

04-1831-CD
ROSS KEITH SALINE, et al. vs. PAUL A. KOSTANEK, et al.

Ross Keith et al vs Paul Kostanek et al
2004-1831-CD

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: CLEARFIELD

Mag. Dist. No.:

46-3-01

DJ Name: Hon.

PATRICK N. FORD
Address: **309 MAPLE AVENUE**
P.O. BOX 452
DUBOIS, PA

Telephone: **(814) 371-5321** 15801

PATRICK N. FORD
309 MAPLE AVENUE
P.O. BOX 452
DUBOIS, PA 15801

**NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE**

PLAINTIFF:

SALINE, ROSS KEITH, ET AL.
889 TREASURE LAKE
DUBOIS, PA 15801

NAME and ADDRESS

DEFENDANT:

KOSTANSEK, PAUL A, ET AL.
1671 TREASURE LAKE
DUBOIS, PA 15801

NAME and ADDRESS

Docket No.: **CV-0000423-04**
Date Filed: **8/27/04**



04-1831-CD

THIS IS TO NOTIFY YOU THAT:

Judgment:

DEFAULT JUDGMENT PLTF

Judgment was entered for: (Name) **SALINE, ROSS KEITH, ET AL.**

Judgment was entered against: (Name) **KOSTANSEK, AMY M**

in the amount of \$ **5,128.50** on: (Date of Judgment) **11/01/04**

Defendants are jointly and severally liable. (Date & Time) _____

Damages will be assessed on:

This case dismissed without prejudice **FILED** *6/1/38* *6/1/38*
DEC 02 2004

Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127 \$ **William A. Shaw**

Portion of Judgment for physical damages arising out of residential lease \$ _____

Amount of Judgment	\$ 5,000.00
Judgment Costs	\$ 128.50
Interest on Judgment	\$.00
Attorney Fees	\$.00
Total	\$ 5,128.50
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
Certified Judgment Total \$ _____	

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

EXCEPT AS OTHERWISE PROVIDED IN THE RULES OF CIVIL PROCEDURE FOR DISTRICT JUSTICES, IF THE JUDGMENT HOLDER ELECTS TO ENTER THE JUDGMENT IN THE COURT OF COMMON PLEAS, ALL FURTHER PROCESS MUST COME FROM THE COURT OF COMMON PLEAS AND NO FURTHER PROCESS MAY BE ISSUED BY THE DISTRICT JUSTICE.

UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE DISTRICT JUSTICE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

11-1-04 Date *Patrick N. Ford - PNF*, District Justice

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

Date _____, District Justice

My commission expires first Monday of January, **2006**

SEAL

AOPC 315-03

DATE PRINTED: **11/01/04 8:26:11 AM**

COMMONWEALTH OF PENNSYLVANIA

NOTICE OF APPEAL

COURT OF COMMON PLEAS

Clearfield County
JUDICIAL DISTRICT
46-3-01

Honorable Patrick N. Ford

FROM

DISTRICT JUSTICE JUDGMENT

COMMON PLEAS NO.

04-1831-CD

NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case mentioned below.

NAME OF APPELLANT		MAG. DIST. NO. OR NAME OF D.J.		
Amy M. Kostansek		46-3-01		
ADDRESS OF APPELLANT		CITY	STATE	ZIP CODE
1671 Treasure Lake		DuBois	PA	15801
DATE OF JUDGMENT	IN THE CASE OF (Plaintiff) (Defendant)			
11-01-04	Ross Keith Saline, et al vs. Paul A. Kostansek, et al			
CLAIM NO.	SIGNATURE OF APPELLANT OR HIS ATTORNEY OR AGENT			
CV 18 0000423-04 LT 19	MW S Michael Sloat			
This block will be signed ONLY when this notation is required under Pa. R.C.P.J.P. No. 1008B.				
This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.				
Signature of Prothonotary or Deputy				
If appellant was CLAIMANT (see Pa. R.C.P.J.P. No. 1001(6) in action before District Justice, he MUST FILE A COMPLAINT within twenty (20) days after filling his NOTICE of APPEAL.				

PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa. R.C.P.J.P. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee).

PRAECIPE: To Prothonotary

Enter rule upon Ross Keith Saline & Elmira Lorraine Saline, appellee(s), to file a complaint in this appeal
(Name of appellee(s))

(Common Pleas No. 04-1831-CD) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

MW S
Michael Sloat
Signature of appellant or his attorney or agent

RULE: To Ross Keith Saline & Elmira Lorraine Saline, appellee(s).
(Name of appellee(s))

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS WILL BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of mailing.

Date: Nov. 17, 2004

William A. Shaw
Signature of Prothonotary or Deputy

FILED Copies
10/23/04 to Atty Sloat
NOV 17 2004 Atty pd. \$5.00
William A. Shaw
Prothonotary/Clerk of Courts

PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT

(This proof of service MUST BE FILED WITHIN TEN (10) DAYS AFTER filing the notice of appeal. Check applicable boxes)

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF _____ ; ss

AFFIDAVIT: I hereby swear or affirm that I served

a copy of the Notice of Appeal, Common Pleas No. _____, upon the District Justice designated therein on (date of service) _____, by personal service by (certified) (registered) mail, sender's receipt attached hereto, and upon the appellee, (name) _____, on _____, 19_____, by personal service by (certified) (registered) mail, sender's receipt attached hereto.

and further that I served the Rule to File a Complaint accompanying the above Notice of Appeal upon the appellee(s) to whom the Rule was addressed on _____, 19_____, by personal service by (certified) (registered) mail, sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME

THIS _____ DAY OF _____, 19_____

Signature of affiant

Signature of official before whom affidavit was made

Title of official

My commission expires on _____, 19_____

William A. Shaw
Prothonotary/Clerk of Courts

Nov 17 2004

FILED

**NOTICE OF JUDGMENT/TRANSCRIPT
PLAINTIFF CIVIL CASE**

PLAINTIFF: **CIVIL CASE** NAME and ADDRESS
[**SALINE, ROSS KEITH, ET AL.**
889 TREASURE LAKE
DUBOIS, PA 15801

DEFENDANT: VS. NAME and ADDRESS
KOSTANSEK, PAUL A, ET AL.
1671 TREASURE LAKE
DUBOIS, PA 15801

Docket No.: **CV-0000423-04**
Date Filed: **8/27/04**



AMY M. KOSTANSEK
1671 TREASURE LAKE
DUBOIS, PA 15801

THIS IS TO NOTIFY YOU THAT

THE JUDGMENT

DEFALUT JUDGMENT PLAINTIFF

Judgment was entered for: (Name) CATINE, ROSS KEITH, ET AL
 Judgment was entered against: (Name) KOSTANSKY, MARY M

in the amount of \$ **5,128.52** am-

(Date of Judgment) 11/01/04

Defendants are jointly and severally liable

(Date & Time)

<input type="checkbox"/> Defendants are jointly and severally liable.	(Date & Time) _____
<input type="checkbox"/> Damages will be assessed on:	
<input type="checkbox"/> This case dismissed without prejudice.	
<input type="checkbox"/> Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127 \$ _____	
<input type="checkbox"/> Portion of Judgment for physical damages arising out of residential lease \$ _____	
	Amount of Judgment \$ <u>5,000.00</u>
	Judgment Costs \$ <u>128.50</u>
	Interest on Judgment \$ <u>.00</u>
	Attorney Fees \$ <u>.00</u>
	Total \$ <u>5,128.50</u>
	Post Judgment Credits \$ _____
	Post Judgment Costs \$ _____

Amount of Judgment	\$ 5,000.00
Judgment Costs	\$ 128.50
Interest on Judgment	\$.00
Attorney Fees	\$.00
Total	\$ 5,128.50
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
Certified Judgment Total	\$ _____

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL. EXCEPT AS OTHERWISE PROVIDED IN THE RULES OF CIVIL PROCEDURE FOR DISTRICT JUSTICES, IF THE JUDGMENT HOLDER ELECTS TO ENTER THE JUDGMENT IN THE COURT OF COMMON PLEAS, ALL FURTHER PROCESS MUST COME FROM THE COURT OF COMMON PLEAS AND NO FURTHER PROCESS MAY BE ISSUED BY THE DISTRICT JUSTICE. UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE DISTRICT JUSTICE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES OR OTHERWISE COMPLIES WITH THE JUDGMENT.

11-1-04 Date Patrick N. Fowl SGNF , District Justice

I certify that this is a true and correct copy of the record of the proceedings.

My commission expires first Monday of January, 2005.

SEAI

AOPC 315-03

DATE PRINTED: 11/01/04 8:26:11 AM

NOV. 17. 2004 3:43PM LYNN KING SCHREFFLER
COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: CLEARFIELD

NO. 082 P.1

Mag. Distr. No.:

46-3-01

DJ Name: Hgn.

PATRICK N. FORD
309 MAPLE AVENUE
P.O. BOX 452
DUBOIS, PA

Telephone: (814) 371-5321 15801

AMY M. KOSTANSEK
1671 TREASURE LAKE
DUBOIS, PA 15801

NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE

PLAINTIFF:

SALINE, ROSS KEITH, ET AL.
889 TREASURE LAKE
DUBOIS, PA 15801

NAME and ADDRESS

DEFENDANT:

KOSTANSEK, PAUL A, ET AL.
1671 TREASURE LAKE
DUBOIS, PA 15801

VS.

NAME and ADDRESS

Docket No.: CV-0000423-04
Date Filed: 8/27/04



THIS IS TO NOTIFY YOU THAT:

Judgment:

Judgment was entered for: (Name) SALINE, ROSS KEITH, ET AL.

Judgment was entered against: (Name) KOSTANSEK, AMY M

DEFAULT JUDGMENT PLTF

In the amount of \$ 5,128.50 on: (Date of Judgment) 11/01/04

Defendants are jointly and severally liable.

Damages will be assessed on:

This case dismissed without prejudice.

Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127 \$ _____

Portion of Judgment for physical damages arising out of residential lease \$ _____

(Date & Time) _____

Amount of Judgment	\$ 5,000.00
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Total	\$ 5,128.50
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
Certified Judgment Total \$ _____	

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL. EXCEPT AS OTHERWISE PROVIDED IN THE RULES OF CIVIL PROCEDURE FOR DISTRICT JUSTICES, IF THE JUDGMENT HOLDER ELECTS TO ENTER THE JUDGMENT IN THE COURT OF COMMON PLEAS, ALL FURTHER PROCESS MUST COME FROM THE COURT OF COMMON PLEAS AND NO FURTHER PROCESS MAY BE ISSUED BY THE DISTRICT JUSTICE. UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE DISTRICT JUSTICE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

11-1-04 Date Patrick N. Ford, District Justice

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.
Date _____, District Justice

My commission expires first Monday of January, 2006.

AOPC 315-03

DATE PRINTED: 11/01/04 8:26:11 AM

SEAL

, upon the District Justice designated therein on
service by (certified) (registered) mail, sender's
Mrs. Horrane Saline, an
ed mail, sender's receipt attached hereto.
Notice of Appeal upon the appellee(s) to whom
by personal service by (certified) (registered)

Signature of affiant

SWORN (AFFIRMED) AND S^u
2251

THIS 20 DAY OF

Carole J. C. See Ref.

Title of official

My commission expires on: 10 - 3 File No. 005

Notarial Seal
Jeanette L. Johns, Notary Public
Emmorton, Pa. No. 10000
My Comm. 10/1/2005
Member, Pennsylvania Association of Notaries

FILED *NOV 1 34874* *NOV 24 2004*

William A. Shaw
Prothonotary/Clerk of Courts

COMMONWEALTH OF PENNSYLVANIA

COURT OF COMMON PLEAS

Clearfield County
JUDICIAL DISTRICT
46-3-01

Honorable Patrick N. Ford

NOTICE OF APPEAL

FROM

DISTRICT JUSTICE JUDGMENT

COMMON PLEAS NO.

04-1831-CD

NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case mentioned below.

NAME OF APPELLANT	MAG. DIST. NO. OR NAME OF D.J.	
<u>Amy M. Kontanack</u>	46-3-01	STATE
ADDRESS OF APPELLANT	CITY	
<u>1671 Treasure Lake</u>	<u>DuBois</u>	ZIP CODE
DATE OF JUDGMENT	PA (Defendant)	
<u>11-01-04</u>	vs. <u>Ross Keith Saline, et al</u>	
CLAIM NO.	SIGNATURE OF APPELLANT OR HIS ATTORNEY OR AGENT	
<u>CV 19 0000423-04</u>	<u>MW S</u> <u>Michael Sloat</u>	
LT 19		
This block will be signed ONLY when this notation is required under Pa. R.C.P.J.P. No. 1008B.		
This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.		
Signature of Prothonotary or Deputy		

If appellant was CLAIMANT (see Pa. R.C.P.J.P. No. 1001(6) in action before District Justice, he MUST FILE A COMPLAINT within twenty (20) days after filing his NOTICE of APPEAL.

PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa. R.C.P.J.P. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee).

PRAECIPE: To Prothonotary

Enter rule upon Ross Keith Saline & Elmira Lorraine Saline, appellee(s), to file a complaint in this appeal
(Name of appellee(s))

(Common Pleas No. 04-1831-CD) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

MW S

Signature of appellant or his attorney or agent

RULE: To Ross Keith Saline & Elmira Lorraine Saline, appellee(s).
(Name of appellee(s))

Michael Sloat

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS WILL BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of mailing.

Date: Nov. 17, 2004Willie L. Brown
Signature of Prothonotary or Deputy

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

CIVIL COMPLAINT

Mag. Dist. No.:

46-3-01

DJ Name: Hon.

PATRICK N. FORD
Address: **109 NORTH BRADY STREET**
P.O. BOX 452
DUBOIS, PA 15801
Telephone: **(814) 371-5321**

PLAINTIFF:

NAME and ADDRESS

ROSS KEITH SALINE and ELMIRA LORRAINE SALIN
889 Treasure Lake
DuBois PA 15801

VS.

DEFENDANT:

NAME and ADDRESS

PAUL A. KOSTANSEK and AMY M. KOSTANSEK
1671 Treasure Lake
DuBois PA 15801

Docket No.: **CV-423-04**
Date Filed: **8-27-04**



	AMOUNT	DATE PAID
FILING COSTS	\$ <u>128.50</u>	<u>8/27/04</u>
SERVING COSTS	\$ _____	/ /
TOTAL	\$ _____	/ /

TO THE DEFENDANT: The above named plaintiff(s) asks judgment against you for \$ 5,000.00 together with costs upon the following claim (Civil fines must include citation of the statute or ordinance violated):

Amount represents downpayment paid by Plaintiffs to Defendants for purchase of real property of the Defendants, which was negated as a result of the Defendants' failure to abide by the terms and conditions of the parties' agreement of April 6, 2004.

I, Ross Keith Saline verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of Section 4904 of the Crimes Code (18 PA. C.S. § 4904) related to unsworn falsification to authorities.

(Signature of Plaintiff or Authorized Agent)

Plaintiff's Attorney: Benjamin S. Blakley, III Address: 90 Beaver Drive, Box 6

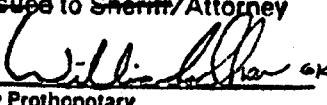
Telephone: (814) 371-2730 DuBois PA 15801

IF YOU INTEND TO ENTER A DEFENSE TO THIS COMPLAINT, NOTIFY THIS OFFICE IMMEDIATELY AT THE ABOVE TELEPHONE NUMBER. YOU MUST APPEAR AT THE HEARING AND PRESENT YOUR DEFENSE. UNLESS YOU DO, JUDGMENT WILL BE ENTERED AGAINST YOU BY DEFAULT.

If you have a claim against the plaintiff which is within district justice jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office at least five (5) days before the date set for the hearing. If you have a claim against the plaintiff which is not within district justice jurisdiction, you may request information from this office as to the procedures you may follow. If you are disabled and require assistance, please contact the Magisterial District office at the address above.

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

ROSS KEITH SALINE and) NO. 04-1831 C.D.
ELMIRA LORRAINE SALINE,)
Plaintiffs,) Type of Case: CIVIL ACTION
vs.)
AMY M. KOSTANSEK,) Type of Pleading:
Defendant.) COMPLAINT
)
) Filed on Behalf of:
) PLAINTIFFS
)
) Counsel of Record:
) BENJAMIN S. BLAKLEY, III, ESQ.
) Supreme Court no. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) Du Bois, Pa 15801
) (814) 371-2730

2-24-05 Document
Reinstated/Reissued to Sheriff/Attorney
for service.

William A. Shaw
Deputy Prothonotary

FILED 3CC
08/4/2004 Atty Blakley
DEC 10 2004 E61C

William A. Shaw
Prothonotary/Clerk of Courts

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

ROSS KEITH SALINE and ELMIRA) NO. 04-1831-C.D.
LORRAINE SALINE,)
)
Plaintiffs,)
)
vs.)
)
AMY M. KOSTANSEK,)
)
Defendant.)

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint is 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 an order may be entered against you by the Court without further notice for any money claimed in the Complaint requested by 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.

David S. Meholick,
Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814) 765-2641

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

ROSS KEITH SALINE and ELMIRA) NO. 04-1831-C.D.
LORRAINE SALINE,)
)
Plaintiffs,)
)
vs.)
)
AMY M. KOSTANSEK,)
)
Defendant.)

COMPLAINT

AND NOW come Plaintiffs, **ROSS KEITH SALINE and ELMIRA LORRAINE SALINE**, by and through their attorneys, **BLAKLEY & JONES**, and file the following Complaint, of which the following is a statement:

1. The Plaintiffs, **ROSS KEITH SALINE and ELMIRA LORRAINE SALINE** are adult individuals, husband and wife, residing at 889 Treasure Lake, DuBois, Clearfield County, Pennsylvania, 15801.
2. Defendant is **AMY M. KOSTANSEK**, an adult individual, residing at 1671 Treasure Lake, DuBois, Clearfield County, Pennsylvania, 15801.
3. At all times material hereto, the Defendant, along with her husband, Paul A. Kostansek, were the owners of real property located at Section 10, Lot 83, Treasure Lake Subdivision, Sandy Township, Clearfield County, Pennsylvania.

4. By Agreement dated April 6, 2004, and executed by the Plaintiffs on April 12, 2004, the Plaintiffs did offer to purchase the real property of the Defendant located at Section 10, Lot 83, Treasure Lake Subdivision, Sandy Township, Clearfield County, Pennsylvania, for the sum of \$268,000.00. A copy of said Agreement is attached hereto and made a part hereof and marked as Exhibit A.

5. The said written Agreement/offer to purchase was prepared by the Defendant and her husband.

6. At the time of their execution of the said offer to purchase the said real property, the Plaintiffs did tender to the Defendant and her husband the sum of \$5,000.00, representing earnest money for the sale of the real property.

7. Pursuant to the terms of the said Agreement/offer for the sale of real estate, the Defendant and her husband were to provide written approval of the Plaintiffs' offer to purchase said real property on or before April 20, 2004.

8. On May 1, 2004, the Defendant, **AMY M. KOSTANSEK**, did deliver the written approval of the Plaintiffs' offer to purchase the subject real property to the Plaintiffs at their residence, said delivery of written approval coming twelve (12) days beyond the time period set forth for written approval in the parties' Agreement/offer for the sale of real estate.

9. Under the terms of the said Agreement prepared by the Plaintiffs, at all times referred to in the Agreement for the performance of any of the obligations of the Agreement were be of the essence.

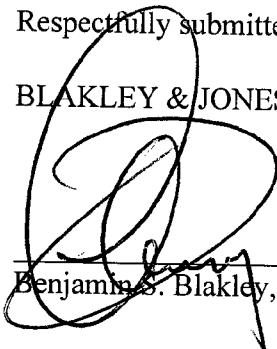
10. The failure of the Defendant and her husband to provide written approval to the Plaintiffs of their offer to purchase the subject real property on or before April 20, 2004, constituted a rejection of Plaintiff's offer to purchase, thereby entitling the Plaintiffs to the return of their \$5,000.00 earnest money.

11. Despite repeated requests, Defendant has failed and refused to return the Plaintiffs' earnest money which is due and owing the Plaintiffs as a result of the breach of the Defendant and her husband in the fulfillment of their obligations under the Agreement/offer for the sale of real estate dated April 6, 2004.

WHEREFORE, Plaintiffs demand judgment in their favor and against the Defendant, **AMY M. KOSTANSEK**, in the amount of \$5,000.00, together with interest from April 20, 2004, and costs of suit.

Respectfully submitted,

BLAKLEY & JONES


Benjamin S. Blakley, III

VERIFICATION

We, **ROSS KEITH SALINE** and **ELMIRA LORRAINE SALINE**, hereby state that we are the Plaintiffs in this action and verify that the statements made in the foregoing Complaint are true and correct to the best of our knowledge, information, and belief. We understand that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 12-9-04


ROSS KEITH SALINE

Dated: 12/9/04


ELMIRA LORRAINE SALINE

AGREEMENT FOR THE SALE OF REAL ESTATE

1. THIS AGREEMENT, dated APRIL 6, 2004, is between:
SELLER(S): PAULA KOSTANSEK AND AMY M. KOSTANSEK, HUSBAND AND WIFE, BOTH OF 1671 TREASURE LAKE, DUBOIS, PA 15801, called "Seller", and
BUYER(S): ROSS KEITH SALINE AND ELMIRA LORRAINE SALINE, HUSBAND AND WIFE, BOTH OF 229 TREASURE LAKE, DUBOIS, PA 15801, called "Buyer".

2. PROPERTY. Seller hereby agrees to sell and convey to the Buyer, who hereby agrees to purchase: ALL THAT CERTAIN lot or piece of ground with buildings and improvements thereon erected, if any, known as: SECTION 10, LOT 83, in the TOWNSHIP of SANDY, County of CLEARFIELD, in the Commonwealth of Pennsylvania, Identification (e.g., Tax ID#, Parcel #, Lot, Block; Deed Book, Page, Recording Date): INSTRUMENT # 200313697 UNDER DATE OF 8/1/2003

3. TERMS

(A) Purchase Price: Two hundred sixty-eight thousand - Dollars which will be paid to Seller by Buyer as follows:

(B) Cash or check at signing this Agreement: \$ 5,000.00

(C) Cash or check within _____ days of the execution of this Agreement: \$ _____

(D) Cash, cashier's or certified check at time of settlement: \$ _____

(E) Cash, cashier's or certified check at time of settlement: \$ 263,000.00

(F) Deposits paid on account of purchase price will be held by the law firm of Lynn, King & Schreffler, unless otherwise stated here: _____

(G) Seller's written approval to be on or before: APRIL 20, 2004.

(H) Settlement to be made on or before: JUNE 30, 2004.

(I) Conveyance from Seller will be by fee simple deed of general warranty unless otherwise stated here: _____

(J) Payment of transfer taxes will be divided equally between Buyer and Seller unless otherwise stated here: BUYER WILL PAY TREASURE LAKE BOAT TRANSFER SEE.

(K) At the time of settlement, the following will be adjusted pro-rata on a daily basis between Buyer and Seller, reimbursing where applicable: taxes; rents; interest on mortgage assumptions; condominium fees and homeowner association fees, if any; water and/or sewer fees, if any, together with any other lienable municipal service. The charges are to be pro-rated for the period(s) covered: Seller will pay up to and including the date of settlement; the Buyer will pay for all days following settlement unless otherwise stated here: _____

4. FIXTURES & PERSONAL PROPERTY

(A) INCLUDED in this sale and purchase price are all existing items permanently installed in the Property, free of liens, including plumbing; heating; lighting fixtures (including chandeliers and ceiling fans); water treatment systems; pool and spa equipment; garage door openers and transmitters; television antennas; shrubbery, plantings and unpoled trees; any remaining heating and cooking fuels stored on the Property at the time of settlement; wall to wall carpeting; window covering hardware, shades, blinds; built-in air conditioners; built-in appliances; and the range/oven unless otherwise stated. Also included: _____

(B) LEASED items (items now owned by Seller): _____

(C) EXCLUDED fixtures and items: POOL TABLE LIGHT, WASHER AND DRYER

5. SPECIAL CLAUSES

Buyer has received the Seller's Property Disclosure Statement before signing this Agreement, if required by law. (See Notice, Information Regarding the Seller's Property Disclosure Act).

Sale & Settlement of Other Property Contingency Addendum

Sale & Settlement of Other Property Contingency with Right to Continue Marketing Addendum

Settlement of Other Property Contingency Addendum

Tenant-Occupied Property Addendum

SALE IS CONTINGENT ON HOME APPRAISING AT A VALUE AT LEAST EQUAL UPON ROOF AND INTERIOR WATER, TO SALE PRICE.

DAMAGE REPAIR.

6. MORTGAGE CONTINGENCY

WAIVED. This sale is NOT contingent on mortgage financing.

ELECTED.

(A) This sale is contingent upon Buyer obtaining mortgage financing as follows:

1. Amount of mortgage loan: _____
2. Minimum Term _____ years
3. Type of mortgage: _____
4. Interest rate _____ %; however, Buyer agrees to accept the interest rate as may be committed by the mortgage lender, not to exceed a maximum interest rate of _____ %.
5. Discount points, loan origination, loan placement and other fees charged by the lender as a percentage of the mortgage loan (excluding any mortgage insurance premiums or VA funding fee) not to exceed _____ % of the mortgage loan. The interest rate and fees provision required by Buyer are satisfied if a mortgage lender makes available to the Buyer the right to guarantee an interest rate at or below the Maximum Interest

EXHIBIT

tabbies

A

Rate specified herein with the percentage fees at or below the amount specified herein. Buyer gives Seller the right, at Seller's sole option and as permitted by the lending institution and applicable laws, to contribute financially, without promise of reimbursement, to the Buyer and/or lender to make the above terms available to Buyer.

(B) Within 10 days of the execution of this Agreement, Buyer will make a completed, written mortgage application to a responsible mortgage lending institution.

(C) 1. Upon receipt of a mortgage commitment, Buyer will promptly deliver a copy of the commitment to Seller.

2. Mortgage Commitment Date: _____ If a written commitment date is not received by Seller by the above date, **Buyer and Seller agree to extend the commitment date until Seller terminates this Agreement in writing.**

3. Seller has the option to terminate this Agreement in writing, on or after the mortgage commitment date, if the mortgage commitment:

a. Is not valid until the date of settlement, OR

b. Is conditioned upon the sale and settlement of any other property, OR

c. Contains any other condition not specified in this Agreement.

4. In the event that Seller does not terminate this Agreement as provided above, Buyer has the option to terminate this Agreement in writing if the mortgage commitment:

a. Is not obtained by or valid until the date of settlement, OR

b. Is conditioned upon the sale and settlement of any other property which do not occur by the date of settlement, OR

c. Contains any other condition not specified in this Agreement which Buyer is unable to satisfy by the date of settlement.

5. If this Agreement is terminated as specified in paragraphs 6 (C) (2), (3) or (4) all deposit monies paid on account of purchase price will be returned to Buyer. Buyer will be responsible for any premiums for mechanics lien insurance and/or title search, or fee for cancellation of same, if any; AND/OR any premiums for flood insurance and/or fire insurance with extended coverage, insurance binder charges or cancellation fee, if any; AND/OR any appraisal fees and charges paid in advance to mortgage lender.

(D) If the mortgage lender requires repairs to the property, Buyer will, upon receipt, deliver a copy of the mortgage lender's requirements to Seller. Seller will, within 5 days of receipt of the lender's requirements, notify Buyer whether Seller will make the required repairs at Seller's expense.

1. If Seller chooses to make repairs, Buyer will accept the Property and agree to the RELEASE set forth in paragraph 25 of this Agreement.

2. If Seller chooses not to make the required repairs, Buyer will, within 5 days, notify Seller in writing of Buyer's choice to terminate this Agreement OR make the required repairs at Buyer's expense and with Seller's permission, which will not be unreasonably withheld. If Seller denies Buyer permission to make the required repairs, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

(E) **Seller Assist**
 NOT APPLICABLE
 APPLICABLE. Seller will pay:
 \$ _____, maximum, toward Buyer's costs as permitted by the mortgage lender.

(F) **FHA/VA, IF APPLICABLE**
 It is expressly agreed that notwithstanding any other provisions of this contract, Buyer will not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless Buyer has been given, in accordance with HUD/FHA or VA requirements, a written statement by the Federal Housing Commissioner, Veterans Administration, or a Direct Endorsement Lender setting forth the appraised value of the property of not less than \$ _____ (the dollar amount to be inserted is the sales price as stated in this Agreement). Buyer will have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum value not the condition of the Property. Buyer should satisfy himself/herself that the price and condition of the Property are acceptable.

Warning: Section 1010 of Title 18, I.S.C., Department of Housing and Urban Development provides, "Whoever for the purpose of ... influencing in any way the action of such department...makes, passes, utters or publishes any statement knowing the same to be false...shall be fined not more than \$5,000.00 or imprisoned not more than two years, or both".

(G) **U. S. Department of Housing and Urban Development (HUD) NOTICE TO PURCHASERS: Buyers Acknowledgment**
 Buyer has received the HUD Notice "For Your Protection: Getting a Home Inspection" (see Notices and Information on Property Condition Inspections). Buyers understands the importance of getting an independent home inspection and has thought about this before signing this Agreement.

(H) **Certification** We the undersigned, Seller(s) and Buyer(s) party to this transaction each certify that the terms of this contract for purchase are true to the best of our knowledge and belief, and that any other agreement entered into by any of these parties in connection with this transaction is attached to this Agreement.

7. **INSPECTIONS**

(A) Seller hereby agrees to permit inspections by authorized appraisers, reputable certifiers, insurer's representatives, surveyors, municipal officials and/or Buyer as may be required by the lending institutions, if any, or insuring agencies. Seller further agrees to permit any other inspections required by or provided for in the terms of this Agreement.

(B) Buyer reserves the right to make a pre-settlement walk through inspection of the Property. Buyer's right to make this inspection is not waived by any other provision of this Agreement.

(C) Seller will have heating and all utilities (including fuel(s)) on for the inspections.

8.

PROPERTY INSPECTION CONTINGENCY

WAIVED. Buyer understands that Buyer has the option to request inspections of the Property (see Property Inspection and Environmental Notices). BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

ELECTED

(A) Within _____ days of the execution of this Agreement, Buyer, at Buyer's expense, may choose to have inspections and/or certifications completed by licensed or otherwise qualified professionals (see Property Inspection and Environmental Notices). This contingency does not apply to the following existing conditions and/or items:

(B) Other provisions of this Agreement may provide for inspections and/or certifications that are not waived or altered by Buyer's election here.

(C) If Buyer is not satisfied with the condition of the Property as stated in any written report, Buyer will, **within the time given for completing inspections:**

Option 1

1. Accept the property with the information stated in the report(s) and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR
2. Terminate the Agreement in writing by notice to Seller within the time given for inspection, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

Option 2

1. Accept the Property with the information stated in the report(s) and agree to the RELEASE set forth in paragraph 25 of this Agreement, UNLESS the total cost to correct the conditions contained in the report(s) is more than \$ _____.
2. If the total cost to correct the conditions contained in the report(s) is more than \$ _____, Buyer will deliver the report to Seller within the time given for inspection.

a. Seller will, within _____ days of receiving the report(s), inform Buyer in writing of Seller's choice to:

- (1) Make repairs before settlement so that the remaining cost to repair conditions contained in the report(s) is less than or equal to the amount specified in paragraph 8 (C) (Option 2) 1.
- (2) Credit Buyer at settlement for the difference between the estimated cost of repairing the conditions contained in the report(s) and the amount specified in paragraph 8 (C) (Option 2) 1. This option must be acceptable to the mortgage lender, if any.
- (3) Not make any repairs and not credit Buyer at settlement for any defects in conditions contained in the report(s).

b. If Seller chooses to make repairs or credit Buyer at settlement as specified in paragraph 8 (C) (Option 2) 2, Buyer will accept the Property and agree to the RELEASE set forth in paragraph 25 of this Agreement.

c. If Seller chooses not to make repairs and not to credit Buyer at settlement, or if Seller fails to choose any option within the time given, Buyer will, within _____ days:

- (1) Accept the Property with the information stated in the report(s) and agree to the RELEASE set forth in Paragraph 25 of this Agreement, OR
- (2) Terminate the Agreement in writing by notice to Seller, in which case all deposit monies paid on account or purchase price will be returned promptly to Buyer and this Agreement will be VOID.

9.

WOOD INFESTATION CONTINGENCY

WAIVED. Buyer understands that Buyer has the option to request that the Property be inspection for wood infestation by a certified Pest Control Operator. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in Paragraph 25 of this Agreement.

ELECTED

(A) Within _____ days of the execution of this Agreement, Buyer, at Buyer's expense, will obtain a written "Wood-Destroying Insect Infestation Inspection Report" from a certified Pest Control Operator and will deliver it and all supporting documents and drawings provided by the Pest Control Operator to Seller. The report is to be made satisfactory to and in compliance with applicable laws, mortgage and lending institutions, and/or Federal Insuring and Guaranteeing Agency requirements, if any. The inspection will include all readily visible and accessible areas of all structures on the Property except the following structures, which will not be inspected:

(B) If the inspection reveals evidence of active infestation(s), Seller agrees, at Seller's expense and before settlement, to treat for active infestation(s) in accordance with applicable laws.

(C) If the inspection reveals damage from active infestation(s) or previous infestation(s), Buyer, at Buyer's expense, has the option to obtain a written report by a profession contractor, home inspection service, or structural engineer that is limited to structural damage to the Property caused by wood-destroying organisms and a proposal to repair the damage. Buyer will deliver the structural damage report and corrective proposal to Seller within _____ days of delivering the original inspection report.

(D) Within 5 days of receiving the structural damage report and corrective proposal, Seller will advise Buyer whether Seller will repair, at Seller's expense and before settlement, any structural damage from active or previous infestation(s).

(E) If Seller chooses to repair structural damage revealed by the report, Buyer agrees to accept the Property as repaired and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

(F) If Seller chooses not to repair structural damage revealed by the report or fails to respond within the time given, Buyer, within 5 days of receiving Seller's notice, will notify Seller in writing of Buyer's choice to:

1. Accept the Property with the defects revealed by the inspection, without abatement of price and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR

2. Make the repairs before settlement, if required by the mortgage lender, if any, at Buyer's expense and with Seller's permission, which will not be unreasonably withheld, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement. If Seller denies Buyer permission to make the repairs, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price shall be returned promptly to Buyer and this Agreement will be VOID, OR

3. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

10. **RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT NOTICE REQUIRED FOR PROPERTIES BUILT BEFORE 1978.**

NOT APPLICABLE.
 APPLICABLE.

(A) Seller represents that: (check 1 OR 2)

1. Seller has no knowledge concerning the presence of lead-based paint and/or lead-based paint hazards in or about the Property.

2. Seller has knowledge of the presence of lead-based paint and/or lead-based paint hazards in our exist, the location(s) and the condition of the painted surfaces, and other available information concerning Seller's knowledge of the presence of lead-based paint and/or lead-based paint hazards.)

(B) **Records/Reports** (check 1 OR 2)

1. Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in or about the Property.

2. Seller has provided Buyer with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in or about the Property. (List documents).

(C) **Buyer's Acknowledgment**

1. Buyer has received the pamphlet *Protect Your Family from Lead in Your Home* and has read the Lead Warning Statement contained in this Agreement (See Environmental Notices). **Buyer's Initials** _____ **Date** _____

2. Buyer has reviewed Seller's disclosure of known lead-based paint and/or lead-based paint hazards, as identified in paragraph 10(A) and has received the records and reports pertaining to lead-based paint and/or lead-based paint hazards identified in paragraph 10(B). **Buyer's Initials** _____ **Date** _____

(D) **RISK ASSESSMENT/INSPECTION:** Buyer acknowledges that before Buyer is obligated to buy a residential dwelling built before 1978, Buyer has a 10 day period (unless Buyer and Seller agree in writing to a different period of time) to conduct a risk assessment or inspection of the Property for the presence of lead-based paint and/or lead-based paint hazards.

WAIVED. Buyer understands that Buyer has the right to conduct a risk assessment or inspection of the Property to determine the presence of lead-based paint and/or lead-based paint hazards. **BUYER WAIVES THIS RIGHT** and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

1. Buyer, at Buyer's expense, chooses to obtain a risk assessment and/or inspection of the Property for lead-based paint and/or lead-based paint hazards. The risk assessment and/or inspection will be completed within _____ days of the execution of this Agreement (insert "10" unless Buyer and Seller agree to a different period of time).

2. **Within the time set forth above for obtaining a risk assessment and/or inspection of the Property for lead-based paint and/or lead-based paint hazards, Buyer may deliver to the Seller a written list of the specific hazardous conditions cited in the report and those corrections requested by Buyer, along with a copy of the risk assessment and/or inspection report.**

3. Seller may, within _____ days of receiving the lists and report(s), submit a written corrective proposal to Buyer. The corrective proposal will include, but not be limited to, the name of the remediation company and a completion date for corrective measures. Seller will provide certification from a risk assessor or inspector that corrective measures have been made satisfactorily or before the completion date.

4. Upon receiving the corrective proposal, Buyer, within 5 days, will:

a. Accept the corrective proposal and the Property in writing, and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR

b. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to buyer and this Agreement will be VOID.

5. **Should Seller fail to submit a written corrective proposal within the time set forth in paragraph 10(D)3 of this Agreement, then Buyer, within 5 days, will:**

a. Accept the Property in writing, and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR

b. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

(E) **Certification** By signing this Agreement, Buyer and Seller certify the accuracy of their respective statements, to the best of their knowledge.

11. **RADON CONTINGENCY**

(A) Seller represents that:

1. Seller has no knowledge concerning the presence or absence of radon.

2. Seller has the knowledge that the Property was tested on the date, by the methods (e.g., charcoal canister, alpha track, etc.) And with the results of all test indicated below:

DATE	TYPE OF TEST	RESULTS
7/19/03	SST E-PERM	1.8 to 1.9 pCi/L

COPIES OF ALL AVAILABLE TEST REPORTS will be delivered to Buyer with this Agreement.
 SELLER DOES NOT WARRANT EITHER THE METHODS OR RESULTS OF THE TESTS.

3. Seller has knowledge that the property underwent radon reduction measures on the date(s) and by the method(s) indicated below:

DATE	RADON REDUCTION METHOD

WAIVED. Buyer understands that Buyer has the option to request that the Property be inspected for radon by a certified inspector (see Radon Notice). BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

(B) Buyer, at Buyer's expense, has the option to obtain, from a certified inspector, a radon test of the Property (See Radon Notice.)

1. If the test report reveals the presence of radon below 0.02 working levels (4 picocuries/liter), Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement.
2. If the test report reveals the presence of radon at or exceeding 0.02 working levels (4 picocuries/liter), Buyer will, within 7 days of receipt of the test results:
 - a. Accept the Property in writing and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR
 - b. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID, OR
 - c. Submit a written, corrective proposal to Seller. The corrective proposal will include, but not be limited to, the name of the certified mitigation company; provisions for payment, including retests; and completion date for corrective measures.
 - (1) Within 5 days of receiving the corrective proposal, Seller will:
 - (a) Agree to the terms of the corrective proposal in writing, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR
 - (b) Not agree to the terms of the corrective proposal. Should Seller not agree to the terms of the corrective proposal or fail to respond within the time given, Buyer will, within 5 days, elect to:
 - (a) Accept the Property in writing and agree to the RELEASE set forth in Paragraph 25 of this Agreement, OR
 - (b) Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

(2) Option 2

- a. Accept the Property in writing and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR
- b. Submit a written, corrective proposal to Seller. The corrective proposal will include, but not be limited to, the name of the certified mitigation company; provisions for payment, including retests; and completion date for corrective measures. Seller will pay a maximum of \$ 500.00 toward the cost of remediation and retests, which will be completed by settlement.
 - (1) If the total cost of remediation and retests EXCEEDS the amount specified in paragraph 11(B) (Option 2) b, Seller will, within 5 days of receipt of the cost of remediation, notify Buyer in writing of Seller's choice to:
 - (a) Pay for the total cost of remediation and retests, in which case buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR
 - (b) Not pay for the total cost of remediation and retests. If Seller chooses not to pay for the total cost of remediation and retests, or if Seller fails to choose either option within the time given, Buyer will, within 5 days, notify Seller in writing of Buyer's choice to:
 - (a) Pay the difference between Seller's contribution to remediation and retests and the actual cost thereof, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR
 - (b) Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

12. STATUS OF WATER

(A) Seller represents that this property is served by:

Public Water
 On-site Water
 Community Water
 None

(B) WATER SERVICE INSPECTION CONTINGENCY

WAIVED. Buyer acknowledges that Buyer has the option to request an inspection of the water service for the Property. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

ELECTED.

1. Buyer has the option, within _____ days of the execution of this Agreement and at Buyer's expense, to deliver to Seller a written inspection report by a qualified, professional water testing company of the quality and/or quantity of the water service.
2. Seller agrees to locate and provide access to the on-site (or individual) water system, if applicable, at Seller's expense, if required by the inspection company. Seller also agrees to restore the Property prior to settlement.
3. If the report reveals that the water service does not meet the minimum standards of any applicable governmental authority and/or fails to satisfy the requirements for quality and/or

quantity set by the mortgage lender, if any, then Seller will, within _____ days of receipt of the report, notify Buyer in writing of Seller's choice to:

- a. Upgrade the water service to the minimum acceptable levels, before settlement, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR
- b. Not upgrade the water service.

4. If Seller chooses not to upgrade the service to minimum acceptable levels, or **fails to respond within the time given**, Buyer will, within _____ days, either:

- a. Accept the Property and the water service, and, if required by mortgage lender, if any, and/or governmental authority, upgrade the water service before settlement or within the time required by the mortgage lender, if any, and/or governmental authority, at Buyer's expense and with Seller's permission, which will not be unreasonably withheld, and agree to the RELEASE set forth in paragraph 25 of this Agreement. If Seller denies Buyer permission to upgrade the water service, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID, OR
- b. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to buyer and this Agreement will be VOID.

13. **STATUS OF SEWER**

(A) Seller represents that the property is served by:

Public Sewer
 Individual On-Site Sewage Disposal System (See Sewage Notice 1)
 Individual On-Site Sewage Disposal System in Proximity to Well (See Sewage Notice 1; see Sewage Notice 4, if applicable)
 Community Sewage Disposal System
 Ten-acre Permit Exemption (See Sewage Notice 2)
 Holding Tank (See Sewage Notice 3)
 None (See Sewage Notice 1)
 None Available/Permit Limitations in Effect (See Sewage Notice 5)

(B) **INDIVIDUAL ON-SITE SEWAGE DISPOSAL INSPECTION CONTINGENCY**

WAIVED. Buyer acknowledges that Buyer has the option to request an individual on-lot sewage inspection of the Property. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

ELECTED

1. Buyer has the option, within _____ days of the execution of this Agreement and at Buyer's expense, to deliver to Seller a written inspection report by a qualified, professional inspector of the individual on-site sewage disposal system.
2. Seller agrees to locate and provide access to the individual on-site sewage disposal system, and, if required by the inspection company, empty the septic tank, at Seller's expense. Seller also agrees to restore the Property prior to settlement.
3. If the report reveals defects that do not require expansion or replacement of the existing sewage disposal system, Seller will, within _____ days of receipt of the report, notify Buyer in writing of Seller's choice to:
 - a. Correct the defects before settlement, including retests, at Seller's expense, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR
 - b. Not correct the defaults, or if Seller **fails to respond within the time given**, Buyer will, within _____ days, either:
 - (1) Accept the Property and the system and, if required by the mortgage lender, if any, and/or governmental authority, correct the defects before settlement or within the time required by the mortgage lender, if any, and/or governmental authority, at Buyer's sole expense and with Seller's permission, which will not be unreasonably withheld, and agree to the RELEASE set forth in paragraph 25 of this Agreement. If Seller denies Buyer permission to correct the defects, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID, OR
 - (2) Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.
4. If the report reveals the need to expand or replace the existing individual on-lot sewage disposal system, Seller may, within _____ days of the report, submit a corrective proposal to Buyer. The corrective proposal will include, but not be limited to, the name of the remediation company; provisions for payment, including retests; and completion date for corrective measures. Within 5 days of receiving Seller's corrective proposal, or if **no corrective proposal is received within the time given**, Buyer will:
 - a. Agree to the terms of the corrective proposal, if any, in writing, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR
 - b. Accept the Property and system and, if required by the mortgage lender, if any, and/or any governmental authority, correct the defects before settlement or within the time required by the mortgage lender, if any, and/or any governmental authority, at Buyer's sole expense and with Seller's permission, which will not be unreasonably withheld, and agree to the RELEASE set forth in paragraph 25 of this Agreement. If Seller denies Buyer permission to correct the defects, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID, OR
 - c. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

14. **NOTICES, ASSESSMENTS & CERTIFICATES OF OCCUPANCY**

(A) Seller represents as of Seller's execution of this Agreement, that no public improvement, condominium or homeowner association assessments have been made against the Property which remain unpaid and that no notice by any government or public authority has been served upon Seller or anyone on Seller's behalf, including notices relating to violations of zoning, housing, building, safety or fire ordinances which remain uncorrected, and that Seller knows of no condition that would constitute a violation of any such ordinances which remains uncorrected, unless otherwise specified here:

(B) Seller knows of no other potential notices (including violations) and assessments except as follows:

(C) In the event any notices (including violations) and assessments are received after execution of this Agreement and before settlement, Seller will notify Buyer in writing, within 5 days of receiving the notice or assessment, that Seller will:

1. Comply with notices and assessments at Seller's expense, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR
2. NOT comply with notices and assessments at Seller's expense, in which case Buyer will notify Seller within 5 days in writing that Buyer will:
 - a. Comply with notices and assessments at Buyer's expense and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR
 - b. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.
If Buyer fails to notify Seller within the time given, Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

(D) Buyer is advised that access to a public road may require issuance of a highway occupancy permit from the Department of Transportation.

(E) If required by law, within 30 days of the execution of this Agreement, Seller will order for delivery to Buyer, on or before settlement,

1. A certification from the appropriate municipal department or departments disclosing notice of any uncorrected violation of zoning, housing, building, safety or fire ordinances, AND/OR
2. A certificate permitting occupancy of the Property. In the event that repairs/improvements are required for the issuance of the certificate, Seller will, within 5 days of Seller's receipt of the requirements, notify Buyer of the requirements and whether Seller will make the required repairs/improvements at Seller's expense.

If Seller chooses not to make the required repairs/improvements, Buyer will, within 5 days, notify Seller in writing of Buyer's choice to terminate this Agreement OR make the repairs/improvements at Buyer's expense and with Seller's permission, which will not be unreasonably withheld. If Seller denies Buyer permission to make the required repairs, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

15. **TITLE, SURVEY & COSTS**

(A) The Property is to be conveyed free and clear of all liens, encumbrances, and easements, EXCEPTING HOWEVER, the following: existing deed restrictions, historic preservation restrictions or ordinances, building restrictions, ordinances, easements of roads, easements visible upon the ground, easements of record, privileges or rights of public service companies, if any; otherwise the title to the above described real estate will be good and marketable and such as will be insured by a reputable Title Insurance Company at the regular rates.

(B) In the event Seller is unable to give a good and marketable title and such as will be insured by a reputable Title Insurance Company at the regular rates, as specified in paragraph 15(A), Buyer will have the option of taking such title as Seller can give without changing the price or of being repaid all monies paid by Buyer to Seller on account of purchase price and Seller will reimburse Buyer for any costs incurred by Buyer for those items specified in paragraph 15(C) and in paragraph 15(D) items (1), (2) and (3); and in the latter event there will be no further liability or obligation on either of the parties hereto and this Agreement will become VOID.

(C) Any survey or surveys which may be required by the Title Insurance Company or abstracting attorney, for the preparation of an adequate legal description of the Property (or the correction thereof), will be secured and paid for by Seller. However, any survey or surveys desired by Buyer or required by the mortgage lender will be secured and paid for by Buyer.

(D) Buyer will pay the following: (1) The premium for mechanics lien insurance and/or title search, or fee for cancellation of the same, if any; (2) The premiums for flood insurance and/or fire insurance with extended coverage, insurance binder charges or cancellation fee, if any; (3) Appraisal fees and charges paid in advance to mortgage lender, if any; (4) Buyers' customary settlement costs and accruals.

16. **ZONING CLASSIFICATION**

Failure of this Agreement to contain the zoning classification (except in cases where the property [and each parcel thereof, if subdividable] is zone solely or primarily to permit single-family dwellings) will render this Agreement voidable at the option of the Buyer, and, if voided, any deposits tendered by the Buyer will be returned to the Buyer without any requirement for court action.

Zoning classification: _____

ELECTED. Within _____ days of execution of this Agreement, Buyer will verify that the existing use of the Property as _____ is permitted. In the event the use is not permitted, Buyer will, within the time given for verification, notify Seller, in writing that the existing use is not permitted and this Agreement will be VOID, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer. Buyer's failure to respond within the time given will constitute a WAIVER of this contingency and all other terms of this Agreement remain in full force and effect.

17. **COAL NOTICE.**

NOT APPLICABLE
 APPLICABLE

THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL SUCH COAL AND IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. (This notice is set forth in the

manner provided in Section 1 of the Act of July 17, 1957, P.L. 984.) "Buyer acknowledges that he may not be described herein may be protected from damage due to mine subsidence by a private contract with the owners of the economic interests in the coal. This acknowledgment is made for the purpose of complying with the provisions of Section 14 of the Bituminous Mine Subsidence and the Land Conservation Act of April 27, 1966." Buyer agrees to sign the deed from Seller which deed will contain the aforesaid provision.

18. **POSSESSION**

(A) Possession is to be delivered by deed, keys and:

1. Physical possession to a vacant building (if any) broom-clean, free of debris at day and time of settlement, AND/OR
2. Assignment of existing lease(s), together with any security deposits and interest, at the time of settlement, if Property is tenant-occupied at the execution of this Agreement or unless otherwise specified herein. Buyer will acknowledge existing lease(s) by initialing said lease(s) at time of signing of this Agreement, if Property is tenant-occupied.

(B) Seller will not enter into any new leases, written extension of existing leases, if any, or additional leases for the Property without expressed written consent of Buyer.

19. **RECORDING**. This Agreement will not be recorded in the office for the Recording of Deeds or in any other office or place of public record and if Buyer causes or permits this Agreement to be recorded, Seller may elect to treat such act as a breach of this Agreement.

20. **ASSIGNMENT**. This Agreement will be binding upon the parties, their respective heirs, personal representatives, guardians and successors, and to the extent assignable, on the assigns of the parties hereto, it being expressly understood, however, that Buyer will not transfer or assign this Agreement without the written consent of Seller.

21. **DEPOSIT & RECOVERY FUND**.

(A) Deposits paid by Buyer within 30 days of settlement will be by cash, cashier's or certified check. Deposits, regardless of the form of payment and the person designated as payee, will be paid to the party identified in paragraph 3(F), who will retain them in an escrow account until consummation or termination of this Agreement in conformity with all applicable laws and regulations. Any uncashed check tendered as deposit may be held pending the acceptance of this offer.

(B) in the event of a dispute over entitlement to deposit monies, the _____ holding the deposit is required by the Rules and Regulations of the State Real Estate Commission (49 Pa. Code §35.327) to retain the monies in escrow until the dispute is resolved. In the event of litigation for the return of deposit monies, the _____ will distribute the monies as directed by a final order of court or the written Agreement of the parties. Buyer and Seller agree that, in the event any _____ is joined in a litigation for the return of deposit monies, the attorney's fees and costs of the _____ will be paid by the party joining them.

22. **MAINTENANCE & RISK OF LOSS**

(A) Seller will maintain the Property, grounds, fixtures, and any personal property specifically scheduled herein in its present condition, normal wear and tear excepted.

(B) In the event any system or appliance included in the sale of the Property fails and Seller does not repair or replace the item, Seller will promptly notify Buyer in writing of Seller's choice to:

1. Repair or replace the failed system or appliance before settlement or credit Buyer at settlement for the fair market value of the failed system or appliance (this option must be acceptable to the mortgage lender, if any). In each case, Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR
2. Make no repairs or replacements, and not credit Buyer at settlement for the fair market value of the failed system or appliance, in which case Buyer will notify Seller in writing within 5 days or before settlement, whichever is sooner, that Buyer will:
 - a. Accept the Property and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR
 - b. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

(C) Seller will bear risk of loss from fire or other casualties until time of settlement. In the event of damage by fire or other casualties to any property included in this sale that is not repaired or replaced prior to settlement, Buyer will have the option of rescinding this Agreement and promptly receiving all monies paid on account of purchase price or of accepting the Property in its then condition together with the proceeds of any insurance recovery obtainable by Seller. Buyer is hereby notified that Buyer may insure Buyer's equitable interest in this Property as of the time of execution of this Agreement.

23. **WAIVER OF CONTINGENCIES**. In the event this Agreement is contingent upon Buyer's right to inspect and/or repair the Property, Buyer's failure to exercise any of Buyer's options within the time limits specified in the contingency provision(s) will constitute a WAIVER of that contingency and Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

24. **RELEASE**. Buyer hereby releases, quit claims and forever discharges SELLER, and any other PERSON, FIRM or CORPORATION who may be liable by or through them, from any and all claims, losses or demands, including, but not limited to, personal injuries and property damage and all of the consequences thereof, whether now known or not, which may arise from the presence of termites or other wood-boring insects, radon, lead-based paint hazards, environmental hazards, any defects in the individual on-lot sewage disposal system or deficiencies in the on-site water service system, or any defects or conditions on the Property. This release will survive settlement.

25. **REPRESENTATIONS**

(A) Buyer understands that any representations, claims, advertising, promotional activities, brochures or plans of any kind made by Seller are not a part of this Agreement unless expressly incorporated or stated in this Agreement.

(B) It is understood that Buyer has inspected the Property before signing this Agreement (including fixtures and any personal property specifically scheduled herein), or has waived the right to do so, and has agreed to purchase it in its present condition unless otherwise stated in this Agreement. Buyer acknowledges that THEY has not made an independent examination or determination of the structural soundness of the Property, the age or condition of the components, environmental conditions, the permitted uses, or of conditions existing in the locale where the Property is situated; nor have they made a mechanical inspection of any of the

(C) systems contained therein.

(D) It is further understood that this Agreement contains the whole agreement between Seller and Buyer and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise of any kind whatsoever concerning this sale. Furthermore, this Agreement will not be altered, amended, changed, or modified except in writing executed by the parties.

26. The headings, captions, and line numbers in this Agreement are meant only to make it easier to find the paragraphs.

TIME OF THE ESSENCE - DEFAULT

The said time for settlement and all other times referred to for the performance of any of the obligations of this Agreement are hereby agreed to be of the essence of this Agreement. For the purposes of this Agreement, number of days will be counted from the date of execution, by excluding the day this Agreement was executed and including the last day of the time period. Should Buyer:

(A) Fail to make any additional payments as specified in paragraph 3; OR

(B) Furnish false or incomplete information to Seller, or the mortgage lender, if any, concerning the Buyer's legal financial status, or fail to cooperate in the processing of the mortgage loan application, which acts would result in the failure to obtain the approval of a mortgage loan commitment; OR

(C) Violate or fail to fulfill and perform any other terms or conditions of this Agreement; then in such case, Seller has the option of retaining all sums paid by Buyer, including deposit monies, 1) on account of purchase price, or 2) as monies to be applied to Seller's damages, or 3) as liquidated damages for such breach, as Seller may elect, **unless otherwise checked below**. If Seller elects to retain all sums paid by Buyer, including deposit monies, as liquidated damages, Buyer and Seller will be released from further liability or obligation and this Agreement will be VOID.

Buyer and Seller acknowledge that they have read and understand the notices and explanatory information set forth in this Agreement.

Buyer acknowledges receiving a copy of this Agreement at the time of signing.

NOTICE TO PARTIES: WHEN SIGNED, THIS AGREEMENT IS A BINDING CONTRACT. Returns by facsimile transmission (FAX) of this Agreement, and all addenda, bearing the signatures of all parties, constitutes acceptance of this Agreement.

WITNESS _____ BUYER Elmira Lorraine Saline DATE 4.12.04
 Buyer Name (print) Elmira Lorraine Saline

WITNESS _____ BUYER Ross Keith Saline DATE 4.12.04
 Buyer Name (print) Ross Keith Saline

Seller hereby approves the above contract this (date) 4-18-04

WITNESS _____ SELLER Amy M Kostanek DATE 4.18.04
 Seller Name (print) Amy M Kostanek

WITNESS _____ SELLER Paul A Kostanek DATE 4/18/04
 Seller Name (print) Paul A. Kostanek



Amy

July 11, 2003

Paul Kostanek
c/o Pillar To Post
RD 4 Box 419
DuBois PA 15801

Re: Short Term Radon Test conducted at Sec 10 Lot 83 Bay Read Treasure Lake

Dear Mr. Kostanek:

The results of the radon measurements that were conducted at Sec 10 Lot 83 as follows:

<u>Device Type</u>	<u>Electer No.</u>	<u>Location</u>	<u>Start Test</u>	<u>Finish Test</u>	<u>Results</u>
SST E-Perm	S11-B012	Family Room	07/09/03 09:20	07/11/03 07:20	1.9 pCi/L
SST E-Perm	S14-B176	Family Room	07/09/03 09:20	07/11/03 07:20	1.8 pCi/L

Average Radon Concentration: 1.9 pCi/L

Relative Percent Difference: 5

Short-term radon tests are intended to give you an indication of the radon levels during the measurement period in the area where the test was conducted.

If you should have any questions concerning your radon measurements, please contact me at the telephone number listed below.

Sincerely,

Don Cessna
DEP ID#1996

Pennsylvania Notice to Clients: The Radon Certification Act requires that anyone who provides radon-related services or product to the general public must be certified by the Pennsylvania Department of Environmental Protection. You are entitled to evidence of certification from any person who provides such services or products. You are also entitled to a price list for services or products offered. All radon measurement data will be sent to the Department as required by the Act and will be kept confidential. If you have any questions, comments or complaints concerning persons who provide radon-related services, please contact the Department at the Bureau of Radiation Protection Department of Environmental Protection, P.O. Box 8469, Harrisburg, PA 17108-8469 (717) 783-3594.

407 W. Sample Street, Ebensburg, PA 15931
Phone: (814) 471-6961 Toll Free: (877) 471-6961 Fax: (814) 471-0382
AUTHORIZED INDEPENDENT FRANCHISEE
Op. by Don Cessna Home Inspections Inc.

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

ROSS KEITH SALINE and ELMIRA
LORRAINE SALINE,

Plaintiffs,

v.

AMY M. KOSTANSEK,

Defendant.

COMPLAINT

No. 04-1831-C.D.

FILED

DEC 10 2004

William A. Shaw
Prothonotary/Clerk of Courts

LAW OFFICES
BLAKLEY & JONES
90 BEAVER DRIVE - BOX 6
DUBOIS, PA 15801

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

ROSS KEITH SALINE and
ELMIRA LORRAINE SALINE,

Plaintiffs,

vs.

AMY M. KOSTANSEK,

Defendant.

CIVIL ACTION - LAW

No. 04-1831 C.D.

Type of Pleading:
PRELIMINARY OBJECTIONS

Filed on behalf of:
DEFENDANT

COUNSEL OF RECORD:

Michael W. Sloat, Esquire
I.D. No. 89076

J. Michael King, Esquire
I.D. No. 25222

LYNN, KING & SCHREFFLER, P.C.
606 Main Street, P.O. Box 99
Emlenton, PA 16373
(724) 867-5921

*And. Comp
Filed*

6/14/04 FILED 1cc
m/11/04 674 Atty Sloat
DEC 29 2004

William A. Shaw
Prothonotary/Clerk of Courts

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

ROSS KEITH SALINE and
ELMIRA LORRAINE SALINE, : No. 04-1831 C.D.
Plaintiffs, :
vs. :
AMY M. KOSTANSEK, :
Defendant. :

NOTICE TO PLEAD

To: ROSS KEITH SALINE and ELMIRA LORRAINE SALINE

You are hereby notified to file a written response to the enclosed Preliminary Objections
within twenty (20) days from service hereof or a judgment may be entered against you.



Michael W. Sloat, Esq.
Attorney for Defendant,
606 Main Street, P.O. Box 99
Emlenton, PA 16373
(724) 867-5921

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

ROSS KEITH SALINE and
ELMIRA LORRAINE SALINE,
Plaintiffs,
vs.
AMY M. KOSTANSEK,
Defendant.

No. 04-1831 C.D.

PRELIMINARY OBJECTIONS

DEFENDANT, AMY M. KOSTANSEK, PRELIMINARILY OBJECTS TO PLAINTIFFS'
COMPLAINT PURSUANT TO P.A.R.C.P. 1028(a)(5) AS FOLLOWS:

NONJOINDER OF NECESSARY PARTY

1. As appears on the face of the Complaint, the Plaintiffs' fail to join a necessary party.
2. Paragraphs 5 and 11 of Plaintiffs' Complaint avers that:

"Defendant, along with her husband, Paul A. Kostanek, were the owners of real property
... [and] Defendant has failed ... to return Plaintiffs' earnest money ... as a result of the
breach of the Defendant and her husband ... for the sale of real estate ..."

3. The real estate is held by the entireties by Defendant and her husband and all proceeds
related to the sale of the real estate is joint property.
4. Pennsylvania's Rule of Civil Procedure (Pa.R.C.P.) 2227(a) requires Plaintiffs to join
Defendant's Husband, a joint owner and seller with the Defendant.

WHEREFORE, Defendant respectfully requests that Plaintiffs' Complaint be dismissed.



Michael W. Sloat
Attorney for Defendant

VERIFICATION

I verify that the factual allegations made in the foregoing Preliminary Objections are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to 18 P.a.C.S.A. 4904, relating to unsworn falsification to authorities.

Date 12/20/04



Amy M. Kostanek

Certificate of Service

I certify that I served a true and correct copy of the foregoing Preliminary Objections by first class US Mail, postage prepaid, on the following:

Benjamine S. Blakley, III, Esquire
90 Beaver Drive, Box 6
DuBois, PA 15801

Date: 12-27-04



Michael W. Sloat

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

ROSS KEITH SALINE and) NO. 04-1831 C.D.
ELMIRA LORRAINE SALINE,)
Plaintiffs,) Type of Case: CIVIL ACTION
vs.)
) Type of Pleading:
AMY M. KOSTANSEK and) Filed on Behalf of:
PAUL A. KOSTANSEK,) PLAINTIFFS
Defendants.)
) Counsel of Record:
) BENJAMIN S. BLAKLEY, III, ESQ.
) Supreme Court No. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) Du Bois, Pa 15801
) (814) 371-2730

2-22-05
Reinstated/Reissued to Sheriff/Attorney
for service.

Will. Shaw
Deputy Prothonotary

FILED 400
01/10/2005
JAN 13 2005
44g

William A. Shaw
Prothonotary/Clerk of Courts

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

ROSS KEITH SALINE and ELMIRA) NO. 04-1831-C.D.
LORRAINE SALINE,)
)
Plaintiffs,)
)
vs.)
)
AMY M. KOSTANSEK and PAUL A.)
KOSTANSEK,)
)
Defendants.)

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint is 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 an order may be entered against you by the Court without further notice for any money claimed in the Complaint requested by 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.

David S. Meholic,
Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814) 765-2641

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

ROSS KEITH SALINE and ELMIRA) NO. 04-1831-C.D.
LORRAINE SALINE,)
)
Plaintiffs,)
)
vs.)
)
AMY M. KOSTANSEK and PAUL A.)
KOSTANSEK,)
)
Defendants.)

COMPLAINT

AND NOW come Plaintiffs, **ROSS KEITH SALINE and ELMIRA LORRAINE SALINE**, by and through their attorneys, **BLAKLEY & JONES**, and file the following Complaint, of which the following is a statement:

1. The Plaintiffs, **ROSS KEITH SALINE and ELMIRA LORRAINE SALINE** are adult individuals, husband and wife, residing at 889 Treasure Lake, DuBois, Clearfield County, Pennsylvania, 15801.
2. Defendant **AMY M. KOSTANSEK** is an adult individual, residing at 1671 Treasure Lake, DuBois, Clearfield County, Pennsylvania, 15801.
3. Defendant **PAUL A. KOSTANSEK** is an adult individual, whose last known address was 1671 Treasure Lake, DuBois, Clearfield County, Pennsylvania, 15801.

4. At all times material hereto, the Defendants were the owners of real property located at Section 10, Lot 83, Treasure Lake Subdivision, Sandy Township, Clearfield County, Pennsylvania.

5. By Agreement dated April 6, 2004, and executed by the Plaintiffs on April 12, 2004, the Plaintiffs did offer to purchase the real property of the Defendants located at Section 10, Lot 83, Treasure Lake Subdivision, Sandy Township, Clearfield County, Pennsylvania, for the sum of \$268,000.00. A copy of said Agreement is attached hereto and made a part hereof and marked as Exhibit A.

6. The said written Agreement/offer to purchase was prepared by the Defendants.

7. At the time of their execution of the said offer to purchase the said real property, the Plaintiffs did tender to the Defendants the sum of \$5,000.00, representing earnest money for the sale of the real property.

8. Pursuant to the terms of the said Agreement/offer for the sale of real estate, the Defendants were to provide written approval of the Plaintiffs' offer to purchase said real property on or before April 20, 2004.

9. On May 1, 2004, the Defendant, **AMY M. KOSTANSEK**, did deliver the written approval of the Plaintiffs' offer to purchase the subject real property to the Plaintiffs at their residence, said delivery of written approval coming twelve (12) days beyond the time period set forth for written approval in the parties' Agreement/offer for the sale of real estate.

10. Under the terms of the said Agreement prepared by the Plaintiffs, at all times referred to in the Agreement for the performance of any of the obligations of the Agreement were be of the essence.

11. The failure of the Defendants to provide written approval to the Plaintiffs of their offer to purchase the subject real property on or before April 20, 2004, constituted a rejection of Plaintiff's offer to purchase, thereby entitling the Plaintiffs to the return of their \$5,000.00 earnest money.

12. Despite repeated requests, Defendants have failed and refused to return the Plaintiffs' earnest money which is due and owing the Plaintiffs as a result of the breach of the Defendants in the fulfillment of their obligations under the Agreement/offer for the sale of real estate dated April 6, 2004.

WHEREFORE, Plaintiffs demand judgment in their favor and against the Defendants, **AMY M. KOSTANSEK and PAUL A. KOSTANSEK**, jointly and severally, in the amount of \$5,000.00, together with interest from April 20, 2004, and costs of suit.

Respectfully submitted,

BLAKLEY & JONES

Benjamin S. Blakley, III

VERIFICATION

We, **ROSS KEITH SALINE** and **ELMIRA LORRAINE SALINE**, hereby state that we are the Plaintiffs in this action and verify that the statements made in the foregoing Amended Complaint are true and correct to the best of our knowledge, information, and belief. We understand that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



ROSS KEITH SALINE

Dated: 1-11-05



ELMIRA LORRAINE SALINE

Dated: 1-11-05

AGREEMENT FOR THE SALE OF REAL ESTATE

1. THIS AGREEMENT, dated APRIL 6, 2004, is between:

SELLER(S): PAULA A. KOSTANEK AND AMY M. KOSTANEK, HUSBAND AND WIFE, BOTH OF 1671 TREASURE LAKE, DUBOIS, PA 15801, called "Seller", and

BUYER(S): ROSS KEITH SALINE AND ELMIRA LORRAINE SALINE, HUSBAND AND WIFE, BOTH OF 829 TREASURE LAKE, DUBOIS, PA 15801, called "Buyer".

2. PROPERTY. Seller hereby agrees to sell and convey to the Buyer, who hereby agrees to purchase: ALL THAT CERTAIN lot or piece of ground with buildings and improvements thereon erected, if any, known as: SECTION 10, LOT 83, in the TOWNSHIP of SANDU, County of CLEARFIELD, in the Commonwealth of Pennsylvania, Identification (e.g., Tax ID#, Parcel #, Lot, Block; Deed Book, Page, Recording Date): INSTRUMENT # 200313697 UNDER DATE OF 8/1/2003

3. TERMS

(A) Purchase Price: Two hundred sixty-eight thousand - Dollars which will be paid to Seller by Buyer as follows:

(B) Cash or check at signing this Agreement: \$ 5,000.00

(C) Cash or check within ____ days of the execution of this Agreement: \$ _____

(D) \$ _____

(E) Cash, cashier's or certified check at time of settlement: \$ 263,000.00

(F) Deposits paid on account of purchase price will be held by the law firm of Lynn, King & Schreffler, unless otherwise stated here: _____

(G) Seller's written approval to be on or before: APRIL 20, 2004.

(H) Settlement to be made on or before: JUNE 30, 2004

(I) Conveyance from Seller will be by fee simple deed of general warranty unless otherwise stated here: _____

(J) Payment of transfer taxes will be divided equally between Buyer and Seller unless otherwise stated here: BUYER WILL PAY TREASURE LAKE POA TRANSFER SEE.

(K) At the time of settlement, the following will be adjusted pro-rata on a daily basis between Buyer and Seller, reimbursing where applicable: taxes; rents; interest on mortgage assumptions; condominium fees and homeowner association fees, if any; water and/or sewer fees, if any, together with any other lienable municipal service. The charges are to be pro-rated for the period(s) covered: Seller will pay up to and including the date of settlement; Buyer will pay for all days following settlement unless otherwise stated here: _____

4. FIXTURES & PERSONAL PROPERTY

(A) INCLUDED in this sale and purchase price are all existing items permanently installed in the Property, free of liens, including plumbing; heating; lighting fixtures (including chandeliers and ceiling fans); water treatment systems; pool and spa equipment; garage door openers and transmitters; television antennas; shrubbery, plantings and unptotted trees; any remaining heating and cooking fuels stored on the Property at the time of settlement; wall to wall carpeting; window covering hardware, shades, blinds; built-in air conditioners; built-in appliances; and the range/oven unless otherwise stated. Also included: _____

(B) LEASED items (items now owned by Seller): _____

(C) EXCLUDED fixtures and items: POOL TABLE LIGHT, WASHER AND DRYER

5. SPECIAL CLAUSES

Buyer has received the Seller's Property Disclosure Statement before signing this Agreement, if required by law. (See Notice, Information Regarding the Seller's Property Disclosure Act).

Sale & Settlement of Other Property Contingency Addendum

Sale & Settlement of Other Property Contingency with Right to Continue Marketing Addendum

Settlement of Other Property Contingency Addendum

Tenant-Occupied Property Addendum

SALE IS CONTINGENT ON HOME APPRAISING AT A VALUE AT LEAST EQUAL UPON ROOF AND INTERIOR WALLS, TO SALE PRICE.

6. MORTGAGE CONTINGENCY

WAIVED. This sale is NOT contingent on mortgage financing.

ELECTED.

(A) This sale is contingent upon Buyer obtaining mortgage financing as follows:

1. Amount of mortgage loan: _____
2. Minimum Term _____ years
3. Type of mortgage: _____
4. Interest rate _____ %; however, Buyer agrees to accept the interest rate as may be committed by the mortgage lender, not to exceed a maximum interest rate of _____ %.
5. Discount points, loan origination, loan placement and other fees charged by the lender as a percentage of the mortgage loan (excluding any mortgage insurance premiums or VA funding fee) not to exceed _____ % of the mortgage loan.

The interest rate and fees provision required by Buyer are satisfied if a mortgage lender makes available to the Buyer the right to guarantee an interest rate at or below the Maximum Interest

EXHIBIT

A

Rate specified herein with the percentage fees at or below the amount specified herein. Buyer gives Seller the right, at Seller's sole option and as permitted by the lending institution and applicable laws, to contribute financially, without promise of reimbursement, to the Buyer and/or lender to make the above terms available to Buyer.

(B) Within 10 days of the execution of this Agreement, Buyer will make a completed, written mortgage application to a responsible mortgage lending institution.

(C) 1. Upon receipt of a mortgage commitment, Buyer will promptly deliver a copy of the commitment to Seller.

2. Mortgage Commitment Date: _____ If a written commitment date is not received by Seller by the above date, Buyer and Seller agree to extend the commitment date until Seller terminates this Agreement in writing.

3. Seller has the option to terminate this Agreement in writing, on or after the mortgage commitment date, if the mortgage commitment:

a. Is not valid until the date of settlement, OR

b. Is conditioned upon the sale and settlement of any other property, OR

c. Contains any other condition not specified in this Agreement.

4. In the event that Seller does not terminate this Agreement as provided above, Buyer has the option to terminate this Agreement in writing if the mortgage commitment:

a. Is not obtained by or valid until the date of settlement, OR

b. Is conditioned upon the sale and settlement of any other property which do not occur by the date of settlement, OR

c. Contains any other condition not specified in this Agreement which Buyer is unable to satisfy by the date of settlement.

5. If this Agreement is terminated as specified in paragraphs 6 (C) (2), (3) or (4) all deposit monies paid on account of purchase price will be returned to Buyer. Buyer will be responsible for any premiums for mechanics lien insurance and/or title search, or fee for cancellation of same, if any; AND/OR any premiums for flood insurance and/or fire insurance with extended coverage, insurance binder charges or cancellation fee, if any; AND/OR any appraisal fees and charges paid in advance to mortgage lender.

(D) If the mortgage lender requires repairs to the property, Buyer will, upon receipt, deliver a copy of the mortgage lender's requirements to Seller. Seller will, within 5 days of receipt of the lender's requirements, notify Buyer whether Seller will make the required repairs at Seller's expense.

1. If Seller chooses to make repairs, Buyer will accept the Property and agree to the RELEASE set forth in paragraph 25 of this Agreement.

2. If Seller chooses not to make the required repairs, Buyer will, within 5 days, notify Seller in writing of Buyer's choice to terminate this Agreement OR make the required repairs at Buyer's expense and with Seller's permission, which will not be unreasonably withheld. If Seller denies Buyer permission to make the required repairs, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

(E) Seller Assist

NOT APPLICABLE

APPLICABLE. Seller will pay:

\$ _____, maximum, toward Buyer's costs as permitted by the mortgage lender.

(F) **FHA/VA, IF APPLICABLE**

It is expressly agreed that notwithstanding any other provisions of this contract, Buyer will not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless Buyer has been given, in accordance with HUD/FHA or VA requirements, a written statement by the Federal Housing Commissioner, Veterans Administration, or a Direct Endorsement Lender setting forth the appraised value of the property of not less than \$ _____ (the dollar amount to be inserted is the sales price as stated in this Agreement). Buyer will have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the Property. Buyer should satisfy himself/herself that the price and condition of the Property are acceptable.

Warning: Section 1010 of Title 18, I.S.C., Department of Housing and Urban Development provides, "Whoever for the purpose of ...influencing in any way the action of such department...makes, passes, utters or publishes any statement knowing the same to be false...shall be fined not more than \$5,000.00 or imprisoned not more than two years, or both".

(G) U. S. Department of Housing and Urban Development (HUD) NOTICE TO PURCHASERS: Buyers Acknowledgment

Buyer has received the HUD Notice "For Your Protection: Getting a Home Inspection" (see Notices and Information on Property Condition Inspections). Buyers understands the importance of getting an independent home inspection and has thought about this before signing this Agreement.

(H) Certification We the undersigned, Seller(s) and Buyer(s) party to this transaction each certify that the terms of this contract for purchase are true to the best of our knowledge and belief, and that any other agreement entered into by any of these parties in connection with this transaction is attached to this Agreement.

7. **INSPECTIONS**

(A) Seller hereby agrees to permit inspections by authorized appraisers, reputable certifiers, insurer's representatives, surveyors, municipal officials and/or Buyer as may be required by the lending institutions, if any, or insuring agencies. Seller further agrees to permit any other inspections required by or provided for in the terms of this Agreement.

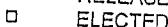
(B) Buyer reserves the right to make a pre-settlement walk through inspection of the Property. Buyer's right to make this inspection is not waived by any other provision of this Agreement.

(C) Seller will have heating and all utilities (including fuel(s)) on for the inspections.

8.

PROPERTY INSPECTION CONTINGENCY

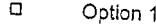
WAIVED. Buyer understands that Buyer has the option to request inspections of the Property (see Property Inspection and Environmental Notices). BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

**ELECTED**

(A) Within _____ days of the execution of this Agreement, Buyer, at Buyer's expense, may choose to have inspections and/or certifications completed by licensed or otherwise qualified professionals (see Property Inspection and Environmental Notices). This contingency does not apply to the following existing conditions and/or items:

(B) Other provisions of this Agreement may provide for inspections and/or certifications that are not waived or altered by Buyer's election here.

(C) If Buyer is not satisfied with the condition of the Property as stated in any written report, Buyer will, within the time given for completing inspections:

**Option 1**

1. Accept the property with the information stated in the report(s) and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR

2. Terminate the Agreement in writing by notice to Seller within the time given for inspection, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

**Option 2**

1. Accept the Property with the information stated in the report(s) and agree to the RELEASE set forth in paragraph 25 of this Agreement, UNLESS the total cost to correct the conditions contained in the report(s) is more than \$_____

2. If the total cost to correct the conditions contained in the report(s) is more than \$_____ Buyer will deliver the report to Seller within the time given for inspection.

a. Seller will, within _____ days of receiving the report(s), inform Buyer in writing of Seller's choice to:

(1) Make repairs before settlement so that the remaining cost to repair conditions contained in the report(s) is less than or equal to the amount specified in paragraph 8 (C) (Option 2) 1.

(2) Credit Buyer at settlement for the difference between the estimated cost of repairing the conditions contained in the report(s) and the amount specified in paragraph 8 (C) (Option 2) 1. This option must be acceptable to the mortgage lender, if any.

(3) Not make any repairs and not credit Buyer at settlement for any defects in conditions contained in the report(s).

b. If Seller chooses to make repairs or credit Buyer at settlement as specified in paragraph 8 (C) (Option 2) 2, Buyer will accept the Property and agree to the RELEASE set forth in paragraph 25 of this Agreement.

c. If Seller chooses not to make repairs and not to credit Buyer at settlement, or if Seller fails to choose any option within the time given, Buyer will, within _____ days:

(1) Accept the Property with the information stated in the report(s) and agree to the RELEASE set forth in Paragraph 25 of this Agreement, OR

(2) Terminate the Agreement in writing by notice to Seller, in which case all deposit monies paid on account or purchase price will be returned promptly to Buyer and this Agreement will be VOID.

9.

WOOD INFESTATION CONTINGENCY

WAIVED. Buyer understands that Buyer has the option to request that the Property be inspection for wood infestation by a certified Pest Control Operator. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in Paragraph 25 of this Agreement.

**ELECTED**

(A) Within _____ days of the execution of this Agreement, Buyer, at Buyer's expense, will obtain a written "Wood-Destroying Insect Infestation Inspection Report" from a certified Pest Control Operator and will deliver it and all supporting documents and drawings provided by the Pest Control Operator to Seller. The report is to be made satisfactory to and in compliance with applicable laws, mortgage and lending institutions, and/or Federal Insuring and Guaranteeing Agency requirements, if any. The inspection will include all readily visible and accessible areas of all structures on the Property except the following structures, which will not be inspected:

(B) If the inspection reveals evidence of active infestation(s), Seller agrees, at Seller's expense and before settlement, to treat for active infestation(s) in accordance with applicable laws.

(C) If the inspection reveals damage from active infestation(s) or previous infestation(s), Buyer, at Buyer's expense, has the option to obtain a written report by a professional contractor, home inspection service, or structural engineer that is limited to structural damage to the Property caused by wood-destroying organisms and a proposal to repair the damage. Buyer will deliver the structural damage report and corrective proposal to Seller within _____ days of delivering the original inspection report.

(D) Within 5 days of receiving the structural damage report and corrective proposal, Seller will advise Buyer whether Seller will repair, at Seller's expense and before settlement, any structural damage from active or previous infestation(s).

(E) If Seller chooses to repair structural damage revealed by the report, Buyer agrees to accept the Property as repaired and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

(F) If Seller chooses not to repair structural damage revealed by the report or fails to respond within the time given, Buyer, within 5 days of receiving Seller's notice, will notify Seller in writing of Buyer's choice to:

1. Accept the Property with the defects revealed by the inspection, without abatement of price and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR

2. Make the repairs before settlement, if required by the mortgage lender, if any, at Buyer's expense and with Seller's permission, which will not be unreasonably withheld, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement. If Seller denies Buyer permission to make the repairs, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price shall be returned promptly to Buyer and this Agreement will be VOID, OR

3. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

10. **RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT NOTICE REQUIRED FOR PROPERTIES BUILT BEFORE 1978.**

NOT APPLICABLE.

APPLICABLE.

(A) Seller represents that: (check 1 OR 2)

1. Seller has no knowledge concerning the presence of lead-based paint and/or lead-based paint hazards in or about the Property.

2. Seller has knowledge of the presence of lead-based paint and/or lead-based paint hazards in our about the Property (Provide the basis for determining that the lead-based paint and/or hazards exist, the location(s) and the condition of the painted surfaces, and other available information concerning Seller's knowledge of the presence of lead-based paint and/or lead-based paint hazards.)

(B) **Records/Reports** (check 1 OR 2)

1. Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in or about the Property.

2. Seller has provided Buyer with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in or about the Property. (List documents).

(C) **Buyer's Acknowledgment**

1. Buyer has received the pamphlet *Protect Your Family from Lead in Your Home* and has read the Lead Warning Statement contained in this Agreement (See Environmental Notices). **Buyer's Initials** _____ Date _____

2. Buyer has reviewed Seller's disclosure of known lead-based paint and/or lead-based paint hazards, as identified in paragraph 10(A) and has received the records and reports pertaining to lead-based paint and/or lead-based paint hazards identified in paragraph 10(B). **Buyer's Initials** _____ Date _____

(D) **RISK ASSESSMENT/INSPECTION:** Buyer acknowledges that before Buyer is obligated to buy a residential dwelling built before 1978, Buyer has a 10 day period (unless Buyer and Seller agree in writing to a different period of time) to conduct a risk assessment or inspection of the Property for the presence of lead-based paint and/or lead-based paint hazards.

WAIVED. Buyer understands that Buyer has the right to conduct a risk assessment or inspection of the Property to determine the presence of lead-based paint and/or lead-based paint hazards. BUYER WAIVES THIS RIGHT and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

ELECTED.

1. Buyer, at Buyer's expense, chooses to obtain a risk assessment and/or inspection of the Property for lead-based paint and/or lead-based paint hazards. The risk assessment and/or inspection will be completed within _____ days of the execution of this Agreement (insert "10" unless Buyer and Seller agree to a different period of time).

2. Within the time set forth above for obtaining a risk assessment and/or inspection of the Property for lead-based paint and/or lead-based paint hazards, Buyer may deliver to the Seller a written list of the specific hazardous conditions cited in the report and those corrections requested by Buyer, along with a copy of the risk assessment and/or inspection report.

3. Seller may, within _____ days of receiving the lists and report(s), submit a written corrective proposal to Buyer. The corrective proposal will include, but not be limited to, the name of the remediation company and a completion date for corrective measures. Seller will provide certification from a risk assessor or inspector that corrective measures have been made satisfactorily on or before the completion date.

4. Upon receiving the corrective proposal, Buyer, within 5 days, will:

a. Accept the corrective proposal and the Property in writing, and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR

b. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to buyer and this Agreement will be VOID.

5. Should Seller fail to submit a written corrective proposal within the time set forth in paragraph 10(D)3 of this Agreement, then Buyer, within 5 days, will:

a. Accept the Property in writing, and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR

b. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

(E) **Certification** By signing this Agreement, Buyer and Seller certify the accuracy of their respective statements, to the best of their knowledge.

11. **RADON CONTINGENCY**

(A) Seller represents that:

1. Seller has no knowledge concerning the presence or absence of radon.

2. Seller has the knowledge that the Property was tested on the date, by the methods (e.g., charcoal canister, alpha track, etc.) And with the results of all test indicated below:

DATE	TYPE OF TEST	RESULTS
7/19/03	SST E-PERM	1.8 to 1.9 pCi/L

COPIES OF ALL AVAILABLE TEST REPORTS will be delivered to Buyer with this Agreement. SELLER DOES NOT WARRANT EITHER THE METHODS OR RESULTS OF THE TESTS.

3. Seller has knowledge that the property underwent radon reduction measures on the date(s) and by the method(s) indicated below:
 DATE _____ RADON REDUCTION METHOD _____

WAIVED. Buyer understands that Buyer has the option to request that the Property be inspected for radon by a certified inspector (see Radon Notice). BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

(B) Buyer, at Buyer's expense, has the option to obtain, from a certified inspector, a radon test of the Property and will deliver a copy of the test report to Seller within 15 days of the execution of this Agreement. (See Radon Notice.)

1. If the test report reveals the presence of radon below 0.02 working levels (4 picocuries/liter), Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement.
2. If the test report reveals the presence of radon at or exceeding 0.02 working levels (4 picocuries/liter), Buyer will, within 7 days of receipt of the test results:

Option 1

 - a. Accept the Property in writing and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR
 - b. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID, OR
 - c. Submit a written, corrective proposal to Seller. The corrective proposal will include, but not be limited to, the name of the certified mitigation company; provisions for payment, including retests; and completion date for corrective measures.
 - (1) Within 5 days of receiving the corrective proposal, Seller will:
 - (a) Agree to the terms of the corrective proposal in writing, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR
 - (b) Not agree to the terms of the corrective proposal. Should Seller not agree to the terms of the corrective proposal or fail to respond within the time given, Buyer will, within 5 days, elect to:
 - (a) Accept the Property in writing and agree to the RELEASE set forth in Paragraph 25 of this Agreement, OR
 - (b) Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

Option 2

- a. Accept the Property in writing and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR
- b. Submit a written, corrective proposal to Seller. The corrective proposal will include, but not be limited to, the name of the certified mitigation company; provisions for payment, including retests; and completion date for corrective measures. Seller will pay a maximum of \$ 500.00 toward the cost of remediation and retests, which will be completed by settlement.
 - (1) If the total cost of remediation and retests EXCEEDS the amount specified in paragraph 11(B) (Option 2) b, Seller will, within 5 days of receipt of the cost of remediation, notify Buyer in writing of Seller's choice to:
 - (a) Pay for the total cost of remediation and retests, in which case buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR
 - (b) Not pay for the total cost of remediation and retests.
 - (2) If Seller chooses not to pay for the total cost of remediation and retests, or if Seller fails to choose either option within the time given, Buyer will, within 5 days, notify Seller in writing of Buyer's choice to:
 - (a) Pay the difference between Seller's contribution to remediation and retests and the actual cost thereof, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR
 - (b) Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

12. STATUS OF WATER

(A) Seller represents that this property is served by:

Public Water
 On-site Water
 Community Water
 None

(B) WATER SERVICE INSPECTION CONTINGENCY

WAIVED. Buyer acknowledges that Buyer has the option to request an inspection of the water service for the Property. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

ELECTED.

1. Buyer has the option, within _____ days of the execution of this Agreement and at Buyer's expense, to deliver to Seller a written inspection report by a qualified, professional water testing company of the quality and/or quantity of the water service.
2. Seller agrees to locate and provide access to the on-site (or individual) water system, if applicable, at Seller's expense, if required by the inspection company. Seller also agrees to restore the Property prior to settlement.
3. If the report reveals that the water service does not meet the minimum standards of any applicable governmental authority and/or fails to satisfy the requirements for quality and/or

quantity set by the mortgage lender, if any, then Seller will, within _____ days of receipt of the report, notify Buyer in writing of Seller's choice to:

- a. Upgrade the water service to the minimum acceptable levels, before settlement, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR
- b. Not upgrade the water service.

4. If Seller chooses not to upgrade the service to minimum acceptable levels, or fails to respond within the time given, Buyer will, within _____ days, either:

- a. Accept the Property and the water service, and, if required by mortgage lender, if any, and/or governmental authority, upgrade the water service before settlement or within the time required by the mortgage lender, if any, and/or governmental authority, at Buyer's expense and with Seller's permission, which will not be unreasonably withheld, and agree to the RELEASE set forth in paragraph 25 of this Agreement. If Seller denies Buyer permission to upgrade the water service, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID, OR
- b. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to buyer and this Agreement will be VOID.

13. **STATUS OF SEWER**

(A) Seller represents that the property is served by:

Public Sewer

Individual On-Site Sewage Disposal System (See Sewage Notice 1)

Individual On-Site Sewage Disposal System in Proximity to Well (See Sewage Notice 1; see Sewage Notice 4, if applicable)

Community Sewage Disposal System

Ten-acre Permit Exemption (See Sewage Notice 2)

Holding Tank (See Sewage Notice 3)

None (See Sewage Notice 1)

None Available/Permit Limitations in Effect (See Sewage Notice 5)

(B) **INDIVIDUAL ON-SITE SEWAGE DISPOSAL INSPECTION CONTINGENCY**

WAIVED. Buyer acknowledges that Buyer has the option to request an individual on-lot sewage inspection of the Property. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

ELECTED

1. Buyer has the option, within _____ days of the execution of this Agreement and at Buyer's expense, to deliver to Seller a written inspection report by a qualified, professional inspector of the individual on-site sewage disposal system.
2. Seller agrees to locate and provide access to the individual on-site sewage disposal system, and, if required by the inspection company, empty the septic tank, at Seller's expense. Seller also agrees to restore the Property prior to settlement.
3. If the report reveals defects that do not require expansion or replacement of the existing sewage disposal system, Seller will, within _____ days of receipt of the report, notify Buyer in writing of Seller's choice to:
 - a. Correct the defects before settlement, including retests, at Seller's expense, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR
 - b. Not correct the defaults, or if Seller fails to respond within the time given, Buyer will, within _____ days, either:
 - (1) Accept the Property and the system and, if required by the mortgage lender, if any, and/or governmental authority, correct the defects before settlement or within the time required by the mortgage lender, if any, and/or governmental authority, at Buyer's sole expense and with Seller's permission, which will not be unreasonably withheld, and agree to the RELEASE set forth in paragraph 25 of this Agreement. If Seller denies Buyer permission to correct the defects, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID, OR
 - (2) Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.
4. If the report reveals the need to expand or replace the existing individual on-lot sewage disposal system, Seller may, within _____ days of the report, submit a corrective proposal to Buyer. The corrective proposal will include, but not be limited to, the name of the remediation company; provisions for payment, including retests; and completion date for corrective measures. Within 5 days of receiving Seller's corrective proposal, or if no corrective proposal is received within the time given, Buyer will:
 - a. Agree to the terms of the corrective proposal, if any, in writing, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR
 - b. Accept the Property and system and, if required by the mortgage lender, if any, and/or required by the mortgage lender, if any, and/or any governmental authority, at Buyer's sole expense and with Seller's permission, which will not be unreasonably withheld, and agree to the RELEASE set forth in paragraph 25 of this Agreement. If Seller denies Buyer permission to correct the defects, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID, OR
 - c. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

14. **NOTICES, ASSESSMENTS & CERTIFICATES OF OCCUPANCY**

(A) Seller represents as of Seller's execution of this Agreement, that no public improvement, condominium or homeowner association assessments have been made against the Property which remain unpaid and that no notice by any government or public authority has been served upon Seller or anyone on Seller's behalf, including notices relating to violations of zoning, housing, building, safety or fire ordinances which remain uncorrected, and that Seller knows of no condition that would constitute a violation of any such ordinances which remains uncorrected, unless otherwise specified here:

(B) Seller knows of no other potential notices (including violations) and assessments except as follows:

(C) In the event any notices (including violations) and assessments are received after execution of this Agreement and before settlement, Seller will notify Buyer in writing, within 5 days of receiving the notice or assessment, that Seller will:

1. Comply with notices and assessments at Seller's expense, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR
2. NOT comply with notices and assessments at Seller's expense, in which case Buyer will notify Seller within 5 days in writing that Buyer will:
 - a. Comply with notices and assessments at Buyer's expense and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR
 - b. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.
If Buyer fails to notify Seller within the time given, Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

(D) Buyer is advised that access to a public road may require issuance of a highway occupancy permit from the Department of Transportation.

(E) If required by law, within 30 days of the execution of this Agreement, Seller will order for delivery to Buyer, on or before settlement,

1. A certification from the appropriate municipal department or departments disclosing notice of any uncorrected violation of zoning, housing, building, safety or fire ordinances, AND/OR
2. A certificate permitting occupancy of the Property. In the event that repairs/improvements are required for the issuance of the certificate, Seller will, within 5 days of Seller's receipt of the requirements, notify Buyer of the requirements and whether Seller will make the required repairs/improvements at Seller's expense.

If Seller chooses not to make the required repairs/improvements, Buyer will, within 5 days, notify Seller in writing of Buyer's choice to terminate this Agreement OR make the repairs/improvements at Buyer's expense and with Seller's permission, which will not be unreasonably withheld. If Seller denies Buyer permission to make the required repairs, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

15. **TITLE, SURVEY & COSTS**

(A) The Property is to be conveyed free and clear of all liens, encumbrances, and easements, EXCEPTING HOWEVER, the following: existing deed restrictions, historic preservation restrictions or ordinances, building restrictions, ordinances, easements of roads, easements visible upon the ground, easements of record, privileges or rights of public service companies, if any; otherwise the title to the above described real estate will be good and marketable and such as will be insured by a reputable Title Insurance Company at the regular rates.

(B) In the event Seller is unable to give a good and marketable title and such as will be insured by a reputable Title Insurance Company at the regular rates, as specified in paragraph 15(A), Buyer will have the option of taking such title as Seller can give without changing the price or of being repaid all monies paid by Buyer to Seller on account of purchase price and Seller will reimburse Buyer for any costs incurred by Buyer for those items specified in paragraph 15(C) and in paragraph 15(D) items (1), (2) and (3); and in the latter event there will be no further liability or obligation on either of the parties hereto and this Agreement will become VOID.

(C) Any survey or surveys which may be required by the Title Insurance Company or abstracting attorney, for the preparation of an adequate legal description of the Property (or the correction thereof), will be secured and paid for by Seller. However, any survey or surveys desired by Buyer or required by the mortgage lender will be secured and paid for by Buyer.

(D) Buyer will pay the following: (1) The premium for mechanics lien insurance and/or title search, or fee for cancellation of the same, if any; (2) The premiums for flood insurance and/or fire insurance with extended coverage, insurance binder charges or cancellation fee, if any; (3) Appraisal fees and charges paid in advance to mortgage lender, if any; (4) Buyers' customary settlement costs and accruals.

16. **ZONING CLASSIFICATION**

Failure of this Agreement to contain the zoning classification (except in cases where the property [and each parcel thereof, if subdividable] is zone solely or primarily to permit single-family dwellings) will render this Agreement voidable at the option of the Buyer, and, if voided, any deposits tendered by the Buyer will be returned to the Buyer without any requirement for court action.

Zoning classification: _____

ELECTED. Within _____ days of execution of this Agreement, Buyer will verify that the existing use of the Property as _____ is permitted. In the event the use is not permitted, Buyer will, within the time given for verification, notify Seller, in writing that the existing use is not permitted and this Agreement will be VOID, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer. Buyer's failure to respond within the time given will constitute a WAIVER of this contingency and all other terms of this Agreement remain in full force and effect.

17. **COAL NOTICE**

NOT APPLICABLE
 APPLICABLE

THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL SUCH COAL AND IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. (This notice is set forth in the

manner provided in Section 1 of the Act of July 17, 1957, P.L. 984.) "Buyer acknowledges that he may not be obtaining the right of protection against subsidence resulting from coal mining operations, and that the property described herein may be protected from damage due to mine subsidence by a private contract with the owners of the economic interests in the coal. This acknowledgment is made for the purpose of complying with the provisions of Section 14 of the Bituminous Mine Subsidence and the Land Conservation Act of April 27, 1966." Buyer agrees to sign the deed from Seller which deed will contain the aforesaid provision.

18. **POSSESSION**

(A) Possession is to be delivered by deed, keys and:

1. Physical possession to a vacant building (if any) broom-clean, free of debris at day and time of settlement, AND/OR
2. Assignment of existing lease(s), together with any security deposits and interest, at the time of settlement, if Property is tenant-occupied at the execution of this Agreement or unless otherwise specified herein. Buyer will acknowledge existing lease(s) by initialing said lease(s) at time of signing of this Agreement, if Property is tenant-occupied.

(B) Seller will not enter into any new leases, written extension of existing leases, if any, or additional leases for the Property without expressed written consent of Buyer.

19. **RECORDING.** This Agreement will not be recorded in the office for the Recording of Deeds or in any other office or place of public record and if Buyer causes or permits this Agreement to be recorded, Seller may elect to treat such act as a breach of this Agreement.

20. **ASSIGNMENT.** This Agreement will be binding upon the parties, their respective heirs, personal representatives, guardians and successors, and to the extent assignable, on the assigns of the parties hereto, it being expressly understood, however, that Buyer will not transfer or assign this Agreement without the written consent of Seller.

21. **DEPOSIT & RECOVERY FUND.**

(A) Deposits paid by Buyer within 30 days of settlement will be by cash, cashier's or certified check. Deposits, regardless of the form of payment and the person designated as payee, will be paid to the party identified in paragraph 3(F), who will retain them in an escrow account until consummation or termination of this Agreement in conformity with all applicable laws and regulations. Any uncashed check tendered as deposit may be held pending the acceptance of this offer.

(B) In the event of a dispute over entitlement to deposit monies, the _____ holding the deposit is required by the Rules and Regulations of the State Real Estate Commission (49 Pa. Code §35.327) to retain the monies in escrow until the dispute is resolved. In the event of litigation for the return of deposit monies, the _____ will distribute the monies as directed by a final order of court or the written Agreement of the parties. Buyer and Seller agree that, in the event any _____ is joined in a litigation for the return of deposit monies, the attorney's fees and costs of the _____ will be paid by the party joining them.

22. **MAINTENANCE & RISK OF LOSS**

(A) Seller will maintain the Property, grounds, fixtures, and any personal property specifically scheduled herein in its present condition, normal wear and tear excepted.

(B) In the event any system or appliance included in the sale of the Property fails and Seller does not repair or replace the item, Seller will promptly notify Buyer in writing of Seller's choice to:

1. Repair or replace the failed system or appliance before settlement or credit Buyer at settlement for the fair market value of the failed system or appliance (this option must be acceptable to the mortgage lender, if any). In each case, Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR
2. Make no repairs or replacements, and not credit Buyer at settlement for the fair market value of the failed system or appliance, in which case Buyer will notify Seller in writing within 5 days or before settlement, whichever is sooner, that Buyer will:
 - a. Accept the Property and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR
 - b. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

(C) Seller will bear risk of loss from fire or other casualties until time of settlement. In the event of damage by fire or other casualties to any property included in this sale that is not repaired or replaced prior to settlement, Buyer will have the option of rescinding this Agreement and promptly receiving all monies paid on account of purchase price or of accepting the Property in its then condition together with the proceeds of any insurance recovery obtainable by Seller. Buyer is hereby notified that Buyer may insure Buyer's equitable interest in this Property as of the time of execution of this Agreement.

23. **WAIVER OF CONTINGENCIES.**

In the event this Agreement is contingent upon Buyer's right to inspect and/or repair the Property, Buyer's failure to exercise any of Buyer's options within the time limits specified in the contingency provision(s) will constitute a WAIVER of that contingency and Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

24. **RELEASE.** Buyer hereby releases, quit claims and forever discharges SELLER, and any other PERSON, FIRM or CORPORATION who may be liable by or through them, from any and all claims, losses or demands, including, but not limited to, personal injuries and property damage and all of the consequences thereof, whether now known or not, which may arise from the presence of termites or other wood-boring insects, radon, lead-based paint hazards, environmental hazards, any defects in the individual on-lot sewage disposal system or deficiencies in the on-site water service system, or any defects or conditions on the Property. This release will survive settlement.

25. **REPRESENTATIONS**

(A) Buyer understands that any representations, claims, advertising, promotional activities, brochures or plans of any kind made by Seller are not a part of this Agreement unless expressly incorporated or stated in this Agreement.

(B) It is understood that Buyer has inspected the Property before signing this Agreement (including fixtures and any personal property specifically scheduled herein), or has waived the right to do so, and has agreed to purchase it in its present condition unless otherwise stated in this Agreement. Buyer acknowledges that THEY has not made an independent examination or determination of the structural soundness of the Property, the age or condition of the components, environmental conditions, the permitted uses, or of conditions existing in the locale where the Property is situated; nor have they made a mechanical inspection of any of the

(C) systems contained therein.
 It is further understood that this Agreement contains the whole agreement between Seller and Buyer and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise of any kind whatsoever concerning this sale. Furthermore, this Agreement will not be altered, amended, changed, or modified except in writing executed by the parties.

(D) The headings, captions, and line numbers in this Agreement are meant only to make it easier to find the paragraphs.

26. **TIME OF THE ESSENCE - DEFAULT**

The said time for settlement and all other times referred to for the performance of any of the obligations of this Agreement are hereby agreed to be of the essence of this Agreement. For the purposes of this Agreement, number of days will be counted from the date of execution, by excluding the day this Agreement was executed and including the last day of the time period. Should Buyer:

(A) Fail to make any additional payments as specified in paragraph 3; OR
 (B) Furnish false or incomplete information to Seller, or the mortgage lender, if any, concerning the Buyer's legal financial status, or fail to cooperate in the processing of the mortgage loan application, which acts would result in the failure to obtain the approval of a mortgage loan commitment; OR
 (C) Violate or fail to fulfill and perform any other terms or conditions of this Agreement; then in such case, Seller has the option of retaining all sums paid by Buyer, including deposit monies, 1) on account of purchase price, or 2) as monies to be applied to Seller's damages, or 3) as liquidated damages for such breach, as Seller may elect, unless otherwise checked below.
 Seller is limited to retaining sums paid by Buyer, including deposit monies, as liquidated damages. If Seller elects to retain all sums paid by Buyer, including deposit monies, as liquidated damages, Buyer and Seller will be released from further liability or obligation and this Agreement will be VOID.

Buyer and Seller acknowledge that they have read and understand the notices and explanatory information set forth in this Agreement.

Buyer acknowledges receiving a copy of this Agreement at the time of signing.

NOTICE TO PARTIES: WHEN SIGNED, THIS AGREEMENT IS A BINDING CONTRACT. Returns by facsimile transmission (FAX) of this Agreement, and all addenda, bearing the signatures of all parties, constitutes acceptance of this Agreement.

WITNESS _____ BUYER Elmira Lorraine Saline DATE 4.12.04
 Buyer Name (print) Elmira Lorraine Saline

WITNESS _____ BUYER Ross Keith Saline DATE 4.12.04
 Buyer Name (print) Ross Keith Saline

Seller hereby approves the above contract this (date) 4-18-04

WITNESS _____ SELLER Amy M Kostansek DATE 4.18.04
 Seller Name (print) Amy M Kostansek

WITNESS _____ SELLER Paul A Kostansek DATE 4/18/04
 Seller Name (print) Paul A. Kostansek



Amy

July 11, 2003

Paul Kostansek
c/o Pillar To Post
RD 4 Box 419
DuBois PA 15801

Re: Short Term Radon Test conducted at Sec 10 Lot 83 Bay Road Treasure Lake

Dear Mr. Kostansek:

The results of the radon measurements that were conducted at Sec 10 Lot 83 as follows:

Device Type	Electro No.	Location	Start Test	Finish Test	Results
SST E-PERM	S11-B012	Family Room	07/09/03 09:20	07/11/03 07:20	1.9 pCi/L
SST E-PERM	S14-B176	Family Room	07/09/03 09:20	07/11/03 07:20	1.8 pCi/L

Average Radon Concentration: 1.9 pCi/L

Relative Percent Difference: 5

Short-term radon tests are intended to give you an indication of the radon levels during the measurement period in the area where the test was conducted.

If you should have any questions concerning your radon measurements, please contact me at the telephone number listed below.

Sincerely,

Don Cessna
DEP ID#1996

Pennsylvania Notice to Clients: The Radon Certification Act requires that anyone who provides radon-related services or products to the general public must be certified by the Pennsylvania Department of Environmental Protection. You are entitled to evidence of certification from any person who provides such services or products. You are also entitled to a price list for services or products offered. All radon measurement data will be sent to the Department as required by the Act and will be kept confidential. If you have any questions, comments or complaints concerning persons who provide radon-related services, please contact the Department at the Bureau of Radiation Protection, Department of Environmental Protection, P.O. Box 8469, Harrisburg, PA 17108-8469 (717) 783-3594.

107 W. Sample Street, Ebensburg, PA 15931
Phone: (814) 471-6961 Toll Free: (877) 471-6961 Fax: (814) 672-0382
AUTHORIZED INDEPENDENT FRANCHISEE
Op. by Don Cessna Home Inspections Inc.

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

ROSS KEITH SALINE and) NO. 04-1831 C.D.
ELMIRA LORRAINE SALINE,)
Plaintiffs,) Type of Case: CIVIL ACTION
vs.)
Type of Pleading:
AMY M. KOSTANSEK and) Filed on Behalf of:
PAUL A. KOSTANSEK,) PLAINTIFFS
Defendants.) Counsel of Record:
) BENJAMIN S. BLAKLEY, III, ESQ.
) Supreme Court No. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) Du Bois, Pa 15801
) (814) 371-2730

6/11/2005
JAN 14 2005
FILED
Atty Bailey
1cc

William A. Shaw
Prothonotary/Clerk of Courts

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

ROSS KEITH SALINE and ELMIRA)	NO. 04-1831-C.D.
LORRAINE SALINE,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
AMY M. KOSTANSEK and PAUL A.)	
KOSTANSEK,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

I, **BENJAMIN S. BLAKLEY, III**, hereby certify that I have served a true and correct copy of Plaintiffs' Amended Complaint upon Defendants on this 13rd day of January, 2005, by depositing the same with the United States Postal Service via First-Class Mail, postage pre-paid, addressed as follows:

J. Michael King, Esquire
Lynn, King & Schreffler, P.C.
606 Main Street
P O Box 99
Emlenton PA 16373
Counsel for Defendant, Amy M. Kostansek

Paul A. Kostansek
1671 Treasure Lake
DuBois PA 15801

BLAKLEY & JONES

Benjamin S. Blakley, III
Attorney for Plaintiffs

OF COMMON PLEAS
NTY, PENNSYLVANIA

ROSS KI
ELMIRA

TELEPHONE (724) 867-5921
FAX (724) 867-5101

AMY M
PAUL

**LYNN, KING & SCHREFFLER
ATTORNEYS AT LAW**

P.O. BOX 99

606 MAIN STREET

EMLTON, PA 16373

CIVIL ACTION - LAW

No. 04-1831 C.D.

Type of Pleading:
Answer, New Matter, Counterclaim

Filed on behalf of:
Amy M. Kostanek, Defendant

COUNSEL OF RECORD:
Michael W. Sloat, Esquire
I.D. No. 89076

J. Michael King, Esquire
I.D. No. 25222

LYNN, KING & SCHREFFLER, P.C.
606 Main Street, P.O. Box 99
Emlenton, PA 16373
(724) 867-5921

FILED ^{6th}
NOV 1 07 2005 CC
JAN 3 1 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

ROSS KEITH SALINE and
ELMIRA LORRAINE SALINE,

Plaintiffs,

vs.

AMY M. KOSTANSEK, and
PAUL A. KOSTANSEK,

Defendants.

: CIVIL ACTION - LAW
: No. 04-1831 C.D.
: Type of Pleading:
: Answer, New Matter, Counterclaim
: Filed on behalf of:
: Amy M. Kostansek, Defendant
: COUNSEL OF RECORD:
: Michael W. Sloat, Esquire
: I.D. No. 89076
: J. Michael King, Esquire
: I.D. No. 25222
: LYNN, KING & SCHREFFLER, P.C.
: 606 Main Street, P.O. Box 99
: Emlenton, PA 16373
: (724) 867-5921

FILED *all*
1/1/07 No. *CC*
JAN 3 1 2005

William A. Shaw
Prothonotary/Clerk of Courts

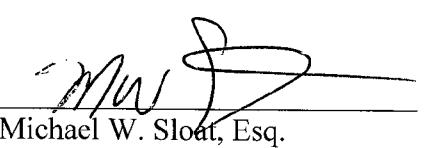
**IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA**

ROSS KEITH SALINE and :
ELMIRA LORRAINE SALINE, : No. 04-1831 C.D.
Plaintiffs, :
vs. :
AMY M. KOSTANSEK, and :
PAUL A. KOSTANSEK :
Defendants. :

NOTICE TO PLEAD

To: ROSS KEITH SALINE and ELMIRA LORRAINE SALINE

You are hereby notified to file a written response to the enclosed New Matter and Counterclaim within twenty (20) days from service hereof or a judgment may be entered against you.



Michael W. Sloat, Esq.
Attorney for Defendant, Amy M. Kostansek
606 Main Street, P.O. Box 99
Emlenton, PA 16373
(724) 867-5921

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

ROSS KEITH SALINE and	:	
ELMIRA LORRAINE SALINE,	:	No. 04-1831 C.D.
Plaintiffs,	:	
vs.	:	
	:	
AMY M. KOSTANSEK, and	:	
PAUL A. KOSTANSEK	:	
Defendants.	:	

ANSWER BY DEFENDANT AMY KOSTANSEK

1. Admitted.
2. Admitted that this is the proper mailing address of Defendant, Amy Konstansek.
3. Denied. The last known address of Defendant, Paul Kostansek is 1016 Maple St.,
Traverse City, Michigan.
4. Admitted, with the clarification that there was a mortgage on the subject property.
5. Admitted.
6. Admitted that the Agreement was a form prepared by Defendants' attorney.
7. Denied. Plaintiffs signed the Agreement on April 12, 2004 but did not present the
Agreement, along with the deposit, to the Defendants until on or about April 18, 2004.
8. Denied. The Agreement only required Defendants' written acceptance by April 20, 2004.
The Agreement did not require delivery to the Plaintiffs by April 20, 2004.
9. Denied. The Agreement did not set forth a time period by which the Defendants were to
deliver the Agreement to the Plaintiffs. It is admitted that on or about May 1, 2004, the
Defendants delivered to, and the Plaintiffs accepted the Agreement.
10. Admitted.

11. To the extent that the assertions of paragraph 11 are conclusions of law, no response is required. To the extent that a response is required, it is specifically denied that Defendants rejected Plaintiffs' offer. Rather the Defendants signed and accepted the offer, pursuant to the terms of the Agreement, on April 18, 2004, and the Plaintiffs accepted delivery of the Agreement from the Defendants on or about May 1, 2004 without objection.
12. To the extent that the assertions of paragraph 12 are conclusions of law, no response is required. To the extent that a response is required, it is specifically denied that Defendants breached any terms or obligations of the Agreement which the Plaintiffs did not waive.
WHEREFORE, the Defendant, Amy Kostansek, demands judgment in her favor and against Plaintiffs and that Plaintiffs' Complaint be dismissed with prejudice.

NEW MATTER

13. The averments set forth in paragraphs 1 through 12 hereinbefore are incorporated by reference herein as though set forth at length.
14. On or about April 12, 2004, the Plaintiffs executed an Agreement offering to purchase the real property of the Defendants for the sum of \$268,000.00 and delivered the Agreement and deposit money to the Defendants on or about April 18, 2004.
15. At the time of the offer the Plaintiffs requested the Defendants to take the home off the market and to take the for sale sign down.
16. The Defendants accepted the Agreement on April 18, 2004 and delivered the Agreement to the Defendants on or about May 1, 2004.

17. At no time prior to the Plaintiffs' acceptance of the Agreement did the Plaintiffs withdraw their offer to purchase.
18. The Plaintiffs accepted delivery of the Agreement from the Defendants without any objections and with all indications on moving forward with purchasing the real estate pursuant to the terms of the Agreement.
19. Plaintiffs waived any right or claim regarding the time of delivery once they accepted the Agreement from the Defendants without any objections or comments regarding the same.
20. Plaintiffs continued to move forward with the terms of the Agreement after they accepted delivery and thereafter continued to communicate with the Defendants their intent to move forward with purchasing the real estate by, among other things,:
 - a. requesting an earlier closing date; and
 - b. bringing their adult children to the house to show them the new home they were purchasing.
21. Plaintiffs' claim is barred due to waiver.
22. Plaintiffs' claim is barred due to estoppel.
23. Plaintiffs' claim is barred due to consent.
24. Plaintiffs' claim is barred for failure to state a claim.
25. Weeks later, the Plaintiff, Ross Keith Saline, contacted the Defendant, Amy Kostanek, to inform her that the Plaintiffs did not intend to honor the Agreement because his wife had received a pay cut.
26. Weeks later Plaintiffs contacted Defendants' attorney and inquired as to whether the

deposit money would be returned.

27. A letter, dated June 18, 2004, was sent, by certified mail, to the Plaintiffs informing them that the Defendants intended to move forward with the sale and that the Plaintiffs' failure to do so would be considered a breach of the Agreement. A copy of said letter is attached hereto and made a part hereof and marked as Exhibit "1".
28. Plaintiffs did not respond to said letter.
29. Plaintiffs failed to close by June 30, 2004, the settlement/closing date specified in the Agreement.
30. Under the terms of the Agreement, the settlement date was of the essence.
31. Subsequent to the settlement/closing date the Defendants placed the real estate back on the market.
32. On November 12, 2004, 135 days (4 ½ months) after the closing date of the Agreement, the Defendants sold the house to another buyer for \$260,000.00.

WHEREFORE, the Defendant, Amy Kostansek, demands judgment in her favor and against Plaintiffs and that Plaintiffs' Complaint be dismissed with prejudice.

COUNTERCLAIM

BREACH OF CONTRACT

33. The averments set forth in paragraphs 1 through 32 hereinbefore are incorporated by reference herein as though set forth at length.
34. Plaintiffs breached the Agreement by failing to purchase the real estate on or before the closing date of June 30, 2004, as provided in the Agreement.
35. Upon breach by the Plaintiffs, pursuant to the terms of the Agreement, the Defendants

have the option of retaining all sums paid by the Plaintiffs, including deposit monies; on account of purchase price, or as liquidated damages, or as monies to be applied towards Defendants' damages.

36. As a direct result of Plaintiffs' breach of the Agreement, the Defendants incurred the following damages totaling \$15,248.70:
 - a. A loss of \$8,000.00 on the purchase price; and
 - b. Daily mortgage interest payment of \$38.49 x 135 days, totaling \$5,196.15; and
 - c. 4 ½ months of County taxes in the amount of \$227.25; and
 - d. 4 ½ months of Township taxes in the amount of \$153.77; and
 - e. 4 ½ months of School taxes in the amount of \$1,143.18; and
 - f. 4 ½ months of Treasure Lake Association fees in the amount of \$184.50; and
 - g. 4 ½ months of homeowner's insurance in the amount of \$343.85.

WHEREFORE, the Defendant, Amy Kostanek, requests this Honorable Court to grant judgment against Plaintiffs in the amount of \$15, 248.70, plus interest, costs, and attorney's fees.

Respectfully Submitted,

LYNN, KING & SCHREFFLER, P.C.


J. Michael King, Esquire


Michael W. Sloat, Esquire

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

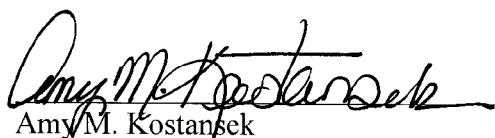
ROSS KEITH SALINE and :
ELMIRA LORRAINE SALINE, : No. 04-1831 C.D.
Plaintiffs, :
vs. :
AMY M. KOSTANSEK, and :
PAUL A. KOSTANSEK :
Defendants. :
:

VERIFICATION

I verify that the factual allegations made in the foregoing Answer, New Matter, and Counterclaim are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to 18 P.a.C.S.A. 4904, relating to unsworn falsification to authorities.

Date

01/25/05



Amy M. Kostansek

LYNN, KING & SCHREFFLER, P.C.
ATTORNEYS AT LAW

606 MAIN STREET, P.O. BOX 99, EMLENTON, PA 16373
TELEPHONE (724) 867-5921
FAX (724) 867-5101
EMAIL: lkslaw@csonline.net

J. MICHAEL KING
SCOTT W. SCHREFFLER
MICHAEL W. SLOAT

MILES R. LYNN, JR.
COUNSEL TO THE FIRM

June 18, 2004

Ross Keith Saline
Elmira Lorraine Saline
889 Treasure Lake
DuBois, PA 15801

Re: Agreement of Sale

Dear Mr. and Mrs. Saline:

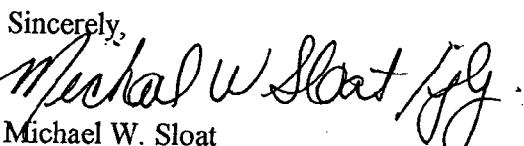
I am writing in regards to the Agreement of Sale of Real Estate you entered into with my clients, Paul and Amy Kostanek. It is my understanding that you do not intend to honor the agreement and have repudiated the same in a conversation with my client as well as our office.

Our client intends to move forward with the Agreement and are prepared to tender a deed to you at closing. Kindly contact our office to schedule a closing date if in fact you intend to move forward with the purchase. It is important that you either confirm, in writing, your intention to move forward with the purchase or confirm your withdrawal from the agreement.

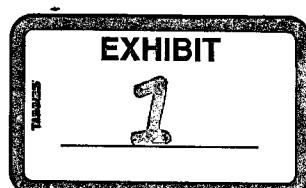
Again, the Kostaneks are offering a deed to you pursuant the Agreement For Sale of Real Estate. If you move forward with the purchase, the deposit money of \$5000.00 will be credited against the same, if not, it will be retained by my clients as liquidated damages as provided in the Agreement.

If I do not hear from you by June 30, 2004, the settlement date provided in the Agreement, I will have no other alternative but to hold you in breach of the agreement, release the deposit money to my clients, and hold the property out for sale.

I am looking forward to hearing from you.

Sincerely,

Michael W. Sloat

Certified Mail #7002 3150 0005 4577 2365
cc: Paul and Amy Kostanek



Certificate of Service

I certify that I served a true and correct copy of the foregoing Answer, New Matter, and Counterclaim by first class US Mail, postage prepaid, on the following:

Benjamin S. Blakley, III, Esquire
90 Beaver Drive, Box 6
DuBois, PA 15801

Date: 1/28/15


Michael W. Sloat

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

ROSS KEITH SALINE and) NO. 04-1831 C.D.
ELMIRA LORRAINE SALINE,)
Plaintiffs,) Type of Case: CIVIL ACTION
vs.)
Type of Pleading:
AMY M. KOSTANSEK and) Filed on Behalf of:
PAUL A. KOSTANSEK,) PLAINTIFFS
Defendants.) Counsel of Record:
) BENJAMIN S. BLAKLEY, III, ESQ.
) Supreme Court No. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) Du Bois, Pa 15801
) (814) 371-2730

642 **FILED**
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1/26/05
FEB 22 2005
Recd by Clerk of Court

William A. Shaw
Prothonotary/Clerk of Courts

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

ROSS KEITH SALINE and ELMIRA) NO. 04-1831-C.D.
LORRAINE SALINE,)
)
Plaintiffs,)
)
vs.)
)
AMY M. KOSTANSEK and PAUL A.)
KOSTANSEK,)
)
Defendants.)

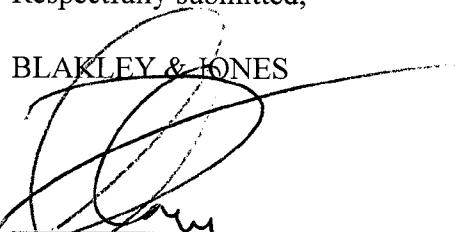
PRAECIPE TO REINSTATE COMPLAINT

TO: WILLIAM A. SHAW, PROTHONOTARY

Please reinstate the Complaint filed on December 10, 2004, in the above-captioned matter as to Defendant **PAUL A. KOSTANSEK**.

Respectfully submitted,

BLAKLEY & JONES



Benjamin S. Blakley, III
Attorney for Plaintiff

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

ROSS KEITH SALINE and) NO. 04-1831 C.D.
ELMIRA LORRAINE SALINE,)
Plaintiffs,) Type of Case: CIVIL ACTION
vs.)
Type of Pleading: REPLY TO NEW MATTER
AND ANSWER TO COUNTERCLAIM
AMY M. KOSTANSEK,) Filed on Behalf of:
Defendant.) PLAINTIFFS
Counsel of Record:
BENJAMIN S. BLAKLEY, III, ESQ.
Supreme Court no. 26331
BLAKLEY & JONES
90 Beaver Drive, Box 6
Du Bois, Pa 15801
(814) 371-2730

FILED

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William A. Shaw
Prothonotary/Clerk of Courts
1 Cents to Mail

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

ROSS KEITH SALINE and ELMIRA) NO. 04-1831-C.D.
LORRAINE SALINE,)
)
 Plaintiffs,)
)
 vs.)
)
 AMY M. KOSTANSEK,)
)
 Defendant.)

REPLY TO NEW MATTER AND ANSWER TO COUNTERCLAIM

AND NOW come Plaintiffs, **ROSS KEITH SALINE and ELMIRA LORRAINE SALINE**, by and through their attorneys, **BLAKLEY & JONES**, and file the following Reply to New Matter and Answer to Counterclaim of Defendant, **AMY M. KOSTANSEK**, of which the following is a statement:

13. Requires no answer.
14. Admitted.
15. Admitted.
16. After reasonable investigation, the Plaintiffs are unable to determine the truth or falsity of the allegations contained within Paragraph 16 of the Defendant's New Matter insofar as the same alleges an acceptance of the agreement on April 18, 2004, and therefore deny the same and demand strict proof thereof at trial. It is admitted, however, that the agreement was delivered to the Defendants on May 1, 2004.

17. It is admitted that the Plaintiffs did not communicate a withdrawal of their offer to purchase to the Defendants, but further, it was assumed by the Plaintiffs that the Defendants had rejected the Plaintiffs' offer to purchase the subject property, as the Plaintiffs failed to communicate their acceptance of the agreement to the Defendants on or before April 20, 2004, as set forth in the parties' Agreement of Sale dated April 6, 2004.

18. It is admitted that the Plaintiffs accepted physical delivery of the agreement from the Defendant **AMY M. KOSTANSEK** when she appeared at the door of the Plaintiffs on May 1, 2004; however, it is denied that the Plaintiffs did not accept the physical delivery of the agreement from the Defendants without objections and with any indications of moving forward with the purchase of the real estate, and on the contrary, it is averred that the Plaintiffs communicated to Defendant **AMY M. KOSTANSEK** on May 1, 2004, that they would contact her in the future regarding their intentions, given the communication of acceptance by the Plaintiffs after the April 20, 2004, deadline.

19. Denied, and on the contrary, it is averred that the Plaintiffs at no time waived any right or claim regarding the delivery, as at the time, the Defendant did not indicate to the Plaintiffs what she was delivering to the Plaintiff nor that the agreement had, in fact, been accepted by the Defendants, and further, the Plaintiffs indicated to the Defendant **AMY L. KOSTANSEK** that they would contact her at a later date with regard to their intentions regarding the purchase of the property, given that the Defendant did not communicate with the Plaintiffs on or before April 20, 2004.

20. It is denied that the Plaintiffs, in any manner, continued to move forward with the terms of any agreement subsequent to May 1, 2004, nor did the Plaintiffs have any communications with the Defendant as to their intent to close the property, other than to request the return of their downpayment subsequent to May 1, 2004. It is further denied that all communications with regard to an earlier closing date and the taking of the adult children to the house occurred prior to April 12, 2004, the date on which the Plaintiffs executed their offer to purchase the Defendants' real property.

21. Denied for the reasons set forth above.

22. It is denied that the Plaintiffs' claim is barred due to estoppel, as no estoppel has occurred in any manner in this matter.

23. It is denied that the Plaintiffs' claim is barred due to consent, and on the contrary, it is averred that the Plaintiffs, in no manner, consented to the actions of the Defendants in failing to abide by the terms of the parties' Agreement of Sale.

24. It is denied that the Plaintiffs' claim is barred for failure to state a claim, and on the contrary, it is averred that the Plaintiffs' claim is clearly set forth in their Complaint.

25. It is admitted that the Plaintiff advised the Defendant that, in addition to the Defendant's failure to abide by the terms of the Agreement of Sale in their acceptance of the Plaintiffs' offer, the Plaintiffs had decided not to go forward with the purchase of the home because the Plaintiff, **ELMIRA LORRAINE SALINE**'s, financial situation had changed. It is denied, however, that the Plaintiffs' financial situation was the reason for the Plaintiffs' failure to

purchase the Defendants' real property, and on the contrary, it is averred that the actions of the Defendants in failing to abide by the terms of their agreement caused the Agreement of Sale to fail.

26. It is admitted that, approximately two (2) weeks after May 1, 2004, Plaintiff **ROSS KEITH SALINE** contacted the Defendants' attorney and inquired as to when the deposit money would be returned, as it was the Plaintiffs' position at that point that the agreement was terminated due to the actions of the Defendants and that sufficient time had passed for the Defendants to return the Plaintiffs' deposit money.

27. Admitted.

28. It is denied that the Plaintiffs did not respond to said letter, and on the contrary, it is averred that, by letter dated June 30, 2004, Plaintiffs' attorney forwarded a response to Defendants' attorney's June 18, 2004, letter. A copy of said letter is attached hereto and made a part hereof and marked as Exhibit B.

29. Admitted as the Defendants did void the Agreement of Sale by their failure to abide by the terms of the April 6, 2004, Agreement of Sale.

30. It is admitted that, under the terms of the agreement, the time for settlement and **all other times referred to for the performance of any and all obligations of the agreement** were of the essence, including the date on which the Defendants were to indicate their approval of the Plaintiffs' offer to purchase the subject property.

31. After reasonable investigation, the Plaintiffs were unable to determine the truth or falsity of the allegations contained in Paragraph 31 of the Defendants' New Matter and therefore denies the same and demands strict proof thereof at trial.

32. After reasonable investigation, the Plaintiffs were unable to determine the truth or falsity of the allegations contained in Paragraph 32 of the Defendants' New Matter and therefore denies the same and demands strict proof thereof at trial.

WHEREFORE, Plaintiffs demand judgment in their favor, pursuant to their demand in their Complaint.

ANSWER TO COUNTERCLAIM

BREACH OF CONTRACT

33. Requires no answer.

34. It is denied that the Plaintiffs, in any manner, breached their Agreement by failing to purchase the real estate on or before the closing date of June 30, 2004, and on the contrary, it is averred that the said Agreement was voided by the actions of the Defendants in failing to indicate their approval of the Plaintiffs' offer to purchase on or before April 20, 2004, thereby relieving the Plaintiffs of any further obligation under said Agreement.

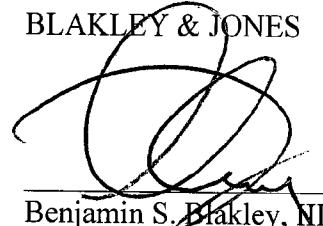
35. It is admitted that, under the terms of the Agreement, the Defendants have certain options with regard to damages, but it is denied that the Plaintiffs, in any manner, breached the Agreement of Sale, entitling the Defendants to retain any deposit monies or to seek damages in any manner from the Plaintiffs.

36. It is denied that the Plaintiffs, in any manner, breached any Agreement between the Plaintiffs and the Defendants, and on the contrary, it is averred that it is the Defendants who breached the said Agreement of Sale by failing to abide by the terms of **their** agreement in failing to communicate their approval of the Plaintiffs' offer to purchase on or before April 20, 2004.

WHEREFORE, Plaintiffs request that this Honorable Court deny the Defendants' prayer for judgment against the Plaintiffs and enter judgment for the Plaintiffs as prayed for in the Plaintiffs' Complaint.

Respectfully submitted,

BLAKLEY & JONES



Benjamin S. Blakley, NI

VERIFICATION

We, **ROSS KEITH SALINE** and **ELMIRA LORRAINE SALINE**, hereby state that we are the Plaintiffs in this action and verify that the statements made in the foregoing Reply to New Matter and Answer to Counterclaim are true and correct to the best of our knowledge, information, and belief. We understand that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 2-21-05


ROSS KEITH SALINE

Dated: 2/21/05


ELMIRA LORRAINE SALINE

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

ROSS KEITH SALINE and) NO. 04-1831 C.D.
ELMIRA LORRAINE SALINE,)
Plaintiffs,) Type of Case: CIVIL ACTION
vs.)
AMY M. KOSTANSEK and) Type of Pleading:
PAUL A. KOSTANSEK,) CERTIFICATE OF SERVICE
Defendants.)
) Filed on Behalf of:
) PLAINTIFFS
)
) Counsel of Record:
) BENJAMIN S. BLAKLEY, III, ESQ.
) Supreme Court No. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) Du Bois, Pa 15801
) (814) 371-2730

FILED

616 FEB 23 2005
m/12:33p
William A. Shaw
Prothonotary/Clerk of Courts
1 cent to Attn

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

ROSS KEITH SALINE and ELMIRA) NO. 04-1831-C.D.
LORRAINE SALINE,)
)
Plaintiffs,)
)
vs.)
)
AMY M. KOSTANSEK and PAUL A.)
KOSTANSEK,)
)
Defendants.)

CERTIFICATE OF SERVICE

I, **BENJAMIN S. BLAKLEY, III**, hereby certify that I have served a true and correct copy of Plaintiffs' Reply to New Matter and Answer to Counterclaim upon Defendants on this 21st day of February, 2005, by depositing the same with the United States Postal Service via First-Class Mail, postage pre-paid, addressed as follows:

Michael W. Sloat, Esquire
Lynn, King & Schreffler, P.C.
606 Main Street
P O Box 99
Emlenton PA 16373
Counsel for Defendant, Amy M. Kostansek

Paul A. Kostansek
1016 Maple Street
Traverse City MI 49684

BLAKLEY & JONES
Benjamin S. Blakley, III
Attorney for Plaintiffs

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

ROSS KEITH SALINE and) NO. 04-1831 C.D.
ELMIRA LORRAINE SALINE,)
Plaintiffs,) Type of Case: CIVIL ACTION
vs.)
Type of Pleading:
AMY M. KOSTANSEK and) Filed on Behalf of:
PAUL A. KOSTANSEK,) PLAINTIFFS
Defendants.) Counsel of Record:
) BENJAMIN S. BLAKLEY, III, ESQ.
) Supreme Court No. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) Du Bois, Pa 15801
) (814) 371-2730

sw
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D 3205 Atty
APR 14 2005 Blakley
William A. Shaw
Prothonotary/Clerk of Courts

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

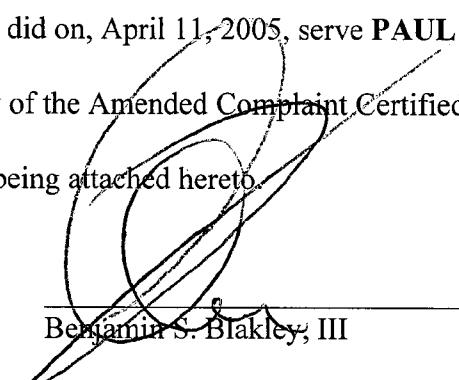
ROSS KEITH SALINE and ELMIRA) NO. 04-1831-C.D.
LORRAINE SALINE,)
)
Plaintiffs,)
)
vs.)
)
AMY M. KOSTANSEK and PAUL A.)
KOSTANSEK,)
)
Defendants.)

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA :
: **SS.**
COUNTY OF CLEARFIELD :

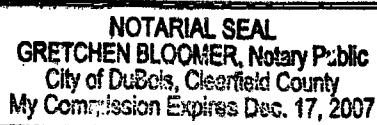
BENJAMIN S. BLAKLEY, III, ESQUIRE, being duly sworn according to law, deposes and says that as attorney for Plaintiff, he did on, April 11, 2005, serve **PAUL A. KOSTANSEK**, Defendant, with a certified copy of the Amended Complaint Certified Mail, Return Receipt Requested, said return receipt is being attached hereto.

Sworn to and Subscribed
before me this 14th day
of April, 2005.



Benjamin S. Blakley, III


Notary Public



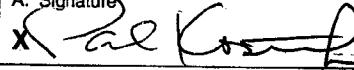
SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

PAUL A. KOSTANEK
433 WEBSTER
TRAVERSE CITY MI 49686

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

 Agent Addressee

B. Received by (Printed Name)

Paul Kostanek

C. Date of Delivery

4/11/05

D. Is delivery address different from item 1? Yes
if YES, enter delivery address below: No

3. Service Type

<input checked="" type="checkbox"/> Certified Mail	<input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered	<input type="checkbox"/> Return Receipt for Merchandise
<input type="checkbox"/> Insured Mail	<input type="checkbox"/> C.O.D.

E. Restricted Delivery? (Extra Fee) Yes

2. Article Number

(Transfer from service label)

7001 1940 0000 1929 0977

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

ROSS KEITH SALINE and) NO. 04-1831 C.D.
ELMIRA LORRAINE SALINE,)
Plaintiffs,) Type of Case: CIVIL ACTION
)
vs.) Type of Pleading:
AMY M. KOSTANSEK and) Filed on Behalf of:
PAUL A. KOSTANSEK,) PLAINTIFFS
Defendants.)
) Counsel of Record:
) BENJAMIN S. BLAKLEY, III, ESQ.
) Supreme Court No. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) Du Bois, Pa 15801
) (814) 371-2730

o⁴ FILED NO
MAY 09 2005
cc

William A. Shaw
Prothonotary/Clerk of Courts

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

ROSS KEITH SALINE and ELMIRA) NO. 04-1831-C.D.
LORRAINE SALINE,)
)
Plaintiffs,)
)
vs.)
)
AMY M. KOSTANSEK and PAUL A.)
KOSTANSEK,)
)
Defendants.)

CERTIFICATE OF SERVICE

I, **BENJAMIN S. BLAKLEY, III**, hereby certify that I have served a true and correct copy of Plaintiffs' Ten-Day Notice upon Defendants on this 6th day of May, 2005, by depositing the same with the United States Postal Service via First-Class Mail, postage pre-paid, addressed as follows:

Michael W. Sloat, Esquire
Lynn, King & Schreffler, P.C.
606 Main Street
P O Box 99
Emlenton PA 16373
Counsel for Defendant, Amy M. Kostanek

Paul A. Kostanek
433 Webster
Traverse City MI 49684

BLAKLEY & JONES

Benjamin S. Blakley, III
Attorney for Plaintiffs

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

ROSS KEITH SALINE and) NO. 04-1831 C.D.
ELMIRA LORRAINE SALINE,)
Plaintiffs,) Type of Case: CIVIL ACTION
vs.)
AMY M. KOSTANSEK and) Type of Pleading:
PAUL A. KOSTANSEK,) TEN-DAY NOTICE
Defendants.)
) Filed on Behalf of:
) PLAINTIFFS
)
) Counsel of Record:
) BENJAMIN S. BLAKLEY, III, ESQ.
) Supreme Court No. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) Du Bois, Pa 15801
) (814) 371-2730

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

ROSS KEITH SALINE and ELMIRA) NO. 04-1831-C.D.
LORRAINE SALINE,)
)
Plaintiffs,)
)
vs.)
)
AMY M. KOSTANSEK and PAUL A.)
KOSTANSEK,)
)
Defendants.)

TEN-DAY NOTICE

DATE OF NOTICE: **May 6, 2005**

TO: PAUL A. KOSTANSEK
433 Webster
Traverse City MI 49686

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN (10) 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 OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

David S. Meholic, Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814) 765-2641

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

ROSS KEITH SALINE and
ELMIRA LORRAINE SALINE, : CIVIL ACTION - LAW
Plaintiffs, : No. 04-1831 C.D.
vs. : Type of Pleading:
AMY M. KOSTANSEK, and : Answer, New Matter, Counterclaim
PAUL A. KOSTANSEK, : Filed on behalf of:
Defendants. : Paul A. Kostansek, Defendant
: COUNSEL OF RECORD:
: Michael W. Sloat, Esquire
: I.D. No. 89076
: J. Michael King, Esquire
: I.D. No. 25222
: LYNN, KING & SCHREFFLER, P.C.
: 606 Main Street, P.O. Box 99
: Emlenton, PA 16373
: (724) 867-5921

FILED ^{6/21/05}
NO CC
MAY 12 2005

William A. Shaw
Prothonotary/Clerk of Courts

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

ROSS KEITH SALINE and	:	
ELMIRA LORRAINE SALINE,	:	No. 04-1831 C.D.
Plaintiffs,	:	
vs.	:	
AMY M. KOSTANSEK, and	:	
PAUL A. KOSTANSEK	:	
Defendants.	:	

NOTICE TO PLEAD

To: ROSS KEITH SALINE and ELMIRA LORRAINE SALINE

You are hereby notified to file a written response to the enclosed New Matter and Counterclaim within twenty (20) days from service hereof or a judgment may be entered against you.



Michael W. Sloat, Esq.
Attorney for Defendant, Amy M. Kostansek
606 Main Street, P.O. Box 99
Emlenton, PA 16373
(724) 867-5921

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

ROSS KEITH SALINE and :
ELMIRA LORRAINE SALINE, : No. 04-1831 C.D.
Plaintiffs, :
vs. :
AMY M. KOSTANSEK, and :
PAUL A. KOSTANSEK :
Defendants. :

ANSWER BY DEFENDANT PAUL KOSTANSEK

1. Admitted.
2. Admitted that this is the proper mailing address of Defendant, Amy Kostanek.
3. Denied. Paul Kostanek's address is 923 S. Maple Street, Traverse City, Michigan, 49684.
4. Admitted, with the clarification that there was a mortgage on the subject property.
5. Admitted.
6. Admitted that the Agreement was a form prepared by Defendants' attorney.
7. Denied. Plaintiffs signed the Agreement on April 12, 2004 but did not present the Agreement, along with the deposit, to the Defendants until on or about April 18, 2004.
8. Denied. The Agreement only required Defendants' written acceptance by April 20, 2004. The Agreement did not require delivery to the Plaintiffs by April 20, 2004.
9. Denied. The Agreement did not set forth a time period by which the Defendants were to deliver the Agreement to the Plaintiffs. It is admitted that on or about May 1, 2004, the Defendants delivered to, and the Plaintiffs accepted the Agreement.
10. Admitted.
11. To the extent that the assertions of paragraph 11 are conclusions of law, no response is required. To the extent that a response is required, it is specifically denied that Defendants rejected Plaintiffs' offer. Rather the Defendants signed and accepted the offer, pursuant to the terms of the Agreement, on April 18, 2004, and the Plaintiffs accepted delivery of the Agreement from the Defendants on or about May 1, 2004 without objection.

12. To the extent that the assertions of paragraph 12 are conclusions of law, no response is required. To the extent that a response is required, it is specifically denied that Defendants breached any terms or obligations of the Agreement which the Plaintiffs did not waive.
WHEREFORE, the Defendant, Paul Kostanek, demands judgment in his favor and against Plaintiffs and that Plaintiffs' Complaint be dismissed with prejudice.

NEW MATTER

13. The averments set forth in paragraphs 1 through 12 hereinbefore are incorporated by reference herein as though set forth at length.
14. On or about April 12, 2004, the Plaintiffs executed an Agreement offering to purchase the real property of the Defendants for the sum of \$268,000.00 and delivered the Agreement and deposit money to the Defendants on or about April 18, 2004.
15. At the time of the offer the Plaintiffs requested the Defendants to take the home off the market and to take the for sale sign down.
16. The Defendants accepted the Agreement on April 18, 2004 and delivered the Agreement to the Defendants on or about May 1, 2004.
17. At no time prior to the Plaintiffs' acceptance of the Agreement did the Plaintiffs withdraw their offer to purchase.
18. The Plaintiffs accepted delivery of the Agreement from the Defendants without any objections and with all indications on moving forward with purchasing the real estate pursuant to the terms of the Agreement.
19. Plaintiffs waived any right or claim regarding the time of delivery once they accepted the Agreement from the Defendants without any objections or comments regarding the same.
20. Plaintiffs continued to move forward with the terms of the Agreement after they accepted delivery and thereafter continued to communicate with the Defendants their intent to move forward with purchasing the real estate by, among other things,:
 - a. requesting an earlier closing date; and
 - b. bringing their adult children to the house to show them the new home they were purchasing.
21. Plaintiffs' claim is barred due to waiver.

22. Plaintiffs' claim is barred due to estoppel.
23. Plaintiffs' claim is barred due to consent.
24. Plaintiffs' claim is barred for failure to state a claim.
25. Weeks later, the Plaintiff, Ross Keith Saline, contacted the Defendant, Amy Kostansek, to inform her that the Plaintiffs did not intend to honor the Agreement because his wife had received a pay cut.
26. Weeks later Plaintiffs contacted Defendants' attorney and inquired as to whether the deposit money would be returned.
27. A letter, dated June 18, 2004, was sent, by certified mail, to the Plaintiffs informing them that the Defendants intended to move forward with the sale and that the Plaintiffs' failure to do so would be considered a breach of the Agreement. A copy of said letter is attached hereto and made a part hereof and marked as Exhibit "1".
28. Plaintiffs did not respond to said letter.
29. Plaintiffs failed to close by June 30, 2004, the settlement/closing date specified in the Agreement.
30. Under the terms of the Agreement, the settlement date was of the essence.
31. Subsequent to the settlement/closing date the Defendants placed the real estate back on the market.
32. On November 12, 2004, 135 days (4 ½ months) after the closing date of the Agreement, the Defendants sold the house to another buyer for \$260,000.00.

WHEREFORE, the Defendant, Paul A. Kostansek, demands judgment in his favor and against Plaintiffs and that Plaintiffs' Complaint be dismissed with prejudice.

COUNTERCLAIM

BREACH OF CONTRACT

33. The averments set forth in paragraphs 1 through 32 hereinbefore are incorporated by reference herein as though set forth at length.
34. Plaintiffs breached the Agreement by failing to purchase the real estate on or before the closing date of June 30, 2004, as provided in the Agreement.

35. Upon breach by the Plaintiffs, pursuant to the terms of the Agreement, the Defendants have the option of retaining all sums paid by the Plaintiffs, including deposit monies; on account of purchase price, or as liquidated damages, or as monies to be applied towards Defendants' damages.
36. As a direct result of Plaintiffs' breach of the Agreement, the Defendants incurred the following damages totaling \$15,248.70:
 - a. A loss of \$8,000.00 on the purchase price; and
 - b. Daily mortgage interest payment of \$38.49 x 135 days, totaling \$5,196.15; and
 - c. 4 ½ months of County taxes in the amount of \$227.25; and
 - d. 4 ½ months of Township taxes in the amount of \$153.77; and
 - e. 4 ½ months of School taxes in the amount of \$1,143.18; and
 - f. 4 ½ months of Treasure Lake Association fees in the amount of \$184.50; and
 - g. 4 ½ months of homeowner's insurance in the amount of \$343.85.

WHEREFORE, the Defendant, Paul A. Kostansek, requests this Honorable Court to grant judgment against Plaintiffs in the amount of \$15, 248.70, plus interest, costs, and attorney's fees.

Respectfully Submitted,

LYNN, KING & SCHREFFLER, P.C.



Michael W. Sloat, Esquire

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

ROSS KEITH SALINE and	:	
ELMIRA LORRAINE SALINE,	:	No. 04-1831 C.D.
Plaintiffs,	:	
vs.	:	
AMY M. KOSTANSEK, and	:	
PAUL A. KOSTANSEK	:	
Defendants.	:	

VERIFICATION

I, Michael W. Sloat, Esquire, hereby verify that I am counsel for Defendant in the above captioned matter, that Defendant Paul Kostansek cannot make the verification to the foregoing Answer, New Matter, and Counterclaim because he is outside the court's jurisdiction and his verification cannot be obtained within the time allowed for filing. I hereby verify that the averments in the foregoing Answer, New Matter, and Counterclaim, are true and correct to the best of my information and belief. I have no special knowledge regarding the facts of the within lawsuit; however, I have obtained the facts by reviewing my clients' file. I understand that the averments of facts in this pleading are made subject to the penalties of 18 Pa.C.S. 4904, relating to unsworn falsification to authorities.

Date May 10 2005



Michael W. Sloat, Esquire

Certificate of Service

I certify that I served a true and correct copy of the foregoing Answer, New Matter, and Counterclaim by first class US Mail, postage prepaid, on the following:

Benjamin S. Blakley, III, Esquire
90 Beaver Drive, Box 6
DuBois, PA 15801

Date: May 10, 2005



Michael W. Sloat

LYNN, KING & SCHREFFLER, P.C.

ATTORNEYS AT LAW

606 MAIN STREET, P.O. BOX 99, EMLENTON, PA 16373

TELEPHONE (724) 867-5921

FAX (724) 867-5101

EMAIL: lkslaw@csonline.net

J. MICHAEL KING
SCOTT W. SCHREFFLER
MICHAEL W. SLOAT

MILES R. LYNN, JR.
COUNSEL TO THE FIRM

June 18, 2004

Ross Keith Saline
Elmira Lorraine Saline
889 Treasure Lake
DuBois, PA 15801

Re: Agreement of Sale

Dear Mr. and Mrs. Saline:

I am writing in regards to the Agreement of Sale of Real Estate you entered into with my clients, Paul and Amy Kostanek. It is my understanding that you do not intend to honor the agreement and have repudiated the same in a conversation with my client as well as our office.

Our client intends to move forward with the Agreement and are prepared to tender a deed to you at closing. Kindly contact our office to schedule a closing date if in fact you intend to move forward with the purchase. It is important that you either confirm, in writing, your intention to move forward with the purchase or confirm your withdrawal from the agreement.

Again, the Kostaneks are offering a deed to you pursuant the Agreement For Sale of Real Estate. If you move forward with the purchase, the deposit money of \$5000.00 will be credited against the same, if not, it will be retained by my clients as liquidated damages as provided in the Agreement.

If I do not hear from you by June 30, 2004, the settlement date provided in the Agreement, I will have no other alternative but to hold you in breach of the agreement, release the deposit money to my clients, and hold the property out for sale.

I am looking forward to hearing from you.

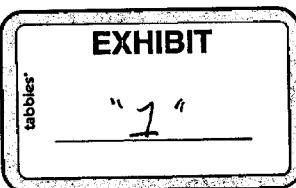
Sincerely,



Michael W. Sloat

Michael W. Sloat

Certified Mail #7002 3150 0005 4577 2365
cc: Paul and Amy Kostanek



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

ROSS KEITH SALINE and) NO. 04-1831 C.D.
ELMIRA LORRAINE SALINE,)
Plaintiffs,) Type of Case: CIVIL ACTION
vs.)
AMY M. KOSTANSEK and) Type of Pleading:
PAUL A. KOSTANSEK,) CERTIFICATE OF SERVICE
Defendants.)
) Filed on Behalf of:
) PLAINTIFFS
)
) Counsel of Record:
) BENJAMIN S. BLAKLEY, III, ESQ.
) Supreme Court No. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) Du Bois, Pa 15801
) (814) 371-2730

CF FILED NO CC
MAY 11 2005
MAY 20 2005

William A. Shaw
Prothonotary/Clerk of Courts

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

ROSS KEITH SALINE and ELMIRA) NO. 04-1831-C.D.
LORRAINE SALINE,)
)
Plaintiffs,)
)
vs.)
)
AMY M. KOSTANSEK and PAUL A.)
KOSTANSEK,)
)
Defendants.)

CERTIFICATE OF SERVICE

I, **BENJAMIN S. BLAKLEY, III**, hereby certify that I have served a true and correct copy of Plaintiffs' Reply to New Matter and Answer to Counterclaim of Paul A. Kostansek on this 19th day of May, 2005, by depositing the same with the United States Postal Service via First-Class Mail, postage pre-paid, addressed as follows:

Michael W. Sloat, Esquire
Lynn, King & Schreffler, P.C.
606 Main Street
P O Box 99
Emlenton PA 16373

BLAKLEY & JONES

Benjamin S. Blakley, III
Attorney for Plaintiffs

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

ROSS KEITH SALINE and) NO. 04-1831 C.D.
ELMIRA LORRAINE SALINE,)
Plaintiffs,) Type of Case: CIVIL ACTION
vs.)
Type of Pleading: REPLY TO NEW MATTER
AMY M. KOSTANSEK,) AND ANSWER TO COUNTERCLAIM OF
Defendant.) PAUL A. KOSTANSEK
Filed on Behalf of:)
PLAINTIFFS)
Counsel of Record:)
BENJAMIN S. BLAKLEY, III, ESQ.)
Supreme Court no. 26331)
BLAKLEY & JONES)
90 Beaver Drive, Box 6)
Du Bois, Pa 15801)
(814) 371-2730)

FILED[®]
MAY 11 2005
MAY 20 2005
cc

William A. Shaw
Prothonotary/Clerk of Courts

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

ROSS KEITH SALINE and ELMIRA) NO. 04-1831-C.D.
LORRAINE SALINE,)
)
Plaintiffs,)
)
vs.)
)
AMY M. KOSTANSEK and PAUL A.)
KOSTANSEK,)
)
Defendant.

**REPLY TO NEW MATTER AND ANSWER
TO COUNTERCLAIM OF PAUL A. KOSTANSEK**

AND NOW come Plaintiffs, **ROSS KEITH SALINE and ELMIRA LORRAINE SALINE**, by and through their attorneys, **BLAKLEY & JONES**, and file the following Reply to New Matter and Answer to Counterclaim of Defendant, **PAUL A. KOSTANSEK**, of which the following is a statement:

13. Requires no answer.
14. Admitted.
15. Admitted.
16. After reasonable investigation, the Plaintiffs are unable to determine the truth or falsity of the allegations contained within Paragraph 16 of the Defendant's New Matter insofar as the same alleges an acceptance of the agreement on April 18, 2004, and therefore deny the same

and demand strict proof thereof at trial. It is admitted, however, that the agreement was delivered to the Defendants on May 1, 2004.

17. It is admitted that the Plaintiffs did not verbally communicate a withdrawal of their offer to purchase to the Defendants, but further, as the Plaintiffs failed to communicate their acceptance of the agreement to the Defendants on or before April 20, 2004, the offer to purchase expired by the terms of the Plaintiffs' contract, and the Plaintiffs relied on such contract language in assuming that the Defendants had withdrawn their offer to sell the subject property to the Plaintiffs.

18. It is admitted that the Plaintiffs accepted physical delivery of the agreement from the Defendant **AMY M. KOSTANSEK** when she appeared at the door of the Plaintiffs on May 1, 2004; however, it is denied that the Plaintiffs did not accept the physical delivery of the agreement from the Defendants without objections and with any indications of moving forward with the purchase of the real estate, and on the contrary, it is averred that the Plaintiffs communicated to Defendant **AMY M. KOSTANSEK** on May 1, 2004, that they would contact her in the future regarding their intentions, given the communication of acceptance by the Plaintiffs after the April 20, 2004, deadline.

19. Denied, and on the contrary, it is averred that the Plaintiffs at no time waived any right or claim regarding the delivery, as at the time, the Defendant did not indicate to the Plaintiffs what she was delivering to the Plaintiff nor that the agreement had, in fact, been accepted by the Defendants, and further, the Plaintiffs indicated to the Defendant **AMY L.**

KOSTANSEK that they would contact her at a later date with regard to their intentions regarding the purchase of the property, given that the Defendant did not communicate with the Plaintiffs on or before April 20, 2004.

20. It is denied that the Plaintiffs, in any manner, continued to move forward with the terms of any agreement subsequent to May 1, 2004, nor did the Plaintiffs have any communications with the Defendant as to their intent to close the property, other than to request the return of their downpayment subsequent to May 1, 2004. It is further denied that all communications with regard to an earlier closing date and the taking of the adult children to the house occurred prior to April 12, 2004, the date on which the Plaintiffs executed their offer to purchase the Defendants' real property.

21. Denied for the reasons set forth above.

22. It is denied that the Plaintiffs' claim is barred due to estoppel, as no estoppel has occurred in any manner in this matter.

23. It is denied that the Plaintiffs' claim is barred due to consent, and on the contrary, it is averred that the Plaintiffs, in no manner, consented to the actions of the Defendants in failing to abide by the terms of the parties' Agreement of Sale.

24. It is denied that the Plaintiffs' claim is barred for failure to state a claim, and on the contrary, it is averred that the Plaintiffs' claim is clearly set forth in their Complaint.

25. It is admitted that the Plaintiff advised the Defendant that, in addition to the Defendant's failure to abide by the terms of the Agreement of Sale in their acceptance of the

Plaintiffs' offer, the Plaintiffs had decided not to go forward with the purchase of the home because the Plaintiff, **ELMIRA LORRAINE SALINE**'s, financial situation had changed. It is denied, however, that the Plaintiffs' financial situation was the reason for the Plaintiffs' failure to purchase the Defendants' real property, and on the contrary, it is averred that the actions of the Defendants in failing to abide by the terms of their agreement caused the Agreement of Sale to fail.

26. It is admitted that, approximately two (2) weeks after May 1, 2004, Plaintiff **ROSS KEITH SALINE** contacted the Defendants' attorney and inquired as to when the deposit money would be returned, as it was the Plaintiffs' position at that point that the agreement was terminated due to the actions of the Defendants and that sufficient time had passed for the Defendants to return the Plaintiffs' deposit money.

27. Admitted.

28. It is denied that the Plaintiffs did not respond to said letter, and on the contrary, it is averred that, by letter dated June 30, 2004, Plaintiffs' attorney forwarded a response to Defendants' attorney's June 18, 2004, letter. A copy of said letter is attached hereto and made a part hereof and marked as Exhibit B.

29. Admitted as the Defendants did void the Agreement of Sale by their failure to abide by the terms of the April 6, 2004, Agreement of Sale.

30. It is admitted that, under the terms of the agreement, the time for settlement and **all other times referred to for the performance of any and all obligations of the agreement**

were of the essence, including the date on which the Defendants were to indicate their approval of the Plaintiffs' offer to purchase the subject property.

31. After reasonable investigation, the Plaintiffs were unable to determine the truth or falsity of the allegations contained in Paragraph 31 of the Defendants' New Matter and therefore denies the same and demands strict proof thereof at trial.

32. After reasonable investigation, the Plaintiffs were unable to determine the truth or falsity of the allegations contained in Paragraph 32 of the Defendants' New Matter and therefore denies the same and demands strict proof thereof at trial.

WHEREFORE, Plaintiffs demand judgment in their favor, pursuant to their demand in their Complaint.

ANSWER TO COUNTERCLAIM

BREACH OF CONTRACT

33. Requires no answer.

34. It is denied that the Plaintiffs, in any manner, breached their Agreement by failing to purchase the real estate on or before the closing date of June 30, 2004, and on the contrary, it is averred that the said Agreement was voided by the actions of the Defendants in failing to indicate their approval of the Plaintiffs' offer to purchase on or before April 20, 2004, thereby relieving the Plaintiffs of any further obligation under said Agreement.

35. It is admitted that, under the terms of the Agreement, the Defendants have certain options with regard to damages, but it is denied that the Plaintiffs, in any manner, breached the

Agreement of Sale, entitling the Defendants to retain any deposit monies or to seek damages in any manner from the Plaintiffs.

36. It is denied that the Plaintiffs, in any manner, breached any Agreement between the Plaintiffs and the Defendants, and on the contrary, it is averred that it is the Defendants who breached the said Agreement of Sale by failing to abide by the terms of **their** agreement in failing to communicate their approval of the Plaintiffs' offer to purchase on or before April 20, 2004.

WHEREFORE, Plaintiffs request that this Honorable Court deny the Defendants' prayer for judgment against the Plaintiffs and enter judgment for the Plaintiffs as prayed for in the Plaintiffs' Complaint.

Respectfully submitted,

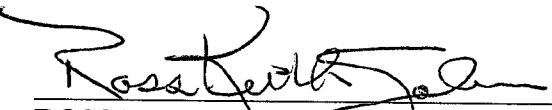
BLAKLEY & JONES

Benjamin S. Blakley, III

VERIFICATION

We, **ROSS KEITH SALINE** and **ELMIRA LORRAINE SALINE**, hereby state that we are the Plaintiffs in this action and verify that the statements made in the foregoing Reply to New Matter and Answer to Counterclaim are true and correct to the best of our knowledge, information, and belief. We understand that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 5-17-05


ROSS KEITH SALINE

Dated: 5-17-05


ELMIRA LORRAINE SALINE

LAW OFFICES OF
BLAKLEY & JONES
90 Beaver Drive, Box 6
Du Bois, Pennsylvania 15801

COPY

*Telephone (814) 371-2730
Fax (814) 375-1082*

Benjamin S. Blakley, III

June 30, 2004

Michael W. Sloat, Esquire
Lynn, King & Schreffler, P.C.
606 Main Street
P O Box 99
Emlenton PA 16373

**Re: My Client : Keith & Lorraine Saline
Your Clients : Paul & Amy Kostanek**

Dear Attorney Sloat:

Please be advised that this office represents the interests of Mr. & Mrs. R. Keith Saline with regard to an Agreement of Sale dated April 6, 2004, entered into between the Salines and your clients, Mr. & Mrs. Paul Kostanek.

My client has presented me with your letter of June 18, 2004, in which your clients allege that my clients would be in breach of the above Agreement of Sale if the sale was not closed by June 20, 2004. In speaking with my client, and in reviewing the Agreement of Sale, it appears that your clients were obligated under the Agreement of Sale to provide written approval of the Agreement of Sale on or before April 20, 2004 (Paragraph 3G). My clients indicate that they heard nothing more from your clients until May 1, 2004, or approximately twelve (12) days beyond the date set in the Agreement of Sale. It would be my clients' position that your clients' failure to abide by the deadline set within the contract voids the contract and relieves my client of any further obligations to perform under the contract. I would refer you to the Agreement of Sale prepared by your office, particularly Paragraph 26, setting forth that:

"The said time for settlement and all other times referred to for the performance of any of the obligations of this Agreement are hereby agreed to be of the essence of this Agreement."

Your clients' attempt to present the written approval to my clients on May 1st does not act as a reinstatement of the Agreement, and my clients do not recognize the Agreement as reinstated as of that date.

In light of the above, my clients would demand an immediate return of the deposit monies paid to your clients in the amount of \$5,000.00 within ten (10) days of the date of this



COPY

June 30, 2004

Page 2

letter. If my clients has not received the above amount, my clients have instructed this office to explore all legal remedies available to them for the return of this earnest money as a result of your clients' breach.

If you have any questions or comments, please feel free to contact this office.

Very truly yours,

BLAKLEY & JONES

Benjamin S. Blakley, III

BSB/glb

cc: Mr. & Mrs. R. Keith Saline
889 Treasure Lake
DuBois PA 15801

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

ROSS KEITH SALINE and : CIVIL ACTION - LAW
ELMIRA LORRAINE SALINE, :
Plaintiffs, : No. 04-1831 C.D.
vs. : Type of Pleading:
AMY M. KOSTANSEK, and : Praecipe for Substitution of Verification
PAUL A. KOSTANSEK, :
Defendants. : Filed on behalf of:
 : Paul A. Kostanek, Defendant
 : COUNSEL OF RECORD:
 : Michael W. Sloat, Esquire
 : I.D. No. 89076
 :
 : J. Michael King, Esquire
 : I.D. No. 25222
 :
 : LYNN, KING & SCHREFFLER, P.C.
 : 606 Main Street, P.O. Box 99
 : Emlenton, PA 16373
 : (724) 867-5921

FILED NO
m/11/2005 cc
JUN 20 2005 6W

William A. Shaw
Prothonotary/Clerk of Courts

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

ROSS KEITH SALINE and :
ELMIRA LORRAINE SALINE, : No. 04-1831 C.D.
Plaintiffs, :
vs. :
AMY M. KOSTANSEK, and :
PAUL A. KOSTANSEK :
Defendants. :

To: Prothonotary

PRAECIPE FOR SUBSTITUTION OF VERIFICATION

Kindly substitute the attached Verification of Paul A. Kostansek for my Verification filed
with his Answer, New Matter, and Counterclaim in this case.


Michael W. Sloat, Esq.
Attorney for Defendant, Paul A. Kostansek
606 Main Street, P.O. Box 99
Emlenton, PA 16373
(724) 867-5921

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

ROSS KEITH SALINE and :
ELMIRA LORRAINE SALINE, :
Plaintiffs, :
vs. :
AMY M. KOSTANSEK, and :
PAUL A. KOSTANSEK :
Defendants.

VERIFICATION

I verify that the factual allegations made in the foregoing Answer, New Matter, and Counterclaim are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to 18 P.a.C.S.A. 4904, relating to unsworn falsification to authorities.

Date 6/12/05



Paul A. Kostanek

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

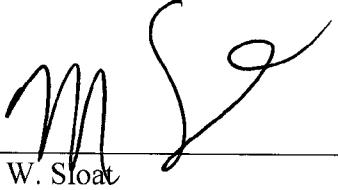
ROSS KEITH SALINE and :
ELMIRA LORRAINE SALINE, : No. 04-1831 C.D.
Plaintiffs, :
vs. :
AMY M. KOSTANSEK, and :
PAUL A. KOSTANSEK :
Defendants. :
:

Certificate of Service

I certify that a true and correct copy of the within Substitution of Verification was mailed by first class US Mail, postage prepaid, on the following:

Benjamin S. Blakley, III, Esquire
90 Beaver Drive, Box 6
DuBois, PA 15801

Date: 6-16-05



Michael W. Sloat

CA

**COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL TRIAL LISTING**

CERTIFICATE OF READINESS		TO THE PROTHONOTARY	
(To be executed by Trial Counsel Only)		DATE PRESENTED	
CASE NUMBER 04-1831-CD Date Complaint filed:	TYPE TRIAL REQUESTED		ESTIMATED TRIAL TIME 1/2 DAYS
	<input type="checkbox"/> Jury	<input type="checkbox"/> Non-jury	
(X) Arbitration			

PLAINTIFF(S)

Ross Keith Saline and Elmira Lorraine Saline ()

DEFENDANT(S)

Amy M. Kostansek and Paul A. Kostansek ()

ADDITIONAL DEFENDANT(S)

Check Block
if a Minor
is a Party
to the Case

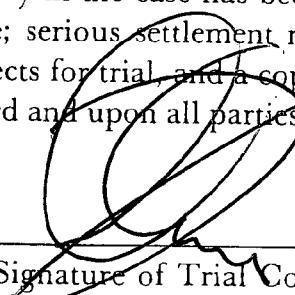
()

JURY DEMAND FILED BY:	DATE JURY DEMAND FILED:
-----------------------	-------------------------

AMOUNT AT ISSUE	CONSOLIDATION	DATE CONSOLIDATION ORDERED
\$ 5,000.00	() Yes (X) No	

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.


Signature of Trial Counsel

FILED Atty
M 11-4 S/Blakley
OCT 04 2005 pd. 20.00

William A. Shaw No CC
Prothonotary/Clerk of Courts 60

COUNSEL WHO WILL ACTUALLY TRY THE CASE

FOR THE PLAINTIFF	TELEPHONE NUMBER
<u>Benjamin S. Blakley, III</u>	814-371-2730
FOR THE DEFENDANT	TELEPHONE NUMBER
<u>J. Michael King and Michael W. Sloat</u>	724-867-5921
FOR ADDITIONAL DEFENDANT	TELEPHONE NUMBER

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

ROSS KEITH SALINE and) NO. 04-1831 C.D.
ELMIRA LORRAINE SALINE,)
Plaintiffs,) Type of Case: CIVIL ACTION
vs.)
Type of Pleading:)
AMY M. KOSTANSEK and) Filed on Behalf of:
PAUL A. KOSTANSEK,) PLAINTIFFS
Defendants.)
Counsel of Record:
BENJAMIN S. BLAKLEY, III, ESQ.
Supreme Court No. 26331
BLAKLEY & JONES
90 Beaver Drive, Box 6
Du Bois, Pa 15801
(814) 371-2730

FILED NO
M 114586
OCT 04 2005 LM

William A. Shaw
Prothonotary/Clerk of Courts

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

ROSS KEITH SALINE and ELMIRA) NO. 04-1831-C.D.
LORRAINE SALINE,)
Plaintiffs,)
vs.)
AMY M. KOSTANSEK and PAUL A.)
KOSTANSEK,)
Defendants.)

CERTIFICATE OF SERVICE

I, **BENJAMIN S. BLAKLEY, III**, hereby certify that I have served a true and correct copy of Plaintiffs' Certificate of Readiness on this 3rd day of October, 2005, by depositing the same with the United States Postal Service via First-Class Mail, postage pre-paid, addressed as follows:

Michael W. Sloat, Esquire
Lynn, King & Schreffler, P.C.
606 Main Street
P O Box 99
Emlenton PA 16373

BLAKLEY & JONES
Benjamin S. Blakley, III
Attorney for Plaintiffs

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

ROSS KEITH SALINE and
ELMIRA LORRAINE SALINE

vs.

: No. 04-1831-CD

AMY M. KOSTANSEK and
PAUL A. KOSTANSEK

FILED
01/10/2006
FEB 28 2006

William A. Shaw
Prothonotary/Clerk of Courts
7CC CA

ORDER

NOW, this 27 day of February, 2006, it is the ORDER of the Court that the above-captioned matter is scheduled for Arbitration on Thursday, April 20, 2006 at 1:00 P.M. in the Conference/Hearing Room No. 3, 2nd Floor, Clearfield County Courthouse, Clearfield, PA. The following have been appointed as Arbitrators:

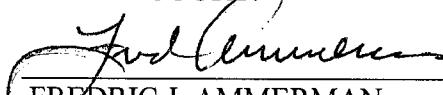
Michael P. Yeager, Chairman

Theron G. Noble, Esquire

Paul Colavecchi, Esquire

Pursuant to Local Rule 1306A, you must submit your Pre-Trial Statement seven (7) days prior to the scheduled Arbitration. The original should be forwarded to the Court Administrator's Office and copies to opposing counsel and each member of the Board of Arbitrators. For your convenience, a Pre-Trial (Arbitration) Memorandum Instruction Form is enclosed as well as a copy of said Local Rule of Court.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

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

ROSS KEITH SALINE and) NO. 04-1831 C.D.
ELMIRA LORRAINE SALINE,)
Plaintiffs,) Type of Case: CIVIL ACTION
vs.)
AMY M. KOSTANSEK,) Type of Pleading:
Defendant.) MOTION FOR CONTINUANCE
)
) Filed on Behalf of:
) PLAINTIFFS
)
) Counsel of Record:
) BENJAMIN S. BLAKLEY, III, ESQ.
) Supreme Court no. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) Du Bois, Pa 15801
) (814) 371-2730

CA
FILED
M 1:57 AM 6cc
MAR 10 2006 Atty Blakley
GK
William A. Shaw
Prothonotary/Clerk of Courts

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

ROSS KEITH SALINE and ELMIRA) NO. 04-1831-C.D.
LORRAINE SALINE,)
)
Plaintiffs,)
)
vs.)
)
AMY M. KOSTANSEK,)
)
Defendant.)

ORDER

AND NOW, this ____ day of _____, 2006, upon consideration of the foregoing Motion for Continuance, it is the ORDER of this Court that said Motion is hereby granted and the arbitration presently scheduled for April 20, 2006, is hereby continued to the ____ day of _____, 2006, at ____ o'clock ____ .m. in Courtroom ____ of the Clearfield County Courthouse.

By the Court,

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

ROSS KEITH SALINE and ELMIRA) NO. 04-1831-C.D.
LORRAINE SALINE,)
)
Plaintiffs,)
)
vs.)
)
AMY M. KOSTANSEK,)
)
Defendant.)

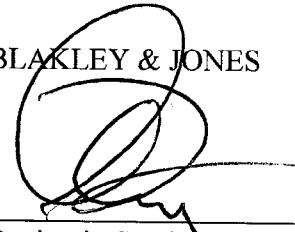
MOTION FOR CONTINUANCE

AND NOW come Plaintiffs, **ROSS KEITH SALINE and ELMIRA LORRAINE SALINE**, by and through their attorneys, **BLAKLEY & JONES**, and moves this Honorable Court for a continuance of the arbitration presently scheduled for April 20, 2006, and in support thereof, the following is averred:

1. Arbitration of the above-captioned matter has been has been scheduled for Tuesday, April 20th, at 1:00 p.m.
2. Plaintiff **ELMIRA LORRAINE SALINE** will be unavailable to be present on that date, as her employer has scheduled her to attend a mandatory meeting in Pittsburgh at that time.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant their motion and reschedule the arbitration in this matter for a later date.

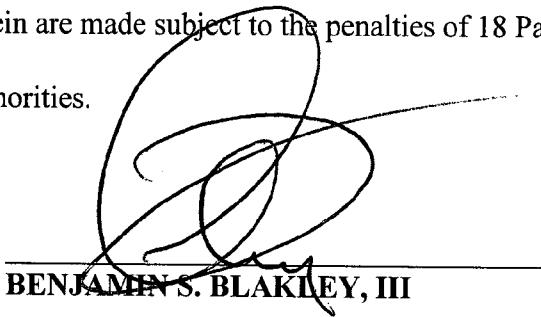
BLAKLEY & JONES



Benjamin S. Blakley, III
Attorney for Plaintiffs

VERIFICATION

I, **BENJAMIN S. BLAKLEY, III**, counsel for Plaintiffs, **ROSS KEITH SALINE and ELMIRA LORRAINE SALINE**, hereby verify that the statements made in the foregoing Motion for Continuance are true and correct to the best of my knowledge, information, and belief. I understand that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



BENJAMIN S. BLAKLEY, III

CERTIFICATE OF SERVICE

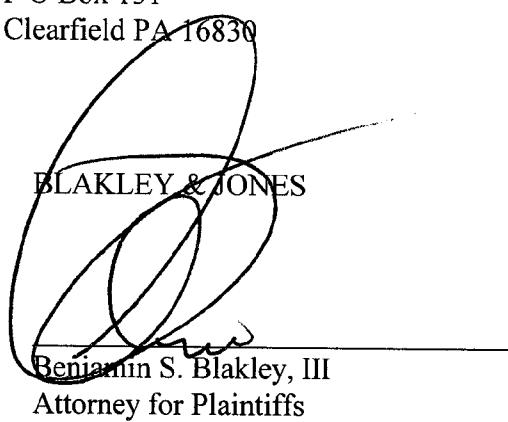
I, **BENJAMIN S. BLAKLEY, III**, hereby certify that I have served a true and correct copy of Plaintiffs' Motion for Continuance on the following parties this 9th day of March, 2006, by depositing the same with the United States Postal Service via First-Class Mail, postage pre-paid, addressed as follows:

Michael W. Sloat, Esquire
Attorney for Defendants
Lynn, King & Schreffler, P.C.
606 Main Street
P O Box 99
Emlenton PA 16373

Theron G. Noble, Esquire
301 East Pine Street
Clearfield PA 16830

Michael P. Yeager, Esquire
P O Box 752
Clearfield PA 16830

Paul Colavecchi, Esquire
221 East Market Street
P O Box 131
Clearfield PA 16830


BLAKLEY & JONES
Benjamin S. Blakley, III
Attorney for Plaintiffs

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

ROSS KEITH SALINE and) NO. 04-1831 C.D.
ELMIRA LORRAINE SALINE,)
Plaintiffs,) Type of Case: CIVIL ACTION
vs.)
Type of Pleading:
AMY M. KOSTANSEK and) Filed on Behalf of:
PAUL A. KOSTANSEK,) PLAINTIFFS
Defendants.) Counsel of Record:
) BENJAMIN S. BLAKLEY, III, ESQ.
) Supreme Court No. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) Du Bois, Pa 15801
) (814) 371-2730

FILED ^{No}
3/12/2006
MAR 17 2006
©

William A. Shaw
Prothonotary/Clerk of Courts

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

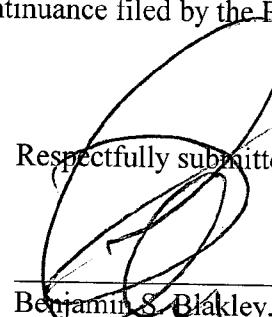
ROSS KEITH SALINE and ELMIRA) NO. 04-1831-C.D.
LORRAINE SALINE,)
Plaintiffs,)
vs.)
AMY M. KOSTANSEK and PAUL A.)
KOSTANSEK,)
Defendants.)

PRAECIPE TO WITHDRAW MOTION

TO: WILLIAM A. SHAW, PROTHONOTARY

Please withdraw the Motion for Continuance filed by the Plaintiffs in the above captioned matter.

Respectfully submitted,



Benjamin S. Blakley, III
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I, **BENJAMIN S. BLAKLEY, III**, hereby certify that I have served a true and correct copy of Plaintiffs' Praecipe to Withdraw Motion on this 16th day of March, 2006, by depositing the same with the United States Postal Service via First-Class Mail, postage pre-paid, addressed as follows:

Michael W. Sloat, Esquire
Lynn, King & Schreffler, P.C.
606 Main Street
P O Box 99
Emlenton PA 16373

BLAKLEY & JONES

Benjamin S. Blakley, III
Attorney for Plaintiffs

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

ROSS KEITH SALINE and) NO. 04-1831 C.D.
ELMIRA LORRAINE SALINE,)
Plaintiffs,) Type of Case: CIVIL ACTION
)
vs.) Type of Pleading:
AMY M. KOSTANSEK and) Filed on Behalf of:
PAUL A. KOSTANSEK,) PLAINTIFFS
Defendants.)
) Counsel of Record:
) BENJAMIN S. BLAKLEY, III, ESQ.
) Supreme Court No. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) Du Bois, Pa 15801
) (814) 371-2730

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

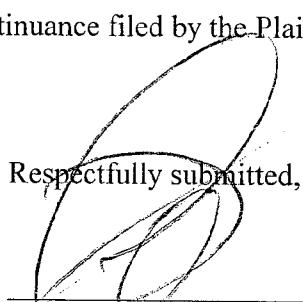
ROSS KEITH SALINE and ELMIRA) NO. 04-1831-C.D.
LORRAINE SALINE,)
)
Plaintiffs,)
)
vs.)
)
AMY M. KOSTANSEK and PAUL A.)
KOSTANSEK,)
)
Defendants.)

PRAECIPE TO WITHDRAW MOTION

TO: WILLIAM A. SHAW, PROTHONOTARY

Please withdraw the Motion for Continuance filed by the Plaintiffs in the above captioned matter.

Respectfully submitted,

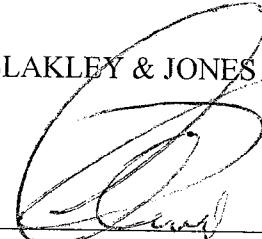


Benjamin S. Blakley, III
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I, **BENJAMIN S. BLAKLEY, III**, hereby certify that I have served a true and correct copy of Plaintiffs' Praecipe to Withdraw Motion on this 16th day of March, 2006, by depositing the same with the United States Postal Service via First-Class Mail, postage pre-paid, addressed as follows:

Michael W. Sloat, Esquire
Lynn, King & Schreffler, P.C.
606 Main Street
P O Box 99
Emlenton PA 16373

BLAKLEY & JONES


Benjamin S. Blakley, III
Attorney for Plaintiffs

(A)

LAW OFFICES OF
BLAKLEY & JONES
90 Beaver Drive, Box 6
DuBois, Pennsylvania 15801

Telephone (814) 371-2730
Fax (814) 375-1082

Benjamin S. Blakley, III

March 16, 2006

Michael W. Sloat, Esquire
Lynn, King & Schreffler, P.C.
606 Main Street
P O Box 99
Emlenton PA 16373

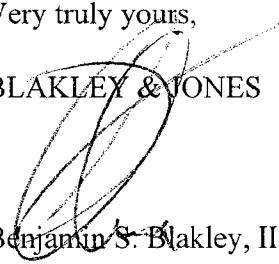
**Re: Saline v. Kostanek
Clearfield County
No. 04-1831-CD**

Dear Attorney Sloat:

Mr. Saline stopped into my office yesterday and informed me that he had misread the date for the arbitration and that, as a result, his wife is available on April 20th. Accordingly, I have withdrawn my Motion for Continuance in this matter. A copy of the Praeclipe to Withdraw Motion is enclosed for your records.

Very truly yours,

BLAKLEY & JONES


Benjamin S. Blakley, III

BSB/glb

cc: Michael W. Sloat, Esquire
 Mr. & Mrs. R. Keith Saline
 Theron G. Noble, Esquire
 Michael P. Yeager, Esquire
 Paul Colavecchi, Esquire
 David S. Meholic, Court Administrator



LAW OFFICES OF
BLAKLEY & JONES
90 Beaver Drive, Box 6
DuBois, Pennsylvania 15801

Telephone (814) 371-2730
Fax (814) 375-1082

May 6, 2005

Benjamin S. Blakley, III

William A. Shaw, Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

**Re: Ross Keith Saline & Elmira Lorraine Saline
v. Amy Kostanek & Paul A. Kostanek
Clearfield County No. 04-1831-CD**

Dear Mr. Shaw:

Enclosed for filing please find a Praeclipe to Withdraw Motion in the above matter.

Thank you for your attention to this matter.

Very truly yours,
BLAKLEY & JONES

Benjamin S. Blakley, III

BSB:glb

Enclosures

cc: Michael W. Sloat, Esquire (w/copy of Motion)
Mr. & Mrs. R. Keith Saline (w/copy of Motion)
Theron G. Noble, Esquire (w/copy of Motion)
Michael P. Yeager, Esquire (w/copy of Motion)
Paul Colavecchi, Esquire (w/copy of Motion)
David S. Meholic, Court Administrator (w/copy of Motion)



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

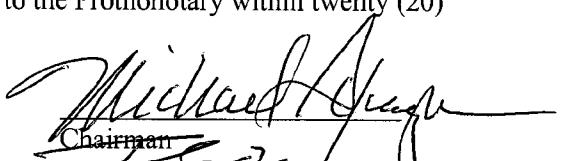
Ross Keith Saline and Elmira Lorraine Saline
vs.
Paul A. Kostansek and Amy M. Kostansek

No. 2004-01831-CD

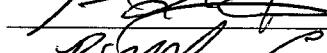
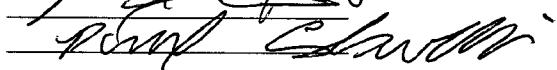
OATH OR AFFIRMATION OF ARBITRATORS

Now, this 20th day of April, 2006, we the undersigned, having been appointed arbitrators in the above case do hereby swear, or affirm, that we will hear the evidence and allegations of the parties and justly and equitably try all matters in variance submitted to us, determine the matters in controversy, make an award, and transmit the same to the Prothonotary within twenty (20) days of the date of hearing of the same.

Michael P. Yeager, Esq.


Michael P. Yeager
Chairman

Theron G. Noble, Esq.
Paul Colavecchi, Esq.

Sworn to and subscribed before me this
April 20, 2006


Prothonotary

AWARD OF ARBITRATORS

Now, this 20th day of April, 2006, we the undersigned arbitrators appointed in this case, after being duly sworn, and having heard the evidence and allegations of the parties, do award and find as follows:

Verdict for Plaintiff as to Civil complaint
and as the Defendant's counter-claim, in the
amount of \$ 5,000, plus interest from
~~commence~~ and costs of suit. 
Michael P. Yeager Chairman

April 20, 2006

(Continue if needed on reverse.)

ENTRY OF AWARD

Now, this 20th day of April, 2006, I hereby certify that the above award was entered of record this date in the proper dockets and notice by mail of the return and entry of said award duly given to the parties or their attorneys.

WITNESS MY HAND AND THE SEAL OF THE COURT


Prothonotary
By _____

FILED

13:43 PM
APR 20 2006

Notice to
Attns: Blekley
Sloat

William A. Shaw
Prothonotary/Clerk of Courts



CCopy

Ross Keith Saline and
Elmira Lorraine Saline

: IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY

Vs.

: No. 2004-01831-CD

:

Paul A. Kostansek and Amy M. Kostansek

NOTICE OF AWARD

TO: BENJAMIN S. BLAKLEY III, ESQ.

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on April 20, 2006, and have awarded:

Verdict for Plaintiff as to Civil Complaint and for Plaintiff as the Defendant's counterclaim, in the amount of \$5,000.00, plus interest from April 20, 2004, and costs of suit.

William A. Shaw

Prothonotary

By

April 20, 2006

Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

Ross Keith Saline and
Elmira Lorraine Saline

: IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY

Vs.

: No. 2004-01831-CD

:

Paul A. Kostanek and Amy M. Kostanek

CC, y

NOTICE OF AWARD

TO: MICHAEL W. SLOAT, ESQ.

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on April 20, 2006, and have awarded:

Verdict for Plaintiff as to Civil Complaint and for Plaintiff as the Defendant's counterclaim, in the amount of \$5,000.00, plus interest from April 20, 2004, and costs of suit.

William A. Shaw
Prothonotary
By William A. Shaw

April 20, 2006
Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

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

ROSS KEITH SALINE and) NO. 04-1831 C.D.
ELMIRA LORRAINE SALINE,)
Plaintiffs,) Type of Case: CIVIL ACTION
vs.)
AMY M. KOSTANSEK and) Type of Pleading:
PAUL A. KOSTANSEK,) PRAECIPE TO ENTER JUDGMENT
Defendants.)
) Filed on Behalf of:
) PLAINTIFFS
)
) Counsel of Record:
) BENJAMIN S. BLAKLEY, III, ESQ.
) Supreme Court No. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) Du Bois, Pa 15801
) (814) 371-2730

FILED *per \$20.00 Atty
m/2:10pm Notice to debtors
MAY 26 2000 Statement to Atty*

William A. Shaw
Prothonotary

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

ROSS KEITH SALINE and ELMIRA) NO. 04-1831-C.D.
LORRAINE SALINE,)
)
Plaintiffs,)
)
vs.)
)
AMY M. KOSTANSEK and PAUL A.)
KOSTANSEK,)
)
Defendants.)

PRAECIPE TO ENTER JUDGMENT

TO: WILLIAM SHAW, PROTHONOTARY

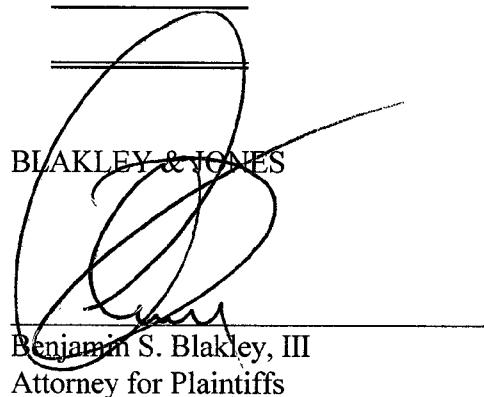
Please enter judgment upon the arbitrators' award of April 20, 2006, in the above-captioned matter as follows:

Amount of Judgment \$ 5,000.00

Costs _____

Interest from 4/23/04 _____

Total _____


BLAKLEY & JONES
Benjamin S. Blakley, III
Attorney for Plaintiffs

COPY

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

ROSS KEITH SALINE and ELMIRA) NO. 04-1831-C.D.
LORRAINE SALINE,)
Plaintiffs,)
vs.)
AMY M. KOSTANSEK and PAUL A.)
KOSTANSEK,)
Defendants.)

NOTICE OF JUDGMENT

Notice is given that a JUDGMENT in the above captioned matter has been entered
against you in the amount of \$5,000.00 on May 26, 2006.

WILLIAM SHAW, PROTHONOTARY

BY: William Shaw, Deputy

CERTIFICATE OF SERVICE

I, **BENJAMIN S. BLAKLEY, III**, hereby certify that I have served a true and correct copy of Plaintiffs' Praecipe to Enter Judgment on this 24th day of May, 2006, by depositing the same with the United States Postal Service via First-Class Mail, postage pre-paid, addressed as follows:

Michael W. Sloat, Esquire
Lynn, King & Schreffler, P.C.
606 Main Street
P O Box 99
Emlenton PA 16373

BLAKLEY & JONES

Benjamin S. Blakley, III
Attorney for Plaintiffs

FILED

MAY 26 2006

William A. Shaw
Prothonotary

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

Ross Keith Saline
Elmira Lorraine Saline
Plaintiff(s)

No.: 2004-01831-CD

FILED
O 1:30 PM 6K
JUN 13 2006, CC TO
William A. Shaw, Atty
Prothonotary/Clerk of Courts
GR

Real Debt: \$5,000.00

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Paul A. Kostanek
Amy M. Kostanek
Defendant(s)

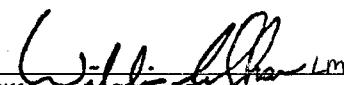
Entry: \$20.00

Instrument: Judgment

Date of Entry: May 26, 2006

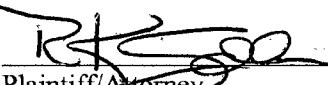
Expires: May 26, 2011

Certified from the record this May 26, 2006


William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

Received on 6/6, 2006, 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

CERTIFICATE OF SATISFACTION OF JUDGMENT

No.: 2004-01831-CD

Ross Keith Saline
Elmira Lorraine Saline

Debt: \$5,000.00

Vs.

Atty's Comm.:

Paul A. Kostansek
Amy M. Kostansek

Interest From:

Cost: \$

NOW, Tuesday, June 13, 2006 , directions for satisfaction having been received, and all costs having been paid, SATISFACTION was entered of record.

Certified from the record this 13th day of June, A.D. 2006.

Prothonotary

LAW OFFICES OF
BLAKLEY & JONES
90 Beaver Drive, Box 6
DuBois, Pennsylvania 15801

Telephone (814) 371-2730
Fax (814) 375-1082

May 6, 2005

Benjamin S. Blakley, III

William A. Shaw, Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

*Need \$20
called 5/25/05*

**Re: Ross Keith Saline & Elmira Lorraine Saline
v. Amy Kostanek & Paul A. Kostanek
Clearfield County No. 04-1831-CD**

Dear Mr. Shaw:

Enclosed for filing please find a Praeclipe to Enter Judgment and Notice of Judgment in the above matter. Also enclosed are postage paid envelopes addressed to each defendant for the mailing of the Notice of Judgment.

Thank you for your attention to this matter.

Very truly yours,
BLAKLEY & JONES

Benjamin S. Blakley, III

BSB:glb

Enclosures

**cc: Michael W. Sloat, Esquire (w/copy of Motion)
Mr. & Mrs. R. Keith Saline (w/copy of Motion)**



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

Ross Keith Saline
Elmira Lorraine Saline
Plaintiff(s)

No.: 2004-01831-CD

COPY

Real Debt: \$5,000.00

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Paul A. Kostanek
Amy M. Kostanek
Defendant(s)

Entry: \$20.00

Instrument: Judgment

Date of Entry: May 26, 2006

Expires: May 26, 2011

Certified from the record this May 26, 2006



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

707.
4/20

LAW OFFICES OF
BLAKLEY & JONES
90 Beaver Drive, Box 6
DuBois, Pennsylvania 15801

Telephone (814) 371-2730
Fax (814) 375-1082

April 10, 2006

Benjamin S. Blakley, III

David S. Meholick, Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

**Re: Ross Keith Saline and Elmira Lorraine Saline
v. Amy M. Kostansek and Paul A. Kostansek
No. 04-1831-CD**

Dear Mr. Meholick:

Enclosed for filing in the above matter please find the Plaintiffs' Pretrial Statement.

Very truly yours,
BLAKLEY & JONES
Benjamin S. Blakley, III

BSB:glb

cc: Michael W. Sloat, Esquire (w/enclosure)
Michael P. Yeager, Esquire (w/enclosure)
Theron G. Noble, Esquire (w/enclosure)
Paul Colavecchi, Esquire (w/enclosure)
Mr. & Mrs. R. Keith Saline (w/enclosure)

AP 10 2006

CLERK'S OFFICE
COURT ADMINISTRATION
DEPARTMENT



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

ROSS KEITH SALINE and) NO. 04-1831 C.D.
ELMIRA LORRAINE SALINE,)
Plaintiffs,) Type of Case: CIVIL ACTION
vs.)
AMY M. KOSTANSEK and) Type of Pleading:
PAUL A. KOSTANSEK,) PLAINTIFFS' PRETRIAL STATEMENT
Defendants.) Filed on Behalf of:
) PLAINTIFFS
) Counsel of Record:
) BENJAMIN S. BLAKLEY, III, ESQ.
) Supreme Court No. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) Du Bois, Pa 15801
) (814) 371-2730

RECEIVED
COURT OF COMMON PLEAS

APR 11 2006

AMERICAN S. SALINE, ESQ.
C.R.D.E.

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

ROSS KEITH SALINE and ELMIRA LORRAINE SALINE,) NO. 04-1831-C.D.
)
)
Plaintiffs,)
)
)
vs.)
)
)
AMY M. KOSTANSEK and PAUL A. KOSTANSEK,)
)
)
Defendants.)

PLAINTIFFS' PRETRIAL STATEMENT

I. FACTS

The Plaintiffs are Ross Keith Saline and Elmira Lorraine Saline, husband and wife, currently residing at 889 Treasure Lake, DuBois, Clearfield County, Pennsylvania. Defendants Paul A. Kostanek and Amy M. Kostanek, now divorced, were the owners of real property located at Section 10, Lot 83, in the Treasure Lake Subdivision. By sales agreement drafted by the Defendants and dated April 6, 2004, the Plaintiffs offered to purchase Defendant's real property for \$268,000.00, and at that time, tendered to the Defendants \$5,000.00 as earnest money. Under the terms of the agreement, the Defendants were to provide the Plaintiffs with a written acceptance of their offer on or before April 20, 2004. Under Paragraph 26 of the agreement prepared by the Defendants and presented to the Plaintiffs, the time for settlement and all other times referred to for the performance of any of the obligations of the agreement were to be of the essence.

On May 1, 2004, Defendant Amy A. Kostansek delivered written acceptance of Plaintiffs' offer to the Plaintiffs at their home, with the delivery coming twelve days beyond the time period set forth in the agreement prepared by the Defendants. The Plaintiffs then indicated to the Defendants that they no longer wished to proceed with their purchase of the property and demanded a return of their \$5,000.00 downpayment. To date, the earnest money has not been returned.

The Defendants subsequently sold the subject property for \$260,000.00 and have counterclaimed for a loss of \$8,000.00 on the purchase price, plus interest and prorated taxes, Treasure Lake Association fees and homeowner's insurance for the four and one-half month period of time, despite the language in their agreement that time was of the essence.

II. UNUSUAL QUESTIONS OF LAW

None.

III. LIST OF NAMES AND ADDRESSES OF ALL PERSONS WHO MAY BE CALLED AS WITNESSES

Ross Keith Saline and Elmira Lorraine Saline
889 Treasure Lake
DuBois, PA 15801

IV. REPORTS OF EXPERTS

None.

V. SPECIAL DAMAGES

None.

VI. EXHIBITS

1. "Agreement for the Sale of Real Estate" dated April 6, 2004, attached hereto.

VII. ESTIMATED LENGTH OF TIME REQUIRED TO TRY THE CASE

One-half day.

VIII. PROPOSED STIPULATIONS

None.

Respectfully Submitted,

BLAKELEY & JONES

Benjamin S. Blakley, III
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I, **BENJAMIN S. BLAKLEY, III**, hereby certify that I have served a true and correct copy of Plaintiffs' Pretrial Statement on this 10th day of April, 2006, by depositing the same with the United States Postal Service via First-Class Mail, postage pre-paid, addressed as follows:

Michael W. Sloat, Esquire
Lynn, King & Schreffler, P.C.
606 Main Street
P O Box 99
Emlenton PA 16373

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield PA 16830-2518

Michael P. Yeager, Esquire
110 North Second Street
P O Box 752
Clearfield PA 16830-2553

Paul Colavecchi, Esquire
Colavecchi & Colavecchi
221 East Market Street
P O Box 131
Clearfield PA 16830-2424

BLAKLEY & JONES

Benjamin S. Blakley, III
Attorney for Plaintiffs

LYNN, KING & SCHREFFLER, P.C.
ATTORNEYS AT LAW

606 MAIN STREET, P.O. BOX 99, EMLENTON, PA 16373

TELEPHONE (724) 867-5921

FAX (724) 867-5101

EMAIL:legal@lkslaw.us

J. MICHAEL KING
SCOTT W. SCHREFFLER
MICHAEL W. SLOAT

MILES R. LYNN, JR.
COUNSEL TO THE FIRM

April 11, 2006

David S. Meholic
Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

In re: Saline v Kostansek
No. 04-1831-CD

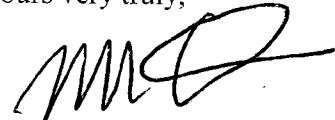
Dear Mr. Meholic:

Please find enclosed original Pretrial Statement filed in regard to the above referenced matter pursuant to Arbitration scheduled for April 20, 2006.

A true and correct copy of the same has been forwarded this date to counsel of record and Arbitrators as stated therein.

Thank you for your attention to this matter. Should you require anything further, please feel free to contact this office.

Yours very truly,



Michael W. Sloat

enc.

cc:

Benjamin S. Blakley, III, Esquire
Michael P. Yeager, Esquire
Theron G. Noble, Esquire
Paul Colavecchi, Esquire

APR 11 2006

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

ROSS KEITH SALINE and
ELMIRA LORRAINE SALINE, : CIVIL ACTION - LAW
Plaintiffs, : No. 04-1831 C.D.
vs. : Type of Pleading:
AMY M. KOSTANSEK, and : Pretrial Statement
PAUL A. KOSTANSEK, : Filed on behalf of:
Defendants. : Defendants
: COUNSEL OF RECORD:
: Michael W. Sloat, Esquire
: I.D. No. 89076
: J. Michael King, Esquire
: I.D. No. 25222
: LYNN, KING & SCHREFFEL
: 606 Main Street, P.O. Box 99
: Emlenton, PA 16373
: (724) 867-5921

DEPARTMENT OF INFORMATION
OFFICE

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

ROSS KEITH SALINE and	:	
ELMIRA LORRAINE SALINE,	:	No. 04-1831 C.D.
Plaintiffs,	:	
vs.	:	
AMY M. KOSTANSEK, and	:	
PAUL A. KOSTANSEK	:	
Defendants.	:	

PRETRIAL STATEMENT

1. Brief Statement of Case

On or about April 12, 2004, the Buyers (Plaintiffs) executed an Agreement, dated April 6, 2004, offering to purchase the real property of the Defendants for the sum of \$268,000.00 and delivered the Agreement and deposit money of \$5,000.00 to the Defendants (Sellers) on or about April 18, 2004. At the time of the offer the Plaintiffs requested the Defendants to take the home off the market and to take the "for sale" sign down. Under the terms of the Agreement the Sellers (Defendants) were to provide written approval on or before April 20, 2004. The Agreement provided, *inter alia*, that:

"The said time for settlement and all other times referred to for the performance of the obligations of this Agreement are hereby agreed to be of the essence of this Agreement."

The Defendants accepted the Agreement on April 18, 2004, deposited the down payment in escrow on April 19, 2004, and returned the executed Agreement to the Plaintiffs on or about May 1, 2004. At no time prior to the Plaintiffs' acceptance of the Agreement did the Plaintiffs withdraw their offer to purchase. The Plaintiffs accepted return of the Agreement from the Defendants without any objections and with all indications on moving forward with purchasing the real estate pursuant to the terms of the Agreement.

Sometime later, the Plaintiff, Ross Keith Saline, visited the Defendant, Amy Kostansek, at her place of employment to inform her that his wife had received a pay cut and therefore they wanted out of the Agreement. Plaintiffs subsequently contacted Defendants' attorney and inquired as to whether the deposit money would be returned. At no time did Defendants or Defendant's attorney agree to release Plaintiffs from the Agreement.

A letter, dated June 18, 2004, was sent to the Plaintiffs informing them that the

Defendants intended to move forward with the sale and that the Plaintiffs' failure to do so would be considered a breach of the Agreement. Plaintiffs did not respond to said letter. Plaintiffs failed to close by June 30, 2004, the settlement/closing date specified in the Agreement. Under the terms of the Agreement, the settlement date was of the essence.

Pursuant to the terms of the Agreement, in the case of a default by the Plaintiff, the Defendants could either keep the \$5,000.00 as liquidated damages or apply it against actual damages.

However, Plaintiffs filed suit requesting return of the \$5,000.00 down payment claiming that Defendants were in breach by failure to timely return the Agreement by April 20, 2004.

Defendants assert that Plaintiff's claim fails for three separate and distinct reasons:

- a. The time is of the essence clause was for the benefit of the Seller and not the Buyer.
- b. The time is of the essence clause was only to be applied to performance obligations under the Agreement, and return of the Agreement by Seller is not a performance obligation. Time is of the essence applies only after the Sellers delivered the Agreement to the Buyers, and until then, the Buyer would not be bound by the Agreement and could merely withdraw their offer any time prior to Seller's delivery of acceptance.
- c. Even if the Court should find that the essence clause benefits the Seller in the event Buyer fails to return the Agreement by April 20, 2004, the Plaintiffs waived the late return date by accepting the Agreement without objection.

Plaintiffs breached the Agreement by failing to purchase the real estate on or before the closing date of June 30, 2004. Upon breach by the Plaintiffs, pursuant to the terms of the Agreement, the Defendants have the option of retaining all sums paid by the Plaintiffs, including deposit monies; on account of purchase price, or as liquidated damages, or as monies to be applied towards Defendants' damages. Defendants counter claimed for damages due to Plaintiffs breach.

Subsequent to the settlement/closing date the Defendants placed the real estate back on the market. On November 12, 2004, 135 days (4 ½ months) after the closing date of the Agreement, the Defendants sold the house to another buyer for \$260,000.00.

2. Citation to Applicable Case or Statute

- a. Schwoyer v. Fenstermacher, 380 A.2d 468 (1977): Waiver of TIME IS OF THE ESSENCE clause. (See case attached hereto as exhibit "A")

b. Cohn v. Wiss, 51 A.2d 740 (1947) Waiver of TIME IS OF THE ESSENCE clause. (See case attached hereto as exhibit "B")

3. List of Witnesses

- a. Amy Kostansek
- b. David Cox

4. Statement of Damages and Copy of Bills

As a direct result of Plaintiffs' breach of the Agreement, the Defendants incurred the following damages totaling \$16,443.31, plus interest, costs, and attorney fees:

- a. A loss of \$8,000.00 on the purchase price (see subsequent sales agreement with purchase price of \$260,000.00 attached hereto as exhibit "C"); and
- b. 4 ½ months of mortgage interest payments totaling \$6,478.56 (see payment schedule and Note attached hereto as exhibit "D"); and
- c. 4 ½ months of Real Estate Taxes (County, Township, and School) in the amount of \$1,524.17 (see Real Estate Tax Bills attached hereto as exhibit "E"); and
- d. 4 ½ months of Treasure Lake Association fees in the amount of \$183.00 (see Treasure Lake Association Fee attached hereto as exhibit "F"); and
- e. 4 ½ months of homeowner's insurance in the amount of \$257.58 (see Homeowner Insurance premium attached hereto as exhibit "G")

Respectfully Submitted,

LYNN, KING & SCHREFFLER, P.C.



Michael W. Sloat, Esquire

Certificate of Service

I certify that I served a true and correct copy of the Pretrial Statement by first class US Mail, postage prepaid, on the following:

Benjamin S. Blakley, III, Esquire
90 Beaver Drive, Box 6
DuBois, PA 15801

Michael P. Yeager, Esquire
P.O. Box 752
Clearfield, PA 16830

Theron G. Noble, Esquire
301 East Pine Street
Clearfield, PA 16830

Paul Colavecchi, Esquire
221 East Market Street
P.O. Box 131
Clearfield, PA 16830

Date: 4/11/06



Michael W. Sloat

251 Pa. Super. 243, *; 380 A.2d 468, **;
1977 Pa. Super. LEXIS 2955, ***

Beulah M. SCHWOYER, Appellant, v. Frederick M. FENSTERMACHER and Janet L. Fenstermacher, his wife. Frederick M. FENSTERMACHER and Janet L. Fenstermacher, his wife v. Beulah M. SCHWOYER, Appellant

Superior Court of Pennsylvania

251 Pa. Super. 243; 380 A.2d 468; 1977 Pa. Super. LEXIS 2955

April 2, 1976, Submitted
December 2, 1977, Decided

PRIOR HISTORY: [**1]**

No. 74 October Term 1976

No. 75 October Term 1976, Appeals from the Decree dated Aug. 18, 1975, of the Court of Common Pleas, Civil Action, Equity, of Berks County at Nos. 3682 and 3692 of 1972.

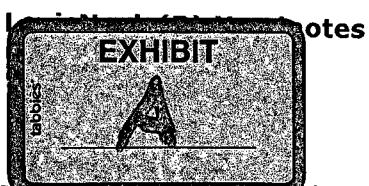
CASE SUMMARY:

PROCEDURAL POSTURE: Appellant seller sought review of the order of the Court of Common Pleas of Berks County (Pennsylvania), which granted judgment to appellee buyers in their action for specific performance of a contract to sell real estate and which ruled against appellant in her action to rescind the contract. Appellant alleged that the appellees had failed to perform with the contract time limits.

OVERVIEW: Appellant seller entered into a contract to sell her farm to appellee buyers, which contained a clause that time was of the essence. By agreement of the parties, appellant's attorney was to perform the title searches. Appellees paid a deposit and took possession. The court affirmed the trial court's judgment in favor of appellees in their action for specific performance and against appellant's action to rescind the contract. The court held that even though a contract provision made time of the essence, appellant affirmatively waived the provision. When appellant's attorney did not timely complete the title searches, the parties agreed to extend the time period. The attorney did not complete the searches within the extended period, nor did he inform appellant of that fact. When she appeared at his office for settlement she did not object to the delay. Further appellant told appellees that they could construct a pond on the farm. Appellant's knowledge that her attorney controlled the time of settlement and that he kept appellees informed, together with her acquiescence to the delays, compelled the conclusion that she waived the time provision.

OUTCOME: The court affirmed judgment for appellee buyers in their action for specific performance of a contract to sell real estate and judgment against appellant seller's action to rescind the contract. Appellant affirmatively waived the contract provision that time was of the essence.

CORE TERMS: settlement, farm, chancellor, waived, agreement of sale, seller, reasonable notice, affirmatively, waive, extension agreement, mutual consent, new attorney, endorsed, pond



Contracts Law > Contract Conditions & Provisions > Conditions Subsequent
Contracts Law > Contract Conditions & Provisions > Express Conditions

HN1 Even though an agreement of sale makes time of "the essence of the contract," the provision may be waived by agreement or by the conduct of the parties.

Contracts Law > Contract Conditions & Provisions > Waivers

HN2 Performance in accordance with contract terms is assumed, and a deviation is permissible only if the affected party affirmatively assents to it.

Contracts Law > Contract Conditions & Provisions > Waivers

HN3 Authority to waive a provision that time was of the essence need not be specifically communicated to a party's attorney.

Legal Ethics > Client Relations > Conflicts of Interest

HN4 The rule that an agent cannot act for both parties to a transaction has no application where such double representation was known to the parties and not objected to by them at or previous to the time when they executed their agreement.

Contracts Law > Contract Conditions & Provisions > Waivers

HN5 When a seller waives time for settlement, the time limit becomes indefinite, and the seller cannot thereafter terminate the agreement without reasonable notice to the buyer.

COUNSEL: John E. Ruth, Reading, for appellant.

David M. Kozloff, Wyomissing, for appellees.

JUDGES: Watkins, President Judge, and Jacobs, Hoffman, Cercone, Price, Van der Voort, and Spaeth, JJ. Price, J., concurs in the result.

OPINIONBY: SPAETH

OPINION: **[*245] [**469]** Appellant brought an action to rescind an agreement to sell her farm to appellees, on the theory that appellees had failed to perform within the time provided for in the agreement. In response, appellees brought an action against appellant for specific performance of the agreement. The actions were consolidated, and the chancellor decided both in favor of appellees. His findings may be summarized as follows:

An agreement of sale was executed on August 3, 1971. Appellant was represented by R. Joseph Merkel, attorney, and with her knowledge and consent Merkel was retained by appellees to perform services in regard to the sale and purchase of appellant's farm. One provision of the agreement was that "the said SELLER **[***2]** and PURCHASER hereby bind themselves, their heirs, executors, administrators, successors and assigns, for the faithful performance of the above agreement within 120 days from the date of this Agreement, said time to be of the essence of this agreement, unless extended by mutual consent in writing endorsed hereon." Appellees paid appellant a deposit of \$ 3,160 and entered into possession of the farm.

To finance the purchase, appellees found it necessary to obtain a blanket mortgage not only on the farm but also on two other properties, which appellees already owned. For the purposes of this mortgage, title **[**470]** searches were required on all three properties. The parties arranged that the searches should be made by Merkel.

On November 30, 1971, because the title searches had not been completed and the time for

settlement was approaching, the parties signed an agreement extending the time for settlement from December 1, 1971, to January 14, 1972. This extension agreement also provided that the parties confirmed and ratified "all other terms and conditions" of the original agreement. When entering into the extension agreement, appellant understood that Merkel would continue **[***3]** to be responsible for the title searches on her farm and on appellees' two properties.

[*246] A few days before January 14, 1972, Merkel informed appellees by telephone that the title searches on their two properties were not completed and that therefore settlement would not occur on January 14. Merkel neglected to inform appellant of this. On the evening of January 14, appellant went to Merkel's office for settlement. Appellees were not present. Merkel then informed appellant that as soon as the title searches were completed settlement would take place. Appellant made no objection.

On February 15, Merkel informed appellant that he had one more title search to complete. In late February or early March, appellees talked with appellant about constructing a pond on her farm; appellant said that as the farm would belong to appellees, they could do as they wanted. At about the same time, appellant told appellees that she did not know when settlement would take place.

By March 23 or 24, Merkel had completed all title searches and informed appellees that settlement would take place the following week. On March 27, Merkel telephoned appellant to tell her the same thing. Appellant **[***4]** replied that she was sick and then ended the conversation; on March 24, still interested in making settlement, appellant had consulted another attorney, and on March 27, she mailed Merkel a letter informing him that she was transferring her legal affairs to this new attorney; Merkel received this letter on March 28 or 29. By letter dated March 28, appellant's new attorney informed appellees that the agreement was "null and void" and directed them to surrender possession.

Appellees contend, and the chancellor found, that on January 14 appellant waived the provision that time was of the essence. We agree.

"**HN1**" Even though the agreement of sale makes time of 'the essence of the contract,' this provision may be waived by agreement or by the conduct of the parties." *Cohn v. Weiss*, 356 Pa. 78, 81, 51 A.2d 740, 742, (1947) (emphasis added). The chancellor found waiver on the basis of appellant's failure to repudiate the agreement on January 14, when she **[*247]** went to Merkel's office for settlement and was told settlement would not take place. We find this reasoning contrary to *New Eastwick Corp. v. Philadelphia Builders Eastwick Corp.*, 430 Pa. 46, 241 A.2d 766 (1968), where **[***5]** it was said: "The chancellor seemed to feel that NEC had the duty to inform PBEC that it (NEC) intended to insist on strict performance of the option. On the contrary, **HN2** performance in accordance with the contract terms . . . is assumed, and a deviation is permissible only if NEC affirmatively assents to it." *Id.* 430 Pa. at 50-51, 241 A.2d at 769. We nevertheless conclude that the result reached by the chancellor was correct, for we find that appellant's actions demonstrated that she "affirmatively assented" to settlement being held at some date later than January 14, depending on when Merkel completed the title searches.

At all times during the negotiations reviewed above, appellant knew that her attorney, Merkel, was also acting for appellees, albeit in a limited capacity. Thus, when she went to Merkel's office on January 14, she was in effect dealing not only with her attorney, but also with appellees' representative. Appellant's knowledge that Merkel was controlling the time of settlement (through his speed on the title searches) and was keeping appellees informed of when settlement would occur, together with her apparent acquiescence to **[**471]** this way of proceeding, **[***6]** compel the conclusion that appellant represented to appellees -- through Merkel -- that she was waiving the provision that time was of the essence. Her conduct after January 14, especially in regard to the pond, supports this conclusion. The case

therefore falls within the rule of *Cohn v. Weiss, supra.* *

- - - - - Footnotes - - - - -

* We note one difference between this case and *Cohn*. There, the agreement of sale did not contain the words, "unless extended by mutual consent in writing endorsed hereon." Appellant has not argued that appellees had to show first that this requirement was waived; she might have so argued, citing *C. I. T. Corp. v. Jonnet*, 419 Pa. 435, 214 A.2d 620 (1965). Similarly, appellant has not argued, nor did she plead below, whether such a modification of the term requiring written extensions would itself fail for non-compliance with the Statute of Frauds. See Restatement of Contracts § 223 (1932).

- - - - - End Footnotes- - - - -

[*248] Appellant argues that Merkel had no ~~HN3~~ authority from her to waive the provision that time [***7] was of the essence. Such authority, however, need not be specifically communicated. Here, appellant's actions were sufficient to give it. *DiGiuseppe v. DiGiuseppe*, 373 Pa. 556, 96 A.2d 874 (1953).

Appellant also argues that "Merkel's dual representation limited his authority to modify the contract provisions on behalf of either party." However, ~~HN4~~ "[t]he rule that an agent cannot act for both parties to a transaction has no application where such double representation was known to the parties and not objected to by them at or previous to the time when they executed their agreement." *Warner Co. v. MacMullen*, 381 Pa. 22, 27, 112 A.2d 74, 77 (1955).

Given the conclusion that appellant waived the provision that time was of the essence, the proper result is clear.

~~HN5~~ When a seller waives time for settlement, the time limit becomes indefinite, and the seller cannot thereafter terminate the agreement without reasonable notice to the buyer. *Warner Co. v. MacMullen, supra* 381 Pa. at 29, 112 A.2d at 78. [***8] Appellant did not give appellees reasonable notice. Therefore the chancellor was correct in ordering that the contract must be specifically enforced.

Affirmed.

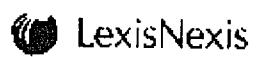
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356 Pa. 78, *; 51 A.2d 740, **;
1947 Pa. LEXIS 308, ***

Cohn v. Weiss et ux., Appellants

The Supreme Court of Pennsylvania

356 Pa. 78; 51 A.2d 740; 1947 Pa. LEXIS 308

Argued January 8, 1947
March 24, 1947

PRIOR HISTORY: [*1]**

Appeal, No. 229, Jan. T., 1946, from decree of C.P. No. 5, Phila. Co., Dec. T., 1945, No. 2141, in case of Benjamin F. Cohn, Agent for Rebecca Fischell v. Max Weiss et ux. Decree affirmed.

Bill in equity for specific performance. Before ALESSANDRONI, J.

Adjudication filed finding for plaintiff and final decree entered ordering conveyance of property. Defendants appealed.

DISPOSITION: The decree is affirmed at appellants' cost.

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant seller sought review of the decision of the trial court (Pennsylvania), which found for plaintiff buyer and entered a final decree ordering conveyance of certain property to the buyer. The buyer filed a bill in equity for specific performance of an agreement of sale of premises.

OVERVIEW: The court affirmed the decree of the trial court. The court found that the seller deliberately permitted the settlement day to pass without affirmative action in the expectation of avoiding the contract. The court stated that if the seller really considered that time was of the essence of the contract, he should have told the buyer to close the transaction by a certain date or that the deal was at an end. Instead the seller put off the buyer until the seller refused to carry out the agreement. Having allowed the stated time to go by, neither party could terminate the contract suddenly without giving the other an opportunity to perform. The parties had subjected themselves to the equitable jurisdiction of the courts, and the remedy of specific performance was available.

OUTCOME: The court affirmed the decree of the trial court that ordered the specific performance of a contract for the sale of real property.

CORE TERMS: settlement, decree, specific performance, personam, waived, vendor, general warranty deed, agreement of sale, real estate, default, vendee, wherever, inequitable, purchase price, purchaser, answered, express stipulation, duly executed, lands lying, time fixed, chancellor, subject-matter, conveyance, decreed, defeat, notice, ended, territorial jurisdiction, strict compliance, time specified

LexisNexis(R) Headnotes

Contracts Law > Contract Conditions & Provisions > Waivers
Contracts Law > Contract Conditions



Additional Duties Generally

HN1 Even though an agreement of sale makes time of the essence of the contract, that provision may be waived by agreement or by the conduct of the parties.

Contracts Law > Contract Conditions & Provisions > Waivers

Contracts Law > Contract Conditions & Provisions > Conditional Duties Generally

HN2 Wherever time is made essential either by the nature of the subject-matter and object of the agreement, or by express stipulation, or by a subsequent notice given by one of the parties to the other, the party in whose favor this quality exists, that is, the one who is entitled to insist upon a punctual performance by the other or else that the agreement be ended, may waive his right and the benefit of any objection which he might raise to a performance after the prescribed time, either expressly or by his conduct, and his conduct will operate as a waiver when it is consistent only with a purpose on his part to regard the contract as still subsisting, and not ended by the other party's default. It must affirmatively appear that the parties regarded time or place as an essential element in their agreement, or a court of equity will not so regard it. But courts of equity make a distinction in all case between that which is matter of substance and that which is matter of form; and if it find that, by insisting on form, the substance will be defeated, it holds it to be inequitable to allow a person to insist on such form, and thereby defeat the substance.

Contracts Law > Contract Conditions & Provisions > Waivers

Contracts Law > Contract Conditions & Provisions > Conditional Duties Generally

HN3 Although time is expressly made of the essence of the contract, this stipulation may be waived by a failure to insist on performance within the time prescribed, and it cannot thereafter be asserted as a defense to a suit for specific performance.

Contracts Law > Contract Conditions & Provisions > Waivers

Contracts Law > Remedies > Specific Performance

Contracts Law > Contract Conditions & Provisions > Conditional Duties Generally

HN4 Even where time is made material, by express stipulation, the failure of one of the parties to perform a condition within the particular time limited, will not in every case defeat his right to specific performance, if the condition be subsequently performed, without unreasonable delay, and no circumstances have intervened that would render it unjust or inequitable to give such relief. The discretion which a court of equity has to grant or refuse specific performance, and which is always exercised with reference to the circumstances of the particular case before it, may, and of necessity must often be controlled by the conduct of the party who bases his refusal to perform the contract upon the failure of the other party to strictly comply with its conditions. Time, made of the essence of the contract by stipulation or circumstances, may be waived by inconsistent conduct subsequent to the time fixed for performance.

Contracts Law > Contract Conditions & Provisions > Waivers

Contracts Law > Remedies > Specific Performance

Contracts Law > Contract Conditions & Provisions > Conditional Duties Generally

HN5 Although performance within the time specified in the contract may be of the essence of the contract it may be waived by written or oral agreement. Specific performance of contracts must always rest in the sound discretion of the court; to be decreed or not as shall seem just and equitable under the peculiar circumstances of each case. It is frequently ordered in favor of a party who has been for a considerable period in default, if he has never abandoned the contract, and the other party has suffered nothing from the delay for which he cannot be compensated in the decree. Specific performance of a contract for the purchase of real estate may not be arbitrarily refused, but in the exercise of a sound legal discretion should be granted, in the absence of some showing that to do so would be inequitable.

Contracts Law > Contract Conditions & Provisions > Waivers

Contracts Law > Contract Conditions & Provisions > Conditional Duties Generally

HN6  Whether time is or is not of the essence of the contract, if the vendor has waived strict compliance with its terms as regards time of payment, he cannot thereafter rescind or forfeit the contract, without notifying the purchaser of his intention to do so unless payment is made, and allowing him a reasonable time for performance. After forfeiture for default has been waived, time becomes essential thereafter only where the vendor makes it so by proper notice and demand. The decisions proceed upon the theory that the vendor cannot use his own indulgence as a trap in which to catch the purchaser.

Contracts Law > Contract Conditions & Provisions > Waivers

Contracts Law > Remedies > Specific Performance

Contracts Law > Contract Conditions & Provisions > Conditions Precedent

HN7  Whichever of the parties first desired to enforce performance was bound to regard his part of the contract as a condition precedent, and perform or offer performance in order to enable him to proceed to enforce the contract. It is equally well established that a tender of performance on the part of plaintiff is prerequisite to a decree for the specific performance of a contract for the sale of real estate he who seeks equity must do equity.

Civil Procedure > Jurisdiction > Equity Jurisdiction

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

HN8  When a court acts in personam, as the court does in the present instance, it is not restricted by geographical boundary lines. The general rule is that, where a court of equity has jurisdiction of the person of defendant, it may render any appropriate decree acting directly on the person, even though the subject matter affected is outside the jurisdiction; a decree does not operate directly on a res which is beyond the territorial jurisdiction of the court, but the court may, acting in personam, coerce action respecting it. A court of equity may compel action with respect to land which lies beyond its jurisdiction, as by conveyance thereof, provided it can enforce its decree by the exercise of its powers over the persons before it.

Civil Procedure > Jurisdiction > Equity Jurisdiction

HN9  The principles of equity give a court jurisdiction wherever the person may be found, and the circumstances, that a question of title may be involved in the inquiry, and may even constitute the essential point on which the case depends, does not seem sufficient to arrest that jurisdiction.

Civil Procedure > Jurisdiction > Equity Jurisdiction

HN10  Where the necessary parties are before a court of equity, it is immaterial that the res of the controversy, whether it be real or personal property, is beyond the territorial jurisdiction of the tribunal. It has the power to compel the defendant to do all things necessary, according to the *lex loci rei sitae*, which he could do voluntarily, to give effect to the decree against him. Without regard to the situation of the subject-matter, such courts consider the equities between the parties, and decree in personam according to those equities, and enforce obedience to their decrees by process in personam.

COUNSEL: *Leon Shechtman, with him Hanley S. Rubinson and Rubinson, Lodge, Shechtman & Zahn, for appellants.*

David Kanner, with him Samuel C. Nissenbaum, for appellee.

JUDGES: Before MAXEY, C.J., DREW, LINN, STERN, PATTERSON, STEARNE and JONES, JJ.

OPINIONBY: MAXEY

OPINION: [*79] [**741] OPINION BY MR. CHIEF JUSTICE MAXEY

Plaintiffs filed a bill in equity for specific performance of an agreement of sale of premises situated at 10-12 North Massachusetts Avenue, Atlantic City, New Jersey. Defendants in their answer averred that the vendee was in default for failing to make settlement at the time specified.

On September 4, 1945, plaintiffs entered into a written agreement, apparently in Pennsylvania, to purchase the premises referred to from the defendants, who are residents of Philadelphia, for the sum of \$16,850.00, subject to a mortgage of \$12,000.00. The sum of \$500.00 was paid on account of the purchase price. The agreement provided, inter alia, as follows: "Settlement is to take place at Atlantic City, N.J., on or before the 25th day of November, 1945, which time is of the essence of this agreement, when the Seller shall deliver a general warranty deed for the said premises, and the balance of the purchase price is to be paid or secured as follows: ..." The agreement of sale did not contain a waiver of formal tender of the general warranty deed. On November 24, 1945, by an agreement in writing, the time for settlement was extended to December 26, 1945, and the plaintiffs paid an additional sum of \$500.00 on account of the purchase price.

On December 19, 1945, the plaintiff, Rebecca Fischell, notified the defendants that she had received a general warranty deed for execution, and certain affidavits to be executed by the defendants as required by the title company in order to remove objections raised by the existence of certain judgment against an individual who bore the same name as Max Weiss. Cohn [**3] testified that on December 19, 1945, he discussed the settlement with the defendant, Max Weiss, that he told Weiss that [*80] he had the papers for him to execute; that he would mail them to him; that Weiss told him not to mail them. The next afternoon Weiss came in and told Cohn that he [Weiss] had a child who had been taken to the hospital, seriously ill. Cohn said: "With your child in the hospital, I will try to save trouble for your wife. You have her sign the deed here in front of a Jersey Commissioner. You will have to go to Atlantic City." Weiss took the papers away. Weiss said to Cohn: "Let me know in a couple of days [about closing the transaction] because with the boy in the hospital I would like to know in advance." He said: "Finally I got the Title Company and a date was arranged for the following Saturday, the 29th. I called Weiss immediately and said 'settlement is arranged for the 29th if it's all right with you, if it isn't we can change the date.'" Weiss said: "I'll call you tomorrow morning and let you know." Weiss did not call him so he called Weiss, who then said: "I think we are going to have a little trouble... I don't own that property, my mother [**4] owns it... We are not going to sell." Weiss testified that his child was in the hospital not on the 21st but on the 24th of December. He said he asked Cohn on December 21st if a date had been fixed for settlement. Cohn said he would let him know. He again called Cohn on December 22nd to find out when the settlement was to be held. Cohn said he would let him know. They had a similar conversation of December 23rd. He testified that on December 26th, about 4 P.M., he talked with Cohn and was told by him the settlement was going to be December 29th in Atlantic City. Weiss testified he told Cohn he would let him know in the morning. The next morning he said he told Cohn "I could not agree and I refused to go on with the settlement at that time." He was asked these questions on cross-examination: "Did you tell Mr. Cohn on the 21st that if a settlement was not made on the 26th you would consider the deposit forfeited." He answered: "I did not." "Did you [*81] tell him that on the 24th?" He answered: "I did not." "Did you tell him that on the 25th?" "A. I did not. Q. Did you tell him that on the 26th when he called you at 4:00 o'clock? A. No." He was asked: "The first time [**5] you told [**742] him was on the 27th?" He answered: "That's right." The conduct of the defendant, Weiss, during the week ending on December

26, 1945 was sufficient to convince the plaintiff that he, Weiss, was not going to insist that the transaction be consummated on the date specified, to wit, December 26, 1945. ^{HN1}

Even though the agreement of sale makes time of "the essence of the contract", this provision may be waived by agreement or by the conduct of the parties. This record supports the court's 13th finding of fact that "the defendants deliberately permitted the settlement day to pass without affirmative action in the expectation of avoiding the contract..." Weiss admitted that 2 days before the fixed date of settlement he mentioned to Cohn that his [Weiss'] son was in the hospital. The further statement (if Cohn's testimony is credited) that he was "not interested in real estate... his child's life came first" was well calculated to lull Cohn into the belief that Weiss was not going to insist on closing the deal on December 26th. Weiss admitted that on December 26th, Cohn said that settlement had been fixed for December 29 and he [Weiss] made no objection. If Weiss **[***6]** really considered that time was of the essence of the contract, he should, on December 26th, have said to Cohn: "You close this transaction today or I will consider the agreement at an end." Instead of thus acting with the frankness of a fairdealing man, he said nothing until the following day when he refused to carry out the agreement of sale.

In *Vankirk v. Patterson*, 201 Pa. 90, 50 A. 966, this court cited with approval the following from Pomeroy on Contracts, section 394: ^{HN2} "Wherever time is made essential either by the nature of the subject-matter and object of the agreement, or by express stipulation, or by a subsequent **[*82]** notice given by one of the parties to the other, the party in whose favor this quality exists -- that is, the one who is entitled to insist upon a punctual performance by the other or else that the agreement be ended -- may waive his right and the benefit of any objection which he might raise to a performance after the prescribed time, either expressly or by his conduct, and his conduct will operate as a waiver when it is consistent only with a purpose on his part to regard the contract as still subsisting, and not ended by the other party's **[***7]** default." (Italics supplied.) In *Secombe et al. v. Steele*, 61 U.S. 94, at 104, the Supreme Court of the United States said: "It must affirmatively appear that the parties regarded time or place as an essential element in their agreement, or a court of equity will not so regard it." The court cites *Parkin v. Thorald*, 16 Beav. 59, where the master of the rolls said: "But courts of equity make a distinction in all case between that which is matter of substance and that which is matter of form; and if it find that, by insisting on form, the substance will be defeated, it holds it to be inequitable to allow a person to insist on such form, and thereby defeat the substance." In *Marshall v. Keach*, 227 Ill. 35, 81 N.E. 29, it was held that ^{HN3} "although time is expressly made of the essence of the contract, this stipulation may be waived by a failure to insist on performance within the time prescribed, and it cannot thereafter be asserted as a defense to a suit for specific performance.

In *Cheney v. Libby*, 134 U.S. 68, at page 78, it was held by the United States Supreme Court, in an opinion by Justice HARLAN: ^{HN4} "Even where time is made material, by express stipulation, the **[***8]** failure of one of the parties to perform a condition within the particular time limited, will not in every case defeat his right to specific performance, if the condition be subsequently performed, without unreasonable delay, and no circumstances have intervened that would render it unjust or inequitable to give such relief. The discretion which **[*83]** a court of equity has to grant or refuse specific performance, and which is always exercised with reference to the circumstances of the particular case before it, (*Hennessy v. Woolworth*, 128 U.S. 438, 442,) may, and of necessity must often be controlled by the conduct of the party who bases his refusal to perform the contract upon the failure of the other **[**743]** party to strictly comply with its conditions. (Citing cases)." In *Kobrin et al. v. Drazin*, 128 A. 796, it was held by the Court of Chancery of New Jersey that time, made of the essence of the contract by stipulation or circumstances, may be waived by inconsistent conduct subsequent to the time fixed for performance.

In *Waller v. Lieberman*, 183 N.W. 235, the Supreme Court of Michigan held that **HN5** "although performance within the time specified in the contract **[***9]** may be of the essence of the contract it may be waived by written or oral agreement. It quotes the following from Justice COOLEY, in *Smith v. Lawrence*, 15 Mich. 499-500: "Specific performance of contracts must always rest in the sound discretion of the court; to be decreed or not as shall seem just and equitable under the peculiar circumstances of each case. It is frequently ordered in favor of a party who has been for a considerable period in default, if he has never abandoned the contract, and the other party has suffered nothing from the delay for which he cannot be compensated in the decree." "In *Hager v. Ray*, 176 N.W. 443, 446, the court said: '... specific performance of a contract for the purchase of real estate may not be arbitrarily refused, but in the exercise of a sound legal discretion should be granted, in the absence of some showing that to do so would be inequitable.'"

Volume 30 of Cyc., at page 1384, makes the following statement: **HN6** "Whether time is or is not of the essence of the contract, if the vendor has waived strict compliance with its terms as regards time of payment, he cannot thereafter rescind or forfeit the contract, without **[*84]** notifying **[***10]** the purchaser of his intention to do so unless payment is made, and allowing him a reasonable time for performance... After forfeiture for default has been waived, time becomes essential thereafter only where the vendor makes it so by proper notice and demand. The decisions proceed upon the theory that the vendor cannot use his own indulgence as a trap in which to catch the purchaser." (Citing cases). In the instant case the apparent "indulgence" of the defendant at Christmas-time 1945 and his leading Cohn to believe that his (Weiss') solicitude for his son who was ill in the hospital had crowded the pending real estate deal out of his mind was well calculated to serve "as a trap" to put the purchaser "off his guard" in respect to time being of the essence of the contract of sale and purchase. His failure on December 26th to object to the postponement of the settlement date also tended to mislead Cohn into the belief that Weiss did not regard time as of the essence of the contract.

Another important element in this case is the fact, as found by the court below, that the defendants never tendered a duly executed general warranty deed nor the necessary affidavits as to existing **[***11]** judgments required to remove the objections of the title company. If the vendor intended to hold the vendee to a strict compliance to the terms of the agreement in respect to the time of settlement, he should have been meticulous about his own readiness to perform his part of the agreement at the time fixed for settlement. In *Lefferts v. Dolton*, 217 Pa. 299, 66 A. 527, this court held that before a vendee is called upon to pay his money, he is "entitled to see that the conveyance is properly signed, sealed and acknowledged, and that the description of the land to be conveyed is correct."

In the instant case the court below correctly said: "In the absence of an express waiver of formal tender, the vendors were under a duty to appear at the stipulated time and place for performance and produce a **[*85]** duly executed instrument. Until this was done, the vendee could not be called upon to make payment or to proceed in the performance of her covenant... [citing *Vankirk v. Patterson*, 201 Pa. 90]. We are confronted, therefore, with a situation in which both parties permitted the time for performance to pass... Having allowed the stated time to go by, neither party could terminate **[***12]** the contract suddenly without giving the other an opportunity to perform: *Dravo Cont'ng Co. v. Rees & Sons Co.*, 291 Pa. 387."

[744]** In *Irvin v. Bleakley*, 67 Pa. 24, which was an action of assumpsit for breach of contract for the purchase and sale of property, this court said: "... **HN7** whichever of the parties first desired to enforce performance was bound to regard his part of the contract as a condition precedent, and perform or offer performance in order to enable him to proceed to enforce the contract." (Citing cases). This doctrine was reiterated by this court in *Heights Land Co. v. Swengel's Estate et al.*, 319 Pa. 298, 179 A. 431, where it said: "It is equally

well established that a tender of performance on the part of plaintiff is prerequisite to a decree for the specific performance of a contract for the sale of real estate [citing cases]; he who seeks equity must do equity."

The court below in its discussion says: "Both parties apparently have overlooked the question of what law governs this action. The contract involved real estate located in New Jersey and was to have been performed in that state. In the absence of applicable pleadings and of pertinent [***13] evidence the lex forum is applied: Standard Pennsylvania Practice, Volume 3, page 35." The sentence just quoted is a correct statement of a legal principle, but in this case the location of the real estate involved is of no materiality. The defendant is properly before the court and must be submissive to its lawful decrees. ^{HN8} When a court acts in personam, as the court does in the present instance, it is not restricted by geographical boundary lines.30 C.J.S. 439, section [*86] 81 makes this statement: "The general rule is that, where a court of equity has jurisdiction of the person of defendant, it may render any appropriate decree acting directly on the person, even though the subject matter affected is outside the jurisdiction; a decree does not operate directly on a res which is beyond the territorial jurisdiction of the court, but the court may, acting in personam, coerce action respecting it." 30 C.J.S., section 82, p. 441 lays down this principle: "A court of equity... may compel action with respect to land which lies beyond its jurisdiction, as by conveyance thereof, provided it can enforce its decree by the exercise of its powers over the persons before it."

In *Massie* [***14] v. *Watts* , 6 Cranch 148, there was an appeal from the circuit court of the United States, for the district of Kentucky, in a suit in equity brought by Watts, a citizen of Virginia, against Massie, a citizen of Kentucky, to compel the latter to convey to the former 1,000 acres of land in the state of Ohio, the defendant having obtained the legal title with notice of the plaintiff's equitable title. A decree having been obtained against the defendant, the latter objected to the jurisdiction of the court. Chief Justice MARSHALL, speaking for the United States Supreme Court, said: "... ^{HN9} the principles of equity give a court jurisdiction wherever the person may be found, and the circumstances, that a question of title may be involved in the inquiry, and may even constitute the essential point on which the case depends, does not seem sufficient to arrest that jurisdiction." Chief Justice MARSHALL cites several cases, among them being the celebrated case of *Penn v. Lord Baltimore* , 1 Vez. 444, in which the Lord Chancellor of England decreed a specific performance of a contract respecting lands lying in North America. In Chief Justice MARSHALL'S opinion appears the following: "In the [***15] case of *Arglasse v. Muschamp*, 1 Vernon, 75, the defendant, residing in England, having fraudulently obtained a rent charge on lands lying in Ireland, [*87] a bill was brought in England to set it aside. To an objection made to the jurisdiction of the court the chancellor replied, 'This is surely only a jest put upon the jurisdiction of this court by the common lawyers; for when you go about to bind the lands and grant a sequestration to execute a decree, then they readily tell you that the authority of this court is only to regulate a man's conscience, and ought not to affect the estate, but that this court must agree in personam only; and when, as in this case, you prosecute the person for a fraud, they tell you that you must not intermeddle here, because, the fraud, though committed here, concerns lands that lie in Ireland, which makes the jurisdiction local, and so wholly elude the jurisdiction [**745] of this court.' The chancellor, in that case, sustained his jurisdiction on principle, and on the authority of Archer and Preston, in which case a contract made respecting lands in Ireland, the title to which depends on the act of settlement, was enforced in England, although [***16] the defendant was a resident of Ireland, and had only made a casual visit to England. On a rehearing before Lord Keeper North this decree was affirmed." Chief Justice MARSHALL adds: "Upon the authority of these cases, and of others which are to be found in the books, as well as upon general principles, this court is of opinion that, in a case of fraud, of trust, or of contract, the jurisdiction of a court of chancery is sustainable wherever the person be found, although lands not within the jurisdiction of that court may be affected by the decree."

In *Schmaltz v. York Mfg. Co.*, 204 Pa. 1, 13, this court said in an opinion by Justice MESTREZAT: "While the situs of the property in dispute is in another state and a decree of a court of this state cannot operate upon or directly affect it, yet we think that a court of equity in this state, having jurisdiction of all the parties, can determine their rights to the property, and by proper process enforce them in personam. (Citing cases). In the last cited case [Phelps v. McDonald, 99 U.S. 298] **[*88]** it is said: *HN10* Where the necessary parties are before a court of equity, it is immaterial that the res of the controversy, whether **[***17]** it be real or personal property, is beyond the territorial jurisdiction of the tribunal. It has the power to compel the defendant to do all things necessary, according to the *lex loci rei sitoe*, which he could do voluntarily, to give effect to the decree against him. Without regard to the situation of the subject-matter, such courts consider the equities between the parties, and decree in personam according to those equities, and enforce obedience to their decrees by process in personam." See also *Commonwealth v. Froelich*, 56 Pa. Superior Ct. 604; *Kane & Elk Railroad Co. v. Pittsburgh & Western Railroad Co.*, 241 Pa. 608; *Given's Appeal*, 121 Pa. 260; *Vaughan v. Barclay*, 6 Wharton 392.

The decree is affirmed at appellants' cost.

Service: Get by LEXSEE®

Citation: 356 Pa. 78, at 81

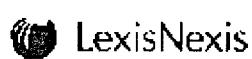
View: Full

Date/Time: Tuesday, April 4, 2006 - 11:40 AM EDT

* Signal Legend:

- Warning: Negative treatment is indicated
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AGREEMENT FOR THE SALE OF REAL ESTATE

1. **THIS AGREEMENT**, dated October 13, 2004, is between
SELLER(S): Paul A. Kostanek & Amy M. Kostanek, his wife, both of 1671 Treasure Lake, Dubois, PA 15801, called "Seller",
BUYER(S): Roland E. Bechtel, Jr., & Janet L. Bechtel, his wife, both of 1573 Treasure Lake, Dubois, PA 15801, called "Buyer".

2. **PROPERTY.** Seller hereby agrees to sell and convey to the Buyer, who hereby agrees to purchase: ALL THAT CERTAIN lot or piece of ground with buildings and improvements thereon erected, if any, known as: Section 10, Lot 83 Sandy, County of Clearfield, in the Commonwealth of Pennsylvania, in the Township of Sandy. Identification (e.g., Tax ID#, Parcel #, Lot, Block, Deed Book, Page, Recording Date): Instrument #200313697 under date of August 1, 2003

3. **TERMS**

(A) Purchase Price: Two Hundred Sixty Thousand and no/100 Dollars which will be paid to Seller by Buyer as follows:

(B) Cash or check at signing this Agreement: \$ 2,000.00

(C) Cash or check within _____ days of the execution of this Agreement: \$ _____

(D) Cash, cashier's or certified check at time of settlement: \$ _____

(E) Deposits paid on account of purchase price will be held by the law firm of Lynn, King & Schreffler, P.C. unless otherwise stated here: TOTAL \$ 258,000.00

(F) Seller's written approval to be on or before: October 26, 2004

(G) Settlement to be made on or before: November 15, 2004

(H) Conveyance from Seller will be by fee simple deed of general warranty unless otherwise stated here:

(I) Payment of transfer taxes will be divided equally between Buyer and Seller unless otherwise stated here: Buyer will pay Treasure Lake POA Transfer Fee ~~Divided equally~~ ^{Divided equally}

(J) At the time of settlement, the following will be adjusted pro-rata on a daily basis between Buyer and Seller, reimbursing where applicable: taxes; rents; interest on mortgage assumptions; condominium fees and homeowner association fees, if any; water and/or sewer fees, if any, together with any other lienable municipal service. The charges are to be pro-rated for the period(s) covered: Seller will pay up to and including the date of settlement; Buyer will pay for all days following settlement unless otherwise stated here:

4. **FIXTURES & PERSONAL PROPERTY**

(A) INCLUDED in this sale and purchase price are all existing items permanently installed in the Property, free of liens, including plumbing; heating; lighting fixtures (including chandeliers and ceiling fans); water treatment systems; pool and spa equipment; garage door openers and transmitters; television antennas; shrubbery, plantings and unpotted trees; any remaining heating and cooking fuels stored on the Property at the time of settlement; wall to wall carpeting; window covering hardware, shades, blinds; built-in air conditioners; built-in appliances; and the range/oven unless otherwise stated. Also included:

(B) LEASED items (items now owned by Seller):

(C) EXCLUDED fixtures and items: Pool Table Light, Washer and Dryer

5. **SPECIAL CLAUSES**

Buyer has received the Seller's Property Disclosure Statement before signing this Agreement, if required by law. (See Notice, Information Regarding the Seller's Property Disclosure Act).

Sale & Settlement of Other Property Contingency Addendum

Sale & Settlement of Other Property Contingency with Right to Continue Marketing Addendum

Settlement of Other Property Contingency Addendum

Tenant-Occupied Property Addendum

Buyers are aware of water damage to upstairs ceiling and will repair same at their own expense.

6. **MORTGAGE CONTINGENCY**

WAIVED. This sale is NOT contingent on mortgage financing.

(A) This sale is contingent upon Buyer obtaining mortgage financing as follows:

1. Amount of mortgage loan: _____

2. Minimum Term _____ years

3. Type of mortgage: _____

4. Interest rate _____ %; however, Buyer agrees to accept the interest rate as may be committed by the mortgage lender, not to exceed a maximum interest rate of _____ %.

5. Discount points, loan origination, loan placement and other fees charged by the lender as a percentage of the mortgage loan (excluding any mortgage insurance premiums or VA funding fee) not to exceed _____ % of the mortgage loan.

The interest rate and fees provision required by Buyer are satisfied if a mortgage lender makes available to the Buyer the right to guarantee an interest rate at or below the Maximum Interest

EXHIBIT C

Rate specified herein with the percentage fees at or below the amount specified herein. B gives Seller the right, at Seller's sole option and as permitted by the lending institution and applicable laws, to contribute financially, without promise of reimbursement, to the Buyer a lender to make the above terms available to Buyer.

(B) Within 10 days of the execution of this Agreement, Buyer will make a completed, written mortgage application to a responsible mortgage lending institution.

(C) 1. Upon receipt of a mortgage commitment, Buyer will promptly deliver a copy of the commitment by Seller by the above date, **Buyer and Seller agree to extend the commitment date until Seller terminates this Agreement in writing.**

2. Seller has the option to terminate this Agreement in writing, on or after the mortgage commitment date, if the mortgage commitment:

- a. Is not valid until the date of settlement, OR
- b. Is conditioned upon the sale and settlement of any other property, OR
- c. Contains any other condition not specified in this Agreement.

3. In the event that Seller does not terminate this Agreement as provided above, Buyer has the option to terminate this Agreement in writing if the mortgage commitment:

- a. Is not obtained by or valid until the date of settlement, OR
- b. Is conditioned upon the sale and settlement of any other property which do not occur
- c. Contains any other condition not specified in this Agreement which Buyer is unable to

5. satisfy by the date of settlement.

If this Agreement is terminated as specified in paragraphs 6 (C) (2), (3) or (4) all deposit monies paid on account of purchase price will be returned to Buyer. Buyer will be responsible for any premiums for mechanics lien insurance and/or title search, or fee for cancellation of same, if a

AND/OR any premiums for flood insurance and/or fire insurance with extended coverage, insurance binder charges or cancellation fee, if any; AND/OR any appraisal fees and charges in

(D) advance to mortgage lender.

If the mortgage lender requires repairs to the property, Buyer will, upon receipt, deliver a copy of the mortgage lender's requirements to Seller. Seller will, within 5 days of receipt of the lender's requirements, notify Buyer whether Seller will make the required repairs at Seller's expense.

1. If Seller chooses to make repairs, Buyer will accept the Property and agree to the RELEASE set forth in paragraph 24 of this Agreement.

2. If Seller chooses not to make the required repairs, Buyer will, within 5 days, notify Seller in writing of Buyer's choice to terminate this Agreement OR make the required repairs at Buyer's expense and with Seller's permission, which will not be unreasonably withheld. If Seller denies Buyer permission to make the required repairs, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of

purchase price will be returned promptly to Buyer and this Agreement will be VOID.

(E) Seller Assist

NOT APPLICABLE

APPLICABLE. Seller will pay:

\$ _____, maximum, toward Buyer's costs as permitted by the mortgage lender.

(F) **FHA/VA, IF APPLICABLE**

It is expressly agreed that notwithstanding any other provisions of this contract, Buyer will not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless Buyer has been given, in accordance with HUD/FHA or VA requirements, a written statement by the Federal Housing Commissioner, Veterans Administration, or a

Direct Endorsement Lender setting forth the appraised value of the property of not less than \$ _____ (the dollar amount to be inserted is the sales price as stated in this Agreement). Buyer will have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the Property. Buyer should satisfy himself/herself that the price and condition of the Property are acceptable.

Warning: Section 1010 of Title 18, I.S.C., Department of Housing and Urban Development provides, "Whoever for the purpose of ... influencing in any way the action of such department...makes, passes, utters or publishes any statement knowing the same to be false...shall be fined not more than \$5,000.00 or imprisoned not more than two years, or both".

(G) **U. S. Department of Housing and Urban Development (HUD) NOTICE TO PURCHASERS:**

Buyers Acknowledgment

Buyer has received the HUD Notice "For Your Protection: Getting a Home Inspection" (see Notices and Information on Property Condition Inspections). Buyers understands the importance of getting an independent home inspection and has thought about this before signing this Agreement.

(H) **Certification** We the undersigned, Seller(s) and Buyer(s) party to this transaction each certify that the terms of this contract for purchase are true to the best of our knowledge and belief, and that any other agreement entered into by any of these parties in connection with this transaction is attached to this Agreement.

7. INSPECTIONS

(A) Seller hereby agrees to permit inspections by authorized appraisers, reputable certifiers, insurer's representatives, surveyors, municipal officials and/or Buyer as may be required by the lending institutions, if any, or insuring agencies. Seller further agrees to permit any other inspections required by or provided for in the terms of this Agreement.

(B) Buyer reserves the right to make a pre-settlement walk through inspection of the Property. Buyer's right to make this inspection is not waived by any other provision of this Agreement.

(C) Seller will have heating and all utilities (including fuel(s)) on for the inspections.

8.

PROPERTY INSPECTION CONTINGENCY

WAIVED. Buyer understands that Buyer has the option to request inspections of the Property (see Property Inspection and Environmental Notices). BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 24 of this Agreement.

ELECTED

(A) Within _____ days of the execution of this Agreement, Buyer, at Buyer's expense, may choose to have inspections and/or certifications completed by licensed or otherwise qualified professionals (see Property Inspection and Environmental Notices). This contingency does not apply to the following existing conditions and/or items:

(B) Other provisions of this Agreement may provide for inspections and/or certifications that are not waived by Buyer's election here.

(C) If Buyer is not satisfied with the condition of the Property as stated in any written report, Buyer will, within the time given for completing inspections:

Option 1

1. Accept the property with the information stated in the report(s) and agree to the RELEASE set forth in paragraph 24 of this Agreement, OR
2. Terminate the Agreement in writing by notice to Seller within the time given for inspection, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

Option 2

1. Accept the Property with the information stated in the report(s) and agree to the RELEASE set forth in paragraph 24 of this Agreement, UNLESS the total cost to correct the conditions contained in the report(s) is more than \$_____.
2. If the total cost to correct the conditions contained in the report(s) is more than \$_____ Buyer will deliver the report to Seller within the time given for inspection.

a. Seller will, within _____ days of receiving the report(s), inform Buyer in writing of Seller's choice to:

- (1) Make repairs before settlement so that the remaining cost to repair conditions contained in the report(s) is less than or equal to the amount specified in paragraph 8 (C) (Option 2) 1.
- (2) Credit Buyer at settlement for the difference between the estimated cost of repairing the conditions contained in the report(s) and the amount specified in paragraph 8 (C) (Option 2) 1. This option must be acceptable to the mortgage lender, if any.
- (3) Not make any repairs and not credit Buyer at settlement for any defect in conditions contained in the report(s).

b. If Seller chooses to make repairs or credit Buyer at settlement as specified in paragraph 8 (C) (Option 2) 2, Buyer will accept the Property and agree to the RELEASE set forth in paragraph 24 of this Agreement.

c. If Seller chooses not to make repairs and not to credit Buyer at settlement, or if Seller fails to choose any option within the time given, Buyer will, within _____ days:

- (1) Accept the Property with the information stated in the report(s) and agree to the RELEASE set forth in Paragraph 24 of this Agreement, OR
- (2) Terminate the Agreement in writing by notice to Seller, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

9.

WOOD INFESTATION CONTINGENCY

WAIVED. Buyer understands that Buyer has the option to request that the Property be inspected for wood infestation by a certified Pest Control Operator. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in Paragraph 24 of this Agreement.

ELECTED.

(A) Within _____ days of the execution of this Agreement, Buyer, at Buyer's expense, will obtain a written "Wood-Destroying Insect Infestation Inspection Report" from a certified Pest Control Operator and will deliver it and all supporting documents and drawings provided by the Pest Control Operator to Seller. The report is to be made satisfactory to and in compliance with applicable laws, mortgage and lending institutions, and/or Federal Insuring and Guaranteeing Agency requirements, if any. The inspection will include all readily visible and accessible areas of all structures on the Property except the following structures, which will not be inspected:

(B) If the inspection reveals evidence of active infestation(s), Seller agrees, at Seller's expense and before settlement, to treat for active infestation(s) in accordance with applicable laws.

(C) If the inspection reveals damage from active infestation(s) or previous infestation(s), Buyer, at Buyer's expense, has the option to obtain a written report by a professional contractor, home inspection service, or structural engineer that is limited to structural damage to the Property caused by wood-destroying organisms and a proposal to repair the damage. Buyer will deliver the structural damage report and corrective proposal to Seller within _____ days of delivering the original inspection report.

(D) Within 5 days of receiving the structural damage report and corrective proposal, Seller will advise Buyer whether Seller will repair, at Seller's expense and before settlement, any structural damage from active or previous infestation(s).

(E) If Seller chooses to repair structural damage revealed by the report, Buyer agrees to accept the Property as repaired and agrees to the RELEASE set forth in paragraph 24 of this Agreement.

(F) If Seller chooses not to repair structural damage revealed by the report or fails to respond within the time given, Buyer, within 5 days of receiving Seller's notice, will notify Seller in writing of Buyer's choice to:

1. Accept the Property with the defects revealed by the inspection, without abatement of price and agree to the RELEASE set forth in paragraph 24 of this Agreement, OR

2. Make the repairs before settlement, if required by the mortgage lender, if any, at Buyer's expense and with Seller's permission, which will not be unreasonably withheld, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 24 of this Agreement. If Seller denies Buyer permission to make the repairs, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price shall be returned promptly to Buyer and this Agreement will be VOID, OR

3. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

10. **RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT NOTICE REQUIRED FOR PROPERTIES BUILT BEFORE 1978.**

NOT APPLICABLE.
 APPLICABLE.

(A) Seller represents that: (check 1 OR 2)

1. Seller has no knowledge concerning the presence of lead-based paint and/or lead-based paint hazards in or about the Property.

2. Seller has knowledge of the presence of lead-based paint and/or lead-based paint hazards in or about the Property (Provide the basis for determining that the lead-based paint and/or hazards exist, the location(s) and the condition of the painted surfaces, and other available information concerning Seller's knowledge of the presence of lead-based paint and/or lead-based paint hazards.)

(B) Records/Reports (check 1 OR 2)

1. Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in or about the Property.

2. Seller has provided Buyer with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in or about the Property. (List documents).

(C) Buyer's Acknowledgment

1. Buyer has received the pamphlet *Protect Your Family from Lead in Your Home* and has read the Lead Warning Statement contained in this Agreement (See Environmental Notices).
 Buyer's Initials _____ Date _____

2. Buyer has reviewed Seller's disclosure of known lead-based paint and/or lead-based paint hazards, as identified in paragraph 10(A) and has received the records and reports pertaining to lead-based paint and/or lead-based paint hazards identified in paragraph 10(B).
 Buyer's Initials _____ Date _____

(D) **RISK ASSESSMENT/INSPECTION:** Buyer acknowledges that before Buyer is obligated to buy a residential dwelling built before 1978, Buyer has a 10 day period (unless Buyer and Seller agree in writing to a different period of time) to conduct a risk assessment or inspection of the Property for the presence of lead-based paint and/or lead-based paint hazards.

WAIVED. Buyer understands that Buyer has the right to conduct a risk assessment or inspection of the Property to determine the presence of lead-based paint and/or lead-based paint hazards. BUYER WAIVES THIS RIGHT and agrees to the RELEASE set forth in paragraph 24 of this Agreement.

ELECTED.

1. Buyer, at Buyer's expense, chooses to obtain a risk assessment and/or inspection of the Property for lead-based paint and/or lead-based paint hazards. The risk assessment and/or inspection will be completed within _____ days of the execution of this Agreement (Insert "10" unless Buyer and Seller agree to a different period of time).

2. Within the time set forth above for obtaining a risk assessment and/or inspection of the Property for lead-based paint and/or lead-based paint hazards, Buyer may deliver to the Seller a written list of the specific hazardous conditions cited in the report and those corrections requested by Buyer, along with a copy of the risk assessment and/or inspection report.

3. Seller may, within _____ days of receiving the lists and report(s), submit a written corrective proposal to Buyer. The corrective proposal will include, but not be limited to, the name of the remediation company and a completion date for corrective measures. Seller will provide certification from a risk assessor or inspector that corrective measures have been made satisfactorily on or before the completion date.

a. Accept the corrective proposal, Buyer, within 5 days, will: _____
 b. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to buyer and this Agreement will be VOID.

5. Should Seller fail to submit a written corrective proposal within the time set forth in paragraph 10(D)3 of this Agreement, then Buyer, within 5 days, will:

a. Accept the Property in writing, and agree to the RELEASE set forth in paragraph 24 of this Agreement, OR
 b. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

(E) **Certification** By signing this Agreement, Buyer and Seller certify the accuracy of their respective statements, to the best of their knowledge.

11. **RADON CONTINGENCY**

(A) Seller represents that:

1. Seller has no knowledge concerning the presence or absence of radon.

2. Seller has the knowledge that the Property was tested on the date, by the methods (e.g., charcoal canister, alpha track, etc.) And with the results of all test indicated below:

DATE 7/09/03 TYPE OF TEST SST E-PERM RESULTS 1.8 to 1.9 pCi/L
See attached.

COPIES OF ALL AVAILABLE TEST REPORTS will be delivered to Buyer with this Agreement.
 SELLER DOES NOT WARRANT EITHER THE METHODS OR RESULTS OF THE TESTS.

3. Seller has knowledge that the property underwent radon reduction measures on the date(s) by the method(s) indicated below:
 DATE _____

RADON REDUCTION METHOD

WAIVED. Buyer understands that Buyer has the option to request that the Property be inspected for radon by a certified inspector (see Radon Notice). BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 24 of this Agreement.

(B) ELECTED. Buyer, at Buyer's expense, has the option to obtain, from a certified inspector, a radon test of the Property and will deliver a copy of the test report to Seller within _____ days of the execution of this Agreement. (See Radon Notice.)

1. If the test report reveals the presence of radon below 0.02 working levels (4 picocuries/liter), Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 24 of this Agreement.

2. If the test report reveals the presence of radon at or exceeding 0.02 working levels (4 picocuries/liter), Buyer will, within _____ days of receipt of the test results:

a. Accept the Property in writing and agree to the RELEASE set forth in paragraph 24 of this Agreement, OR

b. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID, OR

c. Submit a written, corrective proposal to Seller. The corrective proposal will include, but not be limited to, the name of the certified mitigation company; provisions for payment, including retests and completion date for corrective measures.

(1) Within 5 days of receiving the corrective proposal, Seller will:

(a) Agree to the terms of the corrective proposal in writing, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 24 of this Agreement, OR

(b) Not agree to the terms of the corrective proposal.

(2) Should Seller not agree to the terms of the corrective proposal or fail to respond within the time given, Buyer will, within 5 days, elect to:

(a) Accept the Property in writing and agree to the RELEASE set forth in Paragraph 24 of this Agreement, OR

(b) Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

Option 2

a. Accept the Property in writing and agree to the RELEASE set forth in paragraph 24 of this Agreement, OR

b. Submit a written, corrective proposal to Seller. The corrective proposal will include, but not be limited to, the name of the certified mitigation company; provisions for payment, including retests and completion date for corrective measures. Seller will pay a maximum of \$ _____ toward the cost of remediation and retests, which will be completed by settlement.

(1) If the total cost of remediation and retests EXCEEDS the amount specified in paragraph 11(B) (Option 2) b, Seller will, within 5 days of receipt of the cost of remediation, notify Buyer in writing of Seller's choice to:

(a) Pay for the total cost of remediation and retests, in which case buyer accepts the Property and agrees to the RELEASE set forth in paragraph 24 of this Agreement, OR

(b) Not pay for the total cost of remediation and retests.

(2) If Seller chooses not to pay for the total cost of remediation and retests, or if Seller fails to choose either option within the time given, Buyer will, within 5 days, notify Seller in writing of Buyer's choice to:

(a) Pay the difference between Seller's contribution to remediation and retests and the actual cost thereof, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 24 of this Agreement, OR

(b) Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

12. STATUS OF WATER

(A) Seller represents that this property is served by:

Public Water
 On-site Water
 Community Water
 None

(B) WATER SERVICE INSPECTION CONTINGENCY

WAIVED. Buyer acknowledges that Buyer has the option to request an inspection of the water service for the Property. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 24 of this Agreement.

ELECTED.

1. Buyer has the option, within _____ days of the execution of this Agreement and at Buyer's expense, to deliver to Seller a written inspection report by a qualified, professional water testing company of the quality and/or quantity of the water service.

2. Seller agrees to locate and provide access to the on-site (or individual) water system, if applicable, at Seller's expense, if required by the inspection company. Seller also agrees to restore the Property prior to settlement.

3. If the report reveals that the water service does not meet the minimum standards of any applicable governmental authority and/or fails to satisfy the requirements for quality and/or

quantity set by the mortgage lender, if any, then Seller will, within _____ days of receipt of the report, notify Buyer in writing of Seller's choice to:

- Upgrade the water service to the minimum acceptable levels, before settlement, in case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 24 of this Agreement, OR
- Not upgrade the water service.

4. If Seller chooses not to upgrade the service to minimum acceptable levels, or fails to respond within the time given, Buyer will, within _____ days, either:

- Accept the Property and the water service, and, if required by mortgage lender, if any, and/or governmental authority, upgrade the water service before settlement or within the time required by the mortgage lender, if any, and/or governmental authority, at Buyer's expense and with Seller's permission, which will not be unreasonably withheld, and agree to the RELEASE set forth in paragraph 24 of this Agreement. If Seller denies Buyer permission to upgrade the water service, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID, OR
- Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to buyer and this Agreement will be VOID.

13. STATUS OF SEWER

(A) Seller represents that the property is served by:

- Public Sewer
- Individual On-Site Sewage Disposal System (See Sewage Notice 1)
- Individual On-Site Sewage Disposal System in Proximity to Well (See Sewage Notice 1; see Sewage Notice 4, if applicable)
- Community Sewage Disposal System
- Ten-acre Permit Exemption (See Sewage Notice 2)
- Holding Tank (See Sewage Notice 3)
- None (See Sewage Notice 1)
- None Available/Permit Limitations in Effect (See Sewage Notice 5)

(B) INDIVIDUAL ON-SITE SEWAGE DISPOSAL INSPECTION CONTINGENCY

WAIVED. Buyer acknowledges that Buyer has the option to request an individual on-lot sewage inspection of the Property. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 24 of this Agreement.

(C) ELECTED

- Buyer has the option, within _____ days of the execution of this Agreement and at Buyer's expense, to deliver to Seller a written inspection report by a qualified, professional inspector of the individual on-site sewage disposal system.
- Seller agrees to locate and provide access to the individual on-site sewage disposal system, and, if required by the inspection company, empty the septic tank, at Seller's expense. Seller also agrees to restore the Property prior to settlement.
- If the report reveals defects that do not require expansion or replacement of the existing sewage disposal system, Seller will, within _____ days of receipt of the report, notify Buyer in writing of Seller's choice to:
 - Correct the defects before settlement, including retests, at Seller's expense, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 24 of this Agreement, OR
 - Not correct the defaults, or if Seller fails to respond within the time given, Buyer will, within _____ days, either:
 - Accept the Property and the system and, if required by the mortgage lender, if any, and/or governmental authority, correct the defects before settlement or within the time required by the mortgage lender, if any, and/or governmental authority, at Buyer's sole expense and with Seller's permission, which will not be unreasonably withheld, and agree to the RELEASE set forth in paragraph 24 of this Agreement. If Seller denies Buyer permission to correct the defects, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID, OR
 - Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.
- If the report reveals the need to expand or replace the existing individual on-lot sewage disposal system, Seller may, within _____ days of the report, submit a corrective proposal to Buyer. The corrective proposal will include, but not be limited to, the name of the remediation company, provisions for payment, including retests; and completion date for corrective measures. Within 5 days of receiving Seller's corrective proposal, or if no corrective proposal is received within the time given, Buyer will:
 - Agree to the terms of the corrective proposal, if any, in writing, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 24 of this Agreement, OR
 - Accept the Property and the system and, if required by the mortgage lender, if any, and/or required by the mortgage lender, if any, and/or any governmental authority, at Buyer's sole expense and with Seller's permission, which will not be unreasonably withheld, and agree to the RELEASE set forth in paragraph 24 of this Agreement. If Seller denies Buyer permission to correct the defects, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID, OR
 - Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

manner provided in Section 1 of the Act of July 17, 1957, P.L. 984.) "Buyer acknowledges that he may not obtain the right of protection against subsidence resulting from coal mining operations, and that the property described herein may be protected from damage due to mine subsidence by a private contract with the property owner. This acknowledgment is made for the purpose of complying with the provisions of Section 14 of the Bituminous Mine Subsidence and the Land Conservation Act of April 27, 1966." Buyer to sign the deed from Seller which deed will contain the aforesaid provision.

18. **POSSESSION**

(A) Possession is to be delivered by deed, keys and:

1. Physical possession to a vacant building (if any) broom-clean, free of debris at day and time of settlement, AND/OR
2. Assignment of existing lease(s), together with any security deposits and interest, at the time of settlement, if Property is tenant-occupied at the execution of this Agreement or unless otherwise specified herein. Buyer will acknowledge existing lease(s) by initialing said lease(s) at time of signing of this Agreement, if Property is tenant-occupied.

(B) Seller will not enter into any new leases, written extension of existing leases, if any, or additional leases of the Property without expressed written consent of Buyer.

19. **RECORDING**. This Agreement will not be recorded in the office for the Recording of Deeds or in any other office or place of public record and if Buyer causes or permits this Agreement to be recorded, Seller may elect to treat such act as a breach of this Agreement.

20. **ASSIGNMENT**. This Agreement will be binding upon the parties, their respective heirs, personal representatives, guardians and successors, and to the extent assignable, on the assigns of the parties hereto, it being expressly understood, however, that Buyer will not transfer or assign this Agreement without the written consent of Seller.

21. **DEPOSIT & RECOVERY FUND**

(A) Deposits paid by Buyer within 30 days of settlement will be by cash, cashier's or certified check. Deposits, regardless of the form of payment and the person designated as payee, will be paid to the party identified in paragraph 3(F), who will retain them in an escrow account until consummation or termination of this Agreement in conformity with all applicable laws and regulations. Any uncashed check tendered as deposit may be held pending the acceptance of this offer.

(B) In the event of litigation for the return of deposit monies, Lynn, King & Schreffler, P.C. will distribute the monies as directed by a final order of court or the written Agreement of the parties.

22. **MAINTENANCE & RISK OF LOSS**

(A) Seller will maintain the Property, grounds, fixtures, and any personal property specifically scheduled herein in its present condition, normal wear and tear excepted.

(B) In the event any system or appliance included in the sale of the Property fails and Seller does not repair or replace the item, Seller will promptly notify Buyer in writing of Seller's choice to:

1. Repair or replace the failed system or appliance before settlement or credit Buyer at settlement for the fair market value of the failed system or appliance (this option must be acceptable to the mortgage lender, if any). In each case, Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 24 of this Agreement, OR
2. Make no repairs or replacements, and not credit Buyer at settlement for the fair market value of the failed system or appliance, in which case Buyer will notify Seller in writing within 5 days of settlement, whichever is sooner, that Buyer will accept the Property and agree to the RELEASE set forth in paragraph 24 of this Agreement, OR
- a. Accept the Property and agree to the RELEASE set forth in paragraph 24 of this Agreement, OR
- b. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

Seller will bear risk of loss from fire or other casualties until time of settlement. In the event of damage by fire or other casualties to any property included in this sale that is not repaired or replaced prior to settlement, Buyer will have the option of rescinding this Agreement and promptly receiving all monies paid on account of purchase price or of accepting the Property in its then condition together with the proceeds of any insurance recovery obtainable by Seller. Buyer is hereby notified that Buyer may insure Buyer's equitable interest in this Property as of the time of execution of this Agreement.

23. **WAIVER OF CONTINGENCIES**. In the event this Agreement is contingent upon Buyer's right to inspect and/or repair the Property, Buyer's failure to exercise any of Buyer's options within the time limits specified in the contingency provision(s) will constitute a WAIVER of that contingency and Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 24 of this Agreement.

24. **RELEASE**. Buyer hereby releases, quit claims and forever discharges SELLER, and any other PERSON, FIRM or CORPORATION who may be liable by or through them, from any and all claims, losses or demands, including, but not limited to, personal injuries and property damage and all of the consequences thereof, whether now known or not, which may arise from the presence of termites or other wood-boring insects, radon, lead-based paint hazards, environmental hazards, any defects in the individual on-lot sewage disposal system or deficiencies in the on-site water service system, or any defects or conditions on the Property. This release will survive settlement.

25. **REPRESENTATIONS**

(A) Buyer understands that any representations, claims, advertising, promotional activities, brochures or plans of any kind made by Seller are not a part of this Agreement unless expressly incorporated or stated in this Agreement.

(B) It is understood that Buyer has inspected the Property before signing this Agreement (including fixtures and any personal property specifically scheduled herein), or has waived the right to do so, and has agreed to purchase it in its present condition unless otherwise stated in this Agreement. Buyer acknowledges that they have not made an independent examination or determination of the structural soundness of the Property, the age or condition of the components, environmental conditions, the permitted uses, or of conditions existing in the locale where the Property is situated; nor have they made a mechanical inspection of any of the systems contained therein.

(C) It is further understood that this Agreement contains the whole agreement between Seller and Buyer and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise of any kind whatsoever concerning this sale. Furthermore, this Agreement will not be altered, amended, changed, or modified except in writing executed by the parties.

(D) The headings, captions, and line numbers in this Agreement are meant only to make it easier to find the paragraphs.

26. **TIME OF THE ESSENCE - DEFAULT**

The said time for settlement and all other times referred to for the performance of any of the obligations of this Agreement are hereby agreed to be of the essence of this Agreement. For the purposes of this Agreement, number of days will be counted from the date of execution, by excluding the day this Agreement was executed and including the last day of the time period. Should Buyer:

(A) Fail to make any additional payments as specified in paragraph 3; OR

(B) Furnish false or incomplete information to Seller, or the mortgage lender, if any, concerning the Buyer's legal financial status, or fail to cooperate in the processing of the mortgage loan application, which acts would result in the failure to obtain the approval of a mortgage loan commitment; OR

(C) Violate or fail to fulfill and perform any other terms or conditions of this Agreement; then in such case, Seller has the option of retaining all sums paid by Buyer, including deposit monies, 1) on account of purchase price, or 2) as monies to be applied to Seller's damages, or 3) as liquidated damages for such breach, as Seller may elect, unless otherwise checked below.

Seller is limited to retaining sums paid by Buyer, including deposit monies, as liquidated damages. If Seller elects to retain all sums paid by Buyer, including deposit monies, as liquidated damages, Buyer and Seller will be released from further liability or obligation and this Agreement will be VOID.

Buyer and Seller acknowledge that they have read and understand the notices and explanatory information set forth in this Agreement.

Buyer acknowledges receiving a copy of this Agreement at the time of signing.

NOTICE TO PARTIES: WHEN SIGNED, THIS AGREEMENT IS A BINDING CONTRACT. Returns by facsimile transmission (FAX) of this Agreement, and all addenda, bearing the signatures of all parties, constitutes acceptance of this Agreement.

WITNESS _____

BUYER Roland E. Bechtel Jr. DATE 10/14/04

Buyer Name (print)

WITNESS _____

BUYER Janet L. Bechtel DATE 10/14/04

Buyer Name (print)

WITNESS _____

SELLER Paul Kostanski DATE 10/18/04

Seller Name (print)

WITNESS _____

SELLER Amy M. Kostanski DATE 10/14/04

Seller Name (print)

FROM : PillarToPost

PHONE NO. : 814 471 8382

Jul. 11 2003 04:59AM P1

Amy


Pillar To Post
Professional Home Inspection

Paul Kostanek
c/o Pillar To Post
RD 4 Box 413
DuBois PA 15801

July 11, 2003

Re: Short Term Radon Test conducted at Sec 10 Lot 83 Bay Road Treasure Lake

Dear Mr. Kostanek:

The results of the radon measurements that were conducted at Sec 10 Lot 83 is as follows:

Device Type	Exposure No.	Location	Start Test	Finish Test	Results
SST E-PERM	S11-B012	Family Room	07/09/03 09:20	07/11/03 07:20	1.9 pCi/L
SST E-PERM	S14-B176	Family Room	07/09/03 09:20	07/11/03 07:20	1.8 pCi/L

Average Radon Concentration: 1.9 pCi/L

Relative Percent Difference: 5

Short-term radon tests are intended to give you an indication of the radon levels during the measurement period in the area where the test was conducted.

If you should have any questions concerning your radon measurements, please contact me at the telephone number listed below.

Sincerely,



Don Cesna
DEP ID#1996

Pennsylvania Notice to Clients: The Radon Certification Act requires that anyone who provides radon-related services or products to the general public must be certified by the Pennsylvania Department of Environmental Protection. You are entitled to evidence of certification from any person who provides such services or products. You are also entitled to a price list for services or products offered. All radon measurement data will be sent to the Department as required by the Act and will be kept confidential. If you have any questions, comments or complaints concerning persons who provide radon-related services, please contact the Department at the Bureau of Radiation Protection, Department of Environmental Protection, P.O. Box 3469, Harrisburg, PA 17108-3469 (717)-753-3584.

407 W. Sample Street, Ebensburg, PA 15931
Phone: (814) 471-6962 Toll Free: (877) 471-6962 Fax: (814) 471-0382
AUTHORIZED INDEPENDENT FRANCHISEE
Op. by Don Cesna Home Inspections Inc.

Note 110267 - AMY M COX

	Rel	Birthdate	Phone	Tax Identification
[02] AMY M COX	P		[H] (814) 371-4145 [B] (814) 375-8940	SSN 175-68-7359
[01] PAUL A KOSTANEK 1671 TREASURE LK DUBOIS PA 15801	P		[H] (814) 371-4145	SSN 289-80-2080

Tax Name: [2] AMY M COX

Account Classification

Portfolio:	434293	Responsibility Code:	[111]
Product:	[142100] Residential Mortgage - Fixed	Purpose Code:	[140]
Accounting Branch:	[11]	Collateral:	CLEARFIELD COUNTY & STOCK

Loan To Date

Date	Description	Transaction Amount	Principal	Interest	Principal Balance
Aug 01, 2003	Original Rate	Interest Rate:	5.7500%		
Aug 01, 2003	PRINCIPAL ADVANCE	\$248,000.00	\$248,000.00		\$248,000.00
Sep 02, 2003	Regular Payment	\$1,447.99	\$236.87	\$1,211.12	\$247,763.13
Oct 01, 2003	Regular Payment	\$1,447.99	\$277.02	\$1,170.97	\$247,486.11
Nov 03, 2003	Regular Payment	\$1,447.99	\$239.38	\$1,208.61	\$247,246.73
Dec 01, 2003	Regular Payment	\$1,447.99	\$279.43	\$1,168.56	\$246,967.30
Jan 02, 2004	Regular Payment	\$1,447.99	\$241.91	\$1,206.08	\$246,725.39
Feb 02, 2004	Regular Payment	\$1,447.99	\$243.06	\$1,204.93	\$246,482.33
Mar 01, 2004	Regular Payment	\$1,447.99	\$321.91	\$1,126.08	\$246,160.42
Apr 01, 2004	Regular Payment	\$1,447.99	\$245.86	\$1,202.13	\$245,914.56
May 03, 2004	Regular Payment	\$1,447.99	\$285.80	\$1,162.19	\$245,628.76
Jun 01, 2004	Regular Payment	\$1,447.99	\$248.36	\$1,199.63	\$245,380.40
Jul 01, 2004	Regular Payment	\$1,447.99	\$288.32	\$1,159.67	\$245,092.08
Aug 02, 2004	Regular Payment	\$1,447.99	\$251.07	\$1,196.92	\$244,841.01
Sep 01, 2004	Regular Payment	\$1,447.99	\$252.26	\$1,195.73	\$244,588.75
Oct 01, 2004	Regular Payment	\$1,447.99	\$292.06	\$1,155.93	\$244,296.69
Nov 16, 2004	Payoff Charge		\$35.00	\$35.00	\$244,331.69
Nov 16, 2004	PAYOUT	\$246,102.00	\$244,331.69	\$1,770.31	\$0.00

EXHIBIT

http://10.1.0.4/LAS_LAS1151/LAS1151.ASP?Print&XMLGuid=BC7... 4/5/2006

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing. Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

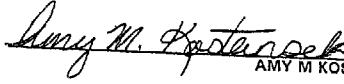
Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 1B, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.


(Seal)
PAUL A KOSTANSEK - Borrower


(Seal)
AMY M KOSTANSEK - Borrower

[Sign Original Only]

Bill # 5444 County Of Clearfield - SANDY TOWNSHIP
 Desc. Map# C02-010-00083-00-21 FOR TAX YEAR 2004 Control# 128.0-77821
 H & L 83 SECTION 10

Payable To:
 LEE ANN COLLINS
 PO BOX 252
 DUBOIS PA

COPY

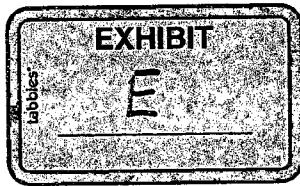
15801

Phone/Fax814-371-1901
 TAXES ARE DUE AND PAYABLE FROM:
 (KOSTANSEK, PAUL A. & AMY M.)
 ROLAND E BECHTEL JR
 JANET L BECHTEL
 1573 TREASURE LAKE
 DUBOIS PA 15801

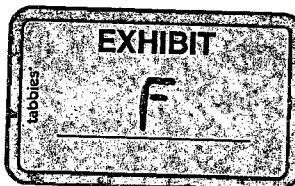
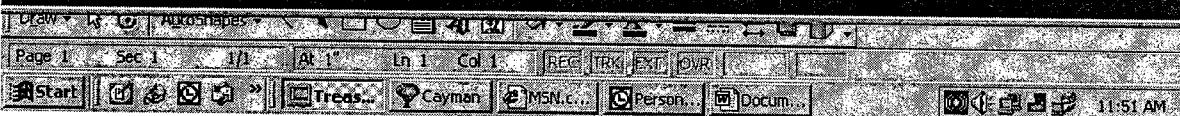
ENCLOSE SELF ADDRESSED STAMPED ENVELOPE
 WHEN A RETURN RECEIPT IS REQUESTED

ASSESSED	Desc.	VALUE	Of Tax	Tax Rate	Amt of Tax
L 4250	COUNTY			17.00	606.05
B 31400	TWP TAX			11.50	320.85
	Library				17.83
	Fire				71.30
T 35650			Total Tax>		1016.03
* PAYMENT SCHEDULE					
RECEIVED BY 04/30/2004 = 995.70					
FROM 05/01/04-07/02/04 = 1016.03					
BEGINNING 07/03/2004 = 1117.63					
L. Collins 4-13-04 995.70					
SIGNATURE OF T.C. DATE PAID AMOUNT					

TAXPAYERS COPY



OWNER INQUIRY		*						
Owner:	1205 KOSTANSEK, AMY 1671 TREASURE LAKE	* Current-Bal: 580.00 * Previous Yr: 00 * Over-Due-Bal: 00 * Lien/Coll/ee: 00 * Interest: 00 * Citation: 00 * Boat-Chgs: 00 * Gif/Tns-Chgs: 00 * Balance-Due: 580.00						
Section:	06A	Lot:	0020	01	House: H			
INV#	SO#	DATE	TYPE	CURRENT	OVER-DUE	LN/CO/CI	INTEREST	BOAT GLF/TNS
61047	1	03/29/06	CHG	580.00				
1205	26	01/19/06	ADJ					800.00
1205	25	04/19/05	PMT	535.04	535.04-P			
			PMT	535.04	262 ASSESS. COLL. IN ADV	Current Amt		
51050	1	04/01/05	CHG	535.04 P				
50251	1	03/22/05	CHG					800.00
1205	24	11/18/04	PMT	488.00	335 PROPERTY TRANSFER FE			
			PMT	25.00	311 RESALE CERT. PACKET			
1205	23	04/30/04	PMT	493.00			60.00	
SCREEN FULL (PRESS ENTER KEY FOR MORE DATA) ESC-EXIT								





USAA CASUALTY INSURANCE COMPANY

PAGE 3
MAIL MACH-15800 Fredericksburg Road • San Antonio, Texas 78288
HOMEOWNERS POLICY DECLARATIONS

Named Insured and Residence Premises

AMY M KOSTANSEK

Policy Number

1671 TREASURE LK
DU BOIS, CLEARFIELD, PA 15801-9044

CIC 01583 19 16 90A

POLICY PERIOD From: 01/09/04 To: 01/09/05
(12:01 AM standard time at location of the residence premises)

COVERAGE AND LIMITS OF LIABILITY

SECTION I	A. Dwelling	\$212,000
	C. Personal Property	\$159,000
	D. Loss of Use (UP TO 12 MONTHS)	UNLIMITED
SECTION II	E. Personal Liability - Each Occurrence	\$100,000
	F. Medical Payments to Others - Each Person	\$1,000

Your premium has already been reduced by the following:
FIRE/BURGLARY CREDIT

\$12.44 CR

BASIC PREMIUM \$646.87

OTHER COVERAGE AND ENDORSEMENTS

Form and Endorsements are printed on the following page.

\$40.00

DEDUCTIBLES (SECTION I ONLY)

We cover only that part of the loss over the deductible stated.
ALL PERILS \$500

TOTAL POLICY PREMIUM \$686.87

THIS IS NOT A BILL. STATEMENT TO FOLLOW.

FIRST MORTGAGEE:
FARMERS NATIONAL BANK OF EMLTON
612 MAIN ST
DRAWER D
EMLETON, PA 16373

In Witness Whereof, this policy is signed on 01/08/04

REFER TO YOUR POLICY FOR OTHER COVERAGE, LIMITS AND EXCLUSIONS.

HO-D1 (04-03)

