

Civil Other

Date		Judge
09/08/2004	✓ Filing: Civil Complaint Paid by: Naddeo, James Receipt number: 1886162 Dated: 09/08/2004 Amount: \$85.00 (Check) 2 cert. to Atty.	No Judge
10/08/2004	✓ Sheriff Return, now, Sept. 14, 2004, served the within complaint on Sandra J. Shomo, Defendant at Sheriff's office. Now, September 22, 2004 Sheriff of Cambria Co. served the within complaint on James E. Shomo, Defendant. So Answers, Chester A. Hawkins, Sheriff, by s/Marilyn Hamm. No CC.	No Judge
10/13/2004	✓ Certificate of Service, Notice of Default served on James E. Shomo and Sandra J. Shomo on the 13th of Oct. 2004 by 1st class mail. Filed by s/James A. Naddeo, Esquire. 2CC Atty. Naddeo	No Judge
10/14/2004	✓ Praecipe For Entry of Appearance, for Defendant Sandra J. Shomo, filed by s/Suzanne Bigelow-Cherry, Esquire. No CC Certificate of Service, upon James A. Naddeo, Esq., October 13, 2004.	No Judge
	✓ Answer and New Matter filed, along with Notice to Plead. On behalf of Defendant, by s/Suzanne Bigelow-Cherry. Certificate of Service, October 13th, 2004 upon James A. Naddeo, Esq. by first-class mail.	No Judge
10/26/2004	✓ Filing: Judgment Paid by: Naddeo, James A. (attorney for Ankney, Raymond G.) Receipt number: 1889105 Dated: 10/26/2004 Amount: \$20.00 (Check) Notice to Def. Stmt. to Atty. Judgment entered against Def. in the amount \$36,779.75	No Judge
11/02/2004	✓ Petition for Leave to Amend Complaint, filed by s/James A. Naddeo, Esq. One CC Attorney Naddeo	No Judge
11/04/2004	✓ Rule, AND NOW, this 4th day of Nov. 2004, upon consideration of the attached Petition, a Rule is hereby issued upon Defendant, Sandra J. Shomo, to show cause why the Petition should not be granted. Rule Returnable the 10th of December, 2004, at 11:00 a.m., Clfd. Co. Courthouse, for hearing. BY THE COURT, Fredric J. Ammerman, President Judge. 1CC Atty. Naddeo	Fredric Joseph Ammerman
	✓ Answer to New Matter, filed by s/ James A. Naddeo, Esq. 1CC Atty Naddeo	Fredric Joseph Ammerman
11/05/2004	✓ Certificate of Service, Plaintiff's Answer to New Matter and Petition for Leave to Amend Complaint, on the 5th day of November, 2004 by 1st class Mail, served on Suzanne Bigelow-Cherry, Esquire. Filed by s/ James A. Naddeo, Esquire. no cc	Fredric Joseph Ammerman
11/24/2004	✓ Reply to Petition to Amend, filed by s/ Suzanne Bigelow-Cherry, Esquire. Certificate of Service to James A. Naddeo, Esquire. No CC	Fredric Joseph Ammerman
12/13/2004	✓ Order, NOW, this 10th day of December, 2004, following argument on the Plaintiff's Petition for Leave to Amend Complaint, it is the ORDER of this Court that said Petition be and is hereby granted. The Plaintiff shall have no more than 20 days from this date in which to file amended complaint with the Court. BY THE COURT: Fredric J. Ammerman, President Judge. 1CC Atty Naddeo, 1CC Atty Bigelow-Cherry, 1CC Def. J. Shomo	Fredric Joseph Ammerman
12/17/2004	✓ Amended Complaint, filed by s/ James A. Naddeo Esquire. 1CC Atty Naddeo.	Fredric Joseph Ammerman
01/14/2005	✓ Answer and New Matter filed, by s/ Suzanne Bigelow-Cherry, Esquire. No CC	Fredric Joseph Ammerman
01/25/2005	✓ Answer To New Matter, filed by s/ James A. Naddeo, Esquire. 1CC to Atty Naddeo	Fredric Joseph Ammerman

Civil Other

Date	Judge
02/08/2005 ✓	Fredric Joseph Ammerman
Certificate of Service, certified copy of Notice of Taking Deposition of Sandra J. Shomo, on the 8th day of Feb., 2005, upon Suzanne Bigelow-Cherry, Esquire. Filed by s/James A. Naddo, Esquire. No CC	Fredric Joseph Ammerman
Certificate of Service, certified copy of Notice of Taking Deposition of James E. Shomo, on the 8th day of Feb., 2005, upon Suzanne Bigelow-Cherry, Esquire, and James E. Shomo. Filed by s/James A. Naddo, Esquire. No CC	Fredric Joseph Ammerman
04/12/2005 ✓	Fredric Joseph Ammerman
Certificate of Service Notice of Taking Deposition of Sandra J. Shomo on 12th day of April, 2005. Filed by s/James A. Naddo, Esq. No CC	Fredric Joseph Ammerman
06/06/2005 ✓	Fredric Joseph Ammerman
Motion For Summary Judgment, filed by s/James A. Naddo, Esquire. 1CC Atty. Naddo	Fredric Joseph Ammerman
Praecipe to File Deposition as Part of Record, filed by s/James A. Naddo, Esquire. No CC	Fredric Joseph Ammerman
Deposition Transcript of Sandra J. Shomo, May 9, 2005, filed.	Fredric Joseph Ammerman
06/09/2005 ✓	Fredric Joseph Ammerman
Order, NOW, this 9th day of June, 2005, it is the ORDER of this Court that Plaintiffs Motion for Summary Judgment is scheduled for the 13th day of July, 2005 at 2:00 p.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Naddo	Fredric Joseph Ammerman
06/27/2005 ✓	Fredric Joseph Ammerman
Defendant's Reply to Plaintiff's Motion for Summary Judgment, filed by s/ Suzanne Bigelow-Cherry, Esquire. No CC	Fredric Joseph Ammerman

Clearfield County Court of Common Pleas

ROA Report

Case: 2004-01391-CD

Current Judge: Fredric Joseph Ammerman

Raymond G. Ankney vs. James E. Shomo, Sandra J. Shomo

Civil Other

Date		Judge
02/08/2005	✓ Certificate of Service, certified copy of Notice of Taking Deposition of Sandra J. Shomo, on the 8th day of Feb., 2005, upon Suzanne Bigelow-Cherry, Esquire. Filed by s/ James A. Naddeo, Esquire. No CC	Fredric Joseph Ammerman
	✓ Certificate of Service, certified copy of Notice of Taking Deposition of James E. Shomo, on the 8th day of Feb., 2005, upon Suzanne Bigelow-Cherry, Esquire, and James E. Shomo. Filed by s/ James A. Naddeo, Esquire. No CC	Fredric Joseph Ammerman
04/12/2005	✓ Certificate of Service Notice of Taking Deposition of Sandra J. Shomo on 12th day of April, 2005. Filed by s/Jame A Naddeo, Esq. No CC	Fredric Joseph Ammerman
06/06/2005	✓ Motion For Summary Judgment, filed by s/James A. Naddeo, Esquire. 1CC Atty. Naddeo	Fredric Joseph Ammerman
	Praecipe to File Deposition as Part of Record, filed by s/ James A. Naddeo, Esquire. No CC	Fredric Joseph Ammerman
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06/27/2005	✓ Defendant's Reply to Plaintiff's Motion for Summary Judgment, filed by s/ Suzanne Bigelow-Cherry, Esquire. No CC	Fredric Joseph Ammerman
07/15/2005	✓ Order, NOW, this 13th day of July, 2005, following argument on Plaintiff's Motion for Summary Judgment, Ordered that counsel provide the Court with letter brief within no more than 15 days from today's date. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Naddeo, S. Cherry, 1CC def. J. Shomo	Fredric Joseph Ammerman

Civil Other

Date	Judge
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Filing: Civil Complaint Paid by: Naddo, James Receipt number: 1886162 Dated: 09/08/2004 Amount: \$85.00 (Check) 2 cert. to Atty.	
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Answer and New Matter filed, along with Notice to Plead. On behalf of Defendant, by s/Suzanne Bigelow-Cherry. Certificate of Service, October 13th, 2004 upon James A. Naddo, Esq. by first-class mail.	
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Filing: Judgment Paid by: Naddo, James A. (attorney for Ankney, Raymond G.) Receipt number: 1889105 Dated: 10/26/2004 Amount: \$20.00 (Check) Notice to Def. Stmt. to Atty. Judgment entered against Def. in the amount \$36,779.75	
✓ 11/02/2004	No Judge
Petition for Leave to Amend Complaint, filed by s/James A. Naddo, Esq. No Judge	
✓ 11/04/2004	Fredric Joseph Ammerman
Rule, AND NOW, this 4th day of Nov. 2004, upon consideration of the attached Petition, a Rule is hereby issued upon Defendant, Sandra J. Shomo, to show cause why the Petition should not be granted. Rule Returnable the 10th of December, 2004, at 11:00 a.m., Cftd. Co. Courthouse, for hearing BY THE COURT, Fredric J. Ammerman, President Judge. 1CC Atty. Naddo	
✓ 11/05/2004	Fredric Joseph Ammerman
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✓ 11/24/2004	Fredric Joseph Ammerman
Reply to Petition to Amend, filed by s/ Suzanne Bigelow-Cherry, Esquire. Certificate of Service to James A. Naddo, Esquire. No CC	
✓ 12/13/2004	Fredric Joseph Ammerman
Order, NOW, this 10th day of December, 2004, following argument on the Plaintiffs Petition for Leave to Amend Complaint, it is the ORDER of this Court that said Petition be and is hereby granted. The Plaintiff shall have no more than 20 days from this date in which to file amended complaint with the Court. BY THE COURT: Fredric J. Ammerman, President Judge. 1CC Atty Naddo, 1CC Atty Bigelow-Cherry, 1CC Def. J. Shomo	
✓ 12/17/2004	Fredric Joseph Ammerman
Amended Complaint, filed by s/ James A. Naddo Esquire. 1CC Atty Naddo.	
✓ 01/14/2005	CC
Answer and New Matter filed, by s/ Suzanne Bigelow-Cherry, Esquire. No Fredric Joseph Ammerman	
✓ 01/25/2005	Naddo
Answer To New Matter, filed by s/ James A. Naddo, Esquire. 1CC to Atty Fredric Joseph Ammerman	

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

No. 04- 1391-CD

COMPLAINT

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

207 E. Market Street
P.O. Box 552
Clearfield, PA. 16830
(814) 765-1601

FILED
SEP 08 2004
013:25
William A. Shaw
Prothonotary/Clerk of Courts
2 cent to Arts

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

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No. 04- -CD

COMPLAINT

NOW COMES Plaintiff, Raymond G. Ankey, and by and through his attorney, James A. Naddeo, sets forth the following:

1. That Plaintiff is an adult individual residing at R-3309 Elton Road, Johnstown, PA 15904.
2. That Defendants, husband and wife, reside at 5 Lyle Lane, Coalport, PA 16627.
3. That Defendants are the owners of a bar/restaurant, The Rainbow Inn, located at 2526 Glendale Boulevard, Coalport, PA 16627.
4. That Clearfield Bank and Trust, 11 North Second Street, Clearfield, PA 16830, loaned Defendants \$100,000.00 for The Rainbow Inn on September 17, 1998.

COUNT I

5. That Plaintiff incorporates Paragraphs 1 through 4 of this Complaint by reference and makes them a part hereof.
6. That on May 2, 2002, Plaintiff and Defendants entered into a sealed written agreement in which Plaintiff loaned Defendants \$10, 469.79 to pay overdue mortgage payments to Clearfield Bank and Trust for The Rainbow Inn to avoid a Sheriff's Sale on the property. A copy of the Agreement is attached hereto as Exhibit "A."

7. That the written agreement provided that if Defendants did not repay the loan within six months, Defendants would transfer to Plaintiff, Liquor License No. R-17768.
8. That on June 10, 2002, Plaintiff and Defendants entered into a sealed Security Agreement, in consideration for the loan on May 2, 2002, granting Plaintiff a security interest in Liquor License No. R-17768. A copy of the Security Agreement is attached hereto as "Exhibit B."
9. That Plaintiff has made a demand for the transfer of Liquor License No. R-17768 and/or for the repayment of the loan.
10. That Plaintiff has not received any payments from Defendants for the loan identified in Exhibits A and B nor have Defendants transferred Liquor License No. R-17768 to Plaintiff as required by the terms of the Agreement attached hereto as Exhibit "B."

WHEREFORE, Plaintiff claims damage in the amount of \$10,469.79, with interest as allowable by law, from November 2, 2002.

COUNT II

11. That Plaintiff incorporates Paragraphs 1 through 4 of this Complaint by reference and makes them a part hereof.
12. That on September 11, 2003, Plaintiff and Defendants entered into a written agreement, in which Plaintiff loaned Defendants \$2,000 to pay overdue property taxes owed on the Rainbow Inn. A copy of the written agreement is attached hereto as "Exhibit C."
13. That the written agreement provided that Defendants were to repay Plaintiff \$12,469.79, the sum of the \$2,000 loan plus an overdue \$10,469.79 loan, by November 10, 2003.
14. That Plaintiff has made a demand for the repayment of the loan identified in Exhibit "C."
15. That Plaintiff has not received any payments from Defendants for the loan identified in

Exhibit "C."

WHEREFORE, Plaintiff claims damage in the amount of \$2,000, with interest as allowable by law, from November 10, 2003.

COUNT III

16. That Plaintiff incorporates Paragraphs 1 through 4 of this Complaint by reference and makes them a part hereof.
17. That on January 29, 2004, Plaintiff and Defendants entered into a sealed written agreement permitting Plaintiff to reconcile Defendants' loan with Clearfield Bank and Trust in consideration for repayment. A copy of the written agreement is attached hereto as "Exhibit D."
18. That on February 5, 2004, Plaintiff paid Clearfield Bank and Trust \$22,339.94 for Defendants' overdue mortgage payments for The Rainbow Inn. A copy of the Cashier's Check is attached hereto as "Exhibit E."
19. That this payment stopped the Sheriff's Sale, scheduled for February 6, 2004, of The Rainbow Inn.
20. That the agreement provided that upon Plaintiff's satisfaction of Defendants' overdue payments with Clearfield Bank and Trust, Defendants agreed to sell and Plaintiff agreed to buy all equipment and furnishings as set forth in the agreement, the Liquor License No. R-17768, and all real property located in Beccaria Township, Clearfield County, PA. Exhibit "D", Page 2.
21. That Plaintiff has made a demand for the repayment of the loan identified in Exhibit "E" and/or has requested Defendants' compliance with the terms of the January 29, 2004 agreement.
22. That Plaintiff has not received any payments from Defendants for the loan identified in Exhibits D and E, nor have Defendants transferred or sold to Plaintiff any equipment or furnishings, Liquor License No. R-17768, or any real property located in Beccaria Township,

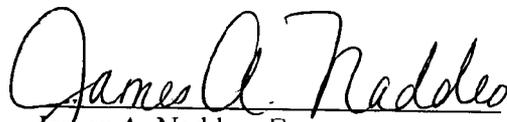
Clearfield County, PA.

WHEREFORE, Plaintiff claims damage in the amount of \$22,339.94, with interest as allowable by law, from February 5, 2004.

COUNT IV

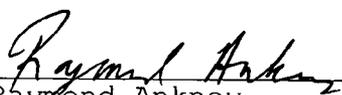
23. That Plaintiff incorporates Paragraphs 1 through 4 of this Complaint by reference and makes them a part hereof.
24. That on March 25, 2004 Plaintiff, at the express request and insistence of Defendants, paid \$1970.02 to Clearfield Bank and Trust for Defendants' mortgage on The Rainbow Inn. A copy of the check is attached hereto as "Exhibit F."
25. That at the time Plaintiff made the payment referred to in paragraph 24, Defendants agreed to repay Plaintiff for the money paid by Plaintiff to Clearfield Bank and Trust.
26. That Plaintiff has made a demand upon Defendants for the payment made to Clearfield Bank and Trust.
27. That Plaintiff has not received any payment from Defendants for the loan evidenced by Exhibit "F."

WHEREFORE, Plaintiff claims damage from the Defendant in the amount of \$1970.02 with interest as allowable by law, from March 25, 2004.


James A. Naddeo, Esq.
Attorney for Plaintiff

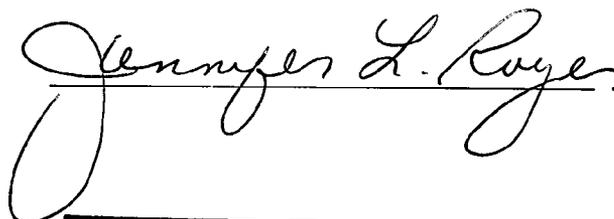
COMMONWEALTH OF PENNSYLVANIA)
)
) ss.
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared Raymond Ankney, who, being duly sworn according to law, deposes and states that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.



Raymond Ankney

SWORN and SUBSCRIBED before me this 20th day of August, 2004.



Notarial Seal
Jennifer L. Royer, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires May 17, 2007

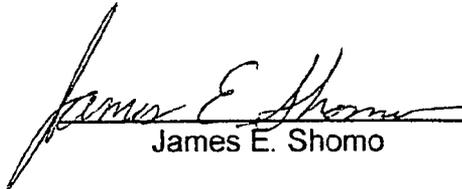
May 2, 2002

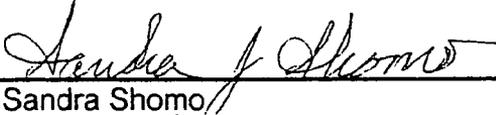
On this date, May 2, 2002, it is agreed that Raymond G. Ankney will lend to James E. Shomo and Sandra J. Shomo the amount of \$10,469.79.

This amount, \$10,469.79., will be repaid to Raymond G. Ankney within six months from this date.

If not paid within six months the liquor license from the Rainbow Inn will be transferred to Raymond G. Ankney.

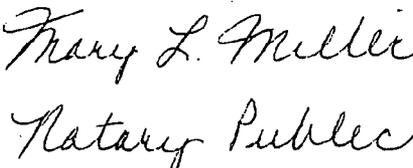

Raymond G. Ankney


James E. Shomo


Sandra Shomo

State of Pennsylvania
County of Cambria

On this second day of May 2002 appeared before me Raymond Ankney, James E. Shomo and Sandra Shomo, and agreed to the above.


Notary Public

Notarial Seal
Mary L. Miller, Notary Public
Beccaria Twp., Clearfield County
My Commission Expires Aug. 25, 2004
Member, Pennsylvania Association of Notaries

EXHIBIT "A"

POWER OF ATTORNEY

THE UNDERSIGNED, hereby grants to **RAYMOND G. ANKNEY**, a Power of Attorney for the purpose of signing all documents relative to **JAMES E. SHOMO AND SANDRA J. SHOMO, AND/OR RAINBOW INN**, with any required notice, renewal or transfer related to Liquor License No. R-17768 to be utilized if **JAMES E. SHOMO AND SANDRA J. SHOMO** is in default under the terms of a certain Security Agreement dated June 10, 2002, in default under the promissory note, or to protect the collateral. The parties hereby acknowledge that this power is granted for good and valuable consideration, the receipt of which is hereby acknowledged. This power shall be exercised in Raymond G. Ankney's sole discretion.

IN WITNESS WHEREOF AND INTENDING TO BE LEGALLY BOUND, the undersigned has hereunto set their hands and seals.

WITNESS

Mary L. Miller

Mary L. Miller

By: James E. Shomo
James E. Shomo

By: Sandra J. Shomo
Sandra J. Shomo

COMMONWEALTH OF PENNSYLVANIA

: SS

COUNTY OF Clearfield

ON THIS 10th day of June, 2002, before me, a Notary Public, the undersigned officer, personally appeared **JAMES E. SHOMO AND SANDRA J. SHOMO**, his 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 herein contained.

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

Mary L. Miller
Notary Public

Notarial Seal
Mary L. Miller, Notary Public
Beccaria Twp., Clearfield County
My Commission Expires Aug. 25, 2004
Member, Pennsylvania Association of Notaries

3

SECURITY AGREEMENT

JAMES E. SHOMO AND SANDRA J. SHOMO, his wife, RD 1 Box 246, Coalport, Pennsylvania, 16627, ("Debtor") hereby grants to **RAYMOND G. ANKNEY** ("Secured Party") a security interest in Liquor License No. R-17767 presently issued to the Rainbow Inn, to secure covenants under that certain Promissory Note dated the 10 day of June, 2002, executed and delivered by Debtor to Secured Party, in consideration of **TEN THOUSAND FOUR HUNDRED SIXTY NINE AND 79/100 (\$10,469.79) DOLLARS.**

Debtor agrees that they:

1. Will not permit the collateral to be removed, transferred or sold from the above-mentioned location without the prior written consent of the Secured Party.
2. Will not (a) permit any liens or security interests (other than Secured Party's security interest) to be attached to the collateral; (b) permit the collateral to be levied upon under any legal process; (c) dispose of the collateral without the prior written consent of Secured Party; (d) permit anything to be done that may impair the value of any of the collateral or the security intended to be afforded by this agreement.
3. Secured Party is hereby appointed Debtor's attorney-in-fact to do all acts and things and execute all instruments which Secured Party may deem necessary to perfect and continue perfected the security interest created by this security agreement or to protect the collateral.
4. Debtor agrees that Debtor will not transfer the collateral to any person, corporation, partnership or other entity or to any other premises.
5. Upon default by Debtor in the performance of any warranty, covenant or agreement herein or in the discharge of any liability to Secured Party under the Promissory

Note dated the 10 day of June, 2002, Debtor agrees to transfer the collateral to the Secured Party or to such other person or other entity which the Secured Party may nominate. Debtor agrees that the Security Party may file an action in equity to compel retransfer of Debtor's Liquor License in addition to any other rights of the Secured Party set forth herein.

6. As additional Security, Debtor submits to Security Party herewith an application for transfer and tax certification state of the liquor license, signed in blank, with the express authorization hereunder that, upon breach of the Agreement, default under the note or other security agreement, or to protect the collateral, Secured Party may apply to the Pennsylvania Liquor Control Board for the transfer of such license to Security Party or its designee and this document shall then operate as an Agreement sufficient to authorize the said Pennsylvania Liquor Control Board to approve said transfer.

7. All rights of Security Party hereunder shall inure to the benefit of his heirs, successors and assigns, and all obligations of Debtor shall bind its successors and assigns.

This Agreement is executed on June 10, 2002.

WITNESS:

Mary L. Mellie

Mary L. Mellie

DEBTOR:

By: James E. Shomo 
James E. Shomo

By: Sandra J. Shomo 
Sandra J. Shomo

On May 2, 2002 I Raymond Ankney lent James E. Shomo and Sandra Shomo the amount of \$10,469.79 to pay the bank for back payments. The Shomo's signed a contract for Raymond Ankney that was to be paid back in six months, or the liquor license was to be transferred in Raymond Ankneys name. Now the Shomo's need \$2,000.00 to pay their back taxes on the bar. I'm giving them the money for the taxes on September 11, 2003.

James and Sandra Shomo agree to sign an article of agreement to Raymond Ankney to sell him the bar, liquor license and the contents of the bar known as Rainbow Inn. Located at RR1 Box 246, Coalport, PA 16627-0600.

The article of agreement will allow Raymond Ankney to take over the payments at the Clearfield Bank and Trust Company till the balance is paid in full.

If the Shomo's pay Raymond Ankney the \$12,469.79 by November 10, 2003 this contract will be void.

James E Shomo
Borrower's name

Raymond Ankney
Lender's name

Sandra J Shomo
Borrower's name

Witness

Witness

EXHIBIT "C"

AGREEMENT

THIS AGREEMENT, made and entered into this 29th day of JANUARY, 2004, by and between **JAMES E. SHOMO** and **SANDRA J. SHOMO**, his wife, of 5 Lyle Lane Coalport, PA 16627, hereinafter called "Sellers"

AND

RAYMOND G. ANKNEY of R. 3309 Elton Road, Johnstown, PA 15904, hereinafter called "Buyer".

WHEREAS, Sellers are the owners of three (3) tracts of land in Beccaria Township, Clearfield County, Pennsylvania, being Tax Map No. 101-H18-675-24 assessed as House, Shed and 4.092 acres; Tax Map No. 101-H18-46 assessed as Tavern, Apartment, Garage, and .5 acres; and Tax Map No. 101-H18-47 assessed as a Lot, and;

WHEREAS, all of the aforesaid real property is currently subject to foreclosure and Sheriff's Sale by Clearfield Bank and Trust Company on February 6, 2004 under Clearfield County File No. 2003-526-CD, and;

WHEREAS, Buyer is willing to payoff Clearfield Bank and Trust Company in full prior to the scheduled Sheriff's Sale or thereafter with agreement of Clearfield Bank and Trust Company and to preserve the current property, provided Sellers agree to the terms and conditions of this agreement.

EXHIBIT "D"

NOW THEREFORE, in consideration of the terms, covenants, and conditions in this agreement, and with the intent to be legally bound hereby, the Parties agree as follows:

1. REMOVAL OF FORECLOSURE AND SHERIFF'S SALE: Buyer agrees to payoff in full the amount due under the case filed in Clearfield County File No. 2003-526-CD against the Sellers. Buyer shall pay the principal amount or judgment amount due plus interest, costs, attorney fees and Sheriff's costs in foreclosure. It is estimated this amount will be over \$100,000.00.

Buyer shall be entitled to negotiate with Clearfield Bank and Trust Company to resolve the foreclosure and Sheriff's Sale against Sellers. Buyer may need additional time after February 6, 2004 to close on this payoff on behalf of Sellers. Buyer can negotiate with Clearfield Bank and Trust Company to continue the February 6, 2004 Sheriff's Sale and this agreement shall remain in effect. This agreement shall be null and void with no further duties, obligations, or rights binding upon Sellers or Buyer if the foreclosure and Sheriff's Sale are completed on February 6, 2004 or any date thereafter.

2. SALE. Upon payment by Buyer to Clearfield Bank and Trust Company to satisfy Clearfield County File No. 2003-526-CD case against the Sellers and upon satisfaction of any mortgages

underlying the aforesaid case, Sellers agree to sell to Buyer and Buyer agrees to purchase from Sellers under the terms and conditions set forth in this agreement, all equipment and furnishings as set forth on Exhibit "A" attached hereto and incorporated herein (hereinafter called "Equipment"); the Liquor License No. R-17768 (hereinafter called "License"); and all real property located in Beccaria Township, Clearfield County, Pennsylvania, having thereon the house, shed, tavern, apartment, and garage (hereinafter called "Real Property", and bounded and described as follows:

THE FIRST THEREOF:

BEGINNING at an iron pin on the westerly line of an access road and on the line of lands now or formerly of Youngkin; thence along the line of said Youngkin lands South $70^{\circ} 25'$ West 342.90 feet to an iron pin on line of lands now or formerly of Noel; thence along the line of said Noel lands South $10^{\circ} 26'$ East 447.77 feet to an existing iron pin on line of lands now or formerly of Gill; thence along the line of said Gill lands South $82^{\circ} 12'$ East 351.54 feet to an existing iron pin on line of lands now or formerly of Beers; thence along the line of said Beers lands and through an iron pin North 10° West 612.22 feet to an iron pin, the place of beginning. Containing 4.092 acres all as is more fully shown on a survey prepared by George A. Cree, R.S. and dated September 24, 1990.

THE SECOND THEREOF:

NO. 1: BEGINNING at a stake on the right-of-way of the old Township Road leading from Flinton to Coalport at a corner of land now or formerly of John Palmer; then along the line of land now or formerly of John Palmer South eighty-five (85°) degrees West a distance of fifty-four and twenty-two hundredths (54.22) feet to a point on the East side of the right-of-way of Pennsylvania State Highway Route No. 53; then crossing

Pennsylvania State Highway Route 53 to the West side of the same South eighty-five (85°) degrees West for fifty-five (55) feet; then continuing along the line of land now or formerly of John Palmer South eighty-five (85°) degrees West a distance of sixty-two and thirty-eight hundredths (62.38) feet to a stake and corner of Parcel No. 2 hereinafter described; then along line of said Parcel No. 2 South ten (10°) degrees East a distance of one hundred seventy-eight (178) feet to a stake on line of land now or formerly of Hegarty Heirs; then along line of land now or formerly of Hegarty Heirs North eighty-three (83°) degrees East a distance of twenty and eight-tenths (20.8) feet to the West side of State Highway Route No. 53; then crossing the East side by the same North eighty-three (83°) degrees East fifty-five (55) feet; then along line of land now or formerly of Harry P. Boone North eighty-three degrees East a distance of one hundred nine (109) feet to a stake and corner on the right-of-way of the old Township Road leading from Flinton to Coalport; then along the right-of-way of said Old Township Road North fifteen (15°) degrees West a distance of one hundred seventy-four and five-tenths (174.5) feet to a stake and corner, the place of beginning. Being Parcel No. 1 on the map of survey of G. A. Heil dated December 10, 1956.

THE THIRD THEREOF:

NO. 2: BEGINNING at a stake on line of land now or formerly of John Palmer at corner of Parcel No. 1 hereinbefore described; then along said land now or formerly of John Palmer South eighty-five (85°) degrees West a distance of eighty-seven (87) feet to a stake on line of land now or formerly of Blake Campbell; then along line of said land now or formerly of Blake Campbell South ten (10°) degrees East a distance of one hundred eighty-one (181) feet to a stake and corner of line of land now or formerly of Hegarty Heirs; then along the line of said land now or formerly of Hegarty Heirs North eighty-three (83°) degrees East a distance of eighty-seven (87) feet to a stake and corner of Parcel No. 1 hereinbefore described; then along the line of said Parcel No. 1 North ten (10°) degrees West a distance of one hundred seventy-eight (178) feet to a stake and corner, the place of beginning. Being Parcel No. 2 on map of survey of G. A. Heil dated December 10, 1956.

The above tracts are known by Clearfield County Tax Map Nos. 101-H18-675-24, 101-H18-46 and 101-H18-47.

3. **PURCHASE PRICE:** The purchase price for the Equipment, License, and Real Property shall be the amount of the payoff by Buyer to Clearfield Bank and Trust Company to satisfy the lien to Clearfield County File No. 03-526-CD.

It is agreed between the Parties that the purchase price shall be allocated as follows:

All Real Estate	50% of payoff
License R-17768	20% of payoff
Equipment	25% of payoff
Trade Name & Goodwill	5% of payoff

4. **BUSINESS NAME AND GOODWILL:** Sellers hereby grant and convey to Buyer the exclusive right to use in any manner the trade name of "Rainbow Inn" and all goodwill associated with the business establishment and name, if Buyer desires to use said name. Buyer shall also have the right to incorporate if he so desires and place ownership of any assets under this agreement in the said corporate name.

5. **CLOSING:** Closing on the Real Property and Equipment shall take place within twenty (20) business days after Buyer has paid off Clearfield Bank and Trust Company in full or at the time of the payoff in full, if Buyer obtains financing to complete the payoff and uses the aforesaid Real Property as collateral.

At closing, Buyer shall be responsible to pay all closing cost including but no limited to:

- a). Preparation of Deed and Bill of Sale.
- b). All transfer tax.
- c). Recording cost of all documents.
- d). All real estate taxes due.
- e). All other closing costs.

At closing Sellers shall deliver a good special warranty deed to Buyer and Sellers hereby warrant good and marketable title.

6. TRANSFER OF LIQUOR LICENSE: After the payoff to Clearfield Bank and Trust Company by Buyer, Buyer shall be responsible at Buyer's cost and expense to prepare and transmit all forms and applications necessary to the Pennsylvania Liquor Control Board as soon as practicable for the transfer of the Liquor License and application for amusement permit, extended hours permit, and Sunday sales permit, as Buyer may desire. Sellers agree to render any assistance and provide information needed and Sellers agree to sign and execute all papers necessary for the transfer of License No. R-17768. Buyer may form a corporation or other entity to transfer the Liquor License, and if requested, Sellers shall execute all documents to transfer said license to the corporation or other entity.

Buyer agrees to have one or both of the Sellers listed as manager on his Liquor License transfer application.

Sellers shall continue to operate and run the tavern and bar business during the application process and after the Liquor License has been transferred to Buyer, subject to the terms in Paragraph 8 below.

7. **SELLERS RESIDENCE**: Sellers may remain in possession of their house and all real property on the First Thereof described real property in Paragraph 2 above for as long as they comply with all terms, covenants, and conditions in this agreement. Their will be no payments due Buyer for possession of this house and real property provided Sellers comply with all terms, covenants, and conditions in this agreement.

8. **OPERATIONS OF TAVERN AND BAR**: Sellers shall pay to Buyer the sum of Six Hundred (\$600.00) Dollars per month commencing on the first day of the month after Buyer has paid off Clearfield Bank and Trust Company in full and on the first day of each and every month thereafter for the same term as Buyer's financing lasts to payoff the lien to File No. 03-526-CD.

Sellers shall operate the tavern and bar business during this time and be responsible to pay all vendors, employees, creditors, yearly PLCB fees, and any fines and costs with PLCB in operation of the business. Sellers shall be responsible for the monthly payment noted herein; all monies generated over and above the monthly payment herein; and the payment of all other costs of

operation of the business shall be Sellers' income as manager of the business, provided PLCB approves this arrangement upon application of transfer of the Liquor License. If PLCB does not approve of this arrangement, the Parties agree to negotiate a fair and equitable arrangement on the management of the business and salary to the manager or managers.

9. **WARRANTIES:** Sellers hereby make the following warranties and representations:

a). Sellers are the owners of and have good and marketable title to the Real Property and Equipment sold herein.

b). Sellers warrant that all assets are free of all debts, encumbrances, liens, mortgages or other claims.

c). No warranty is made as to the condition of Equipment and all equipment is sold "as is".

10. **BILL OF SALE:** Sellers shall execute and deliver a Bill of Sale for all equipment as shown on Exhibit "A" at the time of transfer of the Liquor License to Buyer.

11. **UTILITIES, TAXES AND INSURANCE:** Sellers shall be responsible for all utilities, upkeep, and maintenance of all Real Property in the same condition as they were at closing at Sellers' expense while they reside in the house on the First Thereof Real Property and manage the tavern and bar business.

9

5

All real estate taxes and assessments on the First Thereof, Second Thereof, and Third Thereof Real Property described in Paragraph 2 above shall be paid by Sellers. Buyer shall provide a copy of the tax statement to Sellers at least fifteen (15) days prior to the date the discount amount of taxes is due, and Sellers shall pay Buyer the amount of taxes due at discount or at face provided Sellers pay said amount to Buyer at least five (5) days before the discount or face amount is due.

Buyer shall maintain fire or homeowners and liability insurance on the First Thereof Real Property until the Re-Conveyance under Paragraph 15 below takes place in the same amount of coverage as Sellers currently maintain. Sellers agree to pay the premium for this coverage until the Re-Conveyance under Paragraph 15 below takes place. Buyer shall provide a copy of the premium notice at least fifteen (15) days prior to the due date of coverage and Sellers shall reimburse Buyer for the amount of the premium by the due date of the premium. Sellers shall make no claim against Buyer for any damage or loss to Seller's personal property on the First Thereof Real Property. Sellers may obtain insurance coverage on their personal property if they desire.

K

If the structure on the First Thereof Real Property is damaged by fire or other manner prior to the Re-conveyance under Paragraph 15, but the premises can still be repaired, then the

insurance proceeds received shall be used to repair the structure in the same or similar condition as agreed to between the Parties. In such case, if any insurance proceeds remain, they shall be kept by Sellers provided Sellers have paid the premium.

If the structure on the First Thereof Real Property is destroyed by fire or other manner such that the structure is unusable for an extended period of time, or is totally destroyed, then the Parties agree that upon such condition, that the Parties will negotiate to construct a new house out of the proceeds not to exceed the amount of proceeds received from the fire insurance or the Parties can negotiate some other acceptable resolution fair to both parties as they can mutually agree to. This paragraph concerning reconstruction is subject to any claim of Buyer's lender to payoff the financing Buyer obtains which was used to payoff File No. 2003-526-CD against Sellers. If all or a substantial amount of insurance proceeds is used to payoff Buyer's lender, the Parties agree to negotiate a mutual agreement satisfactory to all parties.

Insurance for the structures and liability insurance on the Second Thereof and Third Thereof Real Property premium shall be paid by Sellers as a costs of business also. Buyer shall provide a copy of the premium notice at least fifteen (15) days prior to

the due date of coverage and Sellers shall reimburse Buyer for the amount of the premium by the due date of the premium.

12. **FAILURE TO APPROVE TRANSFER OF LIQUOR LICENSE:** In the event the Pennsylvania Liquor License Control Board does not approve transfer of Liquor License R-17768 to Buyer or other entity formed by Buyer, then the License shall remain in Sellers name and Buyer will lease the tavern and real property associated with it to Sellers at a fee of Two Hundred (\$200.00) Dollars per month.

13. **ASSIGNMENT AND SUBLEASING:** The rights and duties under this Agreement shall not be assigned without the express written consent of the other Party. Sellers may not sublease any real property for which they have possession under the terms of this agreement without the written consent of Buyer.

14. **DEFAULT:** In the event the Sellers shall default in the payment of any of the sums covenanted herein to be paid by Sellers, including the monthly payments, real estate taxes, insurance premiums due, and vendors or creditors of the business which Sellers manage for a period of sixty (60) days, Buyer, notwithstanding any action or remedy they may have at law or in equity, shall be entitled to terminate this Agreement and retain all sums paid as rental for the use and occupancy of the Real Property. Upon written notice sent by Buyer to Sellers of default

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for sixty (60) days under this paragraph, Sellers shall have ten (10) days to cure the default and if they fail to do so, then Sellers agree to vacate the Real Property and turn possession of Real Property over to Buyer and Sellers hereby agree to waive any prior or other notice to vacate the Real Property when the terms and conditions of this paragraph are met. For purposes of this paragraph, the sixty (60) days shall commence running upon the following:

- a). The day after the monthly payment is due under Paragraph 8 above.
- b). The day payment is due under any bill of a vendor, creditor, or other costs in management of the business.
- c). The day real estate taxes are due at face.
- d). The due date on any insurance premiums.

In addition to other remedies available to Buyer, it is further understood and agreed that in case of default of any monthly payment, real estate taxes, insurance premiums due, and vendors or creditors in management of the business herein agreed to be paid for the period of sixty (60) days after the same shall become due and payable by the terms hereof, the said Sellers hereby authorize and empowers any attorney of any court of record in the State of Pennsylvania to appear for them and confess judgment against them in an amicable action of ejectment for said

13
Real Property, and authorizes the immediate issuing, without asking leave of Court, of a Writ of Possession, with clause for the amount of attorney's fees and costs with a minimum attorney's commission of Five Hundred (\$500.00) Dollars, in each case waiving the right of inquisition if levy is made on land and consenting to condemnation thereof with liberty to sell same without stay of execution and with release of all errors.

In the event of default by Buyer, Sellers shall have all remedies in law or equity available to them.

15. INDEMNIFICATION: Sellers covenant and agree to protect, exonerate, defend, indemnify and save harmless Buyer from and against any and all costs or liabilities which may arise out of Seller's possession of the First Thereof Real Property subject of this Agreement and from and against any and all loss, damage, costs, expense or liability based upon personal injury, death, loss or damage to property suffered or incurred by any person, firm or corporation (including the parties hereto) and arising out of or attributable to the present condition, use, operation or maintenance of said property. Seller's may obtain liability insurance if they desire.

16. RE-CONVEYANCE OF FIRST THEREOF REAL PROPERTY: Whenever the final payment is made on the financing of Buyer to payoff the Clearfield Bank and Trust Company lien to Clearfield County File

No. 03-526-CD by Buyer, and provided Sellers have made all monthly payments under Paragraph 8 of this Agreement and complied with all other terms, covenants, and conditions of this Agreement, then and in that event, Buyer agrees to convey back the First Thereof only real property described in Paragraph 2 above being the House, Shed and 4.092 acres to Sellers. Buyer shall execute a good and marketable special warrant deed for the 4.092 acres. At closing, Sellers shall pay all closing costs, including but not limited to preparation of deed, transfer tax, recording cost of deed.

17. **NOTICES:** Any written notices required to be given under this Agreement shall be personally delivered or mailed to the other Party at the following addresses or to any other place or address designated in writing by one Party to the other:

Sellers:

5 Lyle Lane
Coalport, PA 16627

Buyer:

R. 3309 Elton Road
Johnstown, PA 15904

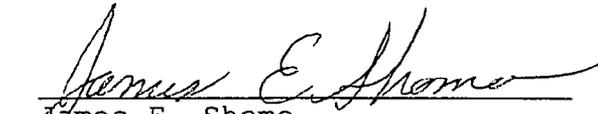
18. **ENTIRE AGREEMENT:** This Agreement contains the entire Agreement between the Parties. This Agreement correctly sets forth the obligations of Sellers and Buyer to each other as of its date. Any modification of this Agreement shall be made in writing executed by both parties.

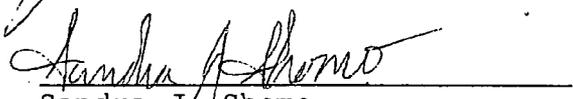
19. PENNSYLVANIA LAW TO APPLY: This Agreement shall be construed under and in accordance with the laws of the Commonwealth of Pennsylvania.

20. BINDING EFFECT: This Agreement shall be binding on the Parties hereto, their heirs, executors, administrators, successors and assigns.

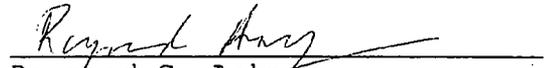
IN WITNESS WHEREOF, the Parties hereto, intending to be legally bounded hereby, have set their hands and seals on the date first written above.

SELLERS:


James E. Shomo


Sandra J. Shomo

BUYER:


Raymond G. Ankney



FIRST
Commonwealth

Banking
Insurance
Trust
Financial Management
Investments

First Commonwealth Bank
Central Offices: Indiana, PA 15701-0400

Official Check

946244

60-682
433

February 5, 2004

Date

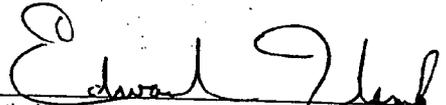
Pay to the
Order of

Clearfield Bank & Trust Company

\$ 22,339.94

THE SUM OF 22,339 and 94/100ths

Raymond G. Ankney
Remitter


Authorized Signature

⑈0946244⑈ ⑆043306826⑆ 00 1990020 8⑈

EXHIBIT "E"

R & S VENDING

60-1587/313
0603680247

3241

acct # 304121466

DATE 03/25/04

PAY TO THE
ORDER OF

Clearfield Bank and Trust

\$ 1970.02

One Thousand Nine Hundred Seventy 02
Two DOLLARS

CENWEST

BANK WINDSOR OFFICE
Member FDIC WINDSOR PA 15080

a division of **FIRST COMMONWEALTH BANK**
Member FDIC

MEMO

payments Bamburgh Inn

Rynd Arz

⑆03⑆⑆3⑆5874⑆ 06 03680247⑆ 324⑆

⑆0000⑆197002⑆

my payment to Clearfield Bank

EXHIBIT "F"

In The Court of Common Pleas of Clearfield County, Pennsylvania

ANKNEY, RAYMOND G.

VS.

SHOMO, JAMES E. & SANDRA J.

Sheriff Docket #

16249

04-1391-CD

COMPLAINT

SHERIFF RETURNS

NOW SEPTEMBER 14, 2004 AT 3:15 PM SERVED THE WITHIN COMPLAINT ON SANDRA J. SHOMO, DEFENDANT AT SHERIFF'S OFFICE, 1 N. 2ND ST., SUITE 116, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO SANDRA J. SHOMO A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: NEVLING

NOW SEPTEMBER 16, 2004, BOB KOLAR, SHERIFF OF CAMBRIA COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON JAMES E. SHOMO, DEFENDANT.

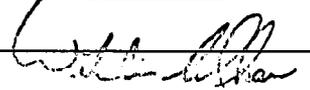
NOW SEPTEMBER 22, 2004 SERVED THE WITHIN COMPLAINT ON JAMES E. SHOMO, DEFENDANT BY DEPUTIZING THE SHERIFF OF CAMBRIA COUNTY. THE RETURN OF SHEIFF KOLAR IS HERETO ATTACHED AND MADE A PART OF THIS RETURN.

Return Costs

Cost	Description
58.00	SHERIFF HAWKINS PAID BY: ATTY CK# 9801
20.00	SURCHARGE PAID BY: ATTY
39.75	CAMBRIA CO. SHFF. PAID BY: ATTY

Sworn to Before Me This

8 Day Of October 2004



So Answers,


by Marilyn Horn
Chester A. Hawkins
Sheriff

FILED ^{EGK}

0 3:11 PM NOLL

OCT 08 2004

William A. Shaw
Prothonotary

CASE # PLAINTIFF
90249-04 RAYMOND G ANKNEY 04-1391
DATE 9/22/04

DEFENDANT
JAMES E SHOMO

AT 14:00 HRS. SERVED THE COMPLAINT WITH NOTICE TO DEFEND
UPON JAMES E. SHOMO BY HANDING A TRUE AND ATTESTED COPY
THEREOF TO HIM PERSONALLY AT 140 SHOMO RD. FALLENTIMBER,
PA. AND MAKING CONTENTS THEREOF KNOWN TO HIM. MY COSTS
PAID BY ATTORNEY FOR PLAINTIFF.

.
.
SHERIFF COSTS 36.75
PROTHONOTARY 3.00
TOTAL COSTS 39.75
.

SO ANSWERS,

Bob Kolar

BOB KOLAR, SHERIFF

.
SWORN AND SUBSCRIBED TO BEFORE ME THIS 29TH DAY OF SEPT. 04.

.
PROTHONOTARY

Patty Berkeley

DEFENDANT
JAMES E SHOMO

PLAINTIFF
RAYMOND G ANKNEY 04-1391

CASE #
90249-04
DATE 9/22/04

AT 14:00 HRS. SERVED THE COMPLAINT WITH NOTICE TO DEFEND
UPON JAMES E. SHOMO BY HANDING A TRUE AND ATTESTED COPY
THEREOF TO HIM PERSONALLY AT 140 SHOMO RD. FALLENIMBER,
PA. AND MAKING COPIES THEREOF KNOWN TO HIM. MY COSTS
PAID BY ATTORNEY FOR PLAINTIFF.

SO ANSWERS,

SHERIFF COSTS 36.75
PROTHONOTARY 3.00
TOTAL COSTS 39.75

BOB KOLAR, SHERIFF

SWORN AND SUBSCRIBED TO BEFORE ME THIS 24TH DAY OF SEPT. 04.

PROTHONOTARY

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

No. 04 - 1391 - CD

CERTIFICATE OF SERVICE

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

EGK
01/10:39 BH 2cc
CCT 13 2004
Atty Naddeo

CLERK OF COURT
CLEARFIELD COUNTY, PENNSYLVANIA

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

RAYMOND G. ANKEY, :
Plaintiff :
 :
v. : No. 04 - 1391 - CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
Defendants :

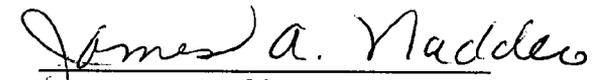
CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Notice of Default filed in the above-captioned action was served on the following persons and in the following manner on the 13th day of October, 2004:

First-Class Mail, Postage Prepaid

James E. Shomo
140 Shomo Road
Falltentimber, PA 16639

Sandra J. Shomo
5 Lyle Lane
Coalport, PA 16627


James A. Naddeo, Esq.
Attorney for Plaintiff

JAMES A. NADDEO
ATTORNEY AT LAW
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RAYMOND G. ANKNEY,
Plaintiff

vs.

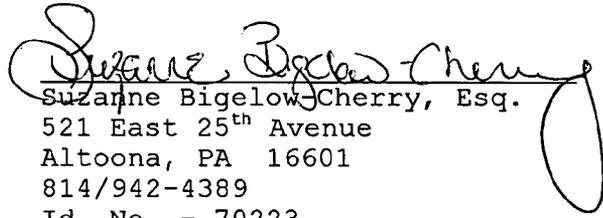
JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife
Defendants

:
:
:
: NO. ^{04-1341-CD}~~91 C.P. 471~~
:
:
:

PRAECIPE TO ENTER APPEARANCE

TO THE PROTHONOTARY OF SAID COURT:

Kindly enter the appearance of the undersigned as Counsel
for SANDRA J. SHOMO, Defendant, in the above-captioned matter.


Suzanne Bigelow Cherry, Esq.
521 East 25th Avenue
Altoona, PA 16601
814/942-4389
Id. No. - 70223

Dated: October 13th, 2004

^{EBK}
FILED ^{NO}
m/11:47 ^{CC}
OCT 14 2004

William A. Shaw
Prothonotary/Clerk of Courts

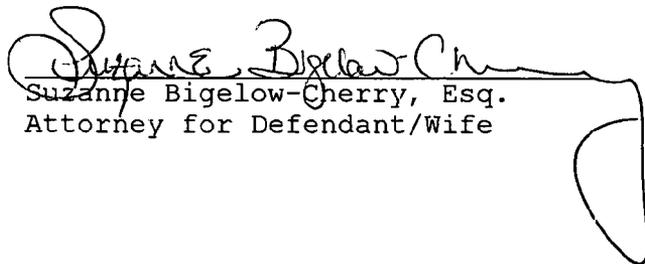
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RAYMOND G. ANKNEY, :
Plaintiff :
 :
vs. : NO. 91 C.P. 471
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife :
Defendants :

CERTIFICATE OF SERVICE

I do hereby certify that on this 3rd day of October,
2004, a true and correct copy of the within PRAECIPE TO ENTER
APPEARANCE was served upon the following by United States first
class mail, postage prepaid:

James A. Naddeo, Esq.
207 E. Market Street
P. O. Box 552
Clearfield, PA 16830
(Attorney for Plaintiff)


Suzanne Bigelow-Cherry, Esq.
Attorney for Defendant/Wife

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

RAYMOND G. ANKNEY, :
PLAINTIFF :
 :
vs. : No. 04-1391-CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
DEFENDANTS :

ANSWER AND NEW MATTER

AND NOW comes Defendant, Sandra J. Shomo, by and through her Attorney, Suzanne Bigelow-Cherry, Esq., and files the following Answer and New Matter to Plaintiff's Complaint:

1. Admitted.

2. Admitted in part; denied in part. Defendant/Wife, Sandra J. Shomo, lives at 5 Lyle Lane, Coalport, PA. Defendant/Husband, James E. Shomo, lives at 140 Shomo Road, Fallentimber, PA 16639.

3. Admitted.

4. Admitted in part; denied in part. Admit loan was made, but paid off by Defendants.

COUNT I

5. Paragraph No. 5 is an incorporation paragraph, and no response is required. Defendant/Wife incorporates answers 1-4.

6. Admitted that the document was executed by Defendant/Wife, Sandra J. Shomo.

7. Admitted in part; denied in part. Admit only that original Agreement called for repayment or transfer within six months. However, Plaintiff gave Defendants extensions; and this

Agreement was rescinded and replaced by a subsequent Agreement. Therefore, the Agreement is null and void.

8. Admitted in part; denied in part. Admit Defendant/Wife signed Exhibit "B". However, Plaintiff gave Defendants an extension; and this Agreement was rescinded and replaced by a subsequent Agreement.

9. Denied as stated. Defendant/Wife did request repayment but never requested transfer of liquor license.

10. Denied as stated. Defendant/Wife offered payments, which were refused. Plaintiff never requested or intended transfer of liquor license.

WHEREFORE, Defendant/Wife respectfully requests Plaintiff's Complaint be dismissed. Furthermore, no document or paragraph avers entitlement to interest.

COUNT II

11. Paragraph No. 11 is an incorporation paragraph, and no response is required. Defendant/Wife incorporates her prior answers to Numbers 1 - 4.

12. Admitted.

13. Denied as stated.

14. Admitted.

15. Denied as stated. Defendant/Wife offered payments, which were refused.

WHEREFORE, the Defendant/Wife respectfully requests Plaintiff's Complaint be dismissed. Furthermore, no document or paragraph avers entitlement to interest.

COUNT III

16. Paragraph No. 16 is an incorporation paragraph, and no response is required. Defendant/Wife incorporates her prior answers to numbers 1 - 4.

17. Denied as stated. Per the Agreement, Plaintiff was to pay off the judgment plus interest, costs, attorney fees and Sheriff costs. Plaintiff was not to "reconcile" the loan, but tender payment in full.

18. Denied as stated. It is believed that the amount was not solely for overdue mortgage payment.

19. Admitted.

20. Denied. On the contrary, the Plaintiff only cured the default but did not pay off the mortgage as required by the Agreement. The payment of the mortgage, judgment, interest, costs and fees was a prerequisite to sale of any property. Defendants subsequently paid off the mortgage.

21. Denied as stated. On the contrary, Plaintiff has refused payments; and Plaintiff is not entitled to transfer any property due to his failure to pay the mortgage, judgment and costs in full as required.

22. Denied as stated. On the contrary, Plaintiff has refused payments; and Plaintiff is not entitled to transfer any property due to his failure to pay the mortgage, judgment and costs in full as required.

WHEREFORE, the Defendant/Wife requests Plaintiff's Complaint be dismissed. Furthermore, no document or paragraph avers entitlement to interest.

COUNT IV

23. Paragraph No. 23 is an incorporation paragraph and no response is required. Defendant/Wife incorporates her prior answers 1 - 4.

24. Denied. On the contrary, Defendant/Wife made no request for payment; nor did she have knowledge thereof at the time payment was allegedly made.

25. Denied.

26. Denied.

27. Denied as stated. Defendant/Wife has no knowledge of these payments and denies any loan being made.

WHEREFORE, the Defendant/Wife requests Plaintiff's Complaint be dismissed. Furthermore, no document or paragraph avers entitlement to interest.

NEW MATTER

By way of further and more complete answer, the Defendant/Wife avers the following:

28. Contrary to Plaintiff's averment, the Plaintiff was to pay off the entire mortgage plus interest, costs, attorney fees and Sheriff costs.

29. Exhibit "D" estimates that the amount to pay these items off would be in excess of \$100,000.00.

30. Exhibit "D" rescinded and replaced the prior Agreements of the parties, to wit, Exhibits "A", "B" and "C".

31. Plaintiff never paid off the Clearfield Bank and Trust mortgage. This was a prerequisite to any sale or transfer of the real property, liquor license, equipment or trade name and goodwill.

32. On the contrary, Defendants personally paid off the Clearfield Bank and Trust mortgage; and that mortgage is now satisfied.

33. Exhibit "D" did not address Defendants' obligation to repay Plaintiff in the event Plaintiff did not pay off the mortgage in full.

34. Exhibit "D" did not require repayment of Plaintiff if Plaintiff failed to pay off the mortgage in full, as required.

35. Exhibit "D" rescinded Exhibits "A", "B" and "C"; and, therefore, said Agreements are null and void.

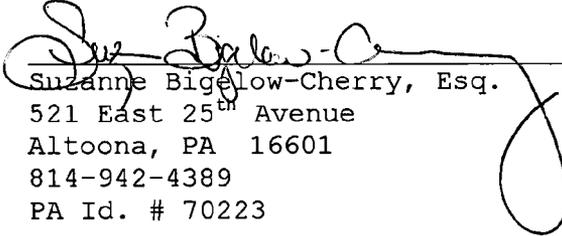
36. No document attached to Plaintiff's Complaint obligates Defendants to pay Plaintiff interest.

37. Plaintiff has failed to state to a claim for which relief can be granted.

38. Defendant raised the affirmative defenses of illegality, impossibility, failure of consideration, estoppel and laches.

WHEREFORE, Defendant/Wife respectfully Plaintiff's Complaint be dismissed.

Respectfully submitted,


Suzanne Bigelow-Cherry, Esq.
521 East 25th Avenue
Altoona, PA 16601
814-942-4389
PA Id. # 70223

VERIFICATION

I, Sandra J. Shomo, do hereby verify that I have read the within Answer and New Matter and acknowledge that the statements therein are true and correct to the best of my personal knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.



Sandra J. Shomo

Dated: day of October, 2004

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

No. 04 - 1391 - CD

**PRAECIPE FOR ENTRY OF
DEFAULT JUDGMENT**

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

*11:13 AM Pl 20.00
Notice to Def. Start to attorney*
OCT 26 2004

William A. Shaw
Prosecutor

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

RAYMOND G. ANKNEY, :
Plaintiff :
 :
v. : No. 04 - 1391 - CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
Defendants :

PRAECIPE FOR ENTRY OF DEFAULT JUDGMENT

TO THE PROTHONOTARY:

Please enter judgment of default in favor of Plaintiff, Raymond G. Ankney, and against Defendant, James E. Shomo, for his failure to plead to the Complaint in this action within the required time. The Complaint contains a Notice to Defend within twenty (20) days from the date of service thereof. Defendant was served on September 22, 2004. His answer was due to be filed on October 12, 2004.

Attached as Exhibit "A" is a copy of Plaintiff's written Notice of Intention to File Praecipe for Entry of Default Judgment as well as a copy of Certificate of Service marked Exhibit "B" showing the date of service of the Notice which I certify were mailed by regular mail to the Defendant on October 13, 2004, which is at least ten days prior to the filing of this Praecipe.

Judgment to be entered in the amount of \$36,779.75
plus interest from November 2, 2002.



James A. Naddeo
Attorney for Plaintiff

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

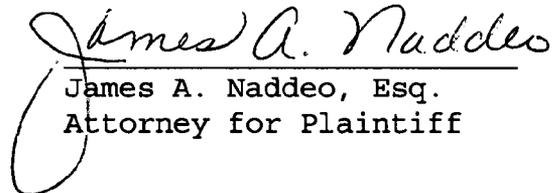
RAYMOND G. ANKEY, :
Plaintiff :
 :
v. : No. 04 - 1391 - CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
Defendants :

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Praecipe for Entry of Default Judgment filed in the above-captioned action was served on the following person and in the following manner on the 26th day of October, 2004:

First-Class Mail, Postage Prepaid

James E. Shomo
140 Shomo Road
Falltentimber, PA 16639


James A. Naddeo, Esq.
Attorney for Plaintiff

7 10/13/04

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

RAYMOND G. ANKNEY,	:	
Plaintiff	:	
	:	
v.	:	No. 04 - 1391 - CD
	:	
JAMES E. SHOMO and	:	
SANDRA J. SHOMO,	:	
Husband and Wife,	:	
Defendants	:	

To: James E. Shomo

Date of Notice: October 13, 2004

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY AN ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Court Administrator
Clearfield County Court House
Market and Second Streets
Clearfield, PA 16830
(814) 765-2641 Ext. 5988

James A. Naddeo
James A. Naddeo, Esquire
207 East Market Street
Clearfield, PA 16830
(814) 765-1601

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

RAYMOND G. ANKEY, :
Plaintiff :
 :
v. : No. 04 - 1391 - CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
Defendants :

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Notice of Default filed in the above-captioned action was served on the following persons and in the following manner on the 13th day of October, 2004:

First-Class Mail, Postage Prepaid

James E. Shomo
140 Shomo Road
Falltentimber, PA 16639

Sandra J. Shomo
5 Lyle Lane
Coalport, PA 16627


James A. Naddeo, Esq.
Attorney for Plaintiff

JAMES A. NADDEO
ATTORNEY AT LAW -
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

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

RAYMOND G. ANKEY, :
Plaintiff :
 :
v. : No. 04 - 1391 - CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
Defendants :

NOTICE

NOTICE is given that a JUDGMENT in the above captioned matter has been entered against Defendant, James E. Shomo, in the amount of \$36,779.75 with interest from November 2, 2002.

PROTHONOTARY

By William A. Shomo

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

Raymond G. Ankney
Plaintiff(s)

No.: 2004-01391-CD

Real Debt: \$36,779.75

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

James E. Shomo
Sandra J. Shomo
Defendant(s)

Entry: \$20.00

Instrument: Default Judgment

Date of Entry: October 26, 2004

Expires: October 26, 2009

Certified from the record this 26th day of October, 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

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

No. 04 - 1391 - CD

**PETITION FOR LEAVE TO
AMEND COMPLAINT**

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED 1cc
0/3/30/2004 Atty Naddeo
NOV 02 2004

W.A.S.
William A. Straw
Prothonotary/Clerk of Courts

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

RAYMOND G. ANKNEY, :
Plaintiff :
 :
v. : No. 04 - 1391 - CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
Defendants :

RULE

AND NOW, this 4th day of November, 2004, upon consideration of the attached Petition, a Rule is hereby issued upon Defendant, Sandra J. Shomo, to show cause why the Petition should not be granted. Rule Returnable the 10 of December, 2004, at 11:00a.m., Clearfield County Courthouse, Clearfield, for hearing.

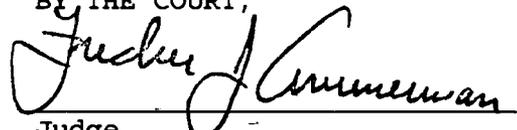
NOTICE

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION, YOU MUST TAKE ACTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY LOSE 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.

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PA 16830
(814) 765-2641, Ext. 5982

BY THE COURT,


Judge

FILED *26k*
M 2:05 PM 100 atty Madhu
NOV 04 2004

William A. Shaw
Prothonotary

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

RAYMOND G. ANKNEY, :
Plaintiff :
 :
v. : No. 04 - 1391- CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
Defendants :

PETITION FOR LEAVE TO AMEND

NOW COMES Plaintiff, Raymond G. Ankney, by and through his attorney, James A. Naddeo, and sets for the following:

1. Plaintiff filed a Complaint in the above-captioned action on September 8, 2004.

2. Service of the Complaint was effected upon James E. Shomo on September 22, 2004.

3. Service of the Complaint was effected upon Sandra J. Shomo on September 14, 2004.

4. That neither Defendant filed an Answer to Plaintiff's Complaint within 20 days as required by the Pennsylvania Rules of Civil Procedure.

5. That Notice of Default was directed to both Defendants on October 13, 2004.

6. That default judgment has been entered against James E. Shomo for failure to file an Answer after proper notice that default judgment would be entered.

7. That an Answer and New Matter to Plaintiff's Complaint was filed by Defendant, Sandra J. Shomo, on October 14, 2004.

8. That Defendant's Answer contains New Matter denying contractual liability to reimburse Plaintiff for monies advanced to the benefit of Defendant, Sandra J. Shomo.

9. That Plaintiff desires to file a Complaint to include a count for unjust enrichment.

10. That the Statute of Limitations for a claim of unjust enrichment has not run.

11. That Defendant will not be prejudiced by Plaintiff's request to amend.

WHEREFORE, Plaintiff requests that a Rule be issued upon Defendant to show cause why Plaintiff should not be permitted to file an Amended Complaint.

Respectfully submitted,



James A. Naddeo, Esquire
Attorney for Plaintiff

JAMES A. NADDEO
ATTORNEY AT LAW
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

CA

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

No. 04 - 1391 - CD

ANSWER TO NEW MATTER

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED ICE
013:2981 Atty
NOV 04 2004 Naddeo

William A. Shaw
Prothonotary/Clerk of Courts

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

RAYMOND G. ANKNEY, :
Plaintiff :
 :
v. : No. 04 - 1391- CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
Defendants :

ANSWER TO NEW MATTER

NOW COMES Plaintiff, Raymond G. Ankney, by and through his attorney, James A. Naddeo, and sets for the following:

28. Admitted as stated. In further answer thereto, it is alleged that Plaintiff paid to Clearfield Bank and Trust the sums necessary to terminate the Sheriff's sale of Defendants' property so that Plaintiff could arrange for financing to pay off the balance of the mortgage. In further answer thereto, it is alleged that Plaintiff was able to arrange financing through the First Commonwealth Bank of Johnstown to pay the balance of Defendants' mortgage, but Defendants refused to permit Plaintiff to pay off their mortgage with Clearfield Bank and Trust and in contravention of their agreement with Plaintiff obtained financing from Option One Mortgage Corporation which Defendants used to pay off their mortgage with Clearfield Bank and Trust.

29. Denied. After reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment.

30. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is denied.

31. Admitted as stated. In further answer thereto, Plaintiff incorporates his answer to Paragraph 28 by reference and makes it a part hereof.

32. Admitted as stated. In further answer thereto, Plaintiff incorporates his answer to Paragraph 28 by reference and makes it a part hereof.

33. Admitted as stated. In further answer thereto, it is alleged that Defendants have been unjustly enriched by Plaintiff in the amount of \$36,779.75.

34. Admitted as stated. In further answer thereto, it is alleged that Defendants have been unjustly enriched by Plaintiff in the amount of \$36,779.75.

35. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is denied.

36. Admitted as stated. In further answer thereto, it is alleged that Plaintiff is entitled to interest as allowable by law from date of Defendants' default.

37. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is denied.

38. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is denied.

Respectfully submitted,



James A. Naddeo, Esquire
Attorney for Plaintiff

JAMES A. NADDEO
ATTORNEY AT LAW
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

No. 04 - 1391 - CD

CERTIFICATE OF SERVICE

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED ^{EOK}
^{NO}
^{CC}
m/110:4301
NOV 05 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

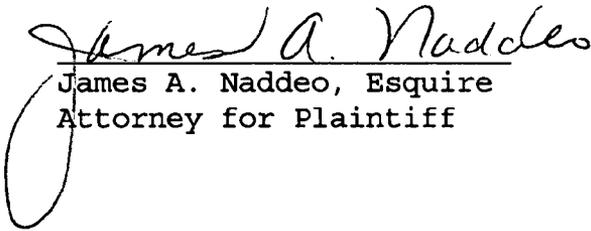
RAYMOND G. ANKNEY, :
Plaintiff :
 :
v. : No. 04 - 1391 - CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
Defendants :

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copies of Plaintiff's Answer to New Matter and Petition for Leave to Amend Complaint filed in the above-captioned action were served on the following person and in the following manner on the 5th day of November, 2004:

First-Class Mail, Postage Prepaid

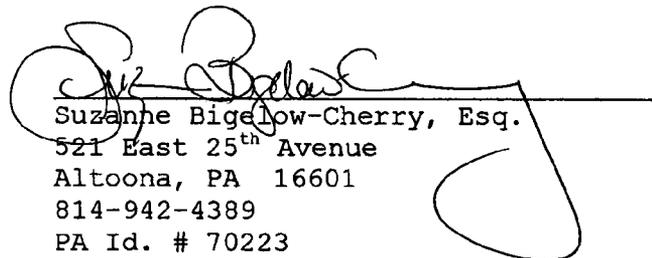
Suzanne Bigelow-Cherry, Esquire
521 East 25th Avenue
Altoona, PA 16601


James A. Naddeo
James A. Naddeo, Esquire
Attorney for Plaintiff

JAMES A. NADDEO
ATTORNEY AT LAW
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

6. Defendant, Sandra J. Shomo, lacks sufficient knowledge to admit or deny the averment, as no Notice was served on her or her undersigned counsel of record; and, therefore, the same is denied.
7. Admitted.
8. Admitted.
9. Paragraph 9 is a legal conclusion, and no response is deemed required. If a response is required, the same is denied.
10. Paragraph 10 is a legal conclusion, and no response is deemed required. If a response is required, the same is denied.
11. Paragraph 11 is a legal conclusion, and no response is deemed required. If a response is required, the same is denied.

WHEREFORE, the Defendant, Sandra J. Shomo, respectfully requests the Court deny Plaintiff's request for Leave to Amend the Complaint.


Suzanne Bigelow-Cherry, Esq.
521 East 25th Avenue
Altoona, PA 16601
814-942-4389
PA Id. # 70223

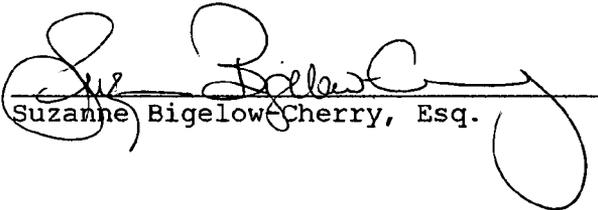
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RAYMOND G. ANKNEY, :
Plaintiff : No. 04 - 1391 - CD
 :
vs. :
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
Defendants :

CERTIFICATE OF SERVICE

I do hereby certify that on this 11 day of November, 2004, a true and correct copy of the within REPLY TO PETITION TO AMEND was served upon the following by United States first class mail, postage prepaid:

James A. Naddeo, Esquire
207 East Market Street
P. O. Box 552
Clearfield, PA 16830
Attorney for Plaintiff


Suzanne Bigelow Cherry, Esq.

CP

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

RAYMOND G. ANKNEY :
VS. : NO. 04-1391-CD
JAMES E. SHOMO and SANDRA J. :
SHOMO, Husband and Wife :

O R D E R

NOW this 10th day of December, 2004, following argument on the Plaintiff's Petition for Leave to Amend Complaint, it is the ORDER of this Court that said Petition be and is hereby granted. The Plaintiff shall have no more than twenty (20) days from this date in which to file amended complaint with the Court.

BY THE COURT:



President Judge

Elak **FILED** *ICC Atty Maddeo*
01/31/02/07 *ICC Atty Bigelow-Cherry*
DEC 13 2004 *ICC Def. J. Shomo*
William A. Shaw *5 Kyle Lane*
Prothonotary/Clerk of Courts *Coalport, PA 16627*

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

No. 04 - 1391 - CD

AMENDED COMPLAINT

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED ^{icc}
011-21601 *Atty Naddeo*
DEC 17 2004 *WKS*

William A. Shaw
Prothonotary/Clerk of Courts

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

RAYMOND G. ANKNEY, :
Plaintiff :
 :
v. : No. 04 - 1391 - CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
Defendants :

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Amended 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.

Court Administrator
Clearfield County Courthouse
Market and Second Streets
Clearfield, PA 16830

(814) 765-2641, ext. 5982

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

RAYMOND G. ANKNEY, :
Plaintiff :
 :
v. : No. 04 - 1391 - CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
Defendants :

AMENDED COMPLAINT

NOW COMES Plaintiff, Raymond G. Ankney, and by and through his attorney, James A. Naddeo, sets forth the following:

1. That Plaintiff is an adult individual residing at R-3309 Elton Road, Johnstown, PA 15904.

2. That Defendants, husband and wife, reside at 5 Lyle Lane, Coalport, PA 16627.

3. That Defendants are the owners of a bar/restaurant, The Rainbow Inn, located at 2526 Glendale Boulevard, Coalport, PA 16627.

4. That Clearfield Bank and Trust, 11 North Second Street, Clearfield, PA 16830, loaned Defendants \$100,000.00 for The Rainbow Inn on September 17, 1998.

COUNT I

5. That Plaintiff incorporates Paragraphs 1 through 4 of this Complaint by reference and makes them a part hereof.

6. That on May 2, 2002, Plaintiff and Defendants entered into a sealed written agreement in which Plaintiff loaned Defendants \$10, 469.79 to pay overdue mortgage payments to Clearfield Bank and Trust for The Rainbow Inn to avoid a Sheriff's Sale on the property. A copy of the Agreement is attached hereto as Exhibit "A."

7. That the written agreement provided that if Defendants did not repay the loan within six months, Defendants would transfer to Plaintiff, Liquor License No. R-17768.

8. That on June 10, 2002, Plaintiff and Defendants entered into a sealed Security Agreement, in consideration for the loan on May 2, 2002, granting Plaintiff a security interest in Liquor License No. R-17768. A copy of the Security Agreement is attached hereto as "Exhibit B."

9. That Plaintiff has made a demand for the transfer of Liquor License No. R-17768 and/or for the repayment of the loan.

10. That Plaintiff has not received any payments from Defendants for the loan identified in Exhibits A and B nor have Defendants transferred Liquor License No. R-17768 to Plaintiff as required by the terms of the Agreement attached hereto as Exhibit "B."

WHEREFORE, Plaintiff claims damage in the amount of \$10, 469.79, with interest as allowable by law, from November 2, 2002.

COUNT II

11. That Plaintiff incorporates Paragraphs 1 through 4 of this Complaint by reference and makes them a part hereof.

12. That on September 11, 2003, Plaintiff and Defendants entered into a written agreement, in which Plaintiff loaned Defendants \$2,000 to pay overdue property taxes owed on the Rainbow Inn. A copy of the written agreement is attached hereto as "Exhibit C."

13. That the written agreement provided that Defendants were to repay Plaintiff \$12, 469.790, the sum of the \$2,000 loan plus an overdue \$10, 469.79 loan, by November 10, 2003.

14. That Plaintiff has made a demand for the repayment of the loan identified in Exhibit "C."

15. That Plaintiff has not received any payments from Defendants for the loan identified in Exhibit "C."

WHEREFORE, Plaintiff claims damage in the amount of \$2,000, with interest as allowable by law, from November 10, 2003.

COUNT III

16. That Plaintiff incorporates Paragraphs 1 through 4 of this Complaint by reference and makes them a part hereof.

17. That on January 29, 2004, Plaintiff and Defendants entered into a sealed written agreement permitting Plaintiff to reconcile Defendants' loan with Clearfield Bank and Trust in consideration for repayment. A copy of the written agreement is attached hereto as "Exhibit D."

18. That on February 5, 2004, Plaintiff paid Clearfield Bank and Trust \$22,339.94 for Defendants' overdue mortgage payments for The Rainbow Inn. A copy of the Cashier's Check is attached hereto as "Exhibit E."

19. That this payment stopped the Sheriff's Sale, scheduled for February 6, 2004, of The Rainbow Inn.

20. That the agreement provided that upon Plaintiff's satisfaction of Defendants' overdue payments with Clearfield Bank and Trust, Defendants agreed to sell and Plaintiff agreed to buy all equipment and furnishings as set forth in the agreement, the Liquor License No. R-17768, and all real property located in Beccaria Township, Clearfield County, PA. Exhibit "D", Page 2.

21. That Plaintiff has made a demand for the repayment of the loan identified in Exhibit "E" and/or has requested

Defendants' compliance with the terms of the January 29, 2004 agreement.

22. That Plaintiff has not received any payments from Defendants for the loan identified in Exhibits D and E, nor have Defendants transferred or sold to Plaintiff any equipment or furnishings, Liquor License No. R-17768, or any real property located in Beccaria Township, Clearfield County, PA.

WHEREFORE, Plaintiff claims damage in the amount of \$22,339.94, with interest as allowable by law, from February 5, 2004.

COUNT IV

23. That Plaintiff incorporates Paragraphs 1 through 4 of this Complaint by reference and makes them a part hereof.

24. That on March 25, 2004 Plaintiff, at the express request and insistence of Defendants, paid \$1970.02 to Clearfield Bank and Trust for Defendants' mortgage on The Rainbow Inn. A copy of the check is attached hereto as "Exhibit F."

25. That at the time Plaintiff made the payment referred to in paragraph 24, Defendants agreed to repay Plaintiff for the money paid by Plaintiff to Clearfield Bank and Trust.

26. That Plaintiff has made a demand upon Defendants for the payment made to Clearfield Bank and Trust.

27. That Plaintiff has not received any payment from Defendants for the loan evidenced by Exhibit "F."

WHEREFORE, Plaintiff claims damage from the Defendant in the amount of \$1970.02 with interest as allowable by law, from March 25, 2004.

COUNT V

In the event it is determined that no oral or written agreement existed in fact or law between Plaintiff and Defendants as alleged in Counts I through IV, the Plaintiff alleges as follows:

28. Plaintiff, at the oral request of Defendants and/or with the Defendants' knowledge and acquiescence, paid on behalf of Defendants the amounts claimed by Plaintiff in Counts I through IV of this Amended Complaint.

29. That Defendants received a direct benefit from the payments made on their behalf by Plaintiff as set forth in Counts I through IV of this Amended Complaint.

30. That irrespective of any contract obligations which may or may not have been breached by Plaintiff, Defendants have been enriched by said payments.

31. That Defendant, James E. Shomo, has acknowledged his obligation to repay to Plaintiff the amounts claimed in Counts I through IV of this Amended Complaint.

32. That Defendant, Sandra J. Shomo, has refused to pay the amounts claimed by Plaintiff in Counts I through IV of this Amended Complaint although both Defendants have benefited from the payments made by Plaintiff.

WHEREFORE, Plaintiff claims damage from the Defendants in the amount of \$36,779.75 with interest thereon as allowable by law.


James A. Naddeo, Esquire
Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF CLEARFIELD)

SS. *[Handwritten]*

Before me, the undersigned officer, personally appeared RAYMOND G. ANKNEY, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Amended Complaint are true and correct to the best of his knowledge, information and belief.

[Handwritten Signature]
Raymond G. Ankney

SWORN and SUBSCRIBED before me this 17th day of December, 2004.

[Handwritten Signature]

Notarial Seal
Jennifer L. Royer, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires May 17, 2007

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

RAYMOND G. ANKNEY, :
Plaintiff :
 :
v. : No. 04 - 1391 - CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
Defendants :

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Amended Complaint filed in the above-captioned action was served on the following person and in the following manner on the 17th day of December, 2004:

First-Class Mail, Postage Prepaid

Suzanne Bigelow-Cherry, Esquire
521 East 25th Avenue
Altoona, PA 16601

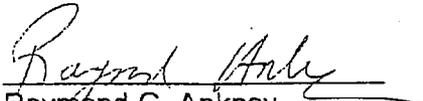

James A. Naddeo, Esquire
Attorney for Plaintiff

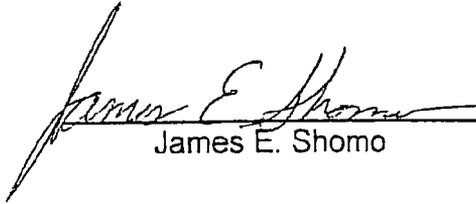
May 2, 2002

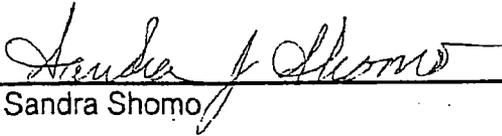
On this date, May 2, 2002, it is agreed that Raymond G. Ankney will lend to James E. Shomo and Sandra J. Shomo the amount of \$10,469.79.

This amount, \$10,469.79., will be repaid to Raymond G. Ankney within six months from this date.

If not paid within six months the liquor license from the Rainbow Inn will be transferred to Raymond G. Ankney.

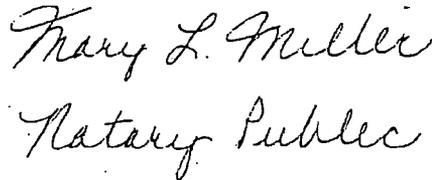

Raymond G. Ankney


James E. Shomo


Sandra Shomo

State of Pennsylvania
County of Cambria

On this second day of May 2002 appeared before me Raymond Ankney, James E. Shomo and Sandra Shomo, and agreed to the above.


Notary Public

Notarial Seal
Mary L. Miller, Notary Public
Beccaria Twp., Clearfield County
My Commission Expires Aug. 25, 2004
Member, Pennsylvania Association of Notaries

EXHIBIT "A"

POWER OF ATTORNEY

THE UNDERSIGNED, hereby grants to RAYMOND G. ANKNEY, a Power of Attorney for the purpose of signing all documents relative to JAMES E. SHOMO AND SANDRA J. SHOMO, AND/OR RAINBOW INN, with any required notice, renewal or transfer related to Liquor License No. R-17768, to be utilized if JAMES E. SHOMO AND SANDRA J. SHOMO is in default under the terms of a certain Security Agreement dated June 10, 2002, in default under the promissory note, or to protect the collateral. The parties hereby acknowledge that this power is granted for good and valuable consideration, the receipt of which is hereby acknowledged. This power shall be exercised in Raymond G. Ankney's sole discretion.

IN WITNESS WHEREOF AND INTENDING TO BE LEGALLY BOUND, the undersigned has hereunto set their hands and seals.

WITNESS

Mary L. Miller

Mary L. Miller

By: James E. Shomo
James E. Shomo

By: Sandra J. Shomo
Sandra J. Shomo

COMMONWEALTH OF PENNSYLVANIA

: SS

COUNTY OF Clearfield

ON THIS 10th day of June, 2002, before me, a Notary Public, the undersigned officer, personally appeared JAMES E. SHOMO AND SANDRA J. SHOMO, his 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 herein contained.

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

Mary L. Miller
Notary Public

Notarial Seal
Mary L. Miller, Notary Public
Beccaria Twp., Clearfield County
My Commission Expires Aug. 25, 2004

Member, Pennsylvania Association of Notaries

3

SECURITY AGREEMENT

JAMES E. SHOMO AND SANDRA J. SHOMO, his wife, RD 1 Box 246, Coalport, Pennsylvania, 16627, ("Debtor") hereby grants to **RAYMOND G. ANKNEY** ("Secured Party") a security interest in Liquor License No. R-17769 presently issued to the Rainbow Inn, to secure covenants under that certain Promissory Note dated the 10 day of June, 2002, executed and delivered by Debtor to Secured Party, in consideration of **TEN THOUSAND FOUR HUNDRED SIXTY NINE AND 79/100 (\$10,469.79) DOLLARS.**

Debtor agrees that they:

1. Will not permit the collateral to be removed, transferred or sold from the above-mentioned location without the prior written consent of the Secured Party.

2. Will not (a) permit any liens or security interests (other than Secured Party's security interest) to be attached to the collateral; (b) permit the collateral to be levied upon under any legal process; (c) dispose of the collateral without the prior written consent of Secured Party; (d) permit anything to be done that may impair the value of any of the collateral or the security intended to be afforded by this agreement.

3. Secured Party is hereby appointed Debtor's attorney-in-fact to do all acts and things and execute all instruments which Secured Party may deem necessary to perfect and continue perfected the security interest created by this security agreement or to protect the collateral.

4. Debtor agrees that Debtor will not transfer the collateral to any person, corporation, partnership or other entity or to any other premises.

5. Upon default by Debtor in the performance of any warranty, covenant or agreement herein or in the discharge of any liability to Secured Party under the Promissory

Note dated the 10 day of June, 2002, Debtor agrees to transfer the collateral to the Secured Party or to such other person or other entity which the Secured Party may nominate. Debtor agrees that the Security Party may file an action in equity to compel retransfer of Debtor's Liquor License in addition to any other rights of the Secured Party set forth herein.

6. As additional Security, Debtor submits to Security Party herewith an application for transfer and tax certification state of the liquor license, signed in blank, with the express authorization hereunder that, upon breach of the Agreement, default under the note or other security agreement, or to protect the collateral, Secured Party may apply to the Pennsylvania Liquor Control Board for the transfer of such license to Security Party or its designee and this document shall then operate as an Agreement sufficient to authorize the said Pennsylvania Liquor Control Board to approve said transfer.

7. All rights of Security Party hereunder shall inure to the benefit of his heirs, successors and assigns, and all obligations of Debtor shall bind its successors and assigns.

This Agreement is executed on June 10, 2002.

WITNESS:

Mary L. Muller

Mary L. Muller

DEBTOR:

By: James E. Shomo 
James E. Shomo

By: Sandra J. Shomo 
Sandra J. Shomo

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On May 2, 2002 I Raymond Ankney lent James E. Shomo and Sandra Shomo the amount of \$10,469.79 to pay the bank for back payments. The Shomo's signed a contract for Raymond Ankney that was to be paid back in six months, or the liquor license was to be transferred in Raymond Ankneys name. Now the Shomo's need \$2,000.00 to pay their back taxes on the bar. I'm giving them the money for the taxes on September 11, 2003.

James and Sandra Shomo agree to sign an article of agreement to Raymond Ankney to sell him the bar, liquor license and the contents of the bar known as Rainbow Inn. Located at RR1 Box 246, Coalport, PA 16627-0600.

The article of agreement will allow Raymond Ankney to take over the payments at the Clearfield Bank and Trust Company till the balance is paid in full.

If the Shomo's pay Raymond Ankney the \$12,469.79 by November 10, 2003 this contract will be void.

James E. Shomo
Borrower's name

Raymond Ankney
Lender's name

Sandra J. Shomo
Borrower's name

Witness

Witness

EXHIBIT "C"

AGREEMENT

THIS AGREEMENT, made and entered into this 29th day of JANUARY, 2004, by and between JAMES E. SHOMO and SANDRA J. SHOMO, his wife, of 5 Lyle Lane Coalport, PA 16627, hereinafter called "Sellers"

AND

RAYMOND G. ANKNEY of R. 3309 Elton Road, Johnstown, PA 15904, hereinafter called "Buyer".

WHEREAS, Sellers are the owners of three (3) tracts of land in Beccaria Township, Clearfield County, Pennsylvania, being Tax Map No. 101-H18-675-24 assessed as House, Shed and 4.092 acres; Tax Map No. 101-H18-46 assessed as Tavern, Apartment, Garage, and .5 acres; and Tax Map No. 101-H18-47 assessed as a Lot, and;

WHEREAS, all of the aforesaid real property is currently subject to foreclosure and Sheriff's Sale by Clearfield Bank and Trust Company on February 6, 2004 under Clearfield County File No. 2003-526-CD, and;

WHEREAS, Buyer is willing to payoff Clearfield Bank and Trust Company in full prior to the scheduled Sheriff's Sale or thereafter with agreement of Clearfield Bank and Trust Company and to preserve the current property, provided Sellers agree to the terms and conditions of this agreement.

EXHIBIT "D"

NOW THEREFORE, in consideration of the terms, covenants, and conditions in this agreement, and with the intent to be legally bound hereby, the Parties agree as follows:

1. REMOVAL OF FORECLOSURE AND SHERIFF'S SALE: Buyer agrees to payoff in full the amount due under the case filed in Clearfield County File No. 2003-526-CD against the Sellers. Buyer shall pay the principal amount or judgment amount due plus interest, costs, attorney fees and Sheriff's costs in foreclosure. It is estimated this amount will be over \$100,000.00.

Buyer shall be entitled to negotiate with Clearfield Bank and Trust Company to resolve the foreclosure and Sheriff's Sale against Sellers. Buyer may need additional time after February 6, 2004 to close on this payoff on behalf of Sellers. Buyer can negotiate with Clearfield Bank and Trust Company to continue the February 6, 2004 Sheriff's Sale and this agreement shall remain in effect. This agreement shall be null and void with no further duties, obligations, or rights binding upon Sellers or Buyer if the foreclosure and Sheriff's Sale are completed on February 6, 2004 or any date thereafter.

2. SALE. Upon payment by Buyer to Clearfield Bank and Trust Company to satisfy Clearfield County File No. 2003-526-CD case against the Sellers and upon satisfaction of any mortgages

underlying the aforesaid case, Sellers agree to sell to Buyer and Buyer agrees to purchase from Sellers under the terms and conditions set forth in this agreement, all equipment and furnishings as set forth on Exhibit "A" attached hereto and incorporated herein (hereinafter called "Equipment"); the Liquor License No. R-17768 (hereinafter called "License"); and all real property located in Beccaria Township, Clearfield County, Pennsylvania, having thereon the house, shed, tavern, apartment, and garage (hereinafter called "Real Property", and bounded and described as follows:

THE FIRST THEREOF:

BEGINNING at an iron pin on the westerly line of an access road and on the line of lands now or formerly of Youngkin; thence along the line of said Youngkin lands South 70° 25' West 342.90 feet to an iron pin on line of lands now or formerly of Noel; thence along the line of said Noel lands South 10° 26' East 447.77 feet to an existing iron pin on line of lands now or formerly of Gill; thence along the line of said Gill lands South 82° 12' East 351.54 feet to an existing iron pin on line of lands now or formerly of Beers; thence along the line of said Beers lands and through an iron pin North 10° West 612.22 feet to an iron pin, the place of beginning. Containing 4.092 acres all as is more fully shown on a survey prepared by George A. Cree, R.S. and dated September 24, 1990.

THE SECOND THEREOF:

NO. 1: BEGINNING at a stake on the right-of-way of the old Township Road leading from Flinton to Coalport at a corner of land now or formerly of John Palmer; then along the line of land now or formerly of John Palmer South eighty-five (85°) degrees West a distance of fifty-four and twenty-two hundredths (54.22) feet to a point on the East side of the right-of-way of Pennsylvania State Highway Route No. 53; then crossing

Pennsylvania State Highway Route 53 to the West side of the same South eighty-five (85°) degrees West for fifty-five (55) feet; then continuing along the line of land now or formerly of John Palmer South eighty-five (85°) degrees West a distance of sixty-two and thirty-eight hundredths (62.38) feet to a stake and corner of Parcel No. 2 hereinafter described; then along line of said Parcel No. 2 South ten (10°) degrees East a distance of one hundred seventy-eight (178) feet to a stake on line of land now or formerly of Hegarty Heirs; then along line of land now or formerly of Hegarty Heirs North eighty-three (83°) degrees East a distance of twenty and eight-tenths (20.8) feet to the West side of State Highway Route No. 53; then crossing the East side by the same North eighty-three (83°) degrees East fifty-five (55) feet; then along line of land now or formerly of Harry P. Boone North eighty-three degrees East a distance of one hundred nine (109) feet to a stake and corner on the right-of-way of the old Township Road leading from Flinton to Coalport; then along the right-of-way of said Old Township Road North fifteen (15°) degrees West a distance of one hundred seventy-four and five-tenths (174.5) feet to a stake and corner, the place of beginning. Being Parcel No. 1 on the map of survey of G. A. Heil dated December 10, 1956.

THE THIRD THEREOF:

NO. 2: BEGINNING at a stake on line of land now or formerly of John Palmer at corner of Parcel No. 1 hereinbefore described; then along said land now or formerly of John Palmer South eighty-five (85°) degrees West a distance of eighty-seven (87) feet to a stake on line of land now or formerly of Blake Campbell; then along line of said land now or formerly of Blake Campbell South ten (10°) degrees East a distance of one hundred eighty-one (181) feet to a stake and corner of line of land now or formerly of Hegarty Heirs; then along the line of said land now or formerly of Hegarty Heirs North eighty-three (83°) degrees East a distance of eighty-seven (87) feet to a stake and corner of Parcel No. 1 hereinbefore described; then along the line of said Parcel No. 1 North ten (10°) degrees West a distance of one hundred seventy-eight (178) feet to a stake and corner, the place of beginning. Being Parcel No. 2 on map of survey of G. A. Heil dated December 10, 1956.

The above tracts are known by Clearfield County Tax Map Nos. 101-H18-675-24, 101-H18-46 and 101-H18-47.

3. **PURCHASE PRICE:** The purchase price for the Equipment, License, and Real Property shall be the amount of the payoff by Buyer to Clearfield Bank and Trust Company to satisfy the lien to Clearfield County File No. 03-526-CD.

It is agreed between the Parties that the purchase price shall be allocated as follows:

All Real Estate	50% of payoff
License R-17768	20% of payoff
Equipment	25% of payoff
Trade Name & Goodwill	5% of payoff

4. **BUSINESS NAME AND GOODWILL:** Sellers hereby grant and convey to Buyer the exclusive right to use in any manner the trade name of "Rainbow Inn" and all goodwill associated with the business establishment and name, if Buyer desires to use said name. Buyer shall also have the right to incorporate if he so desires and place ownership of any assets under this agreement in the said corporate name.

5. **CLOSING:** Closing on the Real Property and Equipment shall take place within twenty (20) business days after Buyer has paid off Clearfield Bank and Trust Company in full or at the time of the payoff in full, if Buyer obtains financing to complete the payoff and uses the aforesaid Real Property as collateral.

At closing, Buyer shall be responsible to pay all closing cost including but no limited to:

- a). Preparation of Deed and Bill of Sale.
- b). All transfer tax.
- c). Recording cost of all documents.
- d). All real estate taxes due.
- e). All other closing costs.

At closing Sellers shall deliver a good special warranty deed to Buyer and Sellers hereby warrant good and marketable title.

6. TRANSFER OF LIQUOR LICENSE: After the payoff to Clearfield Bank and Trust Company by Buyer, Buyer shall be responsible at Buyer's cost and expense to prepare and transmit all forms and applications necessary to the Pennsylvania Liquor Control Board as soon as practicable for the transfer of the Liquor License and application for amusement permit, extended hours permit, and Sunday sales permit, as Buyer may desire. Sellers agree to render any assistance and provide information needed and Sellers agree to sign and execute all papers necessary for the transfer of License No. R-17768. Buyer may form a corporation or other entity to transfer the Liquor License, and if requested, Sellers shall execute all documents to transfer said license to the corporation or other entity.

Buyer agrees to have one or both of the Sellers listed as manager on his Liquor License transfer application.

Sellers shall continue to operate and run the tavern and bar business during the application process and after the Liquor License has been transferred to Buyer, subject to the terms in Paragraph 8 below.

7. SELLERS RESIDENCE: Sellers may remain in possession of their house and all real property on the First Thereof described real property in Paragraph 2 above for as long as they comply with all terms, covenants, and conditions in this agreement. Their will be no payments due Buyer for possession of this house and real property provided Sellers comply with all terms, covenants, and conditions in this agreement.

8. OPERATIONS OF TAVERN AND BAR: Sellers shall pay to Buyer the sum of Six Hundred (\$600.00) Dollars per month commencing on the first day of the month after Buyer has paid off Clearfield Bank and Trust Company in full and on the first day of each and every month thereafter for the same term as Buyer's financing lasts to payoff the lien to File No. 03-526-CD.

Sellers shall operate the tavern and bar business during this time and be responsible to pay all vendors, employees, creditors, yearly PLCB fees, and any fines and costs with PLCB in operation of the business. Sellers shall be responsible for the monthly payment noted herein; all monies generated over and above the monthly payment herein; and the payment of all other costs of

operation of the business shall be Sellers income as manager of the business, provided PLCB approves this arrangement upon application of transfer of the Liquor License. If PLCB does not approve of this arrangement, the Parties agree to negotiate a fair and equitable arrangement on the management of the business and salary to the manager or managers.

9. WARRANTIES: Sellers hereby make the following warranties and representations:

a). Sellers are the owners of and have good and marketable title to the Real Property and Equipment sold herein.

b). Sellers warrant that all assets are free of all debts, encumbrances, liens, mortgages or other claims.

c). No warranty is made as to the condition of Equipment and all equipment is sold "as is".

10. BILL OF SALE: Sellers shall execute and deliver a Bill of Sale for all equipment as shown on Exhibit "A" at the time of transfer of the Liquor License to Buyer.

11. UTILITIES, TAXES AND INSURANCE: Sellers shall be responsible for all utilities, upkeep, and maintenance of all Real Property in the same condition as they were at closing at Sellers expense while they reside in the house on the First Thereof Real Property and manage the tavern and bar business.

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All real estate taxes and assessments on the First Thereof, Second Thereof, and Third Thereof Real Property described in Paragraph 2 above shall be paid by Sellers. Buyer shall provide a copy of the tax statement to Sellers at least fifteen (15) days prior to the date the discount amount of taxes is due, and Sellers shall pay Buyer the amount of taxes due at discount or at face provided Sellers pay said amount to Buyer at least five (5) days before the discount or face amount is due.

Buyer shall maintain fire or homeowners and liability insurance on the First Thereof Real Property until the Re-Conveyance under Paragraph 15 below takes place in the same amount of coverage as Sellers currently maintain. Sellers agree to pay the premium for this coverage until the Re-Conveyance under Paragraph 15 below takes place. Buyer shall provide a copy of the premium notice at least fifteen (15) days prior to the due date of coverage and Sellers shall reimburse Buyer for the amount of the premium by the due date of the premium. Sellers shall make no claim against Buyer for any damage or loss to Seller's personal property on the First Thereof Real Property. Sellers may obtain insurance coverage on their personal property if they desire. X

If the structure on the First Thereof Real Property is damaged by fire or other manner prior to the Re-conveyance under Paragraph 15, but the premises can still be repaired, then the

insurance proceeds received shall be used to repair the structure in the same or similar condition as agreed to between the Parties. In such case, if any insurance proceeds remain, they shall be kept by Sellers provided Sellers have paid the premium.

If the structure on the First Thereof Real Property is destroyed by fire or other manner such that the structure is unusable for an extended period of time, or is totally destroyed, then the Parties agree that upon such condition, that the Parties will negotiate to construct a new house out of the proceeds not to exceed the amount of proceeds received from the fire insurance or the Parties can negotiate some other acceptable resolution fair to both parties as they can mutually agree to. This paragraph concerning reconstruction is subject to any claim of Buyer's lender to payoff the financing Buyer obtains which was used to payoff File No. 2003-526-CD against Sellers. If all or a substantial amount of insurance proceeds is used to payoff Buyer's lender, the Parties agree to negotiate a mutual agreement satisfactory to all parties.

Insurance for the structures and liability insurance on the Second Thereof and Third Thereof Real Property premium shall be paid by Sellers as a costs of business also. Buyer shall provide a copy of the premium notice at least fifteen (15) days prior to

the due date of coverage and Sellers shall reimburse Buyer for the amount of the premium by the due date of the premium.

12. FAILURE TO APPROVE TRANSFER OF LIQUOR LICENSE: In the event the Pennsylvania Liquor License Control Board does not approve transfer of Liquor License R-17768 to Buyer or other entity formed by Buyer, then the License shall remain in Sellers name and Buyer will lease the tavern and real property associated with it to Sellers at a fee of Two Hundred (\$200.00) Dollars per month.

13. ASSIGNMENT AND SUBLEASING: The rights and duties under this Agreement shall not be assigned without the express written consent of the other Party. Sellers may not sublease any real property for which they have possession under the terms of this agreement without the written consent of Buyer.

14. DEFAULT: In the event the Sellers shall default in the payment of any of the sums covenanted herein to be paid by Sellers, including the monthly payments, real estate taxes, insurance premiums due, and vendors or creditors of the business which Sellers manage for a period of sixty (60) days, Buyer, notwithstanding any action or remedy they may have at law or in equity, shall be entitled to terminate this Agreement and retain all sums paid as rental for the use and occupancy of the Real Property. Upon written notice sent by Buyer to Sellers of default

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for sixty (60) days under this paragraph, Sellers shall have ten (10) days to cure the default and if they fail to do so, then Sellers agree to vacate the Real Property and turn possession of Real Property over to Buyer and Sellers hereby agree to waive any prior or other notice to vacate the Real Property when the terms and conditions of this paragraph are met. For purposes of this paragraph, the sixty (60) days shall commence running upon the following:

- a). The day after the monthly payment is due under Paragraph 8 above.
- b). The day payment is due under any bill of a vendor, creditor, or other costs in management of the business.
- c). The day real estate taxes are due at face.
- d). The due date on any insurance premiums.

In addition to other remedies available to Buyer, it is further understood and agreed that in case of default of any monthly payment, real estate taxes, insurance premiums due, and vendors or creditors in management of the business herein agreed to be paid for the period of sixty (60) days after the same shall become due and payable by the terms hereof, the said Sellers hereby authorize and empowers any attorney of any court of record in the State of Pennsylvania to appear for them and confess judgment against them in an amicable action of ejectment for said

Real Property, and authorizes the immediate issuing, without asking leave of Court, of a Writ of Possession, with clause for the amount of attorney's fees and costs with a minimum attorney's commission of Five Hundred (\$500.00) Dollars, in each case waiving the right of inquisition if levy is made on land and consenting to condemnation thereof with liberty to sell same without stay of execution and with release of all errors.

In the event of default by Buyer, Sellers shall have all remedies in law or equity available to them.

15. INDEMNIFICATION: Sellers covenant and agree to protect, exonerate, defend, indemnify and save harmless Buyer from and against any and all costs or liabilities which may arise out of Seller's possession of the First Thereof Real Property subject of this Agreement and from and against any and all loss, damage, costs, expense or liability based upon personal injury, death, loss or damage to property suffered or incurred by any person, firm or corporation (including the parties hereto) and arising out of or attributable to the present condition, use, operation or maintenance of said property. Seller's may obtain liability insurance if they desire.

16. RE-CONVEYANCE OF FIRST THEREOF REAL PROPERTY: Whenever the final payment is made on the financing of Buyer to payoff the Clearfield Bank and Trust Company lien to Clearfield County File

No. 03-526-CD by Buyer, and provided Sellers have made all monthly payments under Paragraph 8 of this Agreement and complied with all other terms, covenants, and conditions of this Agreement, then and in that event, Buyer agrees to convey back the First Thereof only real property described in Paragraph 2 above being the House, Shed and 4.092 acres to Sellers. Buyer shall execute a good and marketable special warrant deed for the 4.092 acres. At closing, Sellers shall pay all closing costs, including but not limited to preparation of deed, transfer tax, recording cost of deed.

17. NOTICES: Any written notices required to be given under this Agreement shall be personally delivered or mailed to the other Party at the following addresses or to any other place or address designated in writing by one Party to the other:

Sellers:

5 Lyle Lane
Coalport, PA 16627

Buyer:

R. 3309 Elton Road
Johnstown, PA 15904

18. ENTIRE AGREEMENT: This Agreement contains the entire Agreement between the Parties. This Agreement correctly sets forth the obligations of Sellers and Buyer to each other as of its date. Any modification of this Agreement shall be made in writing executed by both parties.

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19. PENNSYLVANIA LAW TO APPLY: This Agreement shall be construed under and in accordance with the laws of the Commonwealth of Pennsylvania.

20. BINDING EFFECT: This Agreement shall be binding on the Parties hereto, their heirs, executors, administrators, successors and assigns.

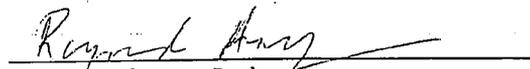
IN WITNESS WHEREOF, the Parties hereto, intending to be legally bounded hereby, have set their hands and seals on the date first written above.

SELLERS:


James E. Shomo


Sandra J. Shomo

BUYER:


Raymond G. Ankney

COMMONWEALTH OF PENNSYLVANIA :

§:

COUNTY OF CLEARFIELD :

On this, the 29th day of JANUARY, 2004, before me, the undersigned officer, personally appeared **JAMES E. SHOMO and SANDRA J. SHOMO**, his wife, 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.

Girard Kasubick

Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Girard Kasubick, Notary Public
Houtzdale Boro, Clearfield County
My Commission Expires June 8, 2007
Member, Pennsylvania Association Of Notaries

COMMONWEALTH OF PENNSYLVANIA :

§:

COUNTY OF CLEARFIELD :

On this, the 29th day of JANUARY, 2004, before me, the undersigned officer, personally appeared **RAYMOND G. ANKNEY**, 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.

Girard Kasubick

Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Girard Kasubick, Notary Public
Houtzdale Boro, Clearfield County
My Commission Expires June 8, 2007
Member, Pennsylvania Association Of Notaries



FIRST Commonwealth

Banking
Insurance
Trust
Financial Management
Investments

First Commonwealth Bank
Central Offices: Indiana, PA 15701-0400

Official Check

946244

60-682
433

February 5, 2004

Date

Pay to the
Order of

Clearfield Bank & Trust Company

\$ 22,339.94

THE SUM OF 22,339 and 94/100

Raymond G. Ankney
Remitter

Edward [Signature]
Authorized Signature

⑈0946244⑈ ⑆043306826⑆ 00 1990020 8⑈

EXHIBIT "E"

60-1587/313
0603680247

3241

R & S NDING

acct # 304121466

DATE 03/25/04

PAY TO THE ORDER OF Clearfield Bank and Trust \$ 1970.02

One Thousand Nine Hundred Seventy 02/100 DOLLARS

CENWEST
BANK WINEMER OFFICE
Member FDIC WINEMER PA 15603

MEMO Payments Remittance Randy

⑆03⑆⑆15874⑆ 06 03680247⑆ 324⑆ ⑆0000197002⑆

my payment to Clearfield Bank

EXHIBIT "F"

JAMES A. NADDEO
ATTORNEY AT LAW
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

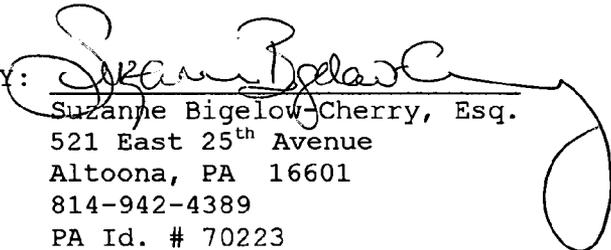
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, CLEARFIELD, PA
CIVIL DIVISION

RAYMOND G. ANKNEY, :
PLAINTIFF :
 :
vs. : No. 04-1391-CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
DEFENDANTS :

NOTICE TO PLEAD

In accordance with Rules 1026 and 1361 of the Pennsylvania Rules of Civil Procedure, you are hereby notified to plead to the within NEW MATTER within twenty (20) days from service hereof or a Default Judgment may be entered against you.

BY: 
Suzanne Bigelow Cherry, Esq.
521 East 25th Avenue
Altoona, PA 16601
814-942-4389
PA Id. # 70223

FILED ^{NO}CC
6/11/04
JAN 14 2005
William A. Shaw
Prothonotary/Clerk of Courts

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

RAYMOND G. ANKNEY, :
PLAINTIFF :
 :
vs. : No. 04-1391-CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
DEFENDANTS :

ANSWER TO AMENDED COMPLAINT
AND NEW MATTER

AND NOW comes Defendant, Sandra J. Shomo, by and through her Attorney, Suzanne Bigelow-Cherry, Esq., and files the following Answer and New Matter to Plaintiff's Amended Complaint:

1. Admitted.

2. Admitted in part; denied in part. Defendant/Wife, Sandra J. Shomo, lives at 5 Lyle Lane, Coalport, PA. Defendant/Husband, James E. Shomo, lives at 140 Shomo Road, Fallentimber, PA 16639.

3. Admitted.

4. Admitted in part; denied in part. Admit loan was made, but paid off by Defendants.

COUNT I

5. Paragraph No. 5 is an incorporation paragraph, and no response is required. Defendant/Wife incorporates answers 1-4.

6. Admitted that the document was executed by Defendant/Wife, Sandra J. Shomo.

7. Admitted in part; denied in part. Admit only that original Agreement called for repayment or transfer within six

months. However, Plaintiff gave Defendants extensions; and this Agreement was rescinded and replaced by a subsequent Agreement. Therefore, the Agreement is null and void.

8. Admitted in part; denied in part. Admit Defendant/Wife signed Exhibit "B". However, Plaintiff gave Defendants an extension; and this Agreement was rescinded and replaced by a subsequent Agreement.

9. Denied as stated. Defendant/Wife did request repayment but never requested transfer of liquor license.

10. Denied as stated. Defendant/Wife offered payments, which were refused. Plaintiff never requested or intended transfer of liquor license.

WHEREFORE, Defendant/Wife respectfully requests Plaintiff's Complaint be dismissed. Furthermore, no document or paragraph avers entitlement to interest.

COUNT II

11. Paragraph No. 11 is an incorporation paragraph, and no response is required. Defendant/Wife incorporates her prior answers to Numbers 1 - 4.

12. Admitted.

13. Denied as stated.

14. Admitted.

15. Denied as stated. Defendant/Wife offered payments, which were refused.

WHEREFORE, the Defendant/Wife respectfully requests Plaintiff's Complaint be dismissed. Furthermore, no document or paragraph avers entitlement to interest.

COUNT III

16. Paragraph No. 16 is an incorporation paragraph, and no response is required. Defendant/Wife incorporates her prior answers to numbers 1 - 4.

17. Denied as stated. Per the Agreement, Plaintiff was to pay off the judgment plus interest, costs, attorney fees and Sheriff costs. Plaintiff was not to "reconcile" the loan, but tender payment in full.

18. Denied as stated. It is believed that the amount was not solely for overdue mortgage payment.

19. Admitted.

20. Denied. On the contrary, the Plaintiff only cured the default but did not pay off the mortgage as required by the Agreement. The payment of the mortgage, judgment, interest, costs and fees was a prerequisite to sale of any property. Defendants subsequently paid off the mortgage.

21. Denied as stated. On the contrary, Plaintiff has refused payments; and Plaintiff is not entitled to transfer any property due to his failure to pay the mortgage, judgment and costs in full as required.

22. Denied as stated. On the contrary, Plaintiff has refused payments; and Plaintiff is not entitled to transfer any

property due to his failure to pay the mortgage, judgment and costs in full as required.

WHEREFORE, the Defendant/Wife requests Plaintiff's Complaint be dismissed. Furthermore, no document or paragraph avers entitlement to interest.

COUNT IV

23. Paragraph No. 23 is an incorporation paragraph and no response is required. Defendant/Wife incorporates her prior answers 1 - 4.

24. Denied. On the contrary, Defendant/Wife made no request for payment; nor did she have knowledge thereof at the time payment was allegedly made.

25. Denied.

26. Denied.

27. Denied as stated. Defendant/Wife has no knowledge of these payments and denies any loan being made.

WHEREFORE, the Defendant/Wife requests Plaintiff's Complaint be dismissed. Furthermore, no document or paragraph avers entitlement to interest.

COUNT V

28. Denied as stated. Defendant, Sandra J. Shomo, did not request the alleged payments in Counts I through IV of the Amended Complaint. As stated herein, Defendant did not know or acquiesce in all of the alleged payments. Furthermore, Plaintiff was given the option to purchase the property and liquor license, but failed to perform the condition precedent.

29. Admitted in part; denied in part. Defendant admits she received a benefit; however, the Plaintiff contracted for his benefit and failed to perform the condition precedent. This was a risk he knowingly and willingly assumed with the advice of counsel.

30. Denied as stated. The Plaintiff contracted for his benefit and failed to perform the condition precedent.

31. Legal conclusion; no response is deemed necessary. If a response is deemed necessary, the same is denied.

32. Denied as stated. Defendant, Sandra J. Shomo, contests the amount claimed. Plaintiff contracted for his benefit and failed to perform the condition precedent.

WHEREFORE, the Defendant/Wife respectfully requests Plaintiff's Complaint be dismissed. Furthermore, no document or paragraph avers entitlement to interest.

NEW MATTER

By way of further and more complete Answer, the Defendant/Wife avers the following:

33. Contrary to Plaintiff's averment, the Plaintiff was to pay off the entire mortgage plus interest, costs, attorney fees and Sheriff costs.

34. Exhibit "D" estimates that the amount to pay these items off would be in excess of \$100,000.00.

35. Exhibit "D" rescinded and replaced the prior Agreements of the parties, to wit, Exhibits "A", "B" and "C".

36. Plaintiff never paid off the Clearfield Bank and Trust mortgage. This was a prerequisite to any sale or transfer of the real property, liquor license, equipment or trade name and goodwill.

37. On the contrary, Defendants personally paid off the Clearfield Bank and Trust mortgage; and that mortgage is now satisfied.

38. Exhibit "D" did not address Defendants' obligation to repay Plaintiff in the event Plaintiff did not pay off the mortgage in full.

39. Exhibit "D" did not require repayment of Plaintiff if Plaintiff failed to pay off the mortgage in full, as required.

40. Exhibit "D" rescinded Exhibits "A", "B" and "C"; and, therefore, said Agreements are null and void.

41. No document attached to Plaintiff's Complaint obligates Defendants to pay Plaintiff interest.

42. Plaintiff has failed to state to a claim for which relief can be granted.

43. Defendant raised the affirmative defenses of illegality, impossibility, failure of consideration, estoppel and laches.

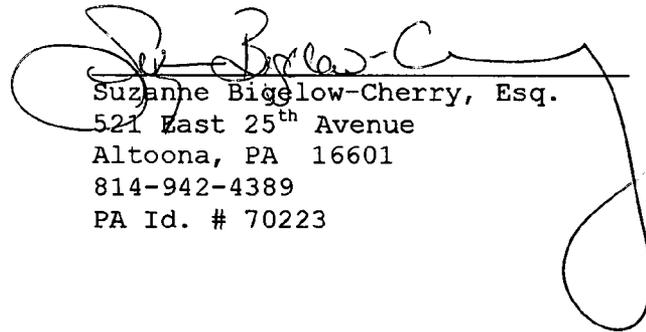
44. Plaintiff contracted for his benefit and failed to perform the condition precedent to fulfill the contract.

45. Plaintiff voluntarily assumed this risk knowingly and willing and assumed with the advice of counsel.

46. Due to Plaintiff's own failure, he has forfeited any sums remitted.

WHEREFORE, Defendant/Wife respectfully Plaintiff's Complaint be dismissed. Furthermore, no document or paragraph avers entitlement to interest.

Respectfully submitted,

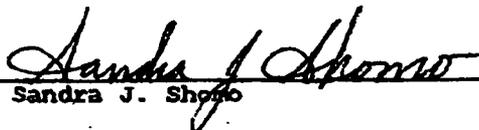


Suzanne Bigelow-Cherry, Esq.
521 East 25th Avenue
Altoona, PA 16601
814-942-4389
PA Id. # 70223

VERIFICATION

I, SANDRA J. SHOMO, do hereby verify that I have read the within ANSWER TO AMENDED COMPLAINT AND NEW MATTER and acknowledge that the statements therein are true and correct to the best of my personal knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.



Sandra J. Shomo

Dated: 7 day of January, 2005

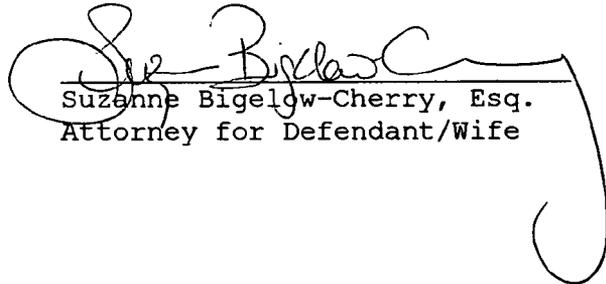
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, CLEARFIELD, PA
CIVIL DIVISION

RAYMOND G. ANKNEY, :
PLAINTIFF :
 :
vs. : No. 04-1391-CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
DEFENDANTS :

CERTIFICATE OF SERVICE

I do hereby certify that on this 13th day of January, 2005,
a true and correct copy of the within ANSWER TO AMENDED COMPLAINT
AND NEW MATTER was served upon the following by United States
first class mail, postage prepaid:

James A. Naddeo, Esq.
207 E. Market Street
P. O. Box 552
Clearfield, PA 16830
(Attorney for Plaintiff)


Suzanne Bigelow-Cherry, Esq.
Attorney for Defendant/Wife

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

No. 04 - 1391 - CD

ANSWER TO NEW MATTER

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

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JAN 25 2005

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Att. Naddeo

William A. Shoo
Prothonotary/Clerk of Courts

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

RAYMOND G. ANKNEY, :
Plaintiff :
 :
v. : No. 04 - 1391- CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
Defendants :

ANSWER TO NEW MATTER

NOW COMES Plaintiff, Raymond G. Ankney, by and through his attorney, James A. Naddeo, and sets for the following:

33. States a conclusion to which no answer is required. All agreements between the parties speak for themselves.

34. States a conclusion to which no answer is required. The agreement between the parties speaks for itself.

35. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is denied.

36. Admitted in so far as it states that Plaintiff did not pay off the Clearfield Bank & Trust Company. In further answer thereto, it is alleged that Defendants prevented Plaintiff from doing so. The remainder of said allegation states a conclusion of law to which no answer is required. To

the extent that an answer may be required, it is alleged that the agreement between the parties speaks for itself.

37. Admitted but in further answer thereto, it is alleged that Plaintiff did not pay off the mortgage because he was prohibited from doing so by the Defendants.

38. States a conclusion to which no answer is required. To the extent that an answer may be required, it is alleged that the agreement between the parties speaks for itself.

39. States a conclusion to which no answer is required. To the extent that an answer may be required, it is alleged that the agreement between the parties speaks for itself.

40. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is denied.

41. States a conclusion of law to which no answer is required. To the extent that an answer may be required, said allegation is denied.

42. States a conclusion of law to which no answer is required.

43. States a conclusion of law to which no answer is required.

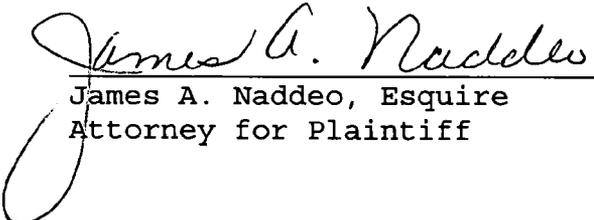
44. States a conclusion to which no answer is required. To the extent that an answer may be required, it is alleged that in the event it is determined from the contractual agreement between the parties that Plaintiff was to perform a condition precedent, the failure of said precedent was caused by the Defendants.

45. Paragraph 45 is generally unintelligible. To the extent that this allegation implies that Plaintiff had the advice of counsel during his dealings with the Defendants, said allegation is denied.

45. States a conclusion of law to which no answer is required.

WHEREFORE, Plaintiff demands judgment as set forth in his Complaint.

Respectfully submitted,

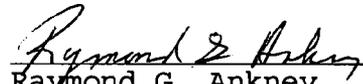

James A. Naddeo, Esquire
Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF CLEARFIELD)

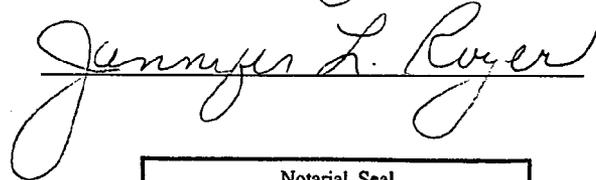
SS. 199-30-3011

Before me, the undersigned officer, personally appeared RAYMOND G. ANKNEY, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Answer to New Matter are true and correct to the best of his knowledge, information and belief.

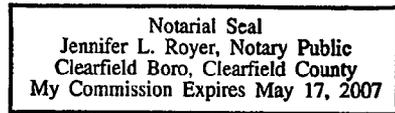


Raymond G. Ankney

SWORN and SUBSCRIBED before me this 25th day of January 2005.



Jennifer L. Royer



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

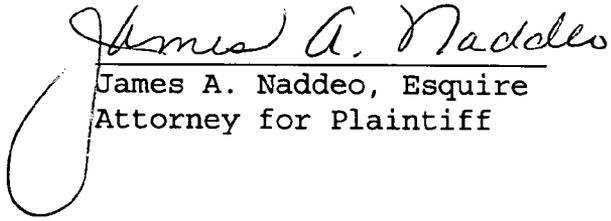
RAYMOND G. ANKNEY, :
Plaintiff :
 :
v. : No. 04 - 1391 - CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
Defendants :

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Answer to New Matter filed in the above-captioned action was served on the following person and in the following manner on the 25th day of January, 2005:

First-Class Mail, Postage Prepaid

Suzanne Bigelow-Cherry, Esquire
521 East 25th Avenue
Altoona, PA 16601


James A. Naddeo, Esquire
Attorney for Plaintiff

JAMES A. NADDEO
ATTORNEY AT LAW
207 EAST MARKET STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

No. 04 - 1391 - CD

CERTIFICATE OF SERVICE

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED

FEB 08 2005

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William A. Shaw
Prothonotary

no c/c

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

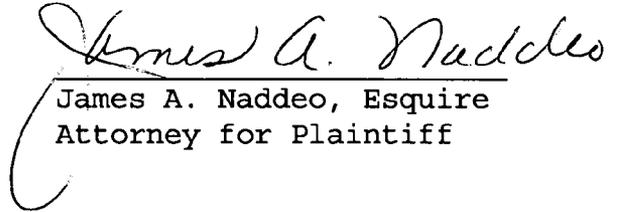
RAYMOND G. ANKNEY, :
Plaintiff :
 :
v. : No. 04 - 1391 - CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
Defendants :

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Notice of Taking Deposition of Sandra J. Shomo in the above-captioned action was served on the following person and in the following manner on the 8th day of February, 2005:

First-Class Mail, Postage Prepaid

Suzanne Bigelow-Cherry, Esquire
521 East 25th Avenue
Altoona, PA 16601


James A. Naddeo, Esquire
Attorney for Plaintiff

JAMES A. NADDEO
ATTORNEY AT LAW
207 EAST MARKET STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

No. 04 - 1391 - CD

CERTIFICATE OF SERVICE

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

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William A. Shaw
Prothonotary
no c/c

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

RAYMOND G. ANKNEY, :
Plaintiff :
 :
v. : No. 04 - 1391 - CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
Defendants :

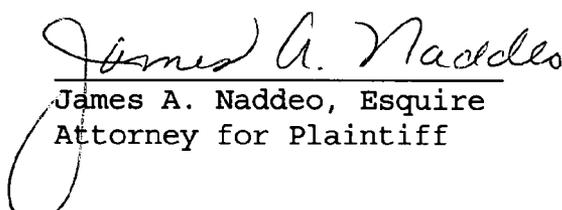
CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Notice of Taking Deposition of James E. Shomo in the above-captioned action was served on the following person and in the following manner on the 8th day of February, 2005:

First-Class Mail, Postage Prepaid

Suzanne Bigelow-Cherry, Esquire
521 East 25th Avenue
Altoona, PA 16601

Mr. James E. Shomo
140 Shomo Road
Fallentimber, PA 16639


James A. Naddeo, Esquire
Attorney for Plaintiff

JAMES A. NADDEO
ATTORNEY AT LAW
207 EAST MARKET STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

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FILED

FEB 08 2005

William A. Shaw
Prothonotary

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

No. 04 - 1391 - CD

CERTIFICATE OF SERVICE

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

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William A. Shaw
Prothonotary/Clerk of Courts

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

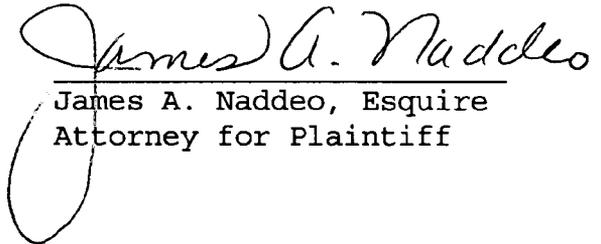
RAYMOND G. ANKNEY, :
Plaintiff :
 :
v. : No. 04 - 1391 - CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
Defendants :

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Notice of Taking Deposition of Sandra J. Shomo in the above-captioned action was served on the following person and in the following manner on the 12th day of April, 2005:

First-Class Mail, Postage Prepaid

Suzanne Bigelow-Cherry, Esquire
521 East 25th Avenue
Altoona, PA 16601


James A. Naddeo, Esquire
Attorney for Plaintiff

JAMES A. NADDEO
ATTORNEY AT LAW
207 EAST MARKET STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

No. 04 - 1391 - CD

Motion for Summary Judgment

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

GK FILED ICC
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JUN 06 2005

William A. Shaw
Prothonotary/Clerk of Courts

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

No. 04 - 1391 - CD

MOTION FOR SUMMARY JUDGMENT

Plaintiff, RAYMOND G. ANKNEY, by his attorney, James A. Naddeo, Esquire, respectfully moves this Court to enter Summary Judgment pursuant to Pa.R.C.P. 1035.1 et. seq., for the relief requested in Plaintiff's Complaint, and in support thereof avers as follows:

1. The pleadings are closed and time exists within which to dispose of this motion without delaying trial.
2. The pleadings, depositions, answers to interrogatories, admissions and affidavits filed of record show that there is no genuine issue of material fact to be tried.
3. Plaintiff is entitled to judgment as a matter of law.

WHEREFORE, Plaintiff RAYMOND G. ANKNEY, respectfully requests that this Court enter Summary Judgment in favor of Plaintiff and against Defendants in the amount of \$36,779.75 with interest as allowable by law, plus costs.


James A. Naddeo, Esq.
Attorney for Plaintiff

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

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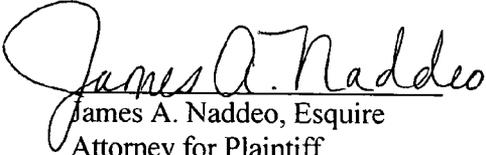
No. 04 - 1391 - CD

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Plaintiff's Motion for Summary Judgment filed in the above-captioned action was served on the following person and in the following manner on the 6th day of June, 2005:

First-Class Mail, Postage Prepaid

Suzanne Bigelow-Cherry, Esquire
521 East 25th Avenue
Altoona, PA 16601


James A. Naddeo, Esquire
Attorney for Plaintiff

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

No. 04 - 1391 - CD

**Proposed Order for
Summary Judgment**

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

:
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No. 04 - 1391 - CD

ORDER

AND NOW, this _____ day of _____, 2005, a motion having been made by Plaintiff for summary judgment in its favor, and after a hearing and on consideration of the pleadings, affidavits, depositions and arguments of counsel, it is ORDERED that the motion is granted, and that summary judgment is entered in favor of the Plaintiff and against Defendant Sandra J. Shomo for \$36,779.75 plus interest as allowable by law and costs.

By the Court,

J.

JAMES A. NADDEO
ATTORNEY AT LAW
207 EAST MARKET STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

No. 04 - 1391 - CD

Scheduling Order

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED *icc*
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JUN 09 2005 *Naddeo*

William A. Shaw 
Prothonotary/Clerk of Courts

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

No. 04 - 1391 - CD

ORDER

AND NOW, this 9th day of ~~April~~ ^{JUNE} ~~April~~, 2005, it is the ORDER of this Court that Plaintiff's Motion for Summary Judgment is scheduled for the 13th day of July, 2005, at 2:00 p.m. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



J.

JAMES A. NADDEO
ATTORNEY AT LAW
207 EAST MARKET STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

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

RAYMOND G. ANKNEY,
PLAINTIFF

vs.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
DEFENDANTS

:
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No. 04-1391-CD

TITLE OF PLEADING:

Defendant's Reply to Plaintiff's
Motion for Summary Judgment

COUNSEL FOR PLEADING:

Suzanne Bigelow-Cherry, Esq.
521 East 25th Avenue
Altoona, PA 16601
814-942-4389
Supreme Court ID # 70223

COUNSEL OF OPPOSING PARTY:

James A. Naddeo, Esq.
P. O. Box 552
Clearfield, PA 16830

FILED
013:08/6/1
JUN 27 2005 @

William A. Shaw
Prothonotary/Clerk of Courts

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

RAYMOND G. ANKNEY, :
Plaintiff :
 :
vs. : No. 04-1391-CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
Defendants :

DEFENDANT, SANDRA J. SHOMO'S REPLY TO
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

AND NOW comes Defendant, Sandra J. Shomo, by and through her Attorney, Suzanne Bigelow-Cherry, Esq., and files the following Reply to Plaintiff's Motion for Summary Judgment:

1.

Defendant admits that the pleadings are closed, but denies that this matter can be disposed of without an evidentiary hearing due to the existence of a genuine issue of material fact.

2.

Denied. On the contrary, Defendant, Sandra J. Shomo, is unaware of any documents filed in support of Plaintiff's Motion other than the Motion for Summary Judgment and pleadings. The instant action was originally pled as a Breach of Contract action solely. Defendant, Sandra J. Shomo, filed an Answer thereto raising meritorious defenses to the action asserting the Plaintiff had not fulfilled the conditions precedent required under the contract. The Plaintiff then obtained leave to amend the Complaint, adding a claim for unjust enrichment.

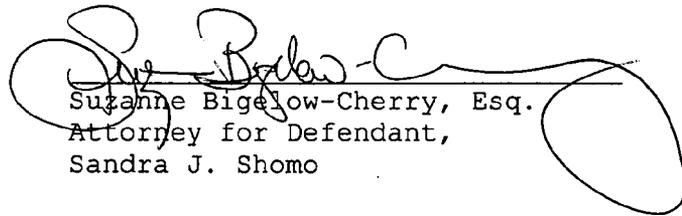
The doctrine of unjust enrichment is an equitable remedy which the Court will need to hear testimony on, as well as testimony relative to the calculation of damages.

3.

Denied. For the reasons set forth above, the Plaintiff is not entitled to judgment as a matter of law; and this matter should be scheduled for a brief evidentiary hearing on the merits.

WHEREFORE, the Defendant, Sandra J. Shomo, respectfully requests the Motion be denied and the matter proceed to a brief evidentiary hearing.

Respectfully submitted,



Suzanne Bigelow-Cherry, Esq.
Attorney for Defendant,
Sandra J. Shomo

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

RAYMOND G. ANKNEY,
PLAINTIFF

vs.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
DEFENDANTS

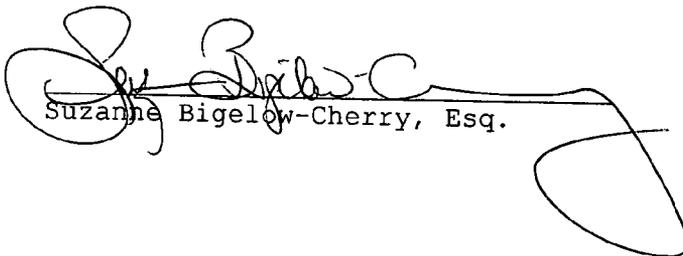
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No. 04-1391-CD

CERTIFICATE OF SERVICE

I do hereby certify that on this 27th day of June, 2005, a true and correct copy of the within REPLY TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT was served upon the following by United States first class mail, postage prepaid:

James A. Naddeo, Esq.
P. O. Box 552
Clearfield, PA 16830


Suzanne Bigelow-Cherry, Esq.

CA

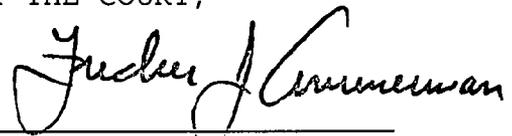
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RAYMOND G. ANKNEY :
VS. : NO. 04-1391-CD
JAMES E. SHOMO and :
SANDRA J. SHOMO :

O R D E R

NOW this 13th day of July, 2005, following argument on Plaintiff's Motion for Summary Judgment, it is the ORDER of this Court that counsel provide the Court with letter brief within no more than fifteen (15) days from today's date.

BY THE COURT,



President Judge

FILED[®]
09:53 AM
JUL 15 2005
icc Atty's:
Naddeo
S. Cherry
William A. Shaw
Prothonotary/Clerk of Courts
icc Def. J. Shomo

A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

RAYMOND G. ANKNEY :
 VS. : NO. 04-1391-CD
 JAMES E. SHOMO and :
 SANDRA J. SHOMO :

O R D E R

NOW this 2nd day of August, 2005, the Court having reviewed the Plaintiff's Motion for Summary Judgment filed against the Defendant Sandra J. Shomo, as well as the parties' briefs and the documents filed with the record; the Court believing that the Plaintiff is entitled to summary judgment, it is hereby the ORDER of this Court that the Motion for Summary Judgment be and is hereby granted. It is the finding of the Court that the said Defendant owes the amount of \$36,779.75 to the Plaintiff. Interest to accrue from the date of September 8, 2004.

BY THE COURT,



President Judge

FILED ^{cc}
 013:43/61
 AUG 04 2005
 1cc Atty Naddeo
 1cc Defs.:
 5 Lyle Lane
 Coalport, PA 16627
 1cc Atty S. Cherry
 8-8-05

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

No. 04 - 1391 - CD

PRAECIPE FOR FINAL
JUDGMENT

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED ^{icc Atty}
011:18 CD Atty pd. 20.00
AUG 08 2005
William A. Shaw ^{Notice to}
Prothonotary/Clerk of Courts ^{Atty S. Cherry}
^{Statement to}
^{Atty Naddeo}

AUG 04 2005

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

RAYMOND G. ANKNEY :
VS. : NO. 04-1391-CD
JAMES E. SHOMO and :
SANDRA J. SHOMO :

O R D E R

NOW this 2nd day of August, 2005, the Court having reviewed the Plaintiff's Motion for Summary Judgment filed against the Defendant Sandra J. Shomo, as well as the parties' briefs and the documents filed with the record; the Court believing that the Plaintiff is entitled to summary judgment, it is hereby the ORDER of this Court that the Motion for Summary Judgment be and is hereby granted. It is the finding of the Court that the said Defendant owes the amount of \$36,779.75 to the Plaintiff. Interest to accrue from the date of September 8, 2004.

BY THE COURT,

/s/ Fredric J. Ammerman

President Judge

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

AUG 04 2005

Attest.

Christine L. Shover
Prothonotary/
Clerk of Courts

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

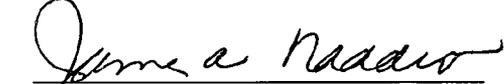
RAYMOND G. ANKNEY, :
Plaintiff :
 :
v. : No. 04 - 1391 - CD
 :
JAMES E. SHOMO and :
SANDRA J. SHOMO, :
Husband and Wife, :
Defendants :

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Plaintiff's Praecipe for Final Judgment filed in the above-captioned action was served on the following person and in the following manner on the 8th day of August, 2005:

First-Class Mail, Postage Prepaid

Suzanne Bigelow-Cherry, Esquire
521 East 25th Avenue
Altoona, PA 16601


James A. Naddeo
Attorney for Plaintiff

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

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No. 04 - 1391- CD

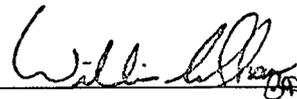
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NOTICE

NOTICE is given that a JUDGMENT in the above captioned matter has been entered against you in the amount of \$36,779.75 with interest from September 8, 2004.

PROTHONOTARY

By


818105

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

 COPY

Raymond G. Ankney
Plaintiff(s)

No.: 2004-01391-CD

Real Debt: \$36,779.75

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

James E. Shomo
Sandra J. Shomo
Defendant(s)

Entry: \$20.00

Instrument: Court-Ordered

Date of Entry: August 8, 2005

Expires: August 8, 2010

Certified from the record this 8th day of August, 2005.

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

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

RAYMOND G. ANKNEY,
Plaintiff

v.

JAMES E. SHOMO and
SANDRA J. SHOMO,
Husband and Wife,
Defendants

No. 04 - 1391 - CD

PRAECIPE TO SATISFY
JUDGMENTS

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED *No cc*
011:25/61 Any pd.
NOV 28 2005 *7.00*

William A. Shaw *Cert. of Sat.*
Prothonotary/Clerk of Courts *to Atty*
@

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CERTIFICATE OF SATISFACTION OF JUDGMENT

Raymond G. Ankney

No.: 2004-01391-CD

Vs.

Debt: \$36,779.75

James E. Shomo
Sandra J. Shomo

Atty's Comm.:

Interest From:

Cost: \$7.00

NOW, Monday, November 28, 2005 , directions for satisfaction having been received,
and all costs having been paid, SATISFACTION was entered of record.

Certified from the record this 28th day of November, A.D. 2005.

Prothonotary

 COPY