

2004-1349-CD
CARL KEITH

VS

MARSHALL J. SHIRLEY, JR., ETAL

Carl Keith vs Marshall Shirley et al
2004-1349-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CARL KEITH,

Plaintiff

Vs.

MARSHALL J. SHIRLEY, JR. and
CELESTINA L.M. SHIRLEY, his
wife,

Defendants

CIVIL DIVISION

No. 04 - ^{CD}1349 - EQU

COMPLAINT FOR SPECIFIC
PERFORMANCE

Filed on Behalf of:

Plaintiff, CARL KEITH

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
Pa. I.D. #06810

COLAVECCHI & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

FILED

AUG 30 2004 ^{FILED}

0/10:15/14

William A. Shaw
Prothonotary

3 cent to Attv

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
EQUITY ACTION

CARL KEITH, :
Plaintiff :
vs. : No. 04 - - EQU
MARSHALL J. SHIRLEY, JR. :
and CELESTINA L.M. SHIRLEY, :
his wife, :
Defendants :

N O T I C E

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 AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAW OFFICES OF
COLAVECCHI
RYAN & COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
Second and Market Streets
Clearfield, PA 16830
Phone 814/765-2641 Ex. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
EQUITY ACTION

CARL KEITH,	:		
Plaintiff	:		
	:		
vs.	:	No. 04 -	- EQU
	:		
MARSHALL J. SHIRLEY, JR.	:		
and CELESTINA L.M. SHIRLEY,	:		
his wife,	:		
Defendants	:		

COMPLAINT FOR SPECIFIC PERFORMANCE

1. Plaintiff is Carl Keith, an individual residing at 504 Ida Street, Houtzdale, Pennsylvania, 16651.

2. Defendants are Marshall J. Shirley, Jr. and Celestina L.M. Shirley, his wife, both residing at R.R. Box 731S, Houtzdale, Pennsylvania, 16651.

3. At all times mentioned herein, Defendants were and still are the owners of the premises situated in Woodward Township, Clearfield County, Pennsylvania, described in Clearfield County Deeds and Records Book 1743, Page 248, and being known by Clearfield County Assessment Tax Map Number 130-M14-401-15.

4. On or about June 2001, Plaintiff and Defendants entered into an oral contract for the Defendants to convey to Plaintiff an easement and right-of-way upon and across the property of Defendants. The easement and right-of-way to be conveyed was to be approximately thirteen feet in width described as follows:

Running on the eastern side of Tax Map Number 130-M14-401-15 from the southern side of Pennsylvania Route 53 and running approximately one hundred sixty (160) feet along the eastern edge of Tax Map Number 130-M14-401-15 and to the property of Plaintiff known by Tax Map Number 130-M14-401-13.

5. The purpose of the easement was for ingress, regress, and egress from State Route 53 to the property of Plaintiff in Woodward Township, Clearfield County, Pennsylvania and known by Tax Map Number 130-M14-401-13, having been conveyed to Carl Keith and Jeanette Keith, his wife, by document recorded in Deeds and Record Book 927, Page 480. The said Jeanette Keith having died, the property vested in her surviving husband, Carl Keith. The easement and right-of-way was to be used only as a roadway or driveway to the property of Plaintiff.

6. The maintenance of the easement and right-of-way was to be the obligation of Plaintiff, his heirs, successors and assigns, and any improvements or changes were to be made only with the consent of Defendants, their heirs, successors and assigns.

7. The easement and right-of-way was for the benefit of Plaintiff and Defendants and was to run appurtenant to and with Plaintiff's land known by Tax Map Number 130-M14-401-13, and was to be for the benefit of his heirs, successors and assigns and to be perpetual. All work to construct the easement and right-of-way was to be at the expense of Plaintiff. Defendants needed this

right-of-way or landing constructed in order to give access to their property which they were renting to tenants.

8. The terms of the parties' oral contract were not reduced to writing but were certain, distinct and free from ambiguity and were clearly stated by both Defendants and Plaintiff.

9. The consideration for this easement and right-of-way was the Plaintiff supplying the backhoe, labor and materials to construct said easement and right-of-way which would be used jointly by Plaintiff and Defendants for their properties, both of which were rented. They formerly had access to these properties through the Abernathy land, but Abernathy had stopped Plaintiff and Defendants from using the Abernathy right-of-way. Defendants agreed to pay for one-half of the cost of the materials utilized in this right-of-way.

10. Pursuant to the terms of the parties' oral contract, Defendants applied for a permit for a minimum use driveway which was received by PennDot on July 2, 2001. A copy of said Application for Minimum Use Driveway is attached hereto marked Exhibit "A".

11. Plaintiff did backfill work on this easement and right-of-way at a cost of One Thousand Five Hundred Seventy-five (\$1,575)

right-of-way or landing constructed in order to give access to their property which they were renting to tenants.

8. The terms of the parties oral contract were not reduced to writing but were certain, distinct and free from ambiguity and were clearly stated by both Defendants and Plaintiff.

9. The consideration for this easement and right-of-way was the Plaintiff supplying the backhoe, labor and materials to construct said easement and right-of-way which would be used jointly by Plaintiff and Defendants for their properties, both of which were rented. They formerly had access to these properties through the Abernathy land, but Abernathy had stopped Plaintiff and Defendants from using the Abernathy right-of-way. Defendants agreed to pay for one-half of the cost of the materials utilized in this right-of-way.

10. Pursuant to the terms of the parties' oral contract, Defendants applied for a permit for a minimum use driveway which was received by PennDot on July 2, 2001. A copy of said Application for Minimum Use Driveway is attached hereto marked Exhibit "A".

11. Plaintiff did backfill work on this easement and right-of-way at a cost of One Thousand Five Hundred Seventy-five (\$1,575)

Dollars for the use of the backhoe as shown in more detail on Exhibit "B" attached hereto.

12. Plaintiff had loads of gravel and shale brought to the property and placed on the easement and right-of-way, said gravel and shale delivered by Baxter Trucking, Inc. at a cost to Plaintiff of Nine Hundred Seventy-five Dollars and Twenty Cents (\$975.20), a copy of said statement being attached hereto marked Exhibit "C".

13. Additional shale and fill was brought in by Baxter Trucking, Inc. at a cost of Eight Hundred Thirty-one Dollars and Seventy-two Cents (\$831.72). A copy of said statement being attached hereto marked Exhibit "D".

14. All of this work and expense, including the use of the backhoe and bringing in the shale and gravel, being constructed on the land of Defendants was based upon the oral contract between Plaintiff and Defendants. The work and payment was made by Plaintiff as set out above, and was pursuant to Plaintiff's oral contract with Defendants. These improvements have been completed.

15. After the work was completed, both Plaintiff and Defendants utilized the easement or right-of-way for the benefit of their respective properties. Plaintiff asked the Defendants to reduce their agreement to writing and retained Girard Kasubick, Esquire to draft a Right-of-Way Agreement.

16. Girard Kasubick, Esquire drafted a Right-of-Way Easement Agreement which was submitted to Defendants who refused to sign it.

17. Defendants have wholly failed to keep or perform their part of the contract.

18. Defendants have recently notified Plaintiff not to utilize the easement and right-of-way.

19. Defendants stated that they have changed their mind and will not perform their contract to convey the easement and right-of-way, and they are also refusing to pay for one-half of the cost of the materials as per the agreement.

20. The proposed agreement prepared by Plaintiff's Attorney, Girard Kasubick, Esquire, is attached hereto marked Exhibit "E".

21. In addition to the damages set out above, Plaintiff has been harmed by the loss of rent for his property because of the problems being created by Defendants in their refusal to let Plaintiff utilize the easement and right-of-way for the benefit of his tenants.

22. By reason of the foregoing, the parties' oral contract has been so far executed by Plaintiff. The Defendants refusal to complete the same is inequitable and a fraud upon the Plaintiff.

WHEREFORE, Plaintiff prays:


(a) That Defendants be enjoined preliminarily until final hearing and permanently thereafter from conveying the property

underlying the right-of-way or from mortgaging or encumbering the property in any way;

(b) That Defendants be ordered to specifically convey the easement and right-of-way to him, which would be the completion of the oral contract, by good and sufficient deed;

(c) That Defendants be Ordered to pay one-half of the cost of the materials which is part of the oral contract.

(d) Such other general relief as may be just and proper.



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Plaintiff

VERIFICATION

I verify that the statements made in this Complaint for Specific Performance 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.

CARL KEITH

Carl Keith

COMMONWEALTH OF PENNSYLVANIA



HIGHWAY OCCUPANCY PERMIT

PERMITTEE _____
ADDRESS _____
POST OFFICE _____ ZIP CODE _____

COUNTY _____

TOWNSHIP/BORO

BOND/AGREEMENT NUMBER _____

ALL WORK UNDER THIS PERMIT MAY BE STARTED ON _____

AND SHALL BE COMPLETED ON OR BEFORE _____

Immediately upon completion of the work, Permittee shall notify the permit office where application was made. Subject to all the conditions, restrictions, and regulations prescribed by the Pennsylvania Department of Transportation, (see in particular 67 Pa. Code, Chapter 203, 441 and 459) and subject to the plans, special conditions, or restrictions herein set forth or attached hereto. This permit shall be located at the work site and shall be available for inspection by any police officer or department representative.

DESCRIPTION	511
STATE ROUTE NO.	0050
SEGMENTS	0050 0050
OFFSET TO OFFSET	0050 0050

DESCRIPTION	STATE ROUTE NO.	SEGMENT(S)	OFFSET TO OFFSET

DESCRIPTION OF WORK

[illegible]

DESCRIPTION	
STATE ROUTE NO.	
SEGMENT(S)	
OFFSET TO OFFSET	

[illegible]

**PLAINTIFF'S
EXHIBIT**

"A"

THIS PERMIT IS NOT VALID UNTIL SIGNED BY THE DISTRICT ENGINEER OR HIS AUTHORIZED REPRESENTATIVE

Acknowledgement of Completion

Permitted work has been completed.

Date 6/12/02 By Steve Martin

FOR _____

Secretary of Transportation

BY _____

District Engineer

4064

2000 年 4 月 25 日

M-950A (10/93)
Central Permit Office

APPLICATION FOR MINIMUM USE DRIVEWAY

A Minimum Use Driveway is: Residential or Other Driveway Which is
Expected to Be Used By Not More Than 25 Vehicles Per Day (i.e. 50 A.D.T.)

READ INSTRUCTIONS ON REVERSE

APPL. NO. 98-396

Applicant: Property Owner
Marshall J. Shirley Celestina L.M. Shirley
 Address
RR1 Box 731-S Kirk St.
 Post Office Houtzdale PA Zip Code 16651
 Phone (814)-378-8892 Fee 25.00 Check No. 3153

LOCATION OF PROPOSED DRIVEWAY

County Clearfield (171)
 Township/Boro Woodward (630)
 Route No. 153
 Name of Nearest Intersection STAMP WORKS ROAD
 Distance to Nearest Intersection in Feet 600'

APPLICATION IS MADE TO

☒ CONSTRUCT A NEW DRIVEWAY ☐ ALTER AN EXISTING DRIVEWAY

DATE WORK SCHEDULED TO BEGIN ASAPDATE WORK SCHEDULED TO BE COMPLETED ASAP

For the purpose of measuring sight distance, the drivers' eye height shall be 3.50 feet above the proposed access surface and highway pavement surface and the vehicles' height shall be 4.25 feet above the proposed access surface and highway pavement surface.

POSTED SPEED LIMIT 35 MPH

EDGE OF PAVEMENT

ROADWAY SIGHT DISTANCE 500'

CENTER LINE

ROADWAY SIGHT DISTANCE 270'

AREA TO BE CLEAR OF VIEW OBSTRUCTIONS

DRIVEWAY RADIUS 15'

90°

EDGE OF PAVEMENT

ROADWAY

RADIUS (R) OF BOTH DRIVEWAY CURVES MUST BE AT LEAST FIVE FEET FOR CARS

DRIVEWAY RADIUS 15'

DRIVEWAY WIDTH 20'

VEHICLE TURNAROUND

DRIVEWAY WIDTH MUST BE AT LEAST 10 FEET FOR CARS

FOR DEPARTMENT USE ONLY
 RECEIVED JUL 02 2001
 CODE 30.4 FIG 5
341
354
DA
7/5/01
406-4

FOR DEPARTMENT USE ONLY
 Site Reviewed On 7/02/01
 Comments SSO - OK
NO PIPE NEEDED
 ROADWAY SHOULDER (Fill in appropriate line)
 slope (Fill in appropriate slope)
 Des. 511
 S.R. 53
 Segment 0370
 Offset 1170
 Field Viewed By Steve Martin 7/02/01

Under and subject to all the conditions, restrictions and regulations prescribed by the Pennsylvania Department of Transportation and on the issued Permit, Form M-945P.

The applicant certifies that all statements contained herein are true and correct.

By X Marshall J. Shirley Celestina L.M. Shirley 6-29-01
 SIGNATURE(S) DATE

HAVE YOU READ INSTRUCTIONS ON REVERSE?
 HAVE YOU COMPLETED ALL BLANKS?

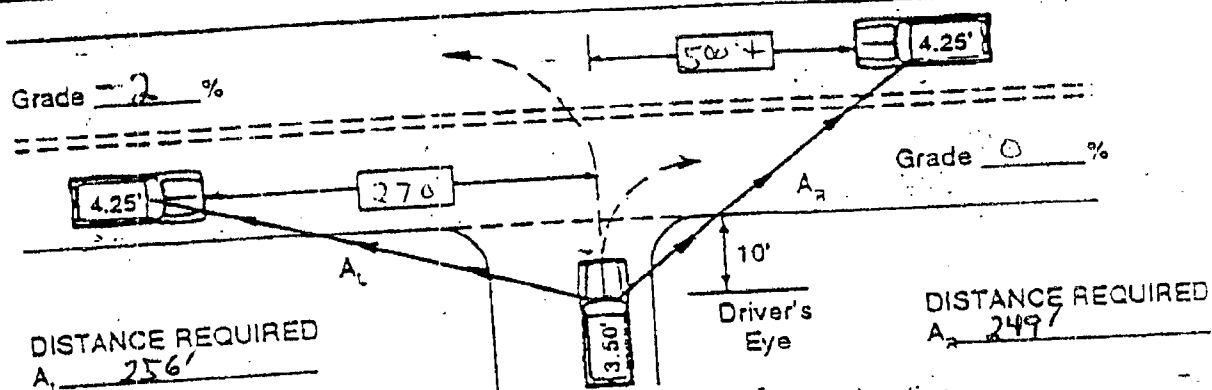
COUNTY PERMIT OFFICE

M-350S (6-95)

FORMULA SIGHT DISTANCE MEASUREMENTS

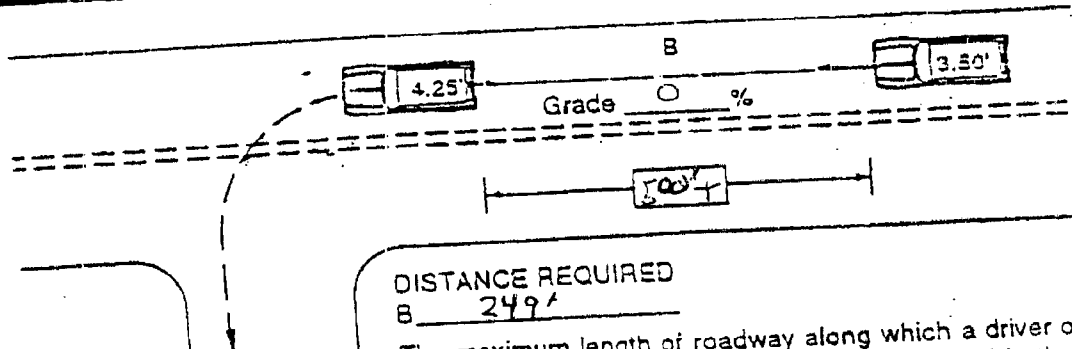
Applicant MARSHALL J + CELESTINA SHIRLEY Application No. 980396
 S.R. 53 Seg. 0370 Offset 1170 Posted Speed Limit 35
 Measured By STEVE MARTIN Date 7/2/01 Safe Operating Speed
 (Unposted Highway)

A



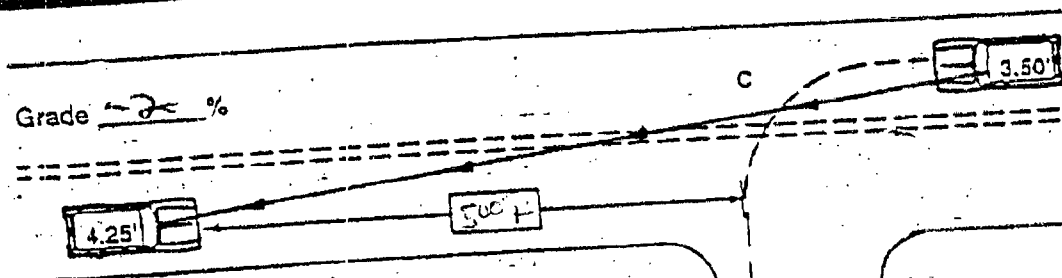
The maximum length of roadway along which a driver at an access location can continuously see another vehicle approaching on the roadway.

B



The maximum length of roadway along which a driver on the roadway can continuously see a vehicle which is located in the driver's travel lane and which is intending to make a left turn into an access.

C

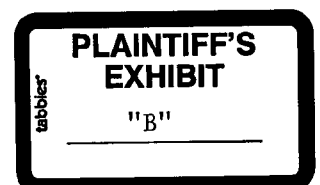


The maximum length of roadway along which a driver of a vehicle intending to make a left turn into an access can continuously see a vehicle approaching from the opposite direction.

*Keith's Auto Body
510 Ida Street
Houtzdale, PA 16651*

Backhoe Work @ \$45.00 per hour

<i>Date:</i>	<i>Hours:</i>	<i>Amount:</i>
<i>7/7/2001</i>	<i>7.0</i>	<i>\$315.00</i>
<i>7/14/2001</i>	<i>9.0</i>	<i>\$405.00</i>
<i>7/28/2001</i>	<i>6.0</i>	<i>\$270.00</i>
<i>9/14/2001</i>	<i>4.0</i>	<i>\$180.00</i>
<i>9/18/2001</i>	<i>5.0</i>	<i>\$225.00</i>
<i>9/21/2001</i>	<i>4.0</i>	<i>\$180.00</i>
<i>Totals:</i>	<i>35.0</i>	<i>\$1575.00</i>



Baxter Trucking, Inc.

R.R. 1 BOX 581 ~ HOUTZDALE, PA. 16651
Phone 814-378-7953 ~ Fax 814-378-5756

Carl Keith
R.R. 1 Box 24
Houtzdale, PA 16651
FAX 378-5919

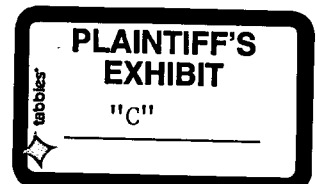
Shale

BILLING DATE: 7/31/01
ACCOUNT ID:
PREVIOUS BALANCE:

ACCOUNT ACTIVITY				
DATE	INVOICE NO.	DETAILS	CHARGES	PAYMENTS
7/7/01		Dave / 3 hours , 5 loads @ \$ 40.00 Hrly.	\$120.00	
7/7/01		Mike / 3 hours , 5 loads @ 40.00 Hrly.	\$120.00	
7/14/01		ED / 5 hours , 10 loads @ \$ 40.00 Hrly	\$200.00	
7/14/01		Dave / 1 hour , 2 loads @ \$ 40.00 Hrly.	\$40.00	
7/14/01		Mike / 5.5 hours , 9 loads @ \$ 40.00 Hrly	\$220.00	
7/28/01		Dave / 4 hours, 8 loads @ \$ 40.00 Hrly	\$160.00	
7/28/01		Ed / 1.5 hours , 3 loads @ 40.00 Hrly	\$60.00	
		Tax	\$55.20	
Totals:			\$975.20	\$0.00
Please pay this amount:				\$975.20

Terms: 30 days
Thank you.

*paid 8-6-01
0718*



Baxter Trucking, Inc.

R.R. 1 BOX 561 ~ HOUTZDALE, PA. 16651
Phone 814-378-7953 ~ Fax 814-378-5756

Carl Keith
R.R. 1 Box 24
Houtzdale, PA 16651

BILLING DATE: Sept. 22, 2001

ACCOUNT ID:

PREVIOUS BALANCE:

ACCOUNT ACTIVITY

DATE	INVOICE NO.	DETAILS	CHARGES	PAYMENTS
9/14/01	3572388	24.31 Tons 2RC Stone @ \$ 8.50 per Ton	\$206.64	
9/18/01	3573006	21.14 Tons 2RC Stone @ \$ 8.50 per Ton	\$179.69	
9/18/01	3573004	22.90 Tons 2RC Stone @ \$ 8.50 per Ton	\$194.65	
9/21/01	3573844	23.96 Tons 2RC Stone @ \$ 8.50 per Ton	\$203.66	
		Tax	\$47.08	
		Totals:	\$831.72	\$0.00
		Please pay this amount:	\$831.72	

Terms: 30 days
Thank you.

**PLAINTIFF'S
EXHIBIT**

"D"



NEW ENTERPRISE STONE & LIME CO., INC.
NEW ENTERPRISE, PA. 16664

PLANT NAME TYRONE FORGE
& NUMBER PLANT NUMBER 35

PHONE (814) 684-4905

ORDER NO 010416082	TICKET NUMBER A SCALE 1 3572388	DATE 09/14/2001	TIME 3:40 PM
CUSTOMER ID 1707600	S O L D O R O BAXTER TRUCKING INC RR 1 BOX 561 HOUTZDALE, PA 16651		
JOB SITE ID 1707600	S H I P T O STATE PA CITY ZONE		NEW07F14
PRODUCT ID CA0832	PRODUCT DESCRIPTION SELECT GRANULAR MAT. 2RC		
CUSTOMER REQUIRED NUMBERS F.O.B.		CUSTOMER PHONE NO.	
TAG NO. AB00142	NO. AXLES 3	TRUCK NO. BX17	CARRIER NAME BAXTER TRUCKING INC CARRIER CODE 134
Pick-up XX	Freight PPD XX	Freight Collect	ACCUMULATIVE QUANTITIES CHARGE XX C.O.D.
US Weight 75,260	METRIC Weight	Gross 150.00	Ordered
26,640		Tare 24.31	Today Loads 1
48,620		Net 162.48	To Date Loads 7
24.31		TONS	Accumulated Cash Sale
WEIGHED BY KAREN M. MCCREARY		TOTAL THIS LOAD	
INSPECTOR'S SIGNATURE <i>[Signature]</i>		JOB ARRIVAL TIME JOB DEPT TIME	
RECEIVED ABOVE MATERIAL IN GOOD CONDITION <i>[Signature]</i>		A SERVICE CHARGE, NOT TO EXCEED THE MAXIMUM ALLOWABLE BY LAW, WILL BE APPLIED TO ALL AMOUNTS OVER 30 DAYS PAST DUE	
DELIVERY INFORMATION Carl Kiech			
GOD BLESS AMERICA			

3572388

PLANT DIRECTORY					
05 ASHCORN (888) 489-2121	08 ROARING SPRING (888) 489-2121	13 EBENSBURG DISTRIBUTION (888) 489-2121	26 OGLETOWN (814) 754-4921	35 TYRONE FORGE (814) 684-4905	41 CENTRAL CITY (814) 754-4921
06 CANOE CREEK (888) 489-2121	10 OREISONIA (814) 447-3295	24 EBENSBURG PULVERIZING (814) 472-4717	29 BOSWELL (814) 629-5664	37 UNION FURNACE (814) 684-3180	
07 MCCONNELLSTOWN (888) 489-2121	11 DRY RUN (717) 349-2412	25 NEW PARIS (888) 489-2121	30 BAKERSVILLE (814) 443-9950	38 SPROUL (888) 489-2121	

CUSTOMER



NEW ENTERPRISE STONE & LIME CO., INC.
NEW ENTERPRISE, PA. 16664

PLANT NAME TYRONE FORGE
& NUMBER PLANT NUMBER 35

PHONE (814) 684-4905

ORDER NO. 010416082		TICKET NUMBER A SCALE 1 3573006		DATE 09/18/2001	TIME 3:16 PM
CUSTOMER ID 1707600		SOLD TO BAXTER TRUCKING INC RR 1 BOX 561 HOUTZDALE, PA 16651			
JOB SITE ID 050400		SHIP TO Carl Keith			STATE PA CITY ZONE
PRODUCT I.D. CA0832		PRODUCT DESCRIPTION SELECT GRANULAR MAT. 2RC NEW07F14			
CUSTOMER REQUIRED NUMBERS F.O.B.				CUSTOMER PHONE NO.	
TAG NO.		NO. AXLES 3	TRUCK NO. BX18	CARRIER NAME BAXTER TRUCKING INC	CARRIER CODE 134
Pick-up XX	Freight PPD	Freight Collect	ACCUMULATIVE QUANTITIES		CHARGE XX
US Weight 68,980		METRIC Weight	Ordered	C.O.D.	
26,700		Gross	250.00	UNIT PRICE	
42,280		Tare	Today	TOTAL	
21.14		Net	44.04	MATERIAL	
		TONS	To Date	HAUL	
			206.52	ADD'L CHARGES	
			Accumulated Cash Sale	TAX	
WEIGHED BY KAREN M. MCCREADY				TOTAL THIS LOAD	
INSPECTOR'S SIGNATURE <i>[Signature]</i>				JOB ARRIVAL TIME	JOB DEPT TIME
RECEIVED ABOVE MATERIAL IN GOOD CONDITION X				A SERVICE CHARGE NOT TO EXCEED THE MAXIMUM ALLOWABLE BY LAW WILL BE APPLIED TO ALL AMOUNTS OVER 30 DAYS PAST DUE	
DELIVERY INFORMATION					
GOD BLESS AMERICA					

3573006

PLANT DIRECTORY					
05 ASHCUM (888) 489-2121	08 ROARING SPRING (888) 489-2121	13 EBENSBURG DISTRIBUTION (888) 489-2121	26 OGLETOWN (814) 754-4921	35 TYRONE FORGE (814) 684-4905	41 CENTRAL CITY (814) 754-4921
06 CANOE CREEK (888) 489-2121	10 ORBISONIA (814) 447-3295	24 EBENSBURG PULVERIZING (814) 472-4717	29 BOSWELL (814) 629-5664	37 UNION FURNACE (814) 684-3180	
07 MCCONNELLSTOWN (888) 489-2121	11 DRY RUN (717) 349-2412	25 NEW PARIS (888) 489-2121	30 BAKERSVILLE (814) 443-9950	38 SPROUL (888) 489-2121	

CUSTOMER



NEW ENTERPRISE STONE & LIME CO., INC.
NEW ENTERPRISE, PA. 16664

PLANT NAME TYRONE FORGE
& NUMBER PLANT NUMBER 35

PHONE (814) 684-4905

ORDER NO. 010416082	TICKET NUMBER A SCALE 1 3573004	DATE 09/18/2001	TIME 3:14 PM
CUSTOMER ID 1707600	S O L D BAXTER TRUCKING INC RR 1 BOX 561 HOUTZDALE, PA 16651		
JOB SITE ID 2100041	S H I P T O Earl Kietz		STATE PA CITY NEWB7F14 ZONE
PRODUCT ID CA0832	PRODUCT DESCRIPTION SELECT GRANULAR MAT. 2RC		
CUSTOMER REQUIRED NUMBERS F.O.B.		CUSTOMER PHONE NO.	
TAG NO. AB00142	NO. AXLES 3	TRUCK NO. BX17	CARRIER NAME BAXTER TRUCKING INC CARRIER CODE 134
Pick-up XX	Freight PRD	Freight Collect	ACCUMULATIVE QUANTITIES
US Weight 72,440	METRIC Weight	Gross	Ordered 250.00
26,640		Tare	Today 22.90
45,800		Net	To Date 185.38
22.90		TON	Accumulated Cash Sale
WEIGHED BY KAREN M. MCCREADY		TOTAL THIS LOAD	
INSPECTORS SIGNATURE X m h		JOB ARRIVAL TIME	JOB DEPT TIME
RECEIVED ABOVE MATERIAL IN GOOD CONDITION		A SERVICE CHARGE NOT TO EXCEED THE MAXIMUM ALLOWABLE BY LAW, WILL BE APPLIED TO ALL AMOUNTS OVER 30 DAYS PAST DUE	
DELIVERY INFORMATION			
GOD BLESS AMERICA			

3573004

PLANT DIRECTORY					
05 ASHCOM (888) 489-2121	08 ROARING SPRING (888) 489-2121	13 EBENSBURG DISTRIBUTION (888) 489-2121	26 OGLETOWN (814) 754-4921	35 TYRONE FORGE (814) 684-4905	41 CENTRAL CITY (814) 754-4921
06 CANOE CREEK (888) 489-2121	10 ORBISONIA (814) 447-3295	24 EBENSBURG PULVERIZING (814) 472-4717	29 BOSWELL (814) 629-5664	37 UNION FURNACE (814) 684-3160	
07 McCONNELLSTOWN (888) 489-2121	11 DRY RUN (717) 349-2412	25 NEW PARIS (888) 489-2121	30 BAKERSVILLE (814) 443-9950	38 SPROUL (888) 489-2121	

CUSTOMER



NEW ENTERPRISE STONE & LIME CO., INC.
NEW ENTERPRISE, PA. 16664

PLANT NAME TYRONE FORGE
& NUMBER PLANT NUMBER 35

PHONE (814) 684-4905

ORDER NO. 010416082	TICKET NUMBER A SCALE 1 3573004		DATE 09/18/2001	TIME 3:14 PM
CUSTOMER ID 1707600	S O L D TO BAXTER TRUCKING INC RR 1 BOX 561 HOUTZDALE, PA 16651			
JOB SITE ID YH0004	S H E C K T Earl Kieth		STATE PA	CITY NEW07F14
PRODUCT I.D. CA0832	PRODUCT DESCRIPTION SELECT GRANULAR MAT. 2RC			
CUSTOMER REQUIRED NUMBERS F.O.B.			CUSTOMER PHONE NO.	
TAG NO. AB00142	NO. AXLES 3	TRUCK NO. BX17	CARRIER NAME BAXTER TRUCKING INC	
			CARRIER CODE 134	
Pick-up XX	Freight PPD	Freight Collect	ACCUMULATIVE QUANTITIES	CHARGE XX
US Weight 72,440	METRIC Weight	Gross	Ordered 250.00	C.O.D.
26,640		Tare	Today 22.90	LOADS 1
45,800		Net	To Date 185.38	LOADS 8
22.90		TONS	Accumulated Cash Sale	ADD'L CHARGES
WEIGHED BY KAREN M. MCCREADY			TOTAL THIS LOAD	
INSPECTOR'S SIGNATURE X M. L. Kieth			JOB ARRIVAL TIME	JOB DEPT TIME
RECEIVED ABOVE MATERIAL IN GOOD CONDITION			A SERVICE CHARGE NOT TO EXCEED THE MAXIMUM ALLOWABLE BY LAW WILL BE APPLIED TO ALL AMOUNTS OVER 30 DAYS PAST DUE	
DELIVERY INFORMATION				
GOD BLESS AMERICA				

3573004

PLANT DIRECTORY					
05 ASHCOM (888) 489-2121	08 ROARING SPRING (888) 489-2121	13 EBENSBURG DISTRIBUTION (888) 489-2121	26 OGLETOWN (814) 754-4921	35 TYRONE FORGE (814) 684-4905	41 CENTRAL CITY (814) 754-4921
06 CANOE CREEK (888) 489-2121	10 ORBISONIA (814) 447-3295	24 EBENSBURG PULVERIZING (814) 472-4717	29 BOSWELL (814) 629-5664	37 UNION FURNACE (814) 684-3180	
07 MCCONNELLSTOWN (888) 489-2121	11 DRY RUN (717) 349-2412	25 NEW PARIS (888) 489-2121	30 BAKERSVILLE (814) 443-9950	38 SPROUL (888) 489-2121	

CUSTOMER



NEW ENTERPRISE STONE & LIME CO., INC.
NEW ENTERPRISE, PA. 16664

PLANT NAME TYRONE FORGE
& NUMBER PLANT NUMBER 35 PHONE (814) 684-4905

ORDER NO 010414082	TICKET NUMBER A SCALE 2 3573844	DATE 09/21/2001	TIME 1:38 PM
CUSTOMER ID 1707600	SOLD TO BAXTER TRUCKING INC RR 1 BOX 561 HOUTZDALE, PA 16651		
JOB SITE ID 00000000	SHIP TO CARL KIEHL		STATE PA CITY ZONE
PRODUCT ID CA0832	PRODUCT DESCRIPTION SELECT GRANULAR MAT. 2RC NEW07F14		
CUSTOMER REQUIRED NUMBERS F.O.R.		CUSTOMER PHONE NO.	
TAG NO AB00142	NO. AXLES 3	TRUCK NO. BX17	CARRIER NAME BAXTER TRUCKING INC CARRIER CODE 134
Pick-up XX	Freight PPD	Freight Collect	ACCUMULATIVE QUANTITIES CHARGE XX C.O.D.
US Weight 74,560	METRIC Weight	Gross	Ordered 250.00
26,640		Tare	Today 23.96
47,920		Net	To Date 230.48
23.96		TONS	Accumulated Cash Sale
WEIGHED BY KAREN M. MCCREADY		TOTAL THIS LOAD	
INSPECTOR'S SIGNATURE X Mike Hinkle		JOB ARRIVAL TIME JOB DEPT TIME	
RECEIVED ABOVE MATERIAL IN GOOD CONDITION		A SERVICE CHARGE NOT TO EXCEED THE MAXIMUM ALLOWABLE BY LAW WILL BE APPLIED TO ALL AMOUNTS OVER 30 DAYS PAST DUE	
DELIVERY INFORMATION			
* GOD BLESS AMERICA *			

3573844

PLANT DIRECTORY					
05 ASHCUM (888) 489-2121	08 ROARING SPRING (888) 489-2121	13 EBENSBURG DISTRIBUTION (888) 489-2121	26 OGLETOWN (814) 754-4921	35 TYRONE FORGE (814) 684-4905	41 CENTRAL CITY (814) 754-4921
06 CANOE CREEK (888) 489-2121	10 ORBISONIA (814) 447-3295	24 EBENSBURG PULVERIZING (814) 472-4717	29 BOSWELL (814) 629-5664	37 UNION FURNACE (814) 684-3180	
07 MCCONNELLSTOWN (888) 489-2121	11 DRY RUN (717) 349-2412	25 NEW PARIS (888) 489-2121	30 BAKERSVILLE (814) 443-9950	38 SPROUL (888) 489-2121	

CUSTOMER

RIGHT-OF-WAY EASEMENT

It is hereby agreed that **MARSHALL J. SHIRLEY, JR.** and **CELESTINA L. M. SHIRLEY**, his wife, of R.R. Box 731S, Houtzdale, PA 16651, herein after called "Grantors", for and in consideration of the sum of One (\$1.00) Dollar, receipt of which is hereby acknowledge, and for other good and valuable consideration, and with the intent to be legally bound hereby, do hereby grant, bargain, sell and convey unto **CARL KEITH**, of 504 Ida Street, Houtzdale, PA 16651, hereinafter called "Grantee", an easement and right-of-way upon and across the property of the Grantors located in Woodward Township, Clearfield County, Pennsylvania which is described in Clearfield County Deeds and Records Book 1743, Page 248 and being known by Clearfield Tax Map No. 130-M14-401-15.

The easement and right-of-way conveyed is approximately thirteen (13) feet in width as is described as follows:

Running on the eastern edge of Tax Map No. 130-M14-401-15 from the southern side of PA Route 53 and running approximately One hundred sixty (160) feet along the eastern edge of Tax Map No. 130-M14-401-15 and to the property of the Grantee known by Tax Map No. 130-M14-401-13. The above right-of-way shaded in red on the Clearfield County Assessment Map attached hereto and marked EXHIBIT "A".

The easement granted and conveyed herein is for the purpose of ingress, regress and egress from State Route 53 to the property of Grantee in Woodward Township,

Clearfield County, Pennsylvania, and known by Tax Map No. 130-M14-401-13, and the said map number conveyed to Carl Keith and Jeanette Keith, his wife, in Clearfield County Deeds and Records Book 927, Page 480. The said Jeanette Keith having died. This easement shall be used only as a roadway or driveway to the property of Grantee. The maintenance of the easements shall be the obligation of Grantee, his heirs, successors or assigns of the dominant property who shall keep it in a safe and passable condition when in use, but any improvements or changes shall be made only with the consent of Grantors, their heirs, successors, and assigns to the servient property. The easement granted hereunder is not exclusive.

The easement or right-of-way is for the benefit of the Grantee, his heirs, successors, and assigns and shall be appurtenant to and run with the Grantee's land, the dominant tenement, known by Tax Map No. 130-M14-401-13, and inure to the benefit of his heirs, successors, assigns and subsequent owners of the dominant tenement.

The easement or right-of-way and privileges and rights herein shall be perpetual and Grantors hereby bind themselves, their heirs, legal representatives, successors and assigns of Grantors' servient tenement to warrant and defend the above described easement and rights unto Grantee, his heirs, legal representatives, successors, and assigns, of the dominant tenement.

This instrument shall be binding on and benefits shall inure to the parties and their heirs, legal representatives, successors and assigns.

Grantors retain, reserve and shall continue to enjoy the use of the surface of such property of the servient tenement for any and all purposes which do not interfere with and prevent the use by Grantee of the within easement as a roadway or driveway to the dominant tenement.

IN WITNESS WHEREOF, this instrument is executed this _____ day of _____, 2002.

WITNESS:

GRANTORS:

Marshall J. Shirley, Jr. (SEAL)

Celestina L. M. Shirley (SEAL)

WITNESS:

GRANTEE:

Carl Keith (SEAL)

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF CLEARFIELD :

§:

On this, the _____ day of _____, 2002, before me, the undersigned officer, personally appeared **MARSHALL J. SHIRLEY, JR. and CELESTINE L. M. SHIRLEY**, husband and wife, Grantors herein, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they executed the same for the purposes therein contained.

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

Notary Public

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF CLEARFIELD :

§:

On this, the _____ day of _____, 2002, before me, the undersigned officer, personally appeared **CARL KEITH**, widower, Grantee herein, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes therein contained.

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

Notary Public

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

CARL KEITH,
Plaintiff

vs.

MARSHALL J. SHIRLEY, JR. and
CELESTINA L.M. SHIRLEY, his
wife,
Defendants

COMPLAINT FOR SPECIFIC
PERFORMANCE

NOTICE TO DEFENDANT:

YOU are hereby notified that
you are required to file an
Answer to the within Complaint
within twenty (20) days after
service upon you or judgment may
be entered against you.

Joseph Colavecchi
JOSEPH COLAVECCHI, ESQUIRE
Attorney for Plaintiff

COLAVECCHI & COLAVECCHI

ATTORNEYS AT LAW
221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA 16830

FILED

AUG 30 2004

William A. Shaw
Prothonotary

Lap over margin

In The Court of Common Pleas of Clearfield County, Pennsylvania

KEITH, CARL

VS.

SHIRLEY, MARSHALL J. JR. & CELESTINA L.M.

Sheriff Docket #

16213

04-1349-CD

COMPLAINT FOR SPECIFIC PERFORMANCE

SHERIFF RETURNS

NOW SEPTEMBER 2, 2004 AT 9:44 AM SERVED THE WITHIN COMPLAINT FOR SPECIFIC PERFORMANCE ON CELESTINA L.M. SHIRLEY, DEFENDANT AT RESIDENCE, RR BOX 731S, HOUTZDALE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO CELESTINA SHIRLEY A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT FOR SPECIFIC PERFORMANCE AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: DAVIS/MORGILLO

NOW SEPTEMBER 2, 2004 AT 9:44 AM SERVED THE WITHIN COMPLAINT FOR SPECIFIC PERFORMANCE ON MARSHALL J. SHIRLEY JR., DEFENDANT AT RESIDENCE, RR BOX 731S, HOUTZDALE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO CELESTINA SHIRLEY, WIFE A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT FOR SPECIFIC PERFORMANCE AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: DAVIS/MORGILLO

Return Costs

Cost	Description
37.87	SHERIFF HAWKINS PAID BY: ATT CK# 7899
20.00	SURCHARGE PAID BY: ATTY CK# 7900


Sworn to Before Me This

8th Day Of Sept 2004



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

So Answers,


Chester A. Hawkins
Sheriff

FILED ^{ELK}
0125900
SEP 08 2004

William A. Shaw
Prothonotary/Clerk of Courts

04-1349 CD

~~Plff~~
vs

Joseph Colavecchi

Marshall J. Shirley Jr
Celestina L.M. "

Shawn P. Sullivan

[illegible]

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
EQUITY ACTION

CARL KEITH, :
Plaintiff :
vs. : NO. 04 - 1349-CD
MARSHALL J. SHIRLEY, JR. and : ANSWER, NEW MATTER &
CELESTINA L. M. SHIRLEY, his : COUNTERCLAIM
wife, :
Defendants :

PRAECIPE FOR ENTRY OF APPEARANCE
ON BEHALF OF DEFENDANTS

FILED ^{NO} CC
m/11:2204
NOV 04 2004 E612
William A. Shaw
Prothonotary/Clerk of Courts

TO THE PROTHONOTARY:

Please note the appearance of the Undersigned as Counsel of record for **MARSHALL J. SHIRLEY, JR. and CELESTINA L. M. SHIRLEY**, the Defendants named in the above matter, noting that all papers and process for service upon said party may be served upon the undersigned at his office: 1701 Fifth Avenue, Altoona, PA 16602.

SULLIVAN, FORR, STOKAN & HUFF

BY: C. Sullivan
Shawn P. Sullivan
State I.D. No. 42167
Sullivan, Forr, Stokan & Huff
1701 Fifth Avenue
Altoona, PA 16602
814-946-4316
814-946-9426 (fax)

DATED: Oct. 22, 2004

CERTIFICATE OF SERVICE

I certify that a true and correct copy of **PRAECIPE
FOR ENTRY OF APPEARANCE** was served on the 22nd day of October,
2004, by U.S. mail, postage prepaid to the following:

Joseph Colavecchi, Esquire
COLAVECCHI & COLAVECCHI
221 E. Market Street
P.O. Box 131
Clearfield, PA 16830

SULLIVAN, FORR, STOKAN & HUFF

BY: 

Shawn P. Sullivan, Esquire
1701 Fifth Avenue
Altoona, PA 16602
(814) 946-4316
STATE I.D. #42167

CARL KEITH,
Plaintiff,

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

: NO. 2004 - 1349

vs.

: ANSWER, NEW MATTER AND
COUNTERCLAIM

MARSHALL J. SHIRLEY, JR. :
and CELESTINA L. M. SHIRLEY, :
his wife

Defendants,

: Filed on behalf of:
Defendants, MARSHALL J.
SHIRLEY, JR. AND CELESTINA L.
M. SHIRLEY

: Counsel of Record For This
Party:

: SHAWN P. SULLIVAN, ESQUIRE
ATTORNEY I.D. NO. 42167
SULLIVAN, FORR, STOKAN & HUFF
1701 FIFTH AVENUE
ALTOONA, PA 16602
(814) 946-4316

FILED^{OK} NO CC
m/11:2234
NOV 04 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY ACTION

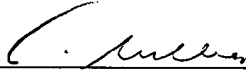
CARL KEITH,	:
Plaintiff	:
	:
vs.	: NO. 04 - 1349
	:
MARSHALL J. SHIRLEY, JR. and	: ANSWER, NEW MATTER &
CELESTINA L. M. SHIRLEY, his	: COUNTERCLAIM
wife,	:
	:
Defendants	:

NOTICE TO PLEAD

TO: CARL KEITH

IN ACCORDANCE WITH RULES 1026 AND 1361 OF THE PENNSYLVANIA RULES OF CIVIL PROCEDURE, YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED **ANSWER, NEW MATTER, AND COUNTERCLAIM** WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

SULLIVAN, FORR, STOKAN & HUFF

BY: 
Shawn P. Sullivan,
Attorney For Defendants
1701 Fifth Avenue
Altoona, PA 16602
(814) 946-4316
STATE I.D. #42167

DATE: _____

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
EQUITY ACTION

CARL KEITH,	:	
Plaintiff	:	
	:	
vs.	:	NO. 04 - 1349
	:	
MARSHALL J. SHIRLEY, JR. and	:	ANSWER, NEW MATTER &
CELESTINA L. M. SHIRLEY, his	:	COUNTERCLAIM
wife,	:	
	:	
Defendants	:	

ANSWER

AND NOW, this 29th day of October, 2004, comes the Defendants, by and through their attorneys, Sullivan, Forr, Stokan & Huff, whereby the following statements are made:

1. Admitted.
2. Admitted, although the new numbering for Defendant's residence is 455 Kirk Street, Houtzdale, PA 16651.
3. Admitted.
4. Admitted and denied. Defendant's agree to an easement of only 10 feet in width.
5. Admitted.
6. Admitted and denied. Although this was never formerly discussed between the parties, Defendants admit that Plaintiff would be solely responsible for the maintenance of the easement. It is denied that Defendants ever

discussed the easement being perpetual for the benefit of Plaintiffs, his heirs and assigns.

7. Admitted and denied. As to the perpetuity of the easement, Defendants incorporate Paragraph 6 of this Answer. Further, Defendants did not need this easement and would not benefit from it except for a parking space which Plaintiff agreed to provide when constructing the easement.
8. Defendants incorporate Paragraph 6 and Paragraph 7 of this Answer.
9. Admitted and denied. The only beneficiary of the easement was Plaintiff. The only benefit to be gained by Defendants was a parking space as set forth in Paragraph 7 of this Answer.
10. Admitted and denied. It is denied that the terms expressed by Plaintiff's Complaint constitute the terms to which Defendants had accepted.
11. Defendants are without sufficient information to form a belief as to the truth of the averment. Therefore, strict proof thereof is demanded at the time of trial.
12. Defendants are without sufficient information to form a belief as to the truth of the averment. Therefore, strict proof thereof is demanded at the time of trial.
13. Defendants are without sufficient information to form a belief as to the truth of the averment. Therefore,

strict proof thereof is demanded at the time of trial.

14. Defendants are without sufficient information to form a belief as to the truth of the averment. Therefore, strict proof thereof is demanded at the time of trial. By way of further Answer, the Defendant, Celestina L. M. Shirley, confronted the Plaintiff at the time of the construction of the easement advising Plaintiff that the width of the easement was being made too large. Plaintiff stated that he would scale back the width of the easement.
15. Admitted and denied. This is denied that the Defendants utilized the easement.
16. Admitted.
17. Denied. It is the Plaintiff that exceeded the terms of the oral agreement between the parties.
18. Denied. Defendants have posted "No Trespassing" signs but have orally told Plaintiff's tenants that they could continue to use the easement until this lawsuit is settled.
19. Denied. Defendants incorporate Paragraph 4 and Paragraph 6 of this Answer. By way of further Answer, Defendants agree to contribute only that which was actually paid by Plaintiff. During one of several conversations between Plaintiff and Mrs. Shirley, the Plaintiff advised that his nephew is doing the work for free. Further, the

backup work was performed by a business owned by the Plaintiff and his sons. Representation was made to Mrs. Shirley that there was no charge for the operation of the backhoe.

20. Admitted.

21. Defendants are without sufficient information to form a belief as to the truth of the averment. Therefore, strict proof thereof is demanded at the time of trial.

22. Denied. Defendants incorporate Paragraph 4 and Paragraph 6 of this Answer.

WHEREFORE, Defendants respectfully pray that your Honorable Court dismiss the Complaint of Plaintiff.

NEW MATTER

23. Defendants incorporate Paragraphs 1-22 of this Answer.

24. Plaintiff, if landlocked, has the right to acquire an easement by necessity from his grantor. The Defendants are not the grantor of Plaintiff's parcel and have therefore have no legal obligation to provide an easement to Plaintiff.

25. This is an oral agreement for the granting of an easement. As such, it is subject to the statute of fraud which legally prohibits specific performance of an oral agreement for an interest in real estate.

WHEREFORE, Defendants respectfully pray that your Honorable Court dismiss the Complaint of Plaintiff.

COUNTERCLAIM

26. The Defendants incorporate Paragraphs 1-25 of this Answer.
27. During the construction of the easement by Plaintiff, Plaintiff's agent or employees caused damage to the fence as well as to the porch on Defendants' property.
28. As a result of these actions, Defendants have suffered damages in the amount of \$9,417.98. A copy of the estimate from Croyle's Quality Contracting is attached hereto and marked as Exhibit "A."

WHEREFORE, Defendants pray that the Court grant judgment in their favor and against the Plaintiff in the amount of \$9,417.98 and that the Complaint of the Plaintiffs against the Defendants be dismissed.

Respectfully submitted,

SULLIVAN, FORR, STOKAN & HUFF

BY: 

Shawn P. Sullivan, Attorney
for Defendants

Croyle's Quality
Contracting

814 342 2404

To Repair front porch:

Block retaining wall:

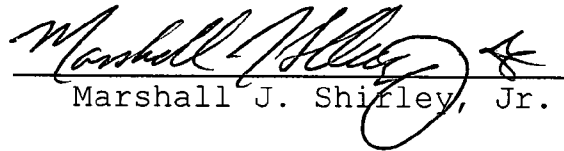
5,163.60

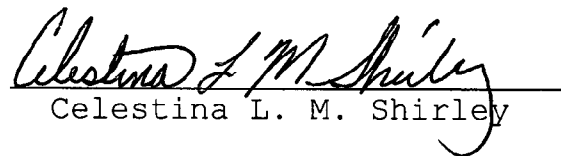
6x6 posts construction:

4,254.38

VERIFICATION

I verify that the statements in this **ANSWER, NEW
MATTER, AND COUNTERCLAIM** are true and correct to the best of
my knowledge and belief. I understand that false statements
made herein are made subject to the penalties of 18 Pa.C.S.
§4904 relating to unsworn falsification to authorities.


Marshall J. Shirley, Jr.


Celestina L. M. Shirley

CERTIFICATE OF SERVICE

I certify that a true and correct copy of **ANSWER, NEW
MATTER, AND COUNTERCLAIM** was served on the 3rd day of ~~October~~^{November}, 2004, by U.S. mail, postage prepaid to the following:

Joseph Colavecchi, Esquire
COLAVECCHI & COLAVECCHI
221 E. Market Street
P.O. Box 131
Clearfield, PA 16830

SULLIVAN, FORR, STOKAN & HUFF

BY: 

Shawn P. Sullivan, Esquire
1701 Fifth Avenue
Altoona, PA 16602
(814) 946-4316
STATE I.D. #42167

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CARL KEITH,

Plaintiff

vs.

MARSHALL J. SHIRLEY, JR., and
CELESTINA L.M. SHIRLEY, his
wife,

Defendants

CIVIL DIVISION

No. 04 - 134⁹ - CD

REPLY TO NEW MATTER AND
ANSWER TO COUNTERCLAIM

Filed on Behalf of:

Plaintiff, CARL KEITH

Counsel of Record for This
Party:

JOSEPH COLAVECCHI, ESQUIRE
Pa. I.D. #06810

COLAVECCHI & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

LAW OFFICES OF
COLAVECCHI
& COLAVECCHI
221 E. MARKET ST.
(ACROSS FROM
COURTHOUSE)
P. O. BOX 131
CLEARFIELD, PA

FILED 3cc
0/11/27/04
NOV 09 2004

William A. Shaw
Prothonotary/Clerk of Courts

Att'y Colavecchi

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

CARL KEITH, :
Plaintiff : No. 04 - 1349 - CD
Vs. :
MARSHALL J. SHIRLEY, JR., and :
CELESTINA L.M. SHIRLEY, his wife, :
Defendants: :

**REPLY TO NEW MATTER
AND ANSWER TO COUNTERCLAIM**

REPLY TO NEW MATTER

Carl Keith, Plaintiff in this matter, through his attorney, Joseph Colavecchi, Esquire, files his Reply to Defendants' New Matter and Answer to Counterclaim and respectfully avers as follows:

23. This does not require a Reply.

24. Denied. This has no relevance to the overall situation. Both Plaintiff and Defendants were utilizing the Abernathy road. When Abernathy cut off the road from both Plaintiff and Defendants, it put both Plaintiff and Defendants in the position where they did not have driving access or parking areas for their buildings.

25. Denied. On the contrary, this would have been taken out of the Statute of Frauds by the fact that Plaintiff, as set forth in the Complaint, has expended considerable work and expenses in putting in the landing and the parking area. This work and

expenses were done with the knowledge and acceptance of said work and expenses by Defendants.

WHEREFORE, Plaintiff asks that the Court dismiss the Answer and New Matter of the Defendants and enter judgment in favor of Plaintiff.


ANSWER TO COUNTERCLAIM

26. This does not require an answer.

27. Denied. The averments set forth herein, are within the knowledge of Defendants and strict proof of these averments is demanded at the trial of this case.

28. Denied. On the contrary, Plaintiff did not cause any damage to the porch of Defendants.

WHEREFORE, Plaintiff asks that the Court dismiss the Counterclaim and enter judgment in favor of Plaintiff together with interest and costs.



JOSEPH COLAVECCHI, ESQUIRE
Attorney for Plaintiff

VERIFICATION

I verify that the statements made in this Reply to New Matter and Answer to Counterclaim 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.



CARL KEITH

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
CIVIL DIVISION
No. 04 - 1349 - CD

CARL KEITH,

Plaintiff

vs.

MARSHALL J. SHIRLEY, JR., and
CELESTINA L.M. SHIRLEY, his
wife,

Defendants

REPLY TO NEW MATTER
AND ANSWER TO COUNTERCLAIM

FILED

NOV 09 2004

William A. Shaw
Prothonotary/Clerk of Courts

COLAVECCHI
RYAN & COLAVECCHI

ATTORNEYS AT LAW
221 EAST MARKET STREET
(ACROSS FROM COURTHOUSE)
P.O. BOX 131
CLEARFIELD, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CARL KEITH,

Plaintiff

CIVIL DIVISION

No. 04 - 1349 -- CD

vs.

MARSHALL J. SHIRLEY, JR., and
CELESTINA L.M. SHIRLEY, his
wife,

Defendants

PRAECIPE TO DISCONTINUE

Filed on Behalf of:

Plaintiff, CARL KEITH

Counsel of Record for This
Party:

PAUL COLAVECCHI, ESQUIRE
Pa. I.D. #83274

COLAVECCHI & COLAVECCHI
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

814/765-1566

2
FILED ICC Atty
of 10:25am Colavecchi
9 APR 30 2013
William A. Shaw
Prothonotary/Clerk of Courts

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

CARL KEITH,

Plaintiff : No. 04 - 1349 - CD

vs. :

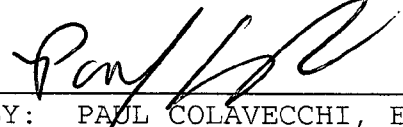
MARSHALL J. SHIRLEY, JR., and :
CELESTINA L.M. SHIRLEY, his wife, :
Defendants: :

PRAECIPE TO DISCONTINUE

TO: PROTHONOTARY OF CLEARFIELD COUNTY

Please mark the record in the above-captioned action settled,
discontinued, and ended.

COLAVECCHI & COLAVECCHI


BY: PAUL COLAVECCHI, ESQUIRE
Attorney for Plaintiff

April 30, 2013