

04-120-CD
PAUL A. RAINNEY, et al. vs. JOHN R. COBURN, et al.

Paul Rainey et al vs. John Coburn et al
2004-120-CD

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

| | | |
|---------------------------|---|-------------------|
| PAUL A. RAINY and | : | NO. OF 2004, C.A. |
| SYLVIA K. RAINY, HIS WIFE | : | 04-120-CJ |
| PLAINTIFFS | : | |
| | : | |
| VS. | : | |
| | : | |
| JOHN R. COBURN AND | : | |
| PAMELA J. COBURN, HUSBAND | : | |
| AND WIFE AND ALBERT GORG | : | |
| AND ROBERTA L. GORG, | : | |
| HUSBAND AND WIFE | : | |
| DEFENDANTS | : | |

COMPLAINT AND CONFESSION OF JUDGMENT

COMPLAINT

NOW COMES, Plaintiffs, Paul A. Rainey and Sylvia K. Rainey, his wife, by and through their attorney, Susan M. Papa, and makes the following Complaint against Defendants wherefore the following is a statement:

1. The Plaintiffs are Paul A. Rainey and Sylvia K. Rainey, husband and wife, adult individuals residing at 2025 Guadalupe Avenue, Youngstown, Ohio, 44504.
2. The Defendants are John R. Coburn and Pamela J. Coburn, husband and wife, AND Albert Gorg and Roberta L. Gorg, adult individuals residing at 2 Dantz Run Road, Wellsboro, Pennsylvania, 16901.
3. By Installment Land Contract dated June 24, 2002 the Plaintiffs and the Defendants entered into an agreement for the purchase of certain real property, known as Section 4, Lot 135, Treasure Lake, Sandy Township, DuBois, Clearfield County,

SUSAN M. PAPA
PAPA & PAPA
ATTORNEYS AT LAW

439 COURT STREET
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PENNSYLVANIA

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Pennsylvania. A true and correct copy of said Installment Land Contract is attached to this Complaint as Exhibit "A".

4. Said Installment Land Contract (Exhibit "A") was recorded in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania. Said Installment Land Contract contains the signature of both Defendant(s).

5. The Plaintiffs aver that judgment is not being entered against a natural person in this action in connection with a residential lease.

6. Since the date of the execution of said Installment Land Contract, said contract has not been assigned.

7. Judgment has not previously been entered on said Installment Land Contract in this or any other jurisdiction.

8. The Defendants have defaulted under the terms of said Installment Land Contract since they have failed to make payments of the required principal and interest when due and payable.

9. The following amounts are due and payable to the Plaintiffs under the terms of said Installment Land Contract:

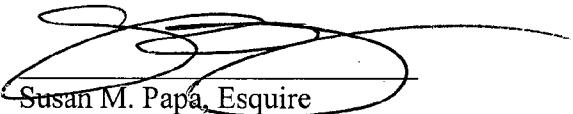
| | |
|----------------------------|---------------------|
| Principal | \$126,840.00 |
| Interest | \$ 28,245.96 |
| Attorney's Commission(10%) | \$ 7,145.00 |
| TOTAL | \$162,230.96 |

**SUSAN M. PAPA
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ATTORNEYS AT LAW**

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PENNSYLVANIA

WHEREFORE, the Plaintiffs demand entry of judgment as described above, together with costs of suit.

Respectfully submitted:



Susan M. Papa, Esquire

**SUSAN M. PAPA
PAPA & PAPA
ATTORNEYS AT LAW**

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NEW CASTLE,
PENNSYLVANIA

VERIFICATION

I/WE verify that the statements made in this Caplit

are true and correct. I/WE understand that false statements made herein are subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

Paul J. Conroy
Plaintiff(s)/Defendant(s)

Alvia K. Lainey
Plaintiff(s)/Defendant(s)

DATED: 1-12-2004

Plaintiff(s)/Defendant(s) Attorney

SUSAN M. PAPA
PAPA & PAPA
ATTORNEYS AT LAW

439 COURT STREET
NEW CASTLE,
PENNSYLVANIA

INSTALLMENT LAND CONTRACT

THIS AGREEMENT, made this _____ day of June, 2002 by and between PAUL A. RAINY and SYLVIA K. RAINY, husband and wife, whose address is 2025 Guadalupe Avenue, Youngstown, Ohio, 44504, hereinafter referred to as the "Seller",

A

N

D

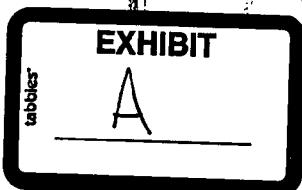
JOHN R. COBURN and PAMELA J. COBURN, husband and wife, whose address is Treasure Lake, DuBois, Pennsylvania, ALBERT GORG and ROBERTA L. GORG, husband and wife, whose address is 2 Dantz Run Road, Wellboro, Pennsylvania 16901, hereinafter referred to as the "Buyer".

WITNESSETH:

Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase, subject to the performance by Buyer of all the covenants, provisions, and conditions hereinafter set forth, all that certain real property known as Section 4, Lot 135, Treasure Lake, Sandy Township, DuBois, County of Clearfield and Commonwealth of Pennsylvania, with a home situate thereon

This Agreement shall be subject to the following terms and conditions:

- 1) Purchase Price. The purchase price shall be ONE HUNDRED FORTY TWO THOUSAND NINE HUNDRED DOLLARS (\$142,900.00), payable and allocated as set forth



on Exhibit "B" attached hereto and made a part hereof. Buyer may prepay the amount due Seller at any time without penalty.

2) **Closing Date.** Execution of the within Agreement shall be held on or before June 28, 2002 (The closing date).

3) **Possession.** Possession of the premises shall be delivered to the Buyer on date of closing.

4) **Utilities.** Buyer shall then be responsible for and shall pay for all utilities consumed on the premises during the term of this Agreement. Seller shall be responsible for all utilities consumed prior to the term of this Agreement.

5) **Fire Insurance.** During the term of this Agreement, Seller shall maintain fire insurance and extended insurance coverage on the premises from a company authorized to issue such insurance within the Commonwealth of Pennsylvania, in an amount not less than One Hundred Forty Two Thousand Nine Hundred Dollars (\$142,900.00). Buyer shall be responsible for the expense of insurance. The parties hereto agree and understand that in the event the property is destroyed by fire or other casualty, Seller shall be paid the amount outstanding under this Agreement. Buyer shall be responsible for insuring any personal property of Buyers within the premises. Seller is not providing coverage on behalf of Buyer.

6) **Liability Insurance.** During the term of this Agreement, Seller shall carry and maintain liability insurance in the minimum amount of \$100,000.00/\$300,000.00 upon the subject premises. Buyer shall be named as an additional insured on said liability insurance policy.

7) **Repairs.** During the term of this Agreement, Buyer shall keep and maintain the premises and personal property in good repair and shall make all necessary repairs to the real and personal property, both major and minor; it being the intent of the parties that the Buyer shall be responsible for all repairs, structural renovations and maintenance to the property as covered under this agreement. Buyer shall make all necessary repairs to the building as located upon the real property within sixty (60) days after notice that the subject premises is in violation of the law, ordinance or regulation of any governmental body, agency or department of the Commonwealth of Pennsylvania, County of Clearfield, Township of Sandy, or Treasurer Lake Property Owners Association; and further, Buyer shall make repairs within sixty (60) days after notice by the Seller of any condition that creates a danger to any occupant of the subject premises, to the public, or to the premises. Buyer hereby agrees to maintain the property in substantially the same condition as it is at the time of the execution of this Agreement.

8) **Improvements.** Subject to the terms and conditions as contained herein, Buyer may make minor repairs and cosmetic alterations, or improvements, to the real property, including but not limited to painting, papering, minor plumbing and replacement of fixtures, but in the event of any major improvement such as the alteration or renovation of the structure, including but not limited to structural changes and additions, Buyer must require and obtain the express written consent of the Seller before proceeding to take any action on such major alteration, renovation, or improvements. Buyer shall waive any claims for the value of improvements made by Buyer in the event of Buyer default.

9) **Real Estate Taxes.** During the term of this Agreement, Buyer shall be responsible for the payment of Treasure Lake Property Owners Assessment fees, Sandy Township property taxes, Clearfield County property taxes and Treasure Lake Property Owners assessment fees assessed against the property. Buyer shall pay same in twelve (12) equal payments representing 1/12 of the total amount due and payable. As of the date of this agreement, the parties agree the taxes and assessments are as follows:

| | |
|--|------------|
| County taxes | \$ 406.13 |
| Township taxes | 311.37 |
| School taxes | 2,315.18 |
| Treasure Lake Property Owners Assessment | 493.00 |
| Home Owners Insurance | 431.00 |
| Total | \$3,956.68 |

Buyer's estimated monthly payment for the escrow items set forth above equal \$329.72 per month. In the event the escrow amounts change, Buyer's monthly escrow shall change accordingly.

10) **Assessments.** During the term of this Agreement, Buyer shall pay to Seller all municipal assessments and Treasure Lake Property Owners Assessments made and levied against the subject property. Upon Buyer's payment to Seller, Seller shall pay said municipal assessments.

11) **Liens and Encumbrances.** Seller warrants the property is free and clear of all liens, defects and encumbrances, subject to all exceptions, reservations and conditions as contained in prior deeds except that Seller represents Seller has a mortgage encumbering the real property.

12) **Condemnation.** In the event that any municipal or other corporate body shall acquire the subject premises through the exercise of the power of eminent domain, in whole or in part, Buyer shall be considered as the owners of the subject premises and entitled to receipt of the proceeds from such condemnation and Seller shall have only an interest in said proceeds to the extent of the unpaid balance of the purchase price; it being understood, however, that neither Buyer nor Seller shall settle any claim for damages without consent of the other party and that the Buyer must be current in his obligations under this Article of Agreement for this provision to apply.

13) **Right to Enter.** During the term of this within Agreement, Seller or Seller's authorized agent, shall have the right to enter the subject premises for the purpose of inspection to determine whether Buyer has complied with the terms of this Agreement; said inspections are to be made at reasonable hours and upon the giving of a twenty-four hour notice.

14) **Additions to Principal.** Seller shall, upon the default of the Buyer in the payment of any obligations for taxes, insurance, municipal assessments, property owner assessments, or utilities, in addition to the other rights herein contained, have the right or option to make said payments on behalf of the Buyer and shall add the amount of any such payments to the outstanding principal balance.

15) **Destruction.** If, during the term of this Agreement the subject premises shall be destroyed in whole or in part by fire or other means, Buyer shall not be relieved of the obligation

for payments provided for herein except to the extent of funds received by Seller from any insurance carrier or third party tortfeasor.

16) **Deed.** Seller shall execute a deed on the closing date in favor of Buyer that shall be held in trust by David J. Hopkins, Esquire. Upon the payment in full of the purchase price by the Buyer to Seller, David J. Hopkins, Esquire shall cause the deed to be delivered so as to convey the subject premises as herein described in fee simple, free and clear of all liens and encumbrances, to the Buyer, with special warranty. The Trustee shall have no liability to Buyer or Seller under this agreement and each party indemnifies and holds the Trustee free from all liability of any nature, now and in the future.

17) **Quit Claim Deed.** Buyer shall execute a quit claim deed on the closing date in favor of Seller which shall be held in trust by David J. Hopkins, Esquire to be recorded in the event of default by Buyer.

18) **Transfer Tax.** All transfer taxes upon the within referred to conveyance shall be paid equally by Buyers and Sellers. In the event that Sellers do not remit Sellers' share of the transfer taxes to Buyers at the time of Recording, Buyer shall have the right to deduct Seller's share from any balance due and owing to the Sellers under this Agreement or Buyers shall have the right to withhold sufficient payments at the end of the term to cover the Sellers' share of the transfer tax due when the deed is to be recorded. Buyer shall pay to record the deed.

19) **Buyer's Default.** In the event of a default in payment of any sum of principal, interest or taxes herein agreed to be paid, for a period of thirty (30) days after the same shall become due and payable, or in the event of a default in the performance of any other term or condition of this Agreement, then Seller shall give written notice of said default and Buyer shall

have thirty (30) days to cure said default. If said default is not cured by Buyer within thirty (30) days after Buyer's receipt of written notice advising Buyer of the default, the whole of the unpaid principal sum shall forthwith become due and payable and Seller shall have the option of either:

- (a) Retaining all monies theretofore paid as liquidated damages and recover possession of the premises including all improvements made by the Buyer thereon. To this end, Buyer hereby authorizes and empowers any attorney of any Court of record to appear for them in an amicable action of ejectment for the subject premises and to enter a judgment against them and in favor of the Seller for said premises with writ of execution for the costs and attorney's commission or fees of five (5%) percent of the purchase price; or
- (b) Enter judgment for the unpaid balance of the purchase price, together with interest costs and attorney's commission. To this end, Buyer hereby authorizes and empowers any attorney of any Court of record to appear for her and to confess judgment against her, upon declaration filed, for the unpaid principal sum together with interest and costs and attorney's commission of five (5%) percent of the purchase price; hereby waiving all the rights of condemnation is hereby agreed to as far as the land herein described and any property or buildings thereon may be concerned;
- (c) All remedies contained in this Agreement shall be cumulative and concurrent. If Seller shall pursue any remedy, it shall not be deemed to be a waiver of the right to seek any other remedy that may exist.

20) **Seller's Default.** In the event Buyer has made all payments required by Buyer under the terms of this Agreement, and Seller has failed to pay the real estate taxes due to Treasury Lake Property Owners Assessment or failed to keep Seller's mortgage current, Buyer may pay same directly and set off the aforesaid payments from the amounts due Seller.

21) **Warranty of Title.** Seller warrants that it shall take no further action which will constitute a lien or encumbrance against the premises in question provided Buyer is not in default.

22) **Leases.** Subject to the terms, conditions and restrictions contained herein, Buyer shall not lease, let, sublet or otherwise surrender possession to any other person of the subject premises in whole or in part, without the prior written consent of Seller.

23) **Strict Performance.** Failure of Seller to insist on strict performance by Buyer of any of the terms of this Agreement shall not be construed as a waiver, release or relinquishment thereof.

24) **Entire Agreement.** This Agreement represents the entire agreement between the parties hereto and shall extend to and be binding upon their heirs, executors, and administrators.

25) **Assignment.** This Agreement is not assignable by the Buyers without the express written consent of the Sellers.

26) **As Is.** The property is sold by Seller and purchased by Buyer in its "as is" condition. No covenants, warranties or representations are given by Seller.

27) **Balloon Payment.** Buyer shall make a Balloon Payment to Seller on June 1, 2005 of all amounts then due. If Balloon Payment is not paid in full by June 1, 2005, said property shall automatically revert to Seller.

28) **Smoke Test.** At the time the title to the property is transferred, if the municipality requires the storm water and sanitary sewer lines to be tested for infiltration of storm water into the sewer system. Seller shall be responsible for obtaining the test and shall make any remedial repairs to the aforesaid systems.

29) **Deposit.** Buyer has deposited Ten Thousand Dollars (\$10,000.00) with Coldwell Banker which, upon the execution of this agreement, shall be non-refundable. At closing Buyer is receiving a credit of \$2,560.00 representing twenty percent (20%) of rental payments from March, 2001, through June, 28, 2002. At closing, Buyer shall also pay \$3,500.00 that shall be non-refundable.

30) **Treasure Lake Property Owners Association Sticker.** Provided Buyer has paid all sums required under the terms of this Agreement, Seller shall cooperate with Buyer so that Buyer will be able to obtain a Treasure Lake Property Owners vehicle sticker and Treasure Lake Property Owners activity card.

31) **Dual Representation:** Buyer and Seller consent to the Hopkins Law Firm representing both Buyer and Seller in this transaction.

32) **Real Estate Commission:** At the execution of this Agreement, Seller shall pay Coldwell Banker a real estate commission of six (6%) percent of the total sale price of \$142,900.00.

State of Ohio)

County of Trumbull)

:ss:

)

On this, the 27th day of June, 2002, before me, the undersigned officer, personally appeared, Paul A. Rainey and Sylvia K. Rainey, 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 executed the same for the purpose therein contained.

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

My Commission Expires: 8/13/02


Notary Public

JUNE M. SMALLWOOD, Notary Public

My Commission Expires: 8/13/02

Commonwealth of Pennsylvania)

:ss:

)

County of Clearfield)

Commonwealth of Pennsylvania)

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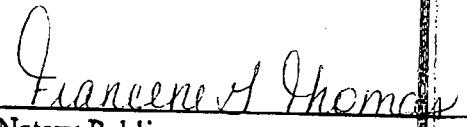
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County of Clearfield)

On this, the 25 day of June, 2002, before me, the undersigned officer, personally appeared, John R. Coburn and Pamela J. Coburn, 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 executed the same for the purpose therein contained.

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

My Commission Expires: Feb. 21, 2004


Notary Public

Notarial Seal
Francene G. Thomas, Notary Public
DuBois, Clearfield County
My Commission Expires Feb. 21, 2004

Member, Pennsylvania Association of Notaries

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

Witness:

Howard Hawks

John Coburn

Fern Reicker

Fern Reicker

Marge L. Bailey

Marge L. Bailey

Seller:

Paul A. Rainey (Seal)
Paul A. Rainey

Sylvia K. Rainey (Seal)
Sylvia K. Rainey

Buyer:

John R. Coburn (Seal)
John R. Coburn

Pamela J. Coburn (Seal)
Pamela J. Coburn

Albert Gorg (Seal)
Albert Gorg

Roberta L. Gorg (Seal)
Roberta L. Gorg

Commonwealth of Pennsylvania)

SS:

County of TIoga)

On this, the 24th day of June, 2002, before me, the undersigned officer, personally appeared, Albert Gorg and Roberta L. Gorg, 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 executed the same for the purpose therein contained.

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

My Commission Expires: 5/13/04

Connie M. Morral
Notary Public

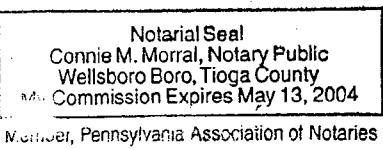


EXHIBIT "A"

ALL that certain tract of land designated as Lot No.135, Section No. 4, in the Treasure Lake Subdivision in Sandy Township, Clearfield County, Pennsylvania, recorded in the Office of the Recorder of Clearfield County.

EXCEPTING AND RESERVING therefrom and subject to:

1. All easements, rights of way, reservations, restrictions and limitations shown or contained in prior instruments of record and in the aforesaid recorded plan.
2. The Declaration of Restrictions, Treasure Lake, Inc. recorded in Misc. Book Vol. 146, p. 476, all of said restrictions being covenants which run with the land.
3. All minerals and mining rights of every kind and nature.
4. A lien for all unpaid charges or assessments as may be made by Treasure Lake Property Owners Association, Inc.; which lien shall run with the land and be an encumbrance against it.

EXHIBIT "B"

| | |
|--|----------------|
| SALE PRICE | \$ 42,900.00 |
| ESCROWED DEPOSIT | \$ 10,000.00 |
| RENT CREDIT | \$ 2,560.00 |
| PAYMENT @ CLOSING | \$ 3,500.00 |
| AMOUNT FINANCED | \$ 26,840.00 |
| INTEREST RATE | 7.76 |
| AMORTIZATION SCHEDULE | 20 Years |
| MONTHLY AMORTIZED INTEREST AND PRINCIPAL PAYMENT | \$ 983.39 |
| FIRST PAYMENT DATE | August 1, 2002 |
| BALLOON PAYMENT DUE | June 1, 2025 |
| ESTIMATED MONTHLY PAYMENT | \$ 1,313.11 |

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

PAUL A. RAINY and : NO. OF 2004, C.A.
SYLVIA K. RAINY, HIS WIFE :
PLAINTIFFS : *04-120-CD*
VS. :
: JOHN R. COBURN AND :
PAMELA J. COBURN, HUSBAND :
AND WIFE AND ALBERT GORG :
AND ROBERTA L. GORG, :
HUSBAND AND WIFE :
DEFENDANTS :
:

FILED

JAN 27 2004

William A. Shaw
Prothonotary/Clerk of Courts

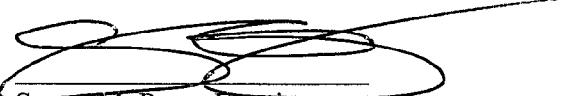
CONFESSON OF JUDGMENT

Pursuant to the authority contained in the warrant of attorney, a copy of which is attached to the Complaint filed above in this action, the undersigned hereby appears for the Defendants and confesses judgment in favor of the Plaintiffs and against the Defendants for possession of the real property described as follows:

By Installment Land Contract dated June 24, 2002, the Plaintiff and the Defendants entered into an agreement for the purchase of certain real property, being known as Section 4, Lot No. 135, Treasure Lake, Sandy Township, DuBois, Clearfield County, Pennsylvania. A true and correct copy of said Installment Land Contract is attached to this Complaint as Exhibit "A".

Together with judgment for sums due in the amount of \$162,230.96.

Respectfully submitted:


Susan M. Papa, Esquire

SUSAN M. PAPA
PAPA & PAPA
ATTORNEYS AT LAW

439 COURT STREET
NEW CASTLE,
PENNSYLVANIA

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JAN 27 2004 Amy pd. 20.00
William A. Shaw
Prothonotary/Clerk of Courts
Notice to Dfts.

COPY

NOTICE OF JUDGMENT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL DIVISION

Paul A. Rainey and
Sylvia K. Rainey, his wife

Vs.

No. 04-120-CD

John R. Coburn, and
Pamela J. Coburn, husband and wife;
and Albert Gorg and
Roberta L. Gorg, husband and wife

To: DEFENDANT(S)

NOTICE is given that a JUDGMENT in the above captioned matter has been entered
against you in the amount of \$162,230.96 on the 27th day of January, 2004.

William A. Shaw
Prothonotary

William A. Shaw

COPY

NOTICE OF JUDGMENT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL DIVISION

Paul A. Rainey and
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NOTICE is given that a JUDGMENT in the above captioned matter has been entered
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William A. Shaw
Prothonotary

William A. Shaw

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

PAUL A. RAINY and : NO. 120-CD OF 2004, C.A.
SYLVIA K. RAINY, HIS WIFE :
PLAINTIFFS :
VS. :
JOHN R. COBURN AND :
PAMELA J. COBURN, HUSBAND :
AND WIFE AND ALBERT GORG :
AND ROBERTA L. GORG, :
HUSBAND AND WIFE :
DEFENDANTS :
:

PRAECIPE

TO: PROTHONOTARY

To Settle, Discontinue and Satisfy – Judgment and Plaintiff's Case as to all
Defendants.



Attorney for Plaintiffs

Date: 10-25-04

FILED 

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William A. Shaw

Prothonotary/Clerk of Courts

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atty*

copy on Disc to CJA

SUSAN M. PAPA
PAPA & PAPA
ATTORNEYS AT LAW

439 COURT STREET
NEW CASTLE,
PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Paul A. Rainey
Sylvia K. Rainey

Vs.

No. 2004-00120-CD

John R. Coburn
Pamela J. Coburn
Albert Gorg
Roberta Gorg

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 November 3, 2004, marked:

Settle, Discontinue and Satisfy

Record costs in the sum of \$115.00 have been paid in full by Papa and Papa.

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

William A. Shaw, Prothonotary