COMPLETED BY ALL APPLICANTS

THE PRINCIPAL CHECKING ACCOUNT OF THE BUSINESS IS

BANK CNB  
OFFICE LOCATION MAIN OFFICE  
ACCOUNT NO. \_\_\_\_\_  
CONTACT PERSON BERRILL DUNLAP

THE PRINCIPAL LENDER TO THE BUSINESS IS.

LENDER CNB  
ADDRESS \_\_\_\_\_  
\_\_\_\_\_

TOTAL LOANS VARIES CONTACT PERSON M. DUNLAP  
DO THESE LOANS INCLUDE A LINE OF CREDIT? X IF YES, LIMIT OF LINE 50,000

PLEASE PROVIDE THE INFORMATION REQUESTED FOR THREE (3) MAJOR BUSINESS REFERENCES

BUSINESS NAME <u>E. M. Brown</u>	BUSINESS NAME <u>Wib Co</u>
CONTACT (NAME & TITLE) <u>Allen</u>	CONTACT (NAME & TITLE) _____
ADDRESS <u>767</u>	ADDRESS <u>P.O. Box 1754 Oldenza</u>
PHONE NUMBER ( ) _____	PHONE NUMBER ( ) _____

BUSINESS NAME Chesford Free Value  
CONTACT (NAME & TITLE) Mich  
ADDRESS P.O. Box 767 Chesford Pa  
PHONE NUMBER ( ) \_\_\_\_\_

I/WE HAVE READ AND UNDERSTAND THE CREDIT TERMS SET FORTH HEREIN AND AUTHORIZE LEZZER'S TO OBTAIN INFORMATION FROM THE REFERENCES LISTED ON THIS APPLICATION OR BY CREDIT BUREAU REPORT.

SIGNATURE A. F. Kane  
SIGNATURE Richard A. Weber

# MATERIAL PURCHASE AGREEMENT

THE undersigned parties who are engaged in business under the trade name of \_\_\_\_\_ hereby contract with Lezzer Cash & Carry, Inc. to furnish materials and building supplies to them. In order to better assure delivery of said materials and supplies and to further secure credit therefore, the undersigned, both in their individual capacity and in their representatives capacity, set forth below, do agree that, in the event payment is not otherwise made for said materials and supplies, that they will make payment therefore when it is billed to them, in an amount of the balance due. If the said account is not paid when due, the undersigned individually, and in their representative capacity, do hereby authorize the Prothonotary or any attorney of any court of record of the United States to appear therein and with the statement filed, to confess judgement therein against them for the amount then due with interest on the unpaid balance at the rate of eighteen (18%) percent per annum together with costs of suit, release of errors, and with fifteen percent for attorneys and/or collection fees, hereby waiving all right of stay of execution, inquisition and appeal and the benefit of any and all laws now or hereafter to be passed, exempting real or personal property from levy and sale on execution and also waiving the benefit of the present or any further insolvent laws of any state of the United States and of the present or any further bankruptcy law of the United States.

WITNESS the signature of the parties hereto, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

## INDIVIDUAL SIGNATURES

_____ (SEAL)	_____ (SEAL)
_____ (SEAL)	_____ (SEAL)

## CORPORATION SIGNATURE & TITLE

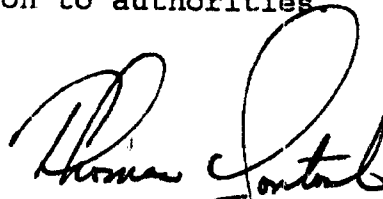
_____	BY: _____ (SEAL)
	Title _____
_____	BY: _____ (SEAL)
	Title _____

## PARTNERSHIP SIGNATURE & TITLE

<i>J. F. Lane</i>	BY: <u>PARTNER</u> (SEAL)
	Title _____
<i>H. H. H. H. H.</i>	BY: <u>PARTNER</u> (SEAL)
	Title _____

V E R I F I C A T I O N

I, Thomas Yontosh, Corporate Credit Manager for  
LEZZER CASH & CARRY of CURWENSVILLE, INC., Plaintiff, verify  
that the statements made in the foregoing Complaint are true  
and correct to the best of my knowledge, information and  
belief. I, the undersigned, understand that false statements  
made herein are subject to the penalties of 18 Pa.C.S. §4904  
relating to unsworn falsification to authorities.

A handwritten signature in cursive script, appearing to read "Thomas Yontosh", written over a horizontal line.

Thomas Yontosh,  
Corporate Credit Manager for  
LEZZER CASH & CARRY of  
CURWENSVILLE, INC.

Date: \_\_\_\_\_

7/3/03

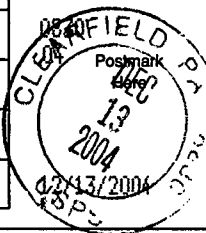
7003 3110 0001 9379 6004

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Certified Fee	\$2.30
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Restricted Delivery Fee (Endorsement Required)	\$0.00
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Sent To Gates + Segraw  
Street, Apt. No., or P.O. Box No. 1000  
City, State, ZIP+4 Clearfield PA 16830

PS Form 3800 June 2002 See Reverse for Instructions

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PS Form 3800, June 2002 (Reverse)

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- For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS® postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "*Restricted Delivery*".
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

**IMPORTANT: Save this receipt and present it when making an inquiry. Internet access to delivery information is not available on mail addressed to APOs and FPOs.**



SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"><li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li><li>■ Print your name and address on the reverse so that we can return the card to you.</li><li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul>		<p>A. Signature <b>X</b> <i>S. Bailey</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>S. BAILEY</i> C. Date of Delivery <i>12-17-04</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
1. Article Addressed to:  <i>Andy Gates</i> <i>Gates + Searan</i>		3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input checked="" type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
2. Article Number (Transfer from serv)		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
<i>7003 3110 0001 9379 6004</i>			

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JOSEPH KANE  
PO BOX 1422  
CLEARFIELD, PA  
16830

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

LEZZER CASH & CARRY OF  
CURWENSVILLE, INC.,  
Plaintiff

Vs.

J.F. KANE, a/k/a  
JOSEPH F. KANE,  
Defendant

No. 03-0994-CD

**AFFADAVIT OF RETURN OF SERVICE BY MAIL**

On Monday, December 13<sup>th</sup>, 2004 I mailed a true copy of the Petition to Open Default Judgment by certified mail, return receipt requested, to Mr. Andrew P. Gates, Esq. at his address. Mr. Gates agent signed the return receipt upon delivery and the receipt, attached here as Exhibit "A," was returned by the post office on December 15, 2004.

I make these statements pursuant to 18 Pa. Cons. Stat. Ann. 4904 relating to unsworn falsification to authorities and understand that false statements may subject me to criminal penalties under that statute.

  
J. F. Kane

**FILED**

DEC 15 2004

03205/um  
William A. Shaw

Prothonotary/Clerk of Courts

No. 03-0994-CD

**In The Court of Common Pleas of Clearfield County, Pennsylvania**

LEZZER CASH & CARRY OF CURWENSVILLE, INC.

Sheriff Docket #

16595

VS.

03-994-CD

BJR, INC. t/d/b/a CONSERVCO al

WRIT OF REVIVAL

**SHERIFF RETURNS**

NOW NOVEMBER 15, 2004 AT 10:02 AM SERVED THE WITHIN WRIT OF REVIVAL ON J.F. KANE a/k/a JOSEPH F. KANE, Ind., DEFENDANT AT RESIDENCE, 9 GULICH AVE., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO MRS. KANE, WIFE A TRUE AND ATTESTED COPY OF THE ORIGINAL WRIT OF REVIVAL AND MADE KNOWN TO HER THE CONTENTS THEREOF.  
SERVED BY: NEVLING/HUNTER

**Return Costs**

Cost	Description
20.37	SHERIFF HAWKINS PAID BY: ATTY CK# 34360
10.00	SURCHARGE PAID BY: ATTY CK# 34361

Sworn to Before Me This

16 Day Of Dec 2004

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

So Answers,

*Chester A. Hawkins*  
*by Mauley's Hammer*  
Chester A. Hawkins  
Sheriff

**FILED** *EBK*

**DEC 16 2004**

*07:00/12:00*  
William A. Shaw  
Prothonotary/Clerk of Courts

William A. Shaw  
 Notary/Clerk of Courts

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

LEZZER CASH & CARRY of  
CURWENSVILLE, INC.,  
Plaintiff

vs.

BJR, INC. t/d/b/a  
CONSERVCO, successor to  
CONSERVCO, a partnership, and  
J.F. KANE, a/k/a JOSEPH F. KANE,  
individually,  
Defendants

: No. 03-994- CD  
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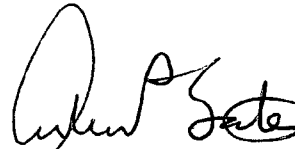
**NOTICE**

To: J.F. KANE, a/k/a JOSEPH F. KANE

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO  
THE ENCLOSED NEW MATTER WITHIN TWENTY (20) DAYS FROM  
SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST  
YOU.

GATES & SEAMAN

By



---

Andrew P. Gates, Esquire  
Attorney for Plaintiff,  
Lezzer Cash & Carry of Curwensville, Inc.

Date: December 30, 2004

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

<b>LEZZER CASH &amp; CARRY of</b>	<b>:</b>	<b>No. 03-994- CD</b>
<b>CURWENSVILLE, INC.,</b>	<b>:</b>	
<b>Plaintiff</b>	<b>:</b>	
	<b>:</b>	
<b>vs.</b>	<b>:</b>	
	<b>:</b>	
<b>BJR, INC. t/d/b/a</b>	<b>:</b>	
<b>CONSERVCO, successor to</b>	<b>:</b>	
<b>CONSERVCO, a partnership, and</b>	<b>:</b>	
<b>J.F. KANE, a/k/a JOSEPH F. KANE,</b>	<b>:</b>	
<b>individually,</b>	<b>:</b>	
<b>Defendants</b>	<b>:</b>	

**ANSWER AND NEW MATTER TO DEFENDANT, J. F. KANE,  
a/k/a JOSEPH F. KANE'S PETITION TO OPEN DEFAULT JUDGMENT**

NOW COMES, Plaintiff, Lezzer Cash & Carry of Curwensville, Inc., (hereafter "Plaintiff Lezzer"), by their attorneys, Gates & Seaman, and responds to Defendant's Petition as follows:

1. Paragraph 1 of Defendant's Petition to Open Default Judgment (hereafter called "Petition to Open") is denied as stated. On the contrary, Plaintiff Lezzer had judgment entered by Confession in accordance with Pa. R.C.P. §2951(b) by virtue of their filing a Complaint with the Prothonotary on July 8, 2003, with judgment being entered for delinquent unpaid credit purchases, accrued interest then due and attorney's fees, as authorized by the warrant of attorney, in the total sum of \$34,602.66, plus interest. By way of further answer, notice of entry of said judgment was promptly forwarded to the named Defendants by the Office of Prothonotary in accordance with the Pennsylvania Rules of Civil Procedure. Attached hereto and made a part hereof as Exhibit "1" is a true and correct copy of the docket

entries of the within matter. By way of further answer, it is admitted that what is attached to Defendant's Petition as Exhibit "A" is in fact a true and correct copy of the Complaint in Confession of Judgment filed in the within matter.

2. Paragraph 2 of Defendant's Petition to Open is denied. On the contrary, Defendant, J. F. Kane, a/k/a Joseph F. Kane, was well aware of the entry of said Judgment by Confession on July 8, 2003, and otherwise contemplated legal action relative to said judgment as evidenced by his letter to Plaintiff's counsel dated July 29, 2003 which was postmarked July 30, 2003. A true and correct copy of the letter to Plaintiff's counsel from Defendant, J. F. Kane, a/k/a Joseph F. Kane, dated July 29, 2003 and the postmarked envelope in which it arrived is attached hereto and made a part hereof, collectively, as Exhibit "2".

3. Paragraph 3 of Defendant's Petition to Open is denied. On the contrary, Defendant, J. F. Kane a/k/a Joseph F. Kane, took no steps to seek to open the confessed judgment for approximately seventeen (17) months (July 8, 2003 until December 3, 2004) despite being aware of his legal rights as evidenced by his letter to Plaintiff's counsel dated July 29, 2003, a photocopy of which is attached hereto and made a part hereof as Exhibit "2". By way of further answer, Plaintiff's did have a Writ of Revival issued by the Clearfield County Prothonotary on November 9, 2004, for the sole purpose of being able to execute upon two parcels of real estate that are now solely owned by said Defendant and to otherwise remove any doubt that their judgment attached as a lien to said real estate since the real estate in question had previously been held in "custodia legis" by the Court in said Defendant's divorce proceedings filed in the within Court to Case No. 01-337-CD which were concluded by



Order entered by the Court on July 23, 2004. A true and correct copy of the Court Order dated July 23, 2004 is attached hereto and made a part hereof as Exhibit "3".

4. Paragraph 4 of Defendant's Petition to Open is denied. On the contrary, Plaintiff Lezzer was never informed by Defendant J. F. Kane, a/k/a Joseph F. Kane, that he created a corporation (i.e. BJR, Inc.) which assumed or began using the trade name of Conservco since all correspondence, purchase orders, checks for payment, and instructions sent to Plaintiff, including list of employees who had authority to charge materials, were under the heading of "Conservco". By way of further answer, Plaintiff at no time billed the entity known as "BJR, Inc.". Attached hereto and made a part hereof, collectively, as Exhibit "4" are copies of representative correspondence, checks for payment, billing statements, and employee authorizations all with the heading of "Conservco". By way of further answer, it was not until Plaintiff's counsel in June 2003, discovered by reviewing various court proceedings and records in the Court of Common Pleas of Clearfield County, Pennsylvania that BJR, Inc. had been formed as a corporation and was utilizing the trade name of Conservco. By way of further answer, all billing documentation, purchase orders and invoices for credit purchases made were assessed to and sent to Conservco, not BJR, Inc. By way of further answer, it is otherwise denied Defendant, J. F. Kane, a/k/a Joseph F. Kane, is also not personally liable for unpaid material purchases since by virtue of the warrant of attorney contained in the Material Purchase Agreement (which was attached to Plaintiff's Complaint as part of Exhibit "A" therein), said individuals agreed as follows:

**“The Undersigned parties ... both in their individual capacity (emphasis added) and in their representative capacity, set forth below, do agree that, in the event payment is not otherwise made for said materials and supplies, that they will make payment therefore when it is billed to them, in the amount of the balance due. If the said account is not paid when due, the undersigned individually (emphasis added) and in their representative capacity do hereby authorize ... to appear... to confess judgment therein against them ...for the amount due, ...**

**5. Paragraph 5 of Defendant’s Petition to Open sets forth a conclusion of law to which no response is required.**

**6. Denied. Plaintiff after reasonable investigation, is without knowledge of the truth or falsity of the allegations set forth in Paragraph 6 of Defendant’s Petition to Open, and, if relevant, strict proof thereof is demanded at time of trial. By way of further answer, at all times from the establishment of the Non-Consumer Credit Agreement and companion Material Purchase Agreement, referenced in Plaintiff’s Complaint for Confession of Judgment, commencing on or about January 1989, to on or about April 25, 2003, all credit purchases made on said account were by authorized representatives of the principals of Conservco and were subsequently paid by the entity known as Conservco.**

**7. It is denied that the terms of the Non-Consumer Credit Agreement and Material Purchase Agreement, containing a warrant of attorney, are unenforceable against Defendant, J. F. Kane, a/k/a Joseph F. Kane, individually. Subparagraph 7 (a) of Defendant’s Petition to Open is denied. On the contrary, the Non-Consumer Credit Agreement contains the trade name Conservco. Subparagraph 7(b) of Defendant’s Petition to Open is denied. On the contrary, the Non-Consumer Credit Agreement is dated “1/89” which stands for January 1989. Subparagraph 7(c)**

of Defendant's Petition to Open is denied. On the contrary, there is no requirement under Pennsylvania law that a warrant of attorney to confess judgment, when executed, be witnessed in order to be enforceable. Subparagraph 7(d) of Defendant's Petition to Open is denied. On the contrary, there is no requirement under Pennsylvania law for an individual's signature on a warrant of attorney to confess judgment, be notarized, in order to be enforceable.

WHEREFORE, Plaintiff Lezzer Cash & Carry of Curwensville, Inc. respectfully requests that the Petition to Open Judgment filed by Defendant, J. F. Kane, a/k/a Joseph F. Kane, be denied, with prejudice.

#### **NEW MATTER**

NOW COMES, Plaintiff, Lezzer Cash & Carry of Curwensville, Inc. (hereafter "Plaintiff, Lezzer") by their attorneys, Gates & Seaman and asserts the following New Matter versus Defendant J. F. Kane, a/k/a Joseph F. Kane (hereafter called "Defendant Kane") and alleges the following in support thereof.

8. Plaintiff Lezzer hereby incorporates by reference its responses set forth in its Answer as though set forth at length herein.

9. Plaintiff Lezzer's Complaint in Confession of Judgment complied with each and every provision of Pa. R.C.P. §2952(a) and thus, judgment was properly entered by the Prothonotary on said Complaint being filed with the Office of the Prothonotary, on July 8, 2003.

10. As a named Defendant, J. F. Kane, a/k/a Joseph F. Kane, individually, was properly served with a Notice of Entry of Judgment and said

**Complaint in Confession of Judgment by the Office of Prothonotary in accordance with the Pennsylvania Rules of Civil Procedure (i.e. Pa. R.C.P. 236(a)).**

**11. Defendant Kane has not acted promptly in seeking to open the aforementioned confessed judgment since he waited approximately seventeen (17) months from when said confessed judgment was entered until the time he filed his Petition to Open.**

**12. Defendant Kane has not offered a reasonable explanation of why he waited approximately seventeen (17) months to file his Petition to Open when the reasons he lists in his Petition to Open were contemplated by him as set forth in his letter to Plaintiff's counsel, dated July 29, 2003, which is attached hereto and made a part hereof as Exhibit "2".**

**13. Defendant Kane is guilty of laches since Plaintiff Lezzer has been greatly prejudiced by Defendant Kane's unexplained delay as it has incurred legal expense to have a Writ of Execution issued on said judgment (issued November 9, 2004) and it has otherwise been required to post advanced costs to the Sheriff's Office to sell the real estate in question in the amount of \$1,500.00.**

**14. Defendant Kane's Petition to Open has failed to set forth a meritorious defense which raises a jury question since: (i) the Non-Consumer Credit Agreement and Material Purchase Agreement, which contains the warrant of attorney to confess judgment, and likewise contains said Defendant's signature, is not ambiguous; and (ii) the facts surrounding the credit purchases of building materials by the entity calling itself "Conservco" are not in dispute.**

15. The terms of the Material Purchase Agreement, executed by Defendant Kane, (which is attached to Plaintiff's Complaint to Confess Judgment as a portion of Exhibit "A") make it clear that: (i) Defendant Kane agreed, in his individual capacity, to be responsible for the cost of materials and supplies purchased should the same not be paid for by Conservco, and (ii) said Defendant likewise agreed, individually, that a judgment could be confessed against him in the event of a default of payment by Conservco.

16. Defendant Kane's Petition does not challenge that: (i) the materials and supplies in question were purchased on credit by Conservco, (ii) the amount of said credit purchases, (iii) that said credit agreement was defaulted upon by Conservco, (iv) the sums stated in Plaintiff's Complaint are actually what is due, or (v) the amount of the claimed attorney's fees.

17. Even though the Material Purchase Agreement itself does not contain the trade name "Conservco" other portions of the Non-Consumer Credit Agreement, of which the Material Purchase Agreement is a part, identify the borrower/applicant as "Conservco" and the date of the Agreement to be "1/89".

18. Even if it should be determined that Defendant Kane's construction business was incorporated after the effective date of the Non-Consumer Credit Agreement and companion Materials Purchase Agreement, by virtue of the continuing credit purchases made by the entity utilizing the name "Conservco", Defendant Kane ratified and/or validated the terms of the Material Purchase Agreement.

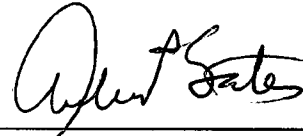
19. Defendant Kane's Petition does not seek to strike the  
aforementioned confessed judgment, nor does it allege any defect in the record  
pertaining to the entry of said judgment.

WHEREFORE, Plaintiff Lezzer requests this Honorable Court deny  
Defendant Kane's Petition to Open, with prejudice.

Respectfully submitted,

GATES & SEAMAN

By:

A handwritten signature in cursive script, appearing to read "Andrew P. Gates", is written over a horizontal line.

Andrew P. Gates, Esquire  
Attorney for Plaintiff, Lezzer Cash  
& Carry of Curwensville, Inc.

GATES & SEAMAN

Attorneys at law

Two North Front Street

P. O. Box 846

Clearfield, Pennsylvania 16830

(814) 765-1766

## Judgment

Date		Judge
07/08/2003	Filing: Judgment Paid by: Gates & Seaman Receipt number: 1862789 Dated: 07/08/2003 Amount: \$20.00 (Check) Notice to Defendants. Statement to Atty. Confession Judgment entered against Defendants in the Amount \$34,602.66	No Judge
11/09/2004	Filing: Praecipe for Writ of Revival Paid by: Lezzer Cash & Carry (plaintiff) Receipt number: 1890187 Dated: 11/09/2004 Amount: \$20.00 (Check) Issued 1 Writ to Atty. Gates Writ of Revival entered against J. F. Kane, a/k/a Joseph F. Kane, only in the amount of \$34,602.66	No Judge
	Filing: Praecipe for Writ of Execution Paid by: Gates, Andrew P. (attorney for Lezzer Cash & Carry) Receipt number: 1890190 Dated: 11/09/2004 Amount: \$20.00 (Check) 6 Writ issued to Sheriff	No Judge
	Affidavit Pursuant To Rule 3129.1, filed by Atty. Gates 1 Cert. to Atty.	No Judge
12/03/2004	Petition to Open Judgment filed by Defendant, Joseph F. Kane. 1 CC to Def.	No Judge
12/09/2004	Order, AND NOW, this 8th day of Dec., 2004, it is the Order of the Court that argument on the attached petition to Open Judgment in the above captioned matter has been scheduled for the 3rd day of Jan. 2005 at 9:00 a.m. in Courtroom No. 1, Clfd. Co. Courthouse. /s/ Fredric J. Ammerman, President Judge. 2CC & Memo Re: Service to Def.	Fredric Joseph Ammerman
12/15/2004	Affidavit of Return of Service by Mail, filed by Defendant Served copy of Petition to Open Default Judgment to Atty. Gates by Cert. Mail. receipts attached.	Fredric Joseph Ammerman
12/16/2004	Sheriff Return, Now, Nov. 15, 2004 served Writ of Revival on J.F. Kane a/k/a Joseph F. Kane, Ind. So Answers, Chester A. Hawkins, Sheriff, by s/ Marilyn Hamm	Fredric Joseph Ammerman

# CONSERVCO

---

## GENERAL CONTRACTORS

---

MAILING ADDRESS  
P.O. Box 1404  
Clearfield, PA 16830

OFFICE ADDRESS  
One Washington Avenue  
Hyde, PA 16843

J.F. Kane

(814) 765-6725  
FAX: (814) 765-2380  
Email: [conservco@clearnet.net](mailto:conservco@clearnet.net)

July 29, 2003

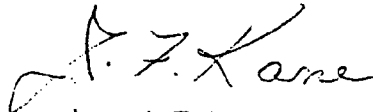
Andrew Gates  
P.O. Box 846  
Clearfield, PA.  
16830

Dear Mr. Gates;

Last week we received a packet of documents from your office that arrived without benefit of a cover letter. Apparently you are intent upon filing a Confession of Judgment against myself and BJR. Included in the packet was a credit application for a company that has not existed for many years. This document apparently is 15 years old and has no viable connection to myself or BJR. Also included was a "material purchase agreement". This document appears to be a draft of some sort. It names no entity, is undated, carries no witness signatures, and is not notarized. The signature area for individuals are blank as are the corporate lines.

Before proceeding further I would suggest that you carefully review the documents to avoid any civil counter on our part for malicious prosecution.

Sincerely Yours;

  
Joseph F. Kane

Cc: Cartwright

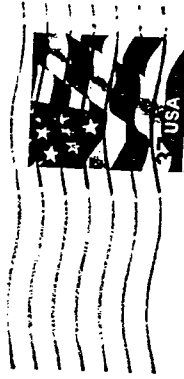
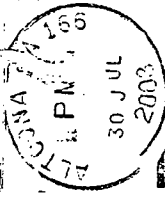
EXHIBIT "2" (2 pages)



CON ERVCO

P.O. BOX 1404

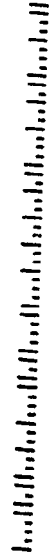
CLEARFIELD, PENNSYLVANIA 16830



Andrew Gates  
P.O. Box 846  
Clearfield, PA.

16830

16830



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

GRACE J. KANE

:

VS.

: NO. 01-337-CD

JOSEPH F. KANE

:

O R D E R

NOW, this 23rd day of July, 2004, being the date set for hearing on economic issues; and the Court having been informed by the parties that they have reached an agreement, the Court therefore enters the following ORDER:

1. Each party shall retain all items of marital property presently in his/her possession, whether tangible, intangible or mixed.

2. Husband shall transfer to Wife one hundred (100) shares of Microsoft stock within thirty (30) days from the date of this Order.

3. Husband shall transfer to Wife thirty (30) shares of BB&T stock within thirty (30) days from the date of this Order.

4. Husband shall pay alimony to Wife in the amount of Three Hundred (\$300.00) Dollars per month, commencing upon the date of this Order and continuing each month thereafter until Wife reaches the age of sixty-five (65) or dies, whichever shall first occur. All payments shall be made through Clearfield County Domestic Relations Section.

FILED

JUL 23 2004

EXHIBIT "3" (2 pages)

William A. Shaw  
Prothonotary/Clerk of Courts

5. The property situate on Walnut Street, Clearfield County, shall remain in joint names until such time as Husband shall request Wife to sign a deed to the property conveying her interest to him. Wife shall promptly execute said deed.

6. All other economic issues including, but not limited to, equitable distribution, alimony, alimony pendente lite, counsel fees, costs and expenses are hereby dismissed.

BY THE COURT:

*Carson V. Brown*

CARSON V. BROWN  
Specially Presiding

# CONSERVCO

## GENERAL CONTRACTORS

MAILING ADDRESS  
805 SOUTH SECOND STREET  
CLEARFIELD, PA. 16830

OFFICE ADDRESS  
ONE WASHINGTON AVENUE  
HYDE, PA. 16843

J. F. KANE  
(814) 765-6725  
FAX: (814) 765-2380

February 07, 1992

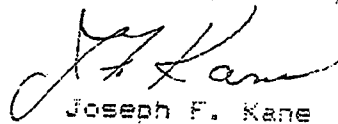
Mr. Yontosh  
Lezzer Lumber  
P.O. Box 217  
Curwensville, Pa.  
116833

Re: Account 1768870

Dear Sir;

We note with concern that our Statement of 01-31-92 indicates that there is a past due balance of \$6,008.87 on our account. Please adjust your records to indicate that our account is not in arrears. The above amount represents an invoice that was prematurely invoiced by Lezzer. The small balance after the invoice is adjusted represents a service charge that should be deleted. Please confirm.

Sincerely Yours,

  
Joseph F. Kane

# CONSERVCO

GENERAL CONTRACTORS

MAILING ADDRESS  
805 SOUTH SECOND STREET  
CLEARFIELD, PA. 16830

OFFICE ADDRESS  
ONE WASHINGTON AVENUE  
HYDE, PA. 16843

J. F. KANE  
(814) 765-6725  
FAX: (814) 765-2380

January 16, 1991

Mr. Tom Yontosh  
Lezzer Lumber  
P.O. Box 217  
Curwensville, PA.  
16833

Re: Invoices

Dear Tom:

I surrender, enclosed herein please find our check in the amount of \$305.74. This check represents payment for all accounts you have indicated are past due. We have seen through your charges for the year many times and cannot find with some exceptions, these charges. I'm spending more money trying to find them than they are worth, ergo our check.

Sincerely Yours,

*J. F. Kane*  
Joseph F. Kane

CONSERVCO

5666

DATE	DESCRIPTION	AMOUNT	DEDUCTION	NET AMOUNT
01/16/91	011691 MISC	284.99	0.00	284.99
01/11/91	5887001 MATERIALS	13.76	0.00	13.76
01/11/91	7005 MATERIALS	6.99	0.00	6.99
CHECK DATE	CONTROL NUMBER	TOTALS		
01/16/91	5666	\$305.74	\$0.00	\$305.74

Paid To Lezzer Lumber, Vendor LEZZ

CONSERVCO

PH. 814-765-8725  
805 SOUTH SECOND ST.  
CLEARFIELD, PA 16830

COUNTY NATIONAL BANK  
CLEARFIELD, PA 16830-0042  
60-627/313

5666

Three Hundred Five & 74/100 Dollars

PAY  
TO THE  
ORDER OF

DATE CONTROL NO. AMOUNT  
January 16, 1991 5666 \*\*\*\$305.74\*\*

Lezzer Lumber  
P.O. Box 217  
Curwensville, PA 16833

*[Signature]*

⑈005666⑈ ⑆031306278⑆ ⑆26086⑈8⑈

CONSERVCO  
PH. 814-765-8725  
805 SOUTH SECOND ST.  
CLEARFIELD, PA 16830

COUNTY NATIONAL BANK  
CLEARFIELD, PA 16830-0042  
60-627/313

6

PAY  
TO THE  
ORDER OF

Ten Thousand Three Hundred Thirty Five & 93/100 Dollars

DATE

CONTROL NO.

AMOUNT

October 12, 1992 6867

\*\*\*\$10,335.93

LEZZER LUMBER  
P.O. BOX 6039  
STATE COLLEGE, PA. 16801

*J. F. Kane*

⑈006867⑈ ⑆031306278⑆ 1⑈25086⑈8⑈

# CONSERVCO

## GENERAL CONTRACTORS

MAILING ADDRESS  
805 SOUTH SECOND STREET  
CLEARFIELD, PA. 16830

OFFICE ADDRESS  
ONE WASHINGTON AVENUE  
HYDE, PA. 16843

J. F. KANE  
(814) 765-6725  
FAX: (814) 765-2380

17658870

January 26, 1992

Lezzer Lumber  
Scofield Street  
Curwensville, PA.

Re: Accounts

Gentlemen

Enclosed herein please find our check for December 1991 charges. We have adjusted your invoice total as follows

Account # 1768870	total invoice amount	\$12,582.45
less invoice # 386866 for tile		(5,973.10)
less service charge of 12/28/91		(35.77)
less payment of 12/30/91		(3,068.78)
balance due on 1768870		\$3,484.80
plus balance on account		331.68
TOTAL OF ENCLOSED PAYMENT		\$3,816.48

Sincerely Yours.

  
Joseph F. Kane



--	--	--

DATE \_\_\_\_\_

### DESCRIPTION

**AMOUNT**

### DEDUCTION

**NET AMOUNT**

3,816.48

\$3,816.48

1100633911 1:03 13062781: 1: 26086...811



# LEZZER

LUMBER AND BUILDING MATERIALS

**MAIN OFFICE:**

P.O. Box 217, Scofield Street, CURWENSVILLE, PA 16833  
(814) 236-0220

To our valued customer:

Date May 1, 1995

For your protection, we are reviewing our records in an attempt to update the current listing of individuals authorized to purchase on your account. We would appreciate completion of the form below and return it at your convenience.

Thank you for your cooperation

*Thomas Yontosh*

Lezzer Cash & Carry  
Thomas Yontosh  
Credit Manager

Name CONSERUCCO

Account# 17658870

Address 805 S. Second St.

Clearfield, PA 16830

Phone (814) 766-6725

Whom to contact concerning account Joseph Kane

Persons authorized to buy:

Name \_\_\_\_\_ Name \_\_\_\_\_

Name see attached Name \_\_\_\_\_

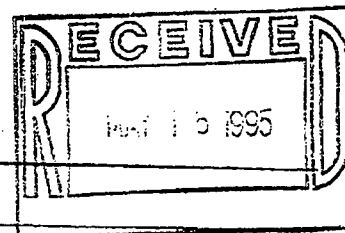
Name \_\_\_\_\_ Name \_\_\_\_\_

Name \_\_\_\_\_ Name \_\_\_\_\_

P.O. Required no

Tax Exempt (form attached) no

Additional Comments \_\_\_\_\_



P.O. Box 646  
Shalfer Road  
DuBOIS, PA 15801  
(814) 271-2211

P.O. Box 87  
1260 Wayne Ave.  
INDIANA, PA 15701  
(412) 240-2281

777 E. Butler Rd.  
BUTLER, PA 16001  
(412) 233-2100

R.D. 2, Box 291  
Chad Road  
MUNCY, PA 17756  
(717) 516-2000

P.O. Box 6039  
2350 E. College Ave.  
STATE COLLEGE, PA 16801  
(814) 237-2511

P.O. Box 826  
104 Industrial Drive  
GROVE CITY, PA 16127  
(412) 453-5501

# CONSERVCO

## GENERAL CONTRACTORS

MAILING ADDRESS  
805 SOUTH SECOND STREET  
CLEARFIELD, PA. 16830

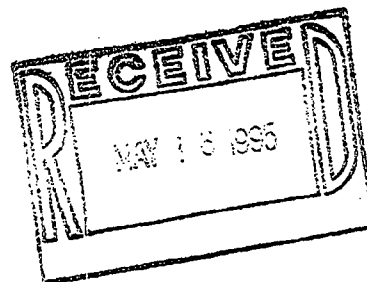
J. F. KANE  
(814) 765-6725  
FAX: (814) 765-2380

OFFICE ADDRESS  
ONE WASHINGTON AVENUE  
HYDE, PA. 16843

The following are authorized to charge on the Conservco Account:

Joseph F. Kane  
Michael Conrad  
James Watkins, Jr.  
William Flanagan  
Ron Bryan  
Edward Powell  
Wendy Sciabica

Richard A. Helsel  
Harold Warren  
Padraic Kane  
William Flanagan, Jr.  
Frank Mayhew  
Isaac Graham  
Pamala Rees



# CONSERVCO

GENERAL CONTRACTORS

MAILING ADDRESS  
805 SOUTH SECOND STREET  
CLEARFIELD, PA. 16830

OFFICE ADDRESS  
ONE WASHINGTON AVENUE  
HYDE, PA. 16843

J. F. KANE  
R. HELSEL  
(814) 765-6725  
FAX: (814) 765-2380

FC's 11/30 145.84  
10/31 454.96

December 07, 1998

Mr. Tom Yontosh  
Lezzer Lumber  
Scofield Street  
Curwensville, Pa.  
16833

Re: Account # 7658870

Dear Tom;

Please take a few moments to reconcile our account before it gets too confusing  
Please consider the following issues

1. Our payment in October for Septembers charges withheld \$ 3,434.40 for windows that were incorrectly ordered and received. This matter was cleared with Mr. Bresler. Your most recent statement indicates a Sept./Oct. balance of \$ 2,251.87.
2. Our October charges amounted to \$ 6,478.32 and this amount was paid. Our most recent statement indicates an amount of \$ 7,926.01
3. Our November slips amount to \$ 3,677.29. Your billing indicated \$ 4,197.39

CUSTOMER	STATEMENT DATE	PAGE
17658970 409	11/30/98	1

# STATEMENT



REMIT TO:

LEZZER CASH & CARRY  
P.O. BOX 217  
CURWENSVILLE, PA 16833  
814-236-0220

TO:

CONSERVCO  
805 S. SECOND STREET  
CLEARFIELD, PA 16830

AMOUNT  
REMITTED: \$

PLEASE RETURN THIS TOP PORTION WITH YOUR PAYMENT.

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TRANSACTION NUMBER	STORE	TRANSACTION DATE	TRANS. TYPE	AMOUNT	DUE DATE	INVOICE AGING					PLEASE CHECK ITEMS BEING PAID
						CP	30	60	90	120	
166249	1	11/02/98	INV	193.08	12/12/98	*					X
167365	1	11/02/98	CRDT	24.70	12/12/98						X
13984	1	11/03/98	PYMT	27704.74							X
172062	1	11/05/98	INV	86.60	12/12/98	*					
176659	1	11/07/98	INV	95.99	12/12/98	*					
179252	1	11/10/98	INV	2.75	12/12/98	*					
182657	1	11/11/98	INV	17.11	12/12/98	*					
183367	1	11/12/98	INV	24.14	12/12/98	*					
183617	1	11/12/98	INV	63.55	12/12/98	*					
184595	1	11/12/98	INV	1020.41	12/12/98	*					
184605	1	11/12/98	INV	26.45	12/12/98	*					
184981	1	11/13/98	INV	58.71	12/12/98	*					
185742	1	11/13/98	INV	12.71	12/12/98	*					
186115	1	11/13/98	INV	751.28	12/12/98	*					
191164	1	11/17/98	INV	48.02	12/12/98	*					
191305	1	11/17/98	INV	72.80	12/12/98	*					
191318	1	11/17/98	INV	52.95	12/12/98	*					
191365	1	11/17/98	INV	3.18	12/12/98	*					

A FINANCE CHARGE OF 1 1/4% PER MONTH WHICH IS AN ANNUAL RATE OF 18% WILL BE ASSESSED ON ALL PAST DUE ACCOUNTS WITH A MINIMUM FINANCE CHARGE OF \$1.00. TERMS ARE NET 30 DAYS.

PREVIOUS BALANCE	CURRENT CHARGES / CREDITS	CURRENT PAYMENTS	FINANCE CHARGE	NEW BALANCE AMOUNT DUE
CONTINUED				

CURRENT	31-60 DAYS	61-90 DAYS	91-120 DAYS	121 DAYS & OVER	ACCUMULATED LATE CHARGES (INTEREST ONLY)

OFFICE



10/31/98

CUSTOMER	STATEMENT DATE	PAGE
17658870 409	10/31/98	1

# STATEMENT



REMIT TO:

LEAZER CASH & CARRY  
P.O. BOX 217  
CURWENSVILLE, PA 16833  
814-236-0220

TO:

CONSERVCO  
905 S. SECOND STREET  
CLEARFIELD, PA 16830

AMOUNT

REMITTED \$

PLEASE RETURN THIS TOP PORTION WITH YOUR PAYMENT.

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TRANSACTION NUMBER	STORE	TRANSACTION DATE	TRANS. TYPE	AMOUNT	DUE DATE	INVOICE AGING					PLEASE CHECK ITEMS BEING PAID
						C/P	30	60	90	120	
112664	1	10/01/98	INV	39.75	11/12/98	*					
115395	1	10/02/98	INV	166.03	11/12/98	*					
115737	1	10/02/98	INV	53.00	11/12/98	*					
116166	1	10/02/98	INV	76.16	11/12/98	*					
117489	1	10/03/98	INV	50.77	11/12/98	*					
118393	1	10/05/98	INV	1199.50	11/12/98	*					
118394	1	10/05/98	INV	132.50	11/12/98	*					
118475	1	10/05/98	INV	7.59	11/12/98	*					
118801	1	10/05/98	INV	12.18	11/12/98	*					X
19	1	10/05/98	-ADJ	270.10							
119635	1	10/05/98	INV	27.30	11/12/98	*					X
19	1	10/05/98	-ADJ	270.10							X
19	1	10/05/98	-ADJ	184.46							
120746	1	10/06/98	INV	108.65	11/12/98	*					
124770	1	10/07/98	INV	5.89	11/12/98	*					
126338	1	10/08/98	INV	11.40	11/12/98	*					X
126340	1	10/08/98	CRDT	12.71	11/12/98	*					
126898	1	10/09/98	INV	29.46	11/12/98	*					

A FINANCE CHARGE OF 1 1/2% PER MONTH WHICH IS AN ANNUAL RATE OF 18% WILL BE ASSESSED ON ALL PAST DUE ACCOUNTS WITH A MINIMUM FINANCE CHARGE OF \$1.00. TERMS ARE NET 30 DAYS.

PREVIOUS BALANCE	CURRENT CHARGES / CREDITS	CURRENT PAYMENTS	FINANCE CHARGE	NEW BALANCE AMOUNT DUE
CONTINUED				

CURRENT	31-60 DAYS	61-90 DAYS	91-120 DAYS	121 DAYS & OVER	ACCUMULATED LATE CHARGES (INTEREST ONLY)

OFFICE



CUSTOMER	STATEMENT DATE	PAGE
17658870 409	10/31/98	2

# STATEMENT



REMIT TO:

TO:

AMOUNT  
REMITTED: \$

PLEASE RETURN THIS TOP PORTION WITH YOUR PAYMENT.

TRANSACTION NUMBER	STORE	TRANSACTION DATE	TRANS. TYPE	AMOUNT	DUE DATE	INVOICE AGING					PLEASE CHECK ITEMS BEING PAID
						C/P	30	60	90	120	
126929	1	10/09/98	INV	54.06	11/12/98	*					
127414	1	10/09/98	INV	24.17	11/12/98	*					
129192	1	10/10/98	INV	58.04	11/12/98	*					
131770	1	10/12/98	INV	129.11	11/12/98	*					
131959	1	10/12/98	CRDT	82.76	11/12/98	*					X
131961	1	10/12/98	INV	27.74	11/12/98	*					
132111	1	10/12/98	CRDT	75.67	11/12/98	*					X
132137	1	10/12/98	INV	75.67	11/12/98	*					
133790	1	10/13/98	INV	213.89	11/12/98	*					
134876	1	10/14/98	INV	104.95	11/12/98	*					
134951	1	10/14/98	INV	4.11	11/12/98	*					
135448	1	10/14/98	INV	34.23	11/12/98	*					
137398	1	10/15/98	CRDT	50.53	11/12/98	*					X
137813	1	10/15/98	CRDT	317.41	11/12/98	*					X
138169	1	10/15/98	INV	402.69	11/12/98	*					
139562	1	10/16/98	INV	7.61	11/12/98	*					
139575	1	10/16/98	INV	292.43	11/12/98	*					
142638	1	10/19/98	INV	7.74	11/12/98	*					

A FINANCE CHARGE OF 1 1/2% PER MONTH WHICH IS AN ANNUAL RATE OF 18% WILL BE ASSESSED ON ALL PAST DUE ACCOUNTS WITH A MINIMUM FINANCE CHARGE OF \$1.00. TERMS ARE NET 30 DAYS.

PREVIOUS BALANCE	CURRENT CHARGES / CREDITS	CURRENT PAYMENTS	FINANCE CHARGE	NEW BALANCE AMOUNT DUE
CONTINUED				

CURRENT	31-60 DAYS	61-90 DAYS	91-120 DAYS	121 DAYS & OVER	ACCUMULATED LATE CHARGES (18% PER ANNUAL RATE)

OFFICE



**STATEMENT**



REMIT TO:

TO:

ITION WITH YOUR PAYMENT.

PLEASE CHECK  
ITEMS BEING PAID

TRANSACTION NUMBER	STORE	TRANSACTION DATE	TRANS. TYPE	AMOUNT	DATE	DEBIT	CREDIT	BALANCE	REMARKS
142639	1	10/19/98	INV	1					
142640	1	10/19/98	INV	2					
142863	1	10/19/98	INV	10					
143318	1	10/19/98	INV	10					
144913	1	10/20/98	INV	15					
144917	1	10/20/98	INV	26					
144920	1	10/20/98	INV	301.55	11/12/98	*			
144925	1	10/20/98	CROT	269.19	11/12/98				X
146914	1	10/21/98	INV	27.61	11/12/98	*			
146915	1	10/21/98	INV	700.30	11/12/98	*			
146993	1	10/21/98	INV	5.40	11/12/98	*			
147060	1	10/21/98	INV	56.60	11/12/98	*			
147704	1	10/21/98	INV	8.94	11/12/98	*			
150157	1	10/22/98	INV	42.29	11/12/98	*			
151143	1	10/23/98	INV	141.83	11/12/98	*			
151180	1	10/23/98	INV	254.76	11/12/98	*			
151884	1	10/23/98	INV	31.79	11/12/98	*			
159506	1	10/23/98	INV	56.81	11/12/98	*			

**A FINANCE CHARGE OF 1 1/2% PER MONTH WHICH IS AN ANNUAL RATE OF 18% WILL BE ASSESSED ON ALL PAST DUE ACCOUNTS WITH A MINIMUM FINANCE CHARGE OF \$1.00. TERMS ARE NET 30 DAYS.**

ACCOUNTS WITH A MINIMUM FINANCE CHARGE OF \$1.00. TERMS ARE NET 30 DAYS.						FINANCE CHARGE	NEW BALANCE AMOUNT DUE
PREVIOUS BALANCE	CURRENT CHARGES / CREDITS	CURRENT PAYMENTS					
CONTINUED							

CONTINUED					COMMUNICATED DATE CHARGES MEMO ONLY
CURRENT	31-60 DAYS	61-90 DAYS	91-120 DAYS	121 DAYS & OVER	

OFFICE





CUSTOMER	STATEMENT DATE	PAGE
17658870 409	10/31/98	4

# STATEMENT



REMIT TO:

TO:

AMOUNT

REMITTED: \$

PLEASE RETURN THIS TOP PORTION WITH YOUR PAYMENT.

TRANSACTION NUMBER	STORE	TRANSACTION DATE	TRANS. TYPE	AMOUNT	DUE DATE
159132	1	10/28/98	INV	102.65	11/12/98
159152	1	10/28/98	INV	121.83	11/12/98
160580	1	10/29/98	INV	315.62	11/12/98
161511	1	10/29/98	INV	296.38	11/12/98
162212	1	10/29/98	INV	55.40	11/12/98
163112	1	10/30/98	INV	21.15	11/12/98
163278	1	10/30/98	INV	296.38	11/12/98
163467	1	10/30/98	INV	370.84	11/12/98
103198	1	10/31/98	FIN	454.96	

*Brenda, something to do with address I have no idea what they are deducting. The difference is 3434.40.*

*Conni*

*This figure includes the deduction of the 184.46 FC from July. So, when*

*this amount was paid it was really deducted a 2nd time*

A FINANCE CHARGE OF 1 1/2% PER ANNUUM WILL BE ASSESSED ON ALL PAST DUE

PREVIOUS BALANCE	CURRENT CHARGES / CREDITS
31323.60	6478.32

CURRENT	31-60 DAYS
7926.01	30330.87

FINANCE CHARGE	NEW BALANCE AMOUNT DUE
454.96	38256.88

ACCUMULATED DATE CHARGE (INCLUDE ONLY)
454.96

OFFICE



CUSTOMER	STATEMENT DATE	PAGE
17658870 409	11/30/98	1

# STATEMENT



REMIT TO:

LEZZER CASH & CARRY  
P.O. BOX 217  
CURWENSVILLE, PA 16833  
814-236-0220

TO:

CONSERVCO  
805 S. SECOND STREET  
CLEARFIELD, PA 16830

AMOUNT  
REMITTED: \$

PLEASE RETURN THIS TOP PORTION WITH YOUR PAYMENT.

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TRANSACTION NUMBER	STORE	TRANSACTION DATE	TRANS. TYPE	AMOUNT	DUE DATE	INVOICE AGING					PLEASE CHECK ITEMS BEING PAID
						C/P	30	60	90	120	
166249	1	11/02/98	INV	199.03	12/12/98	*					
167363	1	11/02/98	CRDT	24.70	12/12/98						
13984	1	11/03/98	PYMT	27704.74							X
172062	1	11/05/98	INV	26.60	12/12/98	*					
176669	1	11/07/98	INV	95.39	12/12/98	*					
179252	1	11/10/98	INV	2.75	12/12/98	*					
182657	1	11/11/98	INV	17.11	12/12/98	*					
183367	1	11/12/98	INV	24.14	12/12/98	*					
183617	1	11/12/98	INV	63.55	12/12/98	*					
184595	1	11/12/98	INV	1020.43	12/12/98	*					
184605	1	11/12/98	INV	24.49	12/12/98	*					
184981	1	11/13/98	INV	58.72	12/12/98	*					
185742	1	11/13/98	INV	12.71	12/12/98	*					
186115	1	11/13/98	INV	751.28	12/12/98	*					
191164	1	11/17/98	INV	48.02	12/12/98	*					
191305	1	11/17/98	INV	72.88	12/12/98	*					
191318	1	11/17/98	INV	52.95	12/12/98	*					
191365	1	11/17/98	INV	3.18	12/12/98	*					

A FINANCE CHARGE OF 1 1/2% PER MONTH WHICH IS AN ANNUAL RATE OF 18% WILL BE ASSESSED ON ALL PAST DUE ACCOUNTS WITH A MINIMUM FINANCE CHARGE OF \$1.00. TERMS ARE NET 30 DAYS.

PREVIOUS BALANCE	CURRENT CHARGES / CREDITS	CURRENT PAYMENTS	FINANCE CHARGE	NEW BALANCE AMOUNT DUE
CONTINUED				

CURRENT	31-60 DAYS	61-90 DAYS	91-120 DAYS	121 DAYS & OVER	ACCUMULATED LATE CHARGES (INTEREST ONLY)

OFFICE



CUSTOMER	STATEMENT DATE	PAGE
17658870 409	11/30/98	2

# STATEMENT



REMIT TO:

TO:

AMOUNT

REMITTED: \$

PLEASE RETURN THIS TOP PORTION WITH YOUR PAYMENT.

5120-0048-7202 ©1997, Moore Document Solutions. All rights reserved. 207

TRANSACTION NUMBER	STORE	TRANSACTION DATE	TRANS. TYPE	AMOUNT	DUE DATE	INVOICE AGING					PLEASE CHECK ITEMS BEING PAID
						C/P	30	60	90	120	
191370	1	11/17/98	INV	6.89	12/12/98	*					
194165	1	11/19/98	INV	16.12	12/12/98	*					
195872	1	11/20/98	INV	191.07	12/12/98	*					
195873	1	11/20/98	INV	60.26	12/12/98	*					
195889	1	11/20/98	CRDT	60.26	12/12/98	*					X
196897	10	11/20/98	INV	565.19	12/12/98	*					
197992	1	11/21/98	INV	40.17	12/12/98	*					
197999	1	11/21/98	INV	12.35	12/12/98	*					
202720	1	11/25/98	INV	239.30	12/12/98	*					
202785	1	11/25/98	CRDT	239.30	12/12/98	*					X
204584	1	11/27/98	INV	85.67	12/12/98	*					
205409	1	11/27/98	INV	113.70	12/12/98	*					
205433	1	11/27/98	INV	35.44	12/12/98	*					
206507	1	11/27/98	INV	15.23	12/12/98	*					
207832	1	11/30/98	INV	40.92	12/12/98	*					
113098	1	11/30/98	FIN	145.84		*					

A FINANCE CHARGE OF 1% PER MONTH WHICH IS AN ANNUAL RATE OF 18% WILL BE ASSESSED ON ALL PAST DUE ACCOUNTS WITH A MINIMUM FINANCE CHARGE OF \$1.00. TERMS ARE NET 30 DAYS.

PREVIOUS BALANCE	CURRENT CHARGES / CREDITS	CURRENT PAYMENTS	FINANCE CHARGE	NEW BALANCE AMOUNT DUE
38256.88	3677.29	27704.74	458.64	44376.27

CURRENT	31-60 DAYS	61-90 DAYS	91-120 DAYS	121 DAYS & OVER	ACCUMULATED LATE CHARGE (MINIMUM \$1.00)
4187.39	7826.01	2251.87	.00	.00	600.80

OFFICE



CUSTOMER	STATEMENT DATE	AGE
17458870 409	11/30/98	2

# STATEMENT



REMIT TO:

TO:

AMOUNT

REMITTED: \$

PLEASE RETURN THIS TOP PORTION WITH YOUR PAYMENT.

51720346-7002 ©1997, Moore Document Solutions. All rights reserved. 207

TRANSACTION NUMBER	STORE	TRANSACTION DATE	TRANS. TYPE	AMOUNT	DUE DATE	INVOICE AGING					PLEASE CHECK ITEMS BEING PAID
						CP	30	60	90	120	
191370	1	11/17/98	INV	4.89	12/12/98	*					
194165	1	11/19/98	INV	15.17	12/12/98	*					
195272	1	11/20/98	INV	191.07	12/12/98	*					
195873	1	11/20/98	INV	60.26	12/12/98	*					
195889	1	11/20/98	CRDI	60.26	12/12/98	*					X
196897	10	11/20/98	INV	545.19	12/12/98	*					
197992	1	11/21/98	INV	40.17	12/12/98	*					
197999	1	11/21/98	INV	12.35	12/12/98	*					
202720	1	11/25/98	INV	289.30	12/12/98	*					
202785	1	11/25/98	CRDI	289.30	12/12/98	*					X
204584	1	11/27/98	INV	85.67	12/12/98	*					
205409	1	11/27/98	INV	113.70	12/12/98	*					
205433	1	11/27/98	INV	65.44	12/12/98	*					
206507	1	11/27/98	INV	10.24	12/12/98	*					
207832	1	11/30/98	INV	40.99	12/12/98	*					
113098	1	11/30/98	FIN	145.84		*					

A FINANCE CHARGE OF 1 1/2% PER MONTH WHICH IS AN ANNUAL RATE OF 18% WILL BE ASSESSED ON ALL PAST DUE ACCOUNTS WITH A MINIMUM FINANCE CHARGE OF \$1.00. TERMS ARE NET 30 DAYS.

PREVIOUS BALANCE	CURRENT CHARGES / CREDITS	CURRENT PAYMENTS	FINANCE CHARGE	NEW BALANCE AMOUNT DUE
38256.88	3677.29	27704.74	145.84	400.80

CURRENT	31-60 DAYS	61-90 DAYS	91-120 DAYS	121 DAYS & OVER	ACCUMULATED FINANCE CHARGE (INTEREST ONLY)
4197.39	7924.01	2251.87	0.00	0.00	400.80

OFFICE



# CONSERVCO

## GENERAL CONTRACTORS

MAILING ADDRESS  
805 SOUTH SECOND STREET  
CLEARFIELD, PA. 16830

OFFICE ADDRESS  
ONE WASHINGTON AVENUE  
HYDE, PA. 16843

J. F. KANE  
R. HELSEL  
(814) 765-6725  
FAX: (814) 765-2380

June 30, 1999

Mr. Tom

Enclosed herein please find our check in the amount of \$ 45,934.08 which we calculated as follows:

May 99 charges \$ 6,657.90

April charges for windows that  
where not picked up or installed  
until May. R. Peterman should  
have discussed this with accounting \$ 35,841.78

Balance from Sept/98 billing which  
represents cost of windows sized wrong  
by Iron City. These windows where replaced  
along with April/99 windows \$ 3,434.40

---

TOTAL DUE LEZZER \$ 45,934.08

Your last invoice calculates as follows: \$ 59,271.29  
Less June 1 payment ( 10,564.19)

---

BALANCE \$ 48,707.10

Difference between Conservco and 84 Lumber Lezzer \$ 2,773.02

This difference appears to be accumulated service charges stemming from the incorrect windows dating back to September of 1998. Please advise if you agree and adjust your records accordingly

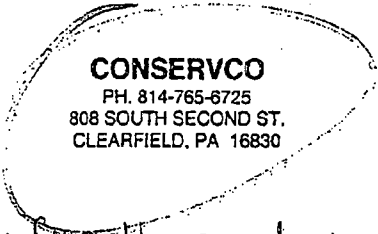


CONSERVCO

14651



DATE	DESCRIPTION	AMOUNT	DEDUCTION	NET AMOUNT
6.30.99	Lezzer	45,934.08		45,934.08
CHECK DATE	CONTROL NUMBER	TOTALS		



**CONSERVCO**  
PH. 814-765-8725  
808 SOUTH SECOND ST.  
CLEARFIELD, PA 16830

**CLEARFIELD BANK AND TRUST COMPANY**  
MAIN OFFICE  
CLEARFIELD, PA 16830  
60-629-313

14651

PAY TO THE ORDER OF *Lezzer Lumber*  
*P.O. Box 217*  
*Curwensville PA, 16833*  
 Forty five thousand nine hundred thirty four dollars <sup>08</sup>/<sub>100</sub> cents  
 DATE *6.30.99* CONTROL NO. AMOUNT *45,934.08*

*A. Hane*

⑈014651⑈ ⑈031306294⑈ 1 00287 5⑈

Security features included. Details on back.

# CONSERVCO

## GENERAL CONTRACTORS

---

MAILING ADDRESS  
P.O. Box 1404  
CLEARFIELD, PA. 16830

OFFICE ADDRESS  
ONE WASHINGTON AVENUE  
HYDE, PA. 16843

J. F. KANE  
(814) 765-6725  
FAX: (814) 765-2380  
E-MAIL:  
conservco@clearnet.net

August 21, 2001

Lezzer Lumber  
Po Box 217  
Curwensville, PA 16833

Here is a copy of our tax exemption certificate for Nutritions Inc.  
Please call me at the above number if you need any further information.

Thank You,

  
Erin M Ager



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF REVENUE  
BUREAU OF BUSINESS TRUST FUND TAXES  
DEPT. 280901  
HARRISBURG, PA 17128-0901

## PENNSYLVANIA EXEMPTION CERTIFICATE

### CHECK ONE:

- ☐ STATE OR LOCAL SALES AND USE TAX  
☐ STATE OR LOCAL HOTEL OCCUPANCY TAX  
☐ PUBLIC TRANSPORTATION ASSISTANCE TAXES AND FEES (PTA)  
☐ PASSENGER CAR RENTAL TAX (PCRT)

(Please Print or Type)

This form cannot be used to  
obtain a Sales Tax License  
Number, PTA License  
Number or Exempt Status.

Read Instructions  
On Reverse Carefully

**THIS FORM MAY BE PHOTOCOPIED - VOID UNLESS COMPLETE INFORMATION IS SUPPLIED**

CHECK ONE: ☐ PENNSYLVANIA TAX UNIT EXEMPTION CERTIFICATE (USE FOR ONE TRANSACTION)  
☒ PENNSYLVANIA TAX BLANKET EXEMPTION CERTIFICATE (USE FOR MULTIPLE TRANSACTIONS)

Name of Seller or Lessor

Lezzer Lumber

Street

City

State

Zip Code

PO Box 217

Curwensville

PA 16833

Property and services purchased or leased using this certificate are exempt from tax because:  
 (Select the appropriate paragraph from the back of this form, check the corresponding block below and insert information requested.)

- ☐ 1. Property or services will be used directly by purchaser in performing purchaser's operation of: \_\_\_\_\_
- ☐ 2. Purchaser is a/an: \_\_\_\_\_
- ☐ 3. Property will be resold under License Number \_\_\_\_\_. (If purchaser does not have a PA Sales Tax License Number, include a statement under Number 7 explaining why a number is not required.)
- ☐ 4. Purchaser is a/an: \_\_\_\_\_ holding Exemption Number \_\_\_\_\_
- ☐ 5. Property or services will be used directly by purchaser performing a public utility service. (Complete Part 5 on Reverse.)
- ☐ 6. Exempt wrapping supplies, License Number \_\_\_\_\_. (If purchaser does not have a PA Sales Tax License Number, include a statement under Number 7 explaining why a number is not required.)
- ☒ 7. Other Contractor for public works Exp Number # 72000817  
 (Explain in detail. Additional space on reverse side.)

I am authorized to execute this Certificate and claim this exemption. Misuse of this Certificate by seller, lessor, buyer, lessee, or their representative is punishable by fine and imprisonment.

Name of Purchaser or Lessee

Signature

Date

CONSERVCO

City

State

Zip Code

Street Address

PO Box 1404

Clearfield

PA

16830

### 1. ACCEPTANCE AND VALIDITY:

For this certificate to be valid, the seller/lessor shall exercise good faith in accepting this certificate, which includes: (1) the certificate shall be completed properly; (2) the certificate shall be in the seller/lessor's possession within sixty days from the date of sale/lease; (3) the certificate does not contain information which is knowingly false; and (4) the property or service is consistent with the exemption to which the customer is entitled. For more information, refer to Exemption Certificates, Title 61 PA Code §32.2. An invalid certificate may subject the seller/lessor to the tax.

### 2. REPRODUCTION OF FORM:

This form may be reproduced but shall contain the same information as appears on this form.

### 3. RETENTION

The seller or lessor must retain this certificate for at least four years from the date of the exempt sale to which the certificate applies. **DO NOT RETURN THIS FORM TO THE PA DEPARTMENT OF REVENUE.**

### 4. EXEMPT ORGANIZATIONS:

This form may be used in conjunction with form REV-1715, Exempt Organization Declaration of Sales Tax Exemption, when a purchase of \$200 or more is made by an organization which is registered with the PA Department of Revenue as an exempt organization. These organizations are assigned an exemption number, beginning with the two digits 75 (example 75-00000-0).





# LEZZER

LUMBER AND BUILDING MATERIALS

**MAIN OFFICE:**

P.O. Box 217, Scofield Street, CURWENSVILLE, PA 16833  
(814) 236-0220

Date MAR, 17, 1995

To our valued customer:

For your protection, we are reviewing our records in an attempt to update the current listing of individuals authorized to purchase on your account. We would appreciate completion of the form below and return it at your convenience.

Thank you for your cooperation

*Thomas Yontosh*

Lezzer Cash & Carry  
Thomas Yontosh  
Credit Manager

Name CONSEPUCCO

Account# 17658870

Address 805 South 2<sup>nd</sup> STR.

Clearfield PA 16830

Phone (814) 765-6725

Whom to contact concerning account Joseph F KANE

Persons authorized to buy:

Name HAROLD WARREN ✓

Name ROBERT L KANE ✓

Name MIKE CONRAD ✓

Name WILLIAM FLANAGAN SR ✓

Name EDWARD R POWELL ✓

Name WILLIAM FLANAGAN JR ✓

Name JAMES WATKINS ✓

Name RONALD BRYAN ✓ (over)

P.O. Required \_\_\_\_\_

Tax Exempt (form attached) NO

Additional Comments \_\_\_\_\_

P.O. Box 646  
Shaffer Road  
DuBOIS, PA 15801  
(814) 371-9311

P.O. Box 87  
1260 Wayne Ave.  
INDIANA, PA 15701  
(412) 349-2281

777 E. Butler Rd.  
BUTLER, PA 16001  
(412) 282-3100

R.D. 2, Box 291  
Chad Road  
MUNCY, PA 17756  
(717) 546-8026

P.O. Box 6039  
2350 E. College Ave.  
STATE COLLEGE, PA 16801  
(814) 237-3511

P.O. Box 826  
104 Industrial Drive  
GROVE CITY, PA 16127  
(412) 458-5501

409



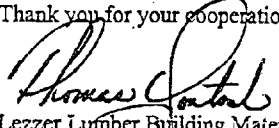
Corporate Office: P.O. Box 217  
Schofield Street  
Curwensville, PA 16833  
(814) 236-0220

February 1, 2000

Dear Valued Customer:

For your protection, we are reviewing our records to update the current list of individuals authorized to purchase on your account. Please complete this form and return it at your convenience.

Thank you for your cooperation,

  
Lezzer Lumber Building Materials Centers  
Thomas Yontosh  
Corporate Credit Manager

Name: Conservco

Account # 765-8870

Address: \_\_\_\_\_

Phone Number: 765-6725

Whom to contact concerning account: J. F. Kane

Persons authorized to buy:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: all employees

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

P.O. Required? (Circle one): YES ☐ NO ☒

Tax Exempt? (Attach form): YES ☐ NO ☒

Additional Comments: \_\_\_\_\_

Person Completing Form: J. F. Kane

Signature

Date: 2-07-00

Indiana

State College

Dubois

Curwensville  
Cranberry

Butler

Grove City

Muncy



Corporate Office: P.O. Box 217  
Schofield Street  
Curwensville, PA 16833  
(814) 236-0220  
(814) 236-2697(Fax)

January 2002

Dear Valued Customer:

For your protection, we are reviewing our records to update the current list of individuals authorized to purchase on your account. Please complete this form and return it at your convenience.

Thank you for your cooperation,

Lezzer Lumber Building Materials Centers  
Thomas Yontosh  
Corporate Credit Manager

CW  
1-8-02

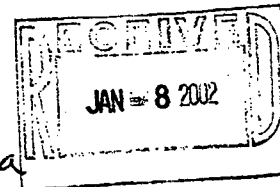
Name: Conservco

Account # 17658870

Address: P.O. Box 1404  
Clearfield PA 16830

Phone Number: 814-765-6725

Whom to contact concerning account: J. Kane or W. Scialbrin



Persons authorized to buy:

Name: Joseph Kane ✓

Name: Frank Mayhew ✓

Name: Padraic Kane ✓

Name: Roger Dixon ✓

Name: Wendy Scialbrin ✓

Name: Craig Peters ✓

Name: Bill Flanagan ✓

Name: Ron Bryan ✓

P.O. Required? (Circle one): YES NO

Tax Exempt? (Attach form): YES NO

Additional Comments: Call office if employee has no P.O.

Person Completing Form: Wendy Scialbrin  
Signature

Date: 1-7-02

Indiana

State College

Dubois

Curwensville  
Cranberry

Butler

Grove City

Muncy



Corporate Office: P.O. Box 217  
Schofield Street  
Curwensville, PA 16833  
(814) 236-0220  
(814) 236-2697(Fax)

February 2002

Dear Valued Customer:

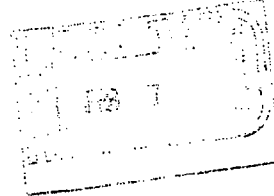
For your protection, we are reviewing our records to update the current list of individuals authorized to purchase on your account. Please complete this form and return it at your convenience.

Thank you for your cooperation,

Lezzer Lumber Building Materials Centers  
Thomas Yontosh  
Corporate Credit Manager

CW 2/7/02

Name: Conservco Account # 17658770 17658870  
Address: P.O. Box 1404  
Clearfield, PA 16830  
Phone Number: 765-6725  
Whom to contact concerning account: J. Kane or W. Sciabica



Persons authorized to buy:

Name: Joe Kane ✓  
Name: Pat Kane ✓  
Name: Wendy Sciabica ✓  
Name: Ron Bryan ✓

Name: Bill Flanagan ✓ Mike Conrad  
Name: Frank Mayhew ✓ Roger Dixon  
Name: Craig Peters ✓ Brent Snyder  
Name: Scott Sheeder ✓ Ed McBride

P.O. Required? (Circle one): ☒ YES ☐ NO

Tax Exempt? (Attach form): YES ☒ NO

Federal Tax I.D. Number \_\_\_\_\_

Additional Comments: \_\_\_\_\_

Person Completing Form: Wendy Sciabica

Signature

Date: 2-6-02

Indiana

State College

Dubois

Curwensville  
Cranberry

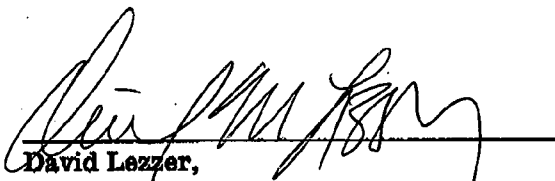
Butler

Grove City

Muncy

**VERIFICATION**

I, David Lezzer, Executive Vice President for LEZZER CASH & CARRY of CURWENSVILLE, INC., Plaintiff, verify that the statements made in the foregoing Answer and New Matter are true and correct to the best of my knowledge, information and belief. I, the undersigned, understand that false statements made herein are subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
David Lezzer,  
Executive Vice President for  
LEZZER CASH & CARRY of  
CURWENSVILLE, INC.

Date: 12/30/04

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PA  
CIVIL ACTION - LAN  
No. 03-994-CD

LEZZER CASH & CARRY OF  
CURMENSVILLE, INC., Plaintiff

vs.

BJR, INC., t/d/b/a CONSERVCO,  
successor to CONSERVCO, a partner-  
ship, and J. F. KANE, a/k/a  
JOSEPH F. KANE, individually,  
Defendants

ANSWER AND NEW MATTER TO DEFENDANT,  
J. F. KANE, a/k/a JOSEPH F. KANE'S  
PETITION TO OPEN DEFAULT JUDGMENT

DEC 30 2004

Prothonotary Clerk of Courts

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

LA

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

LEZZER CASH & CARRY OF  
CURWENSVILLE, INC.

-VS-

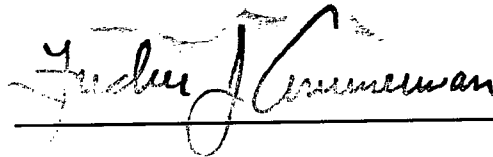
J.F. KANE, a/k/a JOSEPH F.  
KANE

:  
:  
:  
:  
:  
No. 03-994-CD

O R D E R

NOW, this 3rd day of January, 2005, following argument on the Petition to Open Judgment filed on behalf of the Defendant, it is the ORDER of this Court that both parties submit letter brief to the Court within no more than ten (10) days from this date. Plaintiff's letter brief shall include, among the various issues that have been raised, authority indicating that the judgment can be entered against the partners of a partnership individually.

BY THE COURT,



President Judge

FILED

0 9:41 AM 2005  
JAN 05 2005  
Clerk of Court  
16530

William A. Shaw  
Prothonotary

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

LEZZER CASH & CARRY of  
CURWENSVILLE, INC.,  
Plaintiff

vs.

BJR, INC. t/d/b/a  
CONSERVCO, successor to  
CONSERVCO, a partnership, and  
J.F. KANE, a/k/a JOSEPH F. KANE,  
individually,  
Defendants

: No. 03-994- CD

: Type of Case: Civil

: Type of Pleading: Answer and New Matter  
: to Defendant, J. F. Kane, a/k/a Joseph F.  
: Kane's Petition to Open Default Judgment

**AFFIDAVIT OF SERVICE**

COMMONWEALTH OF PENNSYLVANIA

: SS.

COUNTY OF CLEARFIELD

Andrew P. Gates, Esquire, being duly sworn according to law, deposes and says that on January 3, 2005 at 9:00 o'clock a.m., he personally handed to J. F. Kane, a/k/a Joseph F. Kane, at Courtroom Number 1 of the Clearfield County Courthouse, Clearfield, PA 16830, a true and correct copy of the Answer and New Matter to Defendant, J. F. Kane, a/k/a Joseph F. Kane's Petition to Open Default Judgment.

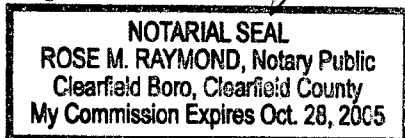
GATES & SEAMAN

By:

  
Andrew P. Gates, Esquire

Sworn to and subscribed before  
me this 4<sup>th</sup> day of January, 2005





**FILED**

OK 01/3/05 11:00 AM CC  
JAN 12 2005

William A. Shaw  
Prothonotary/Clerk of Courts



FILED

01/10/24/BJ  
FEB 17 2005  
William A. Shaw  
Prothonotary/Clerk of Courts  
100 BJR, Inc.  
One Washington Ave., Hyatt, PA 16843  
100 Joseph Kane  
9 Gulick Ave., Clearfield, PA 16830  
CC Conservco  
PO Box 104, Clearfield, PA  
copy to D. Mikesell  
10830

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

LEZZER CASH & CARRY, INC.,  
Plaintiff

vs.

NO. 03-994-CD

BJR, INC., t/d/b/a CONSERVCO,  
successor to CONSERVCO, a  
partnership, and J.F. KANE, a/k/a  
JOSPEH F. KANE, individually,  
Defendants

OPINION and ORDER

On July 8, 2003, Plaintiff filed a Complaint for Confession of Judgment versus the named Defendants in accordance with Pa. R.C.P. § 2951(b) and Judgment was entered by the Prothonotary on that date. As indicated in the docket entries and the case file, prompt Notice of Entry of Judgment as well as certified copy of the Complaint for Confession of Judgment was mailed to both Defendants, including J.F. Kane, a/k/a Joseph F. Kane, individually, at his home address. By letter of Defendant Kane of July 29, 2003, which is attached as Exhibit 2 to Plaintiff's Answer to the Defendant's Petition, Defendant acknowledged receipt of the Notice of Judgment and Complaint for Confession of Judgment. As indicated in said letter, Mr. Kane itemized certain alleged shortcomings in Plaintiff's documentation, but he took no action at that time to obtain relief. By Petition to Open Judgment filed

approximately seventeen (17) months after being served with Notice of Entry of the Confessed Judgment, Mr. Kane requests this Court to open the judgment entered against him individually, for the same reasons set forth in his July 29, 2003 letter.

On November 9, 2004, Plaintiff filed a Praecipe for Writ of Revival to revive the judgment against Mr. Kane, individually, in order to validate its lien, since at the time of its original entry Mr. Kane was involved in an ongoing divorce, which has since been finalized. Concurrently, Plaintiff likewise filed a Praecipe for Writ of Execution which resulted in a Writ of Execution being issued against Mr. Kane and directing a sheriff's sale of the real estate specified in the Writ.

On December 3, 2004, Mr. Kane filed his Petition to Open the judgment confessed against him individually. Plaintiff timely filed an Answer and New Matter to Defendant's Petition. The Answer and New Matter essentially takes the position that the Defendant's Petition was not timely and the same otherwise failed to set forth a meritorious defense. Argument was held on January 3, 2005 at the conclusion of which the Court directed the parties to submit letter briefs, which have now been received.

The Court notes that Plaintiff, following review of the 1996 amendments to Pa. R.C.P. 92959(a)(3) and the case of PNC Bank v. Keir, 802 A.2d 634 (Pa. Super. 2002), has withdrawn its claim that the Defendant's Petition to open was not timely filed. Therefore, there are two remaining issues for consideration:

1. Is the Material Purchase Agreement executed by Defendant Kane in January 1989, in both his individual and representative capacity, enforceable against the Defendant individually, when Defendant's construction business later changed from a partnership to a corporation?
2. Is the Material Purchase Agreement executed by Defendant Kane, both in his individual and representative capacity, enforceable against the Defendant individually, even though the Defendant's signature was not witnessed and/or notarized and the document itself did not contain a date, nor was the trade name of the Defendant's construction business inserted in the appropriate blank?

The Pennsylvania Supreme Court in First Seneca Bank vs. Laurel Mountain Development Corporation, 506 Pa. 439, 485 A.2d 1086, 1088 (1984) set forth the following criteria to be

utilized when a trial court is faced with a petition to open a confessed judgment.

"A petition to open judgment is an appeal to the equitable powers of the court. As such it is committed to the sound discretion of the hearing court and will not be disturbed absent a manifest abuse of discretion. Lincoln Bank v. C & H. Agency, Inc., 500 Pa. 294, 456 A.2d 136 (1982). A judgment taken by confession will be opened in only a limited number of circumstances, and only when the person seeking to have it opened acts promptly, alleges a meritorious defense and presents sufficient evidence of that defense to require submission of the issues to the jury." [citations omitted]

The assertion that once Mr. Kane's construction business became a corporation he could no longer be held individually liable under the terms of the Material Purchase Agreement which he executed as a partner has no merit, and is otherwise controlled by the legal precedent set forth in the Pennsylvania Supreme Court case of Dengler vs. Helms, 4 Walk 476, 1883 WL 14147 (Pa. 1883). In Dengler, the Pennsylvania Supreme Court affirmed and otherwise adopted the opinion of the trial court which granted plaintiff a new trial wherein the jury subsequently found in plaintiff's favor and held directors of a corporation personally liable under a contract made by the directors on behalf of an association which later becomes incorporated. The issue framed by the trial court's opinion was: "Must the plaintiff look alone to the corporation, or can he hold those with whom he contracted individually

responsible.". The trial court in its opinion granting a new trial found not only could the aggrieved party recover against the corporation, but he was also entitled to recover against the individuals with whom he originally contracted. See also Denlinger v. Denlinger, et al, 415 Pa. Super. 164, 608 A.2d 1061 (1992).

In the case at hand, the Material Purchase Agreement was executed by Mr. Kane in not only his representative capacity as a partner, but also in his individual capacity. The fact that Conservco later transferred all of its assets to an already existing corporation, previously created by Mr. Kane, did not relieve Mr. Kane from the personal liability created by virtue of the plain meaning of the Material Purchase Agreement. Had Mr. Kane wished to have himself relieved from the personal liability created under the agreement, he would have had to obtain the assent of Plaintiff to look solely to the corporation for all future credit purchases. This he obviously did not do. By his own admission, Mr. Kane did not notify Plaintiff that Conservco had in any way changed its form of business entity. On the contrary, all outward indicia such as correspondence sent to Plaintiff, checks submitted to Plaintiff for payment of credit purchases, billing statements, purchase invoices and employee authorizations submitted to Plaintiff

were all under the heading of Conservco. Representative copies of these documents were attached to Plaintiff's Answer as Exhibit 4. These documents show no difference from prior to 1996 (when Mr. Kane states Conservco began operating as a corporation) up to when Conservco quit paying its credit purchasers in 2002. Thus, not only did Plaintiff Lezzer not assent to Defendant Kane's corporate entity becoming solely responsible for all future credit purchases of Conservco, Plaintiff had no way of discovering any change in Defendant's business structure based on documentation submitted to it in the ordinary course of the parties' business transactions.

Essentially, what Mr. Kane is arguing is that by virtue of BJR, Inc. taking over all of the assets of what he alleges was a dissolved limited partnership (i.e. Conservco) and by thereafter operating the construction business which made the credit purchases, a "novation of contract" took place which resulted in the corporate entity becoming exclusively and solely liable for all credit purchases while Defendant Kane was individually released. In order for a novation to take place an essential element is that the parties to the new substituted agreement must have consented to the extinction of the old agreement and to its replacement by the new contract. See First Lehigh Bank vs. Haviland Grille, Inc., 704 A.2d 135 (Pa.

Super. 1997). Likewise, the burden of proving the existence of a novation is upon the party asserting the same. See Carlos R. Leffler, Inc. vs. Hutter, 696 A.2d 157 (Pa. Super. 1997). In the case at bar, since Defendant Kane never informed Plaintiff Lezzer of the change of his construction business from a limited partnership to a corporation, he can not now claim that Plaintiff Lezzer agreed to look only to the corporation for all future credit purchases made by Conservco. Without knowledge, there can be no consent.

As to the issue of who Plaintiff Lezzer decided to confess judgment against under the terms of the Material Purchase Agreement, the clear and unambiguous terms thereof state that both the undersigned parties in their individual capacity and in their representative capacity agreed to make payment for the material and supplies in the event payment for the same was not otherwise made. Likewise, said individuals also agreed both in their individual and representative capacity that judgment could be entered against them for the amounts due, if the account was not paid when due. As admitted by Mr. Kane at the argument, the Material Purchase Agreement constitutes a personal guarantee of the signators. Thus, where the terms of the agreement are unambiguous, challenging the same by arguing the document was only signed by individuals in

their representative capacity does not represent a meritorious defense. See Stahl Oil Company, Inc. v. Helsel, 860 A.2d 508 (Pa. Super 2004). Additionally, nowhere in the agreement is there any language stating that if payment was not made, Lezzer's must confess judgment against both signators, individually, as opposed to only one signator individually. Furthermore, as established by the last signed authorization issued by Conservco to Plaintiff dated February 6, 2002, (part of Exhibit 4 to Plaintiff's Answer) the signator, Richard H. Helsel, was no longer listed as a party authorized to make credit purchases on behalf of Conservco.

Defendant's second issue is that the Material Purchase Agreement is not enforceable against him, individually, because his signature was not notarized nor was the same witnessed. There are no such requirements under Pennsylvania law. As for Defendant's assertion that the Material Purchase Agreement is not dated and that the trade name portion of the agreement is left blank, neither of these provide a meritorious defense. Since the Material Purchase Agreement was executed contemporaneously with the Application for Business Credit And Non-Consumer Credit Agreement and the same in the body thereof names the applicant to be "Conservco" (under the partnership section of the application), it is clear from this designation

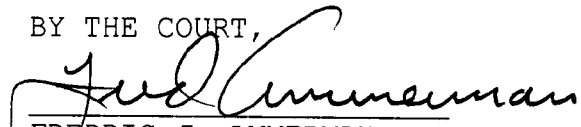


that the parties intended the trade name left blank in the Material Purchase Agreement to be "Conservco". This is particularly so since the two documents making up this transaction, namely the Application for Business Credit and Non-Consumer Credit Agreement and the Material Purchase Agreement are to read together and construed as a whole. Huegel v. Mifflin Const. Co., Inc., 796 A.2d 350, 354-355 (Pa. Super. 2002). Since this was an obvious unintentional omittance and it is otherwise clear and apparent from the credit application that the name to be inserted was to be "Conservco", it is entirely proper for the Court to insert the same and to give the warrant of attorney full effect. See William B. Rambo Building & Loan Association vs. Dragone, 305 Pa. 24, 156 A.2d 311 (1931). Likewise, it is also proper for the Court to infer the date of the Material Purchase Agreement to be January 1989 since the lower right hand corner of two pages of the Application for Business Credit and Non-Consumer Credit Agreement contain the date "1/89". This was the date of the beginning of the credit arrangement as asserted by Plaintiff in Paragraph 8 of its Complaint in Confession of Judgment.

O R D E R

NOW this 15th day of February, 2005, it is the Order of this Court that the Defendant's Petition to Open Judgment be and is hereby DISMISSED.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

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

LEZZER CASH & CARRY OF  
CURWENSVILLE, INC.,  
Plaintiff

-vs-

BJR, INC., t/d/b/a CONSERVCO,  
successor to Conservcc, a  
Partnership, and J. F. KANE,  
a/k/a JOSEPH F. KANE,  
individually, Defendant

No. 03- 994 -CD

Type of Case: Civil Action

Type of Pleading: Praecipe  
For Default Judgment

Filed on behalf of:  
Plaintiff

Counsel of Record for this  
Party: Andrew P. Gates

Supreme Court No.: 36604

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

FILED

FEB 22 2005

William A. Shaw  
Prothonotary

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

LEZZER CASH & CARRY of	:	
CURWENSVILLE, INC.,	:	
Plaintiff	:	
	:	
vs.	:	No. 03-994-CD
	:	
BJR INC., t/d/b/a CONSERVCO,	:	
successor to Conservco, a	:	
Partnership, and J. F. KANE, a/k/a	:	
JOSEPH F. KANE, individually,	:	
Defendants	:	

**PRAECIPE FOR ENTRY OF DEFAULT JUDGMENT**

TO: WILLIAM A. SHAW, PROTHONOTARY:

Please enter Judgment by default in favor of LEZZER CASH & CARRY OF CURWENSVILLE, INC., Plaintiff herein, and against Defendant, J. F. KANE, a/k/a JOSEPH F. KANE, individually, for his failure to plead to the Writ of Revival within the required time. Said Defendant was served with the Writ of Revival, on November 15, 2004, as set forth in the Sheriff's Affidavit of Service.

Attached as Exhibit "A" is a photocopy of Plaintiff's written Notice of Intent to Take Default Judgment which is required by Pa.R.C.P. §237.1(a)(2) and U. S. Postal Service form 3817. I certify that the aforementioned Notice of Intent to Take Default Judgment was mailed by regular mail, postage

prepaid, to Defendant, J. F. KANE, a/k/a JOSEPH F. KANE, at his last known address as indicated on said Notice, on December 13, 2004, which is at least ten (10) days prior to the filing of this Praecipe.

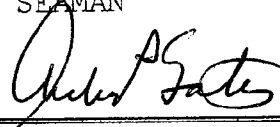
Please assess damages against Defendant, J. F. KANE, a/k/a JOSEPH F. KANE, individually, as follows:

- (a) Amount of original Judgment (\$34,602.66), plus interest at rate of 18.0% per annum from April 30, 2003, until original Judgment entered on July 8, 2003 (69 days x \$14.8385 per day = \$1,023.85)----- \$ 35,626.51
- (b) Legal rate of interest (6.0% per annum) from July 8, 2003 until date hereof - 594 days x \$4.9452 per day----- \$ 2,938.04

TOTAL \$ 38,564.55

GATES & SEAMAN

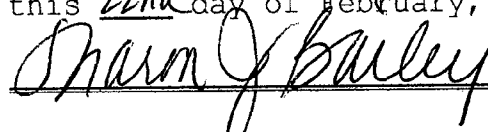
By:

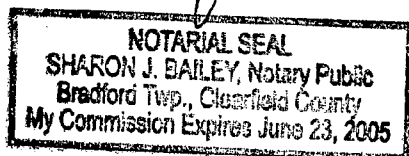
  
\_\_\_\_\_  
Andrew P. Gates, Esquire  
Attorney for Plaintiff,  
Lezzer Cash & Carry of  
Curwensville, Inc.

Date: February 22, 2005

Two North Front St./P.O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

Sworn to and subscribed before me  
this 22nd day of February, 2005

  
\_\_\_\_\_



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

LEZZER CASH & CARRY of CURWENSVILLE, INC.  
Plaintiff

No. 03-994- CD

vs.

BJR, INC. t/d/b/a CONSERVCO, successor to  
CONSERVCO, a partnership, and J.F. KANE, a/k/a  
JOSEPH F. KANE, individually,  
Defendants

TO: Defendant, J. F. Kane, a/k/a Joseph F. Kane  
9 Gulich Avenue  
Clearfield, PA 16830

DATE OF NOTICE: December 13, 2003

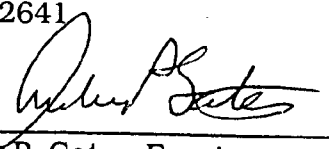
**IMPORTANT NOTICE**

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

**IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

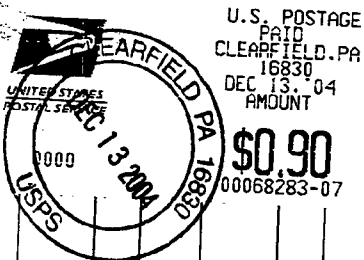
David S. Meholick, Court Administrator  
CLEARFIELD COUNTY COURTHOUSE  
Clearfield, PA 16830  
(814) 765-2641

  
Andrew P. Gates, Esquire,  
Attorney for Plaintiff

P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

EXHIBIT "A"  
2 pages

U.S. POSTAL SERVICE		CERTIFICATE OF MAILING	
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER			
Received From:			
Gates and Seaman			
P. O. Box 846			
Clearfield, PA 16830			
One piece of ordinary mail addressed to:			
J. F. Kane, a/k/a Joseph F. Kane			
9 Gulich Avenue			
Clearfield, PA 16830			



PS Form 3817, January 2001

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

LEZZER CASH & CARRY of  
CURWENSVILLE, INC.,  
Plaintiff

vs.

No. 03-994-CD

BJR INC., t/d/b/a CONSERVCO,  
successor to Conservco, a  
Partnership, and J. F. KANE, a/k/a  
JOSEPH F. KANE, individually,  
Defendants

Notice is given that a JUDGEMENT in the above captioned  
matter has been entered against you in the amount of:  
\$38,564.55 on February 22, 2005.

William A. Shaw, Prothonotary

By \_\_\_\_\_  
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
STATEMENT OF JUDGMENT

Lezzer Cash & Carry  
Plaintiff(s)

No.: 2003-00994-CD

Real Debt: \$38,564.55

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

BJR, Inc  
Joseph F Kane  
Conservco  
Defendant(s)

Entry: \$20.00

Instrument: Default Judgment

Date of Entry: February 22, 2005

Expires: February 22, 2010

Certified from the record this 22nd day of February 2005

\_\_\_\_\_  
William A. Shaw, Prothonotary

\*\*\*\*\*

SIGN BELOW FOR SATISFACTION

Received on \_\_\_\_\_, \_\_\_\_\_, of defendant full satisfaction of this Judgment, Debt,  
Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

\_\_\_\_\_  
Plaintiff/Attorney

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

LEZZER CASH & CARRY, INC.,  
Plaintiff

vs.

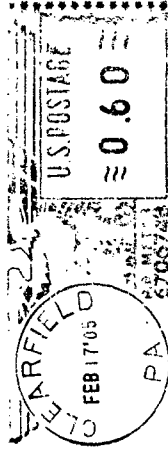
NO. 03-994-CD

BJR, INC., t/d/b/a CONSERVCO,  
successor to CONSERVCO, a  
partnership, and J.F. KANE, a/k/a  
JOSPEH F. KANE, individually,  
Defendants

**OPINION and ORDER**

On July 8, 2003, Plaintiff filed a Complaint for Confession of Judgment versus the named Defendants in accordance with Pa. R.C.P. § 2951(b) and Judgment was entered by the Prothonotary on that date. As indicated in the docket entries and the case file, prompt Notice of Entry of Judgment as well as certified copy of the Complaint for Confession of Judgment was mailed to both Defendants, including J.F. Kane, a/k/a Joseph F. Kane, individually, at his home address. By letter of Defendant Kane of July 29, 2003, which is attached as Exhibit 2 to Plaintiff's Answer to the Defendant's Petition, Defendant acknowledged receipt of the Notice of Judgment and Complaint for Confession of Judgment. As indicated in said letter, Mr. Kane itemized certain alleged shortcomings in Plaintiff's documentation, but he took no action at that time to obtain relief. By Petition to Open Judgment filed

WILLIAM A. SHAW  
PROTHONOTARY  
and CLERK of COURTS  
P.O. BOX 549  
CLEARFIELD, PENNSYLVANIA 16830



BJR, Inc.  
One Washington Ave.  
Hyde, P.

A ☒ INSUFFICIENT ADDRESS  
C ☐ ATTEMPTED NOT KNOWN  
S ☐ NO SUCH NUMBER/ STREET  
☐ NOT DELIVERABLE AS ADDRESSED  
☐ - UNABLE TO FORWARD  
☐ OTHER

RTS  
RETURN TO SENDER

16830+0549

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

LEZZER CASH & CARRY of  
CURWENSVILLE, INC.,  
Plaintiff

vs.

BJR, INC. t/d/b/a  
CONSERVCO, successor to  
CONSERVCO, a partnership,  
and J.F. KANE, a/k/a  
JOSEPH F. KANE,  
individually,  
Defendants

No. 03- 994 -CD

Type of Case: Civil

Type of Pleading: PETITION FOR  
SUPPLEMENTARY RELIEF IN AID OF  
EXECUTION PURSUANT TO Pa.R.C.P.  
§3118

Filed on behalf of: Plaintiff

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 346  
Clearfield, Pennsylvania 16830  
(814) 765-1766

FILED No  
01/4:00/01 cc  
MAR 09 2005

William A. Shaw  
Prothonotary/Clerk of Courts

300 31.01.05

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

LEZZER CASH & CARRY of  
CURWENSVILLE, INC.,  
Plaintiff

vs.

No. 03- 994 -CD

BJR INC., t/d/b/a CONSERVCO,  
successor to Conservco, a  
Partnership, and J.F. KANE, a/k/a  
JOSEPH F. KANE, individually,  
Defendants

**PETITION FOR SUPPLEMENTARY RELIEF**  
**IN AID OF EXECUTION PURSUANT TO Pa.R.C.P. §3118**

AND NOW comes, Petitioner/Plaintiff, Lezzer Cash & Carry of Curwensville, Inc., by their attorneys, Gates & Seaman, and petitions this Honorable Court to enter an Order authorized by Pa.R.C.P. §3118 and, in support thereof, avers the following:

1. By virtue of a Complaint in Confession of Judgment filed on July 8, 2003, Judgment was properly entered by the Prothonotary against the named Defendants in the total amount of \$34,602.66, plus interest and costs;

2. By virtue of the Praecipe for Writ of Revival filed with the Prothonotary on November 9, 2004, the aforementioned Judgment was revived against only Defendant, J. F. Kane, a/k/a Joseph F. Kane, individually.

3. Thereafter, by virtue of a Praecipe for Default Judgment filed with the Prothonotary on February 22, 2005, the Judgment was revived against said Defendant in the total sum of \$38,564.55, which includes all interest to date. Attached hereto and made a part hereof as Exhibits "A" and "B" are true and correct copies of the aforementioned Praecipe for Default Judgment and the Statement of Judgment issued by the Prothonotary.

4. Defendant, J. F. Kane, a/k/a Joseph F. Kane, previously filed a Petition to Open the aforementioned Judgment on December 3, 2004, which following argument and briefs, said Petition was denied by this Court's Order of February 15, 2005.

5. By virtue of a Praecipe for Writ of Execution filed by Plaintiff with the Prothonotary on November 9, 2004, but filed after the aforementioned Praecipe for Writ of Revival, Plaintiff had a Writ of Execution issued which directs the Clearfield County Sheriff to levy upon and sell two parcels of real estate of Defendant, J. F. Kane, a/k/a Joseph F. Kane, consisting of the following:

a. Defendant's interest in a double house and part lot situate in the Second Ward of Clearfield Borough, Clearfield County, Pennsylvania, also identified by Clearfield County Assessment Map No. 4.2-K8-223-21.1; and

b. Defendant's undivided 20% interest in 10.9 acres situate in Lawrence Township, Clearfield County, Pennsylvania, also identified by Clearfield County Assessment Map No. 123-K8-7.

6. Said Defendant's interest in the Clearfield Borough property vested in him by virtue of the following:

(i) Deed dated February 7, 1995 and appearing of record in Clearfield County Deeds and Records Book 1659, Page 101, whereby said Defendant and his then wife, Grace J. Kane, became vested with title to said premises as tenants by the entirety; and

(ii) By virtue of Court Order entered in the Divorce matter of Grace J. Kane versus Joseph F. Kane, Case No. 01-337-CD (Court of Common Pleas of Clearfield County, Pennsylvania), with a copy of said Court Order of July 23, 2004 being attached hereto and made a part hereof as Exhibit "C".

7. By virtue of Defendant, J. F. Kane, a/k/a Joseph F.

Kane, and his wife, Respondent, Grace J. Kane, being granted a divorce in the above-captioned divorce matter by Court Order dated May 21, 2003, Defendant and his ex-wife then held ownership of the aforementioned Clearfield Borough property as tenants in common with each owning a 50% interest in said parcel.

8. By virtue of Plaintiff's Judgment being entered against Defendant, J. F. Kane, a/k/a Joseph F. Kane on July 8, 2003 and by virtue of said Defendant's divorce decree being entered May 21, 2003, Plaintiff by virtue of the terms of the Judgment Lien Law and there being no other record liens or mortgages of record against the aforementioned Clearfield Borough property, became vested with a first lien, on Defendant, J. F. Kane, a/k/a Joseph F. Kane's 50% interest in the Clearfield Borough property.

9. Respondent, Clearfield Bank & Trust Company entered Judgment against both J. F. Kane, a/k/a Joseph F. Kane, and Grace J. Kane, in the Office of the Prothonotary of Clearfield County, Pennsylvania on February 9, 2004 to Case No. 03-1085-CD in the total sum of \$286,130.41, plus attorney's fees, accruing interest, late fees and costs. A photocopy of the docket entries for Case No. 03-1085-CD which shows Judgment was entered on February 9, 2004 is attached hereto and made a part hereof as Exhibit "D".

10. By virtue of the Judgment entered in favor of Clearfield Bank & Trust Company on February 9, 2004 to Case No. 03-1085-CD against J. F. Kane, a/k/a Joseph F. Kane, and Grace J. Kane, and there being no intervening liens of record after Plaintiff's above-referred to Judgment, Clearfield Bank & Trust Company currently holds a second/junior lien against Defendant, J. F. Kane, a/k/a Joseph F. Kane's 50% interest in the Clearfield Borough property and a first lien against the record

interest in said property of Respondent, Grace J. Kane.

11. By virtue of the aforementioned liens held by Plaintiff and by Respondent, Clearfield Bank & Trust Company against the aforementioned Clearfield Borough real estate, there is no equity in said property since collectively the judgment liens held by Plaintiff and Clearfield Bank & Trust Company far exceed the estimated market value of said property several times over.

12. Although this Court's Order of July 23, 2004 directs that the Clearfield Borough property be treated as follows:

**The property situate on Walnut Street, Clearfield County, shall remain in joint names until such time as husband shall request wife to sign a deed for the property conveying her interest to him. Wife shall promptly execute said deed.**

. . .Plaintiff asserts that the wording of the aforementioned Court Order of July 23, 2004 is meant to do nothing more than to attempt to circumvent Plaintiff's Judgment being a lien on the other 50% interest in said property since said Order provides that Grace J. Kane is only to deed her interest in the property to her ex-husband, Defendant, J. F. Kane, a/k/a Joseph F. Kane, at the time of his request. A copy of said July 23, 2004 Order is attached hereto and made a part hereof as Exhibit "C".

13. Plaintiff asserts that by virtue of its Revival of its Judgment, it now holds a viable and enforceable lien on the other 50% interest in said property which is to be deeded to Defendant, J. F. Kane, a/k/ Joseph F. Kane, at his request.

14. In order that the status quo of said lien priorities in said Clearfield Borough real estate may be maintained and to otherwise clarify that the entire 100% interest in said Clearfield Borough property is to be sold by the Clearfield County Sheriff at the upcoming Sheriff's Sale (now scheduled



for May 6, 2005), it is necessary that this Honorable Court enter an Order to that effect, and/or to otherwise direct that Respondent, Grace J. Kane, promptly convey her record interest in said Clearfield Borough property to Defendant, J. F. Kane, a/k/a Joseph F. Kane, with the same to be subject to the judgment liens of Clearfield Bank & Trust Company and Plaintiff, based on their respective priorities.

15. By granting the requested relief, there will be no prejudice to Defendant, J. F. Kane, a/k/a Joseph F. Kane, since there is no equity in the property whereupon he could expect to receive any of the sale proceeds generated by the forthcoming Sheriff's Sale.

16. Respondent, Grace J. Kane, is not prejudiced by the Court entering such an Order since it is clear from the Court's Order of July 23, 2004, she is to receive no additional interest or property in exchange for her conveying her interest in the subject property to Defendant, J. F. Kane, a/k/a Joseph F. Kane.

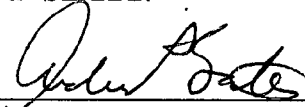
17. Respondent, Clearfield Bank & Trust Company, will not be prejudiced if this Court grants the requested relief since under any scenario it still holds a second lien, junior to Plaintiff's, in Defendant, J. F. Kane, a/k/a Joseph F. Kane's, 50% interest in said property and a first lien on the other 50% interest in the same property to be conveyed to said Defendant by Grace J. Kane.

18. Furthermore, by entering the requested relief, the same is beneficial to this Court so far as judicial economy is concerned since it will negate the need for further legal action, namely; a partition action which will likely result should a party other than Defendant, J. F. Kane, a/k/a Joseph F. Kane, buy said property in at the forthcoming Sheriff's Sale.

19. Plaintiff contends this Honorable Court has authority to grant the requested relief pursuant to either Pa.R.C.P. §3118(a)(3) and/or subsection (a)(6) of the same Rule.

WHEREFORE, Plaintiff requests this Honorable Court to enter a Rule for a hearing/argument for Respondents to show cause why the relief requested by Petitioner/Plaintiff should not be granted.

GATES & SEAMAN



Andrew P. Gates, Esquire  
Attorney for Plaintiff

Date: March 7, 2005

Two North Front Street  
P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

LEZZER CASH & CARRY OF  
CURWENSVILLE, INC.,  
Plaintiff

BJR, INC., t/d/b/a CONSERVCO,  
successor to Conservco, a  
Partnership, and J. F. KANE,  
a/k/a JOSEPH F. KANE,  
individually, Defendant

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

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

LEZZER CASH & CARRY of  
CURWENSVILLE, INC.,  
Plaintiff

vs.

No. 03-994-CD

BJR INC., t/d/b/a CONSERVCO,  
successor to Conservco, a  
Partnership, and J. F. KANE, a/k/a  
JOSEPH F. KANE, individually,  
Defendants

**PRAECIPE FOR ENTRY OF DEFAULT JUDGMENT**

TO: WILLIAM A. SHAW, PROTHONOTARY:

Please enter Judgment by default in favor of LEZZER CASH & CARRY OF CURWENSVILLE, INC., Plaintiff herein, and against Defendant, J. F. KANE, a/k/a JOSEPH F. KANE, individually, for his failure to plead to the Writ of Revival within the required time. Said Defendant was served with the Writ of Revival, on November 15, 2004, as set forth in the Sheriff's Affidavit of Service.

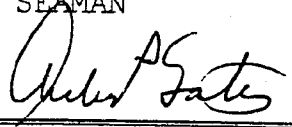
Attached as Exhibit "A" is a photocopy of Plaintiff's written Notice of Intent to Take Default Judgment which is required by Pa.R.C.P. §237.1(a)(2) and U. S. Postal Service form 3817. I certify that the aforementioned Notice of Intent to Take Default Judgment was mailed by regular mail, postage

prepaid, to Defendant, J. F. KANE, a/k/a JOSEPH F. KANE, at his last known address as indicated on said Notice, on December 13, 2004, which is at least ten (10) days prior to the filing of this Praecipe.

Please assess damages against Defendant, J. F. KANE, a/k/a JOSEPH F. KANE, individually, as follows:

- (a) Amount of original Judgment (\$34,602.66), plus interest at rate of 18.0% per annum from April 30, 2003, until original Judgment entered on July 8, 2003 (69 days x \$14.8385 per day = \$1,023.85)----- \$ 35,626.51
- (b) Legal rate of interest (6.0% per annum) from July 8, 2003 until date hereof - 594 days x \$4.9462 per day----- \$ 2,938.04
- TOTAL \$ 38,564.55

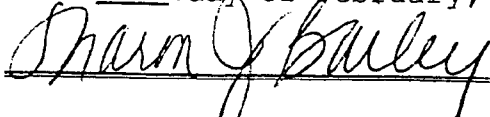
GATES & SEAMAN  
By:

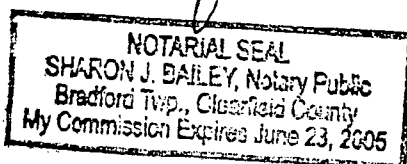
  
\_\_\_\_\_  
Andrew P. Gates, Esquire  
Attorney for Plaintiff,  
Lezzer Cash & Carry of  
Curwensville, Inc.

Date: February 22, 2005

Two North Front St./P.O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

Sworn to and subscribed before me  
this 22nd day of February, 2005

  
\_\_\_\_\_



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

LEZZER CASH & CARRY of CURWENSVILLE, INC.  
Plaintiff

No. 03-994- CD

vs.

BJR, INC. t/d/b/a CONSERVCO, successor to  
CONSERVCO, a partnership, and J.F. KANE, a/k/a  
JOSEPH F. KANE, individually,  
Defendants

TO: Defendant, J. F. Kane, a/k/a Joseph F. Kane  
9 Gulich Avenue  
Clearfield, PA 16830

DATE OF NOTICE: December 13, 2003

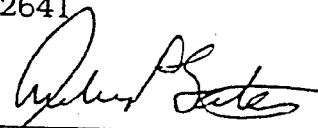
**IMPORTANT NOTICE**

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A  
WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN  
WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE  
CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS  
FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED  
AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR  
PROPERTY OR OTHER IMPORTANT RIGHTS.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU  
DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET  
FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION  
ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE  
ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT  
MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED  
FEE OR NO FEE.


David S. Meholick, Court Administrator  
CLEARFIELD COUNTY COURTHOUSE  
Clearfield, PA 16830  
(814) 765-2641



Andrew P. Gates, Esquire,  
Attorney for Plaintiff

P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

U.S. POSTAL SERVICE		CERTIFICATE OF MAILING	
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER			
Received From:			
Gates and Seaman			
P. O. Box 846			
Clearfield, PA 16830			
One piece of ordinary mail addressed to:			
J. F. Kane, a/k/a Joseph F. Kane			
9 Gullich Avenue			
Clearfield, PA 16830			



UNITED STATES  
POSTAL SERVICE

0009

DEC 13 2004

USPS

U.S. POSTAGE  
PAID  
CLEARFIELD, PA  
16830  
DEC 13, 04  
AMOUNT  
**\$0.90**  
00068283-07

PS Form 3817, January 2001

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
STATEMENT OF JUDGMENT

Lezzer Cash & Carry  
Plaintiff(s)

No.: 2003-00994-CD

Real Debt: \$38,564.55

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

BJR, Inc  
Joseph F Kane  
Conservco  
Defendant(s)

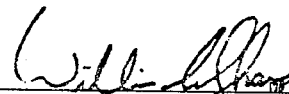
Entry: \$20.00

Instrument: Default Judgmernt

Date of Entry: February 22, 2005

Expires: February 22, 2010

Certified from the record this 22nd day of February 2005

  
\_\_\_\_\_  
William A. Shaw, Prothonotary

\*\*\*\*\*

SIGN BELOW FOR SATISFACTION

Received on \_\_\_\_\_, \_\_\_\_\_, of defendant full satisfaction of this Judgment, Debt,  
Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

\_\_\_\_\_  
Plaintiff/Attorney



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

GRACE J. KANE

VS.

: NO. 01-337-CD

JOSEPH F. KANE

:

O R D E R

NOW, this 23rd day of July, 2004, being the date set for hearing on economic issues; and the Court having been informed by the parties that they have reached an agreement, the Court therefore enters the following ORDER:

1. Each party shall retain all items of marital property presently in his/her possession, whether tangible, intangible or mixed.
2. Husband shall transfer to Wife one hundred (100) shares of Microsoft stock within thirty (30) days from the date of this Order.
3. Husband shall transfer to Wife thirty (30) shares of BB&T stock within thirty (30) days from the date of this Order.
4. Husband shall pay alimony to Wife in the amount of Three Hundred (\$300.00) Dollars per month, commencing upon the date of this Order and continuing each month thereafter until Wife reaches the age of sixty-five (65) or dies, whichever shall first occur. All payments shall be made through Clearfield County Domestic Relations Section.

EXHIBIT "C" - 2 pages

FILED

JUL 23 2004

William A. Shaw  
Prothonotary/Clerk of Courts

Date: 03/01/2005

Time: 10:24 AM

Page 1 of 1

**Clearfield County Court of Common Pleas**

ROA Report

Case: 2003-01085-CD

Current Judge: No Judge

Clearfield Bank and Trust Company vs. Joseph F Kane, Grace J. Kane

User: GLKNISLEY

Civil Other

Date		Judge
07/25/2003	Filing: Civil Complaint Paid by: Tucker Arensberg P.C. Receipt number: 1863477 Dated: 07/25/2003 Amount: \$85.00 (Check) 1 CC to Atty.	No Judge
08/26/2003	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
02/09/2004	Filing: Judgment Paid by: Tucker Arensberg, P.C. Receipt number: 1873405 Dated: 02/09/2004 Amount: \$20.00 (Check) Notice to Defs. Stmt. to Plff. Judgment entered against Defendants in the amount \$286,130.41	No Judge

EXHIBIT "D"

V E R I F I C A T I O N

I, Thomas Yontosh, Corporate Credit Manager for  
LEZZER CASH & CARRY of CURWENSVILLE, INC., Plaintiff, verify  
that the statements made in the foregoing Petition are true and  
correct to the best of my knowledge, information and belief.  
I, the undersigned, understand that false statements made  
herein are subject to the penalties of 18 Pa.C.S. §4904  
relating to unsworn falsification to authorities.

A handwritten signature in cursive script, appearing to read "Thomas Yontosh", written over a horizontal line.

Thomas Yontosh,  
Corporate Credit Manager for  
LEZZER CASH & CARRY of  
CURWENSVILLE, INC.

Date: March 7, 2005

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

LEZZER CASH & CARRY of  
CURWENSVILLE, INC.,  
Plaintiff

vs.

No. 03- 994 -CD

BJR, INC., t/d/b/a CONSERVCO,  
successor to Conservco, a  
Partnership, and J.F. KANE, a/k/a  
JOSEPH F. KANE, individually,  
Defendants

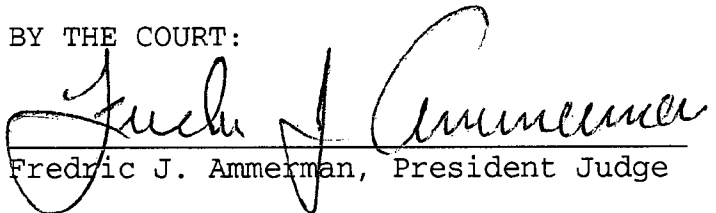
**R U L E**

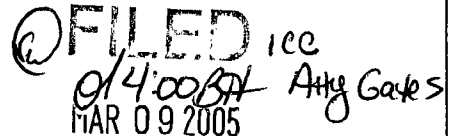
AND NOW, this 9<sup>th</sup> day of March, 2005, in  
consideration of the Plaintiff's Petition, a Rule is entered  
upon Respondents, J. F. Kane, a/k/a Joseph F. Kane, Grace J.  
Kane, and Clearfield Bank & Trust Company to show cause why the  
relief requested in Plaintiff's Petition should not be granted.

RULE RETURNABLE for Argument/Hearing on the 29 day  
of March, 2005, at 2:00 o'clock P.m. in  
Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA  
16830.

Service of a certified copy of Plaintiff's Petition  
and Rule to be served upon the named Respondents by regular, 1<sup>st</sup>  
class mail, postage prepaid.

BY THE COURT:

  
Fredric J. Ammerman, President Judge

  
MAR 09 2005

William A. Shaw 3cc  
Prothonotary/Clerk of Courts Aug 31/05

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.

No. 03-994-CD

LEEZER CASH & CARRY OF  
CURMENSVILLE, INC.  
Plaintiff

- VS -

BJR. INC., t/d/b/a  
CONSERVCO, successor to  
CONSERVCO, a partnership,  
and J. F. KANE, a/k/a  
JOSEPH F. KANE, individually  
Defendants

PETITION FOR SUPPLEMENTARY  
RELIEF IN AID OF EXECUTION  
PURSUANT TO Pa.R.C.P.  
§3118

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

LEZZER CASH & CARRY of  
CURWENSVILLE, INC.,  
Plaintiff

vs.

BJR, INC. t/d/b/a  
CONSERVCO, successor to  
CONSERVCO, a partnership, and  
J.F. KANE, a/k/a JOSEPH F. KANE,  
individually,  
Defendants

: No. 03-994- CD  
:  
:  
: Type of Case: Civil  
:  
: Type of Pleading: Answer and New Matter  
: to Defendant, J. F. Kane, a/k/a Joseph F.  
: Kane's Petition to Open Default Judgment  
:  
:  
:

**AFFIDAVIT OF SERVICE**

COMMONWEALTH OF PENNSYLVANIA

:  
: SS.

COUNTY OF CLEARFIELD

:

Andrew P. Gates, Esquire, being duly sworn according to law, deposes and says that he mailed on March 11, 2005 by regular U. S. Mail, a certified copy of Plaintiff's Petition for Supplementary Relief in Aid of Execution Pursuant to Pa. R.C.P. §3118 and the Rule, to the following:

Joseph F. Kane  
9 Gulich Avenue  
Clearfield, PA 16830


Clearfield Bank & Trust Company  
11 North Second Street  
Clearfield, PA 16830

Grace J. Kane  
303 Elm Avenue  
Clearfield, PA 16830

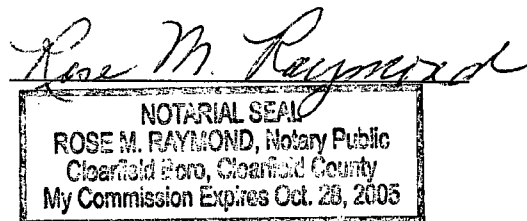
Attached hereto as Exhibit "A" is a photocopy of the original Certificates of Mailing.

GATES & SEAMAN

By:

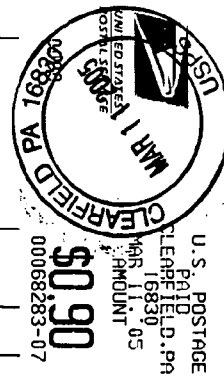
  
\_\_\_\_\_  
Andrew P. Gates, Esquire

Sworn to and subscribed before  
me this 14<sup>th</sup> day of March, 2005



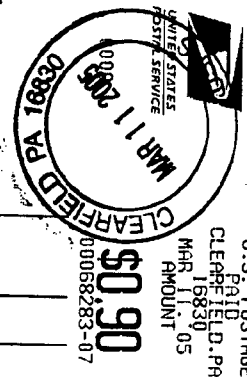
FILED  
01:52 PM  
MAR 21 2005  
William A. Shaw  
Prothonotary/Clerk of Courts

U.S. POSTAL SERVICE	CERTIFICATE OF MAILING
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER	
Received From:	
GATES & SEAMAN	
2 North Front Street	
P. O. Box 846	
Clearfield, PA 16830	
One piece of ordinary mail addressed to:	
Joseph F. Kane	
9 Gulich Avenue	
Clearfield, PA 16830	



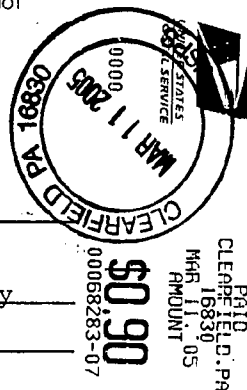
PS Form 3817, January 2001

U.S. POSTAL SERVICE	CERTIFICATE OF MAILING
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER	
Received From:	
GATES & SEAMAN	
2 North Front Street	
P. O. Box 846	
Clearfield, PA 16830	
One piece of ordinary mail addressed to:	
Grace J. Kane	
303 Elm Avenue	
Clearfield, PA 16830	



PS Form 3817, January 2001

U.S. POSTAL SERVICE	CERTIFICATE OF MAILING
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE-POSTMASTER	
Received From:	
GATES & SEAMAN	
2 North Front Street	
P. O. Box 846	
Clearfield, PA 16830	
One piece of ordinary mail addressed to:	
Clearfield Bank & Trust Company	
11 North Second Street	
Clearfield, PA 16830	



PS Form 3817, January 2001

Date: 03/30/2005

**Clearfield County Court of Common Pleas**

User: BHUDSON

Time: 02:28 PM

ROA Report

Page 2 of 2

Case: 2003-00994-CD

Current Judge: Fredric Joseph Ammerman

Lezzer Cash & Carry vs. BJR, Inc, Joseph F Kane, Conservco

**Judgment**

Date		Judge
03/09/2005	X Petition for Supplementary Relief in Aid of Execution Pursuant to Pa.R.C.P. 3118, filed by s/Andrew P. Gates, Esq. No CC Rule, filed 1 Cert. to Atty. Gates NOW, this 9th day of March, 2005, Rule Returnable for Argument/Hearing on the 29th day of March, 2005. 3 additional cert. copies to Atty. Gates on 3/10/05	Fredric Joseph Ammerman
03/21/2005	X Affidavit of Service filed. certified copy of plaintiff's Petition for Supplementary Relief in Aid of Execution upon Joseph F. Kane, Grace J. Kane, and Clearfield Bank & Trust Co. on March 11, 2005. Filed by s/ Andrew P. Gates, Esquire.	Fredric Joseph Ammerman



## Judgment

Date		Judge
07/08/2003	X Filing: Judgment Paid by: Gates & Seaman Receipt number: 1862789 Dated: 07/08/2003 Amount: \$20.00 (Check) Notice to Defendants. Statement to Atty. Confession Judgment entered against Defendants in the Amount \$34,602.66	No Judge
11/09/2004	X Filing: Praecipe for Writ of Revival Paid by: Lezzer Cash & Carry (plaintiff) Receipt number: 1890187 Dated: 11/09/2004 Amount: \$20.00 (Check) Issued 1 Writ to Atty. Gates Writ of Revival entered against J. F. Kane, a/k/a Joseph F. Kane, only in the amount of \$34,602.66 X Filing: Praecipe for Writ of Execution Paid by: Gates, Andrew P. (attorney for Lezzer Cash & Carry) Receipt number: 1890190 Dated: 11/09/2004 Amount: \$20.00 (Check) 6 Writ issued to Sheriff X Affidavit Pursuant To Rule 3129.1, filed by Atty. Gates 1 Cert. to Atty.	No Judge No Judge
12/03/2004	Petition to Open Judgment filed by Defendant, Joseph F. Kane. 1 CC to Def.	No Judge
12/09/2004	X Order, AND NOW, this 8th day of Dec., 2004, it is the Order of the Court that argument on the attached petition to Open Judgment in the above captioned matter has been scheduled for the 3rd day of Jan. 2005 at 9:00 a.m. in Courtroom No. 1, Clfd. Co. Courthouse. /s/ Fredric J. Ammerman, President Judge. 2CC & Memo Re: Service to Def.	Fredric Joseph Ammerman
12/15/2004	X Affidavit of Return of Service by Mail, filed by Defendant Served copy of Petition to Open Default Judgment to Atty. Gates by Cert. Mail. receipts attached.	Fredric Joseph Ammerman
12/16/2004	X Sheriff Return, Now, Nov. 15, 2004 served Writ of Revival on J.F. Kane a/k/a Joseph F. Kane, Ind. So Answers, Chester A. Hawkins, Sheriff, by s/ Marilyn Hamm	Fredric Joseph Ammerman
12/30/2004	X Answer and New Matter to Defendant, J. F. Kane, a/k/a Joseph F. Kane's Petition to Open Default Judgment, filed by s/Andrew P. Gates, Esq. Two CC Attorney Gates	Fredric Joseph Ammerman
01/05/2005	X Order, filed. cert. to Atty. Gates and Defendant J. Kane X NOW, this 3rd day of January, 2005, Order for letter brief's to be filed.	Fredric Joseph Ammerman
01/12/2005	X Affidavit of Service filed. Copy of the Answer and New Matter to Defendant, J.F. Kane, a/k/a Joseph F. Kane's Petition to Open Default Judgment, served on Jan. 3, 2005. Filed by s/ Andrew P. Gates, Esquire. No CC	Fredric Joseph Ammerman
02/17/2005	X Opinion and Order, Opinion (see original). Now, this 15th day of Feb. 2005, it is the Order of this Court that the Defendant's Petition to Open Judgment be and is hereby DISMISSED. By The Court, /s/ Fredric J. Ammerman, President Judge. 2CC Atty Gates, 1CC BJR, Inc., 1CC Joseph Kane, 1CC Conservco.	Fredric Joseph Ammerman
02/22/2005	X Filing: Judgment Paid by: Gates, Andrew P. (attorney for Lezzer Cash & Carry) Receipt number: 1896037 Dated: 02/22/2005 Amount: \$20.00 (Check) Judgment entered against Def. in the amount \$38,564.55 Notice to Def. Stmt. to Atty.	Fredric Joseph Ammerman
02/23/2005	X USPS returned Opinion and Order mailed to BJR, Insufficient Address.	Fredric Joseph Ammerman

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

LEZZER CASH & CARRY of	:	
CURWENSVILLE, INC.,	:	
Plaintiff	:	
	:	
vs.	:	No. 03-994-CD
	:	
BJR INC., t/d/b/a CONSERVCO,	:	
successor to Conservco, a	:	
Partnership, and J. F. KANE, a/k/a	:	
JOSEPH F. KANE, individually,	:	
Defendants	:	

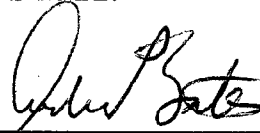
**PRAECIPE**

TO: WILLIAM A. SHAW, PROTHONOTARY:

Kindly withdraw Plaintiff's Petition for Supplementary  
Relief in Aid of Execution filed under Pa. R.C.P. § 3118.

GATES & SEAMAN

By:



Andrew P. Gates, Esquire  
Attorney for Plaintiff,  
Lezzer Cash & Carry of  
Curwensville, Inc.

Date: March 28, 2005

Two North Front St./P.O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

**FILED**

MAR 28 2005

0/2:20 (W)

William A. Shaw

Prothonotary/Clerk of Courts

1 CEN TO ATT

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

LEZZER CASH & CARRY of :  
CURWENSVILLE, INC., :  
Plaintiff :  
vs. : No. 03-994-CD  
BJR INC., t/d/b/a CONSERVCO, :  
successor to Conservco, a :  
Partnership, and J. F. KANE, a/k/a :  
JOSEPH F. KANE, individually, :  
Defendants :

**PRAECIPE**

TO: WILLIAM A. SHAW, PROTHONOTARY:

Kindly withdraw the Writ of Execution directed to the  
Clearfield County Sheriff to sell certain real estate of  
Defendant, J. F. Kane, a/k/a Joseph F. Kane issued on November  
9, 2004.

GATES & SEAMAN  
By:



Andrew P. Gates, Esquire  
Attorney for Plaintiff,  
Lezzer Cash & Carry of  
Curwensville, Inc.

Date: March 28, 2005

Two North Front St./P.O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

**FILED**

MAR 28 2005  
0/2/2005

William A. Shaw  
Prothonotary/Clerk of Courts (60)  
1 CLERK TO BTR  
TO DEL. TO SHFR

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 20047  
NO: 03-994-CD

PLAINTIFF: LEZZER CASH & CARRY OF CURWENSVILLE, INC.

vs.

DEFENDANT: BJR, INC. T/D/B/A CONSERVCO, SUCCESSOR TO CONSERVCO, A PARTNERSHIP, AND J. F. KANE,  
A/K/A JOSEPH F. KANE, INDIVIDUALLY

Execution REAL ESTATE

SHERIFF RETURN

DATE RECEIVED WRIT: 11/09/2004

LEVY TAKEN 01/26/2005 @ 12:49 PM

POSTED 03/01/2005 @ 10:00 AM

SALE HELD

SOLD TO

SOLD FOR AMOUNT PLUS COSTS

WRIT RETURNED 06/23/2005

DATE DEED FILED NOT SOLD

FILED  
012:5034  
JUN 23 2005  
William A. Shaw  
Prothonotary/Clerk of Courts

DETAILS

03/07/2005 @ 7:30 AM SERVED BJR, INC. T/D/B/A CONSERVCO & J. F. KANE, INDIVID  
SERVED JOSEPH F. KANE, DEFENDANT, AT HIS RESIDENCE 9 GULICH AVENUE, CLEARFIELD, CLEARFIELD  
COUNTY, PENNSYLVANIA BY HANDING TO H'S WIFE/AAR,

A TRUE AND ATTESTED COPY OF THE ORIGINAL WIRT OF EXECUTION NOTICE OF SALE AND COPY OF THE  
LEVY AND BY MAKING KNOWN TO HER THE CONTENTS THEREOF.

@ SERVED

NOW, MARCH 28, 2005 RECEIVED A LETTER FROM THE PLAINTIFF'S ATTORNEY TO CANCEL THE SHERIFF'S  
SALE SCHEDULED FOR MAY 6, 2005. THE PARTIES HAD REACHED AN AGREEMENT.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 20047  
NO: 03-994-CD

PLAINTIFF: LEZZER CASH & CARRY OF CURWENSVILLE, INC.

vs.

DEFENDANT: BJR, INC. T/D/B/A CONSERVCO, SUCCESSOR TO CONSERVCO, A PARTNERSHIP, AND J. F. KANE,  
A/K/A JOSEPH F. KANE, INDIVIDUALLY

Execution REAL ESTATE

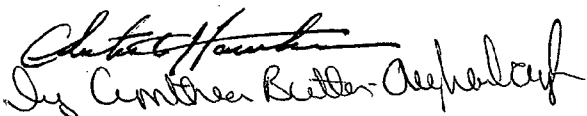
SHERIFF RETURN

---

SHERIFF HAWKINS \$190.44

SURCHARGE \$20.00 PAID BY ATTORNEY

So Answers,

  
Chester A. Hawkins  
Sheriff

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

LEZZER CASH & CARRY of  
CURWENSVILLE, INC.,

Plaintiff

vs.

BJR, INC. t/d/b/a CONSERVCO, successor to  
CONSERVCO, a partnership, and J.F. KANE,  
a/k/a JOSEPH F. KANE, individually,  
Defendants

No. 03-994- CD

WRIT OF EXECUTION

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CLEARFIELD

SS:

TO CHESTER HAWKINS, SHERIFF OF CLEARFIELD COUNTY:

To satisfy the judgment, interest and costs in the above matter you are directed  
to levy upon and sell the following described real property of Defendant, J. F. Kane,

a/k/a Joseph F. Kane: See attached Exhibit "A"

Amount due (as per judgment  
entered July 8, 2003, which  
includes interest through  
April 30, 2003)

\$ 34,602.66

Interest of \$18.0% per annum  
from April 30, 2003 to date of  
Sheriff's Sale:

\$ \_\_\_\_\_

SUBTOTAL

\$

[Costs to be added]

Prothonotary costs

\$

60.00

TOTAL

\$

Received November 9, 2004 @ 3:00 P.M.  
Chester A. Hawkins  
by Cynthia Butler-Chester

Seal of the Court



Prothonotary costs

Date: November 9, 2004

**Legal Description of Real Estate of Joseph F. Kane**

**PARCEL NO. 1**

ALL that property, together with the improvements erected thereon, located in Second Ward of Clearfield Borough, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin at the intersection of an alley and the southern side of Walnut Street; thence along said alley South twenty-five degrees thirty minutes West (S. 25° 30' W.) ninety-five and nine-tenths (95.9) feet to an iron pin on the line of land now or formerly of John R. Crago, et ux; thence along the Crago property North seventy-four degrees sixteen minutes West (N. 74° 16' W.) fifty-nine and two-tenths (59.2) feet to an iron pin on the line of land now or formerly of Francis R. Sughrue, et ux, being the common corner of the property described herein and the properties now or formerly of John R. Crago and Francis R. Sughrue; thence along the Sughrue property North one degree thirty minutes East (N. 1° 30' E.) seventy-three and three-tenths (73.3) feet to an iron pin on the south side of Walnut Street; thence along Walnut Street South eighty-eight degrees thirty minutes East (S. 88° 30' E.) ninety-six and six-tenths (96.6) feet to an iron spike at the corner of an alley and Walnut Street and the place of beginning.

BEING the same premises which vested in Joseph F. Kane by (i) deed dated February 7, 1995 and appearing of record in Clearfield County Deeds and Records Book 1659, Page 101; and (ii) Court Order dated July 23, 2004 filed in the matter of Grace J. Kane vs. Joseph F. Kane, Case No. 01-337-CD (Court of Common Pleas of Clearfield County, Pennsylvania).

Said premises further identified as Double House and Part Lot with Clearfield County Assessment Map No. 4.2-K8-223-21.1

**PARCEL NO. 2**

An undivided twenty (20.0%) per cent interest in all that certain piece or parcel of land, together with all improvements thereon, if any, situate in Lawrence Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at a spike set in an earthen drive which separates the premises conveyed herein from the land of Joseph and Florence Evanko; thence N 36 degrees 55 minutes 58 seconds E 231.46 feet to a ¾" bolt; thence North along the land of Ralph and Dolly Lippert North 54 degrees 17 minutes 01 seconds West 221.50 feet to a ½" iron pipe; thence along the land of Whitford and Ethal Law North 13 degrees 36 minutes 59 seconds East 769.65 feet to a 1" iron pipe; thence along lands of Eugenia Leitzinger and Gerald Hatcher South 44 degrees 53 minutes 01 seconds East 594 feet to a 1 ¼"

iron pipe; thence South along the lands of Mark Fulmer South 14 degrees 43 minutes 47 seconds West 623.49 feet to an ½" iron bolt; thence still along lands of Mark Fulmer South 24 degrees 53 minutes 28 seconds West 313.84 feet to a ¾" iron pipe; thence along lands of James and Helen Spencer North 46 degrees 50 minutes 17 seconds West 367.01 feet to the spike and place of beginning.

BEING the same premises wherein a twenty (20.0%) per cent interest vested in Joseph F. Kane by deed dated February 21, 1989 and appearing of record in Clearfield County Deeds and Records Book 1271, Page 3.

Said premises being further identified as 10.19 acres with Clearfield County Assessment Map No. 123-K8-7.



**REAL ESTATE SALE  
SCHEDULE OF DISTRIBUTION**

NAME BJR, INC. T/D/B/A CONSERVCO & J. F. KANE, INDIVID

NO. 03-994-CD

NOW, June 23, 2005, by virtue of the Writ of Execution hereunto attached, after having given due and legal notice of time and place of sale by publication in a newspaper published in this County and by handbills posted on the premises setting for the date, time and place of sale at the Court House in Clearfield on May 06, 2005, I exposed the within described real estate of Bjr, Inc. T/D/B/A Conservco, Successor To Conservco, A Partnership, And J. F. Kane, A/K/A Joseph F. Kane, Individually to public venue or outcry at which time and place I sold the same to he/she being the highest bidder, for the sum of and made the following appropriations, viz:

**SHERIFF COSTS:**

RDR	15.00
SERVICE	15.00
MILEAGE	2.00
LEVY	15.00
MILEAGE	2.00
POSTING	15.00
CSDS	10.00
COMMISSION	0.00
POSTAGE	4.44
HANDBILLS	15.00
DISTRIBUTION	25.00
ADVERTISING	15.00
ADD'L SERVICE	
DEED	
ADD'L POSTING	15.00
ADD'L MILEAGE	2.00
ADD'L LEVY	15.00
BID AMOUNT	
RETURNS/DEPUTIZE	
COPIES	15.00
	5.00
BILLING/PHONE/FAX	5.00
CONTINUED SALES	
MISCELLANEOUS	
<b>TOTAL SHERIFF COSTS</b>	<b>\$190.44</b>

**DEED COSTS:**

ACKNOWLEDGEMENT	
REGISTER & RECORDER	
TRANSFER TAX 2%	0.00
<b>TOTAL DEED COSTS</b>	<b>\$0.00</b>

**PLAINTIFF COSTS, DEBT AND INTEREST:**

DEBT-AMOUNT DUE	34,602.66
INTEREST @ 18.0000	13,266.00
FROM 04/30/2003 TO 05/06/2005	
PROTH SATISFACTION	
LATE CHARGES AND FEES	
COST OF SUIT-TO BE ADDED	
FORECLOSURE FEES	
ATTORNEY COMMISSION	
REFUND OF ADVANCE	
REFUND OF SURCHARGE	20.00
SATISFACTION FEE	
ESCROW DEFICIENCY	
PROPERTY INSPECTIONS	
INTEREST	
MISCELLANEOUS	
<b>TOTAL DEBT AND INTEREST</b>	<b>\$47,888.66</b>

**COSTS:**

ADVERTISING	0.00
TAXES - COLLECTOR	
TAXES - TAX CLAIM	
DUE	
LIEN SEARCH	
ACKNOWLEDGEMENT	
DEED COSTS	0.00
SHERIFF COSTS	190.44
LEGAL JOURNAL COSTS	0.00
PROTHONOTARY	60.00
MORTGAGE SEARCH	
MUNICIPAL LIEN	
<b>TOTAL COSTS</b>	<b>\$250.44</b>

DISTRIBUTION WILL BE MADE IN ACCORDANCE WITH THE ABOVE SCHEDULE UNLESS EXCEPTIONS ARE FILED WITH THIS OFFICE **WITHIN TEN (10) DAYS FROM THIS DATE.**

CHESTER A. HAWKINS, Sheriff

LAURANCE B. SEAMAN  
ANDREW P. GATES

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

JOHN B. GATES  
(1917-1984)

(814) 765-1766  
FAX (814) 765-1488

January 31, 2005

Cynthia Aughenbaugh  
Clearfield County Sheriff's Office  
Clearfield County Court House  
Clearfield, PA 16830

Re: Lezzer Cash & Carry of Curwensville, Inc., Plaintiff  
vs. J. F. Kane, a/k/a Joseph F. Kane et al, Defendants  
No. 03-994-CD (Writ of Execution to Sell Real Estate issued by  
Prothonotary on November 9, 2004)

Dear Cindy:

This letter is a follow up to our telephone conversation of Friday, January 28, 2005 regarding the aforementioned matter. As I believe you are now aware, after the aforementioned Writ of Execution was issued, Mr. Kane filed a Petition to Open the Lezzer Judgment which is now before the Court for disposition. Although Mr. Kane did not request in the Petition to Open or in any other Petition presented to the Court that the Sheriff's Sale of the two parcels of real estate listed on the aforementioned Writ be stayed, as a courtesy to the Court, the undersigned as attorney for Plaintiff am directing that the Sheriff's Sale be stayed pending the Court's ruling on Mr. Kane's Petition to Open Judgment. My authority to direct that the sale be stayed is set forth in Pa. R.C.P. § 3121(a)(1).


Therefore, since this sale is to be stayed for the time being, please do not advertise the sale or take any further steps to post or serve the notice of sale. Likewise, if either of the properties have already been posted, please remove the posted notice from the said premises.

Should you have any further questions, please don't hesitate to contact me.

Very truly yours,

GATES & SEAMAN

By:



Andrew P. Gates

APG/rmr

xc: The Honorable Fredric J. Ammerman  
Joseph F. Kane  
Tom Yontosh, Lezzer Cash & Carry

Received 1/31/05  
10:15 am

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
PENNSYLVANIA

Leszer Cash & Carry of Cummerville, Pa  
(Plaintiff) CIVIL ACTION

Schofield St., P.O. Box 217 No. 2003-994-CD  
(Street Address)

Cummerville, Pa. 16837  
(City, State ZIP)

Type of Case: Confession of Judgment  
Type of Pleading: Judgment Satisfaction

VS.

BTH Distributors Licensee of  
(Defendant)  
J.P. Kane aka Joseph P. Kane  
9 Gulch Avenue  
(Street Address)  
Clearfield, Pa. 16830  
(City, State ZIP)

Filed on Behalf of:

Plaintiff  
(Plaintiff/Defendant)

Andrew P. Gates, Esquire  
(Filed by)

2 North Brant St., P.O. Box 846  
(Address)

Clearfield, Pa. 16830  
(Phone)

Andrew P. Gates  
(Signature)

**FILED** Antypd. 7:00  
013:4304  
JUL 18 2005 Cert. of Sat.  
William A. Shaw to Any  
Prothonotary/Clerk of Courts  
(64)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
STATEMENT OF JUDGMENT

Lezzer Cash & Carry  
Plaintiff(s)

No.: 2003-00994-CD

Real Debt: \$38,564.55

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

BJR, Inc  
Joseph F Kane  
Conservco  
Defendant(s)

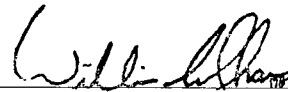
Entry: \$20.00

Instrument: Default Judgment

Date of Entry: February 22, 2005

Expires: February 22, 2010

Certified from the record this 22nd day of February 2005

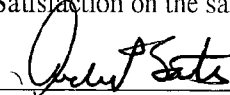


William A. Shaw, Prothonotary

\*\*\*\*\*

SIGN BELOW FOR SATISFACTION

Received on 18<sup>th</sup> of July, 2005, of defendant full satisfaction of this Judgment, Debt,  
Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.



Plaintiff/Attorney

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

 COPY

CERTIFICATE OF SATISFACTION OF JUDGMENT

Lezzer Cash & Carry

No.: 2003-00994-CD

Vs.

Debt: \$38,564.55

BJR, Inc  
Joseph F Kane  
Conservco

Atty's Comm.:

Interest From:

Cost: \$7.00

NOW, Monday, July 18, 2005 , directions for satisfaction having been received, and all costs having been paid, SATISFACTION was entered of record.

Certified from the record this 18th day of July, A.D. 2005.

\_\_\_\_\_  
Prothonotary