

04-172-CD
C. ALAN WALKER, et al. vs. CHAD S. AUBER, et al.

Alan Walker, et al vs. Chad Auber et al
2004-172-CD

In The Court of Common Pleas of Clearfield County, Pennsylvania

WALKER, C. ALAN, SUAN W. KRINER & ANNE WALKER MACKO t/d/b/a

Sheriff Docket # 15167

VS.

04-172-CD

AUBER, CHAD S. & TRACEY L.

COMPLAINT IN CONFESSION OF JUDGMENT

SHERIFF RETURNS

NOW FEBRUARY 17, 2004 AT 10:35 AM SERVED THE WITHIN COMPLAINT IN CONFESSION OF JUDGMENT ON TRACEY L. AUBER, DEFENDANT AT RESIDENCE, 622 ELM AVE., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO TRACEY AUBER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN CONFESSION OF JUDGMENT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: MCCLEARY/NEVLING

NOW FEBRUARY 17, 2004 AT 10:35 AM SERVED THE WITHIN COMPLAINT IN CONFESSION OF JUDGMENT ON CHAD S. AUBER, DEFENDANT AT RESIDENCE, 622 ELM AVE., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO TRACEY AUBER, WIFE A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN CONFESSION OF JUDGMENT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: MCCLEARY/NEVLING

Return Costs

Cost	Description
30.37	SHERIFF HAWKINS PAID BY: ATTY CK# 130
20.00	SURCHARGE PAID BY: ATTY CK# 131

Sworn to Before Me This

28th Day Of April 2004

W.A. Shaw

FILED

APR 29 2004

010:43 a.m.

William A. Shaw
Prothonotary

So Answers,

Chester Hawkins
by Marilyn Harry

Chester A. Hawkins
Sheriff

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

C. ALAN WALKER, SUSAN W. KRINER and ANNE WALKER MACKO, t/d/b/a SHANNON LAND AND MINING COMPANY,	:
Plaintiffs	:
vs.	:
CHAD S. AUBER and TRACEY L. AUBER, husband and wife,	:
Type of Case: Civil	:
Type of Pleading: Complaint in Confession of Judgment	:
Defendants	:
Filed on Behalf of: Plaintiffs	:
Counsel of record for this party: William C. Kriner, Esq.	:
Supreme Ct. I.D. # 15559 31 North Third Street P. O. Box 1425 Clearfield, PA 16830 814-768-7893	:

FILED

FEB 05 2004

William A. Shaw
Prothonotary/Clerk of Courts

ACT 105 OF 2000 NOTICE

A JUDGMENT HAS BEEN ENTERED AGAINST YOU BY CONFESSION OF JUDGMENT.

PURSUANT TO 42 PA. C.S.A. §2737.1, IF YOU WERE INCORRECTLY IDENTIFIED AS A DEFENDANT IN THE COMPLAINT IN CONFESSION OF JUDGMENT, YOU MAY BE ENTITLED TO COSTS AND REASONABLE ATTORNEY FEES AS DETERMINED BY THE COURT.

YOU MAY TAKE ACTION TO STRIKE THE JUDGMENT BY FOLLOWING THE PROCEDURE IN RULE 2959 WHICH IS AS FOLLOWS:

Pennsylvania Rule of Civil Procedure 2959 – Striking Off Judgment.

(a)(1) Relief From a judgment by confession shall be sought by petition. Except as provided in subparagraph (2), all grounds for relief whether to strike off the judgment or to open it must be asserted in a single petition. The petition may be filed in the county in which the judgment was originally entered, in any county to which the judgment has been transferred or in any other county in which the sheriff has received a writ of execution directed to the sheriff to enforce the judgment.

(2) The ground that the waiver of the due process rights of notice and hearing was not voluntary, intelligent and knowing shall be raised only

(i) in support of a further request for a stay of execution where the court has stayed execution despite the timely filing of a petition for relief from the judgment and the presentation of *prima facie* evidence of a defense; and

(ii) as provided by Pennsylvania Rule of Civil Procedure 2958.3 or Rule 2973.3.

(3) If written notice is served upon the petitioner pursuant to Rule 2956.1(c)(2) or Rule 2973.1(c), the petition shall be filed within thirty days after such service. Unless the defendant can demonstrate that there were compelling reasons for the delay, a petition not timely filed shall be denied.

(b) If the petition states *prima facie* grounds for relief the court shall issue a rule to show cause and may grant a stay of proceedings. After being served with a copy of the petition the plaintiff shall file an answer on or before the return day of the rule. The return day of the rule shall be fixed by the court by local rule or special order.

(c) A party waives all defenses and objections which are not included in the petition or answer.

(d) The petition and the rule to show cause and the answer shall be served as provided in Rule 440.

(e) The court shall dispose of the rule on petition and answer, and on any testimony, depositions, admissions and other evidence. The court for cause shown may stay proceedings on the petition insofar as it seeks to open the judgment pending disposition of the application to strike off the judgment. If evidence is produced which a jury trial would require the issues to be submitted to the jury the court shall open the judgment.

(f) The lien of the judgment or of any levy or attachment shall be preserved while the proceedings to strike off or open the judgment is pending.

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

C. ALAN WALKER, SUSAN W. :
KRINER, and ANNE WALKER :
MACKO, t/d/b/a SHANNON :
LAND AND MINING COMPANY : No. 2004 - - CD

V.

CHAD S. AUBER and TRACEY L.
AUBER, husband and wife

CONFESSiON OF JUDGMENT

Pursuant to the authority contained in the Warrant of Attorney contained in the lease, a copy of which is attached to the Complaint filed in this action as Exhibit "A"; I hereby appear for Defendant and confess judgment in favor of the Plaintiff and against the Defendant, as follows:

a. Unpaid rentals.....	\$2,100.00
b. Accrued interest through Feb. 1, 2004.....	63.00
c. 10% attorney's commission.....	216.30
Total	\$ 2,379.30

Plus interest accruing at the contract rate and costs and expenses of suit.

Attorney for Defendant
pro hac vice

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

C. ALAN WALKER, SUSAN W.	:	
KRINER, and ANNE WALKER	:	
MACKO, t/d/b/a SHANNON	:	
LAND AND MINING COMPANY	:	No. 2004 - - CD
	:	
v.	:	
	:	
CHAD S. AUBER and TRACEY L.	:	
AUBER, husband and wife	:	

COMPLAINT IN CONFESSION OF JUDGMENT

NOW COME PLAINTIFFS, by and through their counsel, William C. Kriner, Attorney at Law, who represent as follows:

1. The Plaintiffs are C. Alan Walker, Susan W. Kriner and Anne Walker Macko, trading and doing business as Shannon Land and Mining Company, having its principal place of business at P. O. Box 368, Bigler, PA 16825.
2. The Defendants are Chad S. Auber and Tracey L. Auber, husband and wife, of 622 Elm Avenue, Clearfield, PA 16830.
3. That on 18 January, 2000, the Defendants leased from Bradford Coal Co, Inc., two acres of land and a house known as the Lambert property under a written lease agreement. A copy of said lease is attached hereto and incorporated herein by reference and marked as Exhibit "A".
4. That said written lease agreement was assigned to the Plaintiffs by Bradford Coal Co., Inc., on March 1, 2002. Notice of said assignment was given to the Defendants in writing, a copy of which is attached hereto, incorporated herein by reference and marked as Exhibit "B".
5. That the Defendants vacated the premises in July of 2003.
6. That at the time the Defendants vacated the premises they owed the Plaintiffs unpaid rentals in the amount of \$2,100.00.
7. That the Lease agreement by and between the parties contains a warrant of attorney authorizing confession of judgment in favor of Plaintiffs and against

Defendants for unpaid rentals plus costs of suit and attorney's commission of ten (10%) percent.

8. That the amount due as of 1 February 2004, from Defendants to Plaintiffs pursuant to the warrant of attorney is computed as follows:

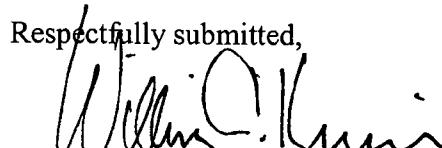
a. Unpaid rentals.....	\$2,100.00
b. Accrued interest through Feb. 1, 2004.....	63.00
c. 10% attorney's commission.....	216.30

Total	<u>\$ 2,379.30</u>
-------	--------------------

9. That judgment has not been entered on the Warrant of Attorney in said lease in any jurisdiction.
10. That except as set forth in paragraph 4, no assignments of the lease with the Warrant of Attorney has been made.
11. JUDGMENT IS NOT BEING ENTERED BY CONFESSION AGAINST A NATURAL PERSON IN CONNECTION WITH A CONSUMER CREDIT TRANSACTION.

WHEREFORE, Plaintiffs demand that judgment be entered in their favor and against Defendants in the amount of \$2,379.30 plus costs of suit and interest thereon at the contract rate from February 1, 2004.

Respectfully submitted,



William C. Kriner, Esq.
31 North Third Street
P. O. Box 1425
Clearfield, PA 16830
I. D. # 15559

RENTAL LEASE AGREEMENT

THIS AGREEMENT, made this 18th day of January, 2000, by and between BRADFORD COAL CO., INC., a Pennsylvania business corporation having its principal place of business at R.D., Dale Road, Woodland, Pennsylvania, party of the first part, hereinafter referred to as "LESSOR",

A

N

D

Chad S. and Tracey Lynn Auber, husband and wife of RD, Grampian, Penn Township, Clearfield County, Pennsylvania; party of the second part, hereinafter referred to as "LESSEE",

WITNESSETH:

THAT the LESSOR, for and in consideration of the rentals to be paid by the LESSEE to the LESSOR, and in further consideration of the covenants hereinafter set forth which are to be done, kept and performed by the LESSEE, do hereby demise, lease and let unto the LESSEE the premises known and described as a house and two (2) acres of land, purchased from Jeffrey and Richard Lambert on November 10, 1999, located on the Irishtown to Chestnut Grove Road in Penn Township, Clearfield County, Pennsylvania, upon the following terms and conditions:

1. THAT the term of this Lease Agreement shall commence on February 1, 2000 and extend for a period of six (6) months from said date of commencement. Said Lease shall renew itself every month thereafter unless either party shall notify the

other in writing at least fifteen (15) days prior to the end of any monthly term of their intention to cancel said Lease. However, LESSEE may terminate this Lease by giving LESSOR thirty (30) days written notice of intention to terminate at the end of any calendar month. LESSOR specifically reserves the right to change the terms and conditions of this Lease, including an increase in the rental to be paid by giving the LESSEE thirty (30) days written notice prior to the expiration of any monthly term of their intention to do so, and the LESSEE holding over is thereby bound by the new terms for the renewal period. Notice under this Lease Agreement shall be deemed to be given by regular mail directed to the LESSOR at P.O. Box 368, Bigler, Pennsylvania 16825, and to the LESSEE at R.D., Grampian, Pennsylvania 16838.

2. THAT the LESSEE shall pay to the LESSOR without prior notice or demand, or without setoff or deduction, the sum of Three Hundred (\$300.00) Dollars per month to be in the hands of the LESSOR on the first (1st) day of each and every month, beginning the first day of February 2000, and continuing on the first (1st) day of every month thereafter during the term of this Agreement. Payments shall be made to the LESSOR at P.O. Box 368, Bigler, Pennsylvania 16825, or at the office of W. Keith Garman located in the Bradford Coal Co., Inc., office building at Dale Road, Bradford Township.

3. THAT in the event the LESSOR desires to sell the property, the LESSEE shall have the right, within thirty (30) days of receiving notice of LESSOR'S intent to sell the property, to purchase the same, at the price to be determined by an appraisal performed by a licensed, registered Pennsylvania Appraiser.

4. THAT the LESSEE shall be responsible for the payment of all utilities, including but not limited to, electric, phone, television, water, fuel oil, and the upkeep of the premises. Said upkeep shall include mowing the lawn around the house. The LESSEE shall be responsible, at the end of this Lease, for ensuring that the oil tank is filled with fuel oil as when originally leased.

5. THAT the LESSEE hereby agrees to occupy the subject premises only as an apartment and not to assign, sublet, or underlet the leased premises or any part thereof, without the written consent and approval of the LESSOR.

6. THAT the LESSEE shall keep the leased premises clean and in good order and repair and at the expiration of the term of this Agreement peaceably deliver up the premises in the same good order and repair as when originally leased, excepting only ordinary wear and tear.

7. THAT the LESSEE shall make no improvements or alterations on the leased premises without first obtaining written approval from the LESSOR.

8. THAT the LESSEE shall be responsible for damages by fire or other casualty to his personals on the leased premises. In the event of total destruction to the premises by virtue of fire or other casualty, this Lease Agreement shall automatically terminate, and in the event of partial destruction, LESSOR may repair at its option if insurance proceeds are available. If the LESSOR chooses not to repair within thirty (30) days of the casualty, then this Lease shall automatically terminate.

9. THAT in the event of a taking by condemnation, in whole or in part, of the demised premises, this Lease shall terminate as of the date the right to possession accrues to the condemning authority. LESSEE hereby waives the right to participate in

any condemnation award except for improvements made by the LESSEE under this Lease.

10. THAT the LESSEE shall carry his own liability insurance for the leased premises and shall indemnify and save the LESSOR harmless from any and all losses, costs, or damages on account of injury to persons or property occurring on the leased premises. In addition, the LESSEE hereby agrees to release the LESSOR from any and all liability for damages sustained by the LESSEE or any invitee of the LESSEE to person or property on the demised premises.

11. THAT in the event the LESSEE does not pay in full when due any and all installments of rent or any other charge, expense, or cost agreed to be paid by LESSEE under the terms of this Lease or if the LESSEE shall fail to keep or comply with any of the covenants, terms, and conditions of this Lease, the LESSOR has the following remedies, all of which are cumulative and concurrent:

(a) THAT the LESSEE does hereby waive any right on the part of the LESSEE or those claiming under LESSEE to the LESSOR, and the LESSOR may terminate and declare void the Lease without condition or conditions violate, and enter an amicable action of ejectment against the LESSEE in the Court of Common Pleas of Clearfield County, Pennsylvania, to recover possession of the demised premises, and reinstate the same by payment or other performances of the authorize for the LESSEE in said action of ejectment and to confess judgment, or judgments, therein as often as the LESSOR for the demised premises, together with costs of suit, and the LESSEE agrees that a writ of possession in such action with clause of execution for costs may issue forthwith without leave of court, and that the said writ of possession when so

issued may be forthwith executed, and the LESSEE does hereby authorize and direct the attorney who may appear for it in the said action to waive and release all errors and irregularities in the said action of ejectment and the proceedings relating thereto, and the LESSEE further agrees that any such action of ejectment, if resorted to, shall not in any manner impair any other rights of the LESSOR or any lawful remedy or remedies herein stipulated for or provided for, or which may be or may become by law provided, and in every such action of ejectment the LESSEE does hereby waive the benefit of all exemption laws and of all laws giving stays of execution and inquisition now in force, or which may hereafter be enacted.

(b) THAT the LESSOR may take possession and re-enter the subject premises without terminating this Lease and demise, let and lease the subject premises to a third party with the LESSEE remaining liable for any loss of rentals under this Lease and liable for costs of reletting, brokerage expenses and costs of preparing the – premises for the new tenant. In addition, the LESSOR is released from any and all liability for re-entering the subject premises.

(c) THAT the LESSOR may accelerate the rental for the balance of the term, thus requiring it to be due and payable immediately without setoff or deduction.

(d) THAT the LESSOR may forthwith seize and levy upon all property, goods, and chattels, without notice or demand, which may be found in or upon the leased premises that the LESSOR may proceed therewith and sell all goods and chattels as is permitted by law in a case of distress for rent. That in addition, the LESSOR is authorized by the LESSEE to follow any property, goods, or chattels removed from the

leased premises by the LESSEE for a period of ninety (90) days after such removal for a purpose of proceeding in an action of distress for rent.

(e) THAT the LESSEE does hereby authorize and empower any attorney of any court of record of Pennsylvania, or elsewhere, without notice to the LESSEE, to appear for the LESSEE and as often as the LESSOR shall deem it necessary to confess judgment or judgments against the LESSEE and in favor of the LESSOR for any and all such sum or sums of money with costs of suit and with an attorney's commission of ten (10%) percent of the amount due for collection thereof and with release of all errors and without stay of execution and inquisition and extension upon any levy on any real estate is hereby waived. These provisions, however, shall not be a bar to any other remedies that may become due from the LESSEE to the LESSOR under the terms of this Lease.

(f) THAT the LESSEE hereby waives all rights of redemption and of exemption under the Landlord and Tenant Act of 1951, April 6, 1981, P.L. 60, or any other appropriate act now in existence or to be in existence in the future, all appeals, stays of execution, errors all notices required by statute, and release the LESSOR from wrongful entry of judgments, distress, or errors.

12. THAT this Lease shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors, and assigns as if they were named in each and every paragraph herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

E. David Nelson
Witness

Chad S. Auber
Chad S. Auber

E. David Nelson
Witness

Tracey Lynn Auber
Tracey Lynn Auber

E. David Nelson
Witness

C. Alan Walker, President & CEO
C. Alan Walker, President & CEO
BRADFORD COAL CO., INC.

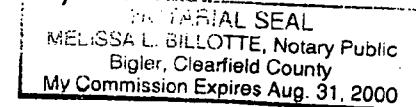
COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF CLEARFIELD :

On this, the 18th day of January, 2000, before me, the undersigned officer, personally appeared C. Alan Walker, who acknowledged himself to be the President and CEO of BRADFORD COAL CO., INC., and that he as such Agent being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the company by himself as Agent.

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

Melissa L. Billotte

Notary Public



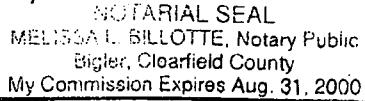
COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF CLEARFIELD :

On this, the 18th day of January, 2000, before me, the undersigned officer, personally appeared Chad S. and Tracey Lynn Auber, 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 same for the purposes therein contained.

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

Melissa L. Billotte

Notary Public



SHANNON LAND AND MINING COMPANY
P. O. Box 368
Bigler, PA 16825

PHONE: (814) 857-7681

FAX: (814) 857-5003

March 1, 2002

Mr. Chad S. Auber
Mrs. Tracey L. Auber
P. O. Box 299
Grampian, PA 16838

**RE: Rental Lease Agreement
Dated January 18, 2000
House and 2.0 Acres
Penn Township, Clearfield County**

Dear Chad and Tracey:

This letter is sent to inform you that the house you are currently renting has been sold by Bradford Coal Co., Inc., to Shannon Land and Mining Company. All rent checks, beginning with rent due for March, 2002, should be sent to: Shannon Land and Mining Company, P. O. Box 368, Bigler, PA 16825.

Also, I have enclosed a copy of your rental payments. Our records indicate that as of March 1, 2002, you are \$2,900.00 in arrears with your rental payments. We will not allow this to continue any longer. Please make arrangements to bring your rent current as soon as possible.

If you have any questions, please contact me.

Very truly yours,



E. David Nelson, Manager
Properties & Reserves
SHANNON LAND AND MINING COMPANY

EDN/smr
Enclosure
cc: Butch Auber
215 State Street
Curwensville, PA 16833
wd/feb01/auber

EXHIBIT "B"

Verification

I verify that the foregoing are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 PA. C.S.A. Section 4904 relating to unsworn falsification to authorities and is given pursuant to the provisions for verification of pleadings as defined and provided for in Rule 1024 of the Pennsylvania Rules of Civil Procedure.

Shannon Land and Mining Company
By

E. David Nelson
E. David Nelson, Agent

February 5, 2004

FILED ~~Office of Statement~~
01/26/04 Atty Kinner
FEB 05 2004

William A. Shaw Atty pd. \$5.00
Prothonotary/Clerk of Courts

2 cc Sheriff

Notice to Def.

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

COPY

C. ALAN WALKER, SUSAN W. KRINER, and ANNE WALKER MACKO, t/d/b/a SHANNON LAND AND MINING COMPANY	:	
	:	No. 2004 - 172 - CD
v.	:	
CHAD S. AUBER and TRACEY L. AUBER, husband and wife	:	
	:	

NOTICE OF ENTRY OF JUDGMENT

To: Chad S. Auber
Tracey L. Auber
622 Elm Avenue
Clearfield, PA 16830

You are hereby notified that a judgment was entered against you by confession in the above captioned proceeding on February 5, 2004.

The amount of the judgment is \$2,379.30 plus interest accruing at the contract rate and expenses of suit.

A copy of the complaint is enclosed.

Prothonotary

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

COPY
ANIA

C. ALAN WALKER, SUSAN W. KRINER, and ANNE WALKER :
MACKO, t/d/b/a SHANNON :
LAND AND MINING COMPANY : No. 2004 - 172 - CD
v. :
CHAD S. AUBER and TRACEY L. :
AUBER, t/a AUBER

NOTICE OF ENTRY OF JUDGMENT

To: Chad S. Auber
Tracey L. Auber
622 Elm Avenue
Clearfield, PA 16830

You are hereby notified that a judgment was entered against you by confession in the above captioned proceeding on February 5, 2004.

The amount of the judgment is \$2,379.30 plus interest accruing at the contract rate and expenses of suit.

A copy of the complaint is enclosed.

Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
STATEMENT OF JUDGMENT

COPY

C. Alan Walker
Susan W. Kriner
Anne Walker Macko t/d/b/a
Shannon Land and Mining Company
Plaintiff(s)

No.: 2004-00172-CD

Real Debt: \$2,379.30

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Chad S. Auber
Tracey L. Auber
Defendant(s)

Entry: \$85.00

Instrument: Confession of Judgment

Date of Entry: February 5, 2004

Expires: February 5, 2009

Certified from the record this 5th day of February, 2004.

William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

Received on _____, _____, of defendant full satisfaction of this Judgment,
Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

Plaintiff/Attorney