

04-55-CD  
GARY L. BERKLEY vs. STEPHEN P. FRANKE, et al.

Gary Berkley vs. Stephen Franek, et al  
2004-55-CD

## Civil Other

Date		Judge
01/13/2004	Filing: Civil Complaint Paid by: Caldwell & Kearns Receipt number: 1872056 Dated: 01/13/2004 Amount: \$85.00 (Check)	No Judge
03/15/2004	Answer to Complaint and Counterclaim. filed by, s/Richard H. Milgrub, Esquire Verification s/Betty J. Franek s/Stephen P. Franek 1 cc Atty Milgrub	No Judge
03/16/2004	Certificate of Service, Defendants' Answer and Counterclaim upon Brett M. Woodburn, Esquire. filed by, s/Richard H. Milgrub, Esquire no cc	No Judge
04/14/2004	Sheriff Return: Now Jan. 26, 2004 served complaint on Betty. J. Franek and Stephen Franek at residence. Costs. \$60.87	No Judge
05/20/2004	ORDER, AND NOW, this 19th day of May, 2004, re; Defendants permitted to amend their responsive pleadings/counterclaim, so as to include a claim for an easement by prescription. by the Court, s/FJA, P.J. 2 cc Atty Milgrub	Fredric Joseph Ammerman
06/11/2004	Amended Answer to Complaint and Counterclaim, filed by s/Richard H. Milgrub, Esq. One CC Attorney	Fredric Joseph Ammerman
06/14/2004	Certificate of Service, Defendants' Amended Answer to Complaint and Counterclaim upon Brett M. Woodburn, Esq., filed by s/Richard H. Milgrub, Esq. No CC	Fredric Joseph Ammerman
11/10/2004	Certificate of Service, Subpoena Pursuant to Rule 4009.22, filed by Atty. Woodburn ?	Fredric Joseph Ammerman
03/04/2005	Certificate of Readiness, NonJury Trial, filed by s/Brett Woodburn No CC	Fredric Joseph Ammerman
03/07/2005	✓ Certificate of Readiness, filed. No CC <i>NOT in file 4-14-05</i>	Fredric Joseph Ammerman
04/15/2005	Certificate of Service, copy of Plaintiff's Pretrial Memorandum, upon Richard H. Milgrub, Esquire, on April 14, 2005. No CC	Paul E. Cherry
04/25/2005	Order, AND NOW, this 21st day of April, 2005, following Pre-Trial Conference, it is the ORDER of this Court as follows: Trial in this matter is scheduled for June 22, 2005 beginning at 9:00 a.m. in Courtroom No. 2. Counsel for the parties, may submit a Trial Brief no more than 30 days prior to the commencement of trial The parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits. BY THE COURT: /s/ Paul E. Cherry, Judge. 2CC Attys: B. Woodburn, Milgrub	Paul E. Cherry
05/25/2005	Reply To Counter-Claims, filed by s/ Brett M. Woodburn, Esquire. No CC	Paul E. Cherry
06/24/2005	Order, NOW, this 22nd day of June, 2005, this being the date set for Civil Nonjury Trial; the Court being advised that the parties have reached an agreement, it is the ORDER of this Court as follows: (see original). By The Court: /s/ Paul E. Cherry, Judge. 1CC Attys: Woodburn, Milgrub	Paul E. Cherry
06/29/2005	Praecipe to Withdraw appearance as counsel for Defendants, filed by s/Richard Milgrub, Esq. One CC Attorney Milgrub	Paul E. Cherry
	Consent to Withdraw appearance, filed. s/Stephen P. Franek s/Betty J. Franek One CC Attorney Milgrub	Paul E. Cherry
	Petition to Vacate Order, filed by s/Richard H. Milgrub, Esq. One CC Attorney Milgrub	Paul E. Cherry
06/30/2005	Praecipe to Withdraw Petition to Vacate Order, filed by s/Richard H. Milgrub, Esq. NO CC	Paul E. Cherry

## Civil Other

Date		Judge
07/06/2005	Order, this 5th day of July, 2005, upon the consent of Stephen Franek and Betty Franek, it is the Order of this Court that Richard H. Milgrub, Esquire, be allowed to Withdraw as Counsel of Record. By The Court: /s/ Paul E. Cherry, Judge. 1CC Atty Milgrub	Paul E. Cherry
09/06/2005	Petition for Status Conference, filed by Atty. Woodburn, 1 Cert. to Att.	Paul E. Cherry
09/09/2005	Order AND NOW this 8th day of September 2005, upon consideration of the within Petition, it is hereby ORDERED that a status conference shall be held in the above referenced matter on October 17, 2005 at 11:30 a.m. in Courtroom #2. BY THE COURT: /s/ Paul E. Cherry. 1CC Atty Woodburn.	Paul E. Cherry
10/18/2005	Order NOW, this 17th day of October, 2005, this being the date set for Status Conference; Defendants, Stephen P. Franek and Betty J. Franek, having failed to appear despite receiving due and proper notice; the Court being satisfied that Defendants have failed to comply with paragraph 2 (f) of this Court's Order dated June 22, 2005, wherein they were to remove the carport and have failed to do so, it is the ORDER of this Court that Plaintiff, Gary L. Berkley, shall hereinafter have the right to remove said carport as soon as may be convenient with his schedule. All costs associated with the removal of said carport shall be assessed to the Defendant, and shall be paid within no more that forty-five (45) days upon receipt of statement of costs. BY THE COURT: /s/ Paul E. Cherry, Judge. 2CC Atty B. Woodburn and 2CC defts-456 German Rd. Grassflat, PA 16839	Paul E. Cherry
10/24/2005	Return mail, filed. No such number number/street for defendants Stephen P. Franek and Betty J. Franek at 456 German Road, Grassflat, PA 16839	Paul E. Cherry
12/19/2005	Petition to Partially Vacate Order of Court Dated June 22, 2005. Filed by s/ Brett M. Woodburn, Esquire. 2CC Atty. Woodburn	Paul E. Cherry
12/22/2005	Order AND NOW, this 21st day of December, 2005, upon consideration of the foregoing Petition, it is hereby ordered that: (1) A Rule is issued upon the Respondents, Betty and Stephen Franek, to show cause why the Petitioner, Gary L. Berkley, is not entitled to the relief requested; (2) The Respondents shall file an Answer to the Petition within twenty (20) days of service upon Respondents; (3) The Petition shall be decided under Pa.R.C.P. No. 206.7; (4) An evidentiary hearing on disputed issues of material facts should be held on January 30, 2006, in Courtroom No. 2 at 3:00 p.m. BY THE COURT: /s/ Paul E. Cherry, Judge. 2CC Atty Woodburn.	Paul E. Cherry
02/01/2006	Order, NOW, this 30th day of Jan., 2006, following the taking of testimony on plaintiff's Petition to Partially Vacate Order of Court, the Court being advised that additional testimony is necessary, Ordered that the matter is continued until 8:45 a.m. p.m. on Monday, March 6, 2006, Courtroom No. 2. By The Court, /s/ Paul E. Cherry, Judge. 2CC Atty. Woodburn, 2CC Defs.	Paul E. Cherry
02/06/2006	Returned mail, Order, dated January 30, 2006. remailed to Stephen P. Franek and Betty J. Franek at PO Box 96, Drifting, PA 16834	Paul E. Cherry

Date: 10/05/2006

Time: 09:11 AM

Page 3 of 4

**Clearfield County Court of Common Pleas**

User: GLKNISLEY

ROA Report

Case: 2004-00055-CD

Current Judge: Paul E. Cherry

Gary L. Berkley vs. Stephen P. Franek, Betty J. Franek

Civil Other

Date		Judge
03/09/2006	Order, NOW, this 6th day of March, 2006, Ordered that Defendants shall permit James Wischuck access to their residence in question on Wed. March 8, 2006 at 9:00 a.m. for purposes of conducting a dye test on the sewerage system. In addition, the defs. shall permit James Wischuck access to their residence on thursday, March 9, 2006, at 9:00 a.m. for the propose of evaluation of said test. In addition, Def. shall sign the Form B. waiver this date. By The Court, /s/ Paul E. Cherry, Judge. 2CC Atty. Woodburn, 2CC Defs.	Paul E. Cherry
07/17/2006	Order, NOW, this 13th day of July, 2006, it is the Order of this Court that Plaintiff shall be responsible for payment of services performed by Central Pa. Sewage Agency in an amount of \$472.59, said amount to be paid to Cooper Township, within 30 days of this date. By The Court, /s/ Paul E. Cherry, Judge. 2CC Atty. Woodburn, 2CC Defs: PO Box 96, Drifting, PA 16834	Paul E. Cherry
07/25/2006	Motion to Enforce Order of Court Dated October 17, 2005, filed by s/Brett M. Woodburn, Esq. One CC Attorney Woodburn	Paul E. Cherry
07/26/2006	Motion to Vacate Order of Court Dated July 13, 2006, filed by s/Brett M. Woodburn, Esq. One CC Attorney Woodburn	Paul E. Cherry
	Order AND NOW, this 25th day of July 2006, upon consideration of the foregoing Motion to Enforce the Order of this Court dated October 17, 2005, it is hereby ordered that: 1. Plaintiff, Gary L. Berkley, shall hereinafter have the right to remove said carport as soon as may be convenient with his schedule; and 2. All costs associated with removing said carport shall be assessed to Defendants, Stephen P. Franek and Betty J. Franek. BY THE COURT: /s/ Paul E. Cherry, Judge. 1CC Atty Woodburn.	Paul E. Cherry
07/31/2006	Order, NOW, this 31st day of July, 2006, upon consideration of Motion, it is Ordered that a status conference shall be held on August 31, 2006, at 3:00 p.m. in Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge. 1CC Atty. Woodburn	Paul E. Cherry
08/09/2006	Motion For Continuance of August 31, 2006 Status Conference, filed by s/ Brett M. Woodburn, Esquire. 1CC Atty. Woodburn	Paul E. Cherry
08/15/2006	Order, NOW, this 14th day of August, 2006, upon consideration of the Motion to seek continuance, it is Ordered that a Status Conference shall be held on Sept. 5, 2006, at 10:30 a.m. in Courtroom No. 2. By The Court, /s/ Paul E. Cherry, Judge. 1CC Atty	Paul E. Cherry
09/06/2006	Order NOW, this 5th day of September 2006, this being the date set for status conference; Defendants, Stephen P. Franek and Betty J. Franek, having failed to appear, the Court being satisfied that attempted service was made by certified mail, restricted delivery, as well as regular mail, and both mailing were returned to Plaintiff's counsel, it is the ORDER of this Court that this Court's Order of July 13, 2006, shall be and is hereby vacated. It is the further Order of this Court that Defendants, Stephen P. Franek and Betty J. Franek, shall be responsible for payment of services performed by Central PA Sewage Agency in the amount of Four Hundred Seventy-Two Dollars and Fifty-nine (\$472.59) cents, with said amount to be paid to Cooper Township, Clearfield County, Pennsylvania, within no more than sixty (60) days from today's date. BY THE COURT: /s/ Paul E. Cherry, Judge. 1CC Atty Woodburn, S. Franek, Betty Franek and Central PA Sewage Agency.	Paul E. Cherry

Date: 10/05/2006

Clearfield County Court of Common Pleas

User: GLKNISLEY

Time: 09:11 AM

ROA Report

Page 4 of 4

Case: 2004-00055-CD

Current Judge: Paul E. Cherry

Gary L. Berkley vs. Stephen P. Franek, Betty J. Franek

Civil Other

Date		Judge
09/28/2006	Petition For Contempt And Sanctions, Filed by s/ Brett M. Woodburn, Esquire. 1CC Atty	Paul E. Cherry
09/29/2006	Order, NOW, this 29th day of Sept., 2006, Ordered : A. The Recorder of Deeds is directed to sign the subdivision plans on behalf of Betty j. and Stephen P. Franek B. The Defendants are ordered to pay to Plaintiff \$2,500.00 as a sanction for their disregard of an Order of Court, and C. Stephen P. Franek is remanded to the Clfd. Co. Jail for a period not to exceed 48 hours. By The Court, /s/ Paul E. Cherry, Judge. 1CC to Atty. 1CC to CCJ	Paul E. Cherry

**VENEZIANO ELECTRICAL SERVICE  
PO BOX 76  
DRIFTING, PA 16830**

*Wiring \* Plumbing \* Refrigeration*

814-345-5507

**January 28, 2006**

**RE: Residence of Steve & Betty Franek  
German Road  
Drifting PA 16834**

**To Whom It May Concern:**

**Please be advised that I have completed a plumbing job for Steve and Betty Franek to remedy the problem of residential waste water not emptying into the sewage system.**

**I removed drain pipes that were connected from the kitchen sink and clothes washer to a drain in the basement floor that drained out of a 4" pipe into a ditch along German Road on the North side of Franek's residence. I also re-plumbed the kitchen sink and clothes washer to drain into the existing septic system.**

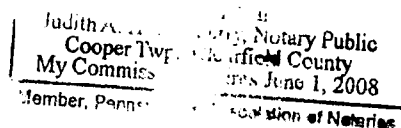
**All drains in the residence now terminate at the sewage system.**

**Sincerely,**

**Richard D. Veneziano**



*Signed this 28th day  
Jan, 2006*



GARY L. BERKLEY,  
Plaintiff

v.

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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

: NO. 04-55-CD

: CIVIL ACTION - LAW (EJECTMENT)

### 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

**FILED**

**JAN 13 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

## **AVISO**

USTED HA SIDO DEMANDADO/A EN CORTE. Si usted desea defenderse de las demandas que se presentan más adelante en las siguientes páginas, debe tomar acción dentro de los próximos veinte (20) días después de la notificación de esta Demanda y Aviso radicando personalmente o por medio de un abogado una comparecencia escrita y radicando en la Corte por escrito sus defensas de, y objeciones a, las demandas presentadas aquí en contra suya. Se le advierte de que si usted falla de tomar acción como se describe anteriormente, el caso puede proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier otra reclamación o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin más aviso adicional. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE UN ABOGADO, LLAME O VAYA A LA SIGUIENTE OFICINA. ESTA OFICINA PUEDE PROVEERLE INFORMACION A CERCA DE COMO CONSEGUIR UN ABOGADO.

SI USTED NO PUEDE PAGAR POR LOS SERVICIOS DE UN ABOGADO, ES POSIBLE QUE ESTA OFICINA LE PUEDA PROVEER INFORMACION SOBRE AGENCIAS QUE OFREZCAN SERVICIOS LEGALES SIN CARGO O BAJO COSTO A PERSONAS QUE CUALIFICAN.

David S. Meholick, Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641, ext. 5982

GARY L. BERKLEY,	:	IN THE COURT OF COMMON PLEAS OF
Plaintiff	:	CLEARFIELD COUNTY, PENNSYLVANIA
	:	
v.	:	NO.
	:	
STEPHEN P. FRANEK and	:	
BETTY J. FRANEK,	:	
Defendants	:	CIVIL ACTION - LAW (EJECTMENT)

**COMPLAINT - ACTION IN EJECTMENT**

AND NOW, comes the Plaintiff, Gary L. Berkley, by and through his attorney,  
CALDWELL & KEARNS, and files the within Complaint, and in support thereof, aver the  
following:

1. Plaintiff, Gary L. Berkley, is an adult individual currently residing at 147 Loop Road, West Decatur, Pennsylvania 16378.
2. Defendants, Betty J. Franek and Steven P. Franek are adult individuals currently residing at 456 German Road, Grassflat, PA 16339.
3. Plaintiff is the owner of three parcels of real estate located in Cooper Township, Clearfield County, Pennsylvania, collectively identified as the "Plubell Farm," by Deed from Anna Plubell, widow, Victor Plubell and Arlene Plubell, husband and wife, dated and recorded July 10, 2003, in the Office of the Recorder of Deeds of Clearfield County. A true and correct copy of the said Deed is attached hereto, identified as Exhibit "A," and incorporated herein by reference.
4. The First Lot is 58.95 acres in size and is more particularly described in Exhibit "A," as "The First Thereof."

5. The Second Lot is 78.25 acres in size and is more particularly described in Exhibit "A," as "The Second Thereof."
6. The Third Lot is 30 acres in size and is more particularly described in Exhibit "A," as "The Third Thereof."
7. The Second Lot, more specifically set forth in Exhibit "A," as identified in paragraph 5 above, borders the lands of Defendants Betty J. Franek and Steven P. Franek, Defendants, to the North and East, which lands of Defendants are identified by tax parcel number 110 T-6 31, as depicted by the aerial photographic survey attached as Exhibit "B."
8. Defendants' Deed is recorded in the Office of the Recorder of Deeds of Clearfield County, in Volume 1942, Page 599. A true and correct copy of said Deed is attached hereto, identified as Exhibit "C," and incorporated herein by reference
9. Defendants' property consists of one acre and is more particularly described as follows:

ALL THAT CERTAIN parcel of land located and situate in Cooper Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING on the South at a post corner of land now or formerly of Michael Rader on Township Road running North  $4\frac{1}{2}$  degrees East  $4\frac{1}{2}$  rods to corner of lands of Grantors; thence East along lands of Grantors 36 rods to corner; thence South along land of Grantors  $4\frac{1}{2}$  rods to land now or formerly of Michael Rader; thence along lands of said Michael Rader 36 rods to Township Road; and place of beginning.

CONTAINING one (1) acre, more or less.

BEING the same premises as vested in Lucy Raymond by Deed of Evelyn L. Raymond, a widow, dated the 1<sup>st</sup> day of April 1986, and recorded in Deed Book

Volume 1073 at Page 508; thereafter the said Lucy Raymond departed this life the 9<sup>th</sup> day of May, 1998.

UNDER AND SUBJECT, NEVERTHELESS, to all exceptions, reservations, conditions and restrictions as contained in prior Deeds in the chain of title.

TOGETHER with all and singular buildings and improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted premises belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title and interest, property, claim and demand whatsoever of the said Grantor, her heirs and assigns, in law, equity, or otherwise, howsoever, in and to the same, and every part thereof.

10. The abstract of title on which Plaintiff relies is as follows:

- (A) The last common owner of the property in dispute was Edward Raymond.
- (B) Edward Raymond conveyed approximately one acre to Rodney Raymond et al , by Deed recorded April 30, 1924, in the Office of the Recorder of Deeds of Clearfield County, in Volume 270, Page 102. A true and correct copy of the said Deed is attached hereto, identified as Exhibit "D," and incorporated herein by reference.
- (C) Edward Raymond and Bertha H. Raymond conveyed three parcels of land constituting 58.95 acres; 78.25 acres; and 30 acres, and which is more particularly described in paragraphs four (4), five (5), and six (6) of this Complaint to Mary Fenush. Said

conveyance was recorded by Deed on July 12, 1927 in the Office of the Recorder of Deeds of Clearfield County, in Volume 283, Page 308, identified as Exhibit "E." Said lots, which consist of approximately 167.2 acres, contained the reservation of approximately one (1) acre, which was previously conveyed to Rodney Raymond et al. as described in subparagraph (B) of this paragraph.

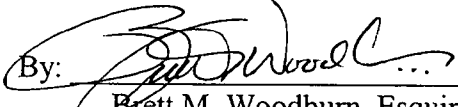
- (D) Mary Fenush and Lewis Fenush, her husband, conveyed the above three parcels to Frank W. Albert, by Deed recorded May 24, 1951, in the Office of the Recorder of Deeds of Clearfield County. A true and correct copy of the said Deed is attached hereto, identified as Exhibit "F," and incorporated herein by reference.
- (E) Frank W. Albert and Alta F. Albert, his wife, conveyed the above three parcels to Willard Plubell and Anna Plubell, husband and wife, by Deed recorded September 10, 1971, in the Office of the Recorder of Deeds of Clearfield County, in Volume 580, Page 044. A true and correct copy of the said Deed is attached hereto, identified as Exhibit "G," and incorporated herein by reference.
- (F) Plaintiff, Gary L. Berkley, purchased, by Deed, the aforementioned three parcels on July 10, 2003, from Anna Plubell, widow, and Victor Plubell and Arlene Plubell, husband and wife. See Exhibit "A."

11. The precise area of Plaintiff's property that is the subject of this dispute, is the location of the Northern-most boundary line, being that which runs "East along lands of Grantors [Plaintiff] 36 rods to corner." See Exhibit "C."
12. Plaintiff hired GeoTech Engineering, Inc., to survey his property.
13. The surveyor used global positioning equipment, in part, to conduct a survey of Plaintiff's lands. The aerial photographs are attached hereto as Exhibits "H-1," "H-2," and "H-3."
14. Plaintiff's lands are identified by tax number 110 T-6 16.
15. Defendants erected a carport and garage that encroaches upon Plaintiff's property.
16. Defendants also installed a septic system, which was placed into the ground without proper authorization by the local municipality, and which encroaches upon Plaintiff's property.
17. Based upon the results of the survey, the surveyor placed markers at the corners of Defendants' property that borders Plaintiff's property.
18. Defendants, or someone known by them, have repeatedly removed the surveying pins and indicated a hostile intent toward Plaintiff and his surveyor.
19. From an unknown date after June 14, 1998, Defendants have exercised and continue to exercise exclusive possession and control of that portion of Plaintiff's property described in paragraphs 16 and 17.
20. Despite Plaintiff's repeated requests, Defendants have failed and refused to remove the car port, garage and septic system, which encroach upon Plaintiff's lands.

WHEREFORE, Plaintiff Gary L. Berkley, respectfully requests that your Honorable Court enter an Order against Defendants Betty J. Franek and Steven P. Franek, which would restore to Plaintiff rightful possession of the subject property, which would require Defendants to remove the car port, garage and septic system that exist upon the property of the Plaintiff, and that would require Defendants to pay Plaintiff costs, and any other relief as this Court deems just and appropriate.

Respectfully submitted,

CALDWELL & KEARNS

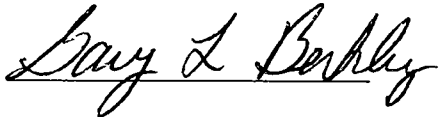
By:  \_\_\_\_\_

Brett M. Woodburn, Esquire  
Attorney I.D. #81786  
3631 North Front Street  
Harrisburg, PA 17110  
(717) 232-7661  
Attorney for Plaintiff

Dated: 1/12/04  
03-901/64840

**VERIFICATION**

I, Gary L. Berkley, verify that the averments in this Complaint 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.

By:   
Gary L. Berkley



# DEED

(1)

MADE this 10<sup>th</sup> day of July, 2003, between  
ANNA PLUBELL, widow, of Box 189, Frenchville, Clearfield County,  
Pennsylvania 16836; VICTOR PLUBELL and ARLENE PLUBELL, husband and  
wife, of Box 97, Frenchville, Clearfield County, Pennsylvania  
16836;

(hereinafter called "Grantors")

AND

GARY L. BERKLEY, of R.R.1, Box 57H, West Decatur, Clearfield  
County, Pennsylvania 16373;

(hereinafter called "Grantee")

WITNESSETH, that in consideration of One Hundred Sixty-Five  
Thousand and 00/100 (\$165,000.00) Dollars, in hand paid, the  
receipt whereof is hereby acknowledged, Grantors do hereby grant  
and convey to Grantee:

ALL those three certain tracts of land situate in Cooper Township,  
Clearfield County, Pennsylvania, bounded and described as follows:

THE FIRST THEREOF:

BEGINNING at a post on line of lands of Joseph Redinger;  
thence by same South 85½° East 1172 feet to post; thence  
by lands of O.R. Schoonover South 5° West 2219 feet to a  
post; thence by lands of John Hartle North 85½° West 1155  
feet to a post; thence by lands of John Swartzle North  
4 3/4th° East 2214 feet to a post and the place of  
beginning. Containing 58.95 acres and allowance.

THE SECOND THEREOF:

BEGINNING at a stone corner on the Township Road leading to the mouth of Big Moshannon and on the road leading to Gillintown and Black Moshannon Bridge; thence along said Township Road leading to Big Moshannon North  $4\frac{1}{2}^{\circ}$  East 2208 feet to a corner; thence South  $85\frac{1}{2}^{\circ}$  East 1572 feet to a post and corner on line of Joseph Redinger; thence South  $4\frac{3}{4}^{\circ}$  West 2214 feet to post on Gillintown Road; thence along Gillintown Road North  $85\frac{1}{4}^{\circ}$  West 1555 feet to place of beginning. Containing 78.25 acres.

Excepting and reserving however, First: All the coal and other minerals in, under and upon the aforesaid two pieces of land with the right to enter, mine and take away the same with all mining privileges contained in deed made by former owner to John G. Reading, dated August 24, 1882 and recorded in Deed Book 24, Page 550; Second: Two acres of surface which Edward Raymond and wife by their deed dated May 4, 1907, recorded in Deed Book 167, Page 93, conveyed to Michael J. Rader; Third: One acre which said Raymond and wife by deed dated February 15, 1922, and recorded in Deed Book 270, Page 102, conveyed by Rodney Raymond and Lucy, his wife.

The above two pieces of land being the same premises which Frank W. Albert and Alta F. Albert, his wife, by their deed dated August 31, 1971 and recorded in Deed Book 580, Page 344, granted and conveyed unto Willard Plubell, Anna Plubell, Victor Plubell and Arlene Plubell.

THE THIRD THEREOF:

BOUNDED on the North by lands of Joseph Rader; on the East by a public road leading from Drifting to Karthaus; on the South by lands now or formerly of Mike Franek; and on the West by land now or formerly of Mike Franke. CONTAINING thirty (30) acres.

BEING the same premises that were granted and conveyed unto Willard Plubell, Anna Plubell, Victor Plubell and Arlene Plubell by deed of Frank W. Albert and Alta F. Albert, his wife, dated April 30, 1970 and entered for record in the Office for the Recording of Deeds of Clearfield County, Pennsylvania, in Deed Book Vol. 560, Page 257.

The said Willard Plubell died January 12, 2003, leaving to survive him his wife, Anna Plubell, as the surviving tenant by the entireties as to their undivided one-half ( $\frac{1}{2}$ ) interest in these tracts.

Excepting and reserving unto the Grantors, their heirs, successors and assigns, all of the oil and gas in, under and upon said tracts together with the right to enter, prospect for, drill, construct wells and pipe lines and take away the same without liability for damage to the surface or support of said tracts.

Grantors covenant that they will WARRANT SPECIALLY the property hereby conveyed.

NOTICE - THIS DOCUMENT MAY NOT (DOES NOT) SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE (HAVE) THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. (This Notice is set forth in the manner provided in Section 1 of the Act of July, 1957, P. L. 934, as amended).

IN WITNESS WHEREOF, the Grantors have hereunto set their hands and seals the day and year first above written.

Sealed and delivered in the presence of:

Anna B. Wood as to all

Anna Plubell SEAL  
ANNA PLUBELL

Victor Plubell

Victor Plubell SEAL  
VICTOR PLUBELL

Arlene Plubell

Arlene Plubell SEAL  
ARLENE PLUBELL

## NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1966" I/we, the undersigned grantee/grantees, hereby certify that I/we know and understand that I/we may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal. I/we further certify that this certification is in a color contrasting with that in the deed proper and is printed in twelve point type preceded by the word "notice" printed in twenty-four point type.

Witness:

J. A. Smith

Gary L. Berkley  
Gary L. Berkley

This 10<sup>th</sup> day of July

2003

COMMONWEALTH OF PENNSYLVANIA :  
: SS:  
COUNTY OF CLEARFIELD :

On this, the 10th day of July, 2003, before me, the undersigned officer, personally appeared ANNA PLUBELL, widow, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Instrument and acknowledged that she has executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Nancy M. Smeal*

NOTARIAL SEAL  
NANCY M. SMEAL, Notary Public  
Graham Township, Clearfield Co., PA  
My Commission Expires, May 4, 2006

COMMONWEALTH OF PENNSYLVANIA :  
: SS:  
COUNTY OF CLEARFIELD :

On this, the 10th day of July, 2003, before me, the undersigned officer, personally appeared VICTOR PLUBELL and ARLENE PLUBELL, husband and wife, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within Instrument and acknowledged that they have executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Nancy M. Smeal*

NOTARIAL SEAL  
NANCY M. SMEAL, Notary Public  
Graham Township, Clearfield Co., PA  
My Commission Expires, May 4, 2006

CERTIFICATE OF RESIDENCE

The undersigned hereby certifies that the precise residence and complete address of the within named Grantee is:

R.R. 1, Box 57H, West Decatur, Pennsylvania 16878

*J. N. Smeal*



110 - 6 - 20

SEPTIC TANK  
ALFAMITI

GARAGE

110 - 6 - 20.6

OLD SUNDAY SIDE ROAD

110 T-6 20

Scale 1" = 100'





#31

VOL 1942 PAGE 599

MAIL TO:  
LAW OFFICES OF  
DAVID C. MASON  
P.O. Box 28  
Phillipsburg, PA 16866

CLEARFIELD COUNTY  
ENTERED OF RECORD  
TIME 2:40 p.m. 6-18-98  
BY ED B. K. KAT  
FEES 77.50  
Karen L. Stord, Recorder

THIS DEED

MADE the 17<sup>th</sup> day of June, in the year nineteen hundred  
and ninety-eight (1998).

BETWEEN FRANCIS RAYMOND, Executrix under the Will of LUCY  
RAYMOND, deceased, Late of Clearfield County, Pennsylvania, GRANTOR and  
Party of the First Part,

A

N

D

BETTY J. FRANEK and STEVE P. FRANEK, husband and wife, currently of P.O.  
Box 96, Drifting, Pennsylvania 16834, as Tenants by the Entireties, hereinafter,  
GRANTEES and Parties of the Second Part.

WHEREAS, the said Lucy Raymond became in her lifetime lawfully  
seized in premises hereinafter described;

WHEREAS, the said Lucy Raymond died on May 9, 1998;

WHEREAS, Letters Testamentary were granted to Francis Raymond as  
the record of which more fully appears in the Register of Wills Office of

VOL 1942 PAGE 600

**W I T N E S S E T H:** That for and in consideration of the sum of **TWELVE THOUSAND AND NO/100\*\*\*\*\*(\$12,000.00)\*\*\*\*\*DOLLARS** lawful money of the United States, to said **GRANTOR** well and truly paid by the said **GRANTEES** at and before the sealing and delivery hereof, the receipt of which is hereby acknowledged, by virtue of the power granted by law, has granted, bargained, sold, aliened, released and confirmed, and by these presents does grant, bargain, sell, alien, release and confirm unto the said **GRANTEES**, their heirs and assigns.

**ALL** that certain parcel of land located and situate in Cooper Township, Clearfield County, Pennsylvania, bounded and described as follows:

**BEGINNING** on the South at a post corner of land now or formerly of Michael Rader on Township Road running North  $4\frac{1}{2}$  degrees East  $4\frac{1}{2}$  rods to corner of lands of Grantors; thence East along lands of Grantors 36 rods to corner; thence South along land of Grantors  $4\frac{1}{2}$  rods to land now or formerly of Michael Rader; thence along lands of said Michael Rader 36 rods to Township Road; and place of beginning.

**CONTAIN'NG** one (1) acre, more or less.

**BEING** the same premises as vested in Lucy Raymond by Deed of Evelyn L. Raymond, a widow, dated the 1st day of April 1986, and recorded in Deed Book Volume 1073 at Page 508; thereafter the said Lucy Raymond departed this life the 9th day of May, 1998.

**UNDER AND SUBJECT, NEVERTHELESS**, to all exceptions, reservations, conditions and restrictions as contained in prior Deeds in the chain of title.

**TOGETHER** with all and singular the buildings and improvements, ways, streets, alleys, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted premises belonging, or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof; and all the estate, right, title and interest, property, claim and demand whatsoever of the said Grantor, her heirs and assigns, in law, equity, or otherwise howsoever, in and to the same, and every part thereof.



63 270/102

DEED ) THIS DEED Made the fifteenth day of February in the year  
EDWARD RAYMOND ) Nineteen hundred and twenty two.  
TO ) BETWEEN Edward Raymond and Bertha Raymond his wife of Cooper  
RODNEY RAYMOND ETAL, ) township, County of Clearfield and state of Pennsylvania,  
parties of the first part, and Rodney Raymond and Lucy his wife, parties of the second part  
of same county and state aforesaid.

WITNESSETH, that in consideration of twenty five dollars in hand paid, the receipt whereof is hereby acknowledged, the said grantor doth hereby grant and convey to the said grantees, all that lot or certain piece or parcel of land situated in Cooper township, County of Clearfield and state of Pennsylvania, bounded and described as follows Beginning on the south at a post corner of land of Michael Rader, on township road, running north (4 $\frac{1}{2}$ \*) East (4 $\frac{1}{2}$ ) four and one half rods to corner of lands of grantors thence east along lands of Grantors (36) thirty six rods to corner, thence south along land of grantors four and one half rods (4 $\frac{1}{2}$ ) to land of Michael Rader, thence along lands of said Michael Rader, thirty six rods (36) to township road; and place of beginning. Containing one acre more or less. this being from a larger piece or parcel of land which the grantor by deed dated the twenty seventh day of March nineteen hundred and five had conveyed to him from John Swartzell and Nora his wife and was recorded in the office for recording of deeds in and for county of Clearfield on the seventh day of March A.D. nineteen hundred and five, in deed Book Number 146 page 33, Excepting and reserving all the coal and other minerals, in and upon the aforesaid piece of land with the right to enter, mine and take away the same, as conveyed to John G Reading and his assigns, by deed dated August 24th 1882 and recorded in deed book number 24 page 550.

AND the said grantors, doth hereby covenant and agree to and with the said grantees, that they, the grantors, their heirs, executors and administrators shall and will warrant and forever defend the herein above described premises, with the hereditaments and appurtenances, unto the said grantees, their heirs and assigns, against the said grantor, and against every other person lawfully claiming or who shall hereafter claim the same or any part thereof.

In witness whereof, said grantors hath hereunto set their hands and seals the day and year first above written.

Sealed and delivered in  
the presence of  
Chas. Diviney

Edw. Raymond (seal)  
Bertha Raymond (seal)  
Rodney Raymond (seal)  
Lucy Raymond (seal)

State of Pennsylvania )  
County of Clearfield SS

ON this fifteenth day of February A.D. 1922, before me a Justice of the Peace came the above named Edward Raymond and Bertha Raymond and acknowledged the foregoing Deed to be their act and deed, and desired the same to be recorded as such.

Witness my hand and Justice seal the day and year aforesaid.

Chas. Diviney (off. seal) J.P.

Entered of Record Apr. 30, 1924, 1-23 P.M.  
Recorded and Compared by

Recorder. MLO

#31



Entered of Record Jul. 12, 1927. 2-35 P.M.

Recorded and Compared by

*Melfair Bratton*  
Recorder.

DEED ) THIS DEED, made the tenth day of June in the year Nineteen  
EDWARD RAYMOND ETAL ) hundred and twenty-seven.  
TO ) BETWEEN Edward Raymond and Bertha H. Raymond, of the city of  
MARY FENUSH ) Williamsport, county of Lycoming, and State of Pennsylvania,  
Husband and wife, grantors, of the first part, and Mary Fenush, of the Township of Cooper  
County of Clearfield, and state of Pennsylvania, grantee, of the second part.

WITNESSETH, that in consideration of the sum of twenty five hundred dollars,  
in hand paid, the receipt whereof is hereby acknowledged, the said grantors do hereby  
grant and convey to the said grantee,

All those three certain pieces or parcels of land situate in the Township of  
Cooper, county of Clearfield, and state of Pennsylvania, bounded and described as follows

THE FIRST THEREOF, Beginning at a post on line of lands of Joseph Redinger;  
thence by same south eighty five and one half degrees east eleven hundred and seventy  
two (1172) feet to post; thence by lands of O.L. Schoonover south five degrees west  
twenty-two hundred and nineteen (2219) feet to a post; thence by lands of John Hartle  
north eighty-five and one half degrees west eleven hundred and fifty five (1155) feet  
to a post; thence by lands of John Swartzle north four and three-fourths degrees East  
twenty two hundred and fourteen (2214) feet to a post and the place of beginning. Con-  
taining fifty-eight and ninety-five one-hundredths (58.95) acres, and allowance.

THE SECOND THEREOF, Beginning at a stone corner on the Township Road leading  
to the mouth of Big Moshamon and on the road leading to Gillintown and Black Moshamon  
Bridge; thence along the said Township road leading to Big Moshamon North four and  
one half degrees east twenty two hundred and eight (2208) feet to a corner; thence south  
eighty-five and one-half degrees east fifteen hundred and seventy-two (1572) feet to  
a post and corner on line of Joseph Redinger; thence south four and three-fourths de-  
grees West twenty two hundred and fourteen (2214) feet to post on Gillintown road;  
thence along Gillintown road north eighty five and one fourth degrees west fifteen  
hundred and fifty-five (1555) feet to place of beginning. Containing seventy-eight and  
twenty-five one hundredths (78.25) acres.

EXCEPTING AND RESERVING, however, first; all the coal and other minerals in,  
under and upon the aforesaid two pieces of land with the right to enter, mine and take  
away the same with all mining privileges contained in deed made by former owner to  
John G Reading dated August 24, 1882, and recorded in Deed Book No. 24 page 550, second;  
Two acres of surface which Edward Raymond and wife by their deed dated May 4, 1907,  
and recorded in Deed Book No. 167 page 93, granted and conveyed to Michael J. Rader,  
third; One acre which the said Edward Raymond and wife by their deed dated February 15,  
1922, and recorded in Deed Book No. 270 page 102, granted and conveyed to Rodney  
Raymond and Lucy, his wife.

The above described two pieces of land being the same premises which A.J. Brandt  
and wife and Theodore Brandt, by their deed dated the \_\_\_ day of November, 1924, and  
recorded in deed Book No. 273 page 80, granted and conveyed to the said Edward Raymond  
and Bertha H. Raymond, grantors herein, subject to the above stated reservations,  
reference being thereunto had the title will more fully and at large appear.

THE THIRD THEREOF, Bounded on the north by lands of Joseph Rader; on the east by a public road leading from Drifting to Karthaus; on the south by lands now or formerly of Mike Franek; and on the west by land now or formerly of Mike Franek. Containing thirty (30) acres and being the same premises which George J. Raymond and wife, by their deed dated August 8, 1918, and recorded in deed Book No. 270 page 68, granted and conveyed to the said Edward Raymond, one of the grantors herein reference being thereunto had the title will more fully and at large appear.

AND the said grantors, do hereby covenant and agree to and with the said grantee, that they, the grantors, their heirs, executors and administrators shall and will generally warrant and forever defend the herein above described premises, with the hereditaments and appurtenances, unto the said grantee, her heirs and assigns against the said grantors, and against every other person lawfully claiming or who shall hereafter claim the same for any part thereof.

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

Sealed and delivered in  
the presence of  
J. Howard Ritter  
Marian Reinhart

Edward Raymond (L.S.)  
Bertha H. Raymond (L.S.)

State of Pennsylvania)  
County of Lycoming )SS

On this 24<sup>th</sup> day of June A.D. 1927, before me a Notary Public, in and for said county, personally came the above named Edward Raymond and Bertha H. Raymond, husband and wife, and acknowledged the foregoing Deed to be their act and deed, and desired the same to be recorded as such.

Witness my hand and official seal the day and year aforesaid.

J.B. Ritter (off. seal)

Notary Public

My commission expires 3/7/29.

Entered of Record Jul. 12, 1927. 2-45 P.M.

Recorded and Compared by

*Milford Bratton*  
Recorder.

DEED ) THIS DEED, Made the third day of June in the year Nineteen hun-  
JOHN M KINNEY ETAL ) dred and twenty-seven.  
TO ) BETWEEN John M. Kinney and Marie Kinney, his wife, of the Borough  
K. L. SCODLINS ) of Houtzdale, county of Clearfield and State of Pennsylvania,  
Grantors; and K.L.Scodlins, of the Borough of Houtzdale, county of Clearfield and State of  
Pennsylvania, Grantee:

WITNESSETH, that in consideration of One (\$1,000 dollars in hand paid, the receipt whereof is hereby acknowledged, the said grantors do hereby grant and convey to the said grantee,

All that certain tract, piece or parcel of land situate in the Borough of Houtzdale, county of Clearfield and state of Pennsylvania, more particularly bounded and described as follows:



STATE OF PENNSYLVANIA :  
: SS:  
COUNTY OF CENTRE :

On this the 12 day of April, 1946, before me the undersigned officer, personally appeared Hugh R. Green who acknowledged himself to be the President of Ednie Coal Company, a corporation, and that he as such President being authorized to do so, executed the foregoing deed for the purposes therein contained by signing the name of the corporation by himself as President.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

NOTARY PUBLIC  
My Commission Exp. 23  
March 5, 1950

*Supervisor of Deeds*

We hereby certify the precise address of the within named Grantee is Philipsburg Borough, Centre County, Penna.

*Smith, Maine & Whitehead  
attys. for grantees.*

Entered of Record May 22 1951, 2:10 P.M. Weir W. Mullen, Recorder

3

## This Deed,

Made the 24<sup>th</sup> day of May in the year of our Lord one thousand nine hundred and fifty-one.

Between MARY FENUSH and LEWIS FENUSH, her husband, of the Township of Cooper, Clearfield County, Pennsylvania, parties of the first part,

Grantor &

and FRANK W. ALBERT, of Morris Township, Clearfield County, Pennsylvania, party of the second part,

Grantee :

Witnesseth, that in consideration of \$1.00 Dollars, in hand paid, the receipt whereof is hereby acknowledged, the said grantor & do hereby grant and convey to the said grantee

ALL those three certain pieces or parcels of land situate in the Township of Cooper, County of Clearfield, and State of Pennsylvania, bounded and described as follows:

THE FIRST THEREOF, Beginning at a post on line of lands of Joseph Redinger; thence by same South eighty-five and one-half degrees East eleven hundred and seventy-two (1172) feet to post; thence by lands of O. L. Schoonover South five degrees West twenty-

North eighty-five and one-half degrees West eleven hundred and forty-five (1155) feet to a post; thence by lands of John Swartzle North four and three-fourths degrees East twenty-two hundred and fourteen (2214) feet to a post and the place of beginning. Containing fifty-eight and ninety-five one-hundredths (58.95) acres, and allowance.

THE SECOND THEREOF, Beginning at a stone corner on the Township Road leading to the mouth of Big Moshannon and on the road leading to Gillsintown and Black Moshannon Bridge; thence along the said Township road leading to Big Moshannon North four and one-half degrees East twenty-two hundred and eight (2208) feet to a corner; thence South eighty-five and one-half degrees East fifteen hundred and seventy-two (1572) feet to a post and corner on line of Joseph Redinger; thence South four and three-fourths degrees West twenty-two hundred and fourteen (2214) feet to post on Gillsintown Road;

thence along Gillsintown Road North eighty-five and one-fourth degrees West fifteen hundred and fifty-five (1555) feet to the place of beginning. Containing seventy-eight and twenty-five one-hundredths (78.25) acres.

EXCEPTING AND RESERVING, however, first; all the coal and other minerals, in, under and upon the aforesaid two pieces of land with the right to enter, mine and take away the same with all mining privileges contained in deed made by former owner to John G. Reading dated August 24, 1882, and recorded in Deed Book No. 24 page 550, second; Two acres of surface which Edward Raymond and wife by their deed dated May 4, 1907, and recorded in Deed Book No. 167 page 93, granted and conveyed to Michael J. Rader; third; one acre which the said Edward Raymond and wife, by their deed dated February 15, 1922, and recorded in Deed Book No. 270 page 102, granted and conveyed to Rodney Raymond and Lucy, his wife.

THE THIRD THEREOF, Bounded on the north by lands of Joseph Rader; on the east by a public road leading from Drifting to Karthaus; on the south by lands now or formerly of Mike Franek; and on the west by land now or formerly of Mike Franek. Containing thirty (30) acres.

Being the same premises which Edward Raymond and Bertha H. Raymond conveyed to Mary Fenash by deed dated June 10, 1927, and recorded in Deed Book 283 page 308.



Vol 580 Page 044

# This Deed,

MADE THE 21<sup>st</sup> day of August in the year  
of our Lord one thousand nine hundred Seventy-one

BETWEEN FRANK W. ALBERT and ALTA F. ALBERT, his wife, both of  
Morris Township, Clearfield County, Pennsylvania, parties of the  
first part,

and WILLARD PLUBELL and ANNA PLUBELL, husband and wife, as tenants  
by entireties, and VICTOR PLUBELL and ARLENE PLUBELL, husband and  
wife, as tenants by entireties, all of Frenchville, Covington Town-  
ship, Clearfield County, Pennsylvania, parties of the second part,

Grantees :

WITNESSETH, that in consideration of Five thousand and no/100 (\$5,000.00) - -  
Dollars,  
in hand paid, the receipt whereof is hereby acknowledged, the said grantors do hereby grant  
and convey to the said grantees,

ALL those two certain tracts of land situate in Cooper Township,

Clearfield County, Pennsylvania, bounded and described as follows:

THE FIRST THEREOF: BEGINNING at a post on line of lands of  
Joseph Redinger; thence by same South  $85\frac{1}{2}^{\circ}$  East 1172 feet to  
post; thence by lands of O. R. Schoonover South  $5^{\circ}$  West 2219  
feet to a post; thence by lands of John Hartle North  $85\frac{1}{2}^{\circ}$   
West 1155 feet to a post; thence by lands of John Swartzale  
North  $4\frac{3}{4}^{\circ}$  East 2214 feet to a post and the place of  
beginning. Containing 53.95 acres and allowance.

THE SECOND THEREOF: BEGINNING at a stone corner on the  
Township Road leading to the mouth of Big Moshannon and on  
the road leading to Gillintown and Black Moshannon Bridge;  
thence along the said Township road leading to Big Moshannon  
North  $4\frac{1}{2}^{\circ}$  East 2208 feet to a corner; thence South  $85\frac{1}{2}^{\circ}$  East  
1572 feet to a post and corner on line of Joseph Redinger;  
thence South  $4\frac{3}{4}^{\circ}$  West 2214 feet to post on Gillintown  
Road; thence along Gillintown Road North  $85\frac{1}{2}^{\circ}$  West 1555 feet  
to place of beginning. Containing 78.25 acres.



Excepting and reserving however, First: All the coal and  
other minerals in, under and upon the aforesaid two pieces  
of land with the right to enter, mine and take away the same  
with all mining privileges contained in deed made by former  
owner to John G. Reading, dated August 24, 1882 and recorded  
in Deed Book 24, Page 550; Second: Two acres of surface  
which Edward Raymond and wife by their deed dated May 4, 1907,  
recorded in Deed Book 167, Page 93, conveyed to Michael J.  
Rader; Third: One acre which said Raymond and wife by deed  
dated February 15, 1922, and recorded in Deed Book 270, Page  
102, conveyed to Rodney Raymond and Lucy, his wife.

[No. 580] [C45]

The above two pieces of land being a part of the same premises which Mary Fenush, by her deed dated May 24, 1951, and recorded in Deed Book 412, Page 558, granted and conveyed unto Frank W. Albert, Grantor herein.

For the purpose of complying with the Act of July 17, 1957, P. L. 984; 52 P. S. Supp. 155 as amended, of the General Assembly of Pennsylvania, and for no other purpose, there is incorporated herein the following notice:

THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT.

It is the intention of the parties that an undivided one-half interest in said property shall be vested in Willard Plubell and Anna Plubell, husband and wife, to be held between them as tenants by the entirety, and it is further the intention that the remaining undivided one-half interest shall be held by Victor Plubell and Arlene Plubell, husband and wife, as tenants by the entirety.

AND the said grantors hereby covenant and agree that they will warrant  
SPECIALLY the property hereby conveyed.

IN WITNESS WHEREOF, said grantors have hereunto set their hands and seals  
the day and year first above written.

Signed, Sealed and Delivered  
in the Presence of

*Frank W. Albert*

Frank W. Albert

*Alta F. Albert*

Alta F. Albert



State of PENNSYLVANIA

County of CLEARFIELD

On this, the 21st

day of August

, 19 71, before me,

the undersigned officer, personally appeared FRANK W. ALBERT and ALTA F. ALBERT,

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

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Carlene L. Jury*

CARLENE L. JURY

Notary Public, Clearfield Co., Clearfield Co.

My Commission Expires June 21st 1972



State of

County of

On this, the

day of

ss.

Vol. 580 Page 047

, 19 , before me.

the undersigned officer, personally appeared

known to me (or satisfactorily proven) to be the person whose name subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I herunto set my hand and official seal.



Title of Office:

I do hereby certify that the precise residence and complete post office address of the within named grantee is Frenchville, Pennsylvania.

19

Mrs. Victor Plubell

Interest of Record Sept 10 1971 11:05 Cecil A. Burns Recorder

WARRANTY

FRANK W. ALBERT, ET UX.

TO

WILLARD PLUBELL, ET AL.

Deed

CLEARFIELD CO. SS  
ENTERED OF RECORD  
11:05  
By Mrs. Victor Plubell  
Fees \$ 6.00  
Cecil A. Burns, Recorder

COMMONWEALTH OF PENNSYLVANIA,  
County of CLEARFIELD

ss.

RECORDED on this 10th day of September

A. D. 1971, in the Recorder's Office of said County, in Deed Book

Vol. 580, Page 47

Given under my hand and the seal of the said office, the date above written.

Cecil A. Burns, Recorder.

MY COMMISSION EXPIRES

NEXT MONDAY IN JANUARY 1972.







SEPTIC TANK  
CLEANOUT

110-1-6-51

110-1-6-16

EXHIBIT "A"

SCALE 1" = 400'





110 - 6 18

SEPTIC TANK  
CLEANING

GARAGE

110 - 6 2016

110 - 6 21

110 - 6 22

OLD BRIDGE ROAD

110 T-6 20

Scale 1" = 100'

FILED  
M 12:02 PM  
JAN 13 2004  
Atty pd. 85.00  
2 cc shsf

William A. Shaw  
Prothonotary/Clerk of Courts

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

GARY L. BERKLEY,  
Plaintiff

-vs-

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

\*  
\*  
\*  
\*  
\*  
\*  
\*

No. 04-55-CD

Type of Action:  
Civil Action - Law  
(Ejectment)

Type of Pleading:  
Answer to Complaint  
and Counterclaim

Filed on Behalf of:  
Defendants

Counsel of Record for this  
Party:

Richard H. Milgrub, Esquire  
Supreme Court I.D. 19865

211 North Second Street  
Clearfield, PA 16830  
(814) 765-1717

THE LAW OFFICES OF  
RICHARD H. MILGRUB  
211 NORTH SECOND STREET  
CLEARFIELD, PA 16830  
—  
109 NORTH BRADY STREET  
DUBOIS, PA 15801

FILED

MAR 15 2004

William A. Shaw  
Prothonotary/Clerk of Courts

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

GARY L. BERKLEY,  
Plaintiff

-vs-

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

\*  
\*  
\*  
\*  
\*  
\*  
\*

No. 04-55-CD

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 Answer and Counterclaim 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 Defendant. You may lose money or property or other rights important to you.

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

COURT ADMINISTRATOR  
Clearfield County Courthouse  
Second & Market Streets  
Clearfield, PA 16830  
(814) 765-2641

THE LAW OFFICES OF  
RICHARD H. MILGRUB  
211 NORTH SECOND STREET  
CLEARFIELD, PA 16830

109 NORTH BRADY STREET  
DUBOIS, PA 15801

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

GARY L. BERKLEY,  
Plaintiff

-vs-

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

\*  
\*  
\*  
\*  
\*  
\*  
\*

No. 04-55-CD

ANSWER TO COMPLAINT - ACTION IN EJECTMENT  
AND COUNTERCLAIM

AND NOW, comes the Defendants, Stephen P. Franek and  
Betty J. Franek, by and through their attorney, Richard H.  
Milgrub, Esquire, who files the following Answer and  
Counterclaim:

Answer

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied. After reasonable investigation, Defendants  
are without knowledge or information sufficient to form a belief  
as to the truth of the averment. Strict proof of said averment  
is demanded at trial.
5. Denied. After reasonable investigation, Defendants  
are without knowledge or information sufficient to form a belief  
as to the truth of the averment. Strict proof of said averment  
is demanded at trial.
6. Denied. After reasonable investigation, Defendants

are without knowledge or information sufficient to form a belief as to the truth of the averment. Strict proof of said averment is demanded at trial.

7. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment. Strict proof of said averment is demanded at trial.

8. Admitted.

9. Admitted.

10a. Admitted.

10b. Admitted.

10c. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment. Strict proof of said averment is demanded at trial.

10d. Admitted.

10e. Admitted.

10f. Admitted.

11. Admitted.

12. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment. Strict proof of said averment is demanded at trial.

13. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment. Strict proof of said averment is demanded at trial.

14. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment. Strict proof of said averment is demanded at trial.

15. Denied. Defendant did not erect a carport and garage. Said carport and garage were present when Defendants purchased the property. Furthermore, it is denied that said carport and garage encroaches upon Plaintiff's property.

16. Denied. It is admitted that the Defendants replaced an existing septic system in the same location which was already in the ground when Defendants purchased the property and which was present for a period in excess of twenty-one (21) years. Evidence of both the prior existing septic system and the existing septic system was noticeable.

17. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment. Strict proof of said averment is demanded at trial.

18. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment. Strict proof of said averment is demanded at trial.

19. Admitted. Defendants have exercised and continue to exercise exclusive possession and control of that portion of the property in which the carport, garage and septic system is located.

20. Admitted. Defendants have failed to remove the garage and septic system since said carport, garage and septic system were present when said property was purchased and had been in present for 21-plus years.

WHEREFORE, Defendant asks that Plaintiff's Complaint be dismissed.

#### COUNTERCLAIM

AND NOW, come the Defendants, Stephen P. Franek and Betty J. Franek, by and through their attorney, Richard H. Milgrub, Esquire, who files the following Counterclaim:

21. Paragraphs 1, 2, 3, 8 and 9 of Plaintiff's Complaint are hereby incorporated herein by reference as though set forth in full.

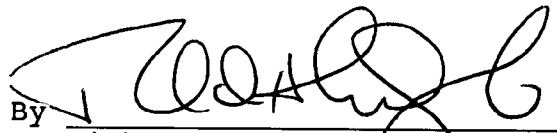
22. On June 17, 1998, when the Defendants purchased their property from Raymond Francis, Executrix of the Will of Lucy Raymond, said garage, septic system and a pole light were already on said property.

23. Said Lucy Raymond, predecessor in title, purchased said property from Evelyn L. Raymond, a widow, by Deed dated April 1, 1986 and recorded in Deed Book 1073, Page 508. Said Evelyn L. Raymond and her husband, Lester Raymond purchased said property through two deeds. The first deed was from Lucy Raymond dated February 2, 1976 and recorded in Deed Book 754, Page 558. The second deed, granting a life estate, from Lucy Raymond in Deed dated July 13, 1983 is recorded in Deed Book 898, Page 207.

24. During the period of time the said individuals had possession of the property, a garage, a visible septic system and a pole light were present.

25. Said Defendants, and predecessors in title, have held adverse, continued, visible, notorious, distinct and hostile possession to the present time, being a period of more than 21 years as to the garage, septic system and pole light.

WHEREFORE, Defendants file this Counterclaim and request an Order and Decree of Court be entered adjudicating that the Plaintiff is forever barred from asserting any right, lien, title or interest in the land on which the garage, septic system and pole light are located and that the Court further Order and Decree that title to the property on which the garage, septic system and pole light are located is vested absolutely in the Defendants' names, their heirs and assigns, free and clear of any and all claims of any nature by the Plaintiff, his heirs, successors and assigns, or by anyone claiming by, through or under him, and that Defendants be seized of an indivisible title to the land on which the garage, septic system and pole light are located. Defendants further request an Order granting an easement for access to the pole light.

By   
Richard H. Milgrub, Esquire  
Attorney for Defendants

THE LAW OFFICES OF  
RICHARD H. MILGRUB  
211 NORTH SECOND STREET  
CLEARFIELD, PA 16830

109 NORTH BRADY STREET  
DUBOIS, PA 15801

We, Betty J. Franek and Stephen P. Franek  
verify that the statements made in the foregoing are true and  
correct. We understand that false statements herein are made  
subject to the penalties of 18 Pa.C.S. Section 4904 relating to  
unsworn falsification to authorities.

Date: 3/12/04

\* Betty J. Franek

Date: 3/12/04

\* Steve P. Franek

THE LAW OFFICES OF  
RICHARD H. MILGRUB  
211 NORTH SECOND STREET  
CLEARFIELD, PA 16830

109 NORTH BRADY STREET  
DUBOIS, PA 15801

FILED ice

02:49 PM 144 M. Igual  
MAR 15 2004

William A. Shaw  
Prothonotary/Clerk of Courts

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

GARY L. BERKLEY,  
Plaintiff

-vs-

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

\*  
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\*  
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\*

No. 04-55-CD

Type of Action:  
Civil

Type of Pleading:  
Certificate of Service

Filed on Behalf of:  
Defendants

Counsel of Record for this  
Party:

Richard H. Milgrub, Esquire  
Supreme Court I.D. 19865

211 North Second Street  
Clearfield, PA 16830  
(814) 765-1717

THE LAW OFFICES OF  
RICHARD H. MILGRUB  
211 NORTH SECOND STREET  
CLEARFIELD, PA 16830  
—  
109 NORTH BRADY STREET  
DUBOIS, PA 15801

FILED

MAR 16 2004

William A. Shaw  
Prothonotary/Clerk of Courts

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

GARY L. BERKLEY,  
Plaintiff

-vs-

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

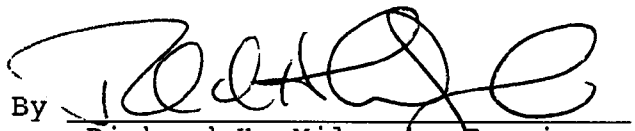
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No. 04-55-CD

CERTIFICATE OF SERVICE

I, Richard H. Milgrub, Esquire, do hereby certify that a certified copy of the Defendants' Answer and Counterclaim were served upon the Plaintiff's attorney of record, Brett M. Woodburn, Esquire, 3631 North Front Street, Harrisburg, PA 17110 by depositing the same in the United States Postal Service, first-class mail, regular deliver, postage prepaid the 15th day of March, 2004.

Date: 3/16/04

By   
Richard H. Milgrub, Esquire  
Attorney for Defendant

THE LAW OFFICES OF  
RICHARD H. MILGRUB  
211 NORTH SECOND STREET  
CLEARFIELD, PA 16830

109 NORTH BRADY STREET  
DUBOIS, PA 15801

William A. Shaw  
Prothonotary/Clerk of Courts

FILED  
MAR 16 2004  
No  
cc



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

BERKLEY, GARY L.

VS.

FRANEK, STEPHEN P. & BETTY J.

COMPLAINT IN EJECTMENT

Sheriff Docket #

15060

04-55-CD

**SHERIFF RETURNS**

NOW JANUARY 26, 2004 AT 10:10 AM SERVED THE WITHIN COMPLAINT IN EJECTMENT ON BETTY J. FRANEK, DEFENDANT AT RESIDENCE, 456 GERMAN ROAD, GRASSFLAT, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO BETTY J. FRANEK A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN EJECTMENT AND MADE KNOWN TO HER THE CONTENTS THEREOF.  
SERVED BY: MCCLEARY/NEVLING

NOW JANUARY 26, 2004 AT 10:15 AM SERVED THE WITHIN COMPLAINT IN EJECTMENT ON STEPHEN P. FRANEK, DEFENDANT AT RESIDENCE, AUTUMN WAY, DRIFTING, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO STEPHEN FRANEK A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN EJECTMENT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.  
SERVED BY: NEVLING/MCCLEARY

**Return Costs**

Cost	Description
40.87	SHERIFF HAWKINS PAID BY: ATTY CK# 40709
20.00	SURCHARGE PAID BY: ATTY CK #40710

Sworn to Before Me This

14 Day Of April 2004  
William A. Shaw

So Answers,

Chester A. Hawkins  
Chester A. Hawkins  
Sheriff

**FILED**

0 8:36 AM

APR 14 2004

William A. Shaw  
Prothonotary

CP

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

GARY L. BERKLEY,  
Plaintiff

-vs-

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

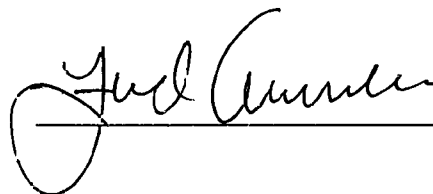
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No. 04-55-CD


ORDER

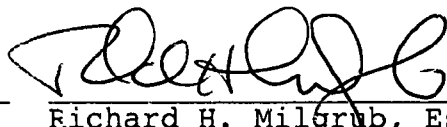
AND NOW, this 1<sup>st</sup> day of May, 2004, upon agreement of the parties, it is the ORDER of this Court that the Defendants be permitted to amend their responsive pleadings/counterclaim, so as to include a claim for an easement by prescription.

BY THE COURT:

  
\_\_\_\_\_  
Judge

We do hereby consent to the entry of the above Order.

  
\_\_\_\_\_  
Brett M. Woodburn, Esquire  
Attorney for Plaintiff

  
\_\_\_\_\_  
Richard H. Milgrub, Esquire  
Attorney for Defendants

THE LAW OFFICES OF  
RICHARD H. MILGRUB  
211 NORTH SECOND STREET  
CLEARFIELD, PA 16830  
—  
109 NORTH BRADY STREET  
DUBOIS, PA 15801

FILED

MAY 20 2004

William A. Shaw  
Prothonotary/Clerk of Courts

FILED  
20c  
01/9:36/20  
MAY 20 2004  
GRAY milgrub  
EG

William A. Shaw  
Prothonotary/Clerk of Courts

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

GARY L. BERKLEY,  
Plaintiff

-vs-

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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\*  
\*

No. 04-55-CD

Type of Action:  
Civil Action - Law  
(Ejectment)

Type of Pleading:  
Amended Answer to  
Complaint and Counterclaim

Filed on Behalf of:  
Defendants

Counsel of Record for this  
Party:

Richard H. Milgrub, Esquire  
Supreme Court I.D. 19865

211 North Second Street  
Clearfield, PA 16830  
(814) 765-1717

THE LAW OFFICES OF  
RICHARD H. MILGRUB  
211 NORTH SECOND STREET  
CLEARFIELD, PA 16830

109 NORTH BRADY STREET  
DUBOIS, PA 15801

FILED

JUN 11 2004

William A. Shaw  
Prothonotary

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

GARY L. BERKLEY,  
Plaintiff

-vs-

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

\*  
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\*  
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\*

No. 04-55-CD

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 Answer and Counterclaim 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 Defendant. You may lose money or property or other rights important to you.

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

COURT ADMINISTRATOR  
Clearfield County Courthouse  
Second & Market Streets  
Clearfield, PA 16830  
(814) 765-2641

THE LAW OFFICES OF  
RICHARD H. MILGRUB  
211 NORTH SECOND STREET  
CLEARFIELD, PA 16830

109 NORTH BRADY STREET  
DUBOIS, PA 15801

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

GARY L. BERKLEY,  
Plaintiff

-vs-

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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No. 04-55-CD

AMENDED ANSWER TO COMPLAINT - ACTION IN EJECTMENT  
AND COUNTERCLAIM

AND NOW, comes the Defendants, Stephen P. Franek and Betty J. Franek, by and through their attorney, Richard E. Milgrub, Esquire, who files the following Amended Answer and Counterclaim:

Answer

1. Admitted.

2. Admitted.

3. Admitted.

4. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment. Strict proof of said averment is demanded at trial.

5. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment. Strict proof of said averment is demanded at trial.

6. Denied. After reasonable investigation, Defendants

are without knowledge or information sufficient to form a belief as to the truth of the averment. Strict proof of said averment is demanded at trial.

7. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment. Strict proof of said averment is demanded at trial.

8. Admitted.

9. Admitted.

10a. Admitted.

10b. Admitted.

10c. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment. Strict proof of said averment is demanded at trial.

10d. Admitted.

10e. Admitted.

10f. Admitted.

11. Admitted.

12. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment. Strict proof of said averment is demanded at trial.

13. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment. Strict proof of said averment is demanded at trial.

14. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment. Strict proof of said averment is demanded at trial.

15. Denied. Defendant did not erect a carport and garage. Said carport and garage were present when Defendants purchased the property. Furthermore, it is denied that said carport and garage encroaches upon Plaintiff's property.

16. Denied. It is admitted that the Defendants replaced an existing septic system in the same location which was already in the ground when Defendants purchased the property and which was present for a period in excess of twenty-one (21) years. Evidence of both the prior existing septic system and the existing septic system was noticeable.

17. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment. Strict proof of said averment is demanded at trial.

18. Denied. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averment. Strict proof of said averment is demanded at trial.

19. Admitted. Defendants have exercised and continue to exercise exclusive possession and control of that portion of the property in which the carport, garage and septic system is located.

20. Admitted. Defendants have failed to remove the garage and septic system since said carport, garage and septic system were present when said property was purchased and had been in present for 21-plus years.

WHEREFORE, Defendant asks that Plaintiff's Complaint be dismissed.

COUNTERCLAIM  
Count I

AND NOW, come the Defendants, Stephen P. Franek and Betty J. Franek, by and through their attorney, Richard H. Milgrub, Esquire, who files the following Counterclaim:

21. Paragraphs 1, 2, 3, 8 and 9 of Plaintiff's Complaint are hereby incorporated herein by reference as though set forth in full.

22. On June 17, 1998, when the Defendants purchased their property from Raymond Francis, Executrix of the Will of Lucy Raymond, said garage, septic system and a pole light were already on said property.

23. Said Lucy Raymond, predecessor in title, purchased said property from Evelyn L. Raymond, a widow, by Deed dated April 1, 1986 and recorded in Deed Book 1073, Page 508. Said Evelyn L. Raymond and her husband, Lester Raymond purchased said property through two deeds. The first deed was from Lucy Raymond dated February 2, 1976 and recorded in Deed Book 754, Page 558. The second deed, granting a life estate, from Lucy Raymond in Deed dated July 13, 1983 is recorded in Deed Book 398, Page 207.

24. During the period of time the said individuals had possession of the property, a garage, a visible septic system and a pole light were present.

25. Said Defendants, and predecessors in title, have held adverse, continued, visible, notorious, distinct and hostile possession to the present time, being a period of more than 21 years as to the garage, septic system and pole light.

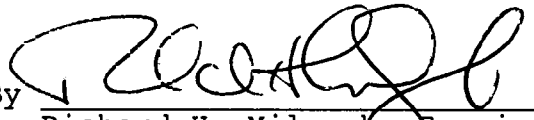
WHEREFORE, Defendants file this Counterclaim and request an Order and Decree of Court be entered adjudicating that the Plaintiff is forever barred from asserting any right, lien, title or interest in the land on which the garage, septic system and pole light are located and that the Court further Order and Decree that title to the property on which the garage, septic system and pole light are located is vested absolutely in the Defendants' names, their heirs and assigns, free and clear of any and all claims of any nature by the Plaintiff, his heirs, successors and assigns, or by anyone claiming by, through or under him, and that Defendants be seized of an indivisible title to the land on which the garage, septic system and pole light are located. Defendants further request an Order granting an easement for access to the pole light.

#### Count II

26. Paragraphs 21, 22, 23, 24 and 25 of Plaintiff's Complaint are hereby incorporated by reference as though set forth in full.

WHEREFORE, Defendants file this Counterclaim and request an Order and Decree of Court be entered adjudicating that

the Defendants are the owners of an easement by prescription of the land in which the garage, septic system and pole light are located. Furthermore, Defendants request an Order enjoining Plaintiff from obstructing said easement and also such other relief as the Court may deem just.

By   
Richard H. Milgrub, Esquire  
Attorney for Defendants

THE LAW OFFICES OF  
RICHARD H. MILGRUB  
211 NORTH SECOND STREET  
CLEARFIELD, PA 16830

—  
109 NORTH BRADY STREET  
DUBOIS, PA 15801

We, Stephen P. Franek and Betty J. Franek, verify that the statements made in the Answer to Complaint and Counterclaim are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

Date: 6/10/04

Betty J. Franek

Date: 6/10/04

Steve Franek

FILED

o 2:27 PM 1cc to ally.

JUN 11 2004

Prothonotary  
William A. Shaw

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

GARY L. BERKLEY,  
Plaintiff

-vs-

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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No. 04-55-CD

Type of Action:  
Civil

Type of Pleading:  
Certificate of Service

Filed on Behalf of:  
Defendants

Counsel of Record for this  
Party:

Richard H. Milgrub, Esquire  
Supreme Court I.D. 19865

211 North Second Street  
Clearfield, PA 16830  
(814) 765-1717

THE LAW OFFICES OF  
RICHARD H. MILGRUB  
211 NORTH SECOND STREET  
CLEARFIELD, PA 16830

—  
109 NORTH BRADY STREET  
DUBOIS, PA 15801

**FILED**

JUN 14 2004

William A. Shaw  
Prothonotary

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

GARY L. BERKLEY,  
Plaintiff

-vs-

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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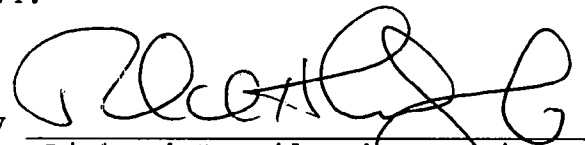
No. 04-55-CD

CERTIFICATE OF SERVICE

I, Richard H. Milgrub, Esquire, do hereby certify that a certified copy of the Defendants' Amended Answer to Complaint and Counterclaim were served upon the Plaintiff's attorney of record, Brett M. Woodburn, Esquire, 3631 North Front Street, Harrisburg, PA 17110 by depositing the same in the United States Postal Service, first-class mail, regular deliver, postage prepaid the 14th day of June, 2004.

Date: 6/14/04

By

  
Richard H. Milgrub, Esquire  
Attorney for Defendant

FILED

O 210 44 NDC

JUN 14 2004

  
William A. Shaw  
Prothonotary

GARY L. BERKLEY  
Plaintiff,

v.

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

: IN THE COURT OF COMMON PLEAS  
: OF CLEARFIELD COUNTY,  
: PENNSYLVANIA  
:  
: No. 04-55-CD  
:  
: CIVIL ACTION - LAW  
:

**CERTIFICATE**  
**PREREQUISITE TO SERVICE OF A SUBPOENA**  
**PURSUANT TO RULE 4009.22**

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Plaintiff Gary L. Berkley certifies that:

- 1) a notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served;
- 2) a copy of the notice of intent, including the proposed subpoena, is attached to this certificate;
- 3) no objection to the subpoena has been received; and
- 4) the subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

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

11/4/04

\_\_\_\_\_  
Attorney for Plaintiff

*[Handwritten Signature]*

(R)  
cc

**FILED**  
mjl:slr  
NOV 08 2004

William A. Shaw  
Prothonotary/Clerk of Courts

GARY L. BERKLEY,  
Plaintiff

v.

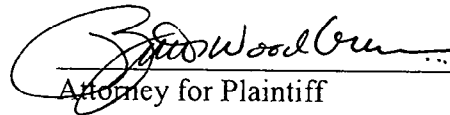
STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

: IN THE COURT OF COMMON PLEAS  
: OF CLEARFIELD COUNTY,  
: PENNSYLVANIA  
:  
: NO. 04-55-CD  
:  
:  
: CIVIL ACTION - LAW (EJECTMENT)

**NOTICE OF INTENT TO SERVE SUBPOENA TO  
PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY  
PURSUANT TO RULE 4009.21**

Plaintiff GARY L. BERKLEY intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served.

Date: 10/1/04

  
Attorney for Plaintiff

**FILED**

**NOV 08 2004**

William A. Shaw  
Prothonotary/Clerk of Courts



# CERTIFICATE OF READINESS

CLEARFIELD COUNTY *CA*  
COURT OF COMMON PLEAS

**INSTRUCTIONS:** This form shall be used for the assignment of Pretrial Motions (preliminary objections, motions for judgment on the pleadings, motions for summary judgment and divorce special relief) and the listing of a case for Arbitration, Nonjury Trial or Jury Trial. File the original and one copy of this form with the Prothonotary's Office. This Certificate of Readiness must be personally signed by the filing counsel of record or the filing pro se party. (USE REVERSE SIDE IF NECESSARY. DO NOT ABBREVIATE PARTIES.)

<b>PLAINTIFF(S):</b> GARY L. BERKLEY	
<b>DEFENDANT(S):</b> STEPHEN P. FRANEK AND BETTY J. FRANEK	
<b>ADDITIONAL DEFENDANT(S):</b>	
<b>DOCKET NUMBER:</b> 04-55-CD	
<b>A. PRETRIAL MOTIONS</b> (Complete Sections A and E of the Certificate of Readiness) <input type="checkbox"/> Preliminary Objections <input type="checkbox"/> Judgment on the Pleadings <input type="checkbox"/> Summary Judgment <input type="checkbox"/> Divorce Special Relief <input type="checkbox"/> I hereby certify that the matter is ready for disposition in accordance with the Pennsylvania Rules of Civil Procedure	
<b>B. ARBITRATION</b> (Complete Sections B, D and E of the Certificate of Readiness) <input type="checkbox"/> I hereby certify that the amount in controversy is \$35,000 or less. This matter will be heard by a Board of Arbitration at the time, date, and place specified by the Chair of the panel but, if one or more of the parties is not present at the hearing, the matter may be heard at the same time and date before a Judge of the Court without the absent party or parties. There is no right to a trial de novo on appeal from a decision entered by a Judge.	
<b>C. TRIAL</b> (Complete Sections C, D and E of the Certificate of Readiness) <input checked="" type="checkbox"/> NONJURY TRIAL <input type="checkbox"/> JURY TRIAL <input type="checkbox"/> I hereby certify that all discovery in the case has been completed; that I have made reasonable inquiry of all counsel and/or pro se parties to ensure that all necessary parties, attorneys, and witnesses will be available and that they are available; that serious settlement negotiations have been conducted; that videotaped testimony for use at trial has been recorded and that the case is ready in all respects for trial. I understand that this case will be listed for trial for the next trial term in accordance with the deadlines found in the annual court calendar. I understand that sanctions may be imposed by the Court for the filing of an improper certificate of readiness listing a case for trial. Has this case previously been certified for trial? <input type="checkbox"/> Yes   Date previously certified: _____ <input checked="" type="checkbox"/> No	
<b>D. TYPE OF CASE</b> <input type="checkbox"/> Contract <input type="checkbox"/> Medical Malpractice <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Products Liability <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Malpractice <input checked="" type="checkbox"/> Other Type of Case: <u>BOUNDARY DISPUTE</u> Estimated Trial/Hearing Time: <u>1.5</u> days	
<b>E. COUNSEL:</b> (List names, addresses and telephone numbers of all counsel and check appropriate box to designate listing counsel)	
Plaintiff(s): Brett M. Woodburn, Esquire 3631 North Front Street Harrisburg, PA 17110 <input checked="" type="checkbox"/> Listing Counsel	Telephone Number: (717) 232-7661 Email Address: bwoodburn@caldwellkearns.com
Defendant(s): Richard Milgrub, Esquire 211 North Second Street Clearfield, PA 16830 <input type="checkbox"/> Listing Counsel	Telephone Number: (814) 765-1717 Email Address:
Additional Defendant(s): <input type="checkbox"/> Listing Counsel	Telephone Number: Email Address:

**VERIFICATION:** Listing counsel or pro se party(ies) hereby acknowledge that sanctions may be imposed for the improper filing of this Certificate of Readiness and that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

3/1/05  
Date

Brett M. Woodburn  
Signature of Listing Counsel or Pro Se Party

FILED

MAR 04 2005

William A. Stone  
Prothonotary/Clerk of Courts

045500 CA

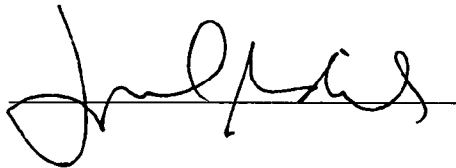
**CERTIFICATE OF SERVICE**

AND NOW, this 14<sup>th</sup> day of April, 2005, I hereby certify that I have served a copy of the within document by depositing a true and correct copy of the same in the U.S. Mails at Harrisburg, Pennsylvania, postage prepaid, addressed to:

Richard H. Milgrub, Esquire  
211 North Second Street  
Clearfield, PA 16830

**CALDWELL & KEARNS**

By:



03-901/86783

**FILED** <sup>CU</sup> NO CC  
p/12:46BY  
APR 15 2005

William A. Shaw  
Prothonotary/Clerk of Courts

GARY L. BERKLEY	:	IN THE COURT OF COMMON PLEAS
Plaintiff,	:	OF CLEARFIELD COUNTY, PENNSYLVANIA
v.	:	
	:	No. 04-55-CD
STEPHEN P. FRANEK and	:	
BETTY J. FRANEK,	:	CIVIL ACTION - LAW
Defendants	:	

### **PLAINTIFF'S PRETRIAL MEMORANDUM**

#### **I. SUMMARY OF FACTS**

Plaintiff Gary Berkley is the owner of three parcels of real estate located in Cooper Township, Clearfield County, Pennsylvania, collectively identified as the "Plubell Farm". The first lot is 58.95 acres, the a second lot is 78.25 acres, and the third lot is 30 acres. The second lot borders the land of Defendants Franek. Plaintiff had his property surveyed, which showed that a car port and garage erected by the Defendants encroached upon Plaintiff's land. The survey further showed that a septic system installed by the Defendants also encroached upon Plaintiff's property. Plaintiff also believes that the septic system was installed without proper authorization from the local municipality.

Plaintiff brought this action in ejectment against the Defendants to seek removal of the car port, garage and septic system that encroach upon his land. Defendants filed a counterclaim seeking an easement by prescription.

#### **II. EXHIBITS**

- A. Deed dated July 10, 2003, conveying the three parcels of land from Anna Plubell, widow, and Victor Plubell and Arlene Plubell, husband and wife, to Gary L. Berkley.

**RECEIVED**

**APR 15 2005**

**COURT ADMINISTRATOR'S  
OFFICE**

**FILED**

**APR 15 2005**

William A. Shaw  
Prothonotary/Clerk of Courts

CA

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

GARY L. BERKLEY

NO. 04-55-CD

V.

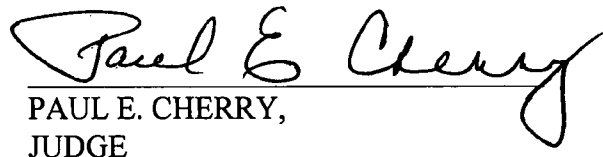
STEPHEN P. FRANEK and  
BETTY J. FRANEK

**ORDER**

AND NOW, this 21<sup>st</sup> day of April, 2005, following Pre-Trial Conference, it is the  
ORDER of this Court as follows:

1. Trial in this matter is scheduled for June 22, 2005, beginning at 9:00 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Counsel for the parties, if they so desire, may submit a Trial Brief to the Court no more than thirty (30) days prior to the commencement of trial.
3. The parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits.

BY THE COURT,

  
PAUL E. CHERRY,  
JUDGE

FILED  
APR 25 2005

William A. Shaw  
Prothonotary/Clerk of Courts

Attys: B. Woodburn  
Mitgala

**FILED**

**APR 25 2005**

William A. Shaw  
Prothonotary/Clerk of Courts

GARY L. BERKLEY,  
Plaintiff,

vs.

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

: IN THE COURT OF COMMON FLEAS  
: OF CLEARFIELD COUNTY,  
: PENNSYLVANIA

:  
: No. 04-55-CD

:  
: CIVIL ACTION - LAW

:

**FILED** <sup>no cc</sup>  
m/10:59/81  
MAY 25 2005 @

**REPLY TO COUNTER-CLAIMS**

William A. Shaw  
Prothonotary/Clerk of Courts

AND NOW comes the Plaintiff, Gary L. Berkley, by and through his attorneys, Caldwell & Kearns, and files the within Reply to Counter-Claims; and in support thereof, avers as follows:

21. Plaintiff Gary L. Berkley incorporates by reference paragraphs 1-20 of his Complaint, as if set forth in full.

22. Denied. After reasonable investigation, Plaintiff is without sufficient information to determine the truth or accuracy of the averments of this paragraph, and the same are hereby denied with strict proof thereof demanded at time of trial.

23. Denied. After reasonable investigation, Plaintiff is without sufficient information to determine the truth or accuracy of the averments of this paragraph, and the same are hereby denied with strict proof thereof demanded at time of trial. By way of further answer, the documents identified in paragraph 23 speak for themselves, and any attempts by Defendants to characterize or interpret the same are specifically denied with strict proof thereof demanded at time of trial.

24. Denied. After reasonable investigation, Plaintiff is without sufficient information to determine the truth or accuracy of the averments of this paragraph, and the same are hereby denied with strict proof thereof demanded at time of trial.

25. Denied. The averments of this paragraph constitute conclusions of law to which no response is required.

WHEREFORE, Plaintiff Gary L. Berkley respectfully request that this Honorable Court DISMISS Counter-Claim I filed by Defendants, Stephen P. and Betty J. Franek and award such costs, expenses and attorneys' fees as authorized by the law and that are deemed necessary, just and appropriate under the circumstances.


**COUNTER-CLAIM II**

26. No response required.

WHEREFORE, Plaintiff Gary L. Berkley respectfully request that this Honorable Court DISMISS Counter-Claim II filed by Defendants, Stephen P. and Betty J. Franek and award such costs, expenses and attorneys' fees as authorized by the law and that are deemed necessary, just and appropriate under the circumstances.

Respectfully submitted,

CALDWELL & KEARNS

By: 

Brett M. Woodburn, Esquire  
Attorney I.D. #81786  
3631 North Front Street  
Harrisburg, PA 17110  
(717) 232-7661

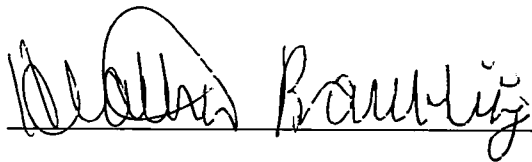
Date: 5/20/05

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the within documents this 23 day of May 2005, on the following by depositing a true and correct copy of the same in the U.S. Mails at Harrisburg, Pennsylvania, postage prepaid, addressed to:

Richard Milgrub, Esquire  
211 North Second Street  
Clearfield, PA 16830

CALDWELL & KEARNS

  
Michael Baulitz

**CALDWELL & KEARNS**  
A PROFESSIONAL CORPORATION  
**ATTORNEYS AT LAW**

3631 NORTH FRONT STREET  
HARRISBURG, PENNSYLVANIA 17110

FILED

019:1061  
JUN 24 2005

ICC Augs: Woodburn  
Milgrub  
OK

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

GARY L. BERKLEY

:

VS.

:

NO. 04-55-CD

STEPHEN P. FRANEK and

:

BETTY J. FRANEK

:

O R D E R

NOW, this 22nd day of June, 2005, this being the date set for Civil Nonjury Trial; the Court being advised that the parties have reached an agreement, it is the ORDER of this Court as follows:

1. Plaintiff, Gary L. Berkley, shall grant an easement to the Defendants', Stephen P. Franek and Eetty J. Franek, with said easement extending north on German Road approximately twenty-eight (28) to thirty (30) feet, which will encompass the septic system, and extending east parallel to the Franeks' existing property line, and continuing south to a point abutting but not extending beyond the edge of the existing garage;

2. The Defendants shall remove the carport and shall convey, in exchange for the easement, a grant of land consisting of four (4) feet to one (1) foot at the back of Defendants' property.

3. Plaintiff shall pay the costs of the subdivision up front. Defendants shall pay the sum of Ten (\$10.00) Dollars

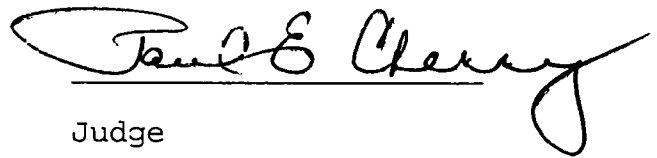
per month, for a total of twenty-four (24) months.

4. Plaintiff's counsel shall prepare the drafting of the lease and easement and forward the same to counsel for Defendants for approval.

5. All provisions within this Order, including subdivision, transfer of properties and releases, as well as removal of the carport, shall be performed within sixty (60) days from date hereof.

6. Counsel shall file, within sixty (60) days from date hereof, a praecipe for discontinuance.

BY THE CCJRT,

  
Judge

**FILED**

**JUN 24 2005**

William A. Shaw  
Prothonotary/Clerk of Courts

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

GARY L. BERKLEY,  
Plaintiff

-vs-

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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No. 04-55-CD

Type of Pleading:  
Praecipe to Withdraw

Filed on Behalf of:  
Defendants

Counsel of Record for this  
Party:

Richard H. Milgrub  
Supreme Court I.D. 19865

211 North Second Street  
Clearfield, PA 16830  
(814) 765-1717

THE LAW OFFICES OF  
RICHARD H. MILGRUE  
211 NORTH SECOND STREET  
CLEARFIELD, PA 16830

109 NORTH BRADY STREET  
DUBOIS, PA 15301

FILED <sup>icc</sup>  
JUN 29 2005  
12:58 PM  
RHM

William A. Shaw  
Prothonotary/Clerk of Courts

CA

Any Milgrub

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

GARY L. BERKLEY,  
Plaintiff

-VS-

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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No. 04-55-CD

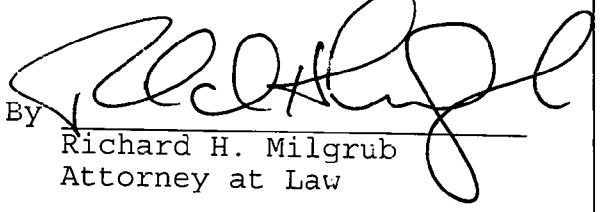
PRAECIPE TO WITHDRAW

TO THE PROTHONOTARY,

Please mark my withdrawal on behalf of Stephen Franek  
and Betty Franek with regards to the above captioned matter.

Date: 6-28-05

By

  
Richard H. Milgrub  
Attorney at Law

THE LAW OFFICES OF  
RICHARD H. MILGRUB  
211 NORTH SECOND STREET  
CLEARFIELD PA 16830

—  
109 NORTH BRACY STREET  
DUBOIS, PA 15801

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

GARY L. BERKLEY,  
Plaintiff

-vs-

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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No. 04-55-CD

CONSENT TO WITHDRAW

I, Stephen P. Franek and Betty J. Franek, hereby consent and  
have no objection to the withdrawal of Richard H. Milgrub.

Date: 4-28-05

Stephen P. Franek  
Stephen P. Franek

Date: 6-28-05

Betty J. Franek  
Betty J. Franek

THE LAW OFFICES OF  
RICHARD H. MILGRUB  
211 NORTH SECOND STREET  
CLEARFIELD, PA 16830  
—  
109 NORTH BRADY STREET  
DLBOIS, PA 15901

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JUN 29 2005  
Any milgrub  
William A. Staw  
Prothonotary/Clerk of Courts

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

GARY L. BERKLEY,  
Plaintiff

-vs-

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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No. 04-55-CD

Type of Action:  
Civil

Type of Pleading:  
Petition to Vacate Order

Filed on Behalf of:  
Defendants

Counsel of Record for this  
Party:

Richard H. Milgrub  
Supreme Court I.D. 19865

211 North Second Street  
Clearfield, PA 16830  
(814) 765-1717

THE LAW OFFICES OF  
RICHARD H. MILGRUB  
211 NORTH SECOND STREET  
CLEARFIELD, PA 16830  
—  
109 NORTH BRADY STREET  
DUBOIS, PA 15801

**FILED**  
012:58/61  
JUN 29 2005

icc  
Att'y Milgrub

*Red*

William A. Shaw  
Prothonotary/Clerk of Courts

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

GARY L. BERKLEY,  
Plaintiff

-vs-

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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No. 04-55-CD

PETITION TO VACATE ORDER

AND NOW, comes Your Petitioner, Stephen P. Franek, by  
and through his attorney, Richard H. Milgrub, Esquire, who files  
the following Petition:

1. That on June 22, 2005, a Trial was scheduled with  
regards to the above captioned matter.
2. That leading up to said Trial date, various  
negotiations were taking place.
3. That the actual occupant of the premise in question  
was the Defendant, Betty J. Franek.
4. That Betty J. Franek was the individual primarily in  
communication with Your Petitioner's attorney of record, Richard H.  
Milgrub.
5. That on the Trial date, negotiations continued  
between Attorney Milgrub and Attorney Brett Woodburn, on behalf of  
the Plaintiff, with both attorneys leaving the Courtroom on several  
occasions.

6. That Stephen P. Franek was aware that negotiations had been going on and were continuing.

7. That at one point the Court recessed the case to give the attorneys more time to continue their negotiations.

8. That upon Mr. Milgrub's return to the Courtroom, he spoke to Betty J. Franek and then left again to continue the negotiations.

9. That although I knew that negotiations were taking place, Betty J. Franek did not keep me directly advised as to the status of the ongoing negotiations.

10. That when the attorneys last entered the Courtroom, this Honorable Court asked whether or not a settlement had been reached, both attorneys responded that a proposal was ready to be presented to the Court.

11. That the terms of said agreement were read out loud in open Court by both attorneys.

12. That the Court then dictated an Order in open Court. Attached hereto and marked Exhibit "A" is a copy of said Order.

13. That Your Petitioner has a hearing problem and was unable to hear and understand the terms of the agreement as recited by the attorneys to the Court.

14. That Your Petitioner because of the hearing problem and the distance was unable to hear the Court's dictation of the Order.

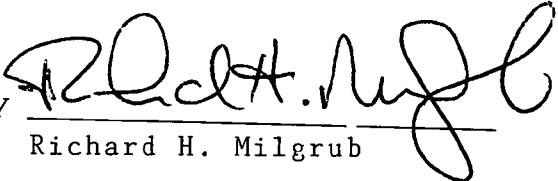
15. That Your Petitioner does not believe that Mr. Milgrub was aware of his hearing problem.

16. That Your Petitioner does not feel that he had an adequate amount of time to reflect on the proposal presented to the Court.

17. That Your Petitioner disagrees with the Order entered and requests that the Order be vacated and the matter be rescheduled for Trial.

18. That because of various stipulations, it is anticipated that the Trial would present only several fact witnesses and would not take more than half a day.

WHEREFORE, Your Petitioner respectfully requests that a Rule be issued to show cause why said Order entered should not be vacated.

By   
Richard H. Milgrub

VERIFICATION

I, Stephen P. Franek, verify that the statements in the Petition to Rescind Order are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

Dated: 6-28-05

\* Steve Franek  
Stephen P. Franek

THE LAW OFFICES OF  
RICHARD H. MILGRUB  
211 NORTH SECOND STREET  
CLEARFIELD, PA 16830

105 NORTH BRADY STREET  
DUBOIS, PA 15801

Milgrat

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

GARY L. BERKLEY :  
VS. : NO. 04-55-CD  
STEPHEN P. FRANEK and :  
BETTY J. FRANEK :

O R D E R

NOW, this 22nd day of June, 2005, this being the date set for Civil Nonjury Trial; the Court being advised that the parties have reached an agreement, it is the ORDER of this Court as follows:

1. Plaintiff, Gary L. Berkley, shall grant an easement to the Defendants', Stephen P. Franek and Betty J. Franek, with said easement extending north on German Road approximately twenty-eight (28) to thirty (30) feet, which will encompass the septic system, and extending east parallel to the Franeks' existing property line, and continuing south to a point abutting but not extending beyond the edge of the existing garage;
2. The Defendants shall remove the carport and shall convey, in exchange for the easement, a grant of land consisting of four (4) feet to one (1) foot at the back of Defendants' property.
3. Plaintiff shall pay the costs of the subdivision up front. Defendants shall pay the sum of Ten (\$10.00) Dollars

EXHIBIT "A"

per month, for a total of twenty-four (24) months.

4. Plaintiff's counsel shall prepare the drafting of the lease and easement and forward the same to counsel for Defendants for approval.

5. All provisions within this Order, including subdivision, transfer of properties and releases, as well as removal of the carport, shall be performed within sixty (60) days from date hereof.

6. Counsel shall file, within sixty (60) days from date hereof, a praecipe for discontinuance.

BY THE COURT,

**/s/ Paul E. Cherry**

---

Judge

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

JUN 24 2005

Attest.

*William L. Cherry*  
Prothonotary/  
Clerk of Courts

**FILED**

**JUN 29 2005**

William A. Shaw  
Prothonotary/Clerk of Courts

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

GARY L. BERKLEY,  
Plaintiff

-vs-

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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No. 04-55-CD

RULE

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2005, upon  
consideration of the Plaintiff's Petition to Rescind Order that a  
Hearing be scheduled for the \_\_\_\_ day of \_\_\_\_\_, 2005 at  
\_\_\_\_:\_\_\_\_.m. in Courtroom \_\_\_\_ of the Clearfield County  
Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

\_\_\_\_\_  
Judge

THE LAW OFFICES OF  
RICHARD H. MILGRLB  
211 NORTH SECOND STREET  
CLEARFIELD, PA 1683C

—  
109 NORTH BRADY STREET  
CUBOIS, PA 15801

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

GARY L. BERKLEY,  
Plaintiff

-vs-

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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No. 04-55-CD

Type of Action:  
Civil

Type of Pleading:  
Praecipe to Withdraw  
Petition to Vacate Order

Filed on Behalf of:  
Defendant

Counsel of Record for this  
Party:

Richard H. Milgrub, Esquire  
Supreme Court I.D. 19865

211 North Second Street  
Clearfield, PA 16830  
(814) 765-1717

THE LAW OFFICES OF  
RICHARD H. MILGRUB  
211 NORTH SECOND STREET  
CLEARFIELD, PA 16830  
—  
109 NORTH BRADY STREET  
DUBO S. PA 15801

FILED No  
0/2-38/64 CC  
JUN 30 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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

GARY L. BERKLEY,  
Plaintiff

-vs-

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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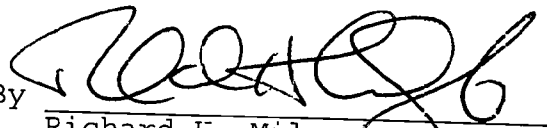
No. 04-55-CD

PRAECIPE TO WITHDRAW PETITION TO VACATE ORDER

NOW, comes Your Petitioner, Richard H. Milgrub,  
Esquire, attorney of record for Stephen P. Franek and Betty J  
Franek, in the above-captioned matter who files the following  
Praecipe:

1. That Your Petitioner has filed a Petition to Vacate  
Order.
2. That Your Petitioner now wishes to withdraw said  
Petition.

By

  
Richard H. Milgrub, Esquire  
Attorney for Defendants

THE LAW OFFICES OF  
RICHARD H. MILGRUB  
211 NORTH SECOND STREET  
CLEARFIELD, PA 16830


109 NORTH BRADY STREET  
DUBOIS, PA 15801

VERIFICATION

I, Richard H. Milgrub, have read the foregoing Praeceptum. The Statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

I am authorized to make this verification on behalf of the Defendants because of my position as counsel of record.



Richard H. Milgrub

Dated: 6/30/05

THE LAW OFFICES OF  
RICHARD H. MILGRUB  
211 NORTH SECOND STREET  
CLEARFIELD, PA 16830

109 NORTH BRADY STREET  
DUBOIS, PA 15801

CA

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

GARY L. BERKLEY,  
Plaintiff

-vs-

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

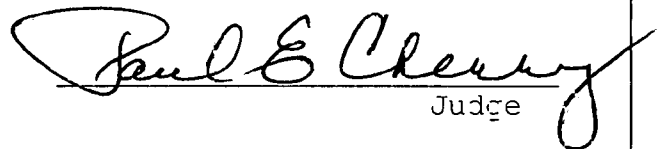
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No. 04-55-CD

ORDER

AND NOW, this 5th day of July, 2005, upon  
the consent of Stephen Franek and Betty Franek, it is the  
Order of this Court that Richard H. Milgrub, Esquire, be  
allowed to Withdraw as Counsel of Record.

BY THE COURT:

  
Judge

THE LAW OFFICES OF  
RICHARD H. MILGRUB  
211 NORTH SECOND STREET  
CLEARFIELD, PA 16830

109 NORTH BRACY STREET  
DUBOIS, PA 15801

FILED 1CC  
01:37 PM  
JUL 06 2005 @  
Ang Milgrub

William A. Shaw  
Prothonotary/Clerk of Courts

GARY L. BERKLEY,  
Plaintiff

v.

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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

: NO. 04-55-CD

: CIVIL ACTION - LAW (EJECTMENT)

**ORDER**

AND NOW this 8<sup>th</sup> day of September, 2005, upon consideration of the within  
Petition, it is hereby ORDERED that a status conference shall be held in the above referenced  
matter on October 17, 2005 at 11:30 o'clock a.m. in court room  
# 2.

BY THE COURT

Paul E Cherry

03-901/92329

FILED <sup>1cc</sup>  
012:5037  
SEP 09 2005  
William A. Shaw  
Prothonotary/Clerk of Courts  
Atty Woodburn

FILED

SEP 09 2005

William A. Shaw  
Prothonotary/Clerk of Courts

GARY L. BERKLEY,  
Plaintiff

v.

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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

: NO. 04-55-CD

: CIVIL ACTION - LAW (EJECTMENT)

**PETITION FOR STATUS CONFERENCE**

AND NOW comes the Plaintiff, Gary Berkley, by and through his attorneys, Caldwell & Kearns, and files the within Request for a Status Conference; and in support thereof, avers as follows:

1. The underlying lawsuit evolved from a boundary dispute existing between the Plaintiff, Gary L. Berkley, ("Plaintiff"), and the Defendants, Stephen and Betty Franek, ("Defendants"), for the property known as 456 German Road, Grassflat, PA 16839. ✓

2. A trial was scheduled for this matter to commence on June 22, 2005.

3. Prior to the commencement of trial, Plaintiff and Defendants reached a settlement for all issues pending before the Court.

4. The terms of the settlement agreement were memorialized on the record.

5. Subsequently, this Honorable Court issued an Order reciting the terms of the settlement agreement and setting forth timelines for compliance. A true and correct copy of this Order is attached hereto as Exhibit "A".

6. Plaintiffs were ordered to remove the carport within 60 days of the date of the order.

7. As of the date of filing this Motion, the carport was not removed.

8. Part of the terms of the settlement agreement involved subdividing Defendants' property and conveying it to Plaintiff.

9. Any reduction in the size of parcel improved by residential real estate requires approval from the Sewage Enforcement Officer.

**FILED**

SEP 06 2005

William A. Shaw

Prothonotary/Clerk of Courts

SENT TO ATT

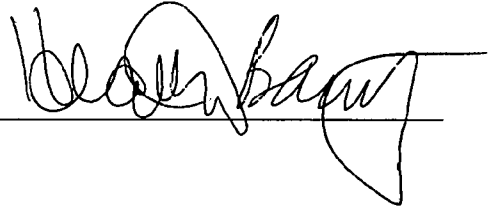
**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the within document this 2 day of  
September, 2005, on the following by depositing a true and correct copy of the same in  
the U.S. Mails at Harrisburg, Pennsylvania, postage prepaid, addressed to:

Stephen and Betty Franek  
456 German Road  
Grassflat, PA 16839

CALDWELL & KEARNS

By: \_\_\_\_\_



**FILED**

**SEP 06 2005**

William A. Shaw  
Prothonotary/Clerk of Courts

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

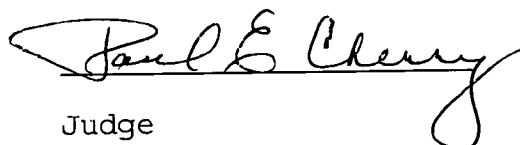
GARY L. BERKLEY :  
VS. : NO. 04-55-CD  
STEPHEN P. FRANEK and :  
BETTY J. FRANEK :

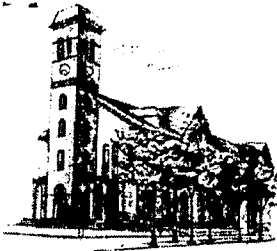
O R D E R

NOW, this 17th day of October, 2005, this being the date set for Status Conference; Defendants, Stephen P. Franek and Betty J. Franek, having failed to appear despite receiving due and proper notice; the Court being satisfied that Defendants have failed to comply with Paragraph 2(f) of this Court's Order dated June 22, 2005, wherein they were to remove the carport and have failed to do so, it is the ORDER of this Court that Plaintiff, Gary L. Berkley, shall hereinafter have the right to remove said carport as soon as may be convenient with his schedule. All costs associated with the removal of said carport shall be assessed to the Defendants, Stephen P. Franek and Betty J. Franek, and shall be paid within no more than forty-five (45) days upon receipt of statement of costs.

BY THE COURT,

**FILED** acc  
013:1784 Amy B. Woodburn  
OCT 18 2005 acc Defs:  
William A. Shaw 456 German Rd.  
Prothonotary Clerk of Courts Grassflat, PA 16839

  
Judge



## Clearfield County Office of the Prothonotary and Clerk of Courts

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

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

\_\_\_\_\_ You are responsible for serving all appropriate parties.

  X   The Prothonotary's office has provided service to the following parties:

  X   Plaintiff(s)/Attorney(s)

  X   Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

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

William A. Shaw  
Prothonotary

③ 2002 4 2 100

W 14.11/14

FILED

NSS  
PE 3

Stephen P. Franek  
Betty J. Franek  
456 German  
Grassflat, PA

A  
C  
S

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

RTS  
RETURN TO SENDER

14#30/0343



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

GARY L. BERKLEY :  
VS. : NO. 04-55-CD  
STEPHEN P. FRANEK and :  
BETTY J. FRANEK :

O R D E R

NOW, this 17th day of October, 2005, this being the date set for Status Conference; Defendants, Stephen P. Franek and Betty J. Franek, having failed to appear despite receiving due and proper notice; the Court being satisfied that Defendants have failed to comply with Paragraph 2(f) of this Court's Order dated June 22, 2005, wherein they were to remove the carport and have failed to do so, it is the ORDER of this Court that Plaintiff, Gary L. Berkley, shall hereinafter have the right to remove said carport as soon as may be convenient with his schedule. All costs associated with the removal of said carport shall be assessed to the Defendants, Stephen P. Franek and Betty J. Franek, and shall be paid within no more than forty-five (45) days upon receipt of statement of costs.

BY THE COURT,

**/s/ Paul E. Cherry**

Judge

I hereby certify this to be a true  
and correct original  
of the within and foregoing

OCT 18 2005

Attest

Clerk of Courts

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

GARY L. BERKLEY

:

VS.

: NO. 04-55-CD

STEPHEN P. FRANEK and

:

BETTY J. FRANEK

:

O R D E R

NOW, this 17th day of October, 2005, this being the date set for Status Conference; Defendants, Stephen P. Franek and Betty J. Franek, having failed to appear despite receiving due and proper notice; the Court being satisfied that Defendants have failed to comply with Paragraph 2(f) of this Court's Order dated June 22, 2005, wherein they were to remove the carport and have failed to do so, it is the ORDER of this Court that Plaintiff, Gary L. Berkley, shall hereinafter have the right to remove said carport as soon as may be convenient with his schedule. All costs associated with the removal of said carport shall be assessed to the Defendants, Stephen P. Franek and Betty J. Franek, and shall be paid within no more than forty-five (45) days upon receipt of statement of costs.

BY THE COURT,

**/s/ Paul E. Cherry**

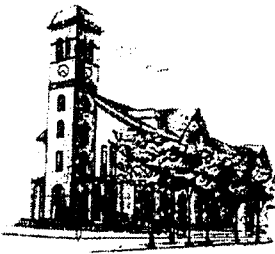
Judge

I hereby certify that to be a true  
and correct copy of the original  
filed in the Court of Common Pleas,  
Clearfield County, Pennsylvania.

OCT 18 2005

Attest:

Clerk of Courts



## Clearfield County Office of the Prothonotary and Clerk of Courts

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

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

\_\_\_\_\_ You are responsible for serving all appropriate parties.

  X   The Prothonotary's office has provided service to the following parties:

  X   Plaintiff(s)/Attorney(s)

  X   Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

GARY L. BERKLEY,  
Plaintiff

v.

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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

: NO. 04-55-CD

: CIVIL ACTION - LAW (EJECTMENT)

FILED  
m/2:00/01  
DEC 19 2005  
2cc  
Atty  
Woodburn

William A. Shaw  
Prothonotary/Clerk of Courts

**PETITION TO PARTIALLY VACATE ORDER OF COURT DATED JUNE 22, 2005**

AND NOW comes the Plaintiff, Gary L. Berkley, by and through his attorneys, Caldwell & Kearns, and files the within Petition to Partially Vacate Order of Court dated June 22, 2005; and in support thereof, avers as follows:

1. The underlying lawsuit evolved from a boundary dispute existing between the Plaintiff, Gary L. Berkley, ("Plaintiff"), and the Defendants, Stephen and Betty Franek, ("Defendants"), for the property known as 456 German Road, Grassflat, PA 16839.
2. A trial was scheduled for this matter, to commence on June 22, 2005.
3. Prior to the commencement of trial, Plaintiff and Defendants reached a settlement for all of the issues pending before the Court.
4. The terms and conditions of the settlement agreement were memorialized on the record.
5. Subsequently, this Honorable Court issued an Order reciting the terms of the settlement agreement and setting forth time lines for compliance. A true and correct copy of the Order is attached hereto as Exhibit "A".
6. Pursuant to Paragraph 1 of the June 22, 2005 Order, Plaintiff was going to grant an easement to Defendants that was intended to encompass Defendants' septic system.
7. According to Paragraph 2 of the Order dated June 22, 2005, Defendants were going to convey to Plaintiff four feet of land from the rear of their property for every one foot of the

easement granted by Plaintiff.

8. The Pennsylvania Sewage Facilities Act requires each municipality to modify its Official Sewage Plan whenever a sub-division of land occurs. 35 P.S. §750.1, et seq.

9. When there is no present or future need for sewage disposal facilities on a given site, and the completion of sewage facilities planning model need not be required, a party can file a Request and Declaration Form seeking a waiver from these planning requirements. A true and correct copy of the Instructions for Completing Request for Planning Waiver & Non-Building Declaration is attached hereto as Exhibit "B".

10. One of the two parcels sought to be created by the proposed sub-division is developed property where Defendants reside.

11. On November 10, 2005, the Sewage Enforcement Officer for Cooper Township, Clearfield County, James M. Wischuck, issued a report that the septic system servicing the property and residence of the Defendants, Betty and Stephen Franek is a malfunctioning septic system. A true and correct copy of James M. Wischuck's report is attached hereto as Exhibit "C".

12. It is believed, and therefore averred, that Defendants' property is not exempt from the requirements of the Sewage Facilities Act because there is an active investigation of malfunction by the local agency or department. 35 P.S. §750.7.

13. It is believed, and therefore averred, that the parties can not perform the terms of the settlement agreement as set forth in the Order of Court dated June 22, 2005, due to a legal impossibility.

14. In the alternative, it is believed, and therefore averred that the parties are unable to perform in accordance with Paragraph 2 of the Order of Court entered June 22, 2005, due to a

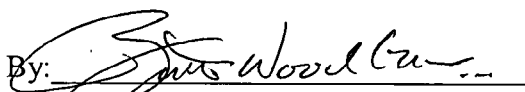
factual impossibility.

15. Because the parties can not satisfy the terms and conditions of the settlement agreement, Plaintiff seeks relief from the Order of Court dated June 22, 2005 and request this Honorable Court to vacate that portion of its Order requiring Plaintiff to grant an easement in exchange for the grant of land consisting of four feet to every one foot of the easement from the rear of Defendants' property.

WHEREFORE, Plaintiff Gary L. Berkley respectfully request that this Honorable Court GRANT his Petition to Partially Vacate the Order of Court dated June 22, 2005.

Respectfully request,

CALDWELL & KEARNS

By:   
Brett M. Woodburn, Esquire  
Attorney I.D. #81786  
3631 North Front Street  
Harrisburg, PA 17110  
(717) 232-7661

Dated: 12/15/05

03-901/95971

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the within documents this 15<sup>th</sup> day of December 2005, on the following by depositing a true and correct copy of the same in the U.S. Mails at Harrisburg, Pennsylvania, postage prepaid, addressed to:

Stephen and Betty Franek  
P.O. Box 96  
Drifting, PA 16834

CALDWELL & KEARNS

  
\_\_\_\_\_

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

GARY L. BERKLEY :  
VS. : NO. 04-55-CD  
STEPHEN P. FRANEK and :  
BETTY J. FRANEK :

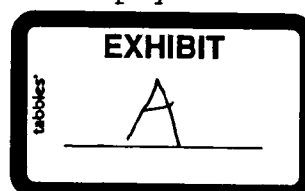
O R D E R

NOW, this 22nd day of June, 2005, this being the date set for Civil Nonjury Trial; the Court being advised that the parties have reached an agreement, it is the ORDER of this Court as follows:

1. Plaintiff, Gary L. Berkley, shall grant an easement to the Defendants', Stephen P. Franek and Betty J. Franek, with said easement extending north on German Road approximately twenty-eight (28) to thirty (30) feet, which will encompass the septic system, and extending east parallel to the Franeks' existing property line, and continuing south to a point abutting but not extending beyond the edge of the existing garage;

2. The Defendants shall remove the carport and shall convey, in exchange for the easement, a grant of land consisting of four (4) feet to one (1) foot at the back of Defendants' property.

3. Plaintiff shall pay the costs of the subdivision up front. Defendants shall pay the sum of Ten (\$10.00) Dollars



per month, for a total of twenty-four (24) months.

4. Plaintiff's counsel shall prepare the drafting of the lease and easement and forward the same to counsel for Defendants for approval.

5. All provisions within this Order, including subdivision, transfer of properties and releases, as well as removal of the carport, shall be performed within sixty (60) days from date hereof.

6. Counsel shall file, within sixty (60) days from date hereof, a praecipe for discontinuance.

BY THE COURT,

**/s/ Paul E. Cherry**

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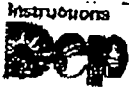
Judge

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

**JUN 24 2005**

Attest.

*William L. Cherry*  
Prothonctary/  
Clerk of Courts



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
BUREAU OF WATER SUPPLY AND WASTEWATER MANAGEMENT

# INSTRUCTIONS FOR COMPLETING REQUEST FOR PLANNING WAIVER & NON-BUILDING DECLARATION

*This form replaces all previous versions of the "Non-Building Waiver" forms. Previous forms may no longer be used and should be recycled.*

**Background:** Act 537 (the Pennsylvania Sewage Facilities Act) and Title 26, Pennsylvania Code, Chapter 71 require each municipality to modify its Official Sewage Plan whenever a subdivision of land occurs. To modify an Official Plan, an appropriate sewage facilities planning module or planning exemption request, completion of required soils testing where onlot disposal is proposed, and formal approval by both the municipality and DEP is required. This sewage facilities planning requirement is not altered by the presence or absence of local or county subdivision regulations or ordinance. Developers, municipal officials and future lot owners are best protected by complying with sewage planning requirements to assure that adequate sewage facilities will be available to serve all newly created parcels of land.

In consideration of claims that since there is no present or future need for sewage disposal facilities on a given site and that completion of sewage facilities planning need not be required, DEP created this waiver request and declaration form (previously known as "Form B") to allow individuals proposing strictly "non-building" subdivisions to document that they may qualify for a waiver from these planning requirements. This form may only be used during the process resulting in creation of new lot boundary lines and a change in land ownership. Neither this declaration nor a Sewage Facilities Planning Module is required to be submitted for a side lot addition when a local ordinance requires such a side lot addition to be legally merged into the tract to which it is being added and any future proposal to subdivide any portion of the merged tracts is to be in accordance with the provision of the Municipalities Planning Code (53 P.S.A. § 10101 et seq.). This request may be submitted in support of "non-building" subdivision proposals in both sewered and unsewered areas.

**Acceptable Uses:** Examples of acceptable large parcel uses for this form include subdivision of property for agriculture, silviculture, mineral lease, division of farmland to settle estates where no building or development is proposed and airport runway extensions. Examples of acceptable small parcel uses for this form include, location of water towers, sewerage pump stations, cell phone towers, separating an existing dwelling from its farmland for agricultural use and where "legally merged" is not a municipal requirement for "side lot additions".

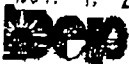
**Unacceptable Uses:** Use of this form is **NOT** acceptable where parcels are being created for new structures that will generate sewage. It may **NOT** be used for subdivision proposals concerning hunting cabins, recreational vehicle sites, camps, or other uses involving construction or placement of temporary or seasonal dwellings on the lots. This form may not be used for further subdivision where lot sizes were originally established in response to local environmental conditions nor may it be used as a means to simply defer sewage facilities testing or planning for any purpose. This form may **NOT** be used in conjunction with or as an "add-on" to a planning module for new land development.

**Form Instructions:** The person requesting the subdivision must complete Section A. The person buying or receiving the parcel must complete Section B. Section C must be signed by the municipality's Sewage Enforcement Officer when the proposal involves the subdivision of property on which there is an existing building currently served by an onlot system. Sections D and E document acceptance of the request by the municipal or county planning agency and by the municipality. The completed waiver/declaration form must be retained by the municipality as part of the permanent record of the subdivision. Following municipal approval, a copy of this form and all attachments must be submitted to DEP and to the municipality's sewage enforcement officer.

EXHIBIT

tabbies

B



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
BUREAU OF WATER SUPPLY AND WASTEWATER MANAGEMENT

REQUEST FOR PLANNING WAIVER & NON-BUILDING DECLARATION

**Section A: To Be Completed by Subdivider**

I, \_\_\_\_\_ (subdivider), propose a subdivision of \_\_\_\_\_ lot(s), located in \_\_\_\_\_ Township/Borough, \_\_\_\_\_ County. No facility or building will be erected on the subdivided lot(s) either now or in the future that will result in the generation of sewage requiring a permit or planning under the Pennsylvania Sewage Facilities Act or the Pennsylvania Clean Streams Law. In support thereof, I have attached the following:

1. A written description of the subdivision and its intended use.
2. A copy of the plot plan and deed (if available) which contains language identical to or similar to:  
"As of the date of this deed/plot plan recording, the property/subdivision described herein is and shall be dedicated for the express purpose of \_\_\_\_\_ use. No portion (or lot number(s)) \_\_\_\_\_ of this property/subdivision are approved by \_\_\_\_\_ (Municipality) or the Department of Environmental Protection (DEP) for the installation of any sewage disposal facility. No permit will be issued for the installation, construction, connection to or use of any sewage collection, conveyance, treatment or disposal system (except for repairs to existing systems) unless the municipality and DEP have both approved sewage facilities planning for the property/subdivision described herein in accordance with the Pennsylvania Sewage Facilities Act (35 P.S. Sections 750.1 et seq.) and regulations promulgated thereunder. Prior to signing, executing, implementing or recording any sales contract or subdivision plan, any purchaser or subdivider of any portion of this property should contact appropriate officials of \_\_\_\_\_ (municipality), who are charged with administering the Sewage Facilities Act to determine the form of sewage facilities planning required and the procedure and requirements for obtaining appropriate permits or approvals."
3. Language identical to or similar to that in Section A.2 above has been recorded on the plot plan and will be recorded on the deed. A copy of the deed (if available) and plot plan is submitted with this waiver request/non-building declaration as documentation of this fact.

I verify that the statements made in Section A of this document are true and correct to the best of my knowledge, information and belief. I understand that false statements in this document are subject to the penalties prescribed by applicable law, including, but not limited to, 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

Subdivider/Developer  
(Print Name)

Signature

Date

**Section B: To Be Completed by Buyer or Recipient of the Non-Building Parcel**

As the anticipated buyer or recipient of the non-building land parcel described in Section A, I declare that my intended use of the parcel is for the purpose of \_\_\_\_\_, that it will not result in any sewage generating facility and that I cannot obtain a permit for a sewage disposal system located on this parcel except in accordance with the Pennsylvania Sewage Facilities Act (35 P.S. §§ 750.1 et seq.), the Pennsylvania Clean Streams Law (35 P.S. §§ 691.1 et seq.) and regulations promulgated thereunder. I understand that false statements in this document are subject to the penalties prescribed by applicable law, including, but not limited to, 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

Buyer/Recipient  
(Print Name)

Signature

Date

**Section 1: Sewage Enforcement Officer** (Only when there is an existing septic system on the parcel under consideration)

I have inspected the lot on which the existing building and existing septic system are located and have concluded, based on soils mapping or soils evaluation, permit information or site inspection that the long-term sewage disposal needs of this site and the building currently served can be met. I further acknowledge that no violations of the Sewage Facilities Act are known to me or have become apparent as a result of my site inspection. No inferences regarding future performance of the existing septic system should be drawn from this acknowledgement. A brief description and sketch of the existing system and site is attached.

Sewage Enforcement Officer (Print Name)	Signature	Certification Number	Date
--	-----------	-------------------------	------

**Section 2: Planning Agency Concurrence**

The described use (agriculture, silviculture, utility placement, mining, etc.) of parcel(s) herein proposed must be consistent with the zoning, land use ordinances and comprehensive plans for the area involved in the proposed subdivision. By signature of the designated official, \_\_\_\_\_ (planning agency with Municipal Planning Code jurisdiction), has reviewed the information submitted requesting a non-building waiver and has found this request to be consistent with applicable plans and ordinances administered by this agency and that it is not part of a subdivision that proposes new sewage generating structures.

Planning Agency Official (Print Name)	Signature	Date
--	-----------	------

**Section 3: Municipal Concurrence**

By signature of the designated official, \_\_\_\_\_ Township/Borough, \_\_\_\_\_ County acknowledges acceptance of this proposal as a non-building lot subdivision. Officials of \_\_\_\_\_ (Municipality) accept full responsibility now and in the future to identify any violation of the non-building lot criteria described and to submit to Pennsylvania DEP a completed Sewage Facilities Planning Module for the entire subdivision should a violation occur. We understand that such planning information may require municipal officials to be responsible for soil testing and other environmental assessments for all the lots in the subdivision. This municipality will retain a copy of this waiver and all attachments. A copy of this form and all attachments are being forwarded to the appropriate office of Pennsylvania DEP and to the municipal sewage enforcement officer.

Municipal Secretary or Chairperson (Print Name)	Signature	Date
--	-----------	------

CENTRAL PA. SEWAGE AGENCY  
P.O. BOX 160  
WEST DECATUR, PA. 16878

NOVEMBER 10, 2005

COOPER TOWNSHIP  
P.O. BOX 208  
KYLERTOWN, PA. 16847

RE: COOPERTOWNSHIP - FORM "B" INSPECTION

REQUEST FOR - FORM "B" - DEP 3800-FM-WSWM0349  
BY GARY BERKLEY

ON 08/23/05 A SEPTIC INSPECTION WAS CONDUCTED ON THE BETTY J. FRANEK AND STEVE P. FRANEK PROPERTY (RESIDENCE) SITUATED IN COOPER TOWNSHIP BOUNDED BY TOWNSHIP ROAD 728.

ON THIS DAY DOMESTIC HOUSEHOLD LIQUID WASTE WAS OBSERVED ON THE BASEMENT FLOOR, ALSO A 4 INCH SEWER PIPE FROM THE SEPTIC TANK TO THE ROADSIDE DITCH WAS FOUND. THE FRANEK'S STATED THEY HAVE HAD PROBLEMS SINCE THEY BOUGHT THE HOUSE. THE SYSTEM IS A MALFUNCTIONING SEPTIC SYSTEM.

THANK YOU,

JAMES M. WISCHUCK  
SEO - COOPER TWP.

EXHIBIT

tabbies

C

GARY L. BERKLEY,  
Plaintiff

v.

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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

: NO. 04-55-CD

: CIVIL ACTION - LAW (EJECTMENT)

FILED 2cc  
01/4/06  
DEC 22 2005  
William A. Seaborn  
Prothonotary/Clerk of Courts

### ORDER

AND NOW this 21<sup>st</sup> day of December, 2005, upon consideration of the foregoing Petition, it is hereby ordered that:

(1) A Rule is issued upon the Respondents, Betty and Stephen Franek, to show cause why the Petitioner, Gary L. Berkley, is not entitled to the relief requested;

(2) The Respondents shall file an Answer to the Petition within twenty (20) days of service upon Respondents;

(3) The Petition shall be decided under Pa. R.C.P. No. 206.7;

(4) An evidentiary hearing on disputed issues of material facts should be held on

January 30, 2006 in Court Room number 2 at 3:00 o'clock p.m. of the Clearfield County Courthouse; and

(5) Notice of the entry of this Order shall be provided to all parties by the Petitioner.

### NOTICE

**A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE MATTERS SET FORTH IN THE FOLLOWING PETITION, YOU MUST ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE AN ANSWER IN WRITING WITH THE PROTHONOTARY SETTING FORTH YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU AND SERVE A COPY ON THE ATTORNEY OR PERSON FILING THE PETITION. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR THE RELIEF REQUESTED BY THE PETITIONER. YOU MAY LOOSE RIGHTS IMPORTANT TO YOU. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU**

**DO NOT HAVE LAWYER OR CAN NOT AFFORD ONE, GO TO OR TELEPHONE  
THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL  
HELP.**

COURT ADMINISTRATOR  
Clearfield County Courthouse  
2<sup>nd</sup> & Market Street  
Clearfield, PA 16830  
(814) 765-2641, ext. 50-51.

  
BY THE COURT

03-901/95975



## Clearfield County Office of the Prothonotary and Clerk of Courts

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

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

DATE: 12/22/05

X You are responsible for serving all appropriate parties.

           The Prothonotary's office has provided service to the following parties:

           Plaintiff(s)/Attorney(s)

           Defendant(s)/Attorney(s)

           Other

           Special Instructions:

## CA

**GARY L. BERKLEY**

-VS-

NC. 04-55-CD

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 13  
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 17  
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BY THE COURT,

Paul E Cherry  
Judge

**FILED**

FEB 01 2006

2cc Atty woodburn

200 Defs. -

456 German Road

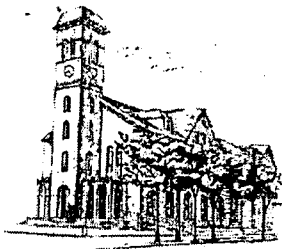
Grassflat, PA 116839

**William A. Shaw**

Prothonotary/Clerk of Courts

Note: Last mail sent to Defs. at address

above was returned by USPS - "no such number/street." On 2/1/80, I called Art Woodburn's office and asked if they had a more current address. They did not. ~~Art~~



## Clearfield County Office of the Prothonotary and Clerk of Courts

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

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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Sincerely,

William A. Shaw  
Prothonotary

DATE: 2/1/06

       You are responsible for serving all appropriate parties.

  X   The Prothonotary's office has provided service to the following parties:

  X   Plaintiff(s)/Attorney(s)

  X   Defendant(s)/Attorney(s)

       Other

       Special Instructions:

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

William A. Shaw  
Prothonotary

FILED

m/2:12 cm  
FEB 06 2006

remailed to  
PO Box 96  
Drifftown PA  
16834

Stephen P. Franek  
Betty J. Franek  
456 German Road  
Grassflat, PA

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

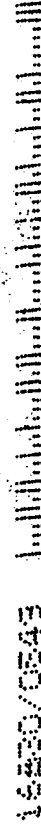
☐ OTHER

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02/01/2006  
Mailed From 16830  
US POSTAGE

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RTS  
RETURN TO SENDER



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

GARY L. BERKLEY

-VS-

STEPHEN P. FRANEK and  
BETTY J. FRANEK

:  
:  
:  
:  
:  
:

No. 04-55-CD

O R D E R

NOW, this 30th day of January, 2006, following the taking of testimony on Plaintiff's Petition to Partially Vacate Order of Court; the Court being advised that additional testimony is necessary, it is the ORDER of this Court that the matter be and is hereby continued until 8:45 a.m. on Monday, March 6, 2006, Courtroom No. 2, Clearfield County Courthouse.

BY THE COURT,

/s/ Paul E. Cherry

Judge

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

FEB 01 2006

Attest

*Christine L. Cherry*  
Prothonotary/  
Clerk of Courts

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

GARY L. BERKLEY

-VS-

STEPHEN P. FRANEK and  
BETTY J. FRANEK

:  
:  
:  
:  
:  
:

No. 04-55-CD

O R D E R

NOW, this 30th day of January, 2006, following the taking of testimony on Plaintiff's Petition to Partially Vacate Order of Court; the Court being advised that additional testimony is necessary, it is the ORDER of this Court that the matter be and is hereby continued until 3:45 a.m. on Monday, March 6, 2006, Courtroom No. 2, Clearfield County Courthouse.

BY THE COURT,

/s/ Paul E. Cherry

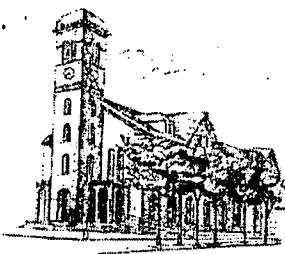
Judge

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

FEB 01 2006

Attest.

*William E. Cherry*  
Prothonotary/  
Clerk of Courts



# Clearfield County Office of the Prothonotary and Clerk of Courts

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

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

DATE: 2/1/06

       You are responsible for serving all appropriate parties.

  X   The Prothonotary's office has provided service to the following parties:

  X   Plaintiff(s)/Attorney(s)

  X   Defendant(s)/Attorney(s)

       Other

       Special Instructions:

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

FILED  
0110:2834  
MAR 09 2006

William A. Shaw  
Prothonotary/Clerk of Courts  
2 CC Atty Woodburn  
2 CC Dets. - PO Box 96  
Drifting, PA  
16834

GARY L. BERKLEY

-VS-

No. 04-55-CD

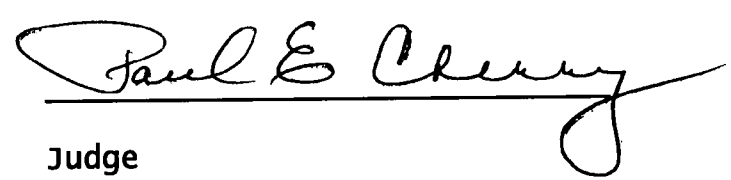
STEPHEN P. FRANEK and  
BETTY J. FRANEK

O R D E R

NOW, this 6th day of March, 2006, following the taking of additional testimony in the above-captioned matter, it is the ORDER of this Court that the Defendants, Stephen P. Franek and Betty J. Franek, shall permit James Wischuck access to their residence in question on Wednesday, March 8, 2006, at 9:00 a.m., for the purpose of conducting a dye test on the sewerage system. In addition, the Defendants shall permit James Wischuck access to their residence on Thursday, March 9, 2006, at 9:00 a.m., for the purpose of evaluation of said test.

In addition, Defendants, Stephen P. Franek and Betty J. Franek, shall sign the Form B waiver this date.

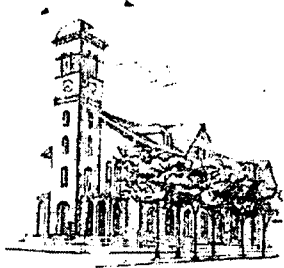
BY THE COURT,

  
Judge

FILED

MAR 09 2008

William A. ...  
Prothonotary



## Clearfield County Office of the Prothonotary and Clerk of Courts

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

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 755-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

DATE: 3/9/06

\_\_\_\_\_ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

X Plaintiff(s)/Attorney(s)

X Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

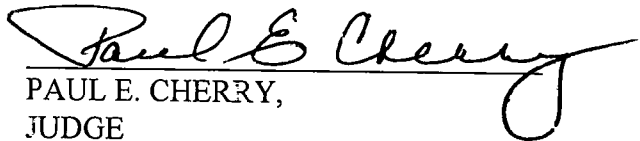
IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

GARY L. BERKLEY .	:	NO. 04-55-CD
	:	
V.	:	
	:	
STEPHEN P. FRANEK and	:	
BETTY J. FRANEK	:	

**ORDER**

AND NOW, this 13<sup>th</sup> day of July, 2006, it is the ORDER of this Court that Plaintiff, Gary L. Berkley, shall be responsible for payment of services performed by Central Pa. Sewage Agency in an amount of \$472.59, said amount to be paid to Cooper Township, within thirty (30) days of this date.

BY THE COURT,

  
PAUL E. CHERRY,  
JUDGE

**FILED** *sec*  
*013:50/501*  
**JUL 17 2006** *sec*  
*Atty Woodburn*  
William A. Shaw  
Prothonotary/Clerk of Courts  
*Def. -*  
*Po Box 896*  
*Drifting PA 16834*  
*CR*

DATE: 7/17/06

☐ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other:

☒ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

FILED

JUL 17 2006

William A. Shaw  
Prothonotary/Clerk of Courts

GARY L. BERKLEY,  
Plaintiff

v.

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

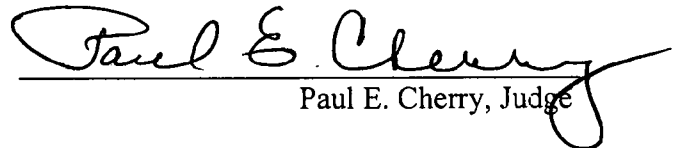
: IN THE COURT OF COMMON PLEAS OF  
: CLEARFIELD COUNTY, PENNSYLVANIA  
:  
: NO. 04-55-CD  
:  
:  
: CIVIL ACTION - LAW (EJECTMENT)

**ORDER**

AND NOW this 25<sup>th</sup> day of July, 2006, upon consideration of the foregoing Motion to Enforce the Order of this Court dated October 17, 2005, it is hereby ordered that:

(1) Plaintiff, Gary L. Berkley, shall hereinafter have the right to remove said carport as soon as may be convenient with his schedule; and

(2) All costs associated with removing said carport shall be assessed to Defendants, Stephen P. Franek and Betty J. Franek.

  
Paul E. Cherry, Judge

03-901/104519

FILED <sup>rec</sup>  
09:42 AM  
JUL 26 2006 <sup>im</sup> Amy Woodburn  
William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 7/26/06

☒ You are responsible for serving all appropriate parties.  
\_\_\_\_ The Probationary's office has provided service to the following parties:  
\_\_\_\_ Plaintiff(s) \_\_\_\_\_ Plaintiff(s) Attorney \_\_\_\_\_ Other \_\_\_\_\_  
\_\_\_\_ Defendant(s) \_\_\_\_\_ Defendant(s) Attorney \_\_\_\_\_  
\_\_\_\_ Special Instructions: \_\_\_\_\_

FILED  
JUL 26 2006  
William A. Shaw  
Probationary/Clerk of Courts

GARY L. BERKLEY,  
Plaintiff

v.

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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

: NO. 04-55-CD

: CIVIL ACTION - LAW (EJECTMENT)

FILED 1CC  
m 11:15 AM  
JUL 25 2006  
Woodburn  
William A. Shaw  
Prothonotary/Clerk of Courts

**MOTION TO ENFORCE ORDER OF COURT DATED OCTOBER 17, 2005**

AND NOW comes the Plaintiff, Gary L. Berkley, by and through his attorneys, Caldwell & Kearns, and files the within Motion to Enforce Order of Court dated October 17, 2005; and in support thereof, avers as follows:

1. The underlying lawsuit evolved from a boundary dispute existing between the Plaintiff, Gary L. Berkley, ("Plaintiff"), and the Defendants, Stephen and Betty Franek, ("Defendants"), for the property known as 456 German Road, Grassflat, PA 16839.
2. A trial was scheduled for this matter, to commence on June 22, 2005.
3. Prior to the commencement of trial, Plaintiff and Defendants reached a settlement for all of the issues pending before the Court.
4. The terms and conditions of the settlement agreement were memorialized on the record.
5. Subsequently, this Honorable Court issued an Order reciting the terms of the settlement agreement and setting forth time lines for compliance. A true and correct copy of the Order is attached hereto as Exhibit "A".
6. On September 6, 2005, Plaintiff Petitioned this Court for a Status Conference to address Defendants' failure to remove a carport as they were ordered to do in this Honorable Court's Order dated June 22, 2005.
7. This Honorable Court scheduled a Status Conference for October 17, 2005.

8. On October 17, 2005, this Honorable Court entered an order in which it provided:

[T]he Court being satisfied that Defendants have failed to comply with Paragraph 2(f) of this Court's Order dated June 22, 2005, wherein they were to remove the carport and have failed to do so, it is the ORDER of this Court that Plaintiff, Gary L. Berkley, shall hereinafter have the right to remove said carport as soon as may be convenient with his schedule.

9. On July 21, 2006, Plaintiff made arrangements to have the carport removed on July 24, 2006.

10. On July 24, 2006, Plaintiff's efforts to remove the carport were stopped by the local police, who indicated that they were operating under the authority and direction of the Honorable Paul E. Cherry.

11. Defendants did not appeal, object to or otherwise request this Honorable Court to reconsider, modify or vacate its Order of October 17, 2005.

12. Defendants have not, individually or through counsel, filed a motion, petition or other request with this Honorable Court regarding the removal of the carport.

13. By Order of this Honorable Court dated June 22, 2005, the carport was to be removed by Defendants.

14. To date, the carport continues to infringe upon Plaintiff's property, interfering with his use and enjoyment of the property, and in direct violation of this Honorable Court's Order.

15. Plaintiff has, in good faith and within the Pennsylvania Rules of Civil Procedure, Clearfield County Local Rules, laws and statutes of this Commonwealth, been trying to accomplish the terms of the settlement negotiated between Plaintiff and Defendants on June 22, 2005, which this Honorable Court memorialized as an Order on that same date.

16. Defendants have refused to cooperate and act in accordance with the Order issued by this Honorable Court in excess of one year.

17. Plaintiff has continuously and in good faith tried to compel Defendants' compliance with this Honorable Court's Order, which he thought had been achieved as of October 17, 2005.


18. Defendants continually ignore Orders of Court, without consequence.

19. Plaintiff seeks relief partially through the enforcement of the October 17, 2005 Order, to wit, the right to remove the carport in accordance with the June 22, 2005 Order, costs to be assessed against Defendants in accordance with the October 17, 2005 Order.

WHEREFORE, Plaintiff Gary L. Berkley respectfully request that this Honorable Court ENFORCE the Order properly issued on October 17, 2005.

Respectfully request,

CALDWELL & KEARNS

By:   
Brett M. Woodburn, Esquire  
Attorney I.D. #81786  
3631 North Front Street  
Harrisburg, PA 17110  
(717) 232-7661

Dated: 7/24/06

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the within document this 24<sup>th</sup> day of July, 2006, on the following by depositing a true and correct copy of the same in the U.S. Mails at Harrisburg, Pennsylvania, postage prepaid, and mailing via certified mail, return receipt requested, addressed to:

Stephen and Betty Franek  
456 German Road  
Grassflat, PA 16339

CALDWELL & KEARNS

By: Nancy Briski

GARY L. BERKLEY,  
Plaintiff

v.

STEPHEN P. FRANEK and  
BETTY J FRANEK,  
Defendants

CA  
: IN THE COURT OF COMMON PLEAS OF  
: CLEARFIELD COUNTY, PENNSYLVANIA  
:  
: NO. 04-55-CD  
:  
:  
: CIVIL ACTION - LAW (EJECTMENT)

**ORDER**

AND NOW this 31<sup>st</sup> day of July, 2006, upon consideration of the  
within Motion, it is hereby ORDERED that a status conference shall be held in the above-  
referenced matter on August 31, 2006, at 3:00 o'clock P.m. in  
Courtroom 2.

BY THE COURT:

Paul E Cherry  
J.

03-901/104616

**FILED**

9/3.25 cm  
JUL 31 2006

ICC Athy  
Woodburn  
GRO

William A. Shaw  
Prothonotary

DATE: 7-31-06

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

GARY L. BERKLEY,  
Plaintiff

v.

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

: IN THE COURT OF COMMON PLEAS OF  
: CLEARFIELD COUNTY, PENNSYLVANIA  
:  
: NO. 04-55-CD  
:  
:  
: CIVIL ACTION - LAW (EJECTMENT)

**ORDER**

AND NOW this \_\_\_\_\_ day of July, 2005, upon consideration of the foregoing Motion  
to Vacate the Order of this Court dated July 13, 2006, Plaintiff's Motion is hereby GRANTED.

BY THE COURT:

---

Paul E. Cherry, Judge

GARY L. BERKLEY,  
Plaintiff

v.

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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

: NO. 04-55-CD

: CIVIL ACTION - LAW (EJECTMENT)

FILED  
JUL 26 2006  
William A. Shaw  
Prothonotary/Clerk of Courts

**MOTION TO VACATE ORDER OF COURT DATED JULY 13, 2006**

AND NOW comes the Plaintiff, Gary L. Berkley, by and through his attorneys, Caldwell & Kearns, and files the within Motion to Vacate the Order of July 13, 2006; and in support thereof, avers as follows:

1. Plaintiff, Gary L. Berkley, ("Plaintiff"), initiated the above-captioned Action in Ejectment by Complaint that was served on Defendants Stephen and Betty Franek, ("Defendants"), on January 24, 2004.

2. Defendants filed an Amended Answer with Counterclaim on March 15, 2004.

3. Plaintiff answered the Counterclaim on May 25, 2004.

4. This matter was certified as trial ready on March 1, 2005.

5. By Order of Court dated April 21, 2005, this matter was scheduled for a bench trial on June 22, 2005.

6. On June 22, 2005, this Honorable Court entered an Order memorializing a settlement agreement that was reached between Plaintiff and Defendants.

7. On December 19, 2005, Plaintiff filed a Petition to Partially Vacate the June 22, 2005 Order, in part because the Cooper Township Sewage Enforcement Officer determined that Defendants' septic system was malfunctioning.

8. At a January 30, 2006 Status Conference, Defendants presented a report indicating that the septic system was repaired.

9. On March 6, 2006, this Honorable Court issued an Order requiring Defendants to permit the Sewage Enforcement Officer to have access to Defendants' property to conduct a dye test on the system.

10. On July 13, 2006, this Honorable Court entered an Order directing Plaintiff to pay \$472.59 to Cooper Township for services performed by the Central Pennsylvania Sewage Agency.

11. No petition or motion regarding said payment was docketed in the above-captioned action.

12. Neither Plaintiff nor Plaintiff's counsel was presented with a request to pay \$472.59 to Cooper Township for services performed by the Central Pennsylvania Sewage Agency.

13. Plaintiff did not order, request or otherwise have initiated any request with Cooper Township whereby the Central Pennsylvania Sewage Agency would conduct any tests on Plaintiff's behalf or on a septic system owned by Plaintiff.

14. The invoice submitted by Central Pennsylvania Sewage Agency includes a charge of \$100 for the Sewage Enforcement Officer to attend and testify in Court on March 6, 2006, in response to a subpoena duly served.

15. The invoice submitted by Central Pennsylvania Sewage Agency includes a charge for mileage for the Sewage Enforcement Officer to appear in Court and testify in an amount of \$9.79.

16. Pursuant to 42 Pa.C.S.A. §5903, the Sewage Enforcement Officer is entitled to \$5.00 per day for the necessary period of attendance.

17 Pursuant to 42 Pa.C.S.A. §5903, the Sewage Enforcement Officer is entitled to \$0.07 per mile, round trip.

18. Plaintiff included payment in the amount of \$20.00, made payable to the Sewage Enforcement Office, when the subpoena was served.

19. Costs of conducting a dye test to confirm that a defective septic system was repaired are not costs associated with subdividing property.

20. Costs of conducting a dye test to confirm that a defective septic system was repaired are costs properly assessed to the owner of the septic system.

21. Plaintiff was not provided with any test results or reports issued as a result of services performed by the Central Pennsylvania Sewage Agency.

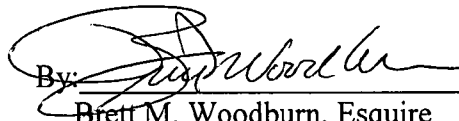
22. There is no evidence of record to support an Order directing Plaintiff to pay \$472.59 for services performed by the Central Pennsylvania Sewage Agency.

23. The amount of \$472.59 includes monies that are not permitted to be recovered under Pennsylvania law.

WHEREFORE, Plaintiff Gary L. Berkley respectfully requests that this Honorable Court Vacate or Rescind its Order dated July 13, 2006.

Respectfully submitted,

CALDWELL & KEARNS

By:   
Brett M. Woodburn, Esquire  
Attorney I.D. #81786  
3631 North Front Street  
Harrisburg, PA 17110  
(717) 232-7661

Dated: 7/25/06

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the within document this 25th day of July, 2006, on the following by depositing a true and correct copy of the same in the U.S. Mails at Harrisburg, Pennsylvania, postage prepaid, and mailing via certified mail, return receipt requested, addressed to:

Stephen and Betty Franek  
456 German Road  
Grassflat, PA 16839

CALDWELL & KEARNS

By: Nancy Brestei

GARY L. BERKLEY,  
Plaintiff

v.

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

CA  
: IN THE COURT OF COMMON PLEAS OF  
: CLEARFIELD COUNTY, PENNSYLVANIA  
:  
: NO. 04-55-CD  
:  
:  
: CIVIL ACTION - LAW (EJECTMENT)

**ORDER**

AND NOW, this 14<sup>th</sup> day of August, 2006, upon consideration of the within Motion to seek continuance, it is hereby ORDERED that a Status Conference shall be held in the above-referenced matter on September 5, 2006, at 10:30 A.m., in Courtroom No. 2.

BY THE COURT:

  
PAUL E. CHERRY, JUDGE

FILED 1cc  
0/10:41 SA Amy  
AUG 15 2006 @  
William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 8/5/06

☒ You are responsible for serving all appropriate parties.

☐ The Probationary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

**FILED**

**AUG 15 2006**

William A. Shaw  
Probationary/Clerk of Courts

GARY L. BERKLEY,  
Plaintiff

v.

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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

: NO. 04-55-CD

: CIVIL ACTION - LAW (EJECTMENT)

FILED  
AUG 09 2006  
m1112128  
JCC  
Amy  
Goodburn  
CR

William A. Shaw  
Prothonotary/Clerk of Courts

**MOTION FOR CONTINUANCE OF AUGUST 31, 2006 STATUS CONFERENCE**

AND NOW comes the Plaintiff, Gary L. Berkley, by and through his attorneys, Caldwell & Kearns, and files the within Request for Continuance of a hearing scheduled for August 31, 2006; and in support thereof, avers as follows:

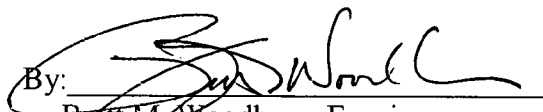
1. On July 13, 2006, this Honorable Court entered an Order directing the Plaintiff, Gary L. Berkley ("Plaintiff") to pay for services performed by Central Pennsylvania Sewage Agency in the amount of \$472.59.
2. On July 26, 2006, Plaintiff filed a Motion to Vacate the Order of Court dated July 13, 2006.
3. On July 31, 2006, this Honorable Court ordered a Status Conference to be held on August 31, 2006, at 3:00 p.m. in Courtroom No. 2.
4. On August 31, 2006, Plaintiff's counsel will be in Arizona on vacation with his family.
5. Because of Plaintiff's counsel's intimate knowledge with the facts and circumstances surrounding this matter, counsel's inability to appear at the Status Conference could prejudice Plaintiff.
6. Plaintiff's counsel is available to appear at a hearing or Status Conference on any day during the week of September 4, 2006.
7. Plaintiff's counsel does not have a telephone number by which to contact the Defendants, Stephen P. and Betty J. Franek.

8. Recent correspondence sent to Defendants' address has been returned as undeliverable.
9. Defendants have been, and continue to be, non-responsive to counsel's requests.
10. Plaintiff's counsel has not been able to secure the consent of the Defendants.
11. Defendants have not objected to Plaintiff's request for a continuance.
12. Plaintiff requests that the Status Conference scheduled for August 31, 2006, be rescheduled for a date convenient to the Court in the week of September 4, 2006.

WHEREFORE, Plaintiff Gary L. Berkley respectfully requests that this Honorable Court GRANT his request for a continuance and reschedule the hearing on the Motion to Vacate the Order of Court Dated July 13, 2006, to the following week..

Respectfully submitted,

CALDWELL & KEARNS

By:   
Brett M. Woodburn, Esquire  
Attorney I.D. #81786  
3631 North Front Street  
Harrisburg, PA 17110  
(717) 232-7661

Dated: 8/8/06

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the within document this 8th day of August, 2006, on the following by depositing a true and correct copy of the same in the U.S. Mails at Harrisburg, Pennsylvania, postage prepaid, and mailing via certified mail, return receipt requested, addressed to:

Stepher and Betty Franek  
456 German Road  
Grassflat, PA 16839

CALDWELL & KEARNS

By: Nancy Breski

**FILED**

**AUG 09 2006**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

GARY L. BERKLEY

-VS-

STEPHEN P. FRANEK and  
BETTY J. FRANEK

No. 04-55-CD

FILED

SEP 06 2006

7:30 / CC Beth Woodbury  
William A. Shaw S. Franek  
Prothonotary/Clerk of Courts B. J. Franek  
Central Sewage

ORDER

NOW, this 5th day of September, 2006, this being the date set for status conference; Defendants, Stephen P. Franek and Betty J. Franek, having failed to appear; the Court being satisfied that attempted service was made by certified mail, restricted delivery, as well as regular mail, and both mailings were returned to Plaintiff's counsel, it is the ORDER of this Court that this Court's Order of July 13, 2006, shall be and is hereby vacated. It is the further ORDER of this Court that Defendants, Stephen P. Franek and Betty J. Franek, shall be responsible for payment of services performed by Central PA Sewage Agency in the amount of Four Hundred Seventy-Two Dollars and Fifty-Nine (\$472.59) Cents, with said amount to be paid to Cooper Township, Clearfield County, Pennsylvania, within no more than sixty (60) days from today's date.

BY THE COURT

Judge

*Paul E. Cherry*

GARY L. BERKLEY,  
Plaintiff

v.

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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

: NO. 04-55-CD

: CIVIL ACTION - LAW (EJECTMENT)

**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2006, upon consideration of the within Petition for Contempt and Sanctions, it is hereby ORDERED that a Status Conference shall be held in the above-referenced matter on \_\_\_\_\_, 2006, at \_\_\_\_\_.m., in Courtroom No. 2.

BY THE COURT:

---

PAUL E. CHERRY, JUDGE

GARY L. BERKLEY,  
Plaintiff

v.

STEPHEN P. FRANEK and  
BETTY J. FRANEK,  
Defendants

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

: NO. 04-55-CD

: CIVIL ACTION - LAW (EJECTMENT)

**ORDER**

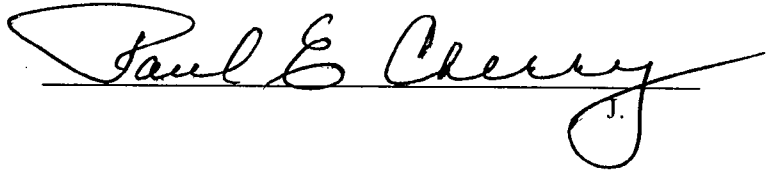
AND NOW, this 29<sup>th</sup> day of September, 2006, it is hereby ORDERED and DECREED as follows:

A. The Recorder of Deeds is hereby directed to sign the subdivision plans on behalf of Betty J. and Stephen P. Franek;

B. The Defendants, Stephen P. and Betty J. Franek, are hereby ordered to pay to Gary L. Berkley \$2,500.00 as a sanction for their disregard of an Order of Court; and

C. Stephen P. Franek is hereby remanded to the Clearfield County jail for a period not to exceed forty-eight (48) hours.

BY THE COURT:



**FILED**

SEP 29 2006

6/1:30W  
William A. Shaw  
Prothonotary/Clerk of Courts

1 cent to Att

1 cent to CTS

DATE: 9-29-06  
☒ You are responsible for serving all appropriate parties.  
\_\_\_\_ The Probationary's office has provided service to the following parties:  
\_\_\_\_ Plaintiff(s) \_\_\_\_ Plaintiff(s) Attorney \_\_\_\_ Other  
\_\_\_\_ Defendant(s) \_\_\_\_ Defendant(s) Attorney  
☒ Special Instructions: copy to CCT.

Brett M. Woodburn, Esquire  
Attorney I.D. #81786  
CALDWELL & KEARNS  
3631 North Front Street  
Harrisburg, PA 17110  
(717) 232-7661  
*Attorney for Plaintiff*

FILED <sup>icc</sup>  
m/11/33/2011 <sup>Attg</sup>  
SEP 28 2006 <sup>6K</sup>

William A. Shaw  
Prothonotary/Clerk of Courts

GARY L. BERKLEY,	:	IN THE COURT OF COMMON PLEAS OF
Plaintiff	:	CLEARFIELD COUNTY, PENNSYLVANIA
	:	
v.	:	NO. 04-55-CD
	:	
STEPHEN P. FRANEK and	:	
BETTY J. FRANEK,	:	
Defendants	:	CIVIL ACTION - LAW (EJECTMENT)

**PETITION FOR CONTEMPT AND SANCTIONS**

AND NOW comes the Plaintiff, Gary L. Berkley, by and through his attorneys, Caldwell & Kearns, and files the within Motion for Contempt and Sanctions; and in support thereof, avers as follows:

1. The underlying lawsuit evolved from a boundary dispute existing between the Plaintiff, Gary L. Berkley, ("Plaintiff"), and the Defendants, Stephen and Betty Franek, ("Defendants"), for the property known as 456 German Road, Grassflat, PA 16839.
2. A trial was scheduled for this matter, to commence on June 22, 2005.
3. Prior to the commencement of trial, Plaintiff and Defendants reached a settlement for all of the issues pending before the Court.
4. The terms and conditions of the settlement agreement were memorialized on the record.
5. Subsequently, this Honorable Court issued an Order reciting the terms of the settlement agreement and setting forth time lines for compliance. A true and correct copy of the Order is attached hereto as Exhibit "A".
6. On September 6, 2005, Plaintiff Petitioned this Court for a Status Conference to address Defendants' failure to remove a carport as they were ordered to do in this Honorable Court's Order dated June 22, 2005.
7. This Honorable Court scheduled a Status Conference for October 17, 2005.

8. On October 17, 2005, this Honorable Court entered an order in which it provided:

[T]he Court being satisfied that Defendants have failed to comply with Paragraph 2(f) of this Court's Order dated June 22, 2005, wherein they were to remove the carport and have failed to do so, it is the ORDER of this Court that Plaintiff, Gary L. Berkley, shall hereinafter have the right to remove said carport as soon as may be convenient with his schedule.

9. On July 21, 2006, Plaintiff made arrangements to have the carport removed on July 24, 2006.

10. On July 24, 2006, Plaintiff's efforts to remove the carport were stopped by the local police, who indicated that they were operating under the authority and direction of Magistrate District Judge Rudella.

11. Defendants did not appeal, object to or otherwise request this Honorable Court to reconsider, modify or vacate its Order of October 17, 2005.

12. Defendants have not, individually or through counsel, filed a motion, petition or other request with this Honorable Court regarding the removal of the carport.

13. By Order of this Honorable Court dated June 22, 2005, the carport was to be removed by Defendants.

14. On July 25, 2006, Plaintiff filed a Motion to Enforce Order of Court Dated October 17, 2005.

15. Plaintiff's Motion was granted.

16. On July 26, 2006, Earthmovers Unlimited, Inc., returned to the Franek property to remove the carport.

17. Defendant Stephen Franek again interfered with the attempts to remove the carport.

18. Upon threat of incarceration, Defendant agreed to remove the carport as previously ordered.

19. Pursuant to the Order of Court dated June 22, 2005, Defendants agreed to subdivide and convey land to Plaintiff.

20. On September 8, 2006, Defendant met with representatives of Geotech, the company engaged by Plaintiff to effectuate the subdivision.

21. Geotech requested Defendant to sign the subdivision plans for recording so that the subdivision could be finalized.

22. This request was made in front of Magistrate District Justice Rudella in his office.

23. Mr. Franek continues to refuse to sign and otherwise cooperate with the finalization of the subdivision plans in accordance with the Order of Court dated June 22, 2005.

24. Defendant has continually refused to comply with the Order of Court memorializing the settlement reached with Plaintiff.

25. Plaintiff has, in good faith and within the Pennsylvania Rules of Civil Procedure, Clearfield County Local Rules, laws and statutes of this Commonwealth, been trying to accomplish the terms of the settlement negotiated between Plaintiff and the Defendants on January 2, 2005, which this Honorable Court memorialized as an Order on the same date.

26. Defendants have refused to cooperate and act in accordance with the Order issued by this Honorable Court in excess of one year.

27. Plaintiff has continuously and in good faith tried to compel Defendants' compliance with this Honorable Court's Order, which he thought had been achieved.

28. Defendants continually ignore Orders of Court without consequence.

29. Plaintiff has incurred legal fees in excess of that which would reasonably be expected or anticipated once an order of court was entered.

30. To date, Plaintiff has incurred \$5,317.03 in legal fees in an effort to enforce the Order of Court dated June 22, 2005. See Exhibit "B".

31. The next meeting at which Cooper Township can approve the subdivision plans is Tuesday, October 3, 2006.

32. If Defendants refuse to sign the subdivision plan, Plaintiff will experience additional delays until the next meeting, which is believed to be the second Tuesday of each month.

WHEREFORE, Plaintiff hereby requests this Honorable Court to grant the following requests:

- A. To compel or direct Defendants to sign the subdivision plan, or, in the alternative, enter an Order directing the Recorder of Deeds to sign the subdivision plans on Defendants' behalf;
- B. Award Plaintiff counsel fees in the amount of \$2,500.00; and
- C. Direct Stephen Franek to be incarcerated for a period of not more than forty-eight (48) hours for his blatant, vexatious and willful disregard of the Orders of this Honorable Court.

Respectfully request,

CALDWELL & KEARNS

By: 

Brett M. Woodburn, Esquire  
Attorney I.D. #81786  
3631 North Front Street  
Harrisburg, PA 17110  
(717) 232-7661

Dated: 9/26/06



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

GARY L. BERKLEY :  
VS. : NO. 04-55-CD  
STEPHEN P. FRANEK and :  
BETTY J. FRANEK :

O R D E R

NOW, this 22nd day of June, 2005, this being the date set for Civil Nonjury Trial; the Court being advised that the parties have reached an agreement, it is the ORDER of this Court as follows:

1. Plaintiff, Gary L. Berkley, shall grant an easement to the Defendants', Stephen P. Franek and Betty J. Franek, with said easement extending north on German Road approximately twenty-eight (28) to thirty (30) feet, which will encompass the septic system, and extending east parallel to the Franeks' existing property line, and continuing south to a point abutting but not extending beyond the edge of the existing garage;

2. The Defendants shall remove the carport and shall convey, in exchange for the easement, a grant of land consisting of four (4) feet to one (1) foot at the back of Defendants property.

3. Plaintiff shall pay the costs of the subdivision up front. Defendants shall pay the sum of Ten (\$10.00) Dollars

per month, for a total of twenty-four (24) months.

4. Plaintiff's counsel shall prepare the drafting of the lease and easement and forward the same to counsel for Defendants for approval.

5. All provisions within this Order, including subdivision, transfer of properties and releases, as well as removal of the carport, shall be performed within sixty (60) days from date hereof.

6. Counsel shall file, within sixty (60) days from date hereof, a praecipe for discontinuance.

BY THE COURT,

**/s/ Paul E. Cherry**

---

Judge

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

JUN 24 2005

Attest

*William B. Cherry*  
Prothonotary/  
Clerk of Courts



**Billed From August 1, 2005 Services to Present**

[illegible]

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the within document this 26<sup>th</sup> day of  
SEPTEMBER, 2006, on the following by depositing a true and correct copy of the same in the  
U.S. Mails at Harrisburg, Pennsylvania, postage prepaid, and mailing via certified mail, return receipt  
requested, addressed to:

Stephen and Betty Franek  
P. O. Box 96  
Drifting, PA 16834

CALDWELL & KEARNS

By: Nancy Breski

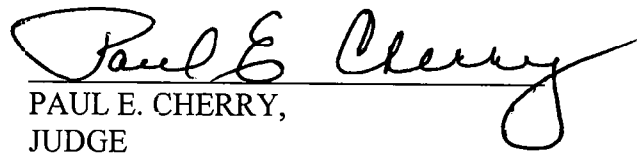
IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

GARY L. BERKLEY : NO. 04-55-CD  
:   
V. :   
:   
STEPHEN P. FRANEK and :   
BETTY J. FRANEK :

ORDER

AND NOW, this 5<sup>th</sup> day of October, 2006, upon consideration of the Motion for Reconsideration, the Court having reviewed the file, it is the ORDER of this Court that said Motion be and is hereby DENIED.

BY THE COURT,

  
PAUL E. CHERRY,  
JUDGE

FILED 1cc Atty Woodburn  
01/10:07/07  
OCT 09 2006 1cc Defs-  
PO Box 96  
William A. Shaw Drifting, PA  
Prothonotary/Clerk of Courts 16834  
EK

FILED

OCT 09 2006

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 10/9/06

X You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

     Plaintiff(s) X Plaintiff(s) Attorney      Other

X Defendant(s)      Defendant(s) Attorney

     Special Instructions:

Sept. 25, 2006

04-55-CD UA

Respectfully Yours,  
Judge Cherry

This is A request that  
you set another date for the hearing  
on the dye test. Because Steve P.  
Frank nor I (Betty J. Frank)  
ever received notice of said hearing at  
P.O. Box 96 Drifting, Pa. 16834 which  
has been are only address for  
20 years + .

Betty J. Frank  
Steve Frank

Do you want  
another hearing scheduled?

denied

**FILED**

OCT 13 2006

William A. Shaw  
Prothonotary/Clerk of Courts



September 18, 2006

Judge Paul Cherry  
Clearfield County Courthouse  
Clearfield, PA 16830

This letter is in response to a request for information from the Drifting Post Office.

According to our records, Mr. Stephen Franek has held mail box, P.O. Box 96, in the Drifting Post Office since October 23, 1980.

In regard to certified letters being received addressed to Stephen and Betty Franek, P.O. Box 96, there has not been any accountable (Registered, Certified, Restricted Delivery, Etc) mail received or returned by our office for Mr. and Mrs. Stephen Franek for the requested time period, August 1<sup>st</sup> through September 18, 2006.

If I can be of further assistance, feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Patti Josephson".

Patti Josephson, OIC  
United States Postal Service  
P.O. Box 9998  
Drifting, PA 16834  
(814) 345-6973