

03-1705-CD
DONALD B. RICE TIRE COM, INC. vs. KEPHART TRUCKING CO.

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

DONALD B. RICE TIRE
COMPANY, INC.,

Plaintiff

vs.

KEPHART TRUCKING CO.,

Defendant

: No. 03- - CD
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NOTICE

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

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

Court Administrator's Office
Clearfield County Courthouse
Corner of Market & Second Streets
Clearfield, PA 16830
Telephone: (814) 765-2641

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

DONALD B. RICE TIRE	:	No. 03-	- CD
COMPANY, INC.,	:		
Plaintiff	:		
	:		
vs.	:		
	:		
KEPHART TRUCKING CO.,	:		
Defendant	:		

COMPLAINT

1. Plaintiff is Donald B. Rice Tire Co., Inc., a corporation with its headquarters at 909 North East Street, Frederick, Maryland, 21701.
2. Kephart Trucking Co. is a Pennsylvania business corporation with its headquarters at Route 322 West, P.O. Box 386, Bigler, Clearfield County, Pennsylvania, 16825.
3. Plaintiff's primary business is the retail sale of tires.
4. Defendant's primary business is commercial haulage by truck.
5. On and after July 12, 2001, Defendant maintained a purchase on open account relationship with Plaintiff.
6. From July 2001 to March 2003, Defendant acquired goods and paid the invoiced price to Plaintiff.

Count I
(Action on Open Account)

7. The averments contained in paragraphs 1 through 6 above are incorporated herein as if set forth verbatim.
8. In 2003, Defendant ordered goods from Plaintiff and Plaintiff delivered goods to Defendant, which the Plaintiff billed to Plaintiff by invoices dated March 24, 2003, March 27,

2003, April 10, 2003, April 17, 2003, April 24, 2003, and May 1, 2003. Copies of the invoices tendered are annexed hereto as Exhibit "A".

9. The total cost of the goods purchased by Defendant is Seventeen Thousand Seven and 36/100 (\$17,007.36) Dollars.

10. In applying for credit with Plaintiff, Defendant agreed to pay all invoices by the tenth of the month following the date of the invoice or be assessed a finance charge. A copy of this Agreement is annexed as Exhibit "B".

11. Despite numerous requests, Defendant has failed or refused to pay the sums due to Plaintiff.

12. In accordance with the parties' agreement, finance charges of One Thousand Eight Hundred Thirty-three and 32/100 (\$1,833.32) Dollars are due and payable.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment in its favor against Defendant in the sum of Eighteen Thousand Eight Hundred Forty and 68/100 (\$18,840.68) Dollars, plus accruing finance charges in accordance with the parties' agreement and Plaintiff's taxable costs expended.

Count II
(Action on Checks)

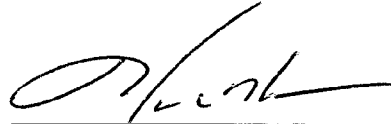
13. The averments contained in Paragraphs 1 through 13 above are incorporated herein by reference as if set forth verbatim.

14. After receiving the invoices annexed hereto as Exhibit "A", Defendant tendered to Plaintiff five (5) checks, copies of which are annexed hereto as Exhibit "C". All of the five (5) checks were dishonored for payment by Defendant's bank for lack of funds.

15. Plaintiff's credit arrangement with trade customers includes a Twenty-five (\$25.00) Dollar dishonored check charge per check.

WHEREFORE, Plaintiff respectfully requests your Honorable Court to enter judgment in its favor and against Defendant in the sum of Eighteen Thousand Eight Hundred Forty and 68/100 (\$18,840.68) Dollars, plus accruing finance charges in accordance with the parties' agreement, Plaintiff's taxable costs expended and One Hundred Twenty-five (\$125.00) Dollars for returned check charges.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kim C. Kesner', is written over a horizontal line.

Kim C. Kesner, Attorney for Plaintiff
Supreme Ct. I.D. #28307

23 North Second Street
Clearfield, PA 16830

814-765-1706

STATE OF MARYLAND

:

: S. S.

COUNTY OF _____

:

Before me the undersigned authority personally appeared, Sabine Nave, who being duly sworn according to law deposes and says that she is the Credit Manager of Donald B. Rice Tire Co., Inc. and that as such, she is authorized and empowered to execute this affidavit and that the facts and averments set forth in the foregoing Complaint are true and correct to the best of her knowledge, information, and belief.

Sabine Nave

Sworn to and subscribed before me this _____ day of _____, 2003.

Notary Public

My Commission Expires:

STATE OF MARYLAND :
 : S. S.
 COUNTY OF _____ :

Before me the undersigned authority personally appeared, Sabine Nave, who being duly sworn according to law deposes and says that she is the Credit Manager of Donald B. Rice Tire Co., Inc. and that as such, she is authorized and empowered to execute this affidavit and that the facts and averments set forth in the foregoing Complaint are true and correct to the best of her knowledge, information, and belief.

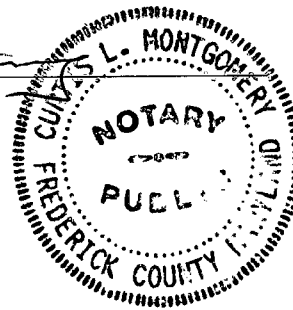
Sabine Nave
 Sabine Nave

Sworn to and subscribed before me this 13 day of NOVEMBER, 2003.

Curtis L. Montgomery
 Notary Public

My Commission Expires:

My commission expires 07/28/05



FILED

Ad 1:07 PM
NOV 17 2003

Atty pd. 85.00

3cc Atty Kesner

William A. Shaw

Prothonotary/Clerk of Courts

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

Donald B. Rice Tire Company, Inc.
Plaintiff

*

*

-VS-

*

Docket No. 03-1705-CD

Kephart Trucking Co.
Defendant

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Type of Pleading:
PRAECIPE TO ENTER APPEARANCE

Filed on behalf of:
Kephart Trucking Co.

Counsel of record for
this party:

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

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

FILED

JAN 09 2004

0/3:00/4
William A. Snaw

Prothonotary/Clerk of Courts

3 CEnt to Att

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

Donald B. Rice Tire Company, Inc.
Plaintiff

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-VS-

*

Docket No. 03-1705-CD

Kephart Trucking Co.
Defendant

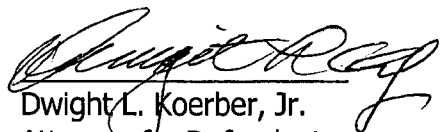
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PRAECIPE TO ENTER APPEARANCE

Please enter my appearance on behalf of Defendant, Kephart Trucking Co. in the
above-referenced matter.

Respectfully Submitted,



Dwight L. Koerber, Jr.
Attorney for Defendant,
Kephart Trucking Co.

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

Donald B. Rice Tire Company, Inc.
Plaintiff

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-VS-

*

Docket No. 03-1705-CD

Kephart Trucking Co.
Defendant

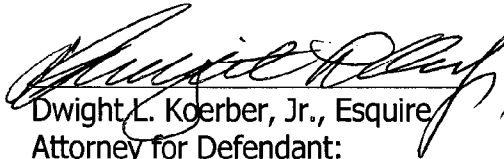
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CERTIFICATE OF SERVICE

This is to certify that on the 9th day of January, 2004 the undersigned served a true and correct copy of the PRAECIPE TO ENTER APPEARANCE in the above captioned matter upon counsel for Plaintiff. Such document was served and United States First Class Mail upon the following:

Kim C. Kesner, Esquire
23 North Second Street
Clearfield, PA 16830


Dwight L. Koerber, Jr., Esquire
Attorney for Defendant:
Kephart Trucking Co.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
DOCKET NO: 03-1705-CD

Donald B. Rice Tire Company, Inc.

-vs-

Kephart Trucking Co.

PRAECIPE TO ENTER APPEARANCE

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

In The Court of Common Pleas of Clearfield County, Pennsylvania

DONALD B. RICE TIRE COMPANY INC

VS.

KEPHART TRUCKING CO.

COMPLAINT

Sheriff Docket #

14846

03-1705-CD

SHERIFF RETURNS

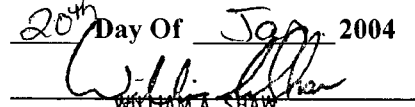
NOW DECEMBER 2, 2003 AT 2:10 PM SERVED THE WITHIN COMPLAINT ON KEPHART TRUCKING CO., DEFENDANT AT EMPLOYMENT, RT 322 WEST, PO BOX 386, BIGLER, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO PAMELA HAMPTON, RECEPT. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: COUDRIET

Return Costs


Cost	Description
24.13	SHERIFF HAWKINS PAID BY: ATTY CK# 3090
10.00	SURCHARGE PAID BY: ATTY CK# 3091

Sworn to Before Me This

20th Day Of Jan, 2004


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

So Answers,


by Manlyp Harris
Chester A. Hawkins
Sheriff

FILED

01/30/04
JAN 20 2004

William A. Shaw
Prothonotary/Clerk of Courts

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CA

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

DONALD B. RICE TIRE
COMPANY, INC.,
Plaintiff

vs.

KEPHART TRUCKING CO.,
Defendant

No. 03-1705- CD

FILED

FEB 19 2004

William A. Shaw
Prothonotary/Clerk of Courts

STIPULATION

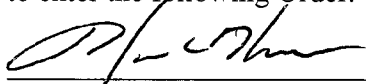
AND NOW, comes Kim C. Kesner, Esquire, counsel of record for Plaintiff Donald B. Rice Tire Company, Inc. and Dwight L. Koerber, Jr., Esquire, counsel of record for Defendant Kephart Trucking, Inc., who with full authority from their respective clients to do so, stipulate as follows:

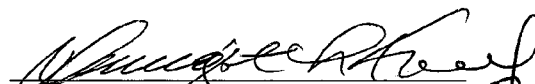
1. Plaintiff commenced this action by filing its civil complaint against Defendant on November 17, 2003 requesting a money judgment upon two counts.
2. The Complaint was served upon Defendant on December 2, 2003.
3. When the period of twenty (20) days for the filing of a responsive pleading lapsed without any action by Defendant, Plaintiff mailed to Defendant the ten (10) day notice required by Pa.R.Civ.P Rule 237.1.
4. Then on January 9, 2004, counsel for Defendant entered his appearance and commenced negotiations with counsel for Plaintiff.
5. Subsequently, an agreement was reached between the parties for resolution of this civil action, the terms of which the parties agreed would be set forth in a stipulation and entered as a court order.

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013:319801
FEB 19 2004
Amy Kessler

William A. Shaw
Prothonotary/Clerk of Courts

6. By their respective counsel, the parties respectfully request this Honorable Court to enter the following Order.


Kim C. Kesner, Attorney for Plaintiff
Donald B. Rice Tire Co., Inc.


Dwight L. Koerber, Jr., Attorney for
Defendant, Kephart Trucking Co., Inc.

ORDER

AND NOW, this 19th day of February, 2004, upon the foregoing Stipulation, it is hereby ORDERED AND DECREED:

1. Defendant is bound and hereby directed to pay to Plaintiff the sum of \$18,965.68 plus interest at 12% per annum in monthly installments over six (6) months.

2. The first payment shall be made by Defendant to Plaintiff on or before March 5, 2004 in the amount of \$3,273.58.

3. Defendant shall pay to Plaintiff four (4) additional monthly payments on the fifth day of each successive month in the amount of \$3,273.58.

4. Defendant shall pay to Plaintiff the last and final payment on or before August 5, 2004 in the amount of \$3,273.56.

5. Should Defendant fail or neglect to make any payment in part or whole upon five (5) days written notice by regular mail to Defendant and its counsel, Plaintiff may upon Praecipe to the Prothonotary without further proceedings, enter default judgment for the accelerated balance all sums due and payable under Paragraph 1 hereof.

BY THE COURT:

FILED


Judge

FEB 19 2004

William A. Shaw
Prothonotary/Clerk of Courts

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013360804

Attg Kesner

FEB 19 2004

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William A. Shaw

Prothonotary/Clerk of Courts

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

DONALD B. RICE TIRE
COMPANY, INC.,

Plaintiff

vs.

KEPHART TRUCKING CO.,

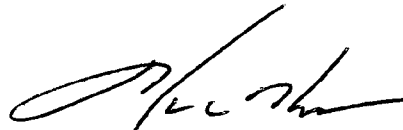
Defendant

No. 03-1705- CD

PRAECIPE TO DISCONTINUE

TO: WILLIAM A. SHAW, PROTHONOTARY.

Kindly mark the above-captioned matter discontinued and ended as Defendant has made
all payments required under Stipulation & Order entered by the Court February 19, 2004.



Kim C. Kesner, Esquire
Attorney for Plaintiff

DATE: August 26, 2004

FILED

01/11:00/07
AUG 26 2004

William A. Shaw
Prothonotary/Clerk of Courts

edk
3 cc @ Certificates
to Atty Kesner
copy to CIA

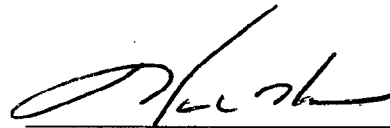
CERTIFICATE OF SERVICE

AND NOW, I do hereby certify that on the 26th day of August, 2004, I caused to be served a true and correct copy of the Praecipe to Discontinue on the following by United States First Class Mail, Postage Prepaid:

Dwight L. Koerber, Jr., Esquire
110 North Second Street
P.O. Box 1320
Clearfield, PA 16830
(Attorney for Defendant)

Date: _____

8/26/04



Kim C. Kesner, Esquire

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

CIVIL DIVISION

COPY

Donald B. Rice Tire Company, Inc.

Vs.

No. 2003-01705-CD

Kephart Trucking Co.

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on August 26, 2004, marked:

Discontinued and Ended

Record costs in the sum of \$85.00 have been paid in full by Kim C. Kesner, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 26th day of August A.D. 2004.

William A. Shaw, Prothonotary