

03-1893-CD

LINDA F. HOFFMAN vs. TONY M. CHERRY, et al.

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

**Linda E. Hoffman,**

Plaintiff

vs.

**Toni M. Cherry, P. Joseph  
Valigorsky, II, Paula M. Cherry  
and Mark A. Piasio,**

Defendants

**Civil Division**

**No. 03-1893-18**

**Complaint in Equity**

**Code:**

Filed on Behalf of:  
**Linda E. Hoffman, Plaintiff**

Counsel of Record  
for this Party:  
**James E. Mahood**  
Pa. I.D. #20403

**Wilder & Mahood**  
Firm #525  
10th Floor, Koppers Building  
Pittsburgh, PA 15219  
(412) 261-4040

**Jay N. Silberblatt**  
Pa. I.D. #32253

**Silberblatt Mermelstein, P.C.**  
Firm #645  
2904 Gulf Tower  
707 Grant Street  
Pittsburgh, PA 15219  
(412) 232-0580

**FILED**

DEC 30 2003

**William A. Shaw  
Prothonotary**

**In the Court of Common Pleas of Clearfield County, Pennsylvania  
Civil Division**

<b>Linda E. Hoffman,</b>	)	<b>Civil Action - Equity</b>
	)	
Plaintiff	)	
	)	
vs.	)	<b>Case No. _____</b>
	)	
<b>Toni M. Cherry, P. Joseph</b>	)	
<b>Valigorsky, II, Paula M. Cherry</b>	)	
<b>and Mark A. Piasio,</b>	)	
	)	
Defendants	)	

**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, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

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

**DAVID S. MEHOLICK, COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
CLEARFIELD, PA 16830  
(814) 765-2641 Ext. 5982**

**In the Court of Common Pleas of Clearfield County, Pennsylvania  
Civil Division**

**Linda E. Hoffman,** ) **Civil Action - Equity**  
Plaintiff )  
vs. )  
**Toni M. Cherry, P. Joseph** )  
**Valigorsky, II, Paula M. Cherry** )  
**and Mark A. Piasio,** )  
Defendants )  
**Case No.** \_\_\_\_\_

## Complaint in Equity

AND NOW comes Plaintiff, Linda E. Hoffman, by her attorneys, James E. Mahood and Wilder & Mahood and Jay N. Silberblatt and Silberblatt Mermelstein, and respectfully represents that:

1. Plaintiff, Linda E. Hoffman, is an adult individual currently residing at 1208 S. Brady Street, County of Clearfield, DuBois, PA 15801.
2. Defendant, Toni M. Cherry, is an adult individual and a resident of the County of Clearfield and Commonwealth of Pennsylvania.
3. Defendant, P. Joseph Valigorsky, II, is an adult individual and a resident of the County of Clearfield and Commonwealth of Pennsylvania. Defendant Valigorsky is the spouse of Defendant Toni Cherry.
4. Defendant, Paula M. Cherry, is an adult individual and a resident of the County of Clearfield and Commonwealth of Pennsylvania. Defendant Paula M. Cherry is the sister and law partner of Defendant Toni M. Cherry.

5. Defendant, Mark A. Piasio, is an adult individual and a resident of the County of Clearfield and Commonwealth of Pennsylvania. Defendant Piasio is the spouse of Defendant Paula Cherry.

6. In 1995 Plaintiff entered into a contractual arrangement and a professional relationship with Defendant Toni M. Cherry and her law partnership and partner, wherein Defendants Toni M. Cherry, and Paula M. Cherry through the law partnership, agreed to render legal aid, assistance, advice and representation to Plaintiff with regard to a divorce from her husband, Robert E. Hoffman, and to reach a resolution of all ancillary claims, including equitable distribution of marital assets.

7. When Plaintiff met with and retained Defendant Toni M. Cherry and her law partnership, Plaintiff advised her that Plaintiff's husband, Robert E. Hoffman, was receiving a monthly retirement benefit from the Pennsylvania State Employes' Retirement System ("SERS").

8. When Plaintiff met with and retained Defendant Toni M. Cherry and her law partnership, Plaintiff advised her that Plaintiff was the beneficiary designated to receive the death benefit on her husband's retirement account with SERS.

9. During the course of the legal representation that Defendants Toni M. Cherry and her partner Paula M. Cherry provided Plaintiff, Plaintiff told Defendant Toni M. Cherry that Plaintiff's husband had sole control over an IRA account that had been funded with monies received from the SERS retirement benefit earned during the marriage.

10. Plaintiff advised Defendant Toni M. Cherry that Plaintiff was the beneficiary designated to receive the proceeds of her husband's IRA account.

11. During the pendency of Plaintiff's domestic litigation in the Court of Common Pleas of Clearfield County, Defendants Toni M. Cherry and Paula M. Cherry did not seek the husband's consent or otherwise petition the Court for an order to maintain the status quo with regard to the husband's SERS retirement account or his IRA account to prevent the Plaintiff's husband from dissipating either account or from changing the beneficiary thereof to the harm and prejudice of Plaintiff.

12. On or about December 3, 1997, during the pendency of Plaintiff's domestic litigation, Plaintiff's husband changed the beneficiary on his SERS account.

13. Shortly prior to his death, during the pendency of Plaintiff's domestic litigation, Plaintiff's husband changed the beneficiary on his IRA account.

14. On January 30, 1998, Plaintiff's husband died.

15. The death benefit on the SERS account was in the amount of Four Hundred Fifty-Two Thousand Seven Hundred Thirty-Eight and 42/100 (\$452,738.42) dollars.

16. The death benefit on the IRA account was in the amount of Fifty-one Thousand Six Hundred Eighty-eight and 36/100 (\$51,688.36) dollars.

17. On February 6, 1998, Defendant Toni M. Cherry and her law partnership received a letter from the Benefits Determination Division of SERS informing her that Plaintiff's request to receive her husband's SERS death benefit was denied.

18. On March 4, 1998, Defendant Toni M. Cherry and her law partnership, on behalf of Plaintiff, by letter to the Appeals Committee of the SERS, appealed from the decision of the SERS.

19. On March 5, 1998, Defendant Toni M. Cherry and her law partnership, on behalf of Plaintiff, filed an Application for Special Relief in the Commonwealth Court seeking to enjoin SERS from making payment of Plaintiff's husband's death benefits.

20. On March 16, 1998 the Commonwealth Court denied Plaintiff's Application for Special Relief.

21. On May 29, 1998, the Appeals Committee of the SERS denied Plaintiff's appeal.

22. On June 26, 1998, Defendant Toni M. Cherry and her law partnership, on behalf of Plaintiff, filed an Appeal from Denial of Claim by the Appeals Committee of the SERS with the State Employes' Retirement Board.

23. On November 12, 1998, the State Employes' Retirement Board dismissed Plaintiff's appeal.

24. On November 3, 1999, Defendant Toni M. Cherry argued on behalf of Plaintiff before the Commonwealth Court seeking review of the State Employes' Retirement Board decision.

25. By Order of Court dated January 7, 2000, the Commonwealth Court affirmed the order of the State Employes' Retirement Board denying Plaintiff's appeal from the denial of her claim by SERS.

26. Defendants Toni M. Cherry and Paula M. Cherry did not take any action prior to the death of Plaintiff's husband to prevent him from changing his beneficiary designations, and failed to protect Plaintiff from the loss of over one-half million dollars in death benefits.

27. Defendant Toni M. Cherry has been practicing law in the Commonwealth of Pennsylvania for 23 years, and approximately 40% of her law partnership practice with Defendant Paula M. Cherry is concerned with family law. Defendants have the requisite experience to have made them aware of the liability they faced as a result of their negligent representation of Plaintiff.

28. Defendants Toni M. Cherry and Paula M. Cherry knew or should have known, by February 6, 1998, that they faced a potential malpractice suit from Plaintiff.

29. On January 26, 2000, Defendant Toni M. Cherry and her law partnership received actual written notice of Plaintiff's malpractice lawsuit.

30. At the time that Toni Cherry was notified of Plaintiff's claims, Toni Cherry and her law firm was insured by a policy of professional liability insurance that had liability limits of only \$250,000.00.

31. As was known to Defendants Cherry, the limits of the professional liability insurance policy that insured Toni Cherry and her law firm and that was applicable to the Plaintiff's claims against them was inadequate to fully compensate the Plaintiff for the losses she suffered as a result of the negligence of Toni Cherry and her law firm.

32. Fully aware of the law partnership's negligent failure to protect the interests of Plaintiff and the inadequate limits of liability of the applicable professional liability insurance policy, Defendant Toni M. Cherry, in her role as partner with Defendant Paula M. Cherry, undertook the following steps in an attempt to avoid the ultimate consequences of her and her law partnership's inaction.

33. On or about December 29, 1995, Defendants Toni M. Cherry and Paula M. Cherry were conveyed, as Tenants in Common, two parcels of land situated in the City of Dubois, Clearfield County, Pennsylvania, ("subject premises"), by Deed of Eleanor L. Cherry, widow, dated December 29, 1995, and recorded in Clearfield County Deeds and Records Book Vol. 1728, Page 327, on December 29, 1995.

34. Defendants Toni M. Cherry and Paula M. Cherry remained in possession of the subject premises, with no change in ownership as Tenants in Common for over four years, until January, 2000.

35. By deed "dated" January 4, 2000, Defendants Toni M. Cherry and Paula M. Cherry conveyed their interest in the subject premises from themselves, as Tenants in Common, to Defendants P. Joseph Valigorsky, II, and Toni M. Cherry, husband and Wife, as Tenants by the Entireties as to an undivided one-half interest in the subject premises and as Tenants in Common as to the remaining undivided one-half interest; and Defendants Mark A. Piasio and Paula M. Cherry, husband and Wife, as Tenants by the Entireties as to an undivided one-half interest in the subject premises and as Tenants in Common as to the remaining undivided one-half interest.

36. On January 28, 2000, Defendants caused to be recorded the deed ostensibly transferring ownership of the subject premises on January 4, 2000.

37. In Pennsylvania, property owned by Tenants by the Entireties is not subject to the individual debts of either spouse. *Stauffer v. Stauffer*, 465 Pa. 558, 576 A.2d 236 (1976).

38. Under the Pennsylvania Uniform Fraudulent Transfer Act (“PUFTA”), a “creditor” is a person who has a claim; a “debtor” is a person liable on a claim; and a “debt” is liability on a claim. 12 Pa.C.S.A. § 5101(b).

39. Plaintiff here is a person with a claim, thus a creditor, against Defendants, who are persons liable on Plaintiff’s claim, thus debtors. The debt here is the liability of Defendants Toni M. Cherry, Paula M. Cherry, and their law partnership, on Plaintiff’s malpractice claim against Defendants.

40. PUFTA defines a “claim” as a “right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.” 12 Pa.C.S.A. § 5101(b).

41. Plaintiff’s claim is a right to payment that has not yet been reduced to judgment.

42. PUFTA states that a debtor is insolvent if, “at fair valuations, the sum of the debtor’s debts is greater than all of the debtor’s assets.” 12 Pa.C.S.A. § 5102(a).

43. Defendants Toni M. Cherry and Paula M. Cherry are insolvent because at fair valuation, the sum of their debt to Plaintiff is greater than the assets Defendants possess as their separate property subject to the debts of Defendants.

44. Pursuant to PUFTA § 5104, a transfer is fraudulent as to present and future creditors where the transferor made the transfer “with the actual intent to hinder, delay or defraud any creditor of the debtor.” 12 Pa.C.S.A. § 5104(a)(1). In determining actual intent, consideration may be given, among other factors, to whether:

- (1) the transfer or obligation was to an insider;
- (2) the debtor retained possession or control of the property transferred after the transfer;

...

- (4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
- (5) the transfer was of substantially all the debtor's assets;
- ...
- (9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (10) the transfer occurred shortly before or shortly after a substantial debt was incurred...

12 Pa.C.S.A. § 5104(b).

45. Defendants Toni M. Cherry and Paula M. Cherry transferred the subject premises to themselves and their husbands as Tenants by the Entireties with the actual intent to hinder Plaintiff in recovering damages sustained as a result of Defendants' malpractice. This intent is shown by the following factors:

- (1) the transfer was to Defendants and their husbands;
- (2) Defendants Toni M. Cherry and Paula M. Cherry retained possession or control of the property transferred after the transfer;
- (3) before the transfer was made, the Defendants were legally aware that they would be sued, and they were in fact threatened with suit;
- (4) the transfer was of substantially all the Defendants separate assets;
- (5) the Defendants became insolvent at the time of the transfer;
- (6) the transfer occurred contemporaneously with the incurrence of the substantial debt of Plaintiff's lawsuit.

46. Pursuant to PUFTA § 5104, a transfer is fraudulent as to present and future creditors if the debtor made the transfer "without receiving a reasonably equivalent value in exchange for the transfer...and the debtor...intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due." 12 Pa.C.S.A. § 5104(a)(2).

47. Defendants transferred the subject premises without receiving a reasonably equivalent value in exchange, and the Defendants reasonably should have believed that they would incur debts beyond their ability to pay.

48. PUFTA § 5105 concerns present creditors, and states:

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

12 Pa.C.S.A. § 5105.

49. The Defendants transfer is fraudulent as to Plaintiff, a present creditor, because Defendants made the transfer without receiving a reasonably equivalent value in exchange and the Defendants were insolvent at that time or the Defendants became insolvent as a result of the transfer.

50. Pursuant to PUFTA §§ 5104(a)(1), 5104(a)(2), and 5105, Defendant's transfer of the subject premises is fraudulent.

51. Pursuant to PUFTA § 5107, in an action for relief against a fraudulent transfer, a creditor may obtain: "Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim." 12 Pa.C.S.A. § 5107(a)(1).

52. Plaintiff is within her right to seek avoidance of the subject premises in order to keep Defendants assets within reach of Plaintiff for partial satisfaction of Plaintiff's claim against Defendants.

**Wherefore**, Plaintiff respectfully requests that this Court:

1. Find, pursuant to 12 Pa.C.S.A. § 5104(a)(1) and (b), that Defendants had the actual intent to hinder, delay or defraud Plaintiff.
2. Find, pursuant to 12 Pa.C.S.A. § 5104(a)(2), that Defendants were rendered insolvent by the transfer, for less than reasonably equivalent value, of the subject premises.
3. Find, pursuant to 12 Pa.C.S.A. § 5101(b), that Plaintiff is a present creditor, and that pursuant to 12 Pa.C.S.A. § 5105, Defendants were rendered insolvent by the transfer, for less than reasonably equivalent value, of the subject premises.
4. Enter an order, pursuant to 12 Pa.C.S.A. § 5107(a)(1), setting aside the aforesaid transfer, thus rendering the subject premises available to satisfy Plaintiff's claim.
5. Award such other and further equitable relief as is just.

Respectfully submitted:



---

James E. Mahood  
**Wilder & Mahood**

Jay N. Silberblatt  
**Silberblatt Mermelstein**

Attorneys for Linda E. Hoffman

## Verification

I VERIFY that the averments of fact contained in the foregoing Complaint in Equity 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. §4904, relating to unsworn falsification to authorities.

Date:

Oct. 31, 2003   
Linda Hoffman

**FILED**  
12/04/03 85.00  
1cc to Atty.  
DEC 30 2003

William A. Shaw  
Prothonotary

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

LINDA E. HOFFMAN,  
Plaintiff

: No. 03-1893-CD

vs.

TONI M. CHERRY, P. JOSEPH  
VALIGORSKY, II, PAULA M. CHERRY  
and MARK A. PIASIO,  
Defendants

: **ENTRY OF APPEARANCE**

: Counsel of Record for Plaintiff:  
**James E. Mahood, Esquire**  
PA. I.D. #20403  
WILDER & MAHOOD  
Firm #525  
10th Floor, Koppers Building  
Pittsburgh, PA 15219  
(412) 261-4040

:  
**Jay N. Silberblatt, Esquire**  
PA. I.D. #32253  
SILBERBLATT MERMELSTEIN, P.C.  
Firm #645  
2904 Gulf Tower  
707 Grant Street  
Pittsburgh, PA 15219  
(412) 232-0580

: Counsel of Record for Defendants:  
**Peter F. Smith, Esquire**  
PA. I.D. #34291  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

**FILED**

JAN 07 2004

William A. Shaw  
Prothonotary/Clerk of Courts

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

LINDA E. HOFFMAN, :  
Plaintiff : No. 03-1893-CD  
:  
vs. :  
:  
TONI M. CHERRY, P. JOSEPH :  
VALIGORSKY, II, PAULA M. CHERRY :  
and MARK A. PIASIO, :  
Defendants :  
:

**PRAECIPE**

To: William A. Shaw, Prothonotary

Dear Sir:

Please enter my appearance as attorney for all four Defendants in the above-captioned matter.

Respectfully submitted,



Peter F. Smith,  
Attorney for Defendants

Date: January 6, 2004

FILED NO  
OCT 6 2004 cc  
JAN 6 2004 EMM  
William A. Shaw  
Prothonotary/Clerk of Courts

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

LINDA E. HOFFMAN,  
Plaintiff

vs.  
No. 03-1893-CD

TONI M. CHERRY, P. JOSEPH  
VALIGORSKY, II, PAULA M. CHERRY  
and MARK A. PIASIO,  
Defendants

**ACCEPTANCE OF SERVICE**

Counsel of Record for Plaintiff:  
**James E. Mahood, Esquire**  
PA. I.D. #20403  
WILDER & MAHOOD  
Firm #525  
10th Floor, Koppers Building  
Pittsburgh, PA 15219  
(412) 261-4040

**Jay N. Silberblatt, Esquire**  
PA. I.D. #32253  
SILBERBLATT MERMELSTEIN, P.C.  
Firm #645  
2904 Gulf Tower  
707 Grant Street  
Pittsburgh, PA 15219  
(412) 232-0580

Counsel of Record for Defendants:  
**Peter F. Smith, Esquire**  
PA. I.D. #34291  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

**FILED**

JAN 07 2004

William A. Shaw  
Prothonotary/Clerk of Courts

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

LINDA E. HOFFMAN, :  
Plaintiff : No. 03-1893-CD  
vs. :  
TONI M. CHERRY, P. JOSEPH :  
VALIGORSKY, II, PAULA M. CHERRY :  
and MARK A. PIASIO, :  
Defendants :  
:

**ACCEPTANCE OF SERVICE**

As counsel for the Defendants in the above-captioned matter, I accept service of a copy of a certified copy of a complaint sent to me by Plaintiff's counsel and received January 6, 2004.

Respectfully submitted,

  
\_\_\_\_\_  
Peter F. Smith,  
Attorney for Defendants

Date: January 6, 2004

FILED

01/18/04  
JAN 07 2004  
cc  
SAC

William A. Shaw  
Prothonotary/Clerk of Courts

**PETER F. SMITH**  
ATTORNEY  
CLEARFIELD, PA. 16830  
814 - 765-5595

CERTIFIED TRUE AND CORRECT COPY

10  
P

ATTORNEY FOR

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

LINDA E. HOFFMAN, :  
Plaintiff : No. 03-1893-CD

vs. :

TONI M. CHERRY, P. JOSEPH :  
VALIGORSKY, II, PAULA M. CHERRY :  
and MARK A. PIASIO, :  
Defendants :  
TYPE OF CASE:  
**Civil**

TYPE OF PLEADING  
**Preliminary Objections**

Filed on Behalf of:  
**Defendants**

Counsel of Record for this Party:  
**Peter F. Smith**  
Supreme Court ID #34291  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

Counsel of Record for Plaintiff:  
**James M. Mahood, Esquire**  
PA I.D. #20403  
Wilder & Mahood  
Firm # 525  
10<sup>th</sup> Floor, Koppers Building  
Pittsburgh, PA 15219  
(412) 261-4040

**Jay N. Silberblatt, Esquire**  
PA I.D. #32253  
Silberblatt Mermelstein, P.C  
Firm #645  
2904 Gulf Tower  
707 Grant Street  
Pittsburgh, PA 15219  
(412) 232-0580

**FILED**

JAN 27 2004

William A. Shaw  
Prothonotary/Clerk of Courts

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

LINDA E. HOFFMAN, :  
Plaintiff : No. 03-1893-CD  
:  
vs. :  
:  
TONI M. CHERRY, P. JOSEPH :  
VALIGORSKY, II, PAULA M. CHERRY :  
and MARK A. PIASIO, :  
Defendants :  
:

**PRELIMINARY OBJECTIONS**

COMES NOW, the Defendants, by their attorney, Peter F. Smith, who makes the following  
Preliminary Objections to the complaint:

1. The complaint fails to state a cause of action against Paula M. Cherry and Mark A. Piasio, husband and wife, and should be dismissed as to them pursuant to Pa.R.C.P. 1028(a)(4).
2. The complaint alleges that Paula M Cherry and Mark A. Piasio engaged in a fraudulent transfer when Paula M. Cherry transferred her undivided one-half interest in an office building in the City of DuBois to herself and her husband jointly. That transfer is described in paragraph 35 of the complaint.
3. The fraudulent transfer allegation against Paula M. Cherry, in her individual capacity, is predicated upon liability alleged by the Plaintiff Linda E. Hoffman in a separate action against Toni M. Cherry and the law firm of Gleason, Cherry & Cherry, L.L.P., at Clearfield County Docket Number 00-96-CD.
4. Any liability in this case against Mark A. Piasio is premised upon liability against his wife Paula M. Cherry because Mark A. Piasio is not and was not a member of the law firm of Gleason, Cherry & Cherry, L.L.P. or its predecessor Gleason, Cherry & Cherry and P.C., and he is not named as a defendant in the other case at No. 00-96-CD. He is named in this case only as a transferee of the subject real estate.

5. The Plaintiff cannot establish personal liability against Paula M. Cherry as a matter of Pennsylvania Law for the following reasons.

6. The underlining malpractice action brought by Plaintiff at Clearfield County No. 00-96-CD does not name Paula M. Cherry has a Defendant. (A true and correct copy of the complaint filed in that action is attached to these Preliminary Objections for the Court's convenience.)

7. Rather the complaint names Toni M. Cherry and the firm of Gleason, Cherry & Cherry, L.L.P. as Defendants.

8. The firm of Gleason, Cherry & Cherry, L.L.P. was a professional corporation at the time the Plaintiff engaged the services of Attorney Toni M. Cherry on September 20, 1995.

9. As indicated by the "L.L.P." designation which Plaintiff use throughout the complaints in both actions, the firm was subsequently converted from a professional corporation to a limited liability partnership and continues as such.

10. Not one of the malpractice complaint's 47 paragraphs and its 27 subparagraphs specifically alleges that Paula M. Cherry undertook the representation, in whole or in part, of Plaintiff.

11. The Business Corporation Law of 1988, as amended, at 15 P.A.C.S.A. §2925(b) limits the liability of a shareholder in a professional corporation to damages for what that shareholder actually did or failed to do and for the actions of those whom that particular shareholder supervised.

12. The liability of a partner in a Limited Liability Partnership is restricted in a similar fashion:

**(a) General Rule.** -- Except as provided in subsection (b), a partner in a registered limited liability partnership shall not be individually liable, directly or indirectly, whether by way of indemnification, contribution or otherwise for debts and obligations of, or chargeable to, the partnership that arise from any negligent or wrongful acts or misconduct committed by another partner or representative of the partnership.

15 P.A.C.S.A. §8203.

13. As admitted by paragraph 33 of the complaint in this action, the subject real estate was conveyed to Toni M. Cherry and Paula M. Cherry, in their personal capacities, as Tenants in Common.

14. As shown by the Complaint, the subject real estate was never an asset of Gleason, Cherry & Cherry, P.C. nor of Gleason, Cherry & Cherry, L.L.P.

15. Since Paula M. Cherry cannot be held personally liable for the injuries alleged in the underlining action at Number 00-96-CD, the Plaintiff cannot have a "claim" against Paula M. Cherry as defined by the Pennsylvania Uniform Fraudulent Transfer Act (PUFTA) at 12 P.A.C.S.A. §5101(b).

16. By definition then, Paula M. Cherry's transfer of her interest to herself and her husband Mark A. Piasio as Tenants by the Entireties cannot be a fraudulent transfer under PUFTA.

WHEREFORE, Defendants Paula M. Cherry and Mark A. Piasio pray that the complaint against them be dismissed with prejudice.

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Defendants

FILED 4cc  
01/03/2004 Amy Smith  
JAN 27 2004

*ccd*  
William A. Shaw  
Prothonotary/Clerk of Courts

**PETER F. SMITH**  
ATTORNEY  
CLEARFIELD, PA. 18830  
814 - 765-5595

CERTIFIED TRUE AND CORRECT COPY

ATTONEY FOR

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

LINDA E. HOFFMAN, :  
Plaintiff : No. 03-1893-CD  
:  
vs. :  
:  
TONI M. CHERRY, P. JOSEPH :  
VALIGORSKY, II, PAULA M. CHERRY :  
and MARK A. PIASIO, :  
Defendants :  
:

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendants, certify that I sent a copy of Defendants'  
**PRELIMINARY OBJECTIONS** to the Attorneys for Plaintiff by U.S. First Class Mail, Postage  
Prepaid on January 27, 2004 at the following addresses:

James E. Mahood, Esquire  
Wilder & Mahood  
Firm #525  
10th Floor, Koppers Building  
Pittsburgh, PA 15219

Jay N. Silberblatt, Esquire  
Silberblatt Mermelstein, P.C.  
Firm #645  
2904 Gulf Tower  
707 Grant Street  
Pittsburgh, PA 15219

Respectfully submitted,

Date: 1/27/04



Peter F. Smith  
Attorney for Defendants

**FILED**

JAN 27 2004

William A. Shaw  
Prothonotary/Clerk of Courts

FILED No cc

2004 JAN 27 2004

William A. Shaw  
Prothonotary/Clerk of Courts

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

LINDA E. HOFFMAN

vs. : No. 03-1893-CD

TONI M. CHERRY, P. JOSEPH  
VALIGORSKY, II, PAULA M.  
CHERRY and MARK A. PIASIO

ORDER

NOW, this 29 day of January, 2004, upon consideration of  
recusal of both Judges sitting in the 46<sup>th</sup> Judicial District, it is the ORDER of this  
Court that the Court Administrator of Clearfield County refer the above-captioned  
civil matter to Administrative Regional Unit II for assignment of a specially presiding  
judicial authority.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

FILED

FEB 03 2004

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

cc

2/3/04  
FEB 03 2004  
E-62  
to CIA for service

William A. Shaw  
Prothonotary/Clerk of Courts

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

LINDA E. HOFFMAN

vs.

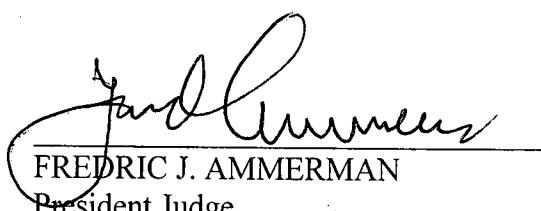
: No. 03-1893-CD

TONI M. CHERRY, P. JOSEPH  
VALIGORSKY, II, PAULA M.  
CHERRY and MARK A. PIASIO

**O R D E R**

AND NOW, this 18 day of February, 2004, it is the ORDER of the Court that argument on Defendants' Preliminary Objections in the above matter has been scheduled for Wednesday, March 3, 2004 at 2:00 P.M., before the Honorable J. Michael Williamson, Specially Presiding, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN

President Judge

FILED

FEB 18 2004

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED** 1cc AAG Mahood  
1cc AAG Silverblatt  
1cc AAG P. Smith  
William A. Shaw  
Prothonotary/Clerk of Court  
to CLA *PA*

02/18/2004  
FEB 18 2004  
1cc AAG P. Smith  
William A. Shaw  
Prothonotary/Clerk of Court  
to CLA *PA*

CA

# In the Court of Common Pleas of Clearfield County, Pennsylvania

Linda E. Hoffman,

Plaintiff

Civil Division

No. 03-1893-CD

vs.

Toni M. Cherry, P. Joseph  
Valigorsky, II, Paula M. Cherry  
and Mark A. Piasio,

Defendants

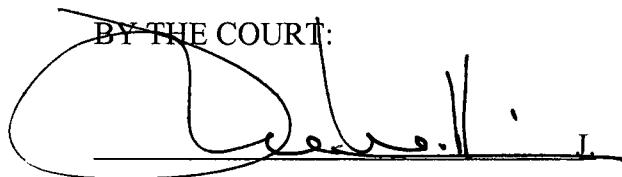
## Order of Court

AND NOW, this 4<sup>th</sup> day of March, 2004, upon consent of the parties through their counsel signed below, it is hereby

**ORDERED AND DECREED** that Paula M. Cherry and Mark A. Piasio be and hereby are dismissed as Defendants in the above captioned action and the caption herein shall be amended to delete said individuals henceforth.

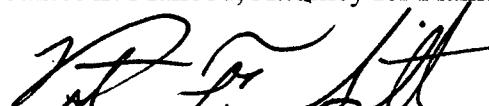
**IT IS FURTHER ORDERED** that the Answer of Defendants, Toni M. Cherry and P. Joseph Valigorsky, II, shall be filed and served upon counsel for Plaintiff on or before March 8, 2004.

BY THE COURT:



Consented to:

  
James E. Mahood, Attorney for Plaintiff

  
Peter F. Smith, Attorney for Defendants

**FILED**

MAR 08 2004

William A. Shaw  
Prothonotary

FILED

cc Atty Ma Jorblatt  
cc Atty Subenblatt  
cc Atty P Smith

MAR 08 2004

6/24

William A. Shaw  
Prothonotary

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

LINDA E. HOFFMAN,  
Plaintiff

vs.

TONI M. CHERRY and P. JOSEPH  
VALIGORSKY, II,  
Defendants

: No. 03-1893-CD

: Type of Pleading:  
**ANSWER & NEW MATTER**

: Filed on Behalf of:  
**DEFENDANTS**

: Counsel of Record for Defendants:  
**Peter F. Smith, Esquire**  
PA. I.D. #34291  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

: Counsel of Record for Plaintiff:  
**James E. Mahood, Esquire**  
PA. I.D. #20403  
WILDER & MAHOOD  
Firm #525  
10th Floor, Koppers Building  
Pittsburgh, PA 15219  
(412) 261-4040

:  
**Jay N. Silberblatt, Esquire**  
PA. I.D. #32253  
SILBERBLATT MERMELSTEIN, P.C.  
Firm #645  
2904 Gulf Tower  
707 Grant Street  
Pittsburgh, PA 15219  
(412) 232-0580

**FILED**

MAR 08 2004

William A. Shaw  
Prothonotary/Clerk of Courts

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

LINDA E. HOFFMAN,	:	
Plaintiff	:	No. 03-1893-CD
vs.	:	
TONI M. CHERRY, and P. JOSEPH	:	
VALIGORSKY, II,	:	
Defendants	:	

**NOTICE TO DEFEND**

To: Linda E. Hoffman

You are hereby notified to file a written response to the following New Matter within twenty (20) days from the service hereof or a judgment may be entered against you.

Date: 3/8/07



Peter F. Smith, Esquire  
Attorney for Defendants  
P. O. Box 130  
30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

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

LINDA E. HOFFMAN,	:	
Plaintiff	:	No. 03-1893-CD
vs.	:	
TONI M. CHERRY, and P. JOSEPH	:	
VALIGORSKY, II,	:	
Defendants	:	

**ANSWER & NEW MATTER**

COMES NOW, the Defendants by their Attorney, Peter F. Smith, who answer the complaint as follows:

1. Admitted, except that it is believed that the Plaintiff has remarried and is now known as Linda E. Thomas.
2. Admitted.
3. Admitted.
4. Neither admitted nor denied because Paula M. Cherry is no longer a party to this case pursuant to this Court's Order dated March 4, 2004. Defendants further aver that this allegation should be stricken because it is not pertinent to the issues of this litigation and because of its scandalous nature.
5. Neither admitted nor denied because Mark A. Piasio is no longer a party to this case pursuant to this Court's Order dated March 4, 2004. Defendants further aver that this allegation should be stricken because it is not pertinent to the issues of this litigation and because of its scandalous nature.

6. Denied as stated. Defendant Toni M. Cherry and her firm, which previously was a Pennsylvania professional corporation and since January 1996 has been a limited liability partnership, entered into a contractual arrangement with the Plaintiff. Denied that her "partner" Paula M. Cherry entered into any contractual relationship with the Plaintiff, and further averred that Defendant P. Joseph Valigorsky, II had no contract, arrangement or professional relationship with the Plaintiff whatsoever. The scope of Defendant Toni M. Cherry's professional relationship with the Plaintiff is contained in an engagement letter dated September 20, 1995 and which is attached hereto as Defendants' Exhibit 1.

The reference to Paula M. Cherry should be stricken because it is not pertinent to the issues of this litigation and because of its scandalous nature.

7. Denied as stated. To the contrary, the Plaintiff advised Defendant Toni M. Cherry that her husband Robert E. Hoffman had a "pension." Denied that Plaintiff ever advised Defendant P. Joseph Valigorsky of any retirement benefits, including but not limited to benefits from the Pennsylvania State Employees' Retirement System ("SERS").

8. Denied as stated. To the contrary, Plaintiff either so advised Defendant Toni M. Cherry on September 20, 1995 or sometime shortly thereafter that Plaintiff was the beneficiary designated to receive death benefits of her husband's SERS retirement account, and further averred that Plaintiff never so advised the other Defendant.

9. Denied as stated. To the contrary, Plaintiff did mention the IRA to Defendant Toni M. Cherry but did not specify that her husband had sole control over it. Rather she referred to this asset as one that had been rolled over as "our stocks." Plaintiff further advised Toni M. Cherry that the stocks were in a joint account held by the Plaintiff and Robert E. Hoffman.

Further averred that Plaintiff never provided this information directly to the other Defendant, nor did Plaintiff specify that the IRA had been funded with monies received from the SERS retirement benefit earned during the marriage.

The reference to Paula M. Cherry should be stricken because it is not pertinent to the issues of this litigation and because of its scandalous nature.

10. Denied for the reasons set forth in paragraph 9 above.

11. Admitted that Defendant Toni M. Cherry did not take those actions, but denied that this in any way makes Defendant Toni M. Cherry liable to Plaintiff because Plaintiff informed her that she had been listed as the beneficiary of the SERS account and that she was a joint owner of the IRA and that her husband would never seek to change her as a named beneficiary. Also denied because Mr. Hoffman's divorce counsel caused Defendant Toni M. Cherry to believe that the beneficiary designations had not been changed and would not be changed. Also denied because to the best of Defendant Toni M. Cherry's knowledge, Plaintiff's husband did not "dissipate" the SERS retirement account nor was he entitled to "dissipate" that account. Further denied that changing beneficiary designation "harmed" the Plaintiff because only a portion of these items were marital property and part of the marital estate, and they were still subject to equitable division either by the parties' agreement or Order of Court. Consequently, it is not certain that the Plaintiff would have acquired even a portion, if any, of these assets and proof to the contrary is demanded.

This averment is further denied because had a petition been filed with the Court of Common Pleas of Clearfield County "to maintain the status quo with regard to the SERS and IRA accounts", it is not certain an Order would have been issued by the Court to such effect and

proof to the contrary is demanded. This averment is denied in its totality as to the Defendant P. Joseph Valigorsky, II because he never made a personal undertaking or engaged a personal obligation to take these actions on behalf of the Plaintiff.

The reference to Paula M. Cherry should be stricken because it is not pertinent to the issues of this litigation and because of its scandalous nature.

12. Admitted and further averred that Toni M. Cherry had no knowledge of the change in beneficiary of the SERS account until after the death of Robert E. Hoffman.

13. Admitted and further averred that Toni M. Cherry had no knowledge of the change in beneficiary of the IRA until after the death of Robert E. Hoffman.

14. Admitted.

15. After reasonable investigation, the Defendants are without knowledge or information sufficient to confirm the truth of this averment. It is therefore denied and strict proof thereof is demanded at trial.

16. After reasonable investigation, the Defendants are without knowledge or information sufficient to confirm the truth of this averment. It is therefore denied and strict proof thereof is demanded at trial.

17. Admitted, except the reference to Defendant Toni M. Cherry's "law partnership" is denied because she was a member of a limited liability partnership at all times pertinent to this litigation.

18. Admitted, except the reference to Defendant Toni M. Cherry's "law partnership" is denied because she was a member of a limited liability partnership at all times pertinent to this litigation.

19. Admitted, except the reference to Defendant Toni M. Cherry's "law partnership" is denied because she was a member of a limited liability partnership at all times pertinent to this litigation.

20. Admitted.

21. Admitted.

22. Admitted, except the reference to Defendant Toni M. Cherry's "law partnership" is denied because she was a member of a limited liability partnership at all times pertinent to this litigation.

23. Admitted.

24. Admitted.

25. Admitted.

26. While it is admitted that Defendant Toni M. Cherry did not take the action alleged prior to the death of Plaintiff's husband, it is denied that this makes her liable to the Plaintiff. It is denied that had any "action" been taken by her prior to the death of Robert E. Hoffman, such action would have prevented him from changing the beneficiary designations and proof to the contrary is demanded.

The reference to Paula M. Cherry should be stricken because it is not pertinent to the issues of this litigation and because of its scandalous nature.

27. Defendant Toni M. Cherry's qualifications as an attorney licensed to practice in Pennsylvania since 1979 are admitted, but the balance of this averment is denied. It is specifically denied that she was in any way negligent or liable to the Plaintiff for the following reasons. Based on the information provided to Ms. Cherry by Plaintiff, the information of which

Ms. Cherry was or should reasonably have been aware, practice in the Clearfield area, the representations of Mr. Hoffman's attorney and Ms. Cherry's evaluation of this case, she at all times acted in a competent and professional manner and did not do or fail to do anything which proximately caused an economic loss to the Plaintiff.

28. Denied for the reasons stated in paragraph 27. The reference to Paula M. Cherry should be stricken because it is not pertinent to the issues of this litigation and because of its scandalous nature.

29. Denied. Although Attorney Mahood's letter is dated January 26, 2000, it was mailed from Pittsburgh, Pennsylvania and would not have reached Defendant Toni M. Cherry for at least two days if not longer.

The reference to Defendant Toni M. Cherry's "law partnership" should be stricken because she was a member of a limited liability partnership at all times pertinent to this litigation.

30. Denied as stated. Ms. Cherry did not actually know the limits of her professional liability policy at that time.

31. Denied for the reason stated in answer 30 and for the reasons stated in paragraph 27. The references to Defendant Toni M. Cherry's "law partnership" should be stricken because she was a member of a limited liability partnership at all times pertinent to this litigation.

32. Any allegation of negligence as to Toni M. Cherry or the limited liability partnership actually is denied for the reasons set forth in answer 27 above. The reference to policy limits is denied on the basis of answer 30 above. Therefore, the allegation that Ms. Cherry "undertook the following steps in attempt to avoid the ultimate consequences of her and her law partnership's inaction" is denied. She was not negligent and therefore is not liable to Plaintiff.

Consequently, the deed discussed in those following paragraphs does not constitute a fraudulent transfer under the act.

The reference to Paula M. Cherry should be stricken because it is not pertinent to the issues of this litigation and because of its scandalous nature.

33. Admitted.

34. Admitted.

35. Admitted and further averred that the deed was acknowledged before a notary public on that same date, to wit; January 4, 2000.

36. Admitted that the deed was recorded on January 28, 2000. The insinuation of "ostensibly" is denied. Title was transferred by this deed when it was executed, acknowledged and delivered on January 4, 2000 as a matter of Pennsylvania law.

37. Neither admitted nor denied because it is a statement of law to which no answer is required.

38. Neither admitted nor denied because it is a statement of law to which no answer is required.

39. Denied. This legal argument is based on a false premise which Plaintiff cannot prove because it is denied that the Plaintiff has any claim against the Defendants for the reasons set forth in paragraphs 7, 8, 9, 11, 12, 26 and 27 above.

The reference to Paula M. Cherry should be stricken because it is not pertinent to the issues of this litigation and because of its scandalous nature.

40. Neither admitted nor denied because it is a statement of law to which no answer is required.

41. Denied that Plaintiff has any entitlement to payment from the Defendants and further averred that Plaintiff's claim has not even been listed for trial.

42. Neither admitted nor denied because it is a statement of law to which no answer is required.

43. Denied that Ms. Cherry has any liability to the Plaintiff and further denied because the Defendants are paying their obligations in due course, and they have and had at the time of the real estate conveyance at issue a positive net worth.

The reference to Paula M. Cherry should be stricken because it is not pertinent to the issues of this litigation and because of its scandalous nature.

44. Denied as a statement of law to which no answer is required. In the event that it be deemed at least partially an averment of fact, it is denied that any transfer was made for the purpose or with the intent of defrauding creditors.

45. Denied that Ms. Cherry is in any way liable to the Plaintiff, and further denied that the transfer was made prior to notice of Plaintiff's claim. The transfer was made in recognition of the financial support that P. Joseph Valigorsky, II has given Toni M. Cherry during the course of their marriage in both her personal and professional endeavors. This conveyance to a joint tenancy by the entireties is consistent with their holdings of other property and their practice as a married couple.

The reference to Paula M. Cherry should be stricken because it is not pertinent to the issues of this litigation and because of its scandalous nature.

46. Neither admitted nor denied because it is a statement of law to which no answer is required.

47. Denied for the reasons set forth in answers 43 and 45.

48. Neither admitted nor denied because it is a statement of law to which no answer is required. It is specifically denied that P. Joseph Valigorsky, II did not provide adequate consideration for the reasons stated in answer 45. Additionally, he supervised the remodeling of the office building subject to the deed at issue in this litigation and has since supervised and sometimes performed its maintenance.

49. Denied for the reasons set forth in paragraph 45.

50. Denied for the reasons set forth in paragraphs 43 and 45.

51. Neither admitted nor denied because it is a statement of law to which no answer is required. Denied that Plaintiff is a "creditor" because Defendants are not liable to her. Therefore, it is denied that she is entitled to avoid this conveyance under the act.

52. Denied that Plaintiff has any right to avoid this transfer, and she must first succeed on the merits of her claim against Defendant Toni M. Cherry and Gleason, Cherry and Cherry, LLP.

WHEREFORE, Defendants respectfully request that the Court deny Plaintiff's prayers for relief.

#### **NEW MATTER**

53. Paragraphs 1- 52 of the Answer are referred to and incorporated herein as those set forth in full.

54. Plaintiff's claim is barred by the Doctrine of Laches. She and her attorneys have been dilatory in the prosecution of her claim against Defendant Toni M. Cherry and Gleason,

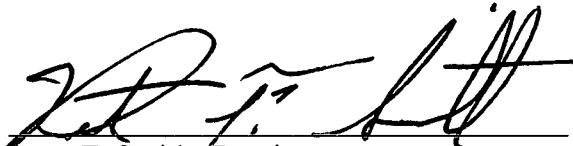
Cherry & Cherry, LLP at Clearfield County Number 00-96-CD.

55. Plaintiff is not entitled to equitable relief on the basis of "unclean hands" because: She failed to provide Defendant Toni M. Cherry with information necessary to evaluate the marital estate and failed to keep Ms. Cherry informed as the situation between Plaintiff and her deceased husband evolved; Plaintiff also failed to keep Ms. Cherry involved and by-passed her and communicated directly with Mr. Hoffman and Mr. Hoffman's attorney, and she misinformed Ms. Cherry of her husband's attitude toward her and the likelihood that he would change her designation as the beneficiary of his SERS and IRA accounts.

56. The conveyance at issue is not a fraudulent transfer because P. Joseph Valigorsky, II took title in good faith and for reasonably equivalent value as stated at 45 and 48 above.

WHEREFORE, Defendants respectfully request that the Court deny Plaintiff's prayers for relief.

Respectfully submitted,

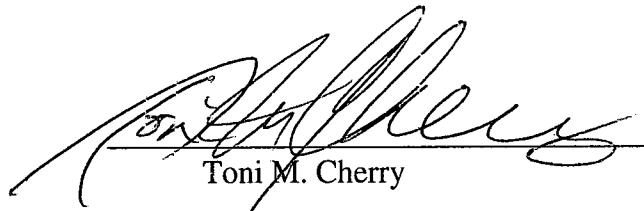


Peter F. Smith, Esquire  
Attorney for Defendants

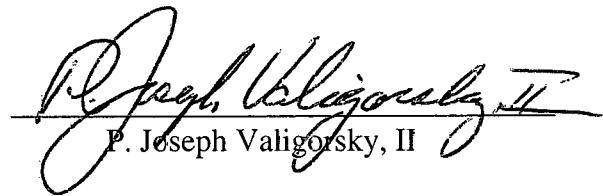
Date: March 8, 2004

## VERIFICATION

I, TONI M. CHERRY and P. JOSEPH VALIGORSKY, II, Defendants, verify that the information provided in the foregoing Answer and New Matter is true and correct to the best of our knowledge, information and belief. We understand that false statements therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.



Toni M. Cherry



P. Joseph Valigorsky, II

DATED: March 5, 2004

LAW OFFICES  
GLEASON, CHERRY AND CHERRY, P.C.  
P. O. Box 605  
DUBOIS, PENNSYLVANIA 15801-0505

TONI M. CHERRY  
PAULA M. CHERRY  
EDWARD V. CHERRY  
1950-1980  
JAMES A. GLEASON  
1946-1978

AREA CODE 814  
371-8800  
FAX NUMBER  
(814) 371-0936

ONE NORTH FRANKLIN STREET

September 20, 1995

Mrs. Linda E. Hoffman  
c/o Mr. William Powers  
1208 South Brady Street  
DuBois, PA 15801

In re: Fee Agreement

Dear Linda:

This letter is to serve as confirmation of our law firm's representation of you and clarification of the general basis upon which fees will be charged by our firm. You have paid a retainer this date of \$500.00 for our representation of you in your domestic matter. The retainer will be credited toward the overall fee in your case. Additional fees, if any, will depend primarily on the time, effort and costs incurred by our representation of you.

During the course of the particular matter for which representation has been accepted, if time and cost charges exceed the amount of the retainer, you will receive additional bills in accordance with our firm's policy, normally on a monthly basis. Each bill you receive will be fully itemized with respect to the time spent, work performed, and charges and costs incurred. It is understood that during the course of this representation our time will be kept at the then-prevailing hourly rate for the person performing the service, with minimum charges in six-minute intervals for all work performed. A minimum of .2 of an hour time charge for telephone conversations; there will be a minimum of .3 of an hour charge in connection with correspondence pertaining to your matter. You will be billed for travel time to and from court at the same rate as the other out-of-court charges. As I told you during our visit on this date, my hourly rate is presently \$100.00.

All bills submitted are to be paid promptly, but no later than thirty (30) days after submission. In the event we are required to institute any legal action for collection of fees or costs due us for services, we have a right also to receive reasonable attorney's fees and costs involved in bringing such action. We reserve the right to terminate our attorney/client relationship for non-payment of fees or costs.

EXHIBIT

tabbies

"1"

Mrs. Linda E. Hoffman

Page Two

September 20, 1995

We will keep you informed about the progress of your case. We will send you copies of all papers coming into and going out of this office, including correspondence, pleadings and other court documents. Your file will always be open for your inspection at any reasonable time. We always attempt to return all telephone calls promptly. If no one is available when you call, we will return your call as quickly as possible, but, under certain circumstances, we might have some delay in returning calls, particularly when preparing for or in trial in another case.

Every effort will be made to expedite your case promptly and efficiently according to the highest legal and ethical standards. However, it is impossible to predict the course that a domestic dispute and action for economic relief will take. Sometimes it expands into property questions and various forms of litigation, all of which you are retaining us to handle on your behalf. It is also impossible to determine in advance the amount of time that will be needed to complete your case. We will use our best judgment to determine the amount of time, who is to perform the work, and the nature of the services to be performed in your best interest. We will keep you as fully informed as possible of all the time devoted to your case by us.

You understand that we have made no guarantees about the disposition of any phase of this matter or matters for which we have been retained, as all statements made by us are only our opinions.

We previously discussed these matters with you in your initial consultation with us this date, but we wanted you to have the terms of our representation in this writing for your reference. We appreciate the opportunity to be of service to you.

Very truly yours,

GLEASON, CHERRY AND CHERRY, P.C.

By \_\_\_\_\_

Toni M. Cherry

TMC:mls

FILED  
1/10  
Clerk  
1/24/04  
MAR 08 2004  
Clerk

William A. Shaw  
Prothonotary/Clerk of Courts

**PETER F. SMITH**  
ATTORNEY  
30 SOUTH SECOND STREET  
P.O. BOX 130  
CLEARFIELD, PA. 16830

**PETER F. SMITH**  
ATTORNEY  
CLEARFIELD, PA. 16830  
814 - 765-5595

CERTIFIED TRUE AND CORRECT COPY

ATTONEY FOR

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

LINDA E. HOFFMAN, Plaintiff	:	
	:	No. 03-1893-CD
vs.	:	
TONI M. CHERRY, P. JOSEPH VALIGORSKY, II, Defendants	:	

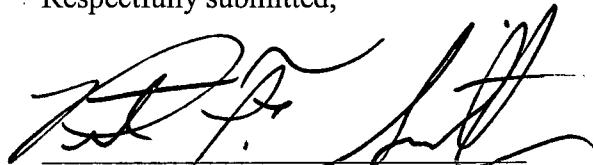
**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendants, certify that I sent a copy of Defendants' **ANSWER & NEW MATTER** to the Attorneys for Plaintiff by U.S. First Class Mail, Postage Prepaid on March 8, 2004 at the following addresses:

James E. Mahood, Esquire  
Wilder & Mahood  
Firm #525  
10th Floor, Koppers Building  
Pittsburgh, PA 15219

Jay N. Silberblatt, Esquire  
Silberblatt Mermelstein, P.C.  
Firm #645  
2904 Gulf Tower  
707 Grant Street  
Pittsburgh, PA 15219

Respectfully submitted,



Peter F. Smith  
Attorney for Defendants

Date: March 8, 2004

**FILED**

**MAR 08 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

*No  
ce*

*Mar 10 2004*  
*WAS*  
*MAP 08 2004*

William A. Shaw  
Prothonotary/Clerk of Courts

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

LINDA E. HOFFMAN, )  
Plaintiff )  
 )  
v. ) NO. 00-96-CD  
 )  
TONI M. CHERRY and GLEASON, )  
CHERRY AND CHERRY, L.L.P., )  
Defendants )

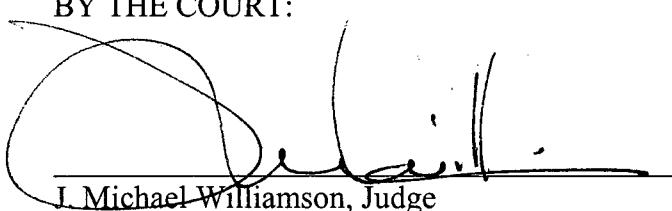
- and -

LINDA E. HOFFMAN, )  
Plaintiff )  
 )  
v. ) NO. 03-1893-CD  
 )  
TONI M. CHERRY, P. JOSEPH )  
VALIGORSKY, II, PAULA M. )  
CHERRY, and MARK A. PIASIO, )  
Defendants )

ORDER

NOW, this 18th day of March, 2004, a conference/argument on all outstanding motions shall be held before the undersigned on Thursday, May 6, 2004, at 1:30 p.m., in Court Room No. 1 of the Clinton County Courthouse, Lock Haven, Pennsylvania.

BY THE COURT:

  
J. Michael Williamson, Judge

XC: James E. Mahood, Esquire  
Jay N. Silberblatt, Esquire  
Dennis J. Roman, Esquire  
Peter F. Smith, Esquire  
Court Administrator

MICHAEL WILLIAMSON  
JUDGE  
COURT OF COMMON PLEAS  
25TH JUDICIAL DISTRICT  
OF PENNSYLVANIA  
COURT HOUSE  
LOCK HAVEN, PA 17745

FILED

MAR 22 2004

William A. Shaw  
Prothonotary/Clerk of Courts

FILED

MAR 22 2004

William A. Shaw  
Prothonotary

E. *[Signature]*

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

**Linda E. Hoffman,**

Plaintiff

vs.

**Toni M. Cherry and  
P. Joseph Valigorsky, II,**

Defendants

**Civil Division**

**No. 03-1893-CD**

**Reply to New Matter**

Code:

Filed on Behalf of:  
**Linda E. Hoffman, Plaintiff**

Counsel of Record  
for this Party:  
**James E. Mahood**  
Pa. I.D. #20403

**Wilder & Mahood**  
Firm #525  
10th Floor, Koppers Building  
Pittsburgh, PA 15219  
(412) 261-4040

**Jay N. Silberblatt**  
Pa. I.D. #32253

**Silberblatt Mermelstein, P.C.**  
Firm #645  
2904 Gulf Tower  
707 Grant Street  
Pittsburgh, PA 15219  
(412) 232-0580

**FILED**

MAR 24 2004

William A. Shaw  
Prothonotary

**In the Court of Common Pleas of Clearfield County, Pennsylvania  
Civil Division**

<b>Linda E. Hoffman,</b>	)	<b>Civil Action - Equity</b>
	)	
Plaintiff	)	
	)	<b>Case No. 03-1893-CD</b>
vs.	)	
	)	
<b>Toni M. Cherry, P. Joseph</b>	)	
<b>Valigorsky, II,</b>	)	
	)	
Defendants	)	

**Reply to New Matter**

**Linda E. Hoffman**, Plaintiff, by her attorneys, James E. Mahood and Wilder & Mahood and Jay N. Silberblatt and Silberblatt Mermelstein, respectfully represents that:

53. The matters set forth in paragraph 53 of Defendants' New Matter require no responsive pleading.

54. It is denied that Plaintiff's claim is barred by the doctrine of laches. On the contrary, the doctrine of laches has no application herein. It is further denied that Plaintiff has in any manner been dilatory in the prosecution of the claims raised herein against Defendants. On the contrary, such claims were promptly raised upon discovery of the cause of action against Defendants herein.

55. The averments set forth in paragraph 55 are specifically denied and strict proof thereof demanded. It is further specifically denied that the doctrine of "unclean hands" has any application herein as a matter of law, equity or fact. By way of further response, it is specifically denied that Plaintiff failed to provide Defendant, Toni M. Cherry with requisite

information and, on the contrary, Defendant Toni M. Cherry was negligent and failed to properly advise or inquire of Plaintiff directly resulting in substantial damage to Plaintiff.

56. The averments set forth in paragraph 56 are specifically denied and strict proof thereof demanded. On the contrary, Plaintiff believes and therefore asserts that Defendant P. Joseph Valigorsky did not act in good faith herein, nor is such relevant in any event. It is further averred that the allegations set forth in paragraph 56 are incompetent and barred by the statute of frauds and parol evidence rule.

Respectfully submitted:



James E. Mahood  
**Wilder & Mahood**

Jay N. Silberblatt  
**Silberblatt Mermelstein**

Attorneys for Linda E. Hoffman

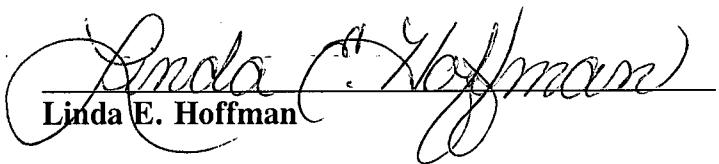
G:\doc\hoffman linda\reply 031204.doc

## Verification

I VERIFY that the averments of fact contained in the foregoing Reply to New Matter 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. §4904, relating to unsworn falsification to authorities.

Date:

19 March 2004

  
Linda E. Hoffman

## **Certificate of Service**

**I hereby certify** that a copy of the foregoing Reply to New Matter was served upon the person and on the date and manner below indicated:

**FIRST CLASS MAIL**  
Peter F. Smith, Esquire  
30 S. Second Street  
P.O. Box 130  
Clearfield, PA 16830

Date: 3/22/04



James E. Mahood  
**Wilder & Mahood**  
Attorneys for Plaintiff

FILED

M 10500 WCC

MAR 24 2004

CR

William A. Shaw  
Prothonotary

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

LINDA E. HOFFMAN :

vs. :

No. 00-96-CD

TONI M. CHERRY, individually and  
GLEASON, CHERRY & CHERRY,  
L.L.P., a Partnership :

LINDA E. HOFFMAN :

vs. :

No. 03-1893-CD

TONI M. CHERRY, P. JOSEPH  
VALIGORSKY, II, PAULA M.  
CHERRY and MARK A. PIASIO :

FILED

MAY 04 2004

William A. Shaw  
Prothonotary/Clerk of Courts

ORDER

AND NOW, this 3rd day of April, 2004, it is the ORDER of the Court  
that Conference/Argument on all Outstanding Motions in the above matters has been  
rescheduled from May 6, 2004 to Tuesday, May 18, 2004 at 1:30 P.M., before the  
Honorable J. Michael Williamson, Specially Presiding, Clearfield County Courthouse,  
Clearfield, PA. Please report to the Court Administrator's Office. You will be  
directed from there where this conference will be held.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

RECEIVED  
MAY 10 2004

APR 10 2004  
RECEIVED  
MAY 10 2004

FILED  
OCT 12 2004  
MAY 04 2004  
William A. Shaw  
Prothonotary/Clerk of Courts  
See to  
014 for service  
Aff

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

LINDA E. HOFFMAN

vs.

No. 00-96-CD

TONI M. CHERRY, individually and  
GLEASON, CHERRY & CHERRY,  
L.L.P., a Partnership

**FILED**

**MAY 07 2004**

LINDA E. HOFFMAN

vs.

No. 03-1893-CD

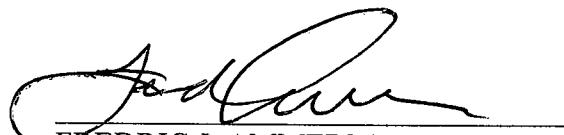
TONI M. CHERRY, P. JOSEPH  
VALIGORSKY, II, PAULA M.  
CHERRY and MARK A. PIASIO

William A. Shaw  
Prothonotary/Clerk of Courts

**ORDER**

AND NOW, this 7 day of May, 2004, it is the ORDER of the Court that  
Conference/Argument on all Outstanding Motions in the above matters has been  
rescheduled from May 6, 2004 to Tuesday, May 18, 2004 at 1:30 P.M., before the  
Honorable J. Michael Williamson, Specially Presiding, Clearfield County Courthouse,  
Clearfield, PA. Please report to the Court Administrator's Office. You will be  
directed from there where this conference will be held.

BY THE COURT:



FREDRIC J. AMMERMAN  
President Judge

Case 1:3

US v. YAN

Confidential

FILED  
01/30/04  
MAY 07 2004  
SCC  
CIA for service  
William A. Shaw  
Prothonotary/Clerk of Courts  
Ko

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

LINDA E. HOFFMAN

-vs-

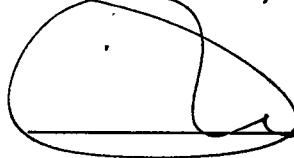
No. 03-1893-CD

TONI M. CHERRY, P. JOSEPH  
VALIGORSKY, II, PAULA M.  
CHERRY and MARK A. PIASIO

ORDER

NOW, this 18th day of May, 2004, based upon the agreement of the parties, it is hereby ORDERED that Defendants Cherry and Valigorsky are enjoined from transferring or encumbering in any manner their real estate in the City of DuBois, Clearfield County, more fully described in Clearfield County Deed Book 1728, Page 327, without further Order of Court.

BY THE COURT,



THE HONORABLE J. MICHAEL WILLIAMSON,  
Specially Presiding

FILED

MAY 21 2004

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

100 Attns: P. Smyth, D. Roman,  
J. Mahmood, J. Silberblatt

02-46081-9  
MAY 2 1 2004

William A. Shaw  
Prothonotary/Clerk of Courts

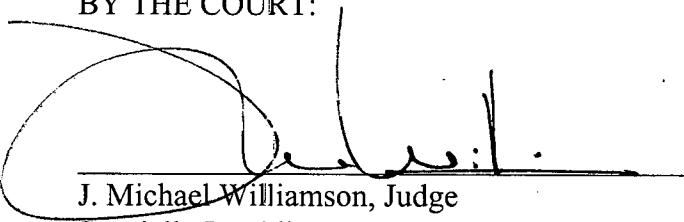
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

LINDA E. HOFFMAN )  
v. ) NO. 03-1893-CD  
TONI M. CHERRY and P. JOSEPH )  
VALIGORSKY, II )

**AMENDED ORDER**

NOW, this 18th day of May, 2004, based upon the agreement of the parties, IT IS  
HEREBY ORDERED that Defendants Cherry and Valigorsky are enjoined from transferring or  
encumbering in any manner their real estate in the City of DuBois, Clearfield County, more fully  
described in Clearfield County Deed Book 1728, Page 327, without further Order of Court.

BY THE COURT:



J. Michael Williamson, Judge  
Specially Presiding  
25th Judicial District of Pennsylvania

xc: James M. Mahood, Esquire  
Jay N. Silberblatt, Esquire  
Peter F. Smith, Esquire  
Dennis J. Roman, Esquire  
Court Administrator

**FILED**

JUN 04 2004

William A. Shaw  
Prothonotary

FILED

JUN 04 2004

11:20 AM  
William A. Shaw  
Prothonotary

Copies Distr. By Judge to  
Parties

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

LINDA E. HOFFMAN,

Plaintiff,

vs.

TONI M. CHERRY, P. JOSEPH  
VALIGORSKY, II, PAULA M. CHERRY  
and MARK A. PIASIO,

Defendants.

CIVIL DIVISION

No. 03-1893-CD

**PRAECIPE TO SETTLE AND  
DISCONTINUE**

Filed on Behalf of the Plaintiff

Counsel of Record for this Party:

James E. Mahood  
Pa. I.D. #20403

Wilder & Mahood, P.C.  
10<sup>th</sup> Floor Koppers Building  
Pittsburgh, PA 15219  
412-261-4040

Jay N. Silberblatt, Esquire  
Pa. I.D. #32253

Silberblatt Mermelstein, P.C.  
2904 Gulf Tower  
707 Grant Street  
Pittsburgh, PA 15219  
412-232-0580

FILED No cc  
m/11/3/04 2 Cert. of Disc.  
SEP 03 2004 to Atty  
Silberblatt  
William A. Shaw  
Prothonotary/Clerk of Courts  
Copy to CJA

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

LINDA E. HOFFMAN,

CIVIL DIVISION

Plaintiff,

No. 03-1893-CD

vs.

TONI M. CHERRY, P. JOSEPH  
VALIGORSKY, II, PAULA M. CHERRY  
and MARK A. PIASIO,

Defendants.

**PRAECIPE TO SETTLE AND DISCONTINUE**

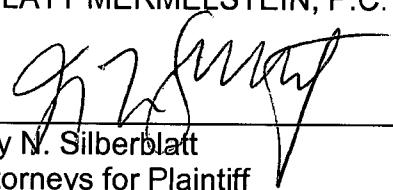
TO: ***WILLIAM A. SHAW, PROTHONOTARY***

Please settle and discontinue the within-captioned case and mark it off the docket or satisfy the Verdict, Award or Judgment.

- (XXX) Attorney for Plaintiff;
- (XXX) Prothonotary Settle and Discontinue with Issue Costs; and
- (XXX) Certificate.

SILBERBLATT MERMELSTEIN, P.C.

By \_\_\_\_\_

  
Jay N. Silberblatt  
Attorneys for Plaintiff

DATE: \_\_\_\_\_

PROTHONOTARY COSTS: \_\_\_\_\_

SWORN to and subscribed before me

this 1<sup>st</sup> day of September, 2004.

Nancy T. Argentieri

NOTARY PUBLIC

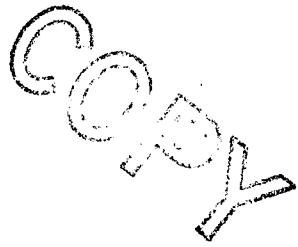
I:\JNS\General\01582\PRAECIPE.S&D2.doc



Member, Pennsylvania Association of Notaries

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION



**Linda E. Hoffman**

vs.

**No. 2003-01893-CD**

**Toni M. Cherry,  
P. Joseph Valigorsky II,  
Paula M. Cherry and  
Mark A. Piasio**

**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 September 3, 2004, marked:

Settled and Discontinued

Record costs in the sum of \$85.00 have been paid in full by Jay N. Silberblatt.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 3rd day of September A.D. 2004.

---

William A. Shaw, Prothonotary