

04-118-CD
CHRISTOPHER P. BUNGO vs. COLDIRON SPECIALIZED COMPANY

Christopher Bungo vs. Coldiron Specialized
2004-118-CD

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

CHRISTOPHER P. BUNGO,

Plaintiff

vs.

COLDIRON SPECIALIZED COMPANY,

Defendant

*
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*
*
*
*

No. 04-118-CD

Code: COMPLAINT

Filed on behalf of:

Christopher P. Bungo, Plaintiff

Counsel of Record for this Party:

George S. Test, Esquire

P. O. Box 706

Philipsburg, PA 16866

(814) 342-4640

PA I.D. #15915

GEORGE S. TEST
ATTORNEY-AT-LAW
PHILIPSBURG, PA

FILED

JAN 26 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

CHRISTOPHER P. BUNGO,

Plaintiff

vs.

COLDIRON SPECIALIZED COMPANY,

Defendant

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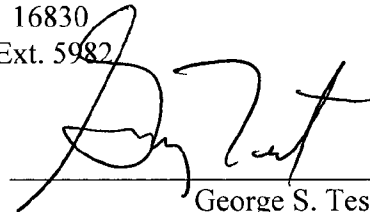
No. _____

NOTICE

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

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

Court Administrator's Office
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641 Ext. 5982



George S. Test, Esquire

GEORGE S. TEST
ATTORNEY-AT-LAW
PHILIPSBURG, PA

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

CHRISTOPHER P. BUNGO ,	*	
Plaintiff	*	No. _____
vs.	*	
	*	
COLDIRON SPECIALIZED COMPANY,	*	
Defendant	*	

COMPLAINT

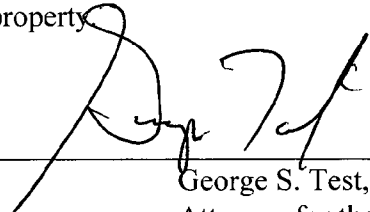
1. The Plaintiff is Christopher P. Bungo, an adult individual, residing at 406 Curtin Street, Osceola Mills, Pennsylvania 16666.
2. The Defendant is Coldiron Specialized Company, with a mailing address of P. O. Box 96649, Oklahoma City, Oklahoma and a place of business at 118 Poor Farm Lane, Philipsburg, Pennsylvania 16866, located in Boggs Township, Clearfield County, Pennsylvania.
3. The Plaintiff is the owner of real property situate in Boggs and Morris Townships, Clearfield County, Pennsylvania.
4. On November 16, 2001, Defendant entered into a lease with an option to purchase with Plaintiff for a portion of Plaintiff's land. A true and correct copy of said agreement is attached hereto and made a part hereof as Exhibit A.
5. On November 21, 2003, Plaintiff notified Defendant he was exercising his option pursuant to the aforesaid agreement to terminate Defendant's lease. A true and correct copy of said notice is attached hereto and made a part hereof as Exhibit B.

GEORGE S. TEST
ATTORNEY-AT-LAW
PHILIPSBURG, PA

6. On November 24, 2003, Defendant notified Plaintiff it was exercising its option to purchase the property leased on November 16, 2001. Said notice demanded closing within sixty (60) days pursuant to the terms of said agreement. A true and correct copy of said notice is attached hereto and made a part hereof as Exhibit C.
7. On December 31, 2003, Plaintiff's attorney wrote to Defendant's local counsel suggesting a date for closing. A true and correct copy of said letter is attached hereto and made a part hereof as Exhibit D.
8. Sixty (60) days have passed since Defendant exercised its option to purchase and Defendant has made no attempt to schedule a closing as required by its exercise of its option to purchase.
9. Failure to complete closing within sixty (60) days from the date of the exercise of the option is a breach of the November 16, 2001 agreement.
10. Upon notice of the exercise of said option, Plaintiff removed his belongings from the property to be purchased and was prepared and able to turn over possession of the leased property to Defendant on January 12, 2004 and thereafter.
11. As a result of Defendant's breach of contract, Plaintiff has suffered the following damages:
 - a. Lost interest on the financing of the purchase in the amount of \$54,893.00 as set out in the calculation set out in Exhibit E which is attached hereto and made a part hereof.
 - b. Sixteen hundred and dollars (\$1,600.00) to have the property surveyed.
 - c. Three thousand dollars (\$3,000.00) to tear down and remove an overhead crane owned by Plaintiff on the property to be purchased.

- d. Five thousand dollars (\$5,000.00) to construct a new site for said overhead crane and to reconstruct it.
- e. Two thousand dollars (\$2,000.00) to purchase two (2) storage trailers to store the personal property Plaintiff removed from the property to be purchased.
- f. Ten thousand dollars (\$10,000.00) to relocate Plaintiff's office and shop.
- g. Three hundred dollars (\$300.00) per month to rent a site for Plaintiff's office and shop.
- h. One thousand dollars (\$1,000.00) to remove Plaintiff's flagpole and scales from the property to be purchased.

WHEREFORE, Plaintiff requests judgment against the Defendant in the amount of \$77,493.00 plus \$300.00 per month to reimburse Plaintiff for the rental he is paying until he retakes possession of his property and the fair rental value of Plaintiff's property now occupied by Defendant until Defendant is removed from said property.



George S. Test, Esquire
Attorney for the Plaintiff

COMMONWEALTH OF PENNSYLVANIA }

COUNTY OF Centre }

SS:

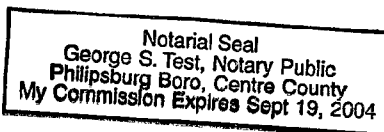
AFFIDAVIT

On this, the 26th day of January, 2004, before me, a Notary Public, personally appeared CHRISTOPHER P. BUNGO, the Plaintiff herein and acknowledged that he has read the foregoing Complaint and that the statements made therein are true and correct to the best of his information and belief.

Christopher P. Bungo
Christopher P. Bungo

SWORN TO and SUBSCRIBED
before me, this 26th day of
January, 2004.

George S. Test
N. P.



GEORGE S. TEST
ATTORNEY-AT-LAW
PHILIPSBURG, PA

**LEASE AGREEMENT
AND
OPTION TO PURCHASE**

THIS AGREEMENT, made and entered into this 16th day of NOVEMBER, 2001,
by and between **CHRISTOPHER P. BUNGO**, of 406 Curtin Street, Osceola Mills,
Pennsylvania, 16666, hereinafter "Lessor"

A

N

D

COLDIRON SPECIALIZED COMPANY, with a mailing address of P. O. Box 96649,
Oklahoma City, OK 73143, hereinafter "Lessee"

1. Lessor agrees to lease to Lessee portions of property owned by Lessor in Boggs Township, Clearfield County, Pennsylvania, and a portion of a building situate thereon. Specifically, the leased area is a tract of land consisting of 16.69 acres, that portion of a building situate thereon consisting of an office which is 30 feet by 16 feet and one bay in a pole building attached to the office which is 30 feet by 40 feet, an area north of the 16.69 acres which is 375 feet by 340 feet by 410 feet by 295 feet and the non-exclusive use of an entrance road from U.S. Route 322. The leased real property is identified on the map attached hereto as Exhibit A and the leased portion of the building is identified on Exhibit B on the map attached hereto.

2. The lease term shall be twenty-four (24) months commencing December 1, 2001, at a monthly rental rate of One Thousand, Four Hundred and No/100 (\$1,400.00) Dollars per month, payable in advance. The Lessee shall be permitted to occupy the premises October 15, 2001. At the end of the twenty-four (24) month term, Lessee shall have the option to continue the lease on a month-to-month basis for an additional twenty-four (24) months and the continuation of the lease shall be automatic unless Lessee or Lessor gives a thirty (30) day written notice to terminate the lease. Rent shall be payable on the tenth (10th) day of each month.

GEORGE S. TEST
ATTORNEY-AT-LAW
PHILIPSBURG, PA

EXHIBIT A

3. Lessor shall pay for and supply heat and water for office use to the demised premises. Lessee shall pay for electricity. Lessor will maintain grass and Lessee shall plow snow.

4. At any time during the term of the lease, Lessee shall have the option to purchase the 16.69 acre tract with the improvements thereon. The purchase price shall be Two Hundred Fifteen Thousand and No/100 (\$215,000.00) unless Lessor has completed the west end of the building which shall increase the purchase price to Two Hundred Twenty-Five Thousand and No/100 (\$225,000.00) Dollars, provided that eighty (80%) percent of each lease payment shall be applied to the purchase price if Lessee exercises its option to purchase. Lessor agrees to provide owner financing for said purchase for a period of five (5) years with interest on the unpaid balance at a rate of eight (8%) percent per annum secured by a note and mortgage and Lessee shall pay Twenty-Five Thousand and No/100 (\$25,000.00) Dollars down and Twenty-Five Thousand and No/100 (\$25,000.00) Dollars per year for five (5) years and the balance at the end of the five (5) year term. Lessee shall give written notice of its intention to exercise its option to purchase. Closing shall take place within sixty (60) days of said notice. At closing, title shall be conveyed by special warranty deed, free and clear of all liens and encumbrances other than utility easements and will be good and marketable such as can be insured by a reputable title insurance company. Taxes shall be prorated and transfer taxes equally divided. Lessor shall also grant to Lessee a non-exclusive right-of-way across other lands of the Lessor to U.S. Route 322. The purchase shall not include the flag pole and top soil pile which Lessor will relocate; nor, the overhead crane and canopy which will also be relocated. Lessor reserves a twenty (20') foot utility right-of-way along the railroad tracks and a fifty (50') foot right-of-way to the balance of Lessor's property at a mutually agreeable location.

5. The Lessee agrees that it will not sublease and/or assign this lease or any part of the demised premises without first obtaining the Lessor's written consent.

6. The Lessee shall have the right to remodel and alter said premises at its own

risk and expense in such a manner as may be reasonable or desirable for the conduct of its business subject to the limitation that no change shall be made that will interfere with the structural soundness of the building or is in any way contrary to good construction and architectural practice.

7. Lessee may at its own risk and expense lawfully erect signs concerning its business on the exterior face of that portion of the building occupied by it so long as the same shall conform to the standards of any regulatory authority governing the same. The said Lessee agrees to maintain said signs in a good state of repair and to save the Lessor harmless from any loss, cost or damage as a result of the erection, existence, maintenance, or removal of such signs. Upon vacating the demised premises, the Lessee agrees to remove all such signs and to repair all damages caused by such removal.

8. Lessee further agrees that all personal property of every kind or description which may at any time be in the demised premises shall be at the Lessee's sole risk or at the risk of those claiming under the Lessee and the Lessor shall not be liable for any damage to said property or loss suffered by the business or occupation of the Lessee arising from the bursting, overflowing or leaking of water, sewer, steam pipes, heating or plumbing fixtures or from electric wires or from gas or odors or caused in any manner whatsoever except as may result from and be caused by the negligence of the Lessor, its agents or employees.

9. (a) Lessee shall not use or occupy or suffer or permit said premises or any part thereof to be used or occupied for any purpose contrary to law or the rules and regulations of any public authority or any manner so as to increase the costs of hazard insurance for the type and location of the building of which the demised premises are a part.

(b) Lessee covenants to at all times save the Lessor harmless from loss, cost or damages which may occur or be claimed with respect to any person or persons, corporation, property or chattels on or about the demised premises or to the property itself resulting from the Lessee's use, non-use or possession of or conduct of its business in said property and any and all loss, cost, liability or expense resulting therefrom.

(c) The Lessee shall also carry adequate public liability and environment pollution insurance for the protection of the Lessor and the Lessee as their respective interests in the demised premises may appear and certificates evidencing such insurance coverage shall be furnished to the Lessor.

10. Lessee covenants and agrees to deliver up and surrender to the Lessor possession of the said premises upon the expiration of this lease on its termination as herein provided in as good condition and repair as the same shall be at the commencement of said term or may have been put by the Lessor or Lessee during the continuance thereof, ordinary wear and tear excepted. It being agreed by the parties that acceptance of delivery of the demised premises shall be deemed conclusive evidence that said premises were in good order and condition at the commencement of the term of this lease. This last sentence is not to be construed to diminish Lessor's obligations regarding maintenance and repair.

11. If Lessee shall remain in possession of all or any part of the demised premises after the expiration of the term of this lease or any renewal thereof, then the Lessee shall be deemed Lessee of the demised premises from month to month at the same rental and subject to all of the terms and provisions hereof except only as to the term of this lease.

12. Lessee further agrees to permit the Lessor or Lessor's agent to inspect or examine the demised premises during normal business hours on reasonable advance notice and to permit the Lessor to make such repairs to the building of which the demised premises are a part as the Lessor may determine desirable or necessary for its preservation and which the Lessee has not covenanted herein to do or has failed to do.

13. Lessee may at the expiration of said term remove all of the Lessee's trade fixtures and equipment provided all rents stipulated are paid in full and all damage to said property occasioned by such removal is promptly repaired.

14. Lessor covenants and agrees that if the Lessee shall perform all of the

covenants and agreements herein stipulated to be performed on the Lessee's part, the Lessee shall at all times during said term, have the peaceable and quiet enjoyment and possession of the said premises without any manner of hindrance from the Lessor or any persons lawfully claiming through the Lessor.

15. It is further agreed that if rent, or any part thereof, shall at any time be in arrears and unpaid for a period of ten (10) days after the same shall become due and payable, or if said Lessee shall fail to keep and perform any of the covenants, agreements or conditions of this lease on its part to be kept or performed, or if said Lessee shall abandon or vacate said premises during the term hereof, or shall make assignment for the benefit of creditors, or if the interest of the Lessee in said premises shall be sold under execution or other legal process, or if the Lessee shall be adjudged a bankrupt or the leasehold seized by a trustee in bankruptcy, or if a receiver shall be appointed for the Lessee by the Court, the Lessor may at Lessor's election at any time thereafter, while such conditions exist, give thirty (30) days notice to the Lessee of his intention to cancel and terminate this lease, and if such default and condition is not corrected or remedied within said thirty (30) days, then the Lessor may lawfully re-enter the demised premises or any part thereof in the name of the whole and repossess the same as of the former estate of the Lessor and expel the Lessee and those claiming under and through it and remove its effects (forcibly if necessary) without being deemed guilty of any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant, and upon entry as aforesaid, this lease shall terminate and the Lessee covenants that in case of such termination it will indemnify the Lessor against all unavoidable loss of rent which the Lessor may incur by reason of such termination during the residue of the term above specified.

16. Lessee agrees that this lease shall be subject to and subordinate to any mortgage or mortgages now on said premises or which any owner of said premises may hereafter at any time elect to place on said premises.

17. This lease constitutes the entire agreement between the parties hereto. No

changes shall be made herein except by writing, signed by each part and dated. The failure to enforce any right or remedy hereunder, and the payment and acceptance of rent hereunder, shall not be deemed a waiver by either party of such right or remedy in the absence of a writing as provided herein.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date first above written.

ATTEST:

Stephen W. Fime
Secretary

COLDIRON SPECIALIZED COMPANY

By: Phil Coldiron
Phil Coldiron, President

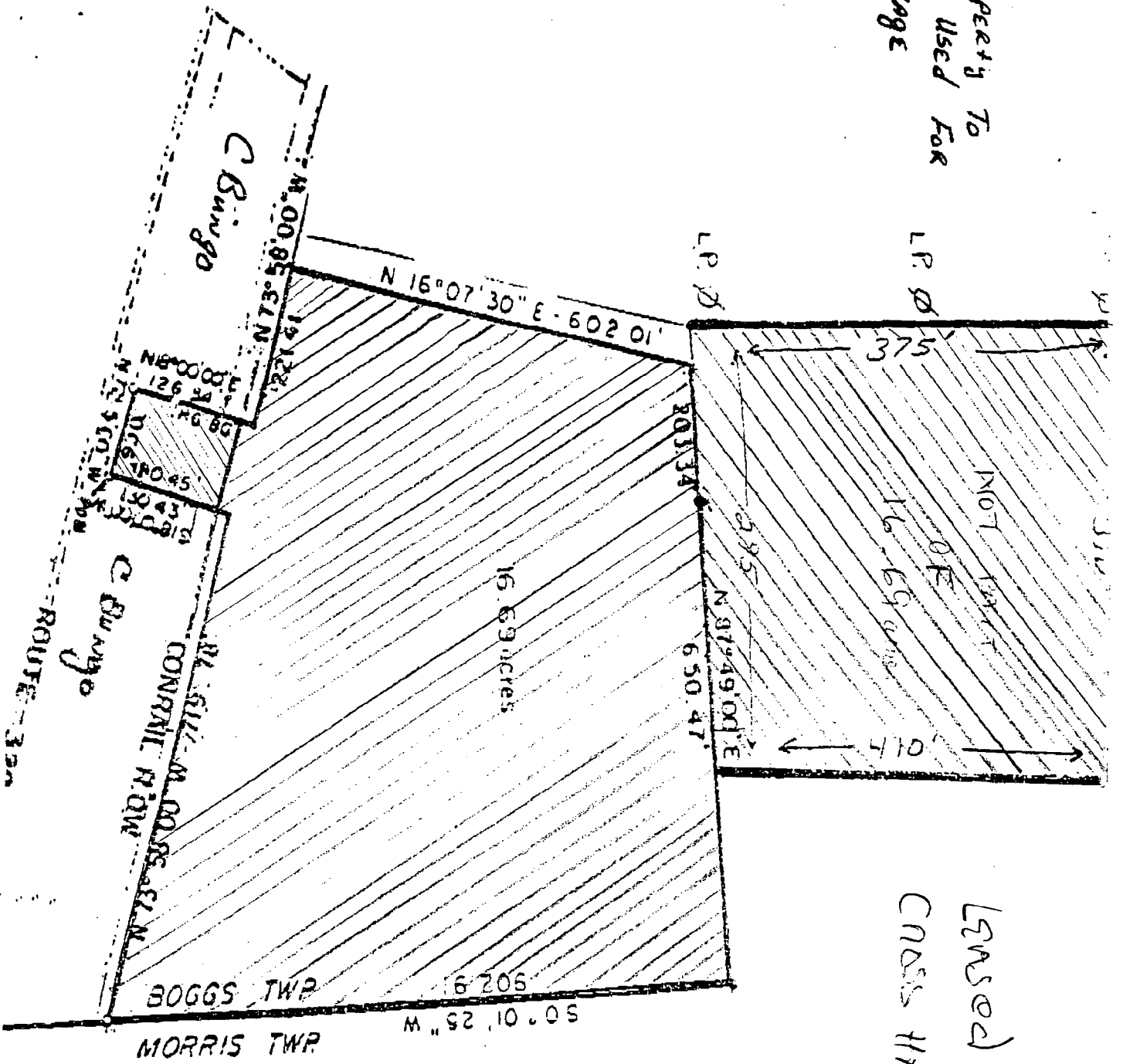
WITNESS:

Catharine L. Bates

Christopher P. Bungo
Christopher P. Bungo

Pg 1

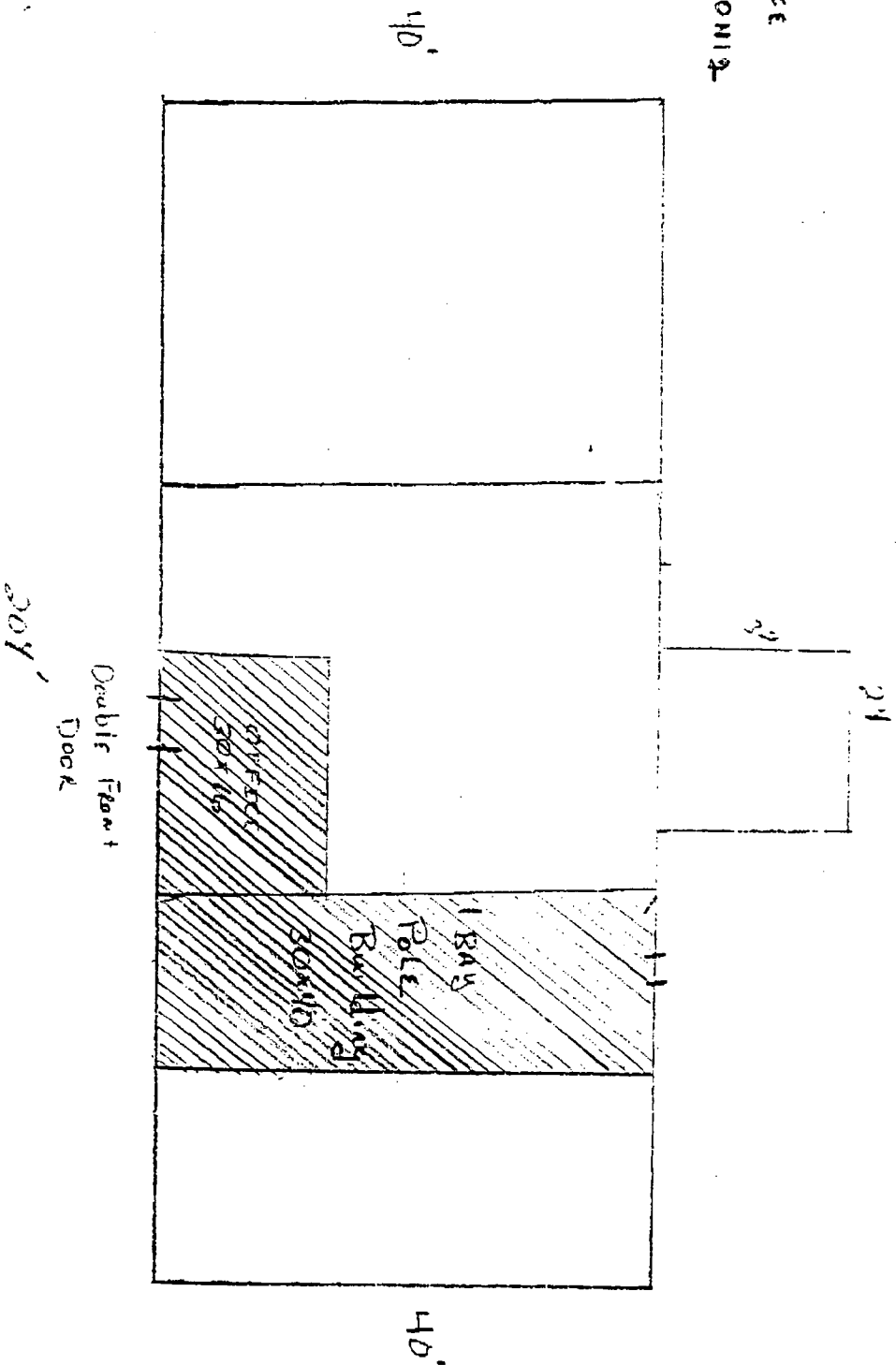
Property To
Be Used For
Storage



LEASED AREAS
CHAS HATCHED

Robert Roxby
(OR 650, PG 107)

Tenant to
Rent office
and 1 Bay only
of Building



Not To Scale

THIS LTR. WAS FAXED
11-24-03 TO THE CORRECT
FAX #!

GEORGE S. TEST
Attorney-at-Law
P.O. Box 706
Philipsburg, PA 16866

203 N. Front Street
Moshannon Building - Room 311
Philipsburg, PA 16866

(814) 342-4640

(Fax) 342-3775

November 21, 2003 (405) 478-5616
Via Fax: ~~(412) 854-0344~~ and
CERTIFIED MAIL #7001 1940 0003 1814 7163
RETURN RECEIPT REQUESTED

Coldiron Specialized Company
P. O. Box 96649
Oklahoma City, OK 73143

Re: Christopher Bungo Property

Dear Sir:

Please be advised as follows:

1. My client, Christopher Bungo exercises his option pursuant to paragraph 2. of the agreement with you dated November 16, 2001, to cancel said lease.
2. If you wish to exercise your option to purchase the 16.69 acres, please notify my client.
3. Please notify who you intend to send to Philipsburg to negotiate the right-of-way location.
4. The trucks stored on the top lot on the northwest corner of this property must be removed thirty (30) days prior to closing so my client can utilize that area to relocate his property.
5. You may lease the area you are currently utilizing, outside the 16.69 acre area, until March 31, 2004 for \$800.00 per month. If not, all of your property outside the 16.69 acres must be removed prior to closing.

Sincerely,

GEORGE S. TEST, ESQUIRE

GST:cw
cc: Christopher P. Bungo

EXHIBIT B

NOTICE OF INTENT TO PURCHASE
PROPERTY PURSUANT TO PURCHASE OPTION

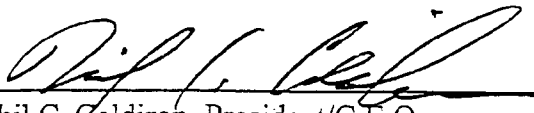
Date of Notice: November 24, 2003

To: CHRISTOPHER P. BUNGO
406 Curtain Street
Osceola Mills, PA 16666

GEORGE S. TEST
Attorney at Law
P.O. Box 706
Philipsburg, PA 16866
telephone: 814.342.4640
facsimile: 814.342.3775

You are hereby Notified that Coldiron Specialized Company, by and through its President and Chief Executive Officer, Phil C. Coldiron, hereby exercises its Option to Purchase pursuant to paragraph 4 of the 2001 Lease Agreement And Option to Purchase ("Lease Agreement") between Christopher P. Bungo, Lessor and Coldiron Specialized Company, Lessee, and entered into the Lease on November 16, 2001. A copy of the Lease is attached as "EXHIBIT A."

Demand is made that Closing take place within Sixty (60) days of this Notice.



Phil C. Coldiron, President/C.E.O.
Coldiron Specialized Company, Lessee

CHRIS BUNGO
SALE OF BUILDING

RENT PAID: $1400.00 \times 24 = 33600.00$
APPLIED TO SALE $33600.00 \times 80\% = 26880.00$

<u>SALES PRICE</u>	215,000
	<u>(26,880)</u>
<u>BALANCE OWED</u>	<u><u>188,120</u></u>

BALANCE OWED	188,120.00
DOWN PYMT AT CLOSING	<u>(25,000.00)</u>
<u>BALANCE TO FINANCE</u>	<u><u>163,120.00</u></u>

RATE OF INTEREST IS 8%

YEAR	PRINCIPAL	INTEREST	BALANCE
BEG			163,120
EOY 1		13,050	
	25,000		151,170
EOY 2		12,094	
	25,000		138,264
EOY 3		11,061	
	25,000		124,325
EOY 4		9,946	
	25,000		109,271
EOY 5		8,742	
BAL REMAINING	25,000		\$ 93,013

FILED
O/S: 2004
JAN 26 2004
William A. Shaw
Prothonotary/Clerk of Courts
Att'y Test pd. 85.00

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

CHRISTOPHER P. BUNGO,

Plaintiff

vs.

COLDIRON SPECIALIZED COMPANY,

Defendant

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*

No.: 04-118-CD

Praecipe to Discontinue

Filed on behalf of:

Christopher P. Bungo, Plaintiff

Attorney of record for the party:

George S. Test, Esquire

P. O. Box 706

Philipsburg, PA 16866

(814) 342-4640

PA I.D. #15915

GEORGE S. TEST
ATTORNEY-AT-LAW
PHILIPSBURG, PA

FILED

APR 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

CHRISTOPHER P. BUNGO,

Plaintiff

No.: 04-118-CD

vs.

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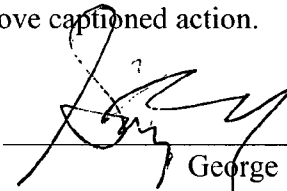
PRAECIPE

TO THE PROTHONOTARY:

Please discontinue and mark "settled" the above captioned action.

Date:

4/9/04



George S. Test, Esquire
Attorney for the Plaintiff

FILED

No

[Signature]

M. D. Hoot
APR 13 2004

Cert. of Disc.

William A. Staw

to Atty Test

Prothonotary/Clerk of Courts

Copy of Cert. to C/A

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Christopher P. Bungo

Vs.

No. 2004-00118-CD

Coldiron Specialized Company

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on April 13, 2004, marked:

Settled

Record costs in the sum of \$85.00 have been paid in full by George S. Test, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 13th day of April A.D. 2004.

William A. Shaw, Prothonotary

COPY

In The Court of Common Pleas of Clearfield County, Pennsylvania

BUNGO, CHRISTOPHER P.

VS.

COLDIRON SPECIALIZED COMPANY

COMPLAINT

Sheriff Docket #

15124

04-118-CD

SHERIFF RETURNS

NOW JANUARY 28, 2004 AT 11:05 AM SERVED THE WITHIN COMPLAINT ON COLDIRON SPECIALIZED COMPANY, DEFENDANT AT EMPLOYMENT, RT 322 E, WEST DECATUR, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO TY GUTHRIE, OFFICE MGR. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: MCCLEARY/NEVLING

Return Costs

Cost	Description
26.62	SHERIFF HAWKINS PAID BY: ATTY CK# 7574
10.00	SURCHARGE PAID BY: ATTY CK# 7575

Sworn to Before Me This

^{year}
15 Day Of April 2004
William A. Shaw

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

So Answers,

Chester A. Hawkins
Ty Guthrie
Chester A. Hawkins
Sheriff

FILED

013:35 BY
APR 15 2004

William A. Shaw
Prothonotary/Clerk of Courts