

03-1037-CD
CLEARFIELD BANK & TRUST CO vs. BJR, INC.

requirement of notice prior to judgment.

needed to aid the bench and *or, Rothschild, O'Brien & Frankel*. The significance of the opinion was stated by Judge R. Stanton Wettick, Jr. in *S & T Bank v. Coyne*, No. GD 94-12141 (Allegheny County, August 11, 1994):

only because the judgment is also subject to a § 1983 claim and its attorneys are now also subject to a § 1983 claim by a judgment debtor who did not waive its constitutional rights to notice and a hearing.

to provide for notice to be served upon the defendant in most cases prior to or during execution on a judgment entered by confession. There are three notices but only one need be given in a particular case.

notice to be served with property to be levied upon and real property and advance notice of the form of the notice is

in Rule 2958.3, the defendant is the sole issue of the rights. The notice also requests a prompt hearing as soon as possible after the sheriff's return is stayed pending waiver. The court is to be shown by a preponderance of the evidence that the defendant knowingly, voluntarily and hearing prior to the judgment imposes the burden of proof on a constitutional right to notice required to satisfy the scope of the rule.

necessity for hearings providing the defendant with an opportunity for hearing on a(2) specifies three instances when the issue of the voluntary, intelligent and knowing waiver of due process rights may be raised. The first is in support of a request for a stay when the court has already denied a prior request for a stay despite timely filing of that request and "the presentation of prima facie evidence of a defense." The second is when personal property has been levied upon or attached without prior notice and hearing under new Rule 2958.2. The third is when a defendant in possession

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that of subdivision

(b) which begins with the clause "If the writ has been served and property has been levied upon or attached, . . ."

Rule 2958.4. Choice of Procedure. Notice Upon Subsequent Executions

(a) A plaintiff who has given notice pursuant to Rule 2958.1 may not proceed thereafter under Rules 2958.2 and 2958.3.

(b) The notice required by Rules 2958.1 through 2958.3 need not be given upon subsequent executions on a judgment if the notice was given prior to or upon a previous execution on that judgment and either

(1) the defendant filed a petition for relief from the judgment and the court denied the relief, or

(2) the defendant failed to file a petition for relief from the judgment within thirty days after service of the notice as required by Rule 2959(a)(3).

Adopted April 1, 1996, effective July 1, 1996.

Explanatory Comment—1996

The rules of civil procedure governing confession of judgment for money have been revised in two major respects: the abolition of confession of judgment in a consumer credit transaction and the imposition of a requirement of notice prior to or with execution upon a confessed judgment.

II. Notice

The provisions for notice are intended to aid the bench and bar in complying with *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250 (C.A.3 1994). The significance of the opinion was stated by Judge R. Stanton Wettick, Jr. in *S & T Bank v. Coyne*, No. GD 94-12141 (Allegheny County, August 11, 1994):

The *Jordan* opinion is significant only because the judgment creditor and its attorneys are now also subject to a § 1983 claim by a judgment debtor who did not waive its constitutional rights to notice and a hearing.

New rules have been promulgated to provide for notice to be served upon the defendant in most cases prior to or during execution on a judgment entered by confession. There are three notices but only one need be given in a particular case.

Under Rule 2958.4, the plaintiff must choose whether to give thirty-days' advance notice under Rule 2958.1 or to give notice as part of the execution process under Rules 2958.2 and 2958.3. Subdivision (a) of the rule provides that a plaintiff who has given notice pursuant to Rule 2958.1 may not proceed also under Rule 2958.2 or Rule 2958.3. However, once having given the required notice, the plaintiff need not give notice again on a subsequent execution on the same judgment.

The intent of these rules is to limit the necessity for hearings on issues of due process and waiver by providing the defendant with a pre-deprivation notice and opportunity for hearing on the merits. However, new Rule 2959(a)(2) specifies three instances when the issue of the voluntary, intelligent and knowing waiver of due process rights may be raised. The first is in support of a request for a stay when the court has already denied a prior request for a stay despite timely filing of that request and "the presentation of prima facie evidence of a defense." The second is when personal property has been levied upon or attached without prior notice and hearing under new Rule 2958.2. The third is when a defendant in possession

of leased residential real property has been evicted without prior notice and hearing under new Rule 2973.3. In all other instances, the issues upon a petition for relief from the judgment will be the merits and not the waiver of due process rights.

Rule 2959. Striking Off or Opening Judgment; Pleadings; Procedure

(a)(1) Relief from a judgment by confession shall be sought by petition. Except as provided in subparagraph (2), all grounds for relief whether to strike off the judgment or to open it must be asserted in a single petition. The petition may be filed in the county in which the judgment was originally entered, in any county to which the judgment has been transferred or in any other county in which the sheriff has received a writ of execution directed to the sheriff to enforce the judgment.

(2) The ground that the waiver of the due process rights of notice and hearing was not voluntary, intelligent and knowing shall be raised only

(i) in support of a further request for a stay of execution where the court has not stayed execution despite the timely filing of a petition for relief from the judgment and the presentation of prima facie evidence of a defense; and

(ii) as provided by Rule 2958.3 or Rule 2973.3.

(3) If written notice is served upon the petitioner pursuant to Rule 2956.1(c)(2) or Rule 2973.1(c), the petition shall be filed within thirty days after such service. Unless the defendant can demonstrate that there were compelling reasons for the delay, a petition not timely filed shall be denied.

(b) If the petition states prima facie grounds for relief the court shall issue a rule to show cause and may grant a stay of proceedings. After being served with a copy of the petition the plaintiff shall file an answer on or before the return day of the rule. The return day of the rule shall be fixed by the court by local rule or special order.

(c) A party waives all defenses and objections which are not included in the petition or answer.

(d) The petition and the rule to show cause and the answer shall be served as provided in Rule 440.

(e) The court shall dispose of the rule on petition and answer, and on any testimony, depositions, admissions and other evidence. The court for cause shown may stay proceedings on the petition insofar as it seeks to open the judgment pending disposition of the application to strike off the judgment. If evidence is produced which in a jury trial would require the issues to be submitted to the jury the court shall open the judgment.

(f) The lien of the judgment or of any levy or attachment shall be preserved while the proceedings to strike off or open the judgment are pending.

Adopted June 27, 1969, effective Jan. 1, 1970. Amended Oct. 4, 1973, effective Dec. 1, 1973; Nov. 14, 1978, effective Dec. 2, 1978; Dec. 14, 1979, effective Feb. 1, 1980; June 20, 1985, effective Jan. 1, 1986; April 1, 1996, effective July 1, 1996.

Explanatory Comment—1979

Amendment to Rule 2959(a). The Act of March 27, 1945, P.L. 83, as amended, 12 P.S. §§ 913, 914 provided that if a confessed judgment is transferred to another county or if a writ of execution upon it is directed to another county, the defendant has the option to petition to open either in the county where the judgment was originally entered or in the county to which it was transferred or to which the executive was directed.

This Act is repealed by JARA. Subdivision (a) of Rule 2950 has been amended to continue the procedure. The scope of the repealed Act is enlarged by granting optional venue in the case of a petition to strike the judgment as well as petitions to open.

This is consisted with subdivision (a) of Rule 2959 which requires all grounds for relief, whether to open or to strike, to be raised at one time. To prevent bifurcation of the proceedings, the optional venue must be extended to both forms of relief.

A petition to strike must assert defects appearing on the record. If the judgment debtor should seek to strike the judgment in an outside county, examination of the record of the original confession may be essential. For this purpose, the judgment debtor can, under the authority of Rule 3002(c), file in the outside county a certified copy of all or any part of the record, testimony or exhibits in the original action.

New Rule 2959(f). An order of court opening a judgment does not impair the lien of the judgment or of any execution issued on it, although the court may stay the execution pending final disposition of the proceeding. 7 Stand.Pa.Prac. 172, 174 §§ 138, 142. To the contrary an order of court striking a judgment annuls the lien of the judgment or of any execution issued on it. 7 Stand.Pa.Prac. 244 §§ 223, 224.

However, the mere filing of a petition to open or strike a judgment does not affect the lien of the judgment or of any execution, subject, of course, to the power of the court to stay execution pending decision on the petition. Subdivision (f) has been added to Rule 2959 to restate this principle.

Section 1722(b) of the Judicial Code authorizes the Supreme Court to promulgate general rules on the subject of liens and their extent where not already governed by Act of Assembly. In the absence of such general rules, present practice shall continue.

The rarely used Act of July 9, 1897, P.L. 237, 12 P.S. § 911, create a special remedy under which a creditor of a judgment debtor might attack a judgment confessed by that debtor in favor of another creditor on a showing of invalidity or fraud, and the filing of a bond to protect the judgment plaintiff. The Act preserved the lien of any levy which had been made pending termination of the proceedings. The Act was suspended in 1969 by Rule 2975(3) [rescinded] with respect to confessed judgments, except insofar as it preserved the lien, and it has been repealed by JARA.

Explanatory Comment—1996

The rules of civil procedure governing confession of judgment for money have been revised in two major respects: the

abolition of confession of judgment in a consumer credit transaction and the imposition of a requirement of notice prior to or with execution upon a confessed judgment.

II. Notice

The provisions for notice are intended to aid the bench and bar in complying with *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250 (C.A.3 1994). The significance of the opinion was stated by Judge R. Stanton Wettick, Jr. in *S & T Bank v. Coyne*, No. GD 94-12141 (Allegheny County, August 11, 1994):

The *Jordan* opinion is significant only because the judgment creditor and its attorneys are now also subject to a § 1983 claim by a judgment debtor who did not waive its constitutional rights to notice and a hearing.

New rules have been promulgated to provide for notice to be served upon the defendant in most cases prior to or during execution on a judgment entered by confession. There are three notices but only one need be given in a particular case.

Under new Rule 2959(a)(3), a defendant must file a petition within thirty days of service of the notice to obtain relief from the judgment or to prevent execution. After thirty days, the defendant is barred from relief unless there are "compelling reasons for the delay".

The intent of these rules is to limit the necessity for hearings on issues of due process and waiver by providing the defendant with a pre-deprivation notice and opportunity for hearing on the merits. However, new Rule 2959(a)(2) specifies three instances when the issue of the voluntary, intelligent and knowing waiver of due process rights may be raised. The first is in support of a request for a stay when the court has already denied a prior request for a stay despite timely filing of that request and "the presentation of prima facie evidence of a defense." The second is when personal property has been levied upon or attached without prior notice and hearing under new Rule 2958.2. The third is when a defendant in possession of leased residential real property has been evicted without prior notice and hearing under new Rule 2973.3. In all other instances, the issues upon a petition for relief from the judgment will be the merits and not the waiver of due process rights.

Rule 2960. Proceedings upon Opening of Judgment. Pleadings. Jury Trial. Waiver

If a judgment is opened in whole or in part the issues to be tried shall be defined by the complaint if a complaint has been filed, and by the petition, answer and the order of the court opening the judgment. There shall be no further pleadings. The right to a jury trial on the opened judgment shall be deemed waived unless a party files and serves a written demand for jury trial within twenty days after the order opening judgment; but if the issue is referred to compulsory arbitration, Rule 1007.1 shall apply.

Adopted June 27, 1969, effective Jan. 1, 1970. Amended Oct. 4, 1973, effective Dec. 1, 1973; April 1, 1996, effective July 1, 1996.

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD BANK & TRUST CO.,

CIVIL DIVISION

Plaintiff,

vs.

No. 03-1037-CD

BJR, INC.,

Defendant.

**COMPLAINT IN CONFESSION OF
JUDGMENT**

Filed on Behalf of:
Clearfield Bank & Trust Co.

Counsel for Plaintiff:

Thomas E. Reiber, Esquire
Pa. I.D. #41825
Brett A. Solomon, Esquire
PA I.D. #83746

TUCKER ARENSBERG, P.C.
Firm #287
1500 One PPG Place
Pittsburgh, PA 15222
(412) 566-1212

FILED

JUL 16 2003

BANK_FIN:202504-1 013828-113500

William A. Shaw
Prothonotary

ACT 105 OF 2000 NOTICE

A JUDGMENT HAS BEEN ENTERED AGAINST YOU BY CONFESSION OF JUDGMENT.

PURSUANT TO 42 PA. C.S.A. §2737.1, IF YOU WERE INCORRECTLY IDENTIFIED AS A DEFENDANT IN THE COMPLAINT IN CONFESSION OF JUDGMENT, YOU MAY BE ENTITLED TO COSTS AND REASONABLE ATTORNEY FEES AS DETERMINED BY THE COURT.

YOU MAY TAKE ACTION TO STRIKE THE JUDGMENT BY FOLLOWING THE PROCEDURE IN RULE 2959 WHICH IS AS FOLLOWS:

Pennsylvania Rule of Civil Procedure 2959 – Striking Off Judgment.

(a) (1) Relief From a judgment by confession shall be sought by petition. Except as provided in subparagraph (2), all grounds for relief whether to strike off the judgment or to open it must be asserted in a single petition. The petition may be filed in the county in which the judgment was originally entered, in any county to which the judgment has been transferred or in any other county in which the sheriff has received a writ of execution directed to the sheriff to enforce the judgment.

(2) The ground that the waiver of the due process rights of notice and hearing was not voluntary, intelligent and knowing shall be raised only

(i) in support of a further request for a stay of execution where the court has stayed execution despite the timely filing of a petition for relief from the judgment and the presentation of prima facie evidence of a defense; and

(ii) as provided by Pennsylvania Rule of Civil Procedure 2958.3 or Rule 2973.3.

(3) If written notice is served upon the petitioner pursuant to Rule 2956.1(c)(2) or Rule 2973.1(c), the petition shall be filed within thirty days after such service. Unless the defendant can demonstrate that there were compelling reasons for the delay, a petition not timely filed shall be denied.

(b) If the petition states prima facie grounds for relief the court shall issue a rule to show cause and may grant a stay of proceedings. After being served with a copy of the petition the plaintiff shall file an answer on or before the return day of the rule. The return day of the rule shall be fixed by the court by local rule or special order.

(c) A party waives all defenses and objections which are not included in the petition or answer.

(d) The petition and the rule to show cause and the answer shall be served as provided in Rule 440 (see text of Rule 440 reprinted below).

(e) The court shall dispose of the rule on petition and answer, and on any testimony, depositions, admissions and other evidence. The court for cause shown may stay proceedings

on the petition insofar as it seeks to open the judgment pending disposition of the application to strike off the judgment. If evidence is produced which a jury trial would require the issues to be submitted to the jury the court shall open the judgment.

(f) The lien of the judgment or of any levy or attachment shall be preserved while the proceedings to strike off or open the judgment is pending.

Rule 440. Service of Legal Papers other than Original Process

(a) (1) Copies of all legal papers other than original process filed in an action or served upon any party to an action shall be served upon every other party to the action. Service shall be made

(i) by handing or mailing a copy to or leaving a copy for each party at the address of the party's attorney of record endorsed on an appearance or prior pleading of the party, or at such other address as a party may agree, or

Note: Such other address as a party may agree might include a mailbox in the prothonotary's office or an e-mail address. For electronic service by means other than facsimile transmission, see Rule 205.4(g).

(ii) by transmitting a copy by facsimile to the party's attorney of record as provided by subdivision (d).

(2) (i) If there is no attorney of record, service shall be made by handing a copy to the party or by mailing a copy to or leaving a copy for the party at the address endorsed on an appearance or prior pleading or the residence or place of business of the party, or by transmitting a copy by facsimile as provided by subdivision (d).

(ii) If such service cannot be made, service shall be made by leaving a copy at or mailing a copy to the last known address of the party to be served.

Note: This rule applies to the service upon a party of all legal papers other than original process and includes, but is not limited to, all other pleadings as well as motions, petitions, answers thereto, rules, notices, interrogatories and answers thereto. Original process is served under Rule 400 et seq.

(b) Service by mail of legal papers other than original process is complete upon mailing.

(c) If service of legal papers other than original process is to be made by the sheriff, he shall notify by ordinary mail the party requesting service to be made that service has or has not been made upon a named party or person.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD BANK & TRUST CO.,)	
)	
Plaintiff,)	
)	
vs.)	No.
)	
BJR, INC.,)	
)	
Defendant.)	

COMPLAINT IN CONFESSION OF JUDGMENT

Plaintiff, Clearfield Bank & Trust Co., by and through its counsel, Tucker Arensberg, P.C., avers as follows:

1. The Plaintiff is Clearfield Bank & Trust Co., a corporation with offices located at 11 North Second Street, Clearfield, PA 16830.
2. The Defendant, BJR, Inc., is a Pennsylvania corporation with a last known address of 805 South Second Street, Clearfield, PA 16830.

COUNT I

3. On or about August 24, 2000 the Defendant executed and delivered to the Plaintiff a Note in the original principal amount of \$300,000 (the "**Note**"), upon terms and conditions contained in the Note, a true and correct copy of which is attached hereto, incorporated herein, and labeled as Exhibit "A".
4. Pursuant to the terms of the Note, the entire outstanding principal balance, plus all accrued unpaid interest thereon was due and payable on July 31, 2001.

5. The Defendant is in default under the Note by, *inter alia*, failing to make payment when due.
6. Notwithstanding default, the Defendant has not repaid the Plaintiff and remains in default under the terms of the Note.
7. The Note contains a warrant of attorney authorizing the confession of judgment in favor of the Plaintiff and against the Defendant, as of any term, for the unpaid balance of the Note, together with costs of suit and an attorneys' commission not to exceed fifteen percent (15%) for collection.
8. Judgment has not been entered on the Note in any jurisdiction.
9. The Note has not been assigned.
10. **JUDGMENT IS NOT BEING ENTERED BY CONFESSION AGAINST A NATURAL PERSON IN CONNECTION WITH A CONSUMER CREDIT TRANSACTION.**
11. As of July 3, 2003, the amount due from the Defendant to the Plaintiff pursuant to the Note, and for which judgment is authorized, is \$328,432.15, plus costs of suit and accruing interest, computed as follows:

Principal Debt:	\$282,011.59
Interest Accrued through July 3, 2003	4,098.82
Late Charges	20.00
Attorney's Commission of 15%:	42,301.74
Total:	<u>\$328,432.15</u>

*Plus interest accruing at the contract rate and costs and expenses of suit.

WHEREFORE, Plaintiff demands that judgment be entered in its favor and against Defendant in the amount of Three Hundred Twenty Eight Thousand Four Hundred Thirty

Two and 15/100 Dollars (\$328,432.15), plus interest thereon at the contract rate after July 3, 2003, plus costs and expenses of suit and such other relief as this Court deems appropriate.

COUNT II

12. On or about February 5, 2002 the Defendant executed and delivered to the Plaintiff a Note in the original principal amount of \$130,000 (the "**2002 Note**"), upon terms and conditions contained in the 2002 Note, a true and correct copy of which is attached hereto, incorporated herein, and labeled as Exhibit "B".
13. The Defendant is in defaulted under the 2002 Note by, *inter alia*, failing to make payment when due.
14. Notwithstanding default, the Defendant has not repaid the Plaintiff and remains in default under the terms of the 2002 Note.
15. The 2002 Note contains a warrant of attorney authorizing the confession of judgment in favor of the Plaintiff and against the Defendant, as of any term, for the unpaid balance of the 2002 Note, together with costs of suit and an attorneys' commission not to exceed fifteen percent (15%) for collection.
16. Judgment has not been entered on the 2002 Note in any jurisdiction.
17. The 2002 Note has not been assigned.
18. **JUDGMENT IS NOT BEING ENTERED BY CONFESSION AGAINST A NATURAL PERSON IN CONNECTION WITH A CONSUMER CREDIT TRANSACTION.**
19. As of July 3, 2003, the amount due from the Defendant to the Plaintiff pursuant to the 2002 Note, and for which judgment is authorized, is \$124,752.34, plus costs of suit and accruing interest, computed as follows:

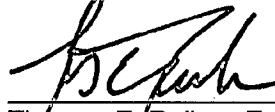
Principal Debt:	\$105,836.78
Interest Accrued through July 3, 2003	2,648.39
Late Charges	391.65
<u>Attorney's Commission of 15%:</u>	<u>15,875.52</u>
Total:	\$124,752.34

*Plus interest accruing at the contract rate and costs and expenses of suit.

WHEREFORE, Plaintiff demands that judgment be entered on the 2002 Note in its favor and against Defendant in the amount of One Hundred Twenty Four Thousand Seven Hundred Fifty Two and 34/100 Dollars (\$124,752.34), plus interest thereon at the contract rate after July 3, 2003, plus costs and expenses of suit and such other relief as this Court deems appropriate. For a total of Count I and Count II of Four Hundred Fifty Three Thousand One Hundred Eighty Four and 49/100 Dollars (\$453,184.49), plus interest thereon at the respective contract rate after July 3, 2003, plus costs and expenses of suit and such other relief as this Court deems appropriate.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



Thomas E. Reiber, Esquire

Pa. I.D. #41825

Brett Solomon, Esquire

Pa. I.D. #83746

1500 One PPG Place

Pittsburgh, Pennsylvania 15222

Phone: (412) 566-1212

Facsimile: (412) 594-5619

Counsel for Clearfield Bank & Trust Co.

Date: July 15, 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD BANK & TRUST CO.,)
)
Plaintiff,)
)
vs.) No.
)
BJR, INC.,)
)
Defendant.)

CONFESSION OF JUDGMENT

Pursuant to the authority contained in the Warrant of Attorney contained in Note and 2002 Note copies of which are attached to the Complaint filed in this action as Exhibits "A" and "B" respectively, I hereby appear for the Defendants and confess judgment in favor of the Plaintiff and against the Defendants, jointly and severally as follows:

Principal Debt (Note)	\$282,011.59
Interest Accrued through July 3, 2003 (Note)	4,098.82
Late Charges (Note)	20.00
<u>Attorney's Commission of 15% (Note)</u>	<u>42,301.74</u>
Total:	\$328,432.15

Principal Debt:	\$105,836.78
Interest Accrued through July 3, 2003	2,648.39
Late Charges	391.65
<u>Attorney's Commission of 15%:</u>	<u>15,875.52</u>
Total:	\$124,752.34

TOTAL.....\$453,184.49

Plus interest accruing at the contract rate and costs and expenses of suit.



Attorney for Defendants
pro hac vice

EXHIBIT "A"

BJR INC PO BOX 1404 CLEARFIELD PA 16830-5404 BORROWER'S NAME AND ADDRESS <small>"I" includes each borrower above, joint and severally.</small>	CLEARFIELD BANK & TRUST COMPANY 11 N. SECOND ST, P O BOX 171 CLEARFIELD, PA 16830 LENDER'S NAME AND ADDRESS <small>"You" means the lender, its successors and assigns.</small>	Loan Number <u>711985</u> Date <u>08/24/00</u> Maturity Date <u>07/31/01</u> Loan Amount \$ <u>300,000.00</u> Renewal Of <u>30412567</u>
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For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of Three hundred thousand & no/100 Dollars \$ 300,000.00

☐ Single Advance: I will receive all of this principal sum on _____. No additional advances are contemplated under this note.

☒ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ 0.00 and future principal advances are contemplated.

Conditions: The conditions for future advances are AT BORROWERS REQUEST

☒ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on JULY 31, 2001

☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from AUGUST 24, 2000 at the rate of 9.5000 % per year until The Prime Rate Changes

☒ Variable Rate: This rate may then change as stated below.

☒ Index Rate: The future rate will be Equal To the following index rate: CLEARFIELD BANK AND TRUST COMPANY BASE RATE

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ Frequency and Timing: The rate on this note may change as often as Daily
A change in the interest rate will take effect Daily

☒ Limitations: During the term of this loan, the applicable annual interest rate will not be more than N/A % or less than N/A %.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:
☒ The amount of each scheduled payment will change. ☒ The amount of the final payment will change.

ACCURAL METHOD: Interest will be calculated on a 365/365 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:
☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).
☐ at a rate equal to _____

☒ LATE CHARGE: If a payment is made more than 15 days after it is due, I agree to pay a late charge of 5% OF THE PAYMENT, WITH A \$20.00 MINIMUM CHARGE

☐ RETURNED CHECK CHARGE: I agree to pay a fee of \$ _____ for each check, negotiable order of withdrawal or draft I issue in connection with this loan that is returned because it has been dishonored.

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above: _____

PAYMENTS: I agree to pay this note as follows:

☒ Interest: I agree to pay accrued interest On Demand, But If No Demand Is Made Monthly Beginning - AUGUST 30, 2000

☒ Principal: I agree to pay the principal On Demand, But If No Demand Is Made At Maturity - JULY 31, 2001

☐ Installments: I agree to pay this note in _____ payments. The first payment will be in the amount of \$ _____ and will be due _____.

A payment of \$ _____ will be due _____ thereafter. The final payment of the entire unpaid balance of principal and interest will be due _____.

☒ **WARRANT OF AUTHORITY TO CONFESS JUDGMENT.** Upon default, in addition to all other remedies and rights available to you, by signing below Borrower irrevocably authorizes the prothonotary, clerk, or any attorney to appear in any court of record having jurisdiction over this matter and to confess judgment against me at any time without stay of execution. I waive notice, service of process and process. I agree and understand that judgment may be confessed against me for any unpaid principal, accrued interest and accrued charges due on this note, plus collection costs and reasonable attorneys' fees up to 15 percent of the judgment. The exercise of the power to confess judgment will not exhaust this warrant of authority to confess judgment and may be done as often as you elect. I further understand that my property may be seized without prior notice to satisfy the debt owed. I knowingly, intentionally, and voluntarily waive any and all constitutional rights I have to pre-deprivation notice and hearing under federal and state laws and fully understand the consequences of this waiver.

ADDITIONAL TERMS: _____

PURPOSE: The purpose of this loan is LINE OF CREDIT

☒ **SECURITY:** This note is separately secured by (describe separate document by type and date):

SECURITY AGREEMENT 12-30-98

(This section is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

Signature for Lender

William A. Shiner
 WILLIAM A. SHINER
 SR VICE PRESIDENT

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

Joseph F. Kane
 JOSEPH F. KANE PRESIDENT

DEFINITIONS: As used on page 1, "X" means the terms that apply to this loan. "I," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this note (together referred to as "us"). "You" or "your" means the Lender and its successors and assigns.

APPLICABLE LAW: The law of the state of Pennsylvania will govern this note. Any term of this note which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement.

PAYMENTS: Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the contrary).

INTEREST: Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, each advance will start to earn interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal advanced at that time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to here (either before or after maturity). If any notice of actual accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

INDEX RATE: The index will serve only as a device for setting the rate on this note. You do not guarantee by selecting this index, or the margin, that the rate on this note will be the same rate you charge on any other loans or class of loans to me or other borrowers.

ACCURAL METHOD: The amount of interest that I will pay on this loan will be calculated using the interest rate and accrual method stated on page 1 of this note. For the purpose of interest calculation, the accrual method will determine the number of days in a "year." If no accrual method is stated, then you may use any reasonable accrual method for calculating interest.

POST MATURITY RATE: For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the earliest of the following:

- the date of the last scheduled payment indicated on page 1 of this note;
- the date you accelerate payment on the note; or
- after the entry of judgment on this note by confession or otherwise and applies to amounts owed under this note on any such judgment until paid in full.

SINGLE ADVANCE LOANS: If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph below.

MULTIPLE ADVANCE LOANS: If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

ADVANCE PROCEDURE AND MEANS: You will advance the loan proceeds by way of check, cash, wire transfer, credit to an account or any combination as You and I agree. The advance(s) will occur upon consummation of the loan and as You and I agree, except that no advance(s) will occur until after three business days from the date of consummation if the loan is rescindable pursuant to Regulation Z (12 C.F.R. § 226).

PAYMENTS BY LENDER: If you are authorized to pay, on my behalf, charges I am obligated to pay (such as property insurance premiums), then you may treat those payments made by you as advances and add them to the unpaid principal under this note, or you may demand immediate payment of the charges.

SET-OFF: I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

"Right to receive money from you" means:

- any deposit account balance I have with you;
- any money owed to me on an item presented to you or in your possession for collection or exchange; and
- any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance due the date for which you properly accelerate under this note.

If my right to receive money from you is also owned by someone who has not agreed to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a representative. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

REAL ESTATE OR RESIDENCE SECURITY: If this note is secured by real estate or a residence that is personal property, the existence of a default and your remedies for such a default will be determined by applicable law, by the terms of any separate instrument creating the security interest and, to the extent not prohibited by law and not contrary to the terms of the separate security instrument, by the "Default" and "Remedies" paragraphs herein.

DEFAULT: I will be in default if any one or more of the following occur: (1) I fail to make a payment on time or in the amount due; (2) I fail to keep the property insured, if required; (3) I fail to pay, or keep any promise, on any debt or agreement I have with you; (4) any other creditor of mine threatens to collect any debt I owe him through court proceedings; (5) I die, am declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due); (6) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided; (7) I do or fail to do something which causes you to believe that you will have difficulty collecting the amount I owe you; (8) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by a legal authority; (9) I change my name or assume an additional name without first notifying you before making such a change; (10) I fail to plant, cultivate and harvest crops in due season; (11) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

REMEDIES: If I am in default on this note you have, but are not limited to, the following remedies:

- You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued charges).
- You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "Set-Off" paragraph herein.
- You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.
- You may refuse to make advances to me or allow purchases on credit by me.
- You may use any remedy you have under state or federal law.

By selecting any one or more of these remedies you do not give up your right to later use any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to later consider the event as a default if it continues or happens again.

COLLECTION COSTS AND ATTORNEY'S FEES: I agree to pay all costs of collection, replevin or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

WAIVER: I give up my rights (to the extent permitted by law) to require you to do certain things. I will not require you to:

- demand payment of amounts due (presentment);
- obtain official certification of nonpayment (protest); or
- give notice that amounts due have not been paid (notice of dishonor).

I waive any defenses I have based on suretyship or impairment of collateral.

OBLIGATIONS INDEPENDENT: I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect this note. You may do so without any notice that I have not been paid (notice of dishonor). You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us will not release me from my duty to pay it. (Of course, you are entitled to only one payment in full.) I agree that you may at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval.

CREDIT INFORMATION: I agree and authorize you to obtain credit information about me from time to time (for example, by requesting a credit report) and to report to others your credit experience with me (such as a credit reporting agency). I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will be accurate, correct and complete.

NOTICE: Unless otherwise required by law, any notice to me shall be given by delivering it or by mailing it by first class mail addressed to me at my last known address. My current address is on page 1. I agree to inform you in writing of any change in my address. I will give any notice to you by mailing it first class to your address stated on page 1 of this agreement, or to any other address that you have designated.

DATE OF TRANSACTION	PRINCIPAL ADVANCE	BORROWER'S INITIALS (not required)	PRINCIPAL PAYMENTS	PRINCIPAL BALANCE	INTEREST RATE	INTEREST PAYMENTS	INTEREST PAID THROUGH:
/ /	\$		\$	\$	%	\$	/ /
/ /	\$		\$	\$	%	\$	/ /
/ /	\$		\$	\$	%	\$	/ /
/ /	\$		\$	\$	%	\$	/ /
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/ /	\$		\$	\$	%	\$	/ /

(page 2 of 2)

EXHIBIT "B"

BJR INC PO BOX 1404 CLEARFIELD PA 16830-5404 BORROWER'S NAME AND ADDRESS <small>"I" includes each borrower above, joint and severally.</small>	CLEARFIELD BANK & TRUST COMPANY 11 N. SECOND ST, P O BOX 171 CLEARFIELD, PA 16830 LENDER'S NAME AND ADDRESS <small>"You" means the lender, its successors and assigns.</small>	Loan Number <u>827061</u> Date <u>02/05/02</u> Maturity Date <u>02/05/07</u> Loan Amount \$ <u>130,000.00</u> Renewal Of _____
--	--	---

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of One hundred thirty thousand & no/100 Dollars \$ 130,000.00

- ☒ **Single Advance:** I will receive all of this principal sum on 02/05/02. No additional advances are contemplated under this note.
- ☐ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.
- Conditions: The conditions for future advances are _____

- ☐ **Open End Credit:** You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____.
- ☒ **Closed End Credit:** You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from FEBRUARY 05, 2002 at the rate of 7.5000 % per year until FEBRUARY 05, 2007

- ☐ **Variable Rate:** This rate may then change as stated below.

☐ **Index Rate:** The future rate will be _____ the following index rate: _____

- ☐ **No Index:** The future rate will not be subject to any internal or external index. It will be entirely in your control.

☐ **Frequency and Timing:** The rate on this note may change as often as _____
A change in the interest rate will take effect _____

- ☐ **Limitations:** During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

- ☐ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

ACCRUAL METHOD: Interest will be calculated on a 365/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

- ☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).
- ☐ at a rate equal to _____

☒ **LATE CHARGE:** If a payment is made more than 15 days after it is due, I agree to pay a late charge of 5% OF THE PAYMENT, WITH A \$20.00 MINIMUM CHARGE

☐ **RETURNED CHECK CHARGE:** I agree to pay a fee of \$ _____ for each check, negotiable order of withdrawal or draft I issue in connection with this loan that is returned because it has been dishonored.

☒ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount above: DOC PREP, FLOOD DETERMINATION, CREDIT REPORT FEES \$125.00

PAYMENTS: I agree to pay this note as follows:

☐ **Interest:** I agree to pay accrued interest On Demand, But If No Demand Is Made

☐ **Principal:** I agree to pay the principal On Demand, But If No Demand Is Made

☒ **Installments:** I agree to pay this note in 60 payments. The first payment will be in the amount of \$ 2,610.92 and will be due MARCH 05, 2002. A payment of \$ 2,610.92 will be due Monthly

unpaid balance of principal and interest will be due FEBRUARY 05, 2007 thereafter. The final payment of the entire

☒ **WARRANT OF AUTHORITY TO CONFESS JUDGMENT.** Upon default, in addition to all other remedies and rights available to you, by signing below Borrower irrevocably authorizes the prothonotary, clerk, or any attorney to appear in any court of record having jurisdiction over this matter and to confess judgment against me at any time without stay of execution. I waive notice, service of process and process. I agree and understand that judgment may be confessed against me for any unpaid principal, accrued interest and accrued charges due on this note, plus collection costs and reasonable attorneys' fees up to 15 percent of the judgment. The exercise of the power to confess judgment will not exhaust this warrant of authority to confess judgment and may be done as often as you elect. I further understand that my property may be seized without prior notice to under federal and state laws and fully understand the consequences of this waiver.

ADDITIONAL TERMS:

PURPOSE: The purpose of this loan is CONSOLIDATION & PAY DOWN LOC

☒ **SECURITY:** This note is separately secured by (describe separate document by type and date):

MORTGAGE & SECURITY AGREEMENT EXECUTED/DATED HEREWITH

SECURITY AGREEMENT DATED 02/05/02 (This document does not mean the agreement will not secure this note.)

Signature for Lender

William A. Shiner
WILLIAM A. SHINER
SR VICE PRESIDENT

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

BJR INC

DEFINITIONS: As used on page 1, "I" means the terms that apply to this loan. "I," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this note (together referred to as "us"). "You" or "your" means the Lender and its successors and assigns.

APPLICABLE LAW: The law of the state of Pennsylvania will govern this note. Any term of this note which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement. Any provision that appoints you as an agent is not subject to the provisions of 20 Pa.C.S.A. Section 5601 et seq. (Chapter 56; Decedents, Estates and Fiduciaries Code). By exercising any of your rights under this note, you do so for your sole benefit.

PAYMENTS: Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the contrary).

INTEREST: Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, each advance will start to earn interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal advanced at that time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to here (either before or after maturity). If any notice of interest accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

INDEX RATE: The index will serve only as a device for setting the rate on this note. You do not guarantee by selecting this index, or the margin, that the rate on this note will be the same rate you charge on any other loans or class of loans to me or other borrowers.

ACCRUAL METHOD: The amount of interest that I will pay on this loan will be calculated using the interest rate and accrual method stated on page 1 of this note. For the purpose of interest calculation, the accrual method will determine the number of days in a "year." If no accrual method is stated, then you may use any reasonable accrual method for calculating interest.

POST MATURITY RATE: For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the earliest of the following:

- the date of the last scheduled payment indicated on page 1 of this note;
- the date you accelerate payment on the note; or
- after the entry of judgment on this note by confession or otherwise and applies to amounts owed under this note on any such judgment until paid in full.

SINGLE ADVANCE LOANS: If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph below.

MULTIPLE ADVANCE LOANS: If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

ADVANCE PROCEDURE AND MEANS: You will advance the loan proceeds by way of check, cash, wire transfer, credit to an account or any combination as You and I agree. The advance(s) will occur upon consummation of the loan and as You and I agree, except that no advance(s) will occur until after three business days from the date of consummation if the loan is rescindable pursuant to Regulation Z (12 C.F.R. § 226).

PAYMENTS BY LENDER: If you are authorized to pay, on my behalf, charges I am obligated to pay (such as property insurance premiums), then you may treat those payments made by you as advances and add them to the unpaid principal under this note, or you may demand immediate payment of the charges.

SET-OFF: I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

- "Right to receive money from you" means:
- any deposit account balance I have with you;
 - any money owed to me on an item presented to you or in your possession for collection or exchange; and
 - any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance the due date for which you properly accelerate under this note.

If my right to receive money from you is also owned by someone who has not agreed to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a

representative. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

REAL ESTATE OR RESIDENCE SECURITY: If this note is secured by real estate or a residence that is personal property, the existence of a default and your remedies for such a default will be determined by applicable law, by the terms of any separate instrument creating the security interest and, to the extent not prohibited by law and not contrary to the terms of the separate security instrument, by the "Default" and "Remedies" paragraphs herein.

DEFAULT: I will be in default if any one or more of the following occur: (1) I fail to make a payment on time or in the amount due; (2) I fail to keep the property insured, if required; (3) I fail to pay, or keep any promise, on any debt or agreement I have with you; (4) any other creditor of mine attempts to collect any debt I owe him through court proceedings; (5) I die, am declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due); (6) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided; (7) I do or fail to do something which causes you to believe that you will have difficulty collecting the amount I owe you; (8) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by a legal authority; (9) I change my name or assume an additional name without first notifying you before making such a change; (10) I fail to plant, cultivate and harvest crops in due season; (11) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

REMEDIES: If I am in default on this note you have, but are not limited to, the following remedies:

- You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued charges).
- You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "Set-Off" paragraph herein.
- You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.
- You may refuse to make advances to me or allow purchases on credit by me.

(5) You may use any remedy you have under state or federal law. By selecting any one or more of these remedies you do not give up your right to later use any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to later consider the event as a default if it continues or happens again.

COLLECTION COSTS AND ATTORNEY'S FEES: I agree to pay all costs of collection, replevin or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

WAIVER: I give up my rights (to the extent permitted by law) to require you to do certain things. I will not require you to:

- demand payment of amounts due (presentment);
- obtain official certification of nonpayment (protest); or
- give notice that amounts due have not been paid (notice of dishonor).

I waive any defenses I have based on suretyship or impairment of collateral.

OBLIGATIONS INDEPENDENT: I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect this note. You may do so without any notice that it has not been paid (notice of dishonor). You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us will not release me from my duty to pay it. (Of course, you are entitled to only one payment in full.) I agree that you may at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval.

CREDIT INFORMATION: I agree and authorize you to obtain credit information about me from time to time (for example, by requesting a credit report) and to report to others your credit experience with me (such as a credit reporting agency). I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will be accurate, correct and complete.

NOTICE: Unless otherwise required by law, any notice to me shall be given by delivering it or by mailing it by first class mail addressed to me at my last known address. My current address is on page 1. I agree to inform you in writing of any change in my address. I will give any notice to you by mailing it first class to your address stated on page 1 of this agreement, or to any other address that you have designated.

DATE OF TRANSACTION	PRINCIPAL ADVANCE	BORROWER'S INITIALS (not required)	PRINCIPAL PAYMENTS	PRINCIPAL BALANCE	INTEREST RATE	INTEREST PAYMENTS	INTEREST PAID THROUGH:
/ /	\$		\$	\$	%	\$	/ /
/ /	\$		\$	\$	%	\$	/ /
/ /	\$		\$	\$	%	\$	/ /
/ /	\$		\$	\$	%	\$	/ /
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VERIFICATION

I, WILLIAM A. SHINER, Senior Vice President and Secretary of CLEARFIELD BANK & TRUST COMPANY, verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 PA. C.S.A. §4904 relating to unsworn falsification to authorities.

CLEARFIELD BANK & TRUST COMPANY

By: William A. Shiner
William A. Shiner, Senior Vice President
and Secretary

Date: 7/10/03

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD BANK & TRUST CO.,)	
)	
Plaintiff,)	
)	
vs.)	No.
)	
BJR, INC.,)	
)	
Defendant.)	


CERTIFICATE OF RESIDENCE

I hereby certify that the precise address of the Plaintiff is:

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

and the last known address of the Defendant, BJR, Inc. is:

805 South Second Street
Clearfield, PA 16830



Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD BANK & TRUST CO.,)
)
Plaintiff,)
)
vs.) No.
)
BJR, INC.,)
)
Defendant.)

AFFIDAVIT

The undersigned, hereby certifies that the facts set forth in the foregoing Complaint in Confession of Judgment are true and correct to the best of my knowledge, information and belief; that the Exhibits attached to the Complaint in Confession of Judgment are true and correct copies of the originals; that the Defendants are in default under the Note and 2002 Note (as those terms are defined in the Complaint); that the underlying transactions giving rise to this action are commercial in nature and are not consumer credit transactions against a natural person; and that I am authorized to make this Affidavit.



Thomas E. Reiber, Esquire
Attorney for Clearfield Bank & Trust
Company

Sworn to and subscribed
before me this 15th
day of July, 2003.



Notary Public
My commission expires:

Notarial Seal
Melissa Szalkay, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires Oct. 31, 2005
Member, Pennsylvania Association of Notaries

CCY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD BANK & TRUST CO.,)	
)	
Plaintiff,)	
)	
vs.)	No.
)	
BJR, INC.,)	
)	
Defendant.)	

NOTICE OF ENTRY OF JUDGMENT

TO: BJR, Inc.
805 South Second Street
Clearfield, PA 16830

You are hereby notified that a judgment was entered against you by confession in the above captioned proceeding on _____, 2003.

The amount of the judgment is \$453,184.49 plus interest accruing at the contract rate and costs and expenses of suit.

A copy of the complaint is enclosed.

Prothonotary, Clearfield County

FILED

JUL 16 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLEARFIELD BANK & TRUST CO.,

CIVIL DIVISION

NO. 2003-01037CD

Plaintiff,

vs.

**PRAECIPE FOR WRIT OF EXECUTION
(CONFESSED JUDGMENT)**

BJR, INC.,

Filed on behalf of Plaintiff, Clearfield Bank &
Trust Co.

Defendant,

CODE:

Counsel of record for this party:

Thomas E. Reiber, Esquire
Pa. I.D. No. 41825
Brett A. Solomon, Esquire
Pa. I.D. No. 83746
TUCKER ARENSBERG, P.C.
Firm #287
1500 One PPG Place
Pittsburgh, Pennsylvania 15222
(412) 566-1212

FILED

MAR 26 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMONS PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

CLEARFIELD BANK & TRUST CO.,)	CASE NO. 2003-01037CD
)	
Plaintiff,)	
)	
vs.)	
)	
BJR, INC.,)	
)	
Defendant.)	

**PRAECIPE FOR WRIT OF EXECUTION
(CONFESSED JUDGMENT)**

To the Prothonotary:

Issue writ of execution in the above matter,

- (1) directed to the Sheriff of Clearfield County;
- (2) against, BJR, Inc., Defendant;
- (3) and index this writ
 - (a) against BJR, Inc., Defendant;
- (4) Amount due \$453,184.49
- Total \$453,184.49

TUCKER ARENSBERG, P.C.




Thomas E. Reiber, Esquire
Brett A. Solomon, Esquire
Attorneys for CLEARFIELD BANK & TRUST CO.,
Plaintiff

CERTIFICATION

I certify that:

(a) This Praecipe is based upon a judgment entered by confession, and notice will be served with the Writ of Execution pursuant to Rule 2958.3.

TUCKER ARENSBERG, P.C.

A handwritten signature in black ink, appearing to read 'T. Reiber', is written over a horizontal line.

Thomas E. Reiber, Esquire

Brett A. Solomon, Esquire

Attorneys for CLEARFIELD BANK & TRUST CO.,
Plaintiff

NOTE

Under paragraph (1) when the writ is directed to the sheriff of another county as authorized by Rule 3103(b), the county should be indicated.

Under Rule 3103(c) a writ issued on a transferred judgment may be directed only to the sheriff of the county in which issued.

Paragraph (3) above should be completed only if a name garnishee is to be included in the writ.

Paragraph (4) (a) should be completed only if indexing of the execution in the county of issuance, is desired as authorized by Rule 3104(a). Where the writ issues to another county indexing is required as of course in that county by the Prothonotary.

See Rule 3104(b).

Paragraph 4 (b) should be completed only if real property in the name of a garnishee is attached and indexing as a lis pendens is desired. See Rule 3104(c).

Certification as to waiver of exemption may be included in the Praecipe. Specific directions to the sheriff as to property to be levied upon may be included in the Praecipe or by separate direction at the option to Plaintiff.

FILED
MAR 26 2004

1cc & LeWonts
to SHff

Attg pd 20.00

William A. Shaw
Prothonotary/Clerk of Courts

[Signature]

**WRIT OF EXECUTION and/or ATTACHMENT
COMMONWEALTH OF PENNSYLVANIA, COUNTY OF CLEARFIELD
CIVIL ACTION – LAW**

COPY

Clearfield Bank and Trust Co.

Vs.

NO.: 2003-01037-CD

BJR, Inc.

TO THE SHERIFF OF CLEARFIELD COUNTY:

To satisfy the debt, interest and costs due CLEARFIELD BANK AND TRUST CO., Plaintiff(s) from BJR, INC., Defendant(s):

(1) You are directed to levy upon the property of the defendant(s) and to sell interest(s) therein:
Personal Property

(2) You are also directed to attach the property of the defendant(s) not levied upon in the possession of:

Garnishee(s) as follows:

and to notify the garnishee(s) that: (a) an attachment has been issued; (b) the garnishee(s) is/are enjoined from paying any debt to or for the account of the defendant(s) and from delivering any property of the defendant(s) or otherwise disposing thereof;

(3) If property of the defendant(s) not levied upon and subject to attachment is found in the possession of anyone other than a named garnishee, you are directed to notify him/her that he/she has been added as a garnishee and is enjoined as above stated.

AMOUNT DUE: **\$453,184.49**

INTEREST: \$

PROTH. COSTS: \$

ATTY'S COMM: \$

DATE: 03/26/2004

PAID: **\$105.00**

SHERIFF: \$

OTHER COSTS: \$

William A. Shaw

Prothonotary/Clerk Civil Division

Received this writ this _____ day
of _____ A.D. _____
At _____ A.M./P.M.

Sheriff

Requesting Party: Thomas E. Reiber, Esq.
1500 One PPG Place
Pittsburgh, PA 15222
(412) 566-1212

June 16, 2004

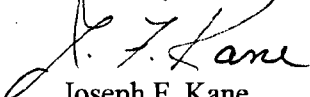
Office of The Sheriff
Clearfield County
2nd & Market Street
Clearfield, PA.
16830

Re: Case 2003-01037CD

Dear Sir;

Under separate cover we have demanded that certain items be removed from the action. In the event that these items are not removed I am invoking my right to request that the judgment be struck and hereby request a prompt hearing. Any attempt to include by personal property is in direct violation of the agreement and accordingly voids the agreement.

Sincerely Yours;



Joseph F. Kane



1997-1998

1997-1998

IN THE COURT OF COMMONS PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

CLEARFIELD BANK & TRUST CO.,)	CASE NO. 2003-01037CD
)	
Plaintiff,)	
)	
vs.)	
)	
BJR, INC.,)	
)	
Defendant.)	

PETITION TO STRIKE JUDGMENT

REQUEST FOR PROMPT HEARING

I hereby certify that I did not voluntarily, intelligently and knowingly give up my right to notice and hearing prior to the entry of judgment. I petition the court to strike the judgment on this ground and request a prompt hearing on this issue.

I verify that the statements made in this Request for Hearing are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Notice of hearing should be given to me at:

PO Box 1422
16830

Dated: 6-16-04

J. F. Kane
Defendant(s)

FILED

JUN 23 2004

BANK_FIN:220029-1 013828-113500

William A. Shaw
Prothonotary/Clerk of Courts

June 16, 2004

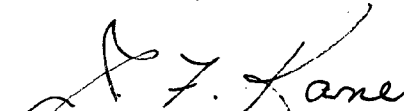
Office of The Sheriff
Clearfield County
2nd & Market Street
Clearfield, PA.
16830

Re: Case 2003-01037CD

Dear Sir;

Reference the aforementioned case be advised that the action is directed towards BJR, Inc. exclusively. Listed as "Item 8" is a 1996 Plymouth van which is identified on the document as the property of Joseph F. Kane. It must be excluded. Additionally a GE microwave is listed. This is not the property of BJR and should be excluded

Sincerely Yours;


Joseph F. Kane

FILED

2cc

Def:

6/23/04
JUN 23 2004

William A. Shaw

Prothonotary/Clerk of Courts

BTR, Inc,

PO Box 1402

Cleasfield, PA 16830

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Or

2

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket #

15504

CLEARFIELD BANK AND TRUST COMPNAY

03-1037-CD

VS.

BJR, INC.

WRIT OF EXECUTION

PERSONAL PROPERTY

SHERIFF RETURNS

NOW, JUNE 16, 2004 AT 10:00 A.M. O'CLOCK A LEVY WAS TAKEN ON THE
PROPERTY OF THE DEFENANT.

NOW, JUNE 16, 2004 @ 10:00 A.M. O'CLOCK SERVED WRIT OF EXECUTION ON
JOE CAIN, OWNER/DEFENDANT, AT HIS PLACE OF RESIDENCE 9 GULICH AVENUE
CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO JOE CAIN,
OWNER OF BJR, INC./DEFENDANT, A TRUE AND ATTESTED COPY OF THE ORIGINAL
WRIT OF EXECUTION AND BY MAKING KNOWN TO HIM THE CONTENTS THEREOF.

A SALE WAS SET FOR AUGUST 6, 2004 @ 9?00 A.M. O'CLOCK.

NOW, JJULY 19, 2004 @ 11:13 A.M. O'CLOCK POSTED THE PROPERTY OF THE
DEFENDANT WITH NOTICE OF SALE @ TQA FABRICATION, INDUSTRIAL DRIVE @
11:19 A.M. APPALACHIAN WOOD, INDUSTRIAL DRIVE, CLFD @ AT 11:40 A.M.BJR
INC , AT WASHINGTON AVE, HYDE, PA

NOW, AUGUST 6, 2004 @ 8:50 A.M. O'CLOCK SERVED JOE CAIN OWNER/
DEFENDANT WITH A NOTICE OF SALE.

NOW, AUGUST 6, 2004 A SALE WAS HELD ON THE PROPERTY OF THE DEFENDANT.

JOSEPH A. ROBISON OF QUALITY VENEER, INC. 423 APPLACHAIN DRIVE, CLFD,_
PA PURCHASED A 1988 MACK ECONODYNE, A MILLER FLAT BED TRAILER, A 1973_
FORD 9000 TRUCK, AND AN ONAN PERFORMER WELDER FOR A TOTAL OF \$8,900.00

NICK SIDORICK OF 103 ELIZABETH STREET, CLFD, PA PURCHASED A FRUEHAUF_
TRAILER FOR \$500.00_

CLEARFIELD BANK & TRUST COMPANY PURCHASED MERCHANDISE IN THE AMOUNT OF
\$14,480.00.

NOW, AUGUST 16, 2004 BILLED ALL PURCHASERS FOR PROPERTY.

NOW, AUGUST 16, 2004 RECEIVED PAYMENT FROM NICHOLAS SIDORICK,
SEPTEMBER 3, 2004 RECEIVED PAYMENT FROM QUALITY VENEER CORP.,
SEPTEMBER 24, 2004 RECEIVED PAYMENT FROM CB&T.

FILED

OCT 15 2004

o/3:00h
William A. Shaw

Prothonotary/Clerk of Courts

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 15504

CLEARFIELD BANK AND TRUST COMPNAY

03-1037-CD

VS.

BJR, INC.

WRIT OF EXECUTION

PERSONAL PROPERTY

SHERIFF RETURNS

NOW, AUGUST 20, 2004 SENT BILL OF SALES TO ALL PURCHASERS.

NOW, OCTOBER 13, 2004 PAID COSTS FROM THE ADVANCE AND MONEY COLLECTED
FROM THE SALE.

NOW, OCTOBER 15, 2004 RETURN WRIT AS A SALE HELD ON THE PERSONAL
PROPERTY OF THE DEFENDANT.

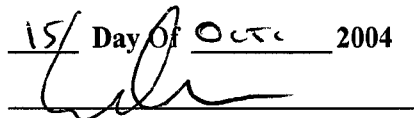
SHERIFF HAWKINS \$639.07

SURCHARGE \$20.00

PAID BY ATTORNEY

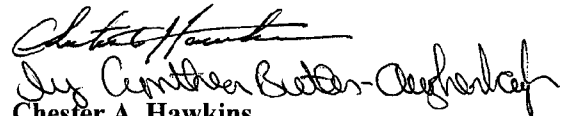
Sworn to Before Me This

15 Day Of Oct 2004



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

So Answers,



Chester A. Hawkins
Sheriff

**WRIT OF EXECUTION and/or ATTACHMENT
COMMONWEALTH OF PENNSYLVANIA, COUNTY OF CLEARFIELD
CIVIL ACTION - LAW**

Clearfield Bank and Trust Co.

Vs.

NO.: 2003-01037-CD

BJR, Inc.

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Personal Property

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Garnishee(s) as follows:

and to notify the garnishee(s) that: (a) an attachment has been issued; (b) the garnishee(s) is/are enjoined from paying any debt to or for the account of the defendant(s) and from delivering any property of the defendant(s) or otherwise disposing thereof;

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AMOUNT DUE: \$453,184.49

INTEREST: \$

PROTH. COSTS: \$

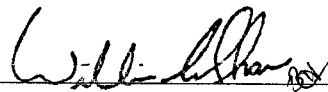
ATTY'S COMM: \$

DATE: 03/26/2004

PAID: \$105.00

SHERIFF: \$

OTHER COSTS: \$



William A. Shaw
Prothonotary/Clerk Civil Division

Received this writ this 26th day
of March A.D. 2004
At 3:40 A.M./P.M.

Chester A. Hawkins
Sheriff Sgt. Cynthia Butler Aufenlaup

Requesting Party: Thomas E. Reiber, Esq.
1500 One PPG Place
Pittsburgh, PA 15222
(412) 566-1212

PERSONAL PROPERTY

SCHEDULE OF DISTRIBUTION

NAME: BJR, INC. NO. 03-1037-CD

NOW, August 6, 2004, by virtue of the writ hereunto attached, after having given due and legal Notice of the time and place of sale, by handbills posted on the premises, setting forth the time and place of sale, I sold on the 6TH day of AUGUST 2004, the defendant's personal property for and made the following appropriations.

SHERIFF COSTS:

RDR	9.00
SERVICE	9.00
MILEAGE	2.00
LEVY	20.00
MILEAGE	5.00
POSTING	9.00
HANDBILLS	10.00
COMMISSION	477.60
UNABLE TO LEVY (9.00)	
POSTAGE	1.48
ADD'L SERVICE/LEVY	40.00
ADD'L MILEAGE-DEPUTIZE	18.00
ADD'L POSTING	18.00
COPIES/BILLING	15.00
BID	14,480.00 9,400.00
RETURN OF INTERROGATORIES	
PHONE CALLS	4.99
ADJOURNED SALE	
TOTAL SHERIFF COSTS	10,039.07

DEBT & INTEREST

DEBT	453,184.49
INTEREST	
TOTAL DEBT & INTEREST	453,184.49

COSTS:

ATTORNEY PAID	
ATTORNEY FEES	
COSTS TO PROTHONOTARY	105.00
SHERIFF'S COSTS	10,039.07
REFUND OF ADVANCE	
REFUND OF SURCHARGE	20.00
COSTS	
OTHER COSTS-PREVIOUS	
TOTAL COSTS	10,164.07

TOTAL DEBT AND COSTS 463,348.56

COMMISSION 2% ON THE FIRST \$100,000.00 AND 1/2% ON ALL OVER THAT. 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