

04-2032-CD  
JAMES W. SWISTOCK, et al. vs. DAVID MAST, et al.

1  
2  
USED

3-16-05

Amended Sheriff Return  
missing

Date: 06/27/2005

Time: 10:31 AM

Page 1 of 3

**Clearfield County Court of Common Pleas**

ROA Report

Case: 2004-02032-CD

User: BILLSHAW

Current Judge: Fredric Joseph Ammerman

James W. Swistock, Ronald R. Bodle vs. David Mast, Olan L. London, Ann Marie Witherow, Melvin Mast, Joseph Mast, David Mast and Sons Logging

**Civil Other**

Date	Judge
12/28/2004	New Case Filed.
	No Judge
X	X Filing: Civil Complaint Paid by: Noble, Theron Receipt number: 1892619 Dated: 12/28/2004 Amount: \$85.00 (Check) 7 Cert. to Atty.
	No Judge
X	X Rule Returnable, AND NOW, this 28th day of December, 2004, based upon Pliffs' request for injunctive relief and an accounting in the above captioned matter Def. Mast and Witherow are hereby ORDERED to file written response by the 21st of Jan. 2005, showing cause as to why said relief should be denied. Hearing on Pliffs' request for said relief and an accounting shall be on the 9th day of Feb. 2005. For purposes of this ORDER, averments 1-35 of Pliffs' Civil Complaint shall require written response on the day above set forth. S/ FJA 6 Cert. to Atty.
X	X Praeclipe For Entry of Appearance, filed on behalf of Ann Marie Witherow, Fredric Joseph Ammerman individually and as Administrator of the Estate of Gerald Witherow, Defendant. Filed by s/ John Sughrue, Esquire. 2CC Atty Sughrue
01/13/2005	
X	X Preliminary Objections to Count III of the Complaint filed by Atty. Sughrue Fredric Joseph Ammerman 1 CC to Atty.
X	X Answer and New Matter filed, on behalf of Defendant Ann Marie Witherow, Fredric Joseph Ammerman by s/ John Sughrue, Esquire. 1CC to Atty
01/25/2005	
X	X Motion To Reschedule Hearing Of Feb. 9, 2005, filed by s/ John Sughrue, Fredric Joseph Ammerman Esquire. 4CC Atty Sughrue.
01/26/2005	
X	X Order, AND NOW, this 25th day of Jan., 2005, upon consideration of Motion to Reschedule Hearing of Feb. 9, 2005 at 9:30 a.m., it is ORDERED that said hearing is rescheduled for the 23rd day of Feb., 2005, commencing at 9:30 a.m. at Court Room No. 1. By The Court, /s/ Fredric J. Ammerman, President Judge. 4CC Atty Sughrue.
01/31/2005	
X	X Praeclipe For Entry of Appearance, filed on behalf of Olan L. London. By s/ John R. Carfley, Esquire. 1CC Atty. Carfley
X	X Preliminary Objections Of Defendant Olan L. London To Plaintiffs' Complaint, filed by s/ John R. Carfley, Esquire. No CC
02/08/2005	
X	X Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm
02/11/2005	
X	X Praeclipe For Entry of Appearance, filed on behalf of Defendant David Mast, by s/ Toni M. Cherry, Gleason, Cherry, and Cherry, L.L.P. 5CC to Atty
X	X Preliminary Objections Of Defendant David Mast, To Plaintiffs' Complaint, filed by s/ Toni M. Cherry, Esquire. 5CC to Atty
02/22/2005	
X	X Scheduling Order, filed cert. to Atty. Noble, Sughrue, Carfley & Cherry. NOW, this 18th day of February, 2005, RE: Preliminary Objections filed by Defendant, Olan London. Rule Returnable the 23rd day of February, 2005.
X	X ORDER, filed. Cert. to Atty. Noble, Sughrue, Carfley & Cherry. NOW, this 18th day of February, 2005, RE: Preliminary Objection filed by Defendant David Mast. Argument scheduled for February 23, 2005.
X	X Scheduling Order, filed 2 Cert. to Atty. Sughrue Now this 22nd day of February, 2005, RE: Motion of Defendants, Argument on Preliminary Objections filed by Defendants shall be heard on February 23, 2005.

Date: 06/27/2005

Time: 10:31 AM

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**Clearfield County Court of Common Pleas**

**ROA Report**

**Case: 2004-02032-CD**

User: BILLSHAW

Current Judge: Fredric Joseph Ammerman

James W. Swistock, Ronald R. Bodle vs. David Mast, Olan L. London, Ann Marie Witherow, Melvin Mast, Joseph Mast, David Mast and Sons Logging

**Civil Other**

Date	Judge
02/23/2005 ✓X Plaintiffs Reply to Preliminary Objections (filed by Defendant London), by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman
02/24/2005 ✓X Order, NOW, this 23rd day of Feb., 2005, being the date set for hearing relative request for injunction and accounting as to defendants Olan L. London and Amm Marie Witherow, it is the ORDER of this Court as follows: (See Original). BY THE COURT, /s/ Fredric J. Ammerman, Judge. 2CC Atty Noble, 1CC Atty. T. Cherry, Shughue, Carfley.	Fredric Joseph Ammerman
✓X Order, NOW, this 23rd day of Feb., 2005, following argument on the Preliminary Objections filed on behalf of all Defendants, it is the ORDER of this Court as follows: (See Original). BY THE COURT: /s/ Fredric J. Ammerman, Judge. 2CC atty Noble, 1CC T. Cherry, Sughrue, Carfley	Fredric Joseph Ammerman
03/16/2005 ✓X Amended Complaint, filed by s/ Theron G. Noble, Esquire. No CC ← Amended Sheriff Return, Complaint served on Def. on Feb. 11, 2005. So Answers Chester A. Hawkins, Sheriff, by s/ Marilyn Hamm.	Fredric Joseph Ammerman
✓X Order, NOW, this 16th day of March, 2005, relative the Preliminary Objection filed on behalf of Defendant Olan London, said Preliminary Objection is DISMISSED, without prejudice. BY THE COURT, /s/ Fredric J. Ammerman, President Judge. 1CC Attys: Noble, T. Cherry, Carfley, Sughrue	Fredric Joseph Ammerman
03/23/2005 ✓X Verifications to Amended Complaint, filed by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman
04/18/2005 ✓X Answer To Amended Complaint, filed by s/ John R. Carfley, Esquire. No CC	Fredric Joseph Ammerman
04/28/2005 ✓X Answer and New Matter to Amended Complaint filed. By s/ John Sughrue, Esquire. 5CC Atty. Sughrue	Fredric Joseph Ammerman
not in file as of 4/20/05 05/06/2005 ← Preliminary Objections of Defendant, David Mast, to Plaintiffs' Amended Complaint. Filed by s/ Toni M. Cherry, Esquire. 2CC Atty T. Cherry	Fredric Joseph Ammerman
05/09/2005 ✓X Reply To New Matter of Defendant Witherow, filed by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman
✓X Preliminary Objections of Defendant, David Mast, to Plaintiffs' Amended Complaint, filed by s/Toni M. Cherry, Esq. Two CC Attorney T. Cherry	Fredric Joseph Ammerman
05/16/2005 ✓X Writ of Summons, to join as an Additional Defendant, David Mast, Melvin Mast and Joseph Mast, t/d/b/a David Mast and Sons Logging . Filed by s/ John R. Carfley, Esquire. 1CC & Writ to Atty	Fredric Joseph Ammerman
05/27/2005 ✓X Praecipe for Withdrawal, filed by Atty. Carfley 2 cert. to Atty.	Fredric Joseph Ammerman
06/01/2005 ✓X Order, AND NOW, this 31st day of May, 2005, Def. David Mast, having filed preliminary Objections to Plaintiffs' Amended Complaint, an argument on said Preliminary Objections is scheduled for the 23rd day of June, 2005 at 10:00 a.m. in Courtroom no. 1. BY THE COURT: /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. T. Cherry	Fredric Joseph Ammerman
✓X Rule Returnable, filed 2 cert. to Atty. Carfley NOW, this 31st day of May, 2005, Rule Returnable RE: Pracipe to Withdraw.	Fredric Joseph Ammerman
06/14/2005 ✓X Certificate of Service, copy of the Praecipe to Withdraw as Counsel, upon Theron G. Noble, Esquire, Toni M. Cherry, Esquire, John Sughrue, Esquire, and Olan L. London. Filed by s/ John R. Carfley, Esquire. No CC	Fredric Joseph Ammerman

Date: 04/20/2006

**Clearfield County Court of Common Pleas**

User: LMILLER

Time: 12:00 PM

**ROA Report**

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Case: 2004-02032-CD

Current Judge: Fredric Joseph Ammerman

James W. Swistock, Ronald R. Bodle vs. David Mast, Olan L. London, Ann Marie Witherow, Melvin Mast, Joseph Mast, David Mast and Sons Logging

**Civil Other**

Date		Judge
06/20/2005	Excerpt of Proceedings, Testimony of David Mast, held Feb. 23, 2005, filed.	Fredric Joseph Ammerman
06/24/2005	XX Order, NOW, this 23rd day of June, 2005, following argument on the Preliminary Objections of Def. David Mast to Plaintiffs' Amended Complaint, it is the ORDER 1. Paragraph 69 is stricken 2. Preliminary Objection to paragraph 64 is denied 3. Def. David Mast shall file a Responsive Pleading to the Amended Complaint in no more than 20 days from this date. BY THE COURT: /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Noble, T. Cherry, Carfley, Sughrue, 1CC David Mast & Sons Logging, Melvin Mast, Joseph Mast	Fredric Joseph Ammerman
	XX Certification of Address, of Def. Olan London, 320 Stony Lonesome Road, Fredric Joseph Ammerman Luthersburg, PA 15848. Filed by s/ John R. Carfley, Esquire. 2CC Atty Carfley	
	XX Order, NOW, this 23rd day of June, 2005, it is the Order of this Court that John R. Carfley, Esquire, be and is hereby withdrawn as counsel for Olan L. London. BY THE COURT: /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Noble, T. Cherry, Carfley, Sughrue, 1CC Melvin Mast, Joseph Mast, David Mast & Sons Logging.	Fredric Joseph Ammerman
07/08/2005	XX Answer and New Matter of Defendant, David Mast, to Plaintiffs' Amended Complaint, filed by s/ Toni M. Cherry Esquire. 5 Cert to Atty.	Fredric Joseph Ammerman
07/22/2005	XX Reply To New Matter of Defendant David Mast, filed by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman
08/17/2005	XX Plaintiffs' Certificate of Service, filed. August 15, 2005, that I did send either the original or true and correct copies of Plaintiffs' NOTICES of DEPOSITIONS to Mr. Olin L. London, Toni M. Cherry Esq., John Sughrue Esq., filed by s/ Theron G. Noble Esquire. No CC.	Fredric Joseph Ammerman
08/19/2005	XX Plaintiffs' Certificate of Service, filed. hereby certify this 18th day of August 2005, that I did send either the original or true and correct copies (as applicable) Plaintiffs' AMENDED NOTICES OF DEPOSITIONS to Mr. Olin L. London, Toni M. Cherry Esquire., John Sughrue Esq, filed by s/ Theron G. Noble Esquire. No CC.	Fredric Joseph Ammerman
09/22/2005	XX Certificate of Service, filed. A true and correct copy of the Response to David Mast to Plaintiff's First Request for Production of Documents was served upon each of the following, Theron G. Noble Esq., Olin L. London, and John Sughrue Esq. on September 21, 2005, filed by s/ Toni M. Cherry Esq. No CC.	Fredric Joseph Ammerman
11/08/2005	Original Transcript of Proceedings, filed. Deposition of Olin L. London, Sept. 21, 2005. Original Transcript of Proceedings, filed. Deposition of David Mast, Sept. 21, 2005	Fredric Joseph Ammerman
12/06/2005	XX Affidavit of Service filed. On December 3, 2005 serve Mr. David Colbentz with a NOTICE OF DEPOSITION, SUBPOENA and check in the amount of \$9.90 filed by s/ Theron G. Noble Esq. No CC.	Fredric Joseph Ammerman
03/14/2006	XX Motion For Partial Summary Judgment as to All Defendants, filed by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman
03/15/2006	XX Praecipe to File Deposition Transcripts for Defendant Ann Marie Witherow, Melvin D. Mast, Joseph D. Mast and Andy Colbentz, filed by Atty. Noble no cert. Copies.	Fredric Joseph Ammerman

Date: 04/20/2006

**Clearfield County Court of Common Pleas**

User: LMILLER

Time: 12:00 PM

**ROA Report**

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Case: 2004-02032-CD

Current Judge: Fredric Joseph Ammerman

James W. Swistock, Ronald R. Bodle vs. David Mast, Olan L. London, Ann Marie Witherow, Melvin Mast, Joseph Mast, David Mast and Sons Logging

**Civil Other**

Date		Judge
03/15/2006	Transcript of Deposition of Joseph D. Mast held on Dec. 23, 2005, filed. Transcript of Deposition of Melvin D. Mast held on Dec. 23, 2005, filed. Transcript of Deposition of Ann Marie Witherow held on Dec. 23, 2005, filed. Transcript of Deposition of Andy Coblenz held on Dec. 23, 2005, filed.	Fredric Joseph Ammerman
	XX Rule To Show Cause, NOW, this 15th day of March, 2006, upon consideration of Def.'s Motion For Partial Summary Judgment as to All Defendants, a Rule is issued. Rule Returnable for filing written response is set for the 17th day of April, 2006 and argument on the Motion set for the 25th day of April, 2006, at 9:00 a.m. in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC to Atty. w/memo for Ser. to parties	Fredric Joseph Ammerman
03/17/2006	XX Certificate of Service, on the 16th day of March, 2006, served by 1st class mail a certified copy of the Rule Returnable issued upon Plaintiffs' Motion For Partial Summary Judgment to: Mr. Olin L. London, Toni M. Cherry, Esquire, and John Sughrue. filed by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman
04/17/2006	XX Defendant, Ann Marie Witherow's Answer in Opposition to Plaintiff's Motion for Partial Summary Judgment, filed by s/ John Sughrue, Esquire. 4CC Atty. Sughrue	Fredric Joseph Ammerman
	XX Defendant David Mast's Answer to Motion For Partial Summary Judgment, Fredric Joseph Ammerman filed by s/ Toni M. Cherry, Esquire. 4CC to Atty	

Date: 06/20/2006

Time: 11:28 AM

Page 1 of 1

**Clearfield County Court of Common Pleas**

User: LMILLER

**ROA Report**

Case: 2004-02032-CD

Current Judge: Fredric Joseph Ammerman

**Civil Other**

Date	Selected Items	Judge
04/24/2006	<input checked="" type="checkbox"/> Affidavit of John Sughrue, filed by s/ John Sughrue Esq. 4CC to Atty.	Fredric Joseph Ammerman
04/27/2006	<input checked="" type="checkbox"/> Order, NOW, this 25th day of April, 2006, following argument on the Plaintiffs' Motion for Partial Summary Judgment; it is the Order of this Court that the said motion is granted to the extent that the Court grants summary judgment on the issue of liability on the part of all Defendants. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Noble, T. Cherry, Sughrue, 1CC Olan London, 320 Stoney Lonesome Road, Luthersburg, PA 15848, 1CC Joseph Mast, Melvin Mast, Rte. 1, Box 172 B. Luthersburg, PA 15848, David Mast & Sons Logging	Fredric Joseph Ammerman
05/25/2006	<input checked="" type="checkbox"/> Motion To Vacate Partial Summary Judgment to Reconsider Motion For Partial Summary Judgment, filed by s/ John Sughrue, Esquire. 5CC Atty. Sughrue	Fredric Joseph Ammerman
05/31/2006	<input checked="" type="checkbox"/> Order, NOW, this 26th day of May, 2006, upon consideration of Motion to Vacate Partial Summary Judgment, a rule is hereby issued upon the Plaintiffs, to show cause why the prayer of said Motion should not be granted. Rule Returnable on the 26th day of June, 2006, for filing written response. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC to Atty	Fredric Joseph Ammerman
06/01/2006	<input checked="" type="checkbox"/> Affidavit of Service filed. A true and correct copy of Court Order dated May 26, 2006 issuing Rule on Motion to Vacate etc. returnable June 26, 2006 to be served on Theron Nobel Esq, Toni M. Cherry Esq., Olan London-Pro Se on May 30, 2006 filed by s/ John Sughrue Esq. 4CC Atty Sughrue	Fredric Joseph Ammerman
06/06/2006	<input checked="" type="checkbox"/> Reply to Defendant's Motion to Vacate Partial Summary Judgment, filed by s/ Theron G. Noble Esq. No CC.	Fredric Joseph Ammerman

6-21-06  Order, June 26, 2006

8-21-06  Certificate of Readiness

1-3-07  Order, 1-2-2007  
1-10-07 Answer of Ann Marie Witherow  
1-11-07 Answer of Ann Marie Witherow  
1-17-07 Order, dated 1-16-07

CA

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

JAMES W. SWISTOCK, an adult individual,  
and RONALD R. BODLE, an adult individual,

**PLAINTIFFS,**

v.

DAVID MAST, an adult individual,  
OLIN L. LONDON, an adult individual, and  
ANN MARIE WITHEROW, individually and  
as Administrator of the Estate of Gerald Witherow,

**DEFENDANT.**

: No. 04- 2032 -CD

: In Equity and at Law

: Type of Pleading:

**CIVIL COMPLAINT**

: Filed By:

: Plaintiff

: Counsel of Record:

: Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814:-375-2221  
PA I.D.#: 55942

FILED

DEC 28 2004

011:50

William A. Shaw

Prothonotary/Clerk of Courts

7 Cents to Atty

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. )  
 )  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )

No. 04-\_\_\_\_\_ -CD  
In Equity and at Law

**NOTICE TO DEFEND**

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIM SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY CLAIM IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF(S). 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 AN ATTORNEY, OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

David Meholick, Court Administrator  
c/o Clearfield County Courthouse  
2nd and Market Streets  
Clearfield, PA 16830  
(814)-765-2641

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. )  
 )  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANT. )  
 )  
No. 04-\_\_\_\_\_ -CD  
In Equity and at Law

**CIVIL COMPLAINT**

**NOW COMES the plaintiffs, James W. Swistock and Ronald R. Bodle, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of their CIVIL COMPLAINT:**

**The Parties**

1. First Plaintiff is James W. Swistock, hereinafter "Swistock", an adult individual who does, and at all material times did, reside at 449 Hunter Avenue, State College, Centre County, Pennsylvania.
2. Second Plaintiff is Ronald R. Bodle, hereinafter "Bodle", an adult individual who does, and at all material times did reside at 617 Nichols Street, Clearfield, Clearfield County, Pennsylvania.
3. That first Defendant is David Mast, hereinafter "Mast", who does, and upon information and belief, at all relevant and material times did reside at Rte. 1, Box 172-B, Luthersburg, Clearfield County, Pennsylvania.
4. The second defendant is Olin L. London, hereinafter "London", who does, and upon information and belief at all material and relevant times, did reside at 320 Sloney Lonesome Rd., Luthersburg, Clearfield County, Pennsylvania.

5. That third and last defendant is Ann Marie Witherow, hereinafter "Witherow", in her individual capacity and as Administrator of the Estate of Gerald Witherow, a duly probated estate in Clearfield County, Pennsylvania, who does, and upon information and belief at all relevant and material times did reside in Olanta, Clearfield County, Pennsylvania, with mailing address of P.O. Box 51, Olanta PA 16863.

Background Information

6. That this matter involves the removal of timber from premises best described as 70 acres situated in Knox Township, Clearfield County, Pennsylvania, identified as Tax Map No. 122-H13-19, hereinafter referred to as "the subject premises".

7. That Defendant Mast, did, and upon information and belief, does operate a timbering business, called David Mast & Son Logging.

8. That upon information and belief, a transaction was entered into by and between Defendants Mast and Witherow, as Administrator of the Estate of Gerald Witherow, on or about April 19, 2002, whereby Mast was to and did perform timbering on the subject premises, as contained in a certain contract entitled "TIMBER SALE AGREEMENT". A true and correct copy of said agreement is attached hereto as Exhibit "A".

9. That the deal between Defendants Mast and Witherow was orchestrated by Defendant London, for which he was paid a fee by Defendant Witherow, of \$2,400, being 10% (ten percent) of the consideration paid by Defendant Mast to Defendant Witherow.

10. That upon information and belief, the timbering operations performed by Mast on the subject premises ended sometime in the spring of 2004.

11. That as a result of the timbering operations performed by Mast on the subject premises, timber having fair market value of approximately \$108,752.84, in an amount to be more fully determined at time of trial, was harvested by cutting down standing trees and removing the resulting timber from the subject premises. Attached hereto as Exhibit "B" is a true and correct copy of the forester's report establishing a value for the timber.

12. That at all relevant and material times, the subject premises was jointly owned by Plaintiffs Swistock and Bodle and the Estate of Gerald Witherow.

13. That upon information and belief, the Estate of Gerald Witherow owned a 1/2 interest in the subject premises at all relevant and material times.

14. That Plaintiff Swistock, at all relevant and material times, owned a 1/4 interest in the subject premises.
15. That Plaintiff Bodle also owned a 1/4 interest in the premises at all relevant and material times.
16. That the ownership rights by Plaintiffs Swistock and Bodle are, and at all relevant and material times, were reflected in the records of the Clearfield County Recorder's Office, by the recording and filing of their various deeds with Plaintiff Swistock's Deed being recorded at Volume 897 and Page 506, while Plaintiff Bodle's deed is recorded at Volume 751, Page 538.
17. That neither Plaintiff Swistock nor Bodle consented, or were even aware, of the timbering operation being performed by Defendant Mast nor that Defendant Witherow had entered into any type of agreement with Defendant Mast.
18. That upon information and belief, Defendant Witherow, at all relevant and material times knew that the subject premises were not completely owned by the Estate of Gerald Witherow and that others, namely the Plaintiffs in this action, owned the other combined 1/2 interest.
19. That upon information and belief, Defendant Mast, at all relevant and material times knew that the subject premises were not completely owned by the Estate of Gerald Witherow.
20. That upon information and belief, Defendant London, at all relevant and material times, knew that the subject premises were not completely owned by the Estate of Gerald Witherow.
21. That upon information and belief, Defendant Witherow informed Defendant Mast prior to, or contemporaneous with the execution of the certain "Timber Sale Agreement", that the Estate of Gerald Witherow only owned a 1/2 interest in the subject premises.
22. That neither Plaintiff Swistock or Bodle received any compensation for the harvesting of the timber from the subject premises.

Count I: In Equity

Request for an Accounting  
v. Defendant Witherow

23. That the averments of paragraphs 1 - 22, inclusive, are hereby incorporated as if again fully set forth at length.
24. That based upon their ownership interests in the subject premises, Plaintiffs have a clear and

unambiguous right to at minimal 1/2 of the proceeds from the harvesting of the timber.

25. That upon information and belief, Defendant Witherow, through the Estate of Gerald Witherow, has some of the cash from the above referenced timber transaction and has distributed some of the proceeds.

26. That Plaintiffs are entitled to an accounting as to the proceeds from the sale of the timber on the subject premises by Defendant Witherow to Defendant Mast.

**WHEREFORE, Plaintiffs request that Defendant Witherow be ORDERED to give to Plaintiffs an accounting of the proceeds from the above referenced transaction.**

Count II: In Equity

Request for An Accounting  
v. Defendant Mast

27. That the averments of paragraphs 1 - 26, inclusive, are hereby incorporated as if again fully set forth at length.

28. That based upon their ownership interests in the subject premises, Plaintiffs have a clear and unambiguous right to one half of the timber that was on the subject premises at the time of the above referenced transaction.

29. That upon information and belief, Defendant Mast converted the Plaintiff's timber into cash.

30. That Plaintiffs are entitled to an accounting as to the proceeds from the sale of the timber on the subject premises by Defendant Mast.

**WHEREFORE, Plaintiffs request that Defendant Mast be ORDERED to give to Plaintiffs an accounting of the proceeds from the above referenced transaction.**

Count III: In Equity

Request for Injunctive Relief  
v. Defendants Mast and Witherow

31. That the averments of paragraphs 1 - 30, inclusive, are hereby incorporated as if again fully set forth at length.

32. That any proceeds which Defendant Witherow or the Estate of Gerald Witherow has in her or its possession should be paid into court pending the outcome of this litigation.
33. That as to those proceeds, 1/4 of those proceeds should be immediately paid to Plaintiff Swistock while another 1/4 should be immediately paid to Plaintiff Bodle.
34. That as to any proceeds which Defendant Mast has which remain from the conversion of the timber, such proceeds should be paid into court pending the outcome of this litigation.
35. That Plaintiffs believe, and therefore aver, that each of these defendants are insolvent or judgment proof, and that without this remedy that Plaintiffs would suffer irreparable harm by these defendants and their acts as herein delineated.

**WHEREFORE, Plaintiffs request that this Honorable Court Order as follows:**

- A. That Defendant Witherow pay into Court an amount to be determined, representing all of the unspent proceeds from the sale of the Plaintiffs' timber to Defendant Mast;**
- B. That of the money paid into Court by Defendant Witherow, that 1/4 of those proceeds be paid to Plaintiff Swistock;**
- C. That another 1/4 of those proceeds be paid to Plaintiff Bodle;**
- D. That Defendant Mast pay into Court an amount to be determined, representing all of the proceeds from the conversion of the timber on the subject premises; and**
- E. Any other remedy the Court determines to be fair and just under the attenuate circumstances.**

Count IV: At Law  
Conversion  
v. Defendant Witherow

36. That the averments of paragraphs 1 - 35, inclusive, are hereby incorporated as if again fully set forth at length.
37. That at all relevant and material times, Plaintiffs each owned a 1/4 interest in the subject premises and the timber which sat upon the premises.

38. That said defendant exercised dominion and control over the timber, to the disregard of Plaintiff's ownership interests, by entering into and carrying out the terms of the certain "timber agreement" with Defendant Mast.

39. That pursuant to 68 Pa.C.S.A. §115, Defendant Witherow did not have the right to cause the timber on the subject premises to be cut and removed without the consent of Plaintiffs.

40. That pursuant to 68 Pa. C.S.A. §116, Defendant Witherow did not have the right to sell the timber on the subject premises without the consent of the Plaintiffs.

41. That 42 Pa.C.S.A. §8311, Defendant Witherow is liable to the Plaintiffs for (i) the value of the timber on the subject premises; (ii) a multiple of said value if it is determined the conversion was either deliberate or negligent, which upon information and belief, Plaintiffs' hereby aver; (iii) the forester's usual and customary reasonable charges in determining the timber's value; (iv) and survey costs if necessary each in an amount to be determined at time of trial.

**WHEREFORE, Plaintiffs' request that judgment be entered in their favor and against Defendant Witherow, individually and as administrator of the Estate of Gerald Witherow, in excess of \$20,000 together with costs and interest.**

Count V: At Law  
Conversion  
v. Defendant Mast

42. That the averments of paragraphs 1 - 41, inclusive, are hereby incorporated as if again fully set forth at length.

43. That at all relevant and material times, Plaintiffs each owned a 1/4 interest in the subject premises and the timber which sat upon the premises.

44. That said defendant exercised dominion and control over the timber and the resulting cash proceeds from the sale of said timber, to the disregard of Plaintiff's ownership interests, by entering into and carrying out the terms of the certain "timber agreement" with Defendant Witherow.

45. That pursuant to 68 Pa.C.S.A. §115, Defendant Mast did not have the right to cut and remove the timber from the subject premises without the consent of Plaintiffs.

46. That pursuant to 68 Pa. C.S.A. §116, Defendant Mast did not have the right to sell the timber on the subject premises without the consent of the Plaintiffs.

47. That 42 Pa.C.S.A. §8311, Defendant Mast is liable to the Plaintiffs for (i) the value of the timber on the subject premises; (ii) a multiple of said value if it is determined the conversion was either deliberate or negligent, which upon information and belief, Plaintiffs' hereby aver; (iii) the forester's usual and customary reasonable charges in determining the timber's value; (iv) and survey costs if necessary each in an amount to be determined at time of trial.

48. That Defendant Mast's conversion was intentional and outrageous to the point he should also be liable for Plaintiffs' reasonable attorney's fees and should have punitive damages, in an amount to be determined, awarded against him to prevent his and others similarly outrageous conduct in the future.

**WHEREFORE, Plaintiffs' request that judgment be entered in their favor and against Defendant Mast in excess of \$20,000 together with costs, interest, attorney's fees and punitive damages.**

Count VI: At Law

Conversion

v. Defendant London

49. That the averments of paragraphs 1 - 48, inclusive, are hereby incorporated as if again fully set forth at length.

50. That at all relevant and material times, Plaintiffs each owned a 1/4 interest in the subject premises and the timber which sat upon the premises.

51. That said defendant exercised dominion and control over the a portion of the cash proceeds from the sale of the timber, to the disregard of Plaintiff's ownership interests.

52. That pursuant to 68 Pa.C.S.A. §115, Defendant London did not have the right to cause the timber on the subject premises to be cut and removed without the consent of Plaintiffs.

53. That pursuant to 68 Pa. C.S.A. §116, Defendant London did not have the right facilitate the sale of the timber on the subject premises without the consent of the Plaintiffs.

54. That 42 Pa.C.S.A. §8311, Defendant London is liable to the Plaintiffs for (i) the value of the

timber on the subject premises; (ii) a multiple of said value if it is determined the conversion was either deliberate or negligent, which upon information and belief, Plaintiffs' hereby aver; (iii) the forester's usual and customary reasonable charges in determining the timber's value; (iv) and survey costs if necessary each in an amount to be determined at time of trial.

**WHEREFORE, Plaintiffs' request that judgment be entered in their favor and against Defendant London, in an amount in excess of \$20,000 together with costs and interest.**

Count VII: at Law

Civil Conspiracy

v. Defendants Witherow, Mast and London

55. That the averments of paragraphs 1 - 53, inclusive, are hereby incorporated as if again fully set forth at length.

56. That the defendants acted in concert and by express agreement to cut, remove and sell the timber on the subject premises which without the Plaintiff's consent was an unlawful act.

57. That the defendants acted with malice in so agreeing to act as they did, in contravention of Plaintiff's ownership interest.

58. That in so doing, Defendants are liable to Plaintiffs for (i) the timber's value; (ii) punitive damages and (iii) reasonable attorney's fees.

**WHEREFORE, Plaintiffs request that judgment be entered in their favor and against defendants, in an amount in excess of \$20,000 together with costs, interest and attorney's fees.**

Miscellaneous

59. That defendants' liability to Plaintiffs is joint and several.

60. That jurisdiction is proper.

61. That venue is proper.

Respectfully Submitted,



---

Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

DAVID MAST  
& SON LOGGING  
Rte. 1, Box 172-B  
Luthersburg, PA 15848

**TIMBER SALE AGREEMENT**

Made and entered into this day April 19, 2002  
between Landowner: Tom H. Hersey, Esse.

and Contractor: David Mast and Son Logging enters  
into contract to buy timber as to the following agreement.

Contractor agrees to pay Twenty-four Thousand Dollars  
\$24,000.00  
and remove timber within a 2 year period.

The Contractor shall be responsible for any damage occurring beyond the limits of the sale area being caused by his operations, including severe deterioration of the access roads on the timber sale area. Reparation of damages shall be made as soon as practicable.

The Landowner guarantees title to the said timber and will defend it at his expense against any and all claims for taxes, mortgages, contracts and any other encumbrances.

The Landowner grants to the Contractor the freedom of entry and right-of-way on and across the area covered by this contract.

Small wood products, pulpwood, firewood, etc. from timber sale area only, may be removed by the Contractor as part of his normal operations. At the completion of operations, all wood left on the sale area shall be the property of the Landowner for his personal use and disposal.

LANDOWNER: Tom H. Hersey, Esse.

CONTRACTOR: David Mast and Son Logging

Other specifications: Cut anything that makes sawlogs.

Exhibit "A"

Witness John L. Ladd

Witness David Mast

# ADVANTAGE FORESTRY

RD2 Box 118  
Reynoldsville, PA 15851

Phn. 1-800-748-4855  
Phn. or Fax (814) 371-0155  
August 30, 2004

Jim Swistock  
Timber Trespass  
Knox Township, Clearfield County  
Parcel # H- 13-19

## Sawtimber

Species	# of Trees	Avg. Diameter	Volume/Tree	Total Volume
Cherry	410	16.1	185	75,839
Soft Maple	111	16.7	185	20,548
Hard Maple	67	17.2	201	13,490
Red Oak	61	19.2	280	17,099
White Oak	5	15.0	136	682
Poplar	4	15.6	182	726
Ash	7	19.4	261	1,830
White Pine	1	17.0	257	257
Hemlock	1	14.0	83	83
Basswood	1	17.0	257	257
Elm	1	22.0	386	386
Total	669	16.7	196	131,197

All trees tallied using International  $\frac{1}{4}$ " minus any defects.

Exhibit "B"

# ADVANTAGE FORESTRY

RD2 Box 118  
 Reynoldsville, PA 15851

Phn. 1-800-748-4855  
 Phn. or Fax (814) 371-0155  
 August 30, 2004

Jim Swistock  
 Timber Trespass  
 Knox Township, Clearfield County  
 Parcel # H- 13-19

## Diameters

Dia.	Che.	SM	HM	RO	WO	Pop.	Ash	WP	He.	Bas.	Elm	Tot.
9	1											1
10			2									2
11	13	7										20
12	22	5	4	1		1						33
13	37	7	3	1	1							49
14	105	15	3	8	3				1			135
15	58	15	8	3								84
16	46	25	17	4		1	1					94
17	35	8	5	9		2	1	1		1		62
18	21	5	6	4			1					37
19	15	5	5	5	1		1					32
20	22	11	4	7			1					45
21	15		3	6								24
22	8	5	2	5			1			1		22
23	2		3	1			1					7
24	3	1	2	1								7
25	1			4								5
26		1										1
27	1											1
28	2			1								3
29	1											1
30		1		1								2
31	2											2
Tot.	410	111	67	61	5	4	7	1	1	1	1	668

# ADVANTAGE FORESTRY

RD2 Box 118  
Reynoldsville, PA 15851

Phn. 1-800-748-4855  
Phn. or Fax (814) 371-0155  
August 30, 2004

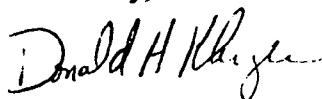
Jim Swistock  
Timber Trespass  
Knox Township, Clearfield County  
Parcel # H- 13-19

## Price Sheet

Species	Bd.Ft. Volume	\$/MBd.Ft.	Total Value
Cherry	75,839	1,200	91,006.80
Soft Maple	20,548	186	3,821.93
Hard Maple	13,490	350	4,721.50
Red Oak	17,099	500	8,549.50
White Oak	682	240	163.68
Poplar	726	135	98.01
Ash	1,830	165	301.95
White Pine	257	60	15.42
Hemlock	83	40	3.32
Basswood	257	110	28.27
Elm	386	110	42.46
		<b>Total Value</b>	<b>\$108,752.84</b>

Tract Total \$108,752.84

Sincerely,



Donald H. Klinger  
Certified Forester  
Advantage Forestry

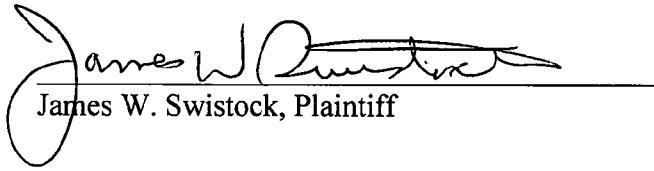
IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL DIVISION)

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. )  
 )  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANT. )  
 )  
No. 04- \_\_\_\_\_-CD  
In Equity and at Law

**VERIFICATION**

I, James W. Swistock, Plaintiff, does hereby swear and affirm that I have read the foregoing and attached CIVIL COMPLAINT in the above captioned matter, and that to the best of my information, knowledge and belief, the facts as set forth therein are true and correct. Furthermore, that I make this statement subject to the penalties of 18 Pa.C.S.A. 4101, relating to unsworn falsification to authorities.

So made this 13<sup>th</sup> day of December, 2004.



James W. Swistock, Plaintiff

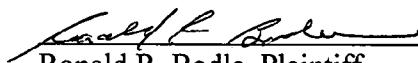
**IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL DIVISION)**

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
PLAINTIFFS, )  
v. ) No. 04-\_\_\_\_\_ -CD  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
DEFENDANTS. )  
In Equity and at Law

**VERIFICATION**

I, Ronald R. Bodle, Plaintiff, does hereby swear and affirm that I have read the foregoing and attached CIVIL COMPLAINT in the above captioned matter, and that to the best of my information, knowledge and belief, the facts as set forth therein are true and correct. Furthermore, that I make this statement subject to the penalties of 18 Pa.C.S.A. 4101, relating to unsworn falsification to authorities.

So made this 28 day of December, 2004.

  
\_\_\_\_\_  
Ronald R. Bodle, Plaintiff

CR

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
)  
PLAINTIFFS, )  
)  
v. )  
)  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
)  
DEFENDANTS. )

No. 04- 02032 -CD

In Equity and at Law

**FILED** ①

DEC 28 2004  
William A. Shaw  
Prothonotary/Clerk of Courts  
6 cases to hear

**RULE RETURNABLE**

AND NOW, this 28 day of December, 2004, based upon

Plaintiffs' request for injunctive relief and an accounting in the above captioned matter,

Defendants Mast and Witherow are hereby ORDERED to file written response by the

21 day of January, 2005, showing cause as to why said relief should be denied. Hearing on Plaintiffs' request for said relief and an accounting (Counts I, II and III of their CIVIL COMPLAINT) shall be on the 9 day of February, 2005, commencing at 9:30, A.M., at Courtroom No.1, Clearfield County Courthouse, Clearfield, Pennsylvania. For purposes of this ORDER, averments 1 - 35 of Plaintiffs' CIVIL COMPLAINT shall require written response on the day above set forth.

By the Court,

  
Fredric J. Ammerman, PJ

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

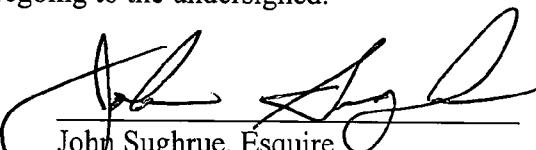
JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. ) No. 04-2032-CD  
 )  
DAVID MAST, an adult individual, ) In Equity and at Law  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS )

**PRAECIPE FOR APPEARANCE**

TO WILLIAM A. SHAW, PROTHONOTARY.

Kindly enter my appearance on behalf of Ann Marie Witherow, individually and as Administrator of the Estate of Gerald Witherow, Defendant in the above-captioned matter. Direct all pleadings and matters concerning the foregoing to the undersigned.

Date: January 13, 2005



John Sughrue, Esquire  
Attorney for Defendant  
Attorney I. D. #01037  
23 North Second Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

FILED *cc*  
*6K 01/15/05 Bov Atty*  
JAN 13 2005 *Sughrue*

William A. Shaw  
Prothonotary/Clerk of Courts

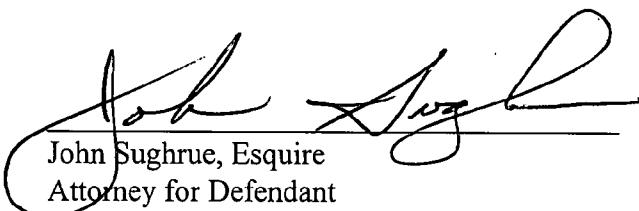
**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on January 13, 2005, I caused a true and correct copy of Praeclipe for Appearance, to be served on the following and in the manner indicated below:

By United States Mail, First Class, Postage Prepaid  
Addressed as Follows:

Mr. Theron Noble, Esq.  
301 E. Pine St.  
Clearfield, PA 16830

Date: January 13, 2005

  
John Sughrue, Esquire  
Attorney for Defendant

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
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PLAINTIFFS, )  
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v. ) No. 04-2032-CD  
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DAVID MAST, an adult individual, ) In Equity and at Law  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )  
 )  
 ) Type of Case: **Civil Action**  
 )  
 ) Type of Pleading:  
 )      **Preliminary Objections to**  
 )      **Count III of the Complaint**  
 )  
 ) Filed on Behalf of: **Defendant,**  
 )      **Ann Marie Witherow**  
 )  
 ) **Counsel of Record for this Party:**  
 ) John Sughrue, Esq.  
 ) Supreme Court No. 01037  
 ) 23 North Second Street  
 ) Clearfield, PA 16830  
 ) Phone: (814) 765-1704  
 ) Fax: (814) 765-6959  
 )  
 )  
 )  
 ) **Other Counsel of Record:**  
 ) Theron G. Noble, Esq.  
 ) Supreme Court No. 55942  
 ) 301 E. Pine St.  
 ) Clearfield, PA 16830  
 ) Phone: (814) 375-2221  
 )  
 )

**FILED**  
03:33 PM 1/21/2005  
JAN 21 2005

William A. Shaw  
Prothonotary

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. ) ) No. 04-2032-CD  
 )  
DAVID MAST, an adult individual, ) ) In Equity and at Law  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )

**DEFENDANT, ANN MARIE WITHEROW'S**  
**PRELIMINARY OBJECTIONS TO COUNT III OF THE COMPLAINT**

AND NOW, comes Defendant, Ann Marie Witherow, by her attorney, John Sughrue, pursuant to Pa.R.C.P. rules 1028(a) and 1509 and files Preliminary Objections to Plaintiffs' request for injunctive relief in Count III, and in support thereof, represents the following:

1. The facts and averments set forth in Paragraphs 1 through 40 of Witherow's Answer and New Matter, filed concurrent herewith, are incorporated herein by reference as though the same were set forth herein at length verbatim.

**I: FAILURE TO EXHAUST A STATUTORY REMEDY AND**  
**THE EXISTENCE OF A FULL COMPLETE AND**  
**ADEQUATE NON-STATUTORY REMEDY AT LAW**

2. The underlying cause of action pleaded in the Complaint (Count IV), which gives rise to an alleged claim for money damages and accounting is conversion, a civil action sounding in trespass.

3. Conversion is a civil remedy at law for money damages as compensation for the unlawful taking of the property of another.

4. Plaintiffs, in their Complaint, seek money damages.

5. The Amount of money damages being sought in the Complaint is unliquidated and the amount of damages is subject to proof, assuming the burden of proving liability is met.

6. Conversion was a cause of action at common law and is presently recognized in the Commonwealth of Pennsylvania as a non-statutory cause of action at law.

7. Further, and in the alternative, Plaintiffs have a full and adequate statutory remedy at law as admitted in Count IV, specifically pursuant to 68 Pa.C.S.A. §115 and 42 Pa.C.S.A. §8311.

## **II: LACK OF IRREPARABLE HARM**

8. Plaintiffs fail to set forth sufficient facts, indicating evidentiary support that the Plaintiffs have suffered, are suffering, or will suffer irreparable harm or the conclusion that Defendant is insolvent or judgment proof.

## **III: LEGAL SUFFICIENCY OF COUNT III**

9. Count III fails to set forth sufficient facts or basis in law upon which this Court may order the requested injunctive relief.

10. As a matter of law, Count III of the Complaint is legally insufficient.

WHEREFORE, for the reasons set forth above, Defendant/Witherow moves the Honorable Court to dismiss Count III of the Complaint, or in the alternative, to deny the relief requested.

## **IV: JURISDICTION OF THE ORPHANS' COURT DIVISION OF THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY OVER THE ADMINISTRATION OF THE ESTATE OF GERALD WITHEROW**

10. The Estate of Gerald Witherow is presently active in administration and subject to the jurisdiction of the Orphans' Court Division of this Court with respect to the receipt and distribution of Estate assets.

12. That the Plaintiffs' cause of action constitutes as a matter of law, an unliquidated claim against the Estate of Gerald Witherow and in the event Plaintiffs are successful in securing a

judgment against the Estate, the priority and/or payment of that judgment claim is a matter to be determined by the Orphans' Court Division upon an appropriate accounting.

WHEREFORE, Defendant/Witherow respectfully moves the Honorable Court to dismiss Count III or in the alternative, to deny the relief requested, generally and in any event, with respect to the Estate of Gerald Witherow.

**V: INSUFFICIENT SPECIFICITY IN A PLEADING**

13. Paragraph 32 and 33 of Count III are general conclusions.
14. In Paragraph 5, the allegations that Defendant is insolvent or judgment proof and the Plaintiffs would suffer irreparable harm are general conclusions.
15. With respect to the general conclusions referenced above, the Plaintiffs fail to set forth sufficient facts and/or basis in law to support such conclusions, including particularly, there are no factual allegations that indicate evidentiary support for the allegations or indicate they are likely to have evidentiary support after Plaintiffs have a reasonable opportunity for further investigation or discovery.

WHEREFORE, in addition, and in the alternative to the foregoing relief requested, Defendant/Witherow requests the Honorable Court to direct Plaintiffs to plead the facts more specifically in support of the relief requested in Count III.

Respectfully submitted:



John Sughrue, Attorney for and on behalf of  
Ann Marie Witherow, individually and as  
Administrator of the Estate of Gerald Witherow

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on January 21, 2005, I caused a true and correct copy of DEFENDANT, ANN MARIE WITHEROW'S PRELIMINARY OBJECTIONS TO COUNT III OF THE COMPLAINT to be served on the following and in the manner indicated below:

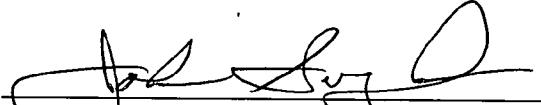
By United States Mail, First Class, Postage Prepaid  
Addressed as Follows:

Mr. Theron Noble, Esq.  
301 E. Pine St.  
Clearfield, PA 16830

Mr. David Mast  
Rte. 1, Box 172 B  
Luthersburg, PA 15848

Mr. Olin L. London  
320 Sloney Lonesome Rd.  
Luthersburg, PA 15848

Date: January 21, 2005



John Sughrue, Attorney for and on behalf of  
Ann Marie Witherow, individually and as  
Administrator of the Estate of Gerald Witherow

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. ) No. 04-2032-CD  
 )  
DAVID MAST, an adult individual, ) In Equity and at Law  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )  
 )  
 ) Type of Case: **Civil Action**  
 )  
 ) Type of Pleading: **Answer and**  
 ) **New Matter**  
 )  
 ) Filed on Behalf of: **Defendant,**  
 ) **Ann Marie Witherow**  
 )  
 ) **Counsel of Record for this Party:**  
 ) John Sughrue, Esq.  
 ) Supreme Court No. 01037  
 ) 23 North Second Street  
 ) Clearfield, PA 16830  
 ) Phone: (814) 765-1704  
 ) Fax: (814) 765-6959  
 )  
 )  
 )  
 ) **Other Counsel of Record:**  
 ) Theron G. Noble, Esq.  
 ) Supreme Court No. 55942  
 ) 301 E. Pine St.  
 ) Clearfield, PA 16830  
 ) Phone: (814) 375-2221  
 )  
 )  
 )  
 )

**FILED**  
03:33 PM 1/26/2005  
JAN 21 2005

William A. Shaw  
Prothonotary

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
)  
PLAINTIFFS, )  
)  
v. ) No. 04-2032-CD  
)  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
)  
DEFENDANTS. )

ANSWER AND NEW MATTER

AND NOW, comes Defendant, Ann Marie Witherow, (hereafter, "Witherow") individually and as Administrator of the Estate of Gerald Witherow, deceased, and responds to a part of the complaint filed in the above-captioned matter in accordance with this Court's Order dated December 28, 2004 as follows:

ANSWER

- 1-4. Paragraphs 1 through 4 of the Complaint are admitted.
5. Admitted. Except with respect to all facts and matters complained of in the Complaint, Witherow intended, believes and was in fact, acting at all times in her capacity as Administrator of the Estate of Gerald Witherow, deceased, and not individually.
6. Admitted. Further, the subject premises are more particularly described in that certain Deed from George E. Erhard, et ux to Gerald Witherow dated September 2, 1947, recorded Clearfield County Recorder's Office in DBV 388, page 236, a true and correct copy of which is attached hereto as Witherow **Exhibit 1** and incorporated herein by reference.
7. Admitted.

8. Denied as stated. On the contrary, on or about April 19, 2002, Witherow was presented by Defendant, London, with a proposed Agreement with David Mast, which she signed with the intent, solely for the purpose of raising cash to pay the debts, taxes and administrative expenses of the Estate of Gerald Witherow. The terms set forth in the Agreement are apparent on the face of the Agreement. Further, Witherow intended, and it is her belief, that she entered into the Agreement for the sale and by that Agreement did sell the one-half interest in the standing timber vested in Gerald Witherow at the time of his death. A true and correct copy of the Agreement presented by Olin London on behalf of Mast and signed by Witherow is attached hereto as **Exhibit 2** and incorporated herein by reference.

9. Admitted in part and denied in part. Defendant/London, was not an agent for Witherow, but was at best an independent broker, or in the alternative, may have in fact been an agent for Defendant/Mast. Defendant/London originally approached Witherow concerning the transaction. Witherow does not have sufficient information at this time to form a belief with respect to the issue of agency. Further, Witherow received \$24,000.00 from London at which time London indicated that a 10% fee was customary, which she then paid.

10. Witherow was never advised by Mast and/or London that timbering operations had begun, were performed or had been completed. Presently, Witherow does not have personal knowledge of the allegation and after reasonable investigation, is without information sufficient to form a belief as to the truth of said averment.

11. Denied. Witherow has no personal knowledge with respect to timber operations performed or not performed by Mast on the subject premises or the fair market value of any timber removed, the same being within the knowledge of Mast, London, Plaintiffs and their experts, and

without reasonable investigation is without information sufficient to form a belief as to the truth of said averment, and strict proof of the same is demanded at trial of this action.

12. Admitted except as stated with respect to the estate. On the contrary, the subject premises were vested in Gerald Witherow at the time of his death and by operation of law, title to the Witherow interest passed to his intestate heirs, Defendant, Ann Marie Witherow, surviving spouse, Gary Witherow, son, and Gail Kelly, daughter, subject to the power of the Defendant/Administrator under the law to sell and liquidate all or part of the decedent's Estate in the course of administering the Estate. For purposes of this pleading, reference to Defendant/Witherow, is intended to refer to and include Witherow, individually and as Administrator, and the Estate of Gerald Witherow, depending on the context.

13. Admitted subject to the clarification set forth in Paragraph 12 above. All of which is incorporated herein by reference.

14. Admitted.

15. Admitted.

16. Further said Deeds were recorded in the Clearfield County Courthouse prior to April 1, 2002 and the ownership was recorded in the Tax Assessment Office and assessed to the Plaintiffs as evidenced by the Clearfield County Tax Assessment Ledgers attached hereto as **Exhibit 3 and 4** respectively and incorporated herein by reference.

17. It is admitted that Witherow did not discuss nor communicate the matter with Plaintiffs until John Sughrue, attorney for the Estate, discussed the matter with Plaintiff/Swistock. Presently, after reasonable investigation, Witherow is without knowledge or information sufficient to form a belief as to whether or not Swistock and/or Bodle consented to the timbering with Defendant/Mast

and/or London or had contact or communications with them of any type, for the reasons that such information is exclusively within the knowledge of the Plaintiffs and Co-Defendants.

18. Admitted.

19. Witherow never had any contact or communications with Mast at any times prior to said Agreement being executed or any time thereafter. However, on information and belief, Witherow believes and therefore avers that Defendant/Mast knew, or should have known, at all relevant and material times, that the subject premises were not owned one hundred (100%) percent by the heirs of Gerald Witherow or his Estate, including specifically, from communications with Defendant/London and the record title to the premises, which was clearly evidenced on the record at the Clearfield County Courthouse, as aforesaid.

20. Admitted.

21. Denied as stated. Witherow never met Mast and had no communications with him either prior to the execution of the Agreement or subsequent thereto. On the contrary, Witherow dealt, at all times with Co-Defendant, London who originally approached her, with respect to the transaction.

22. It is admitted that Witherow did not, as either Administrator of the Estate or individually, pay any compensation to the Plaintiffs for the harvesting of timber. After reasonable investigation, Witherow is without knowledge and information sufficient to form a belief as to whether or not Defendants, Mast or London, compensated the Plaintiffs in any manner for the reasons that such information is exclusively within the knowledge of Plaintiffs and Co-Defendants.

**Count I**  
**In Equity: Request for an Accounting from Defendant/Witherow**

23. The facts and averments set forth in Paragraphs 1 through 22 of this Answer above, as well as hereafter in New Matter, are incorporated herein by reference as though the same were set forth herein at length verbatim.

24. Denied as stated. On the contrary, Plaintiffs, on the basis of ownership, are admitted to being entitled to one-half of the total of the proceeds or value of the sale or harvesting of the whole Estate in the timber if in fact, one-hundred (100%) percent of the whole of the estate in timber had been sold or licensed for royalty payments. On the contrary, in this case, Witherow intended, believed and only sold the one-half interest in the standing timber estate, which she had the power to sell and the payment received by the Estate was intended to be and believed to be payment for the Estate's one-half interest. Defendants, London and Mast, had the duty to negotiate the purchase of the remaining one-half interest owned by the Plaintiffs and to pay for it separately at whatever price was negotiated.

25. Denied as stated. It is admitted that Witherow, solely as Administrator and not individually, sold the Estate's interest in the standing timber and pursuant to the aforesaid agreement received, the sum of \$24,000.00. Further, said sale was made for the purpose of paying funeral expenses, debts, inheritance tax, Court costs and administrative expenses related to the administration and settlement of the Estate of Gerald Witherow. The Estate has paid various legitimate expenses related to the administration of the Estate and continues to have a cash balance on hand.

26. Witherow believes that the Plaintiffs, as joint tenants, with Gerald Witherow and his heirs, are entitled to an accounting of the transaction referenced above. Further, the Estate of Gerald

Witherow is open and subject to administration in the Orphans' Court Division of this Court and subject to the jurisdiction of the Court with respect to the receipt and distribution of Estate assets.

**WHEREFORE**, Defendant/Witherow, with respect to Count I of the Complaint, does not object to the entry of an appropriate order for accounting, subject, however, to the jurisdiction of the Orphans' Court Division of this Court over the administration of said Estate.

**Count II**  
**In Equity: Request for an Accounting v. Defendant, Mast**

27-30. Paragraphs 27 through 30 are directed solely to Defendant/Mast and accordingly, no response thereto is required from Defendant/Witherow.

**WHEREFORE**, Defendant/Witherow moves the Honorable Court to refrain from entering any order with respect to Defendant/Witherow under Count II of the Complaint.

**Count III**  
**In Equity: Request for Injunctive Release v. Defendants, Mast and Witherow**

31-35. Concurrent with the filing of this answer, Defendant/Witherow has filed Preliminary Objections to Count III and is therefore, under the Pennsylvania Rules of Civil Procedure, not required to answer this Count until such time as said Preliminary Objections are determined.

**WHEREFORE**, Defendant/Witherow, requests the Honorable Court to defer adjudicating Count III.

**NEW MATTER**

36. Witherow entered into the aforesaid timber agreement on or about April 19, 2002 and received payment under said agreement at or about the same time.

37. That the Complaint was filed in this matter on or about December 28, 2004.

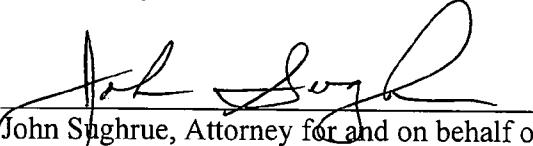
38. That the causes of action set forth against Defendant in the foregoing Complaint are barred by the applicable statute of limitations, particularly, the two year statute of limitation.

39. That the causes of action set forth in the Complaint with respect to equity are barred by the equitable doctrine of Laches.

40. With respect to the equitable actions in the Complaint, the Plaintiffs have failed to exercise or exhaust a statutory remedy, including specifically the statutorily authorized action at law set forth at 42 Pa.C.S.A. §8311.

**WHEREFORE**, Defendant, Ann Marie Witherow, respectfully moves the Honorable Court to forthwith enter an order dismissing, with prejudices, the causes of action filed against her in the above captioned matter.

Respectfully submitted:



John Sughrue, Attorney for and on behalf of  
Ann Marie Witherow, individually and as  
Administrator of the Estate of Gerald Witherow

WILKES DEED

Made the — second day of September \_\_\_\_\_, in the year Nineteen hundred and forty seven (1947)

Between George E. Erhard and Laura N. Erhard, his wife, of the Township of Knox, County of Clearfield and State of Pennsylvania, hereinafter called the grantors, parties of the first part, and

Gerald Q. Witherow, of the Township of Pike, County of Clearfield and State of Pennsylvania, and Raymond S. Fleck, of the Township of Boggs, County of Clearfield and State of Pennsylvania, as tenants in common, hereinafter called the grantees, parties of the second part,

Witnesseth, That in consideration of \$600.00 Six hundred

Dollars,

in hand paid, the receipt whereof is hereby acknowledged, the said grantors do hereby grant and convey to the said grantees, their heirs and assigns,

All those two certain tracts or parcels of land situate formerly in the Township of Jordan, now in the Township of Knox, County of Clearfield and State of Pennsylvania, bounded and described as follows:

THE FIRST THEREOF: Beginning at a hemlock in line of land of Christian Neff; thence south forty (40) degrees east one hundred (100) perches to a sugar; thence south fifty (50) degrees west by land conveyed to I. McKee one hundred and six (106) perches to a beech; thence north forty (40) degrees west one hundred (100) perches to pile of stones; thence north fifty (50) degrees east by land of P. Kloninger one hundred and six (106) perches to the place of beginning. Containing sixty two (62) acres and eighty four (84) perches and allowance of six (6%) per cent for roads.

BEING the same premises which Horatio Wilkes, by deed dated in the year 1840, recorded at Clearfield on February 7, 1840, in Deed Book G, page 413, granted and conveyed to George Erhard; and the said George Erhard, did by Article of Agreement dated the 1st day of October, A. D. 1875, recorded at Clearfield in Miscellaneous Book

, page 403, agree to sell said land unto David Erhard upon certain conditions which were subsequently performed, and the said David Erhard did thereafter, to wit: on the 12th day of July, A. D. 1895, die testate and by his will dated the 2nd day of November, 1880, recorded at Clearfield in Will Book E, page 174, in Item Five, devise the said land to his widow, Jennie D. Erhard for and during her life and thereafter to George Erhard, the present owner. And the heirs of George Erhard, deceased, did by deed dated the 14th day of November, 1899, recorded at Clearfield in Deed Book No. 109, page 3, grant and convey the said premises to Jennie D. Erhard the executrix of the said David Erhard. And the said Jennie Erhard having died on the 1st day of November, 1901, title to said land vested in George Erhard, the present grantor, by reason of provision five in the will above mentioned.

THE SECOND THEREOF: Also situate in the Township of Jordan and being particularly that portion of land being between the original line to the resurvey along line of resurvey to meadow as it existed in 1883, thence west to corner of land now or formerly of Robert Witherow. Containing ten (10) acres, more or less, and being a part of a larger survey in the name of Christian Neff.

BEING the same premises which Louis Erhard and others by Quit-Claim Deed dated the 3rd day of February, 1883, recorded at Clearfield in Deed Book No. 54, page 533, conveyed to George Erhard, who by agreement dated as heretofore stated and by subsequent conveyances as heretofore recited caused the same to vest in the persons through whom title vested in George E. Erhard, the present grantor, all as heretofore recited.

The foregoing two parcels are contiguous in location, and combined represent an area of seventy five (75) acres of land, more or less.

EXCEPTING AND RESERVING, however, unto Hazen H. Owens, for a period of two years from April 15, 1947, all of the timber of every kind and character eight inches or more in diameter one foot from the ground; together with the right of ingress, egress and regress, in, over and upon said parcel of land for the purpose of cutting, pealing, skidding and removing such timber and bark, with the right to construct such roads over the premises hereby conveyed within such period of two years as may be necessary to remove such timber and including the right to erect and maintain a saw mill for the manufacturing of the timber into lumber, with the right to remove the saw mill and appurtenances thereto and other improvements placed upon the ground by Hazen H. Owens at or before the expiration of such two year period. Any timber not cut down and removed from the premises within the said period of two years from April 15, 1947, and all timber which was not eight inches or more in diameter one foot above the ground on April 15, 1947, shall be the property of the present grantees.

All the said grantor s -, do hereby warrant -specially the property hereby conveyed, \_\_\_\_\_

In witness Whereof, said grantors have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered  
In the Presence of

P. W. Heist

George E. Erhard

Wife Yes

Laura N. Erhard



Commonwealth of Pennsylvania  
County of CLEARFIELD } SS

On this, the 3<sup>rd</sup> day of September 1947, before me, Paul Heist, Justice of the Peace, the undersigned officer, personally appeared George E. Erhard and Laura N. Erhard, his wife, \_\_\_\_\_

known to me (or satisfactorily proven) to be the person s whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

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

MY COMMISSION EXPIRES  
1<sup>st</sup> Mon Jan 1950

P. W. Heist

Justice of the Peace

I further certify, that the precise address of the grantee s herein is  
Clanta, Pa. and West Decatur, Pa. respectively.



PAUL

GEORGE E. ERHARD and  
LAURA N. ERHARD, his  
wife

TO

GERALD Q. WITHEROW and  
RAYMOND S. FLECK, as  
tenants in common

Dated, - September 2, - 1947 -

PAUL  
24th of October  
1947  
PAUL

CLARENCE R. KRAMER  
ATTORNEY AT LAW  
CLEARFIELD, PA.

Commonwealth of Pennsylvania  
County of Clearfield

SS:

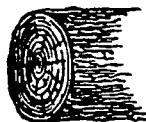
Recorded on this 20 day of Oct AD 1947

in the Recorder's Office of said County  
in DEED Book 388 Vol. PAGE 236

Given under my hand and seal of the said office  
the date above written.

Clarence R. Kramer

RECORDED



DAVID MAST  
& SON LOGGING  
Rte. 1, Box 172-B  
Luthersburg, PA 15848



## TIMBER SALE AGREEMENT

Made and entered into this day April 19, 2002  
between Landowner: Paul McHenry, Esq.

and Contractor: David Mast and Son Logging enters  
into contract to buy timber as to the following agreement.

Contractor agrees to pay Twenty-four Thousand Dollars  
\$24,000.00  
and remove timber within a 2 year period.

The Contractor shall be responsible for any damage occurring beyond the limits of the sale area  
being caused by his operations, including severe deterioration of the access roads on the timber sale  
area. Reparation of damages shall be made as soon as practicable.

The Landowner guarantees title to the said timber and will defend it at his expense against any  
and all claims for taxes, mortgages, contracts and any other encumbrances.

The Landowner grants to the Contractor the freedom of entry and right-of-way on and across  
the area covered by this contract.

Small wood products, pulpwood, firewood, etc. from timber sale area only, may be removed  
by the Contractor as part of his normal operations. At the completion of operations, all wood left on  
the sale area shall be the property of the Landowner for his personal use and disposal.

LANDOWNER: Paul McHenry, Esq.

CONTRACTOR: David Mast and Son Logging

Other specifications: Cut anything that makes sawlogs.

Witness: John L. Ladd

Witness: Joseph D. Mast



BODLE, RONALD  
617 NICHOLS ST.  
CLEARFIELD, PA

1220 H13 000 00019  
DISTRICT MAP. SUB MAP PARCEL SUB PCL I SUB PCL II CARD NO. F 000 OF LIV. UNITS ZONE NC 106 1007  
LEGAL DESCRIPTION 122086163  
TOPO STREET UTIL

16830  
25% INT. IN 70 A SURF.

PROPERTY ADDRESS	LOCATION	CONDOS LEVEL
FRONTING PARCEL TIE BACK	FRONTING PARCEL TIE BACK	CONDOS LEVEL

LAND DATA & COMPUTATIONS		FRONTAGE DEPTH	INFLUENCE FACTOR	LOT VALUE
ACTUAL FRONTAGE	EFFECTIVE FRONTAGE			
LOT				
LOT				
SF				
SF				
AC				
TOTAL ACRES				
GROSS LAND				

TOTAL LAND VALUE

DWELLING DATA & COMPUTATIONS	
NO. LIVING UNITS	
STYLE	
TOTAL ROOMS	
BEDROOMS	
FAMILY ROOMS	
HEAT: SYSTEM/FUEL	
BATHROOMS	
ADDITIONAL FIXTURES	
KITCHEN REMOD	
BATHROOM REMOD	
TOTALS F. LIVING AREA	
YEAR BUILT	
REMODELED	
PHYSICAL CONDITION	
COU	
INTERIOR CONDITION RELATIVE TO EXT.	

U D PARCEL  
FOR LAND & BLDG INFO  
SEE DETAILED CARD  
USED 000.2500 %

NARRATIVE  
NUMBER  
BUILDING PERMIT RECORD  
BUILDING DATE  
AMOUNT

ID	LL	1	2	3	ADDITIONS AREA	PTS	ENTRANCE CODE	PARTIAL

APPR

NUMBER  
BUILDING DATE  
AMOUNT

APPR

NARRATIVE

NUMBER

BUILDING DATE

AMOUNT

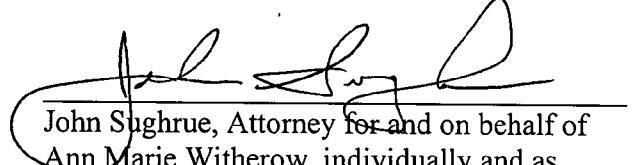
APPR

NUMBER

**VERIFICATION**

I, Attorney for Defendant, Ann Marie Witherow, state that I am acquainted with the facts set forth in the foregoing Answer and New Matter and that the same are true and correct to the best of my knowledge, information, and belief. I further state that this verification is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities; and that in furtherance of judicial expedience, because the client is unavailable to meet with counsel, review the pleading and execute a Verification in time to file this pleading under the significant time constraints imposed by the Court. I am making this verification in order to comply with the Court's Order and to expedite the pleading. Defendant/Witherow and I reserve the right to amend this pleading after it is reviewed by Defendant/Witherow, if counsel made an error in drafting the pleading. A Verification executed by the Defendant will be filed in due course.

Date: January 21, 2005



John Sughrue, Attorney for and on behalf of  
Ann Marie Witherow, individually and as  
Administrator of the Estate of Gerald Witherow

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on January 21, 2005, I caused a true and correct copy of Defendant's Answer and New Matter to be served on the following and in the manner indicated below:

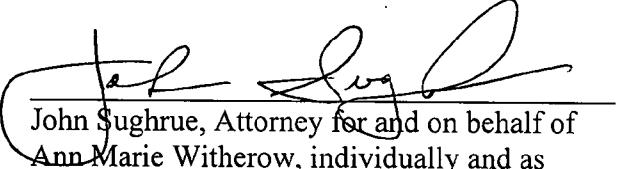
By United States Mail, First Class, Postage Prepaid  
Addressed as Follows:

Mr. Theron Noble, Esq.  
301 E. Pine St.  
Clearfield, PA 16830

Mr. David Mast  
Rte. 1, Box 172 B  
Luthersburg, PA 15848

Mr. Olin L. London  
320 Sloney Lonesome Rd.  
Luthersburg, PA 15848

Date: January 21, 2005

  
John Sughrue, Attorney for and on behalf of  
Ann Marie Witherow, individually and as  
Administrator of the Estate of Gerald Witherow

CA

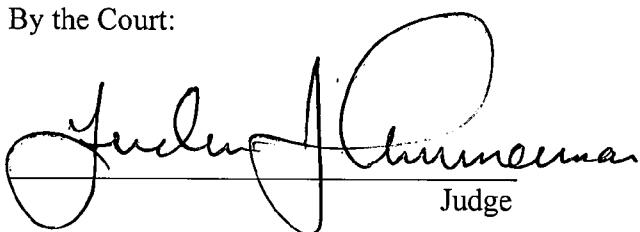
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. ) No. 04-2032-CD  
 )  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )

**ORDER**

AND NOW, this 25<sup>th</sup> day of January, 2005, upon consideration of  
Defendant, Ann Marie Witherow's, MOTION TO RESCHEDULE HEARING OF  
FEBRUARY 9, 2005 at 9:30 a.m., it is ORDERED that said hearing is rescheduled for the 23  
day of February, 2005 commencing at 9:30 o'clock A.m. at Court Room  
No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

By the Court:

  
Judge J. Schumacher  
Judge

FILED 4CC Atty  
01/10/2005 Sughrue  
JAN 26 2005 6K

William A. Shaw  
Prothonotary/Clerk of Courts

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

FILED 4CC

d3:48 AM Atty  
JAN 25 2005 Sughrue

William A. Shaw  
Prothonotary/Clerk of Courts

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. )  
 )  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )

No. 04-2032-CD

In Equity and at Law

**MOTION TO RESCHEDULE HEARING OF**  
**FEBRUARY 9, 2005**

To the Honorable Fredric J. Ammerman, President Judge:

AND NOW, comes Defendant, Ann Marie Witherow, by her attorney, John Sughrue, moves to reschedule a hearing scheduled for February 9, 2005 at 9:30 a.m. and in support thereof, represents the following:

1. Defendant, Ann Marie Witherow, (hereafter, "Witherow") was served in this matter with the original Complaint and a Rule to Show Cause issued by this Court on December 28, 2004.
2. Plaintiffs are represented in this matter by Attorney Theron Noble, Esquire, of 301 E. Pine St., Clearfield, PA 16830.
3. Defendant, David Mast, (hereafter, "Mast") is not represented by an attorney as of the filing of this Motion and is believed to presently reside at Rte. 1, Box 172 B, Luthersburg, PA 15848;

4. Defendant, Olin L. London, (hereafter "London") is not represented by an attorney as of the filing of this motion and is believed to presently reside at 320 Sloney Lonesome Rd., Luthersburg, PA 15848..

5. The Rule to Show Cause issued by this Court on December 28, 2004 directed Defendants to respond to Paragraphs 1 through 35 of the Complaint on or before January 21, 2005 and scheduled a hearing on February 9, 2005 at 9:30 a.m. on Plaintiffs request for equitable and/or injunctive relief. A copy of said Rule is attached hereto as Exhibit A.

6. John Sughrue, attorney for Witherow, was scheduled prior to Witherow being served in this case, for a family vacation in Florida from February 2, 2005 through February 9, 2005 and all airline flights and other arrangements have been paid.

7. Attorney Sughrue is presently scheduled to return to Pennsylvania on February 9, 2005 and cannot be available for said hearing without significant inconvenience and economic hardship.

8. Defendant Witherow respectfully requests that the hearing of February 9, 2005 be rescheduled to a date subsequent so that Witherow may be represented by her regular attorney.

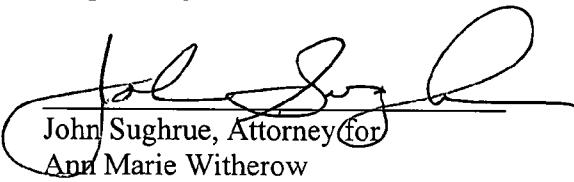
9. That Witherow filed on January 21, 2005 the response required by the Court's Order, including an Answer and New Matter and Preliminary Objections.

10. Witherow's counsel contacted Plaintiffs' counsel to determine whether or not he would agree to this request and was advised that Plaintiffs' counsel was unable to agree in view of the fact that there were other Defendants subject to said Order. As a result of that position, Witherow's counsel has not attempted to secure the consent of the other Defendants.

11. That Witherow believes that rescheduling the hearing will not unnecessarily delay the prosecution of this case or prejudice Plaintiffs' causes of action.

WHEREFORE, Defendant/Witherow, by her counsel, respectfully moves the Honorable Court to forthwith enter an Order rescheduling the February 9, 2005 hearing, or in the alternative, to forthwith issue a rule directed to Plaintiffs and Co-Defendants to show cause, if any, why this Motion for postponement should not be granted and setting a return date for answer and argument prior to February 2, 2005.

Respectfully submitted:



John Sughrue, Attorney for  
April Marie Witherow

CR

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
)  
PLAINTIFFS, )  
)  
v. )  
)  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
)  
DEFENDANTS. )

No. 04-02032-CD

In Equity and at Law

**FILED**

✓  
DEC 28 2004  
William A. Shaw  
Prothonotary/Clerk of Courts  
6 Court St. • • • • •

**RULE RETURNABLE**

AND NOW, this 28 day of December, 2004, based upon  
Plaintiffs' request for injunctive relief and an accounting in the above captioned matter,  
Defendants Mast and Witherow are hereby ORDERED to file written response by the  
21 day of January, 2005, showing cause as to why said relief should be  
denied. Hearing on Plaintiffs' request for said relief and an accounting (Counts I, II and  
III of their CIVIL COMPLAINT) shall be on the 9 day of February,  
2005, commencing at 9:30, A.M., at Courtroom No.1, Clearfield County  
Courthouse, Clearfield, Pennsylvania. For purposes of this ORDER, averments 1 - 35 of  
Plaintiffs' CIVIL COMPLAINT shall require written response on the day above set forth.

By the Court,

  
\_\_\_\_\_  
Fredric J. Ammerman, PJ

Exb. "A"

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on January 25, 2005, I caused a true and correct copy of MOTION TO RESCHEDULE HEARING OF FEBRUARY 9, 2005 and proposed RULE TO SHOW CAUSE and proposed ORDER to be served on the following and in the manner indicated below:

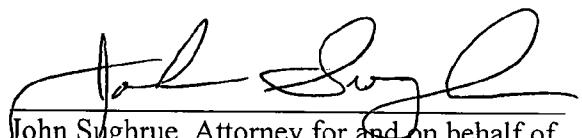
By United States Mail, First Class, Postage Prepaid  
Addressed as Follows:

Mr. Theron Noble, Esq.  
301 E. Pine St.  
Clearfield, PA 16830

Mr. David Mast  
Rte. 1, Box 172 B  
Luthersburg, PA 15848

Mr. Olin L. London  
320 Sloney Lonesome Rd.  
Luthersburg, PA 15848

Date: January 25, 2005



John Sughrue, Attorney for and on behalf of  
Ann Marie Witherow, individually and as  
Administrator of the Estate of Gerald Witherow

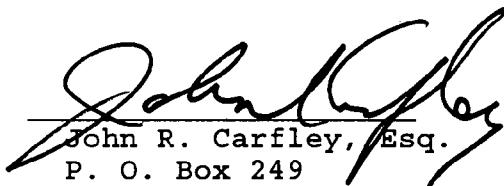
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES W. SWISTOCK, an adult individual :  
and RONALD R. BODLE, an adult individual :  
Plaintiffs :  
  
vs. : No. 04-02032-CD  
  
DAVID MAST, an adult individual :  
OLAN L. LONDON, an adult individual,  
and ANN MARIE WITHEROW, individually :  
and as Administrator of the Estate of  
Gerald Witherow,  
Defendants :  
  
vs. : No. 04-02032-CD

PRAECIPE

TO THE PROTHONOTARY:

PLEASE enter my appearance on behalf of Olan L. London,  
defendant in the above captioned matter.

  
John R. Carfley, Esq.  
P. O. Box 249  
Philipsburg, Pa., 16866  
Attorney for Defendant  
Olan L. London

Dated: January 31, 2005

FILED  
01/31/2005  
JAN 31 2005  
Carfley  
William A. Shaw  
Prothonotary/Clerk of Courts

copy to C/A

**FILED**

**JAN 3 12005**

William A. Shaw  
Prothonotary/Clerk of Courts

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

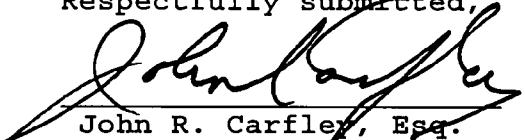
JAMES W. SWISTOCK, an adult individual :  
and RONALD R. BODLE, an adult individual :  
Plaintiffs :  
  
vs. : No. 04-02032-CD  
  
DAVID MAST, an adult individual :  
OLAN L. LONDON, an adult individual,  
and ANN MARIE WITHEROW, individually :  
and as Administrator of the Estate of  
Gerald Witherow,  
Defendants :  
  
CK

NOTICE TO PLEAD

TO: James W. Swistock & Ronald R. Bodle, Plaintiffs  
c/o Theron G. Noble, Esq.  
Ferraraccio & Noble  
301 E. Pine Street  
Clearfield, PA 16830

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.

Respectfully submitted,



John R. Carfley, Esq.  
Attorney for Defendant,  
Olan London  
P. O. Box 249  
Philipsburg, PA 16866

Dated: January 31, 2005

66  
FILED  
1/31/05  
JAN 31 2005  
100  
cc

William A. Shaw  
Prothonotary/Clerk of Courts

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

JAMES W. SWISTOCK, an adult individual :  
and RONALD R. BODLE, an adult individual :  
Plaintiffs :  
:  
vs. : No. 04-02032-CD  
:  
DAVID MAST, an adult individual :  
OLAN L. LONDON, an adult individual, :  
and ANN MARIE WITHEROW, individually :  
and as Administrator of the Estate of :  
Gerald Witherow, :  
Defendants :  
:

PRELIMINARY OBJECTIONS OF DEFENDANT, OLAN L. LONDON

TO PLAINTIFFS' COMPLAINT

AND NOW, comes the Defendant, Olan L. London, who by and through his attorney, John R. Carfley, Esquire, files the following Preliminary Objections to Plaintiffs' Complaint and in support thereof avers as follows:

1. Count 6 of Plaintiffs' Complaint purports to set forth a cause of action at law against the Defendant, London, alleging that the said Defendant converted property belonging to the Plaintiff in complete disregard of the Plaintiff's ownership rights.

2. Paragraph 51 of that Count of said Complaint avers that London exercised dominion and control over a portion of the cash proceeds from the sale of the timber in complete disregard of the Plaintiff's ownership interest.

3. Paragraph 52 of that Count of the said Complaint avers that London did not have the right to cause the timber on the subject premises to be cut and removed without the consent of the

Plaintiffs.

4. Paragraph 53 of that Count of the said Complaint avers that London did not have the right to facilitate the sale of the timber on the subject premises without the consent of the Plaintiffs.

5. The averments of paragraph 52 and 53 are contrary to the general averments of the Complaint which allege that the Defendant, London, at all times relevant to this matter, acted in an agency capacity for the Defendant Mast, who was the party responsible for the acquisition, removal and sale of the timber from the premises. Defendant's actions as an agent for Mast and/or Witherow preclude any cause of action against London based upon an ownership of the timber or the real estate which is a condition precedent to averments under Section 115 and Section 116 of 68 Purdon's since these sections rely on ownership rights and action and since the said Defendant was incapable of acting independently, but rather functioned in an agency relationship, this relationship and the coincident actions could, at most, impose liability only on the principal involved.

6. Section 115 of 68 Purdons (68 Pa. C.S.A. §115) provides that it shall be unlawful for any owner or co-owner to cut or remove timber without obtaining written consent of all co-tenants. Paragraph 116 of 68 Purdons Statutes (68 Pa. C.S. A. §116) provides that it shall be unlawful for any co-tenant to sell timber without the consent of the co-tenant.

7. In the case at bar Defendant London was not a co-tenant nor did he exercise or ever assert any ownership interest in the

real estate or the timber thereon. In the case at bar Defendant London undertook no efforts to sell the timber removed by the Defendant Mast from the subject real estate. Defendant London neither cut timber from the subject premises, removed the timber from the premises or sold the timber so removed thereby negating any claim against the said Defendant, London, who, at most, acted only in an agency capacity under a scenario designed to secure the consent of any of the co-tenants. Defendant London was not bound by the statute cited since that responsibility was only within the purview of the Defendant Witherow and/or the Defendant Mast. Moreover, under this factual scenario, Plaintiffs have failed to state any averments dealing with ownership of the subject real estate or the timber located thereon by which Plaintiffs could be held to answer to a claim under which relief might be granted against Defendant, London.

A. DEMURRER

8. Defendant London hereby incorporates by reference the averments of Paragraphs 1 through 7 as fully as though set forth at length.

9. Defendant London avers that Plaintiffs' Complaint fails to state a claim or cause of action against Defendant, London, upon which relief might be granted in that the said Plaintiff fails to assert facts which would give rise to a cause of action against London in an individual rather than in a representative or agency capacity.

WHEREFORE Defendant, Olan L. London, demurs to Count VI of Plaintiffs' Complaint and moves for the dismissal of said count for

those reasons were fully hereinabove stated and for failure to state a claim upon which relief might be granted.

B. DEMURRER - CIVIL CONSPIRACY

10. Defendant London hereby incorporates by reference the averments of Paragraphs 1 through 9 as fully as though set forth in length.

11. Civil conspiracy is defined in Black's Law Dictionary as "A combination of two or more persons who, by concerted action, seek to accomplish an unlawful purpose or to accomplish some purpose, not in itself unlawful, by unlawful means."

12. A cause of action for conspiracy like fraud, duress, undue influence or other falsehoods cannot be based on mere general averments while referring to the conduct of the defendant without setting forth facts to justify the same or making it appear of what they consist.

13. Said general averments are not sufficient to give rise to a cause of action without setting forth facts to justify the conduct giving rise to the civil conspiracy.

14. In the case at bar the averments of the Complaint state that the Defendant London was an agent for Mast and/or Witherow and in that capacity acted in a lawful manner in brokering a contract for the disposition of the Defendant's property rights.

15. A civil conspiracy by definition seeks the combination of individuals to accomplish an unlawful purpose or to accomplish some purpose which is not in itself unlawful but is conducted by unlawful means.

16. Plaintiffs have failed to set forth any facts which

establish unlawful acts committed by the Defendant London or London's attempt to accomplish some lawful purpose by unlawful means.

17. The conspiracy averred in Count VII of the said Complaint fails to set forth actions of the Defendant London with any degree of specificity or is sufficient to state a cause of action upon which relief might be granted.

WHEREFORE, Defendant, Olan L. London, moves for the dismissal of Count VII for those reasons hereinabove stated and failure to state a claim upon which relief might be granted.

C. MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STATE COUNT VII WITH GREATER SPECIFICITY

18. Defendant London hereby incorporates by reference Paragraphs 1 through 17 of the averments set forth herein as fully as though set forth at length.

19. The averments set forth in Paragraphs 55 through 58 lack the sufficient degree of specificity required by the Pennsylvania Rules of Civil Procedure and as a result said Complaint must be dismissed or in the alternative Plaintiff must be ordered to file a pleading with a greater degree of specificity so as to allow the Defendant London to adequately plead to the averments set forth therein.

20. In an action or complaint pleading a cause of action for civil conspiracy the Plaintiff is required to prove affirmatively an unlawful combination or agreement between two or more persons to do an act unlawful in itself or a lawful act by unlawful means.

21. Moreover if punitive damages are claimed the Complaint

must state, in part, the averments in the nature of a bill of particulars outlining, in specific terms, the actions of the Defendants in causing such harm.

22. The background information asserted by the Plaintiff in its Complaint attempts to assert an ownership interest in the Plaintiff, Swistock and Plaintiff, Bodle, by virtue of certain deeds recorded in the office of the Recorder of Deeds of Clearfield County, Pennsylvania.

23. These averments purporting to assert ownership rights are contained in Paragraph 16, but said Complaint fails to contain as an exhibit an abstract of title by virtue of which the Plaintiff Swistock and the Plaintiff Bodle acquired any ownership interest over the surface and/or timber which is the subject of this suit.

24. The cause of action asserted by the Plaintiffs requires a showing of legal ownership before an action for conversion will lie.

25. Said Plaintiffs are required to attach as an exhibit to their Complaint an abstract of title outlining the manner in which they acquired legal ownership of these property rights.

26. Said Complaint is defective in that it lacks an abstract of title to assert the degree of specificity required in order to support the averments of this action.

WHEREFORE, Defendant London moves this Honorable Court to enter an order dismissing Plaintiffs' Complaint for failure to assert its legal title with the degree of specificity required under Pennsylvania rules.

D. DEMURRER

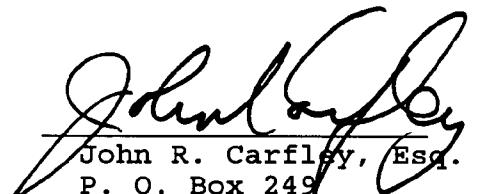
27. Defendant London hereby incorporates by reference Paragraph 1 through 26 of these preliminary objections as fully as though set forth at length.

28. Count III of Plaintiffs' Complaint requests injunctive relief based upon the averments of their Complaint.

29. Plaintiffs aver in Paragraph 35 that the Plaintiffs would suffer irreparable harm should the court fail to grant injunctive relief.

30. Said Plaintiffs have failed to attach to their Complaint as an exhibit an affidavit citing the manner in which irreparable harm would occur to Plaintiffs in order to support the averments of their Complaint and to further support their request for such extraordinary injunctive relief in this matter.

WHEREFORE, Defendant London requests this Honorable Court



John R. Carfley, Esq.  
P. O. Box 249  
Philipsburg, PA 16866  
Attorney for Defendant  
Olan L. London

Dated: January 31, 2005

VERIFICATION

I hereby verify that the statements made in this instrument are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.



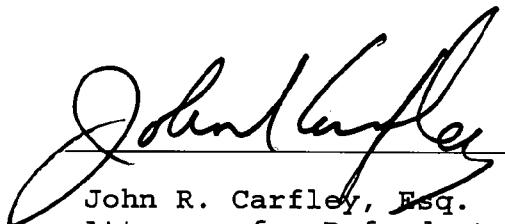
Dated: 1-31-05

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

JAMES W. SWISTOCK, an adult individual :  
and RONALD R. BODLE, an adult individual:  
Plaintiffs :  
:  
vs. : No. 04-02032-CD  
:  
DAVID MAST, an adult individual :  
OLAN L. LONDON, an adult individual :  
and ANN MARIW WITHEROW, individually :  
and as Administrator of the Estate of :  
GERALD WITHEROW, :  
Defendant :  
:

CERTIFICATE OF SERVICE

I hereby certify that I forwarded a copy of the Preliminary  
Objections of Defendant, Olan L. London to Plaintiffs' Complaint by  
regular mail, postage prepaid to Theron G Noble, Esq., Ferraraccio  
& Noble, 301 East Pine Street, Clearfield, Pennsylvania, 16830,  
Attorney for Plaintiffs, on this 31<sup>st</sup> day of January, 2005.



John R. Carfley, Esq.  
Attorney for Defendant,  
Olan L. London  
ID# 17621  
P. O. Box 249  
Philipsburg, PA 16866  
(814) 342-5581

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100093  
NO: 04-2032-CD  
SERVICE # 1 OF 3  
COMPLAINT & RULE RETURNABLE

PLAINTIFF: JAMES W. SWISTOCK an indiv, and RONALD R. BODLE an indiv.

vs.

DEFENDANT: DAVID MAST, An adult ind., OLIN L. LONDON, an adult ind. and ANN MARIE WITHEROW, Ind & as Adm. of the Estate of Gerald Witherow

**SHERIFF RETURN**

---

NOW, January 07, 2005 AT 11:07 AM SERVED THE WITHIN COMPLAINT & RULE RETURNABLE ON DAVID MAST DEFENDANT AT RTE 1 BOX 172-B, LUTHERSBURG, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO DAVID MAST, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT & RULE RETURNABLE AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER / DEHAVEN

**FILED**

FEB 08 2005

0/3/00/

William A. Shaw

Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100093  
NO. 04-2032-CD  
SERVICE # 2 OF 3  
COMPLAINT & RULE RETURNABLE

PLAINTIFF: JAMES W. SWISTOCK an indiv, and RONALD R. BODLE an indiv.

VS.

DEFENDANT: DAVID MAST, An adult ind., OLIN L. LONDON, an adult ind. and ANN MARIE WITHEROW, Ind & as  
Adm. of the Estate of Gerald Witherow

**SHERIFF RETURN**

---

NOW, January 07, 2005 AT 10:30 AM SERVED THE WITHIN COMPLAINT & RULE RETURNABLE ON OLIN L. LONDON DEFENDANT AT 320 STONEY LONESOME ROAD, LUTERSBURG, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO OLIN L. LONDON, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT & RULE RETURNABLE AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER / DEHAVEN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100093  
NO. 04-2032-CD  
SERVICE # 3 OF 3  
COMPLAINT & RULE RETURNABLE

PLAINTIFF: JAMES W. SWISTOCK an indiv, and RONALD R. BODLE an indiv.

vs.

DEFENDANT: DAVID MAST, An adult ind., OLIN L. LONDON, an adult ind. and ANN MARIE WITHEROW, Ind & as  
Adm. of the Estate of Gerald Witherow

SHERIFF RETURN

---

NOW, January 13, 2005 AT 2:05 PM SERVED THE WITHIN COMPLAINT & RULE RETURNABLE ON ANN MARIE  
WITHEROW i/a/a Adm. of Estate of Gerald Witherow DEFENDANT AT SHFF. OFFICE, 1 N. 2nd ST, SUITE 116,  
CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO ANN MARIE WITHEROW,  
DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT & RULE RETURNABLE AND  
MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HAWKINS /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100093  
NO: 04-2032-CD  
SERVICES 3  
COMPLAINT & RULE RETURNABLE

PLAINTIFF: JAMES W. SWISTOCK an indiv, and RONALD R. BODLE an indiv.

vs.

DEFENDANT: DAVID MAST, An adult ind., OLIN L. LONDON, an adult ind. and ANN MARIE WITHEROW, Ind & as  
Adm. of the Estate of Gerald Witherow

**SHERIFF RETURN**

---

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	NOBLE	1694	30.00
SHERIFF HAWKINS	NOBLE	1694	80.78

Sworn to Before Me This

\_\_\_\_ Day of \_\_\_\_\_ 2005

So Answers,



Chester A. Hawkins  
Sheriff

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA

(CIVIL DIVISION)

JAMES W. SWISTOCK, an adult individual )  
and RONALD R. BODLE, an adult individual, )  
PLAINTIFFS, )  
v ) No. 04 - 02032 C.D.  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
DEFENDANTS. )

**PRAECIPE TO ENTER APPEARANCE**

TO WILLIAM A. SHAW, PROTHONOTARY

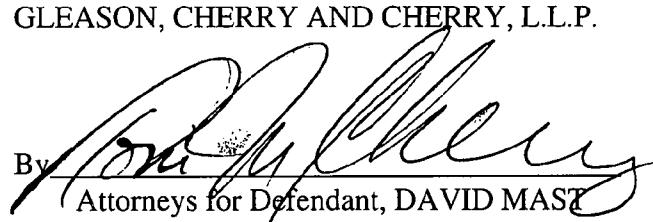
Sir:

Kindly enter our appearance on behalf of Defendant, DAVID MAST, in the above-captioned case.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By

  
John P. Cherry  
Attorneys for Defendant, DAVID MAST

Dated: February 10, 2005

**FILED**

6 FEB 11 2005  
07:20 AM  
William A. Shaw  
Prothonotary/Clerk of Courts  
5 cent to ATFZ

**FILED**

**FEB 11 2005**

William A. Shaw  
Prothonotary/Clerk of Courts

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

JAMES W. SWISTOCK, an adult individual  
and RONALD R. BODLE, an adult individual,

PLAINTIFFS,

v.

DAVID MAST, an adult individual,  
OLIN L. LONDON, an adult individual, and  
ANN MARIE WITHEROW, individually and  
as Administrator of the Estate of Gerald Witherow,

DEFENDANTS.

) No. 04 - 02032 C.D.  
)  
) In Equity and at Law  
)  
) Type of Pleading: PRELIMINARY  
) OBJECTIONS OF DEFENDANT,  
) DAVID MAST, TO PLAINTIFFS'  
) COMPLAINT  
)  
) Filed on Behalf of: Defendant, DAVID  
) MAST  
)  
) Counsel of Record for this Party:  
)  
) TONI M. CHERRY, ESQ.  
) Supreme Court No. 30205  
)  
) GLEASON, CHERRY AND  
) CHERRY, L.L.P.  
) Attorneys at Law  
) P. O. Box 505  
) One North Franklin Street  
) DuBois, PA 15801  
)  
) (814) 371-5800

FILED

64 FEB 11 2005  
07:22 PM  
William A. Shaw  
Prothonotary/Clerk of Courts  
5 cent to ATM

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

JAMES W. SWISTOCK, an adult individual )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 ) No. 04 - 02032 C.D.  
v. )  
 ) In Equity and at Law  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )

**PRELIMINARY OBJECTIONS OF DEFENDANT,  
DAVID MAST, TO PLAINTIFFS' COMPLAINT**

Defendant, DAVID MAST, by his undersigned attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., preliminarily objects to Plaintiffs' Complaint as follows:

**I. Preliminary Objection Raising Failure to Conform to Law  
or Rule of Court Pursuant to Pa. R.C.P. 1028(a)(2)**

1. Plaintiffs' Complaint alleges a cause of action against Defendant, DAVID MAST, on the grounds that Defendant, DAVID MAST, cut timber belonging to the Plaintiffs without the permission of the Plaintiffs.
2. Attached to Plaintiffs' Complaint as Exhibit "A" is a Timber Sale Agreement between Defendant and Ann Witherow, whereby Ann Witherow, Executrix, is listed as the landowner and whereby she, as such landowner, guarantees her title to said timber.

3. That Plaintiffs' cause of action is based upon their claims of ownership of the timber that is the subject of the Agreement of Sale between Ann Witherow and Defendant, DAVID MAST.

4. That Pa. R.C.P. 1019(a) requires that the material facts on which a cause of action is based shall be stated in a concise and summary form.

5. That Pa. R.C.P. 1019(i) requires that when any claim is based upon a writing, a copy of that writing or material part thereof must be attached to the Complaint.

6. That Plaintiffs have failed to attach their chain of title or any deed which would evidence their ownership of the timber or any other proof of their right to bring the subject action in violation of the pleading rules set forth at Pa. R.C.P. 1019.

WHEREFORE, Defendant, DAVID MAST, respectfully requests that the Complaint against him be stricken and the action against him be dismissed.

**II. Preliminary Objection to Count II of Plaintiffs' Complaint  
Raising Legal Insufficiency Pursuant to Pa. R.C.P. 1028(a)(4) (Demurrer)**

7. Count II of Plaintiffs' Complaint against Defendant, DAVID MAST, contains a request for an accounting in equity of proceeds from the sale of timber.

8. That the action known as an accounting in equity has been abolished. (See Pa. R.C.P. 1529, 1530 noting the same were rescinded on December 16, 2003, effective July 1, 2004.)

9. A plaintiff is entitled to an accounting whenever it is alleged that the opposing party has received monies as an agent, trustee, or in any other capacity in which he or she is bound to account to the other. (14 Standard Pennsylvania Practice 2d, Section 81:3)

10. That Plaintiffs' Complaint alleges no relationship with Defendant, DAVID MAST, entitling Plaintiffs to an accounting from DAVID MAST.

11. That Count II of Plaintiffs' Complaint fails to state a cause of action against Defendant, DAVID MAST, upon which relief can be granted.

WHEREFORE, Defendant, DAVID MAST, respectfully requests that Your Honorable Court sustain his Preliminary Objections by way of a demurrer and dismiss Count II of Plaintiffs' Complaint.

**III. Preliminary Objection Pursuant to Pa. R.C.P. 1028(a)(4)  
in the Form of a Demurrer to Count III of Plaintiffs' Complaint**

12. Count III of Plaintiffs' Complaint is a request for an injunction.

13. A party seeking an injunction must establish that the right to relief is clear, there is an urgent necessity to avoid an injury that cannot be compensated for by damage, and a greater injury will result from refusing, rather than granting the relief requested. See Garber v. Pennsylvania Department of Corrections Secretary, 851 A.2d 222 (Pa.Cmwlth.Ct. 2004).

14. Plaintiffs' Complaint contains no allegations to support a conclusion that Plaintiffs' right to relief is clear.

15. Plaintiffs' Complaint fails to allege facts supporting a conclusion that there is an urgent necessity to avoid any injury that could not be compensated for by damages and, in fact, Plaintiffs' only demand for relief is in the form of money damages.

16. Plaintiffs have failed to aver facts which would establish to Your Honorable Court that the greater injury will result from refusing, rather than granting the relief requested.

17. That Plaintiffs' Count III for injunctive relief fails to set forth a cause of action against Defendant, DAVID MAST, upon which relief can be granted.

WHEREFORE, Defendant, DAVID MAST, respectfully requests that Your Honorable Court sustain his Preliminary Objections by way of demurrer to Count III of Plaintiffs' Complaint and dismiss Count III of Plaintiffs' Complaint.

**IV. Preliminary Objection Pursuant to Pa. R.C.P. 1028(a)(4) by way of a Demurrer to Count V of Plaintiffs' Complaint**

18. That Count V of Plaintiffs' Complaint sounds in a cause of action in conversion pursuant to the provisions of 68 P.S. §§115 and 116.

19. That 68 P.S. §§115 and 116 sets forth the obligations of one co-tenant to the other co-tenant upon the sale of timber without the consent of the second co-tenant.

20. That Plaintiffs' Complaint does not allege that Defendant, DAVID MAST, is a co-tenant and, in fact, the allegations contained in Paragraphs 7, 8, 9 and 10 make it clear that Defendant, DAVID MAST, is not a co-tenant subject to the provisions of 68 P.S. §§115 or 116.

21. That Plaintiffs cannot maintain a cause of action against Defendant MAST on the basis of 68 Pa. C.S.A. §§115 and 116 when they have not averred that he is a co-tenant.

22. That Plaintiffs' Count V alleging a cause of action in conversion under 68 Pa. C.S.A §§115 and 116 fails to state a cause of action against Defendant MAST on which relief can be granted.

WHEREFORE, Defendant, DAVID MAST, respectfully requests Your Honorable Court to dismiss Count V of Plaintiffs' Complaint.

**V. Preliminary Objection to Count V of Plaintiffs' Complaint Raising  
Insufficient Specificity Pursuant to Pa. R.C.P. 1028(a)(3)**

23. Paragraph 44 of Plaintiffs' Complaint avers that Defendant MAST exercised dominion and control over the timber and proceeds from the sale of said timber pursuant to the terms of a Timber Agreement with Defendant WITHEROW.

24. That in Paragraph 47, Plaintiffs allege that Defendant MAST'S behavior was either deliberate or negligent but provide no specific allegations to support such averments.

25. That Pa. R.C.P. 1019 require that (a) the materials facts on which a cause of action is based be stated in a concise and summary form.

26. That the aforementioned Paragraph 44 of Plaintiffs' Complaint fails to set forth with sufficient specificity how Defendant MAST'S actions were deliberate in light of the fact that Plaintiffs have alleged that Defendant acted pursuant to a contract so as to cause him to be subject to damages under 42 Pa. C.S.A. §8311(a)(2)(i).

27. That Paragraph 44 of Plaintiffs' Complaint fails to set forth with sufficient specificity in what ways the Defendant MAST was negligent in his actions in light of Plaintiffs' pleading that Defendant acted pursuant to a contract so as to cause him to be subject to damages under 42 Pa. C.S.A. §8311(a)(2)(ii).

28. In Paragraph 48 of Plaintiffs' Complaint, they allege that Defendant MAST'S conversion was "intentional and outrageous".

29. Paragraph 48 fails to set forth with any specificity how the conduct of Defendant MAST rose to the level of intentional and outrageous.

30. Plaintiffs' Complaint lacks sufficient specificity to apprise Defendant MAST of the issues to be litigated, to allow him to adequately prepare and assert defenses to Plaintiffs'

allegations, and/or to identify and join any potentially responsible parties as additional defendants.

WHEREFORE, Defendant, DAVID MAST, respectfully requests that Your Honorable Court order Plaintiff to more specifically plead the averments contained in Paragraphs 44 and 48 of their Complaint.

**VI. Preliminary Objection Raising Legal Insufficiency of Count VII  
of Plaintiffs' Complaint Under Pa. R.C.P. 1028(a)(4)**

31. Count VII of Plaintiffs' Complaint allegedly sets forth an action at law for civil conspiracy.

32. In order to state a cause of action for civil conspiracy under Pennsylvania law, a complaint must allege the existence of all elements necessary to such a cause of action. Baker v. Rangos, 229 Pa.Super. 333, 351, 324 A.2d 498, 506 (1974).

33. A cause of action for conspiracy requires: (1) a combination of two or more persons acting with a common purpose to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose; (2) an overt act done in pursuance of the common purpose; and (3) actual legal damage.

34. Plaintiffs' Complaint must allege facts which, if proven, will support an inference of combination and intent. See Baker v. Rangos, 229 Pa.Super. 333, 324 A.2d 498 (1974).

35. Plaintiffs' Complaint fails to aver meetings, conferences, telephone calls, joint filings, cooperation, consolidation or joint licensing or any other manner in which a conspiratorial scheme was devised and carried out and is thus insufficient to state either the conspiratorial agreement or the requisite intent to cause injury necessary to state a cause of

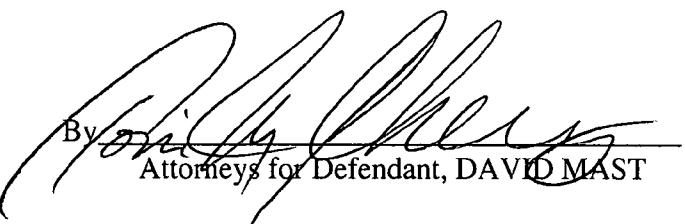
action on a civil conspiracy theory. See Burnside v. Abbott Laboratories, 351 Pa.Super. 264, 505 A.2d 973 (1985).

36. That Count VII of Plaintiffs' Complaint fails to state a cause of action in civil conspiracy upon which relief can be granted.

WHEREFORE, Defendant, DAVID MAST, respectfully requests Your Honorable Court to grant his Preliminary Objection by way of demurrer and dismiss Count VII of Plaintiffs' Complaint.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

  
By John P. Gleason  
Attorneys for Defendant, DAVID MAST

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

JAMES W. SWISTOCK, an adult individual )  
and RONALD R. BODLE, an adult individual, )  
 )  
 )  
PLAINTIFFS, )  
 ) No. 04 - 02032 C.D.  
v. )  
 ) In Equity and at Law  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11<sup>TH</sup> day of February, 2005, a certified copy of the Preliminary Objections of Defendant, David Mast, to Plaintiffs' Complaint was served upon the following persons by mailing the same to them by United States First Class Mail, Postage Prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

THERON G. NOBLE, ESQ.  
Ferraraccio & Noble  
Attorneys at Law  
301 East Pine Street  
Clearfield, PA 16830

JOHN R. CARFLEY, ESQ.  
Attorney at Law  
P. O. Box 249  
Philipsburg, PA 16866

JOHN SUGHRUE, ESQ.  
Attorney at Law  
23 North Second Street  
Clearfield PA 16830

GLEASON, CHERRY AND CHERRY, L.L.P.

By

Attorneys for Defendant, DAVID MAST

Dated: February 11, 2005

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

JAMES W. SWISTOCK, an adult individual :  
and RONALD R. BODLE, an adult individual :  
Plaintiffs :  
:  
vs. : No. 04-02032-CD  
:  
DAVID MAST, an adult individual :  
OLAN L. LONDON, an adult individual, :  
and ANN MARIE WITHEROW, individually :  
and as Administrator of the Estate of :  
Gerald Witherow, :  
Defendants :  
:

SCHEDULING ORDER

AND NOW, this 18<sup>th</sup> day of February, 2005, upon  
consideration of the Preliminary Objections filed by  
Defendant, Olan London, a rule is hereby issued upon Plaintiff to  
Show Cause why the Motion should not be granted. Rule returnable  
the 23 day of February, 2005, at 7:30 A.M. in  
Courtroom Number 1, Clearfield, Pennsylvania, for  
hearing thereon.

Judith Annunziata  
J.

FILED   
09:16 04/22/2005  
/cc attorney  
/cc paralegal  
/cc court reporter  
/cc clerk  
/cc sheriff  
FCB 22 2005

William A. Shaw  
Prothonotary

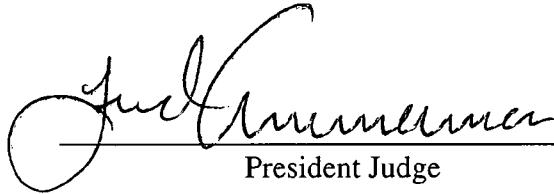
IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA  
(CIVIL DIVISION)

JAMES W. SWISTOCK, an adult individual )  
and RONALD R. BODLE, an adult individual, )  
PLAINTIFFS, )  
v. ) No. 04 - 02032 C.D.  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
DEFENDANTS. )

**O R D E R**

AND NOW, this 18 day of February, 2005, Defendant, DAVID MAST, having filed Preliminary Objections to Plaintiffs' Complaint, an argument on said Preliminary Objections is hereby scheduled for the 23 day of February, 2005, at 9:30 o'clock A.M. in Courtroom No. 1 of the Clearfield County Courthouse, Second Floor, Clearfield, Pennsylvania.

BY THE COURT:

  
\_\_\_\_\_  
President Judge

**FILED**   
O 9:10 AM 13 Allegheny  
1cc Judge  
1cc Clerk  
2cc Clerk  
FEB 22 2005

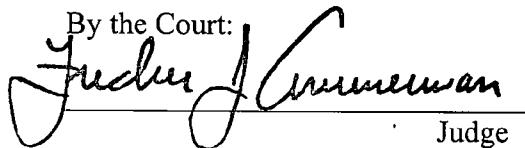
William A. Shaw  
Prothonotary

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. ) No. 04-2032-CD  
 )  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )

**SCEDULING ORDER**

AND NOW, this 22<sup>nd</sup> day of February, 2005, on Motion of Defendants, Argument on Preliminary Objections filed by Defendants shall be heard on the 23 day of February, 2005 at 9:30 o'clock A.m. in Court Room No. 1, Clearfield County Courthouse, 1 North 2<sup>nd</sup> Street, Clearfield, PA 16830.

By the Court:  
  
\_\_\_\_\_  
Judge

FILED  
6 10:27 AM 2005  
FEB 22 2005

William A. Shaw  
Prothonotary

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

JAMES W. SWISTOCK, an adult individual,  
and RONALD R. BODLE, an adult individual,

**PLAINTIFFS,**

v.

DAVID MAST, an adult individual,  
OLIN L. LONDON, an adult individual, and  
ANN MARIE WITHEROW, individually and  
as Administrator of the Estate of Gerald Witherow,

**DEFENDANT.**

Type of Pleading:

**Plaintiffs Reply to Preliminary  
Objections (filed by Defendant  
London)**

Filed By:

Plaintiff

Counsel of Record:

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.#: 55942

**FILED**

6<sup>th</sup> FEB 23 2005  
m/12:30/05  
William A. Shaw  
Prothonotary/Clerk of Courts  
no Court 10012

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
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v. )  
 )  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )  
 )

No. 04- 02032 -CD  
In Equity and at Law

**PLAINTIFFS' REPLY TO PRELIMINARY OBJECTIONS**  
(filed by Defendant London)

AND NOW, comes the Plaintiffs, James W. Swistock and Ronald R. Bodle, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of their REPLY TO PRELIMINARY OBJECTIONS (filed by Defendant London):

- 1 - 4. Said averments are mere recitals and recapitulations of averments contained in Plaintiffs' CIVIL COMPLAINT. As such, the same speak for themselves and no response is deemed necessary.
5. The same is a legal conclusion for which no response is deemed necessary.
6. The same is a legal conclusion for which no response is deemed necessary.
7. The same is a legal conclusion for which no response is deemed necessary.

Demurrer

8. Plaintiffs hereby incorporate their responses to averments 1- 7, inclusive, as of the same were again fully set forth at length.
9. The same is a legal conclusion for which no response is deemed necessary.

**WHEREFORE, Plaintiffs request that Defendant London's request for a demurrer be DENIED.**

Demurrer-Civil Conspiracy

10. Plaintiffs hereby incorporate their responses to averments 1- 7, inclusive, as of the same were again fully set forth at length.
11. The same is a legal conclusion for which no response is deemed necessary.
12. The same is a legal conclusion for which no response is deemed necessary.
13. The same is a legal conclusion for which no response is deemed necessary.
14. Denied. It is DENIED that Plaintiffs have anywhere indicated in their CIVIL COMPLAINT indicated that Defendant London acted "lawfully" in any manner. Put another way, said defendant was primarily involved in a combination of three persons whose actions resulted in the Plaintiffs' property interests being invaded without either their consent or knowledge.
15. The same is a legal conclusion for which no response is deemed necessary.
16. The same is a legal conclusion for which no response is deemed necessary.
17. The same is a legal conclusion for which no response is deemed necessary.

**WHEREFORE, Plaintiffs request that Defendant London's request for a demurrer be DENIED.**

Motion to Dismiss

18. Plaintiffs hereby incorporate their responses to averments 1- 17, inclusive, as of the same were again fully set forth at length.
19. The same is a legal conclusion for which no response is deemed necessary.
20. The same is a legal conclusion for which no response is deemed necessary.
21. The same is a legal conclusion for which no response is deemed necessary.
22. Said averment is a mere recital and recapitulation of the averment contained in Plaintiffs' CIVIL COMPLAINT. As such, the same speaks for itself and no response is deemed necessary.

23. Said averment is a mere recital and recapitulation of the averment contained in Plaintiffs' CIVIL COMPLAINT. As such, the same speaks for itself and no response is deemed necessary.
24. The same is a legal conclusion for which no response is deemed necessary.
25. The same is a legal conclusion for which no response is deemed necessary
26. The same is a legal conclusion for which no response is deemed necessary.

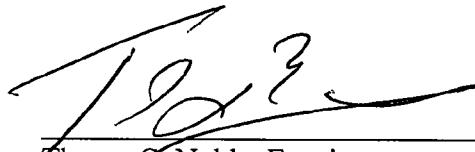
**WHEREFORE, Plaintiffs request that Defendant London's request for a MOTION TO DISMISS be DENIED.**

Demurrer

27. Plaintiffs hereby incorporate their responses to averments 1- 26, inclusive, as of the same were again fully set forth at length.
28. Said averment is a mere recital and recapitulation of the averment contained in Plaintiffs' CIVIL COMPLAINT. As such, the same speaks for itself and no response is deemed necessary.
29. Said averment is a mere recital and recapitulation of the averment contained in Plaintiffs' CIVIL COMPLAINT. As such, the same speaks for itself and no response is deemed necessary.
30. Admitted in part, Denied in part. It is ADMITTED that Plaintiffs did not attach an affidavit to their complaint. However, they did attach a VERIFICATION verifying to the facts and circumstances, including the necessity of injunctive relief. Therefore, the implications of said averment is DENIED. Furthermore, Defendant London has cited no authority, more importantly none exists, that the request for injunctive relief requires some type of "super" verification.

**WHEREFORE, Plaintiffs request that Defendant London's request for a DEMURRER be DENIED.**

Respectfully Submitted,



---

Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
PLAINTIFFS, )  
v. ) No. 04- 02032 -CD  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
DEFENDANTS. )  
In Equity and at Law

**PLAINTIFFS' CERTIFICATE OF SERVICE**

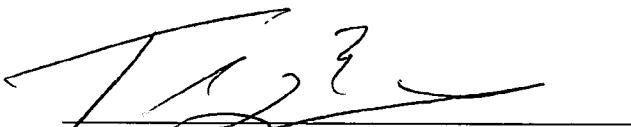
I, Theron G. Noble, Esquire of Ferraraccio & Noble, counsel for Plaintiffs, does hereby certify this 22nd day of February, 2005, that I did send a true and correct copy of Plaintiffs' REPLY TO PRELIMINARY OBJECTIONS (filed by Defendant London) to the below indicated persons, being all counsels of record, via United States Mail, first class, postage prepaid.

John R. Carfley, Esquire  
Counsel for Defendant London  
P.O. Box 249  
Philipsburg, PA 16866

Toni M. Cherry, Esquire  
Counsel for Defendant Mast  
P.O. Box 505  
DuBois, PA 15801

John Sughrue, Esquire  
Counsel for Defendant Witherow  
23 N. 2nd Street  
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

# FILED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

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*1cc att. of. chancery*  
*daughter, carrying*

JAMES W. SWISTOCK and  
RONALD R. BODLE

William A. Shaw  
Prothonotary

VS. : NO. 04-2032-CD

DAVID MAST, OLAN L. LONDON, and :  
ANN MARIE WITHEROW, ind. and :  
Administrator of the Estate of :  
Gerald Witherow :  
:

## ORDER

NOW, this 23rd day of February, 2005, being the date set for hearing relative request for injunction and accounting as to Defendants Olan L. London and Ann Marie Witherow, Administrator of the Estate of Gerald Witherow; upon agreement of the parties, it is the ORDER of this Court as follows:

1. Counsel for the Witherow Estate shall cause the amount of \$17,519.57 to be held in Attorney John Sughrue's escrow account and not be released without written agreement of the parties or Order of Court;

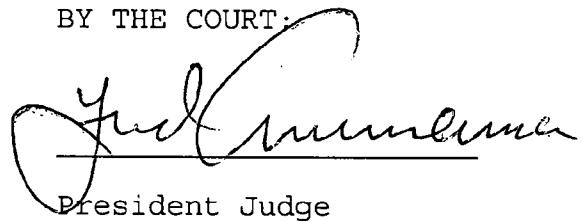
2. Counsel for the Estate shall provide an accounting to Plaintiffs relative receipt of the monies for the timber and disbursements previously made therefrom;

3. Counsel for Olan L. London shall hold the amount of \$2,400.00 in counsel's escrow account, not to be released without written agreement of the parties or Order of Court;

4. Plaintiffs' request for any injunctive relief

against Defendant David Mast is hereby denied. Any request for an "accounting" from Defendant Mast shall be done by the Plaintiffs proceeding with the normal discovery processes.

BY THE COURT:



A handwritten signature in black ink, appearing to read "Judge Schubert". The signature is fluid and cursive, with "Judge" written in a smaller, more formal script above "Schubert".

President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JAMES W. SWISTOCK and  
RONALD R. BODLE

VS.

DAVID MAST, OLAN L. LONDON, and  
ANN MARIE WITHEROW, ind. and  
Administrator of the Estate of  
Gerald Witherow

: NO. 04-2032-CR  
: 04-2032-CR

**FILED**

6M 0 2:16 PM 2/24/05  
cc: Noble  
cc: Cherry  
cc: Subtree  
cc: conspiracy

FEB 24 2005

O R D E R

William A. Shaw  
Prothonotary

NOW, this 23rd day of February, 2005, following  
argument on the Preliminary Objections filed on behalf of all  
Defendants, it is the ORDER of this Court as follows:

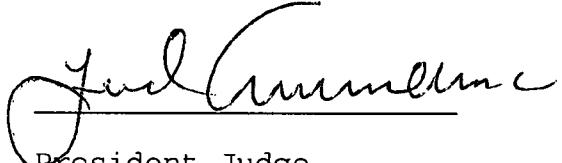
1. Defendants' Preliminary Objections requesting  
that the Plaintiff set forth a complete chain of title and  
attach a copy of each Plaintiff's deed to the complaint is  
denied;

2. Defendants' Preliminary Objections requesting  
that the Plaintiffs plead more specifically the allegations that  
the Defendants London and Witherow engaged in a "civil  
conspiracy" are hereby granted. Plaintiffs shall have no more  
than thirty (30) days from this date in which to file an Amended  
Complaint setting forth the specific facts upon which they base  
the alleged civil conspiracy and any outrageous and/or reckless  
conduct relating to requests for punitive damages and attorney's  
fees;

3. Any Preliminary Objections to the Plaintiffs' request for injunctive relief and accounting are dismissed as moot;

4. Defendant Mast's Preliminary Objection as set forth in Count V is hereby dismissed;

BY THE COURT:

  
\_\_\_\_\_  
President Judge

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

JAMES W. SWISTOCK, an adult individual, :  
and RONALD R. BODLE, an adult individual, :  
PLAINTIFFS, :  
: No. 04- 2032 -CD  
v. : In Equity and at Law  
DAVID MAST, an adult individual, :  
OLIN L. LONDON, an adult individual, and :  
ANN MARIE WITHEROW, individually and :  
as Administrator of the Estate of Gerald Witherow, :  
DEFENDANT. :  
: Type of Pleading:  
: AMENDED COMPLAINT  
: Filed By:  
: Plaintiff  
: Counsel of Record:  
: Theron G. Noble, Esquire  
: Ferraraccio & Noble  
: 301 East Pine Street  
: Clearfield, PA 16830  
: (814)-375-2221  
: PA I.D.#: 55942

FILED NO  
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MAR 16 2005 (6K)

William A. Shaw  
Prothonotary/Clerk of Courts

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
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PLAINTIFFS, )  
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v. )  
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DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )

No. 04- 02032 -CD  
In Equity and at Law

**NOTICE TO DEFEND**

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIM SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY CLAIM IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF(S). 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 AN ATTORNEY, OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

David Meholic, Court Administrator  
c/o Clearfield County Courthouse  
2nd and Market Streets  
Clearfield, PA 16830  
(814)-765-2641

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
PLAINTIFFS, )  
v. )  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
DEFENDANT. )  
No. 04- 2032 -CD  
In Equity and at Law

**AMENDED CIVIL COMPLAINT**

**NOW COMES the plaintiffs, James W. Swistock and Ronald R. Bodle, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of their CIVIL COMPLAINT:**

**The Parties**

1. First Plaintiff is James W. Swistock, hereinafter "Swistock", an adult individual who does, and at all material times did, reside at 449 Hunter Avenue, State College, Centre County, Pennsylvania.
2. Second Plaintiff is Ronald R. Bodle, hereinafter "Bodle", an adult individual who does, and at all material times did reside at 617 Nichols Street, Clearfield, Clearfield County, Pennsylvania.
3. That first Defendant is David Mast, hereinafter "Mast", who does, and upon information and belief, at all relevant and material times did reside at Rte. 1, Box 172-B, Luthersburg, Clearfield County, Pennsylvania.
4. The second defendant is Olin L. London, hereinafter "London", who does, and upon information and belief at all material and relevant times, did reside at 320 Sloney Lonesome Rd., Luthersburg, Clearfield County, Pennsylvania.

5. That third and last defendant is Ann Marie Witherow, hereinafter "Witherow", in her individual capacity and as Administrator of the Estate of Gerald Witherow, a duly probated estate in Clearfield County, Pennsylvania, who does, and upon information and belief at all relevant and material times did reside in Olanta, Clearfield County, Pennsylvania, with mailing address of P.O. Box 51, Olanta PA 16863.

Background Information

6. That this matter involves the removal of timber from premises best described as 70 acres situated in Knox Township, Clearfield County, Pennsylvania, identified as Tax Map No. 122-H13-19, hereinafter referred to as "the subject premises".

7. That Defendant Mast, did, and upon information and belief, does operate a timbering business, called David Mast & Son Logging.

8. That upon information and belief, a transaction was entered into by and between Defendants Mast and Witherow, as Administrator of the Estate of Gerald Witherow, on or about April 19, 2002, whereby Mast was to and did perform timbering on the subject premises, as contained in a certain contract entitled "TIMBER SALE AGREEMENT". A true and correct copy of said agreement is attached hereto as Exhibit "A".

9. That the deal between Defendants Mast and Witherow was orchestrated by Defendant London, for which he was paid a fee by Defendant Witherow, of \$2,400, being 10% (ten percent) of the consideration paid by Defendant Mast to Defendant Witherow.

10. That upon information and belief, the timbering operations performed by Mast on the subject premises ended sometime in the spring of 2004.

11. That as a result of the timbering operations performed by Mast on the subject premises, timber having fair market value of approximately \$108,752.84, in an amount to be more fully determined at time of trial, was harvested by cutting down standing trees and removing the resulting timber from the subject premises. Attached hereto as Exhibit "B" is a true and correct copy of the forester's report establishing a value for the timber.

12. That at all relevant and material times, the subject premises was jointly owned by Plaintiffs Swistock and Bodle and the Estate of Gerald Witherow.

13. That upon information and belief, the Estate of Gerald Witherow owned a 1/2 interest in the subject premises at all relevant and material times.

14. That Plaintiff Swistock, at all relevant and material times, owned a 1/4 interest in the subject premises.
15. That Plaintiff Bodle also owned a 1/4 interest in the premises at all relevant and material times.
16. That the ownership rights by Plaintiffs Swistock and Bodle are, and at all relevant and material times, were reflected in the records of the Clearfield County Recorder's Office, by the recording and filing of their various deeds with Plaintiff Swistock's Deed being recorded at Volume 897 and Page 506, while Plaintiff Bodle's deed is recorded at Volume 751, Page 538.
17. That neither Plaintiff Swistock nor Bodle consented, or were even aware, of the timbering operation being performed by Defendant Mast nor that Defendant Witherow had entered into any type of agreement with Defendant Mast.
18. That upon information and belief, Defendant Witherow, at all relevant and material times knew that the subject premises were not completely owned by the Estate of Gerald Witherow and that others, namely the Plaintiffs in this action, owned the other combined 1/2 interest.
19. That upon information and belief, Defendant Mast, at all relevant and material times knew that the subject premises were not completely owned by the Estate of Gerald Witherow.
20. That upon information and belief, Defendant London, at all relevant and material times, knew that the subject premises were not completely owned by the Estate of Gerald Witherow.
21. That upon information and belief, Defendant Witherow informed Defendant Mast prior to, or contemporaneous with the execution of the certain "Timber Sale Agreement", that the Estate of Gerald Witherow only owned a 1/2 interest in the subject premises.
22. That neither Plaintiff Swistock or Bodle received any compensation for the harvesting of the timber from the subject premises.

Count I: In Equity

Request for an Accounting  
v. Defendant Witherow

23. That the averments of paragraphs 1 - 22, inclusive, are hereby incorporated as if again fully set forth at length.
24. That based upon their ownership interests in the subject premises, Plaintiffs have a clear and

unambiguous right to at minimal 1/2 of the proceeds from the harvesting of the timber.

25. That upon information and belief, Defendant Witherow, through the Estate of Gerald Witherow, has some of the cash from the above referenced timber transaction and has distributed some of the proceeds.

26. That Plaintiffs are entitled to an accounting as to the proceeds from the sale of the timber on the subject premises by Defendant Witherow to Defendant Mast.

**WHEREFORE, Plaintiffs request that Defendant Witherow be ORDERED to give to Plaintiffs an accounting of the proceeds from the above referenced transaction.**

Count II: In Equity

Request for An Accounting  
v. Defendant Mast

27. That the averments of paragraphs 1 - 26, inclusive, are hereby incorporated as if again fully set forth at length.

28. That based upon their ownership interests in the subject premises, Plaintiffs have a clear and unambiguous right to one half of the timber that was on the subject premises at the time of the above referenced transaction.

29. That upon information and belief, Defendant Mast converted the Plaintiff's timber into cash.

30. That Plaintiffs are entitled to an accounting as to the proceeds from the sale of the timber on the subject premises by Defendant Mast.

**WHEREFORE, Plaintiffs request that Defendant Mast be ORDERED to give to Plaintiffs an accounting of the proceeds from the above referenced transaction.**

Count III: In Equity

Request for Injunctive Relief  
v. Defendants Mast and Witherow

31. That the averments of paragraphs 1 - 30, inclusive, are hereby incorporated as if again fully set forth at length.

32. That any proceeds which Defendant Witherow or the Estate of Gerald Witherow has in her or its possession should be paid into court pending the outcome of this litigation.
33. That as to those proceeds, 1/4 of those proceeds should be immediately paid to Plaintiff Swistock while another 1/4 should be immediately paid to Plaintiff Bodle.
34. That as to any proceeds which Defendant Mast has which remain from the conversion of the timber, such proceeds should be paid into court pending the outcome of this litigation.
35. That Plaintiffs believe, and therefore aver, that each of these defendants are insolvent or judgment proof, and that without this remedy that Plaintiffs would suffer irreparable harm by these defendants and their acts as herein delineated.

**WHEREFORE, Plaintiffs request that this Honorable Court Order as follows:**

- A. That Defendant Witherow pay into Court an amount to be determined, representing all of the unspent proceeds from the sale of the Plaintiffs' timber to Defendant Mast;**
- B. That of the money paid into Court by Defendant Witherow, that 1/4 of those proceeds be paid to Plaintiff Swistock;**
- C. That another 1/4 of those proceeds be paid to Plaintiff Bodle;**
- D. That Defendant Mast pay into Court an amount to be determined, representing all of the proceeds from the conversion of the timber on the subject premises; and**
- E. Any other remedy the Court determines to be fair and just under the attenuate circumstances.**

Count IV: At Law  
Conversion  
v. Defendant Witherow

36. That the averments of paragraphs 1 - 35, inclusive, are hereby incorporated as if again fully set forth at length.
37. That at all relevant and material times, Plaintiffs each owned a 1/4 interest in the subject premises and the timber which sat upon the premises.

38. That said defendant exercised dominion and control over the timber, to the disregard of Plaintiff's ownership interests, by entering into and carrying out the terms of the certain "timber agreement" with Defendant Mast.
39. That pursuant to 68 Pa.C.S.A. §115, Defendant Witherow did not have the right to cause the timber on the subject premises to be cut and removed without the consent of Plaintiffs.
40. That pursuant to 68 Pa. C.S.A. §116, Defendant Witherow did not have the right to sell the timber on the subject premises without the consent of the Plaintiffs.
41. That 42 Pa.C.S.A. §8311, Defendant Witherow is liable to the Plaintiffs for (i) the value of the timber on the subject premises; (ii) a multiple of said value if it is determined the conversion was either deliberate or negligent, which upon information and belief, Plaintiffs' hereby aver; (iii) the forester's usual and customary reasonable charges in determining the timber's value; (iv) and survey costs if necessary each in an amount to be determined at time of trial.

**WHEREFORE, Plaintiffs' request that judgment be entered in their favor and against Defendant Witherow, individually and as administrator of the Estate of Gerald Witherow, in excess of \$20,000 together with costs and interest.**

Count V: At Law  
Conversion  
v. Defendant Mast

42. That the averments of paragraphs 1 - 41, inclusive, are hereby incorporated as if again fully set forth at length.
43. That at all relevant and material times, Plaintiffs each owned a 1/4 interest in the subject premises and the timber which sat upon the premises.
44. That said defendant exercised dominion and control over the timber and the resulting cash proceeds from the sale of said timber, to the disregard of Plaintiff's ownership interests, by entering into and carrying out the terms of the certain "timber agreement" with Defendant Witherow.
45. That pursuant to 68 Pa.C.S.A. §115, Defendant Mast did not have the right to cut and remove the timber from the subject premises without the consent of Plaintiffs.

46. That pursuant to 68 Pa. C.S.A. §116, Defendant Mast did not have the right to sell the timber on the subject premises without the consent of the Plaintiffs.

47. That 42 Pa.C.S.A. §8311, Defendant Mast is liable to the Plaintiffs for (i) the value of the timber on the subject premises; (ii) a multiple of said value if it is determined the conversion was either deliberate or negligent, which upon information and belief, Plaintiffs' hereby aver; (iii) the forester's usual and customary reasonable charges in determining the timber's value; (iv) and survey costs if necessary each in an amount to be determined at time of trial.

48. That Defendant Mast's conversion was intentional and outrageous to the point he should also be liable for Plaintiffs' reasonable attorney's fees and should have punitive damages, in an amount to be determined, awarded against him to prevent his and others similarly outrageous conduct in the future.

**WHEREFORE, Plaintiffs' request that judgment be entered in their favor and against Defendant Mast in excess of \$20,000 together with costs, interest, attorney's fees and punitive damages.**

Count VI: At Law  
Conversion  
v. Defendant London

49. That the averments of paragraphs 1 - 48, inclusive, are hereby incorporated as if again fully set forth at length.

50. That at all relevant and material times, Plaintiffs each owned a 1/4 interest in the subject premises and the timber which sat upon the premises.

51. That said defendant exercised dominion and control over the a portion of the cash proceeds from the sale of the timber, to the disregard of Plaintiff's ownership interests.

52. That pursuant to 68 Pa.C.S.A. §115, Defendant London did not have the right to cause the timber on the subject premises to be cut and removed without the consent of Plaintiffs.

53. That pursuant to 68 Pa. C.S.A. §116, Defendant London did not have the right facilitate the sale of the timber on the subject premises without the consent of the Plaintiffs.

54. That 42 Pa.C.S.A. §8311, Defendant London is liable to the Plaintiffs for (i) the value of the

timber on the subject premises; (ii) a multiple of said value if it is determined the conversion was either deliberate or negligent, which upon information and belief, Plaintiffs' hereby aver; (iii) the forester's usual and customary reasonable charges in determining the timber's value; (iv) and survey costs if necessary each in an amount to be determined at time of trial.

**WHEREFORE, Plaintiffs' request that judgment be entered in their favor and against Defendant London, in an amount in excess of \$20,000 together with costs and interest.**

Count VII: at Law

Civil Conspiracy

v. Defendants Witherow, Mast and London

55. That the averments of paragraphs 1 - 54, inclusive, are hereby incorporated as if again fully set forth at length.

56. That the timber on the subject premises was intentionally cut, harvested and removed without the consent of Plaintiffs Swistock and Bodle and was done so intentionally by the defendants.

57. That Defendant Mast knew, or should have known, that Plaintiffs Swistock and Bodle had an interest in the subject premises and that the timber on said premises was not legally able to be cut and/or removed without their consent.

58. That Defendant London knew, or should have known, that Plaintiffs Swistock and Bodle had an interest in the subject premises and that the timber on said premises was not legally able to be cur and/or removed without their consent.

59. That Defendant Witherow knew, or should have known, that Plaintiffs Swistock and Bodle had an interest in the subject premises and that the timber on said premises was not legally able to be cur and/or removed without their consent.

60. That Defendant London acted as the agent of Defendant Mast in facilitating the cutting, harvesting and removal of the timber from the subject premises.

61. In the alternative, Defendant London acted as the agent of Defendant Witherow in facilitating the cutting, harvesting and removal of the timber from the subject premises.

62. That upon information and belief, Defendant Mast, knowing of Plaintiffs Swistock and Bodle's interest in the subject premises proceeded to cut, harvest and remove the timber with the

intent to do so without their consent.

63. That upon information and belief, Defendants London and Mast were reckless in failing to check the property records at the Clearfield County Courthouse prior to timbering the subject premises which if checked would have revealed Plaintiffs Swistock and Bodle's interest in the subject premises.

64. That upon information and belief, Defendant Mast has in the past acted in a pattern consistent with the actions herein, namely by securing the permission of one co-tenant, while he knows of other co-tenants' interests and proceeding to cut, harvest and remove timber, so as to defeat, without consent and without compensation, the other co-tenants' interest in the timber.

65. That the defendants all agreed to act in concert, as is evidenced by Exhibit "A" hereto and as herein pled, to cut, remove and harvest the timber in violations of 42 Pa.C.S.A. §8311; 68 Pa.C.S.A. §115 and 68 Pa.C.S.A. §116.

66. That Defendant Mast intentionally facilitated the conspiracy by (i) giving Defendant London the sum of \$24,000 cash to give to Defendant Witherow; (ii) producing a contract; (iii) charging Defendant London with the responsibility of paying Defendant Witherow and securing her signature on the contract and (iv) cutting, harvesting, removing and receiving the proceeds from the timber.

67. That Defendant London intentionally facilitated the conspiracy by (i) paying the \$24,000 cash to Defendant Witherow; (ii) securing her signature on the contract; (iii) delivering the executed contract to Defendant Mast and (iv) by accepting the sum of \$2,400 cash for his services.

68. That Defendant Witherow intentionally facilitated the conspiracy by (i) signing the contract attached as Exhibit "A"; and (ii) accepting the sum of \$24,000 cash for signing said contract.

69. That by transferring the sum of \$24,000 in cash, which upon information and belief, was done without the necessary reporting requirements prescribed by State and Federal laws, Defendants Witherow, London and Mast also facilitated the conspiracy by other unlawful means relating to violations of numerous money laundering statutes.

70. That for the reasons herein pled, the defendant acted with malice as to Plaintiffs Swistock and Bodle's legitimate property rights in the subject premises and the timber standing upon the premises.

71. That for the reasons herein pled, the Defendant acted in an outrageous manner as to Plaintiffs Swistock and Bodle's legitimate property rights in the subject premises and the timber standing

upon the premises.

72. That in so doing, Defendants are liable to Plaintiffs for (i) the timber's value; (ii) punitive damages and (iii) reasonable attorney's fees.

**WHEREFORE, Plaintiffs request that judgment be entered in their favor and against defendants, in an amount in excess of \$20,000 together with costs, interest and attorney's fees.**

Miscellaneous

73. That defendants' liability to Plaintiffs is joint and several.

74. That jurisdiction is proper.

75. That venue is proper.

Respectfully Submitted,



---

Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

DAVID MAST  
& SON LOGGING  
Rte. 1, Box 172-B  
Luthersburg, PA 15848

**TIMBER SALE AGREEMENT**

Made and entered into this day April 19, 2002  
between Landowner: Tom McHenry, Esq.

and Contractor: David Mast and Sons Logging enters  
into contract to buy timber as to the following agreement.

Contractor agrees to pay Twenty four Thousand Dollars  
\$24,000.00

and remove timber within a 2 year period.

The Contractor shall be responsible for any damage occurring beyond the limits of the sale area  
being caused by his operations, including severe deterioration of the access roads on the timber sale  
area. Reparation of damages shall be made as soon as practicable.

The Landowner guarantees title to the said timber and will defend it at his expense against any  
and all claims for taxes, mortgages, contracts and any other encumbrances.

The Landowner grants to the Contractor the freedom of entry and right-of-way on and across  
the area covered by this contract.

Small wood products, pulpwood, firewood, etc. from timber sale area only, may be removed  
by the Contractor as part of his normal operations. At the completion of operations, all wood left on  
the sale area shall be the property of the Landowner for his personal use and disposal.

LANDOWNER: Tom McHenry, Esq.

CONTRACTOR: David Mast and Sons Logging

Other specifications: Cut anything that makes sawlogs.

Exhibit "A"

Witness John L. Mast

Witness Mark L. Mast

# ADVANTAGE FORESTRY

RD2 Box 118  
Reynoldsville, PA 15851

Phn. 1-800-748-4855  
Phn. or Fax (814) 371-0155  
August 30, 2004

Jim Swistock  
Timber Trespass  
Knox Township, Clearfield County  
Parcel # H- 13-19

## Sawtimber

Species	# of Trees	Avg. Diameter	Volume/Tree	Total Volume
Cherry	410	16.1	185	75,839
Soft Maple	111	16.7	185	20,548
Hard Maple	67	17.2	201	13,490
Red Oak	61	19.2	280	17,099
White Oak	5	15.0	136	682
Poplar	4	15.6	182	726
Ash	7	19.4	261	1,830
White Pine	1	17.0	257	257
Hemlock	1	14.0	83	83
Basswood	1	17.0	257	257
Elm	1	22.0	386	386
Total	669	16.7	196	131,197

All trees tallied using International  $\frac{1}{4}$ " minus any defects.

Exhibit "B"

# ADVANTAGE FORESTRY

RD2 Box 118  
Reynoldsville, PA 15851

Phn. 1-800-748-4855  
 Phn. or Fax (814) 371-0155  
 August 30, 2004

Jim Swistock  
 Timber Trespass  
 Knox Township, Clearfield County  
 Parcel # H- 13-19

## Diameters

Dia.	Che.	SM	HM	RO	WO	Pop.	Ash	WP	He.	Bas.	Elm	Tot.
9	1											1
10			2									2
11	13	7										20
12	22	5	4	1		1						33
13	37	7	3	1	1							49
14	105	15	3	8	3				1			135
15	58	15	8	3								84
16	46	25	17	4		1	1					94
17	35	8	5	9		2	1	1		1		62
18	21	5	6	4			1					37
19	15	5	5	5	1		1					32
20	22	11	4	7			1					45
21	15		3	6								24
22	8	5	2	5			1			1		22
23	2		3	1			1					7
24	3	1	2	1								7
25	1			4								5
26		1										1
27	1											1
28	2			1								3
29	1											1
30		1		1								2
31	2											2
Tot.	410	111	67	61	5	4	7	1	1	1	1	668

# ADVANTAGE FORESTRY

RD2 Box 118  
Reynoldsville, PA 15851

Phn. 1-800-748-4855  
Phn. or Fax (814) 371-0155  
August 30, 2004

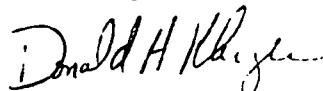
Jim Swistock  
Timber Trespass  
Knox Township, Clearfield County  
Parcel # H- 13-19

## Price Sheet

Species	Bd.Ft. Volume	\$/MBd.Ft.	Total Value
Cherry	75,839	1,200	91,006.80
Soft Maple	20,548	186	3,821.93
Hard Maple	13,490	350	4,721.50
Red Oak	17,099	500	8,549.50
White Oak	682	240	163.68
Poplar	726	135	98.01
Ash	1,830	165	301.95
White Pine	257	60	15.42
Hemlock	83	40	3.32
Basswood	257	110	28.27
Elm	386	110	42.46
		<b>Total Value</b>	<b>\$108,752.84</b>

Tract Total \$108,752.84

Sincerely,



Donald H. Klinger  
Certified Forester  
Advantage Forestry

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. )  
 )  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )  
 )

No. 04- 02032 -CD  
In Equity and at Law

**PLAINTIFFS' CERTIFICATE OF SERVICE**

I, Theron G. Noble, Esquire of Ferraraccio & Noble, counsel for Plaintiffs, does hereby certify this 15th day of March, 2005, that I did send a true and correct copy of Plaintiffs' AMENDED CIVIL COMPLAINT to the below indicated persons, being all counsels of record, via United States Mail, first class, postage prepaid.

John R. Carfley, Esquire  
Counsel for Defendant London  
P.O. Box 249  
Philipsburg, PA 16866

Toni M. Cherry, Esquire  
Counsel for Defendant Mast  
P.O. Box 505  
DuBois, PA 15801

John Sughrue, Esquire  
Counsel for Defendant Witherow  
23 N. 2nd Street  
Clearfield, PA 16830

Respectfully Submitted,

  
\_\_\_\_\_  
Teron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

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

JAMES W. SWISTOCK and  
RONALD R. BODLE, individuals,  
Plaintiffs

vs.

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

NO. 04-2032-CD

DAVID MAST and OLAN LONDON,  
individuals, and ANN MARIE WITHEROW,  
individually and as Administrator of the ESTATE  
of GERALD WITHEROW,  
Defendants

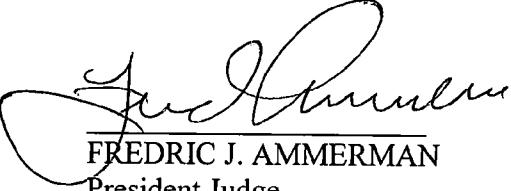
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\*

O R D E R

NOW, this 16<sup>th</sup> day of March, 2005, relative the Preliminary Objections filed on behalf of Defendant Olan London, specifically the said Defendant's Preliminary Objection which requested a dismissal of the action based upon the alleged failure of the Plaintiff to assert facts which would give rise to a cause of action in an individual rather than a representative or agency capacity, it is the ORDER of this Court that said Preliminary Objection be and is hereby DISMISSED, without prejudice. Upon the filing of an Amended Complaint by the Plaintiff as required by prior Court Order, the Defendant is at liberty to re-raise the said Preliminary Objection if he believes the same to be appropriate.

FILED  
02/13/05  
MAR 16 2005  
cc  
Attns: Nodle  
T. Cherry  
Castley  
Sughrue  
William A. Shaw  
Prothonotary/Clerk of Courts

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

**FILED**

**MAR 16 2005**

William A. Shaw  
Prothonotary/Clerk of Courts

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

JAMES W. SWISTOCK, an adult individual, :  
and RONALD R. BODLE, an adult individual, :  
PLAINTIFFS, :  
v. : No. 04- 2032 -CD  
DAVID MAST, an adult individual, : In Equity and at Law  
OLIN L. LONDON, an adult individual, and :  
ANN MARIE WITHEROW, individually and :  
as Administrator of the Estate of Gerald Witherow, :  
DEFENDANT. :  
: Type of Pleading:  
: **VERIFICATIONS TO  
AMENDED COMPLAINT**  
: Filed By:  
: Plaintiff  
: Counsel of Record:  
: Theron G. Noble, Esquire  
: Ferraraccio & Noble  
: 301 East Pine Street  
: Clearfield, PA 16830  
: (814:-375-2221  
: PA I.D.#: 55942

**FILED** *m12:05pm* <sup>NO</sup> <sub>cc</sub>  
**MAR 23 2005** *(bk)*

William A. Shaw  
Prothonotary/Clerk of Courts

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. )  
 )  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )  
 )

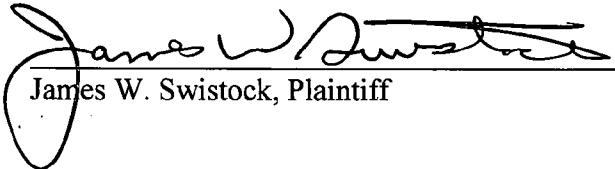
No. 04- 02032 -CD  
In Equity and at Law

**VERIFICATION**

I, James W. Swistock, Plaintiff, do hereby swear and affirm that I have read the foregoing AMENDED CIVIL COMPLAINT and that the averments therein contained are true and correct to the best of my knowledge, information and belief. Furthermore, I am over the age of 18 years of age and give this unsworn statement knowing it is to authorities and subject to the penalties of 18 Pa.C.S.A. 4901.

So made this 16th day of March, 2005.

By,

  
\_\_\_\_\_  
James W. Swistock, Plaintiff

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

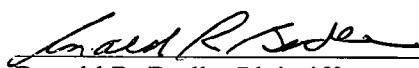
JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
PLAINTIFFS, )  
v. ) No. 04- 02032 -CD  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
DEFENDANTS. )  
In Equity and at Law

**VERIFICATION**

I, Ronald R. Bodle, Plaintiff, do hereby swear and affirm that I have read the foregoing AMENDED CIVIL COMPLAINT and that the averments therein contained are true and correct to the best of my knowledge, information and belief. Furthermore, I am over the age of 18 years of age and give this unsworn statement knowing it is to authorities and subject to the penalties of 18 Pa.C.S.A. 4901.

So made this 19 day of March, 2005.

By,

  
\_\_\_\_\_  
Ronald R. Bodle, Plaintiff

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. )  
 )  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )  
 )

No. 04- 02032 -CD  
In Equity and at Law

**PLAINTIFFS' CERTIFICATE OF SERVICE**

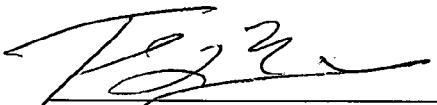
I, Theron G. Noble, Esquire of Ferraraccio & Noble, counsel for Plaintiffs, does hereby certify this 22nd day of March, 2005, that I did send a true and correct copy of Plaintiffs' VERIFICATION TO AMENDED CIVIL COMPLAINT to the below indicated persons, being all counsels of record, via United States Mail, first class, postage prepaid.

John R. Carfley, Esquire  
Counsel for Defendant London  
P.O. Box 249  
Philipsburg, PA 16866

Toni M. Cherry, Esquire  
Counsel for Defendant Mast  
P.O. Box 505  
DuBois, PA 15801

John Sughrue, Esquire  
Counsel for Defendant Witherow  
23 N. 2nd Street  
Clearfield, PA 16830

Respectfully Submitted,



\_\_\_\_\_  
Teron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

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

JAMES W. SWISTOCK, an adult individual  
and RONALD R. BODLE, an adult individual  
Plaintiffs

vs.

DAVID MAST, an adult individual  
OLAN L. LONDON, an adult individual,  
and ANN MARIE WITHEROW, individually  
and as Administrator of the Estate of  
Gerald Witherow,

Defendants

vs.

ANN MARIE WITHEROW, individually  
and as Administrator of the Estate of  
GERALD WITHEROW,

Additional Defendants

No.: 04-02032-CD

Type of Case: Civil

Type of Pleading: Answer to  
Amended Complaint

Filed on behalf of:  
Defendant, Olan L. London

Counsel of Record for this  
Party:

John R. Carfley, Esq.  
P. O. Box 249  
Philipsburg, PA 16866  
814-342-5581

FILED *14864*  
MAY 12 2005  
APR 18 2005  
NO CC

William A. Shaw  
Prothonotary/Clerk of Courts

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

JAMES W. SWISTOCK, an adult individual and RONALD R. BODLE, an adult individual Plaintiffs	:
vs.	No. 04-02032-CD
DAVID MAST; an adult individual OLAN L. LONDON, an adult individual, and ANN MARIE WITHEROW, individually and as Administrator of the Estate of Gerald Witherow, Defendants	:
vs.	:
ANN MARIE WITHEROW, individually and as Administrator of the Estate of GERALD WITHEROW, Additional Defendants	:

NOTICE

You have been sued in Court. If you wish to defend against the matters set forth in the following New Matter, you must enter a written appearance personally or by attorney and file an answer in writing with the Prothonotary setting forth your defenses or objections to the matter set forth against you and serve a copy on the attorney or person filing the Complaint. 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 the relief requested by the Petitioner. You may lose rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator  
Clearfield County Courthouse  
Second & Market Streets  
Clearfield, PA 16830  
814-765-2641, Ext. 50-51

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

JAMES W. SWISTOCK, an adult individual  
and RONALD R. BODLE, an adult individual  
Plaintiffs

vs.

No. 04-02032-CD

DAVID MAST, an adult individual  
OLAN L. LONDON, an adult individual,  
and ANN MARIE WITHEROW, individually  
and as Administrator of the Estate of  
Gerald Witherow,

Defendants

vs.

ANN MARIE WITHEROW, individually  
and as Administrator of the Estate of  
GERALD WITHEROW,  
Additional Defendants

ANSWER TO AMENDED COMPLAINT

AND NOW, comes the Defendant, Olan L. London, who by and through his attorney, John R. Carfley, Esquire, responds to the Plaintiffs' Amended Complaint in the following manner:

1. Paragraph 1 is denied. On the contrary, it is averred that after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of the averment set forth therein and insofar as relevant proof thereof is demanded at time of trial.
2. Paragraph 2 is denied. On the contrary, it is averred that after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of the averment set forth therein and insofar as relevant proof thereof is demanded at time of trial.
3. Paragraph 3 is denied. On the contrary, it is averred that after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of the averment set forth therein and insofar as relevant proof thereof is demanded at time of trial.
4. Admitted.

5. Paragraph 5 is denied. On the contrary, it is averred that after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of the averment set forth therein and insofar as relevant proof thereof is demanded at time of trial.

6. Admitted.

7. Paragraph 7 is denied. On the contrary, it is averred that after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of the averment set forth therein and insofar as relevant proof thereof is demanded at time of trial.

8. Paragraph 8 is denied. On the contrary, it is averred that after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of the averment set forth therein and insofar as relevant proof thereof is demanded at time of trial.

9. It is denied that the Defendant, London, in any way independently orchestrated a timber sale agreement between the Defendants Mast and Witherow. By way of further answer, it is averred that the Defendant, London, was contacted by Witherow and asked to procure an individual who would be willing to timber certain properties owned by Witherow in Knox Township, Clearfield County, Pennsylvania. By way of further answer, it is averred that London at all times acted in this capacity and not as an independent contractor nor did the said London act as a principal or make demand for any fees for the efforts expended; the only consideration provided to London was the sum of \$2,400, which was gratuitively advanced by the Defendant Witherow, allegedly for the services provided by London to Witherow.

10. Paragraph 10 is denied. On the contrary, it is averred that after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of the averment set forth therein and insofar as relevant proof thereof is demanded at time of trial.

11. Paragraph 11 is denied. On the contrary, it is averred that after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of the averment set forth therein and insofar as relevant proof thereof is demanded at time of trial.

12. Paragraph 12 is denied. On the contrary, it is averred that after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of the

averment set forth therein and insofar as relevant proof thereof is demanded at time of trial.

13. Paragraph 13 is denied. On the contrary, it is averred that after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of the averment set forth therein and insofar as relevant proof thereof is demanded at time of trial.

14. Paragraph 14 is denied. On the contrary, it is averred that after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of the averment set forth therein and insofar as relevant proof thereof is demanded at time of trial.

15. Paragraph 15 is denied. On the contrary, it is averred that after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of the averment set forth therein and insofar as relevant proof thereof is demanded at time of trial.

16. Paragraph 16 is denied. On the contrary, it is averred that after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of the averment set forth therein and insofar as relevant proof thereof is demanded at time of trial.

17. Paragraph 17 is denied. On the contrary, it is averred that after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of the averment set forth therein and insofar as relevant proof thereof is demanded at time of trial.

18. Paragraph 18 is denied. On the contrary, it is averred that after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of the averment set forth therein and insofar as relevant proof thereof is demanded at time of trial.

19. Paragraph 19 is denied. On the contrary, it is averred that after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of the averment set forth therein and insofar as relevant proof thereof is demanded at time of trial.

20. It is denied that the Defendant London knew at the time he dealt with Melvin Mast that the subject premises were not owned exclusively by Ann Marie Witherow individually, or by the Estate of Gerald Witherow or that said knowledge was imparted to London at any time during his initial involvement with Mast and Witherow. By way of further answer, it is averred that Defendant London was only informed of the possibility of an outstanding ownership right in

the property when he was contacted by Attorney John Sughrue subsequent to the signing of the Timber Sales Agreement and the exchange of consideration between Mast and Witherow and was advised by Attorney Sughrue that the Estate was not the sole owner of the premises. Moreover, Defendant London further avers that Attorney Sughrue, at that time, represented to London that he intended to contact Defendant Mast on behalf of Witherow and advise him of these outstanding ownership interests and the need for Defendant Mast to acquire those interests before engaging in timbering operations. Moreover, London believes, and therefore avers, that to the best of his knowledge, information and belief, This conversation with Attorney Sughrue occurred at or immediately subsequent to the time of the signing of the Timber Sale Agreement in April, 2002.

21. Paragraph 21 is denied. On the contrary, it is averred that after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of the averment set forth therein and insofar as relevant proof thereof is demanded at time of trial.

22. Paragraph 22 is denied. On the contrary, it is averred that after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of the averment set forth therein and insofar as relevant proof thereof is demanded at time of trial.

COUNT I - IN EQUITY  
Request for an Accounting v. Defendant Witherow

23. The Defendant London's Answers to paragraphs 1 through 22 are herein incorporated by reference as fully as though set forth at length.

24. Paragraph 24 is denied. On the contrary, it is averred that the averments of Paragraph 24 are directed to a Defendant other than the answering Defendant and consequently, no further response is required from the Defendant London.

25. Paragraph 25 is denied. On the contrary, it is averred that the averments of Paragraph 25 are directed to a Defendant other than the answering Defendant and consequently, no further response is required from the Defendant London.

26. Paragraph 26 is denied. On the contrary, it is averred that the averments of Paragraph 26 are directed to a Defendant other than the answering Defendant and consequently, no further response is required from the Defendant London.

COUNT II - IN EQUITY  
REQUEST FOR AN ACCOUNTING V. DEFENDANT MAST

27. The answers to paragraphs 1 through 26 are herein incorporated by reference as fully as though set forth at length.

28. Paragraph 28 is denied. On the contrary, it is averred that the averments of Paragraph 28 are directed to a Defendant other than the answering Defendant and consequently, no further response is required from the Defendant London.

29. Paragraph 29 is denied. On the contrary, it is averred that the averments of Paragraph 29 are directed to a Defendant other than the answering Defendant and consequently, no further response is required from the Defendant London.

30. Paragraph 30 is denied. On the contrary, it is averred that the averments of Paragraph 30 are directed to a Defendant other than the answering Defendant and consequently, no further response is required from the Defendant London.

COUNT III - IN EQUITY  
Request for Injunctive Relief v. Defendants Mast & Witherow

31. The answers to paragraphs 1 through 30 are herein incorporated by reference as fully as though set forth at length.

32. Paragraph 32 is denied. On the contrary, it is averred that the averments of Paragraph 32 are directed to a Defendant other than the answering Defendant and consequently, no further response is required from the Defendant London.

33. Paragraph 33 is denied. On the contrary, it is averred that the averments of Paragraph 33 are directed to a Defendant other than the answering Defendant and consequently, no further response is required from the Defendant London.

34. Paragraph 34 is denied. On the contrary, it is averred that the averments of Paragraph 34 are directed to a Defendant other than the answering Defendant and consequently, no further response is required from the Defendant London.

35. Paragraph 35 is denied. On the contrary, it is averred that the averments of Paragraph 35 are directed to a Defendant other than the answering Defendant and consequently, no further response is required from the Defendant London.

WHEREFORE, Defendant London requests that Plaintiffs' request for relief specified in Sub-paragraphs A, B, C, D, and E be dismissed as to the Defendant London.

COUNT IV - AT LAW  
Conversion v. Defendant Witherow

36. The answers to paragraphs 1 through 35 are herein incorporated by reference as fully as though set forth at length.

37. Paragraph 37 is denied. On the contrary, it is averred that the averments of Paragraph 37 are directed to a Defendant other than the answering Defendant and consequently, no further response is required from the Defendant London.

38. Paragraph 38 is denied. On the contrary, it is averred that the averments of Paragraph 38 are directed to a Defendant other than the answering Defendant and consequently, no further response is required from the Defendant London.

39. Paragraph 39 is denied. On the contrary, it is averred that the averments of Paragraph 39 are directed to a Defendant other than the answering Defendant and consequently, no further response is required from the Defendant London.

40. Paragraph 40 is denied. On the contrary, it is averred that the averments of Paragraph 40 are directed to a Defendant other than the answering Defendant and consequently, no further response is required from the Defendant London.

41. Paragraph 41 is denied. On the contrary, it is averred that the averments of Paragraph 41 are directed to a Defendant other than the answering Defendant and consequently,

no further response is required from the Defendant London.

COUNT V - AT LAW  
Conversion v. Defendant Mast

42. The answers to paragraphs 1 through 41 are herein incorporated by reference as fully as though set forth at length.

43. Paragraph 43 is denied. On the contrary, it is averred that the averments of Paragraph 43 are directed to a Defendant other than the answering Defendant and consequently, no further response is required from the Defendant London.

44. Paragraph 44 is denied. On the contrary, it is averred that the averments of Paragraph 44 are directed to a Defendant other than the answering Defendant and consequently, no further response is required from the Defendant London.

45. Paragraph 45 is denied. On the contrary, it is averred that the averments of Paragraph 45 are directed to a Defendant other than the answering Defendant and consequently, no further response is required from the Defendant London.

46. Paragraph 46 is denied. On the contrary, it is averred that the averments of Paragraph 46 are directed to a Defendant other than the answering Defendant and consequently, no further response is required from the Defendant London.

47. Paragraph 47 is denied. On the contrary, it is averred that the averments of Paragraph 47 are directed to a Defendant other than the answering Defendant and consequently, no further response is required from the Defendant London.

48. Paragraph 48 is denied. On the contrary, it is averred that the averments of Paragraph 48 are directed to a Defendant other than the answering Defendant and consequently, no further response is required from the Defendant London.

COUNT VI - AT LAW  
Conversion v. Defendant London

49. The answers to paragraphs 1 through 48 are herein incorporated by reference as fully as though set forth at length.

50. Paragraph 50 is denied. On the contrary, it is averred that after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of the averment set forth therein and insofar as relevant proof thereof is demanded at time of trial.

51. Paragraph 51 is denied. It is denied that the Defendant London exercised dominion and control over a portion of the cash proceeds from the sale of the timber in that London acted only as a transporter of the funds agreed upon to be the sale price of the timber by Mast and Witherow. The only funds which were physically presented to London and retained by him were those certain sums of money consisting of \$2,400 gratuitously delivered to London by the Defendant Witherow, which funds were placed in an escrow arrangement by London and were retained in said capacity until delivered at the direction of the Court, to counsel for ultimate distribution in accordance with the outcome of this litigation.

52. Paragraph 52 is denied. On the contrary, it is averred that the relevant sections of the Statute cited by the Plaintiffs deal with ownership rights and interests which may exist between tenants in common. In that regard, Defendant London was not a co-tenant and therefore has no liability under the applicable statute.

53. Paragraph 52 is denied. On the contrary, it is averred that the relevant sections of the Statute cited by the Plaintiffs deal with ownership rights and interests which can exist between tenants in common. In that regard, Defendant London was never a co-tenant and therefore has no liability under the applicable statute.

54. Paragraph 54 is denied. On the contrary, it is averred that Paragraph 54 of the Plaintiffs' Amended Complaint states a conclusion of law for which no further response is required.

COUNT VII - AT LAW  
Civil Conspiracy v. Defendants Witherow, Mast & London

55. The answers to paragraphs 1 through 54 are herein incorporated by reference as fully as though set forth at length.

56. Paragraph 56 is denied. On the contrary, it is averred that Defendant London, in all respects, acted only in an agency capacity and therefore is not liable as a principal for any activity conducted on or about the premises allegedly owned by Witherow, Swistock and Bodle. By way of further answer, it is averred that to the extent relevant, Defendant London avers that on or about the date of the signing of the Timber Sales Agreement, or immediately thereafter, Defendant London was advised by Attorney Sughrue that he intended to notify Defendant Mast of an outstanding ownership interest and of Mast's responsibility to secure these ownership interests before conducting any timbering operations on the said property. London has no further knowledge insofar as Attorney Sughrue's activity with respect to notifying Defendant Mast of this outstanding ownership interest and Defendant London is without knowledge sufficient to form a belief as to the outcome or the result of said activity, but insofar as relevant, proof thereof is demanded at time of trial. Moreover, it is averred that in this regard Attorney Sughrue acted as an agent for Defendant Witherow, who is liable for any negligent, reckless or intentional acts which counsel performed or failed to perform in the management and administration of the estate and/or under the auspices of this contractual relationship.

57. Paragraph 57 is denied. On the contrary, it is averred that Defendant London, in all respects, acted in an agency capacity and therefore is not liable as a principal for any activity conducted on or about the premises allegedly owned by Witherow, Swistock and Bodle. By way of further answer, it is averred that to the extent relevant, Defendant London avers that on or about the time of the signing of the Timber Sales Agreement, Defendant London was advised by Attorney Sughrue, who acted on behalf of Witherow, that he intended to notify Defendant Mast of an outstanding ownership interest and of Mast's responsibility to acquire these ownership interests before conducting any timbering operations on the said property. Insofar and as to what extent Attorney Sughrue engaged in activity with respect to notifying Defendant Mast of this

outstanding ownership interest, Defendant London is without knowledge sufficient to form a belief as to the truth of said activity and insofar as relevant, proof thereof is demanded at time of trial.

58. Paragraph 58 is denied. On the contrary, it is averred that Defendant London, in all respects, acted in an agency capacity and therefore is not liable for any acts of conspiracy which may be attributable to his principal or for any activity conducted on or about the premises allegedly owned by Witherow, Swistock and Bodle. By way of further answer, it is averred that to the extent relevant, Defendant London avers that on or about the time of the signing of the Timber Sales Agreement, Defendant London was advised by Attorney Sughrue that he intended to notify Defendant Mast of an outstanding ownership interest and of Mast's responsibility to secure the ownership interests before conducting any timbering operations on the said property. Insofar and as to what extent Attorney Sughrue engaged in activity with respect to notifying Defendant Mast of this outstanding ownership interest, Defendant London is without knowledge sufficient to form a belief as to the extent of said activity and insofar as relevant, proof thereof is demanded at time of trial.

59. Paragraph 59 is denied. On the contrary, it is averred that Defendant London, in all respects, acted in an agency capacity and therefore is not liable as a principal for any activity conducted on or about the premises allegedly owned by Swistock and Bodle. By way of further answer, it is averred that to the extent relevant, Defendant London avers that on or about the time of the signing of the Timber Sales Agreement, Defendant London was advised by Attorney Sughrue that he intended to notify Defendant Mast of an outstanding ownership interest and of Mast's responsibility to secure the ownership interests before conducting any timbering operations on the said property. Insofar as Attorney Sughrue's may have acted with respect to notifying Defendant Mast of this outstanding ownership interest, Defendant London is without knowledge sufficient to form a belief as to the truth of said activity and insofar as relevant, proof thereof is demanded at time of trial.

60. Paragraph 60 is denied. It is denied that Defendant London acted as the agent for

Defendant Mast, or in any way facilitated the cutting, harvesting and removal of the timber from the subject premises.

61. Paragraph 61 is denied. It is denied that Defendant London acted as the agent for Defendant Mast, or in any way facilitated the cutting, harvesting and removal of the timber from the subject premises.

62. Paragraph 62 is denied. On the contrary, it is averred that after reasonable investigation, Defendant is without knowledge sufficient to form a belief as to the truth of the averment set forth therein and insofar as relevant, proof thereof is demanded at time of trial. .

63. Paragraph 63 is denied. It is denied that Defendant London had any obligation to search the property records at the Clearfield County Courthouse prior to Defendant Mast engaging in timbering operations on the said property in that the Defendant London acted, if at all, in an agency capacity for Witherow and therefore was not bound by any obligations applicable to the principals involved in this transaction. Moreover, it is believed and therefore averred that if any party was liable to search the records at the Courthouse, it would be Mast, Witherow and/or Sughrue who represented to London that he was aware of conflicting outstanding ownership interests and that he would take it upon himself as the attorney and agent for the Witherow Estate and for the Defendant Witherow to rectify this situation.

64. Paragraph 64 is denied. On the contrary, the averments of Paragraph 64 are directed to a Defendant other than the answering Defendant and as a result, no further response is required from the Defendant London.

65. Paragraph 65 is denied. It is denied that the Defendants in any way acted in concert with other individuals, or that the said Defendant agreed to cut, remove and harvest the timber in violation of any statute.

66. Paragraph 66 is denied. It is denied that the actions of the Defendant Mast and/or Witherow as recited in Paragraph 66 in any way facilitated a conspiracy or acted as evidence of a conspiracy.

67. Paragraph 67 is denied. It is denied that the Defendant London facilitated a

conspiracy by handing a bag of cash provided to him by the Defendant Mast to the Defendant Witherow or by any other activities recited in Paragraph 67. Insofar as relevant, proof of these activities is demanded at time of trial.

68. Paragraph 68 is denied. On the contrary, it is averred that the averments of Paragraph 68 are directed to a Defendant other than the answering Defendant and as a result, no further response is required from the Defendant London.

69. Paragraph 69 is denied. It is denied that the activity set forth in Paragraph 69 in any way established a conspiracy involving the Defendant London.

70. Paragraph 70 is denied. It is denied that the averments set forth in Paragraphs 61 through 69 in any way evidenced malicious intent or malicious activity on the part of the Defendant London.

71. Paragraph 71 is denied. It is denied that the averments set forth in Paragraphs 61 through 69 in any way establish outrageous conduct on the part of the Defendant London.

72. Further, Paragraph 72 is a statement of law as to which no further response is required.

#### MISCELLANEOUS

73. Paragraph 73 is a statement of law as to which no further response is required.

74. Paragraph 74 is a statement of law as to which no further response is required.

75. Paragraph 75 is a statement of law as to which no further response is required.

#### NEW MATTER IN THE NATURE OF A COMPLAINT TO JOIN ANN MARIE WITHEROW AND THE ESTATE OF GERALD WITHEROW AS ADDITIONAL DEFENDANTS PURSUANT TO RULE 2252 OF THE PA. R.C.P.

AND NOW comes the Defendant, Olan London, who by and through his attorney, John R. Carfley, Esq., joins the herein identified individual and legal entity as Additional Defendants under Rule 2252 of the Pennsylvania Rules of Civil Procedure and in support thereof, avers as follows:

completing and which was signed in the presence of Melvin Mast, his brother, and the Defendants London and Ann Marie Witherow.

- f. Witherow then requested that London meet with Mast in order to collect the money, which Mast provided London in cash. London then delivered said cash payment to Ann Marie Witherow who questioned London concerning the amount of commission which London intended to charge.
- g. At that time, London advised Witherow that he wanted no commission for his services, but Witherow insisted that London accept ten percent (10%) of the total sale price.
- h. Based upon information received, it is London's belief that Ann Marie Witherow, within several days of this meeting, delivered the balance of this money to Attorney John Sughrue's office, at which time Mr. Sughrue informed Witherow that she did not own the entire premises or all of the timber.
- i. Thereafter, Mr. Sughrue, who it is believed was acting as an agent for Witherow, contacted London by telephone and informed London for the first time that Ann Marie Witherow did not own the property and/or the timber exclusively and questioned London concerning a means by which he could reach Melvin Mast.
- j. Since Mast did not have a telephone, London was unable to provide that information to Sughrue, but instead gave Mr. Sughrue Mast's address from the contract.
- k. Mr. Sughrue then represented to London that he intended to contact Mast, Swistock and/or Bodle on behalf of Witherow in an effort to "straighten this mess out." No further information was communicated to London by Witherow or Sughrue until the property was timbered in 2004, some two (2) years after these events.

1. In all respects, London acted only to procure a purchaser for Witherow.
- m. At no time prior to London's discussion with Attorney Sughrue did London have reason to believe that the Witherow Estate and/or Ann Marie Witherow did not retain the sole ownership rights and/or interest in the property and/or the timber. Moreover, subsequent to being informed of the outstanding ownership interest by Attorney Sughrue, London felt certain that Attorney Sughrue, acting on behalf of Witherow, would contact either Mast and/or the other owners of the property to advise them of the situation.
- n. To the best of London's knowledge, information and belief, this property was not timbered until 2004, even though the contract was signed in April, 2002, which delay in activity by Mast should have allowed Sughrue and/or Witherow sufficient time within which to contact Mast or the alleged owners to clarify the situation.

2. If Plaintiffs establish that they suffered injuries and damages as alleged in their Complaint, which allegations answering Defendant denies, said injuries and damages were caused solely by the negligence, recklessness and carelessness of the Additional Defendants, their agents, servants, workmen, counsel and/or employees, by their acts and/or omissions in failing to apprise all other parties, including the Plaintiffs, of the existence of the timber harvesting contract and by other acts and failures to act as herein specified.
3. As a result of the aforesaid actions and/or omissions, Additional Defendant Witherow and the Estate of Gerald Witherow are solely liable and/or joint and severally liable to Plaintiffs for any alleged injuries and damages Plaintiffs may have suffered.
4. If as a result of the matters alleged in Plaintiffs' Complaint, Defendant London is held liable to Plaintiffs for all or part of such injuries or damages as they may have sustained, Additional Defendant Witherow, et al. are the parties primarily liable for such injuries and damages, and are liable over to Defendant London by way of contribution and/or

1. Defendant London, asserts this new matter pursuant to Pa. R.C.P. No. 2252(d) and joins Defendant Ann Marie Witherow, individually and as Administratrix of the Estate of Gerald Witherow as additional defendants in this action on the following basis:

- a. The defendants are Ann Marie Witherow and the Estate of Gerald Witherow, who at the times and places relevant hereto were believed and therefore averred, to be represented by John Sughrue, a duly licensed attorney in the Commonwealth of Pennsylvania, who acted in an agency capacity for Ann Marie Witherow and the Estate.
- b. In or about April of 2002, Ann Marie Witherow and Joseph London, who is the son of Defendant London were visiting the Defendant London at his home and at that time engaged in a conversation with the Defendant London during the course of which Witherow asked London to sell a piece of timber over which she held the ownership rights. No reference was made during this conversation to any outstanding ownership interests.
- c. During the course of the conversation, London advised Witherow that he would contact Melvin Mast, who London believed was involved in the local timber industry, as a result of which he may be interested in the timber located on the property.
- d. At or about the time of this conversation, London and Witherow drove to the subject property where Witherow showed London the approximate location of the property lines. London, in turn, communicated these rough dimensions to Melvin Mast and Mast's brother, who both accompanied London to the Witherow property to walk the property lines. At that time Melvin Mast made an offer of \$24,000 for the timber, which offer London communicated to Witherow for her approval.
- e. Said offer was accepted by Witherow and within days, Melvin Mast produced a blank contract form which Ann Marie Witherow assisted in

completing and which was signed in the presence of Melvin Mast, his brother, and the Defendants London and Ann Marie Witherow.

- f. Witherow then requested that London meet with Mast in order to collect the money, which Mast provided London in cash. London then delivered said cash payment to Ann Marie Witherow who questioned London concerning the amount of commission which London intended to charge.
- g. At that time, London advised Witherow that he wanted no commission for his services, but Witherow insisted that London accept ten percent (10%) of the total sale price.
- h. Based upon information received, it is London's belief that Ann Marie Witherow, within several days of this meeting, delivered the balance of this money to Attorney John Sughrue's office, at which time Mr. Sughrue informed Witherow that she did not own the entire premises or all of the timber.
- i. Thereafter, Mr. Sughrue, who it is believed was acting as an agent for Witherow, contacted London by telephone and informed London for the first time that Ann Marie Witherow did not own the property and/or the timber exclusively and questioned London concerning a means by which he could reach Melvin Mast.
- j. Since Mast did not have a telephone, London was unable to provide that information to Sughrue, but instead gave Mr. Sughrue Mast's address from the contract.
- k. Mr. Sughrue then represented to London that he intended to contact Mast, Swistock and/or Bodle on behalf of Witherow in an effort to "straighten this mess out." No further information was communicated to London by Witherow or Sughrue until the property was timbered in 2004, some two (2) years after these events.

1. In all respects, London acted only to procure a purchaser for Witherow.
- m. At no time prior to London's discussion with Attorney Sughrue did London have reason to believe that the Witherow Estate and/or Ann Marie Witherow did not retain the sole ownership rights and/or interest in the property and/or the timber. Moreover, subsequent to being informed of the outstanding ownership interest by Attorney Sughrue, London felt certain that Attorney Sughrue, acting on behalf of Witherow, would contact either Mast and/or the other owners of the property to advise them of the situation.
- n. To the best of London's knowledge, information and belief, this property was not timbered until 2004, even though the contract was signed in April, 2002, which delay in activity by Mast should have allowed Sughrue and/or Witherow sufficient time within which to contact Mast or the alleged owners to clarify the situation.

2. If Plaintiffs establish that they suffered injuries and damages as alleged in their Complaint, which allegations answering Defendant denies, said injuries and damages were caused solely by the negligence, recklessness and carelessness of the Additional Defendants, their agents, servants, workmen, counsel and/or employees, by their acts and/or omissions in failing to apprise all other parties, including the Plaintiffs, of the existence of the timber harvesting contract and by other acts and failures to act as herein specified.
3. As a result of the aforesaid actions and/or omissions, Additional Defendant Witherow and the Estate of Gerald Witherow are solely liable and/or joint and severally liable to Plaintiffs for any alleged injuries and damages Plaintiffs may have suffered.
4. If as a result of the matters alleged in Plaintiffs' Complaint, Defendant London is held liable to Plaintiffs for all or part of such injuries or damages as they may have sustained, Additional Defendant Witherow, et al. are the parties primarily liable for such injuries and damages, and are liable over to Defendant London by way of contribution and/or

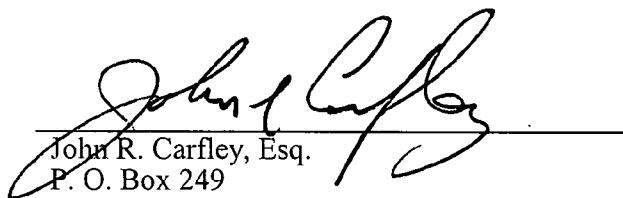
indemnification, for all such damages as he may be required to pay to Plaintiffs.

5. In the alternative, if as a result of the matters alleged in Plaintiffs' Complaint, Defendant Witherow is held liable to Plaintiffs for all or part of such injuries or damages as Plaintiffs may have sustained, Additional Defendant Witherow is jointly and/or severally liable to Plaintiffs based upon the foregoing allegations for such injuries and damages and liable over to Defendant London by way of contribution for all such damages Defendant London may be required to pay to Plaintiffs.

6. As a result of the same transactions upon which Plaintiffs' cause of action is based, Additional Defendant Witherow is liable directly to Defendant London in that the Additional Defendants engaged in various acts which were negligent, careless and reckless and resulted in their failure to advise all parties of the existence of the timber sale agreement as aforesaid.

WHEREFORE, Defendant London demands:

- a. Judgment that, if there is any liability to Plaintiffs, Additional Defendant Witherow is solely liable to Plaintiffs;
- b. In the event that a verdict is recovered by Plaintiffs against Defendant London, that Defendant London may have judgment over and against Additional Defendant Witherow, et al., by way of indemnification and/or contribution for any amount recovered by Plaintiffs against Defendant London, together with costs.



John R. Carfley, Esq.  
P. O. Box 249  
Philipsburg, PA 16866  
Attorney for Defendant  
Olan L. London

Dated: 4-15-05

VERIFICATION

I hereby verify that the statements made in this instrument are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Olan London

Dated: 4/12/2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNA.  
CIVIL ACTION

JAMES W. SWISTOCK, an adult individual :  
and RONALD R. BODLE, an adult individual :  
Plaintiffs :  
vs. : No. 04-02032-CD  
DAVID MAST, an adult individual :  
OLAN L. LONDON, an adult individual :  
and ANN MARIW WITHEROW, individually :  
and as Administrator of the Estate of :  
GERALD WITHEROW, :  
Defendant :  
:

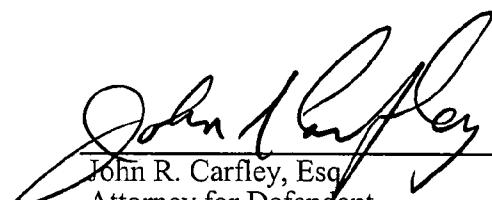
CERTIFICATE OF SERVICE

I hereby certify that I forwarded a copy of the Answer to Amended Complaint, by regular mail, postage prepaid to the following attorneys and/or parties of record, on this 15<sup>th</sup> day of April, 2005.

Theron G Noble, Esq.  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(Attorney for Plaintiffs)

Toni M. Cherry, Esq.  
P. O. Box 505  
DuBois, PA 15801  
(Attorney for Mast)

John Sughrue, Esq.  
23 N. 2<sup>nd</sup> Street  
Clearfield, PA 16830  
(Attorney for Witherow)

  
John R. Carfley, Esq.  
Attorney for Defendant,  
Olan L. London  
ID# 17621  
P. O. Box 249  
Philipsburg, PA 16866  
(814) 342-5581

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

JAMES W. SWISTOCK, an adult individual,  
and RONALD R. BODLE, an adult individual,  
vs.  
Plaintiffs,  
vs.  
DAVID MAST, an adult individual,  
OLAN L. LONDON, an adult individual, and  
ANN MARIE WITHEROW, individually and  
as Administrator of the Estate of Gerald Witherow,  
vs.  
Defendants,  
vs.  
ANN MARIE WITHEROW, individually  
and as Administrator of the Estate of  
GERALD WITHEROW,  
vs.  
Additional Defendants,  
vs.  
DAVID MAST, individually and t/a  
DAVID MAST & SON LOGGING, and  
OLAN L. LONDON, individually,  
vs.  
Additional Defendants  
vs.  
FILED  
APR 26 2005  
SAC  
APR 28 2005  
A. Sughrue  
William A. Shaw  
Prothonotary/Clerk of Courts  
No. 04-2032-CD  
In Equity and at Law  
Type of Case: Civil Action  
Type of Pleading:  
Answer & New Matter  
to Amended Complaint  
Filed on Behalf of: Defendant,  
Ann Marie Witherow  
Counsel of Record for this Party:  
John Sughrue, Esq.  
Supreme Court No. 01037  
23 North Second Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959  
Other Counsel of Record:  
Theron G. Noble, Esq.  
Supreme Court No. 55942  
301 E. Pine St.  
Clearfield, PA 16830  
Phone: (814) 375-2221  
John R. Carfley, Esq.  
P.O. Box 249  
Philipsburg, PA 16866  
Phone: (814) 342-5581

FILED <sup>(6)</sup>  
Scc  
01/10/2005  
APR 28 2005  
Ashley Singhrao

William A. Shaw  
Prothonotary/Clerk of Courts

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
)  
PLAINTIFFS, )  
)  
v. ) No. 04-2032-CD  
)  
DAVID MAST, an adult individual, ) In Equity and at Law  
OLAN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
)  
DEFENDANTS. )

**NOTICE**

**TO: David Mast and Olan L. London, Additional Defendants:**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff(s). 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 HELP.**

Court Administrator's Office  
Clearfield County Courthouse  
1 North Second Street  
Clearfield, PA 16830  
(814) 765-2641, Extension 32

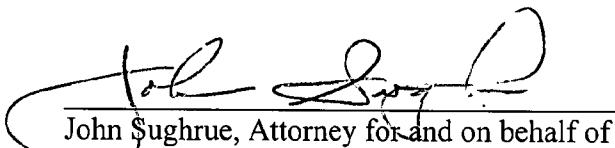
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
)  
PLAINTIFFS, )  
)  
v. ) No. 04-2032-CD  
)  
DAVID MAST, an adult individual, )  
OLAN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
)  
DEFENDANTS. )

**NOTICE**

**TO: James W. Swistock and Ronald R. Bodle, Plaintiffs:**

**YOU ARE HEREBY NOTIFIED to file a written response to the enclosed New  
Matter within twenty (20) days from service hereof or a judgment may be entered against  
you.**

  
John Sughrue, Attorney for and on behalf of  
Ann Marie Witherow, individually and as  
Administrator of the Estate of Gerald Witherow

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
Plaintiffs, )  
vs. ) No. 04-2032-CD  
DAVID MAST, an adult individual, )  
OLAN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
Defendants, )  
vs. )  
ANN MARIE WITHEROW, individually )  
and as Administrator of the Estate of )  
GERALD WITHEROW, )  
Additional Defendants, )  
vs. )  
DAVID MAST, individually and t/a )  
DAVID MAST & SON LOGGING, and )  
OLAN L. LONDON, individually, )  
Additional Defendants. )

**ANSWER AND NEW MATTER**

AND NOW, comes Defendant, Ann Marie Witherow, (hereafter, "Witherow") individually and as Administrator of the Estate of Gerald Witherow, deceased, and responds to the Amended Complaint filed in the above-captioned matter as follows:

**ANSWER**

1-4. Paragraphs 1 through 4 of the Complaint are admitted.  
5. Admitted. Except with respect to all facts and matters complained of in the Complaint, Witherow intended, believes and was in fact, acting at all times in her capacity as Administrator of the Estate of Gerald Witherow, deceased, and not individually.

6. Admitted. Further, the subject premises are more particularly described in that certain Deed from George E. Erhard, et ux to Gerald Witherow dated September 2, 1947, recorded Clearfield County Recorder's Office in DBV 388, page 236, a true and correct copy of which is attached hereto as Witherow Exhibit 1 and incorporated herein by reference. Said property is hereafter referred to as "the subject premises".

7. Admitted.

8. Denied as stated. On the contrary, on or about April 19, 2002, Witherow was presented by Defendant, London, an agent for Defendant, Mast, with a proposed Timber Agreement (hereafter, "Timber Agreement") with David Mast, which she signed with the intent, solely for the purpose of raising cash to pay the debts, taxes and administrative expenses of the Estate of Gerald Witherow. The terms set forth in the Timber Agreement are apparent on the face of the Timber Agreement. Further, Witherow intended, and it is her belief, that she entered into the Timber Agreement for the sale and by that Timber Agreement did sell the one-half interest in the standing timber vested in Gerald Witherow at the time of his death. Mast's Timber Agreement does not specify the timber tract or interest being purchased but the subject of the Timber Agreement was in fact Gerald Witherow's one-half interest in the aforesaid seventy acre tract. A true and correct copy of the Timber Agreement is attached hereto as Exhibit 2 and incorporated herein by reference.

9. Admitted in part and denied in part. Defendant/London, was not an agent for Witherow, but was an agent for Defendant/Mast or in the alternative, at best may have been an independent broker. Defendant/London originally approached Witherow concerning the transaction. Witherow does not have information at this time sufficient to form a belief with respect to the nature of the relationship between Defendant/Mast and Defendant/London for the reason that such information is exclusively within the knowledge of the Co-Defendants, except that Defendant/Mast, in Court

testimony, described Defendant/London as his agent. Further, Witherow received \$24,000.00 from London at which time London indicated that a 10% fee was customary and was due, which she then paid.

10. Witherow was never advised by Mast and/or London that timbering operations had begun, were performed or had been completed. Presently, Witherow does not have personal knowledge of the allegation and after reasonable investigation, is without information sufficient to form a belief as to the truth of said averment.

11. Denied. After reasonable investigation, Witherow has no personal knowledge with respect to timber operations performed or not performed by Mast on the subject premises or the fair market value of any timber removed, the same being within the knowledge of Mast, London, Plaintiffs and their experts, and as a result, is without information sufficient to form a belief as to the truth of said averment, and strict proof of the same is demanded at trial of this action.

12. Admitted except as stated with respect to the estate. On the contrary, the subject premises were vested in Gerald Witherow at the time of his death and by operation of law, title to the Witherow interest passed to his intestate heirs, Defendant, Ann Marie Witherow, surviving spouse, Gary Witherow, son, and Gail Kelly, daughter, subject to the power of the Defendant/Administrator under the law to sell and liquidate all or part of the Decedent's Estate in the course of administering the Estate. For purposes of this pleading, reference to Defendant/Witherow, is intended to refer to and include Witherow, individually and as Administrator, and the Estate of Gerald Witherow, depending on the context.

13. Admitted subject to the clarification set forth in Paragraph 12 above. All of which is incorporated herein by reference.

14. Admitted.

15. Admitted.

16. Further said Deeds were recorded in the Clearfield County Courthouse prior to April 1, 2002 and the ownership was recorded in the Tax Assessment Office and assessed to the Plaintiffs as evidenced by the Clearfield County Tax Assessment Ledgers attached hereto as Exhibit 3 and 4 respectively and incorporated herein by reference.

17. It is admitted that Witherow did not discuss nor communicate the matter with Plaintiffs until John Sughrue, attorney for the Estate, discussed the matter with Plaintiff/Swistock. Presently, after reasonable investigation, Witherow is without knowledge or information sufficient to form a belief as to whether or not Swistock and/or Bodle consented to the timbering with Defendant/Mast and/or London or had contact or communications with them of any type, for the reasons that such information is exclusively within the knowledge of the Plaintiffs and Co-Defendants.

18. Admitted.

19. Witherow never had any contact or communications with Mast at any times prior to said Agreement being executed or any time thereafter. However, on information and belief, Witherow believes and therefore avers that Defendant/Mast knew, or should have known, at all relevant and material times, that the subject premises were not owned one hundred (100%) percent by the heirs of Gerald Witherow or his Estate, including specifically, from communications with Defendant/London and the record title to the premises, which was clearly evidenced on the record at the Clearfield County Courthouse, as aforesaid.

20. Admitted.

21. Denied as stated. Witherow never met Mast and had no communications with him either prior to the execution of the Agreement or subsequent thereto. On the contrary, Witherow

dealt, at all times with Co-Defendant, London who originally approached her, with respect to the transaction, either as an agent for Mast, or, as an independent broker.

22. It is admitted that Witherow did not, as either Administrator of the Estate or individually, pay any compensation to the Plaintiffs for the harvesting of timber. After reasonable investigation, Witherow is without knowledge and information sufficient to form a belief as to whether or not Defendants, Mast or London, compensated the Plaintiffs in any manner for the reasons that such information is exclusively within the knowledge of Plaintiffs and Co-Defendants.

Count I  
In Equity: Request for an Accounting from Defendant/Witherow

23. The facts and averments set forth in Paragraphs 1 through 22 of this Answer above, as well as hereafter in New Matter, are incorporated herein by reference as though the same were set forth herein at length verbatim.

24. Denied as stated. On the contrary, Plaintiffs, on the basis of ownership, are admitted to being entitled to one-half of the total of the proceeds or value of the sale or harvesting of the whole Estate in the timber if in fact, one-hundred (100%) percent of the whole of the estate in timber had been sold or licensed for royalty payments. On the contrary, in this case, Witherow intended, believed and only sold the one-half interest in the standing timber estate, which she had the power to sell and the payment received by the Estate was intended to be and believed to be payment for the Estate's one-half interest. Witherow, at all times relevant, believed the sale of the Estate's one-half undivided interest was dependent upon Defendants, London and Mast securing an agreement from the Plaintiffs. Defendants, London and Mast, had the duty to negotiate the purchase of the remaining one-half interest owned by the Plaintiffs and to pay for it separately at whatever price was negotiated.

25. Admitted in part and denied in part. Witherow received cash from London as aforesaid and originally escrowed the sum pending Defendants securing an agreement with Plaintiffs and the conditional sale as aforesaid being consummated. Witherow does presently have cash on hand and distributed some of the proceeds, after the timber was cut, for the purpose of paying legitimate debts, taxes and administrative expenses of the Gerald Witherow Estate. It is admitted that a cash balance is on hand.

26. Witherow believes that the Plaintiffs, as joint tenants, with Gerald Witherow and his heirs, are entitled to an accounting of the transaction referenced above. Further, the Estate of Gerald Witherow is open and subject to administration in the Orphans' Court Division of this Court and subject to the jurisdiction of the Court with respect to the receipt and distribution of Estate assets. Further, pursuant to prior court proceedings, Witherow has given to Plaintiffs an accounting of the sale proceeds. Further, the Court has entered an order with respect to this count and the issue raised in the Amended Complaint is now believed to be moot.

WHEREFORE, Defendant moves the Honorable Court to enter an order dismissing Plaintiff's request for an accounting from Defendant/Witherow.

**Count II**  
**In Equity: Request for an Accounting v. Defendant, Mast**

27-30. Paragraphs 27 through 30 are directed solely to Defendant/Mast and accordingly, no response thereto is required from Defendant/Witherow.

WHEREFORE, Defendant/Witherow moves the Honorable Court to refrain from entering any order with respect to Defendant/Witherow under Count II of the Complaint.

Count III

In Equity: Request for Injunctive Release v. Defendants, Mast and Witherow

31. Denied. On the contrary, facts and matters are as set forth in paragraphs 1 through 30 of this answer, above, all of which are incorporated herein by reference as if the same were set forth herein at length verbatim.

32. It is denied that such sum should be paid into the Court pending the outcome of this litigation for the reasons set forth in paragraph 31 above, which are incorporated herein by reference and for the reason that this matter has been disposed of by prior Order of this Court.

33. Denied. It's denied that any proceeds should be immediately paid to either of the Plaintiffs for the reason set forth in paragraph 31, above, which are incorporated herein by reference and for the reason that this Court by prior Order resolved this issue. Said Order makes this averment moot.

34. Admitted.

35. It is denied that Witherow individually or as Administrator is insolvent or judgment proof. On the contrary, both the Estate and Witherow have individually have assets, including timber sale proceeds as aforesaid. Further, after reasonable investigation, Witherow is without knowledge sufficient to form a belief as to the material facts or basis for such allegations for the reasons that Plaintiffs have failed to set them forth and they are solely within Plaintiffs' knowledge and therefore strict proof, if relevant, is demanded at the trial of this action.

WHEREFORE, Defendant/Witherow, moves the Honorable Court to determine that its prior Orders adjudicated this issue and the claim should be dismissed.

**COUNT IV**  
**At Law: Conversion v. Defendant, Witherow**

36. Denied. On the contrary, facts and matters are as set forth in paragraphs 1 through 35 of this Answer, above, all of which are incorporated herein by reference as if the same was set forth herein at length verbatim.

37. Admitted.

38. Denied. It is denied that Witherow exercised dominion and control over Plaintiff's interest in said timber to any extent and certainly not in disregard of the Plaintiff's ownership interest by entering into the Timber Agreement. On the contrary, the facts and matters are as set forth in the paragraphs above, all of which are incorporated herein by reference.

39. Denied. Witherow has been advised that the averment of paragraph 39 is a conclusion of law to which no response is required. However, with respect to any fact that is implied or inferred from said statement, it is denied that Witherow caused the timber to be cut and removed without the consent of the Plaintiff. On the contrary, Witherow entered into a contract for the sale of the Estate's interest in the standing timber only with the understanding that the timber would not be cut or removed until Plaintiffs' consent was obtained by Defendants, London and/or Mast. Further, Witherow was unaware of the existence and provisions of 68 Pa.C.S.A. §115 and in any event, did not knowingly, intentionally or negligently violate the same.

40. Denied. Witherow has been advised that the averments of paragraph 40 constitute a legal conclusion to which no response is required. However, with respect to any fact implied or inferred from said language, it is denied that Witherow did not have the right to sell the Estate's interest in the standing timber without the consent of the Plaintiffs. Witherow did not sell any timber cut or removed from such undivided lands. On the contrary, the timber was cut and removed from the lands by Defendant/Mast in violation of the law and in breach of his agreement with

Witherow. By doing so, Defendants, London and Mast, did not acquire title to the cut timber and did not therefore convey good and marketable title to the cut timber thereafter to any third party.

41. Denied. Witherow has been advised that the allegations of this paragraph constitute a legal conclusion and no further response is required.

WHEREFORE, Defendant/Witherow, individually and as Administrator of the Estate of Gerald Witherow requests the Honorable Court to enter judgment in her favor and against the Plaintiffs and Co-Defendants on the cause of action, above stated, with costs of this action taxed to the Plaintiffs.

**COUNT V**  
**At Law: Conversion v. Defendant, Mast**

42-48. Paragraphs 42 through 48 are directed solely to Defendant/Mast and accordingly, no response thereto is required from Defendant/Witherow.

WHEREFORE, Defendant/Witherow moves the Honorable Court to refrain from entering any order with respect to Defendant/Witherow under Count V of the Amended Complaint.

**COUNT VI**  
**At Law: Conversion v. Defendant, London**

49-54. Paragraphs 49 through 54 are directed solely to Defendant/London and accordingly, no response thereto is required from Defendant/Witherow.

WHEREFORE, Defendant/Witherow moves the Honorable Court to refrain from entering any order with respect to Defendant/Witherow under Count VI of the Amended Complaint.

**COUNT VII**  
**At Law: Civil Conspiracy v. Defendants, Witherow, Mast and London**

55. Denied. On the contrary, the facts and matters are as set forth in paragraphs 1 through 54, above, and hereafter under New Matter, all of which is incorporated herein by reference as if the same were set forth herein at length verbatim.

56. Denied. It is admitted that Witherow intentionally entered into the Timber Agreement. It is denied that she intentionally caused the timber to be cut, harvested and removed without the consent of Plaintiffs. On the contrary, the transaction was entered into by her independently clearly as Administrator and for the sole reasons and on the conditions set forth above and hereafter in New Matter, all of which is incorporated herein by reference.

57. Admitted.

58. Admitted.

59. Admitted in part and denied in part. Witherow knew that one-half interest in the subject premises was owned by other persons and knew that included Plaintiff/Bidle. She does not have present recollection as to whether or not she was aware of Plaintiff/Swistock's interest at the time she entered into the Timber Agreement. On the contrary, facts and matters with respect to the cutting and removal of the timber without Plaintiffs' consent are as set forth above and in New Matter, all of which is incorporated herein by reference.

60. From personal knowledge, Witherow knew that London was not acting as her agent. At the time of the Timber Agreement, she believed London was either acting on his own behalf as an independent broker or as an agent for Mast. Witherow admits that Defendant/Mast has testified in a prior proceeding that London was Mast's agent.

61. Denied. It is denied that London acted as agent of Witherow. On the contrary, London, in contact with Witherow, suggested that Witherow sell the timber of the Estate to raise cash and indicated that he could arrange it. Witherow believed London to be acting either as an independent broker or as an agent for a timber purchaser. Subsequently, London brought to Witherow the Timber Agreement for review and execution. Further, facts and matters are as set forth above and in New Matter, all of which are incorporated herein by reference.

62. Denied. After reasonable investigation, Witherow is without knowledge sufficient to form a belief as to such averments for the same, is within exclusive knowledge of Mast or other unknown persons and strict proof of the same, if relevant, is demanded at the trial of this action. Further, facts and matters are as set forth above and in New Matter, all of which is incorporated herein by reference.

63. Admitted.

64. Denied. After reasonable investigation, Witherow is without information or knowledge sufficient to form a belief as to the averments of this paragraph and strict proof of the same, if relevant, is demanded at the trial of this action.

65. Denied. Witherow denies that she agreed to act in concert with one or more of the Defendants to facilitate any improper or unlawful, or criminal act. Witherow simply entered into the Timber Agreement, which she reasonably believed at the time that she had the power to do for the purposes previously set forth. Further, facts and matters are as set forth above and in New Matter, all of which is incorporated herein by reference.

66. Denied in part and admitted in part. Witherow was not part of any conspiracy as aforesaid. She did receive the sum of \$24,000.00 as aforesaid. The Timber Agreement was signed on the recommendation of London. Witherow was paid by London and signed the Timber Agreement at the request of London. After reasonable investigation, Witherow is without information or knowledge sufficient to form a belief as to whether or not there was a conspiracy or plan by Co-Defendants to deprive Plaintiffs of the benefit of their timber ownership. Witherow believed at the time that \$24,000.00 represented fair compensation for the Estate's interest in the timber.

67. Denied in part and admitted in part. London paid the cash to Witherow and she signed the Timber Agreement on his representation that the Timber Agreement was fair. London requested and received \$2,400.00 cash for services from the \$24,000.00 that he delivered on behalf of Mast. Witherow understood that the Timber Agreement was with Mast Logging, which is believed to be owned by Defendant/Mast. After reasonable investigation, Witherow is without knowledge sufficient to form a belief as to whether or not London performed said acts to facilitate a conspiracy to deprive Plaintiffs of the benefits of their timber ownership and strict proof of the same is demanded at the trial of this action.

68. Denied. Witherow denies that she participated or intentionally facilitated any conspiracy for the purpose of depriving Plaintiffs of their timber or the benefit of their timber ownership. Witherow did sign the Timber Agreement as Administrator and accepted the sum of \$21,600.00. Further, facts and matters are as set forth in this Answer and New Matter, all of which is incorporated herein by reference.

69. Denied. Witherow denies that she participated in or facilitated any conspiracy or otherwise intended or did by unlawful means, violate any money laundering statute. On the contrary, without prior notice, cash was delivered to Witherow by London, which she understood to be legal tender and she accepted the same. Witherow did not make any reports described by state or federal laws for the reason that she does not know of any such reports that were required.

70. Denied. Witherow denies that she acted with malice with respect to the Plaintiffs' property rights in the subject premises and the timber standing upon the same. On the contrary, she intended and acted solely with respect to the interest of the Estate in said timber in the manner and for the reasons set forth in this Answer and New Matter, all of which is incorporated herein by reference.

71. Denied. Witherow, at no time intended or acted in an outrageous manner as to Plaintiffs' legitimate property rights in the premises and the timber thereon. On the contrary, at all times relevant, Witherow acted innocently and for the sole purpose of dealing with the Estate's interest in the timber standing on the subject premises for the reasons and in the manner as set forth in this Answer and New Matter, all of which are incorporated herein by reference.

72. Witherow denies that she is liable to the Plaintiffs under the facts and circumstances of this case on a cause of action for civil conspiracy. Further, Witherow is advised by counsel that the statement in this paragraph constitutes a legal conclusion and that no further response is required.

WHEREFORE, Defendant/Witherow moves the Honorable Court to enter judgment in her favor and against the Plaintiffs and the Co-Defendants on the above stated cause of action, with costs of this action taxed to the Plaintiffs.

73. Denied. Witherow is advised that the averments of this paragraph constitute a legal conclusion to which no further response is required.

74. Admitted.

75. Admitted.

#### **NEW MATTER**

76. Defendant/Witherow signed the Timber Agreement solely as Administrator of the Estate of Gerald Witherow.

77. The Timber Agreement does not identify the timber sold and purchased.

78. The Timber Agreement does not identify the real property upon which the timber sold and purchased is standing.

79. The Timber Agreement does not identify Defendant/Witherow's ownership interest as Administrator in the timber, which is subject to the Timber Agreement.

80. The Timber Agreement was prepared by Contractor, David Mast, t/a David Mast & Sons, Logging, or in the alternative, by his agent, Olan London, Additional Defendants herein.

81. The real property and timber, which was subject to the Timber Agreement, was the one-half undivided interest vested in Gerald Witherow in and to seventy acres surface located Knox Township, Clearfield County, PA, identified on the Clearfield County Tax Maps as No. 122-H13-19 and more particularly described in that certain deed from George E. Erhard, et ux to Gerald Witherow and Raymond S. Fleck dated September 2, 1947 and recorded in Clearfield County in DBV 388, page 236, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference.

82. The Timber Agreement transaction was conditioned upon Defendant Mast securing independently a Timber Agreement from the Plaintiffs.

83. Defendant Mast, prior to cutting or removing any timber, was required to inspect the public records relating to the subject premises filed in the Clearfield County Courthouse to ascertain relevant facts, including confirmation of ownership, a description of the premises, a survey, mortgages, liens, prior leases and other restrictions as may appear.

84. In the event Defendants failed or refused to inspect the public records as aforesaid, each is nevertheless charged with the knowledge and information that is available on the public record and available to him.

85. The ownership of the Plaintiffs in the subject premises was at all times relevant hereto, properly noted on the tax assessment and tax map records of Clearfield County and recorded Deeds vesting title in the Plaintiffs.

86. It is customary and ordinary for a timber contractor to inspect the relevant public records with respect to a timber tract prior to commencing cutting operations.

87. That it is ordinary and customary for a contractor, such as David Mast, to pay approximately 50% of the fair market value of the timber to the landowners as a royalty absent special circumstances.

88. The timber located on subject premises was of average or above average quality and included various valuable species, particularly cherry, and there were no special circumstances which would justify payment of a royalty to the landowner of less than approximately 50% of the fair market value.

89. The timber located on the subject premises had a fair market value according to the Plaintiffs' Amended Complaint of \$108,753.00.

90. Defendant/Mast removed timber from the subject premises having a fair market value of approximately \$108,753.00 as set forth on the timber cruise of Advantage Forestry, attached to the Amended Complaint, all of which is incorporated herein by reference.

91. Certain timber was known and alleged to have been stolen by unknown persons from the subject premises prior to Witherow entering into the Timber Agreement.

92. In the alternative, Defendant/Mast removed from the subject premises, timber having a certain fair market value of which Defendant/Witherow has no knowledge, for the reason that the same is exclusively within the knowledge of Defendant/Mast and strict proof of the same is demanded at the trial of this action.

93. The \$24,000.00 or \$21,600.00 net payment to Witherow constituted a fair and reasonable payment for the Estate's one-half undivided interest in the timber.

94. Plaintiffs were entitled to a payment of approximately \$24,000.00 total for their one-half undivided interest in the premises and would have received the same from Defendant/Mast if Mast had secured an agreement from them.

95. Defendant/Mast intentionally failed or refused to secure an agreement with Plaintiffs even though he knew or should have known Plaintiffs owned 50% interest in the timber.

96. Witherow believes and therefore avers that her attorney, John Sughrue, upon becoming aware of the Timber Agreement, phoned Defendant/London on or about late April or early May, 2002 and orally informed him and/or confirmed to him the Plaintiffs' ownership interest in the timber.

97. Witherow believes and therefore avers that Defendant/London communicated to Defendant/Mast or should have communicated to Defendant/Mast, as Mast's agent, facts within his knowledge, including specifically the fact of Plaintiffs' ownership in the subject timber.

98. As a result of the need to secure an agreement from Plaintiffs, Witherow placed the money received by her in her attorney's trustee account and retained it therein pending confirmation of Plaintiffs' agreement and the commencement of timber operations.

99. Neither Defendant ever communicated to Witherow that Mast had secured an agreement with the Plaintiffs.

100. Neither Defendant ever communicated to Witherow that Defendant/Mast had not secured an agreement with Plaintiffs.

101. Neither Defendant communicated to Witherow that the timber was being cut, when it was cut or when the cutting was concluded.

102. Defendant Witherow did not know at any time prior to this lawsuit the nature, extent, or value of the timber located on the subject premises.

103. Witherow retained the funds received in trust except to pay real estate taxes on July 21, 2004 to protect the subject premises until such time as she was able to ascertain independently that timber had in fact been cut and removed.

104. As of the filing of this response, Witherow continues to hold in trust, from such funds, the sum of \$17,519.57 and has so advised Plaintiffs and Additional Defendants.

**NEW MATTER PURSUANT TO Pa.R.C.P. No. 2252 TO  
JOIN PRESENT PARTIES AS ADDITIONAL DEFENDANTS**

AND NOW, comes Ann Marie Witherow, individually and as Administrator of the Estate of Gerald Witherow, by her attorney John Sughrue, and joins original Defendant, David Mast, individually and t/a David Mast & Son Logging, and original Defendant, Olan L. London, individually, as Additional Defendants pursuant to Pa.R.C.P. No. 2252 upon causes of action whereof the following are statements:

**Count I**

**Ann Marie Witherow, Individually, and as Administrator, Plaintiff vs.  
David Mast and Olan L. London, Defendants**

105. The Plaintiff is Ann Marie Witherow (herein, "Witherow"), individually and as Administrator of the Estate of Gerald Witherow (herein, "Decedent").

106. An Additional Defendant is David Mast (herein, "Mast") individually and t/a David Mast & Son Logging.

107. An Additional Defendant is Olan L. London (herein, "London") individually and as agent for David Mast & Son Logging.

108. At all times relevant hereto, London was the duly authorized agent of Mast and was so authorized and acting within the scope of his authority, or, in the alternative, was an independent broker acting on his own behalf and for his own benefit.

109. Witherow believes and therefore avers that Mast was, at the time of the Timber Agreement and for a period of at least ten years prior thereto, engaged in the business of buying, cutting and removing standing timber and selling the cut timber to third parties.

110. The facts and averments set forth in Plaintiffs' Amended Complaint Counts V, (Conversion vs. Mast), VI (Conversion vs. London) and VII (Civil Conspiracy vs. Witherow, Mast and London), paragraphs 42 through 72, are incorporated herein by reference as though the same were set forth herein at length verbatim.

111. The facts and averments set forth in New Matter above, paragraphs 76 through 104, are incorporated herein by reference as though the same were set forth herein at length verbatim.

112. Witherow believes and therefore avers that London and Mast are friends and have been for a period of time.

113. London was a social acquaintance of Decedent during Decedent's lifetime.

114. Witherow, at or about the times relevant to the Timber Agreement, had occasions, from time to time, to have social contacts with London and members with of his family.

115. From such social contacts, London secured knowledge of Decedent's death and the need for funds to pay the expenses of Decedent's Estate.

116. Witherow believes and therefore avers that at all times relevant hereto, London had knowledge of Decedent's ownership of the subject premises, the timber thereon and the fact that Decedent only owned a 50% interest in the same.

117. Prior to entering into the Timber Agreement, London approached Witherow with respect to timber owned by the Estate and suggested to her that it could be sold to raise funds and that London knew an individual who would be interested in purchasing the timber.

118. Prior to said Timber Agreement being executed, London advised Witherow in response to an inquiry that she had the authority as Administrator to sell the timber of the Estate.

119. At London's suggestion, Witherow showed London the general location of the timber in which the Decedent had an ownership interest, specifically the subject premises.

120. At all times relevant hereto, Witherow did not know the exact location or boundary lines of the subject premises and did not represent the same to London or to Mast.

121. Prior to executing the Timber Agreement, Witherow, at no time met with or negotiated the agreement with David Mast or any other of his representatives except London.

122. Subsequent to viewing the subject premises, London advised Witherow that Mast was willing to purchase the Estate's timber for a cash payment of \$24,000.00 in advance with a two year time period to remove the timber.

123. After viewing the subject premises as aforesaid, London subsequently met with Witherow in the company of another individual whom Witherow did not know on or about April 19, 2002, and offered a Timber Agreement on behalf of Mast t/a David Mast & Son Logging in form prepared by the Additional Defendants. The Timber Agreement so presented is Exhibit 2 attached hereto.

124. London represented the proposed sale price as fair and reasonable.

125. As a result of the foregoing, Witherow, on or about April 19, 2002, executed the Timber Agreement and received \$24,000.00 in cash from London on behalf of Mast.

126. After receiving the \$24,000.00, as aforesaid, Witherow asked London if there was a fee due London and he responded that the standard commission was 10% or \$2,400.00.

127. As a result of London's response, Witherow immediately returned to London the sum of \$2,400.00.

128. Within a few days after April 19, 2002, Witherow delivered the Timber Agreement and the cash to the Estate's lawyer, John Sughrue, and reviewed with him the transaction.

129. At said conference, Witherow was advised by said attorney that the written Timber Agreement was deficient in that it failed to identify the timber being purchased, specify the real

property upon which the timber stood and the extent of the Decedent's ownership, specifically 50% of the undivided whole.

130. At all times relevant hereto, Witherow intended, and in fact, by said Timber Agreement, sold only the Decedent's Estate's interest in the subject timber and believed that London knew that the Decedent only owned a 50% undivided interest.

131. At or about the same time as Witherow's conference with Sughrue, Sughrue called London as agent and/or broker of the transaction, communicated to him the deficiencies or ambiguities of the written Timber Agreement prepared by him, confirmed to him that the Estate only owned a 50% interest in the timber, that no timber should be cut in any event unless London and Mast secured the consent of the Plaintiffs and that he, London, should immediately communicate those facts to Mast.

132. Under the facts and circumstances of the case, London was obligated to communicate to Mast if he had not already done so, the fact that Mast had only purchased a 50% interest in the timber.

133. Witherow believes and therefore avers that at the very least, London in fact, after receiving Sughrue's phone call, did inform Mast of the extent of the Decedent's interest in the timber and the fact of unsigned co-owners.

134. In the alternative, if London did not communicate such information to Mast, his failure to do so was a breach of his duty as agent of Mast and/or as a broker in the matter.

135. In the alternative, if London failed or refused to communicate said information to Mast, he did so in order to protect his fees in the transaction.

136. Witherow believes and therefore avers that Mast either knew or should have known prior to cutting the timber that Witherow had only sold him a 50% interest in the timber and that

notwithstanding that knowledge, chose for pecuniary gain, to nevertheless, cut the timber in reckless disregard of the rights and ownership of the Plaintiffs.

137. In the alternative, Mast and London should have known, in advance of cutting the timber, by the exercise of due care and inspection of public records, that the Decedent's Estate owned only a 50% interest in the timber and that the remaining 50% was owned equally by the Plaintiffs.

138. The failure of Mast and London and/or their agents to exercise such due care by inspecting the public records, or communicating with Witherow, constituted negligence and was the direct cause of the timber being cut and removed in violation of the law and Plaintiffs' rights.

139. As a result of the Additional Defendants breach of duty, reckless disregard and negligence as aforesaid, Additional Defendants unlawfully cut, removed and sold or caused to be cut, removed and sold unlawfully, Plaintiffs' timber on the subject premises.

140. In the alternative, as a result of Mast and London's knowledge of the timber ownership as aforesaid, Mast willfully, intentionally and maliciously cut and removed the timber without the consent of the Plaintiffs.

141. As a result of Additional Defendants actions as aforesaid, the Plaintiffs sustained damages as more fully set forth in Plaintiffs' Amended Complaint, all of which is incorporated herein by reference.

142. If Plaintiffs establish the causes of action and damages as alleged in their Amended Complaint, which allegations Witherow admits and/or denies in part, as set forth in the pleadings, said causes of action and the damages arising therefrom were caused solely by the willful, intentional, negligent or reckless and careless acts of the Additional Defendants, individually,

jointly and severally, their agents, servants, partners, officers and/or employees for the reasons set forth in this Count I.

143. As a result of the aforesaid actions and/or omissions of the Additional Defendants, individually and jointly and the damages to Plaintiffs arising therefrom, Additional Defendants, Mast and London, are solely liable either individually and/or jointly and severally to Plaintiffs for the harm and damages Plaintiffs have sustained.

144. If, as a result of the allegations contained in Plaintiffs' Amended Complaint, Witherow is determined to be liable to Plaintiffs for all or any part of the damages Plaintiffs have sustained, a liability which Witherow denies, the Additional Defendants, London and Mast, are the parties primarily liable for such damages for the reasons set forth herein and are liable over to Witherow by way of contribution and/or indemnification for all such damages as Witherow may be required to pay to Plaintiffs.

WHEREFORE, Witherow respectfully moves the Honorable Court to determine or adjudicate with respect to Witherow, both individually and as Administrator, the following relief:

1. To adjudicate that Witherow has no liability to the Plaintiffs, individually or jointly, on the causes of action plead and to enter judgment in her favor and against Plaintiffs;
2. In the event the Court adjudicates that the Plaintiffs have been harmed and are entitled to receive damages, to adjudicate that the Additional Defendants, Mast and/or London, are solely liable on the Plaintiffs causes of action, that Witherow is not liable and to enter judgment in her favor and against the Plaintiffs and the Additional Defendants; or
3. In the alternative, if the Court determines that Witherow has liability to the Plaintiffs, to adjudicate that the Additional Defendants, Mast and/or London, individually or

jointly, are liable over to Witherow on the Plaintiffs causes of action; or, are jointly or severally liable with Witherow on the Plaintiffs causes of action and to enter judgment accordingly, in her favor and against Additional Defendants, Mast and London, individually, jointly and/or jointly and severally.

**Count II**

**Ann Marie Witherow, Individually and Administrator, Plaintiff vs.**  
**David Mast, Individually and t/a David Mast & Son Logging, Defendant**

145. The facts and averments set forth in paragraphs 76 through 144 above are incorporated herein by reference as though the same were set forth herein at length verbatim.

146. On or about April 19, 2002, Witherow entered into a Timber Agreement with Mast.

147. A condition precedent to said contract or to Mast's purchase of the timber and right or license to cut and remove it was that Mast secure an independent agreement from Plaintiffs, Swistock and Bodle, for the purchase of Plaintiffs' 50% interest in the said timber.

148. That Mast knew or should have known of the condition of said sale for the reasons set forth in this Answer and New Matter, all of which are incorporated herein by reference.

149. Notwithstanding such condition, Mast entered the premises, cut, removed and sold the timber without securing the necessary agreement of the Plaintiffs.

150. The value of the timber removed was as set forth in Plaintiffs' Amended Complaint, the sum of \$108,753.00.

151. As a result of Mast's conduct as aforesaid, Mast breached the Timber Agreement between the parties.

WHEREFORE, Witherow moves the Honorable Court to enter judgment in her favor and against Mast in amount of the fair market value of the timber wrongfully removed, specifically the sum of \$54,377.00 together with interest at the legal rate and costs of this action taxed to Mast.

**Count III**

**Ann Marie Witherow, Individually and as Administrator, Plaintiff, vs.**  
**David Mast, Individually and t/a David Mast & Son, Logging, Defendant**

152. The facts and averments set forth in paragraphs 76 through 151 above are incorporated herein by reference as though the same were set forth herein at length verbatim.

153. If it is determined that the Pennsylvania Statutes, 68 P.S. §115 and §116 prohibit Witherow and Mast from entering into the Timber Agreement, the Timber Agreement is illegal.

154. Witherow did not know or believe at the time she entered into the Timber Agreement that the Agreement violated such statutes.

155. Mast did not know or believe at the time he entered into the Timber Agreement that it violated such statutes.

156. At the time Witherow entered into the Timber Agreement, she believed that Mast would secure a separate agreement with Plaintiffs prior to cutting the timber.

157. In the alternative, if it is found that Mast did not know and should not have known that Plaintiffs owned 50% of the timber at the time Mast entered into the Timber Agreement or prior to cutting the timber, Mast mistakenly believed that Witherow was the sole owner of the property.

158. The Timber Agreement between Witherow and Mast was illegal, or in the alternative, made under a mistaken belief of fact and law and is therefore void or voidable.

WHEREFORE, Witherow moves the Honorable Court to declare the aforesaid Timber Agreement invalid, void and unenforceable and to enter judgment in her favor and against Mast on all contract claims.

**Count IV**  
**Ann Marie Witherow, Individually and as Administrator, Plaintiff, vs.**  
**David Mast, Individually and t/a David Mast & Son, Logging, Defendant**

In the alternative, and in the event it is determined that the Timber Agreement between Witherow and Mast is in fact void or invalid in whole or in part, Witherow makes a claim against Mast upon a quasi-contract cause of action, whereof the following is a statement:

159. The facts and averments set forth in paragraphs 76 through 158 above are incorporated herein by reference as though the same were set forth herein at length verbatim.

160. Witherow was, at all times relevant hereto, the owner of 50% of the timber located on the subject premises.

161. Mast entered the subject premises, cut, transported and removed timber from the subject premises and on information and belief, ultimately sold the timber for value.

162. Mast, by his conduct as aforesaid, wrongfully converted the timber and removed it from the subject premises.

163. In the alternative, Mast removed said timber as aforesaid under a mistaken belief of fact and/or law.

164. As a result of Mast's conduct as aforesaid, Mast received an economic benefit, specifically, either the utilization of said timber or money for the sale thereof.

165. Witherow believes and therefore avers based on the appraisal set forth in Plaintiffs' Amended Complaint that the timber removed, as aforesaid, had a total fair market value of \$108,753.00 and that therefore her 50% undivided interest had a value of \$54,377.00.

166. Witherow believes and therefore avers upon information received that the customary and ordinary value to the landowner of such cut timber is equal to 50% of the fair market value of the landowner's interest in the timber, which in this case would be approximately \$27,188.00.

167. That upon removal of the timber as aforesaid, Witherow reasonably expected to be paid for the fair market value of her timber.

168. At the time of removing the timber as aforesaid, Mast reasonably expected to pay for the timber.

169. That the fair and reasonable value of the timber so removed for which Mast should pay is \$27,188.00.

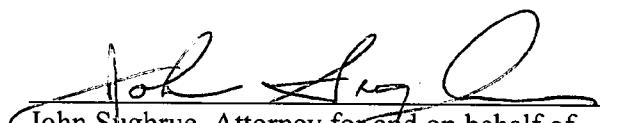
170. Under the facts and circumstances of this case, Mast has a duty to pay for the timber he removed.

171. Under the circumstances of this case, it would be unconscionable for Mast not to pay for the benefit received.

172. In the absence of a valid contract, express or implied in fact, it is fair and just that Mast compensate Witherow for the benefit he received.

WHEREFORE, Witherow moves the Honorable Court to enter a judgment in her favor and against Mast in the amount of \$27,188.00 together with interest at the legal rate with costs of this action taxed to the Mast.

Respectfully submitted:

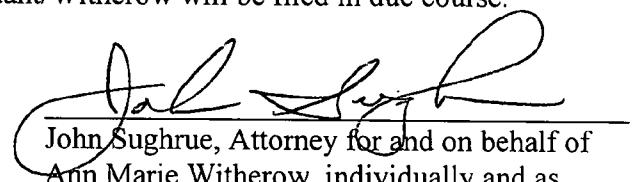


John Sughrue, Attorney for and on behalf of  
Ann Marie Witherow, individually and as  
Administrator of the Estate of Gerald Witherow

**VERIFICATION**

I, Attorney for Defendant, Ann Marie Witherow, state that I am acquainted with the facts set forth in the foregoing Answer and New Matter and that the same are true and correct to the best of my knowledge, information, and belief. I further state that this verification is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities; and that in furtherance of judicial expedience, because the client is unavailable to meet with counsel, review the pleading and execute a Verification in time to file this pleading under the significant time constraints imposed by the Rules of Court. I am making this verification in order to comply with the Court Rules and to expedite the pleading. Defendant/Witherow and I reserve the right to amend this pleading after it is reviewed by Defendant/Witherow, if counsel made an error in drafting the pleading. A Verification executed by the Defendant/Witherow will be filed in due course.

Date: April 28, 2005



John Sughrue, Attorney for and on behalf of  
Ann Marie Witherow, individually and as  
Administrator of the Estate of Gerald Witherow



Made the — second day of September —, in the year  
Nineteen hundred and forty seven (1947) —

Grantors George E. Erhard and Laura N. Erhard, his wife, of the Township of Knox, County of Clearfield and State of Pennsylvania, hereinafter called the grantors, parties of the first part, and

Gerald Q. Witherow, of the Township of Pike, County of Clearfield and State of Pennsylvania, and Raymond S. Fleck, of the Township of Boggs, County of Clearfield and State of Pennsylvania, as tenants in common, hereinafter called the grantees, parties of the second part, —

Witnesseth, That in consideration of \$600.00 Six hundred

Dollars,

in hand paid, the receipt whereof is hereby acknowledged, the said grantors do hereby grant and convey to the said grantees, their heirs and assigns, —

All those two certain tracts or parcels of land situate formerly in the Township of Jordan, now in the Township of Knox, County of Clearfield and State of Pennsylvania, bounded and described as follows:

— THE FIRST THEREOF: Beginning at a hemlock in line of land of Christian Neff; thence south forty (40) degrees east one hundred (100) perches to a sugar; thence south fifty (50) degrees west by land conveyed to I. McKee one hundred and six (106) perches to a beech; thence north forty (40) degrees west one hundred (100) perches to pile of stones; thence north fifty (50) degrees east by land of P. Kloninger one hundred and six (106) perches to the place of beginning. Containing sixty two (62) acres and eighty four (84) perches and allowance of six (6%) per cent for roads.

— BEING the same premises which Horatio Wilkes, by deed dated in the year 1840, recorded at Clearfield on February 7, 1840, in Deed Book G, page 413, granted and conveyed to George Erhard; and the said George Erhard, did by Article of Agreement dated the 1st day of October, A. D. 1875, recorded at Clearfield in Miscellaneous Book

, page 403, agree to sell said land unto David Erhard upon certain conditions which were subsequently performed, and the said David Erhard did thereafter, to wit: on the 12th day of July, A. D. 1895, die testate and by his will dated the 2nd day of November, 1880, recorded at Clearfield in Will Book E, page 174, in Item Five, devise the said land to his widow, Jennie D. Erhard for and during her life and thereafter to George Erhard, the present owner. And the heirs of George Erhard, deceased, did by deed dated the 14th day of November, 1899, recorded at Clearfield in Deed Book No. 109, page 3, grant and convey the said premises to Jennie D. Erhard the executrix of the said David Erhard. And the said Jennie Erhard having died on the 1st day of November, 1901, title to said land vested in George Erhard, the present grantor, by reason of provision five in the will above mentioned.

THE SECOND THEREOF: Also situate in the Township of Jordan and being particularly that portion of land being between the original line to the resurvey along line of resurvey to meadow as it existed in 1883, thence west to corner of land now or formerly of Robert Witherow. Containing ten (10) acres, more or less, and being a part of a larger survey in the name of Christian Neff.

BEING the same premises which Louis Erhard and others by Quit-Claim Deed dated the 3rd day of February, 1883, recorded at Clearfield in Deed Book No. 54, page 533, conveyed to George Erhard, who by agreement dated as heretofore stated and by subsequent conveyances as heretofore recited caused the same to vest in the persons through whom title vested in George E. Erhard, the present grantor, all as heretofore recited.

The foregoing two parcels are contiguous in location, and combined represent an area of seventy five (75) acres of land, more or less.

EXCEPTING AND RESERVING, however, unto Hazen H. Owens, for a period of two years from April 15, 1947, all of the timber of every kind and character eight inches or more in diameter one foot from the ground; together with the right of ingress, egress and regress, in, over and upon said parcel of land for the purpose of cutting, peeling, skidding and removing such timber and bark, with the right to construct such roads over the premises hereby conveyed within such period of two years as may be necessary to remove such timber and including the right to erect and maintain a saw mill for the manufacturing of the timber into lumber, with the right to remove the saw mill and appurtenances thereto and other improvements placed upon the ground by Hazen H. Owens at or before the expiration of such two year period. Any timber not cut down and removed from the premises within the said period of two years from April 15, 1947, and all timber which was not eight inches or more in diameter one foot above the ground on April 15, 1947, shall be the property of the present grantees.

the said grantors do hereby ~~waive~~ - specially the property  
hereby conveyed, \_\_\_\_\_

In witness whereof, said grantors have hereunto set their hands  
and seals the day and year first above written.

Signed, Sealed and Delivered  
In the Presence of

P. W. Heist

George E. Erhard  
Wife  
Laura N. Erhard



Commonwealth of Pennsylvania  
County of CLEARFIELD

On this, the 3<sup>rd</sup> day of September 1947, before me, Paul Heist, Justice of the  
Peace,  
the undersigned officer, personally appeared George E. Erhard and Laura N. Erhard,  
his wife, \_\_\_\_\_

known to me (or satisfactorily proven) to be the person(s) whose name(s) are subscribed to the within  
instrument, and acknowledged that they executed the same for the purpose therein contained.

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

My COMMISSION EXPIRES  
1st Mon Jan 1950

P. W. Heist

Justice of the Peace

I further certify, that the precise address of the grantee(s) herein is  
Olanta, Pa. and West Decatur, Pa. respectively.



DEED

GEORGE E. ERHARD and  
LAURA N. ERHARD, his  
wife

TO

GERALD Q. WITHEROW and  
RAYMOND S. FLECK, as  
tenants in common

Dated, September 2, - 1947 -

24th  
1947  
Gerald Q. Witherow

CLARENCE R. KRAMER  
ATTORNEY AT LAW  
CLEARFIELD, PA.

Commonwealth of Pennsylvania  
County of Clearfield

SS:

Recorded on this 2nd day of September A.D. 1947

in the Recorder's Office of said County  
in DEED Book 3 F P Vol \_\_\_\_\_ PAGE 226

Given under my hand and seal of the said office  
the date above written.

Raymond S. Fleck

RECORDED



DAVID MAST  
& SON LOGGING  
Rte. 1, Box 172-B  
Luthersburg, PA 15848



## TIMBER SALE AGREEMENT

Made and entered into this day April 19, 2002  
between Landowner: John H. Kline, Jr.

and Contractor: David Mast and Sons Logging enters  
into contract to buy timber as to the following agreement.

Contractor agrees to pay Twenty four Thousand Dollars

\$24,000.00

and remove timber within a 2 year period.

The Contractor shall be responsible for any damage occurring beyond the limits of the sale area being caused by his operations, including severe deterioration of the access roads on the timber sale area. Reparation of damages shall be made as soon as practicable.

The Landowner guarantees title to the said timber and will defend it at his expense against any and all claims for taxes, mortgages, contracts and any other encumbrances.

The Landowner grants to the Contractor the freedom of entry and right-of-way on and across the area covered by this contract.

Small wood products, pulpwood, firewood, etc. from timber sale area only, may be removed by the Contractor as part of his normal operations. At the completion of operations, all wood left on the sale area shall be the property of the Landowner for his personal use and disposal.

LANDOWNER: John H. Kline, Jr.

CONTRACTOR: David Mast and Sons Logging

Other specifications: Cut anything that makes sense.

Witness: John H. Kline, Jr.

Witness: David Mast



OLE' RONALD  
7 NICHOLS ST.  
CLEARFIELD, PA

SET BACK  
TRAFFIC

16830  
25% INT. IN. 70 A SURF.

1220 H13 000 00019  
DISTRICT MAP SUB MAP PARCEL SUB PARCEL II CARD NO. CLASS OF 000  
LIV. UNITS ZONE NC 106  
NBHD LAND USE

CONTROL NUMBER 122086163

LEGAL DESCRIPTION

PROPERTY ADDRESS  
LOCATION  
FRONTING  
PARCEL TIE BACK  
CONDOS LEVEL  
CONDOS TYPE

ACTUAL FRONTAGE	EFFECTIVE FRONTAGE	LAND DATA & COMPUTATIONS	FRONTAGE RATE	INFLUENCE FACTOR	LOT VALUE
DEPTH	DEPTH	ACTUAL UNIT PRICE	EFFECTIVE UNIT PRICE	FRONTAGE RATE	INFLUENCE FACTOR

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**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on April 28, 2005, I caused a true and correct copy of Defendant/Witherow's Answer and New Matter to be served on the following and in the manner indicated below:

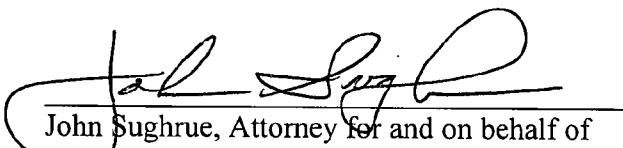
By United States Mail, First Class, Postage Prepaid  
Addressed as Follows:

Mr. Theron Noble, Esq.  
Attorney for Plaintiffs  
301 E. Pine St.  
Clearfield, PA 16830

John R. Carfley, Esq.  
Attorney for Olan L. London  
PO Box 249  
Philipsburg, PA 16866

Ms. Toni Cherry  
Attorney for David Mast  
PO Box 505  
DuBois, PA 15801

Date: April 28 2005

  
John Sughrue, Attorney for and on behalf of  
Ann Marie Witherow, individually and as  
Administrator of the Estate of Gerald Witherow

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

JAMES W. SWISTOCK, an adult individual,  
and RONALD R. BODLE, an adult individual,

PLAINTIFFS,

: No. 04- 2032 -CD

v.

DAVID MAST, an adult individual,  
OLIN L. LONDON, an adult individual, and  
ANN MARIE WITHEROW, individually and  
as Administrator of the Estate of Gerald Witherow,

DEFENDANT.

: Type of Pleading:

: **REPLY TO NEW MATTER OF  
DEFENDANT WITHEROW**

: Filed By:

: Plaintiff

: Counsel of Record:

: Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.#: 55942

*FILED* *WAC*  
*5/2/05*  
*MAY 09 2005*

William A. Shaw  
Prothonotary/Clerk of Courts

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
 )  
PLAINTIFFS, )  
 )  
 )  
v. )  
 )  
 )  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
 )  
DEFENDANTS. )  
 )

No. 04- 02032 -CD  
In Equity and at Law

**PLAINTIFFS' REPLY TO NEW MATTER OF DEFENDANT WITHEROW**

**AND NOW, comes the Plaintiffs, James W. Swistock and Ronald R. Bodle, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows as their REPLY TO NEW MATTER OF DEFENDANT WITHEROW:**

76. After reasonable investigation the same can not be admitted nor denied. Plaintiffs demand strict proof of the same at time of trial.
77. Said agreement speaks for itself, as such no response is deemed necessary.
78. Said agreement speaks for itself, as such no response is deemed necessary.
79. Said agreement speaks for itself, as such no response is deemed necessary.
80. After reasonable investigation the same can not be admitted nor denied. Plaintiffs demand strict proof of the same at time of trial.
81. Admitted, in part, Denied, in part. It is admitted that the timber at issue was the timber standing on the premises as herein identified. To the extent that such averment could be construed that neither Plaintiffs had an interest in said timber or premises the same is strictly denied. Further, to the extent such averment calls for response as to whether a one half interest in said timber was contemplated in said agreement, the same can not either admitted or denied and strict proof of the same is demanded at time of trial.

82. After reasonable investigation the same can not be admitted nor denied. Plaintiffs demand strict proof of the same at time of trial.

83. Admitted.

84. Admitted.

85. Admitted.

86. Admitted.

87. Admitted. By way of further response, it is noted that the same is customary assuming that the seller of the timber is a willing seller and desires for the timber to be removed.

88. Admitted.

89. Admitted.

90. Admitted.

91. After reasonable investigation the same can not be admitted nor denied. Plaintiffs demand strict proof of the same at time of trial.

92. Admitted, in part, Denied in part. It is Admitted that timber was removed, more specifically harvested by Defendant Mast. As to whether Defendant Witherow knew the value of said timber, after reasonable investigation the same can not be admitted nor denied. Plaintiffs demand strict proof of the same at time of trial.

93. Assuming that said Defendant was a willing seller, Admitted.

94. Denied. Although under the facts and circumstances it does appear that if Plaintiffs were willing sellers the same is accurate, however, neither Plaintiff was a willing seller or desired the timber to be harvested, as such the same is DENIED and strict proof is demanded at time of trial.

95. Admitted.

96. After reasonable investigation the same can not be admitted nor denied. Plaintiffs demand strict proof of the same at time of trial.

97. Admitted.

98. After reasonable investigation the same can not be admitted nor denied. Plaintiffs demand strict proof of the same at time of trial.

99. After reasonable investigation the same can not be admitted nor denied. Plaintiffs demand strict proof of the same at time of trial.

100. After reasonable investigation the same can not be admitted nor denied. Plaintiffs demand strict proof of the same at time of trial.

101. After reasonable investigation the same can not be admitted nor denied. Plaintiffs demand strict proof of the same at time of trial.

102. After reasonable investigation the same can not be admitted nor denied. Plaintiffs demand strict proof of the same at time of trial.

103. After reasonable investigation the same can not be admitted nor denied. Plaintiffs demand strict proof of the same at time of trial.

104. Admitted.

**WHEREFORE, Plaintiffs request that judgment be entered in their favor as requested in their CIVIL COMPLAINT.**

105 - 172. Plaintiffs believe that these averments are directed at other parties in this case and as such no response is necessary from Plaintiff.

**WHEREFORE, Plaintiffs request that judgment be entered in their favor as requested in their CIVIL COMPLAINT.**

Respectfully Submitted,



---

Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
PLAINTIFFS, )  
v. ) No. 04- 02032 -CD  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
DEFENDANTS. )  
In Equity and at Law

**VERIFICATION**

I, Ronald R. Bodle, Plaintiff, do hereby swear and affirm that I have read the foregoing REPLY TO NEW MATTER OF DEFENDANT WITHEROW and that the averments therein contained are true and correct to the best of my knowledge, information and belief. Furthermore, I am over the age of 18 years of age and give this unsworn statement knowing it is to authorities and subject to the penalties of 18 Pa.C.S.A. 4901.

So made this 5 day of May, 2005.

By,

  
Ronald R. Bodle, Plaintiff

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. )  
 )  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )  
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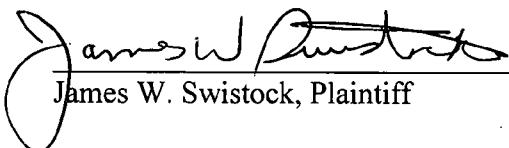
No. 04- 02032 -CD  
In Equity and at Law

**VERIFICATION**

I, James W. Swistock, Plaintiff, do hereby swear and affirm that I have read the foregoing REPLY TO NEW MATTER OF DEFENDANT WITHEROW and that the averments therein contained are true and correct to the best of my knowledge, information and belief. Furthermore, I am over the age of 18 years of age and give this unsworn statement knowing it is to authorities and subject to the penalties of 18 Pa.C.S.A. 4901.

So made this 4th day of May, 2005.

By,

  
\_\_\_\_\_  
James W. Swistock, Plaintiff

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. )  
 )  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )  
 )

No. 04- 02032 -CD  
In Equity and at Law

**PLAINTIFFS' CERTIFICATE OF SERVICE**

I, Theron G. Noble, Esquire of Ferraraccio & Noble, counsel for Plaintiffs, does hereby certify this 10<sup>th</sup> day of May, 2005, that I did send a true and correct copy of Plaintiffs' REPLY TO NEW MATTER OF DEFENDANT WITHEROW to the below indicated persons, being all counsels of record, via United States Mail, first class, postage prepaid.

John R. Carfley, Esquire  
Counsel for Defendant London  
P.O. Box 249  
Philipsburg, PA 16866

Toni M. Cherry, Esquire  
Counsel for Defendant Mast  
P.O. Box 505  
DuBois, PA 15801

John Sughrue, Esquire  
Counsel for Defendant Witherow  
23 N. 2nd Street  
Clearfield, PA 16830

Respectfully Submitted,

  
\_\_\_\_\_  
Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942



IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JAMES W. SWISTOCK, an adult individual	)
and RONALD R. BODLE, an adult individual,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
DAVID MAST, an adult individual,	) No. 04 - 2032 C.D.
OLAN L. LONDON, an adult individual, and	)
ANN MARIE WITHEROW, individually and	) In Equity and at Law
as Administrator of the Estate of Gerald Witherow,	)
	)
Defendants	)
	)
vs.	)
	)
ANN MARIE WITHEROW, individually and as	)
Administrator of the Estate of Gerald Witherow,	)
	)
Additional Defendants	)
	)
vs.	)
	)
DAVID MAST, individually and t/a	)
DAVID MAST & SON LOGGING, and	)
OLAN L. LONDON, individually,	)
	)
Additional Defendants	)

**PRELIMINARY OBJECTIONS OF DEFENDANT,**  
**DAVID MAST, TO PLAINTIFFS' AMENDED COMPLAINT**

Defendant, David Mast, by his undersigned attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., preliminarily objects to Plaintiffs' Amended Complaint as follows:

**I. Preliminary Objection to Inclusion of Scandalous and  
Impertinent Matter Pursuant to Pa. R.C.P. 1028(a)(2)**

1. Plaintiffs' Amended Complaint alleges causes of action against Defendant, David Mast, for damages on the grounds that Defendant, David Mast, cut timber belonging to the Plaintiffs without the permission of the Plaintiffs.
2. Count VII of Plaintiffs' Amended Complaint allegedly sets forth an action at law for civil conspiracy against Defendants Witherow, Mast and London.
3. In order to state a cause of action for civil conspiracy under Pennsylvania law, a complaint must allege the existence of all elements necessary to such a cause of action. Baker v. Rangos, 229 Pa.Super. 333, 351, 324 A.2d 498, 506 (1974).
4. A cause of action for conspiracy requires: (1) a combination of two or more persons acting with a common purpose to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose; (2) an overt act done in pursuance of the common purpose; and (3) actual legal damage.
5. Plaintiffs' Amended Complaint must allege facts which, if proven, will support an inference of combination and intent. See Baker v. Rangos, 229 Pa.Super. 333, 324 A.2d 498 (1974).
6. Paragraph 64 under Count VII of Plaintiffs' Amended Complaint alleges that:

That upon information and belief, Defendant Mast has in the past acted in a pattern consistent with the actions herein, namely by securing the permission of one co-tenant, while he knows of other co-tenants' interests and proceeding to cut, harvest and remove timber, so as to defeat, without consent and without compensation, the other co-tenants' interest in the timber.

7. Paragraph 69 in Count VII of Plaintiffs' Amended Complaint alleges that:

That by transferring the sum of \$24,000 in cash, which upon information and belief, was done without the necessary reporting requirements prescribed by State and Federal laws, Defendants Witherow, London and Mast also facilitated the conspiracy by other unlawful means relating to violations of numerous money laundering statutes.

8. That the allegations set forth in Paragraphs 64 and 69 are unnecessary allegations that bear cruelly on the moral character of David Mast; are contrary to good manners; unbecoming to the dignity of the Court and charge David Mast with crimes or violations not necessary to be shown in this action and are therefore scandalous.

9. The allegations set forth in Paragraphs 64 and 69 are irrelevant, immaterial and inappropriate to the cause of action asserted in Plaintiffs' Amended Complaint against Defendant, David Mast, are in violation of the pleading requirements of Pa. R.C.P. 1019 and, accordingly, are impertinent.

WHEREFORE, Defendant, David Mast, requests that Paragraphs 64 and 69 of Plaintiffs' Amended Complaint be stricken.

**II. Preliminary Objection to Count VII of Plaintiffs' Amended Complaint Raising Insufficient Specificity Pursuant to Pa. R.C.P. 1028(a)(3)**

10. Paragraph 69 of Plaintiffs' Amended Complaint alleges that Defendant Mast did not comply with State and Federal laws and "facilitated the conspiracy by other unlawful means relating to violations of numerous money laundering statutes."

11. That Pa. R.C.P. 1019(a) requires that the materials facts on which a cause of action is based be stated in a concise and summary form.

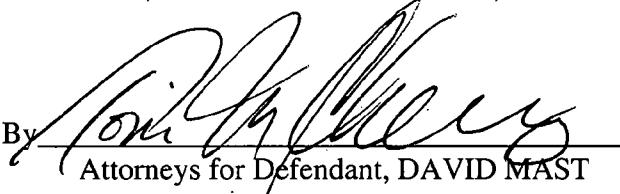
12. That Paragraph 69 fails to set forth with sufficient specificity in what way Defendant Mast violated State and Federal laws; what State and Federal laws were violated and what money laundering statutes were violated and how those statutes were violated by Defendant Mast.

13. That Plaintiffs base their allegation that Defendant Mast is guilty of outrageous conduct on the allegation set forth in Paragraph 69 but Paragraph 69 lacks sufficient specificity to apprise Defendant Mast of the conduct of which he is being accused and upon which Plaintiffs rely, to allow him to adequately prepare and assert defenses to Plaintiffs' allegations, and/or to identify and join any potentially responsible parties as additional defendants.

WHEREFORE, Defendant, David Mast, respectfully requests Your Honorable Court to order Plaintiffs to more specifically plead the averments contained in Paragraph 69 of their Amended Complaint.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By   
Attorneys for Defendant, DAVID MAST

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA

## CIVIL DIVISION

JAMES W. SWISTOCK, an adult individual )  
and RONALD R. BODLE, an adult individual, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
DAVID MAST, an adult individual, ) No. 04 - 2032 C.D.  
OLAN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and ) In Equity and at Law  
as Administrator of the Estate of Gerald Witherow, )  
 )  
Defendants )  
 )  
vs. )  
 )  
ANN MARIE WITHEROW, individually and as )  
Administrator of the Estate of Gerald Witherow, )  
 )  
Additional Defendants )  
 )  
vs.. )  
 )  
DAVID MAST, individually and t/a )  
DAVID MAST & SON LOGGING, and )  
OLAN L. LONDON, individually, )  
 )  
Additional Defendants )

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>TH</sup> day of May, 2005, a true and correct copy of the Preliminary Objections of Defendant, David Mast, to Plaintiffs' Amended Complaint was served upon the following persons by mailing the same to them by United States First Class

Mail, Postage Prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

THON G. NOBLE, ESQ.  
Ferraraccio & Noble  
Attorneys at Law  
301 East Pine Street  
Clearfield, PA 16830

JOHN R. CARFLEY, ESQ.  
Attorney at Law  
P. O. Box 249  
Philipsburg, PA 16866

JOHN SUGHRUE, ESQ.  
Attorney at Law  
23 North Second Street  
Clearfield PA 16830

GLEASON, CHERRY AND CHERRY, L.L.P.

Dated: May 6, 2005

By

John R. Carfley  
Attorneys for Defendant, DAVID MAST

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

JAMES W. SWISTOCK, an adult individual :  
and RONALD R. BODLE, an adult individual :  
Plaintiffs :  
vs. : No. 04-02032-CD  
DAVID MAST, an adult individual :  
OLAN L. LONDON, an adult individual, :  
and ANN MARIE WITHEROW, individually :  
and as Administrator of the Estate of :  
Gerald Witherow, :  
Defendants :  
vs. :  
ANN MARIE WITHEROW, individually and :  
as Administrator of the Estate of Gerald :  
Witherow, and DAVID MAST, MELVIN MAST :  
and JOSEPH MAST, t/d/b/a DAVID MAST AND :  
SONS LOGGING, :  
Additional Defendants

6K  
FILED *ice*  
01241874 Writ  
MAY 16 2005  
to Amy

William A. Shaw  
Prothonotary/Clerk of Courts

WRIT OF SUMMONS

To the Prothonotary:

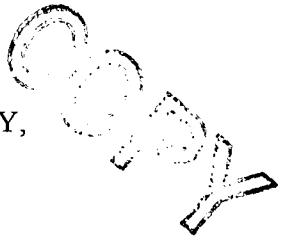
PLEASE issue writ of summons to join as an Additional Defendant, David Mast, Melvin Mast and Joseph Mast, t/d/b/a David Mast and Sons Logging whose current address is Rte. 1, Box 172-B, Luthersburg, PA 15848, pursuant to Rule 2253 of the Pennsylvania Rules of Civil Procedure.

  
John R. Carfley, Esq.  
P. O. Box 249  
Philipsburg, Pa., 16866  
Attorney for Defendant  
Olan L. London

Dated: May 13, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

**WRIT TO JOIN ADDITIONAL DEFENDANT**



James W. Swistock and Ronald R. Bodle  
Plaintiff(s)

Vs.

David Mast, Olan L. London, Ann Marie  
Witherow;  
Defendant(s)

2004-02032-CD

Vs.

David Mast, Melvin Mast and Joseph Mast, t/d/b/a  
David Mast and Sons Logging  
Additional Defendant(s)

To: David Mast, Melvin Mast and Joseph Mast, t/d/b/a David Mast and Sons Logging

You are notified that Olan L. London has joined you as an additional defendant in this action, which you are required to defend.

Dated: May 16, 2005

---

Prothonotary

Filing Attorney: John R. Carfley, Esq.  
PO Box 249  
Philipsburg, PA 16866  
(814) 342-5581

CA

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

JAMES W. SWISTOCK, an adult individual  
and RONALD R. BODLE, an adult individual  
Plaintiffs

vs.

DAVID MAST, an adult individual  
OLAN L. LONDON, an adult individual,  
and ANN MARIE WITHEROW, individually  
and as Administrator of the Estate of  
Gerald Witherow,

Defendants

vs.

ANN MARIE WITHEROW, individually and  
as Administrator of the Estate of Gerald  
Witherow, and DAVID MAST, MELVIN MAST  
and JOSEPH MAST, t/d/b/a DAVID MAST AND  
SONS LOGGING,

Additional Defendants

No. 04-02032-CD

FILED

MAY 27 2005  
012:35/4  
William A. Shaw  
Prothonotary/Clerk of Courts

2 CENTS TO ATT

PRAECLPICE TO WITHDRAW AS COUNSEL

The undersigned counsel for Olan London, Defendant herein, respectfully requests as follows:

1. In January, 2005, the undersigned counsel was retained to represent Olan London in the above matter, and was paid a minimum retainer for such representation, based on the assumption that London might be dismissed from the case in the early stages of the litigation.
2. When it became apparent that the case against London would survive the preliminary stages of litigation, a more realistic retainer was requested from the client in order to cover the potential fees to be incurred in his defense.
3. Counsel is convinced that Defendant's liability and exposure is minimal, but that it will be necessary to engage in discovery in order to develop the case to a point

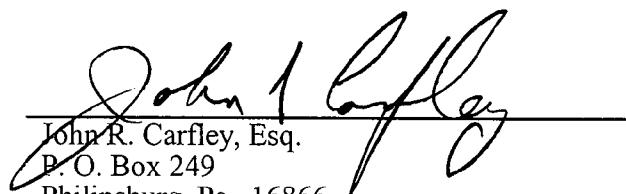
where he can be removed from the matter by pre-trial motion in the form of a Motion for Summary Judgment.

4. Despite the need to provide continued representation to develop this case, Olan London has indicated that he will not pay additional monies for legal representation in this matter.
5. Attempts have been made to expedite a settlement of the case, however, at present, any hopes of settlement have been sidetracked.
6. The amount involved in the litigation exceeds \$100,000 with allegations that the removal of timber from property allegedly owned by the Defendants, Witherow and the Plaintiffs as tenants in common was intentional, willful and deliberate.
7. The factual involvement of the Defendant London as an alleged agent for the named Defendants insures that discovery, including depositions, interrogatories, request for production of documents and requests for admissions will be conducted before sufficient facts are made available to warrant the filing of preliminary motions designed to remove or discharge London as a liable party.
8. It is estimated that attorney's fees in this regard may exceed \$7,500 if the matter must eventually be submitted to a jury or the Court for disposition.
9. It is not only inequitable, but unrealistic, for any party to request an attorney to, in effect, donate their legal services in a proceeding designed to protect a party from monetary exposure.
10. It is believed, and therefore averred, that in the interest of fairness, counsel should be permitted to withdraw at this stage of litigation so that the Defendant can secure alternate counsel or proceed pro se as he has indicated was his intent.
10. Counsel filed Preliminary Objections in an attempt to remove London as a party defendant and, in addition, has filed all responsive pleadings as well as pleading to join Ann Marie Witherow as an additional defendant.
11. Counsel has also protected London's rights by filing a Writ of Summons directed

to David Mast, et al., to join these individuals as additional defendants with liability over to London should he be found responsible for these alleged losses.

12. Counsel, for all intents and purposes, has done everything required at this stage of the proceeding to protect the rights of the Defendant London and it is appropriate at this time that counsel be permitted to withdraw if the Defendant London is either unwilling or unable to bear the reasonable costs of his defense.

WHEREFORE, the undersigned counsel respectfully requests permission from the Court to withdraw as counsel for Defendant, Olan London in the above matter.



John R. Carfley, Esq.  
P. O. Box 249  
Philipsburg, Pa., 16866  
Attorney for Defendant  
Olan L. London

Dated: May 25, 2005

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

JAMES W. SWISTOCK, an adult individual  
and RONALD R. BODLE, an adult individual  
Plaintiffs

vs.

No. 04-02032-CD

DAVID MAST, an adult individual  
OLAN L. LONDON, an adult individual,  
and ANN MARIE WITHEROW, individually  
and as Administrator of the Estate of  
Gerald Witherow,

Defendants

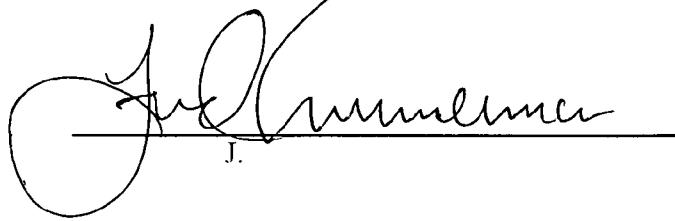
vs.

ANN MARIE WITHEROW, individually and  
as Administrator of the Estate of Gerald  
Witherow, and DAVID MAST, MELVIN MAST  
and JOSEPH MAST, t/d/b/a DAVID MAST AND  
SONS LOGGING,

Additional Defendants

RULE RETURNABLE

AND NOW, this 31<sup>st</sup> day of May, 2005, upon consideration of the  
Praecipe to Withdraw, it is hereby Ordered that a rule returnable is set for the 23<sup>rd</sup> day of  
June, 2005, at 10:00 o'clock A m. in Courtroom No. 1 of the Clearfield  
County Courthouse.



**FILED**

JUN 01 2005

6/3/05 (cc)

William A. Shaw  
Prothonotary

2 copy to Atty (cc)

FILED

JUN 01 2005

William A. Shaw  
Prothonotary

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

JAMES W. SWISTOCK, an adult individual )  
and RONALD R. BODLE, an adult individual, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
DAVID MAST, an adult individual, ) No. 04 - 2032 C.D.  
OLAN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and ) In Equity and at Law  
as Administrator of the Estate of Gerald Witherow, )  
 )  
Defendants )  
 )  
vs. )  
 )  
ANN MARIE WITHEROW, individually and as )  
Administrator of the Estate of Gerald Witherow, )  
 )  
Additional Defendants )  
 )  
vs. )  
 )  
DAVID MAST, individually and t/a )  
DAVID MAST & SON LOGGING, and )  
OLAN L. LONDON, individually, )  
 )  
Additional Defendants )

FILED 2005 Aug 11, 2005  
011236854 Aug 1, 2005  
JUN 01 2005 C  
C

William A. Shaw  
Prothonotary/Clerk of Courts

**O R D E R**

AND NOW, this 31 day of May, 2005, Defendant, DAVID MAST, having filed  
Preliminary Objections to Plaintiffs' Amended Complaint, an argument on said Preliminary  
Objections is hereby scheduled for the 23 day of June, 2005, at  
10:00 o'clock A.M. in Courtroom No. 1 of the Clearfield County Courthouse, Second  
Floor, Clearfield, Pennsylvania.

BY THE COURT:

  
President Judge

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

JAMES W. SWISTOCK, an adult individual  
and RONALD R. BODLE, an adult individual  
Plaintiffs

vs.

DAVID MAST, an adult individual  
OLAN L. LONDON, an adult individual,  
and ANN MARIE WITHEROW, individually  
and as Administrator of the Estate of  
Gerald Witherow,

Defendants

vs.

ANN MARIE WITHEROW, individually and  
as Administrator of the Estate of Gerald  
Witherow, and DAVID MAST, MELVIN MAST  
and JOSEPH MAST, t/d/b/a DAVID MAST AND  
SONS LOGGING,

Additional Defendants

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01/14/2005 @  
JUN 14 2005 @

William A. Shaw  
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

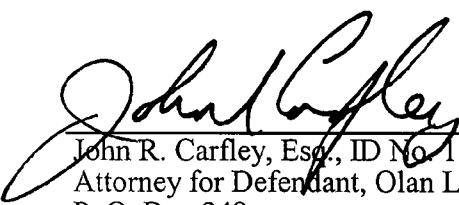
I hereby certify that I forwarded a copy of the Praeclipe to Withdraw as Counsel, by  
regular mail, postage prepaid to the following attorneys and/or parties of record, on this  
9th day of June, 2005.

Theron G Noble, Esq.  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(Attorney for Plaintiffs)

Olan L. London  
320 Stony Lonesome Road  
Luthersburg, PA 15848

Toni M. Cherry, Esq.  
P. O. Box 505  
DuBois, PA 15801  
(Attorney for Mast)

John Sughrue, Esq.  
23 N. 2<sup>nd</sup> Street  
Clearfield, PA 16830  
(Attorney for Witherow)

  
John R. Carfley, Esq., ID No. 17621  
Attorney for Defendant, Olan L. London  
P. O. Box 249  
Philipsburg, PA 16866

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

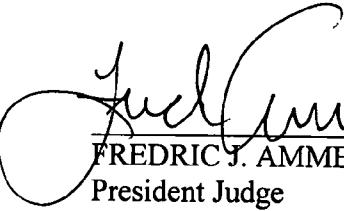
JAMES W. SWISTOCK, an adult individual, :  
and RONALD R. BODLE, an adult individual, :  
Plaintiffs :  
vs. : NO-04-2032-CD  
DAVID MAST, an adult individual, OLIN LONDON, :  
an adult individual, and ANN MARIE WITHEROW, :  
individually and as Administrator of the Estate of :  
Gerald Witherow, :  
Defendants :

**ORDER**

NOW, this 23<sup>rd</sup> day of June, 2005, following argument on the Preliminary Objections of Defendant David Mast to Plaintiffs' Amended Complaint it is the ORDER of this Court as follows:

1. The Preliminary Objection relative paragraph 69 of the Plaintiffs' Amended Complaint is granted. Paragraph 69 is hereby stricken.
2. The Preliminary Objection to paragraph 64 of the Plaintiffs' Amended Complaint is hereby denied.
3. Defendant David Mast shall file a Responsive Pleading to the Amended Complaint in no more than twenty (20) days from this date.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

FILED: cc Atts: Noble  
01232005  
JUN 24 2005  
T. Cherry  
Casley  
Sughrue

William A. Shaw  
Prothonotary/Clerk of Courts

cc: David Mast & Sons Logging  
Melvin Mast  
Joseph Mast  
Rte 1, Box 172-B  
Luthersburg, PA 15848

**FILED**

**JUN 24 2005**

William A. Shaw  
Prothonotary/Clerk of Courts

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
PENNSYLVANIA

JAMES W. SWISTOCK, ET AL.  
(Plaintiff)

CIVIL ACTION

(Street Address)

No. 2004-02032-CD

(City, State ZIP)

Type of Case: Civil

Type of Pleading: Certification  
of Address

VS.

DAVID MAST, ET AL.  
(Defendant)

Filed on Behalf of:

Defendant, Olan L. London  
(Plaintiff/Defendant)

(Street Address)

(City, State ZIP)

John R. Carfley  
(Filed by)

P. O. Box 249

Philipsburg, PA 16866

(Address)

814-342-5581

(Phone)

John R. Carfley  
(Signature)

FILED *acc*  
JUN 24 2005 *Atty Carfley*  
*GW*

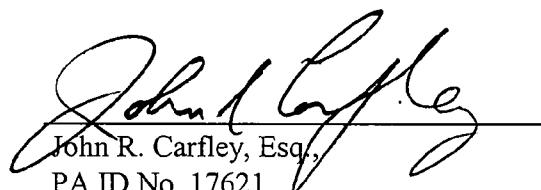
William A. Shaw  
Prothonotary/Clerk of Courts

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

JAMES W. SWISTOCK, an adult individual	:	
and RONALD R. BODLE, an adult individual	:	
Plaintiffs	:	
vs.	:	No. 04-02032-CD
DAVID MAST, an adult individual	:	
OLAN L. LONDON, an adult individual,	:	
and ANN MARIE WITHEROW, individually	:	
and as Administrator of the Estate of	:	
Gerald Witherow,	:	
Defendants	:	
vs.	:	
ANN MARIE WITHEROW, individually and	:	
as Administrator of the Estate of Gerald	:	
Witherow, and DAVID MAST, MELVIN MAST	:	
and JOSEPH MAST, t/d/b/a DAVID MAST AND	:	
SONS LOGGING,	:	
Additional Defendants	:	

CERTIFICATION OF ADDRESS

I hereby certify that the precise mailing address of the Defendant, Olan L. London is 320  
Stony Lonesome Road, Luthersburg, PA 15848.

  
John R. Carfley, Esq.,  
PA ID No. 17621  
P. O. Box 249  
Philipsburg, PA 16866

Dated: June 23, 2005

**FILED**

**JUN 24 2005**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JAMES W. SWISTOCK and :  
RONALD R. BODLE :  
VS. : NO. 04-2032-CD  
DAVID MAST, OLAN L. LONDON, and :  
ANN MARIE WITHEROW, ind. and :  
Administrator of the Estate of :  
Gerald Witherow :  
A

O R D E R

NOW, this 23rd day of June, 2005, upon Praeclipe to withdraw as Counsel as requested by John R. Carfley, Esquire, attorney of record for Olan L. London; Mr. London having failed to appear for the proceeding and there being no objection to the request to withdraw by counsel for any of the other parties involved, it is therefore the ORDER of this Court that John R. Carfley, Esquire, be and is hereby withdrawn as counsel for Olan L. London.

BY THE COURT,



President Judge

FILED  
019-216-B71  
JUN 24 2005

William A. Shaw  
Prothonotary/Clerk of Courts  
Sughrue

ICC Atys:  
Noble  
T.Cherry  
Carfley

ICC Melvin Mast, Joseph Mast, David Mast & Sons Logging  
Rte. 1, Box 172-B  
Luthersburg, PA 15848

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JAMES W. SWISTOCK, an adult individual  
and RONALD R. BODLE, an adult individual,

Plaintiffs,

vs.

DAVID MAST, an adult individual,  
OLAN L. LONDON, an adult individual, and  
ANN MARIE WITHEROW, individually and  
as Administrator of the Estate of Gerald Witherow,

Defendants,

vs.

ANN MARIE WITHEROW, individually and as  
Administrator of the Estate of Gerald Witherow,

Additional Defendants,

vs.

DAVID MAST, individually and t/a  
DAVID MAST & SON LOGGING, and  
OLAN L. LONDON, individually,

Additional Defendants

- ) No. 04 - 2032 C.D.
- )
- ) In Equity and at Law
- )
- ) Type of Pleading: ANSWER AND
- ) NEW MATTER OF DEFENDANT,
- ) DAVID MAST, TO PLAINTIFFS'
- ) AMENDED COMPLAINT
- )
- ) Filed on Behalf of: Defendant, DAVID
- ) MAST
- )
- ) Counsel of Record for this Party:
- )
- ) TONI M. CHERRY, ESQ.
- ) Supreme Court No.: 30205
- )
- ) GLEASON, CHERRY AND
- ) CHERRY, L.L.P.
- ) Attorneys at Law
- ) P. O. Box 1
- ) One North Franklin Street
- ) DuBois, PA 15801
- )
- ) (814) 371-5800
- )
- )
- )
- )

FILED

JUL 08 2005

07 3:30 P.M. b

William A. Shaw

Prothonotary/Clerk of Courts

5 CENT TO AFTER

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

JAMES W. SWISTOCK, an adult individual )  
and RONALD R. BODLE, an adult individual, )  
Plaintiffs, )  
vs. )  
DAVID MAST, an adult individual, ) No. 04 - 2032 C.D.  
OLAN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and ) In Equity and at Law  
as Administrator of the Estate of Gerald Witherow, )  
Defendants )  
vs. )  
ANN MARIE WITHEROW, individually and as )  
Administrator of the Estate of Gerald Witherow, )  
Additional Defendants )  
vs. )  
DAVID MAST, individually and t/a )  
DAVID MAST & SON LOGGING, and )  
OLAN L. LONDON, individually, )  
Additional Defendants )

## **NOTICE TO PLEAD**

YOU ARE HEREBY NOTIFIED TO PLEAD  
TO THE WITHIN NEW MATTER WITHIN  
TWENTY (20) DAYS FROM THE DATE OF  
SERVICE HEREOF.

GLEASON, CHERRY AND CHERRY, L.L.P.

By

Attnorneys for Defendant, DAVID MAST

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

JAMES W. SWISTOCK, an adult individual )  
and RONALD R. BODLE, an adult individual, )  
Plaintiffs, )  
vs. )  
DAVID MAST, an adult individual, ) No. 04 - 2032 C.D.  
OLAN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and ) In Equity and at Law  
as Administrator of the Estate of Gerald Witherow, )  
Defendants )  
vs. )  
ANN MARIE WITHEROW, individually and as )  
Administrator of the Estate of Gerald Witherow, )  
Additional Defendants )  
vs. )  
DAVID MAST, individually and t/a )  
DAVID MAST & SON LOGGING, and )  
OLAN L. LONDON, individually, )  
Additional Defendants )

**ANSWER OF DEFENDANT, DAVID MAST, TO  
AMENDED COMPLAINT**

AND NOW, comes the Defendant, David Mast, t/d/b/a David Mast and Sons Logging, by and through his attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and answers the Amended Civil Complaint filed by Plaintiffs as follows:

## The Parties:

1. ADMITTED.
2. ADMITTED.
3. ADMITTED.

4. ADMITTED in part and DENIED in part. It is DENIED that Defendant, OLAN L. LONDON, resides at 320 Sloney Lonesome Road. All other aspects of Paragraph 4 are ADMITTED. By way of further answer, Defendant, DAVID MAST, believes and therefore avers that Defendant London resides at 320 Stony Lonesome Road, Luthersburg, Clearfield County, Pennsylvania.

5. ADMITTED.

#### **Background Information**

6. ADMITTED.

7. ADMITTED.

8. DENIED as stated. By agreement dated April 19, 2002, Ann Witherow, Administratrix of the Estate of Gerald Witherow, did convey all of the timber located upon the premises described in Paragraph 6 of Plaintiffs' Complaint to David Mast, t/d/a David Mast and Sons Logging, in accordance with the terms of said "TIMBER SALE AGREEMENT" attached to Plaintiffs' Amended Complaint as Exhibit "A".

9. DENIED as stated. By way of further answer, it is averred that on or around April 1, 2002, Defendant London approached Defendant Mast and advised him that a friend of Defendant London had a tract of timber for sale. Defendant London then took the employees of Defendant Mast to the subject premises and showed them the property lines. After performing a timber cruise, Defendant Mast advised Defendant London that he would be willing to pay the property owner \$24,000.00 for the timber. Upon request of Defendant London, Defendant Mast caused to be provided the Timber Sale Agreement, a copy of which is attached to Plaintiffs' Complaint as Exhibit "A". On April 19, 2002, Defendant London

returned the contract to Defendant Mast and Defendant Mast did sign the same at that time in the presence of Defendant London who signed as a witness. It is believed that Defendant London was paid the sum of \$2,400.00 by Defendant Witherow based on a reading of the averments set forth in Defendant London's Answer to Amended Complaint.

10. DENIED. On the contrary, the timbering operations performed by Defendant Mast commenced on or about March 1, 2003, and finished on or about April 1, 2003, and at no time during the timbering operations or at any time prior thereto did anyone advise Defendant Mast that Defendant Witherow was not the sole owner of the premises nor did anyone attempt to stop Defendant Mast from performing said timbering operations.

11. DENIED. Defendant Mast did not cut timber having a fair market value of approximately \$108,752.84. By way of further answer, it is averred that the fair market value of timber cannot be determined by estimating diameter and board feet alone without considering the cost to market timber and the expenses involved in harvesting timber, all of which are taken into consideration when timber is purchased and which is purchased. Consequently, Defendant Mast believes and therefore avers that he cut timber having a fair market value of \$24,000.00 and that is the sum that he paid.

12. DENIED, as after reasonable investigation, Defendant Mast is without knowledge or information sufficient to form a belief as to the truth of this averment and proof thereof is demanded at trial.

13. DENIED, as after reasonable investigation, Defendant Mast is without knowledge or information sufficient to form a belief as to the truth of this averment and proof thereof is demanded at trial.

14. DENIED, as after reasonable investigation, Defendant Mast is without knowledge or information sufficient to form a belief as to the truth of this averment and proof thereof is demanded at trial.

15. DENIED, as after reasonable investigation, Defendant Mast is without knowledge or information sufficient to form a belief as to the truth of this averment and proof thereof is demanded at trial.

16. DENIED, as after reasonable investigation, Defendant Mast is without knowledge or information sufficient to form a belief as to the truth of this averment and strict proof of same is required at trial.

17. DENIED, as after reasonable investigation, Defendant Mast is without knowledge or information sufficient to form a belief as to the truth of this averment. However, by way of further answer, it is averred that Defendant Mast made no effort to hide his timbering operation nor was he advised by Defendant Witherow or by any other individual that Plaintiffs Swistock and Bodle claimed an interest in said timber.

18. DENIED. After reasonable investigation, Defendant Mast is without knowledge or information sufficient to form a belief as to whether Defendant Witherow at all relevant and material times knew that the subject premises were not completely owned by the Estate of Gerald Witherow because at no time did Defendant Witherow or anyone on her behalf ever advise Defendant Mast that the subject premises were not completely owned by the Estate of Gerald Witherow.

19. DENIED. On the contrary, at all times relevant and material hereto, Defendant Mast believed that the subject premises were completely owned by the Estate of Gerald

Witherow and had no reason to believe otherwise as Defendant Witherow assured Defendant Mast, through her signing of the contract by which she guaranteed title to the said timber that the Estate of Gerald Witherow was the sole owner of the subject premises.

20. DENIED as after investigation, Defendant Mast is without knowledge or information sufficient to form a belief as to the truth of this averment. By way of further answer, it is averred that at no time did Defendant London ever advise Defendant Mast that the subject premises were not completely owned by Defendant Witherow and/or the Estate of Gerald Witherow.

21. DENIED. At no time did Defendant Witherow ever inform Defendant Mast that the Estate of Gerald Witherow only owned a one-half interest in the subject premises. On the contrary, at all times Defendant Mast believed that Defendant Witherow and/or the Estate of Gerald Witherow had title to all of the timber on the subject premises because of her assertion that she guaranteed title as set forth in the Timber Sales Agreement.

22. DENIED as after reasonable investigation, Defendant Mast is without sufficient knowledge to attest to the truth or falsity of the averments contained in Paragraph 22 and strict proof of same is required at trial.

**Count I: In Equity**

**Request for an Accounting  
v. Defendant Witherow**

23. The Defendant Mast's answers to Paragraphs 1 through 22 inclusive of the foregoing Answer are incorporated herein by reference as fully as though set forth at length.

24. DENIED. It is averred that the averments of Paragraphs 24 are directed to a defendant other than the answering Defendant and; consequently, no further response is required from the Defendant Mast.

25. DENIED. It is averred that the averments of Paragraphs 25 are directed to a defendant other than the answering Defendant and; consequently, no further response is required from the Defendant Mast.

26. DENIED. It is averred that the averments of Paragraphs 26 are directed to a defendant other than the answering Defendant and; consequently, no further response is required from the Defendant Mast.

WHEREFORE, Defendant Mast requests that Count I of Plaintiffs' Amended Complaint be dismissed.

**Count II: In Equity**

**Request for an Accounting  
v. Defendant Mast**

27. Defendant Mast incorporates herein by reference the answers set forth in Paragraphs 1 through 26 inclusive of the foregoing Answer as if the same were set forth at length herein.

28. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Plaintiffs have a clear and unambiguous right to one-half of the timber that was on the subject premises at the time of the above-referenced transaction as after reasonable investigation, Defendant is without sufficient knowledge to attest to the truth or falsity of the averments set forth in Paragraph 28 and strict proof of same is required at trial.

29. DENIED. Defendant Mast lawfully purchased the timber located on the subject premises based on the representations he received that Defendant Witherow and/or the Estate of Gerald Witherow were the owners of said timber.

30. DENIED. Defendant Mast purchased the timber from Defendant Witherow and/or the Estate of Gerald Witherow based on her representations that she and/or the Estate of Gerald Witherow were the owners of such timber and; accordingly, any accounting owed to the Plaintiffs is owed by Defendant Witherow and/or the Estate of Gerald Witherow.

WHEREFORE, Defendant Mast respectfully requests Your Honorable Court to dismiss Count II of Plaintiffs' Amended Complaint.

**Count III: In Equity**

**Request for Injunctive Relief  
v. Defendants Mast and Witherow**

31. Defendant Mast incorporates herein by reference the averments set forth in Paragraphs 1 through 30 inclusive of this Answer as if the same were set forth at length herein.

32. DENIED. As the averments of Paragraph 32 are directed to a defendant other than the answering Defendant, no response is required.

33. DENIED. As the averments set forth in Paragraph 33 are directed to a defendant other than the answering Defendant, no response is required.

34. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Defendant Mast committed any act which constitutes "conversion of the timber". There are no proceeds remaining to Defendant Mast as a result of his purchase of the timber on the subject premises.

35. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, Defendant avers that he is without sufficient knowledge to attest to the truth or falsity of the averments set forth in Paragraph 35 and strict proof of same is required at trial.

WHEREFORE, Defendant Mast respectfully requests that Count III of Plaintiffs' Amended Complaint be dismissed as to him.

**Count IV: At Law**  
**Conversion**  
**v. Defendant Witherow**

36. Defendant Mast incorporates herein by reference the averments contained in Paragraphs 1 through 35 inclusive of this Answer as if the same were set forth at length herein.

37. DENIED as the averments of Paragraph 37 are directed to a defendant other than the answering Defendant, no response is required.

38. DENIED as the averments of Paragraph 38 are directed to a defendant other than the answering Defendant, no response is required.

39. DENIED as the averments of Paragraph 39 are directed to a defendant other than the answering Defendant, no response is required.

40. DENIED as the averments of Paragraph 40 are directed to a defendant other than the answering Defendant, no response is required.

41. DENIED as the averments of Paragraph 41 are directed to a defendant other than the answering Defendant, no response is required.

WHEREFORE, Defendant Mast respectfully requests that Count IV be dismissed.

**Count V: At Law**  
**Conversion**  
**v. Defendant Mast**

42. Defendant incorporates herein by reference the averments contained in Paragraphs 1 through 41 inclusive of this Answer as if the same were set forth at length herein.

43. DENIED as after reasonable investigation, Defendant Mast is without sufficient knowledge to attest to the truth or falsity of the averments contained in Paragraphs 43 of Plaintiffs' Complaint and strict proof of same is required at trial.

44. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Defendant exercised any dominion or control over the timber or proceeds from the sale therefrom in disregard of Plaintiffs' ownership interests as Defendant Mast entered into a timber agreement with Defendant Witherow in the belief that Defendant Witherow and/or the Estate of Gerald Witherow were the owners of the timber that was the subject of said agreement and upon the guarantee of Defendant Witherow and/or the Estate of Gerald Witherow of their title to said timber and their promise to defend such title. At no time prior to his removal of the timber did anyone advise Defendant Mast that Defendant Witherow and/or the Estate of Gerald Witherow were not the sole owners of said timber.

45. DENIED as a conclusion of law to which no response is required. Insofar as an answer is required, it is DENIED that the relevant section of the statute cited by the Plaintiffs apply to Defendant Mast as said section speaks to matters involving co-tenants.

46. DENIED as a conclusion of law to which no response is required. Insofar as an answer is required, it is DENIED that the relevant section of the statute cited by the Plaintiffs apply to Defendant Mast as said section speaks to matters involving co-tenants.

47. DENIED as a conclusion of law to which no response is required. Insofar as an answer is required, it is DENIED that the relevant section of the statute cited by the Plaintiffs apply to Defendant Mast as said section speaks to matters involving co-tenants.

48. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Defendant Mast acted in any way which entitles Plaintiffs to punitive damages as Defendant Mast entered into a contract with Defendant Witherow based on the representation and guarantee of Defendant Witherow that she and/or the Estate of Gerald Witherow were sole owners of the timber that was the subject of the agreement attached to Plaintiffs' Complaint as Exhibit "A".

WHEREFORE, Defendant Mast respectfully requests that Count V be dismissed.

**Count VI: At Law**  
**Conversion**  
**v. Defendant London**

49. Defendant incorporates herein by reference the averments set forth in Paragraphs 1 through 48 inclusive of this Answer as if the same were set forth at length herein.

50. DENIED. As the averments of Paragraph 50 are directed to a defendant other than the answering Defendant, no response is required.

51. DENIED. As the averments of Paragraph 51 are directed to a defendant other than the answering Defendant, no response is required.

52. DENIED. As the averments of Paragraph 52 are directed to a defendant other than the answering Defendant, no response is required.

53. DENIED. As the averments of Paragraph 53 are directed to a defendant other than the answering Defendant, no response is required.

54. DENIED. As the averments of Paragraph 54 are directed to a defendant other than the answering Defendant, no response is required.

WHEREFORE, Defendant Mast respectfully requests that Count VI of Plaintiffs' Amended Complaint be dismissed as to him.

**Count VII: At Law  
Civil Conspiracy  
v. Defendants Witherow, Mast and London**

55. Defendant incorporates herein by reference the averments contained in Paragraphs 1 through 54 inclusive of this Answer as if the same were set forth at length herein.

56. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that the timber on the subject premises was intentionally cut, harvested and removed without the consent of Plaintiffs Swistock and Bodle. Defendant Mast entered into a contract with Defendant Witherow wherein she guaranteed her title to the timber on the subject premises and on the basis on that guarantee, Defendant Mast was induced to purchase the same from Defendant Witherow and/or the Estate of Gerald Witherow.

57. DENIED. At no time did Defendant Mast know that Plaintiffs Swistock and Bodle claimed any interest in the subject premises as he had an agreement with Defendant Witherow wherein she guaranteed title to the same and Defendant Mast received no information at any

time prior to removing said timber that gave him any reason to question the title guaranteed by Defendant Witherow and/or the Estate of Gerald Witherow. At no time did Defendant Mast ever meet or speak with either Defendants London or Witherow concerning the timber agreement nor was he ever advised by Defendant Witherow or anyone purporting to act as her agent that the Plaintiffs Swistock and Bodle had any interest in the timber that was the subject of the agreement attached to Plaintiffs' Amended Complaint as Exhibit "A".

58. DENIED. Since the averment set forth in Paragraph 58 is directed at a defendant other than the answering Defendant, Defendant Mast is without sufficient knowledge to attest to the truth or falsity of the averments contained in Paragraph 58 and strict proof of same is required at trial.

59. DENIED. Since the averment set forth in Paragraph 59 is directed at a defendant other than the answering Defendant, Defendant Mast is without sufficient knowledge to attest to the truth or falsity of the averments contained in Paragraph 58 and strict proof of same is required at trial.

60. DENIED. Defendant London was not the agent of Defendant Mast nor did he in any way facilitate the cutting, harvesting or removal of the timber from the subject premises.

61. DENIED as after reasonable investigation, Defendant Mast is without sufficient knowledge to attest to the truth or falsity of the averments contained in Paragraph 61 and strict proof of same is required at trial.

62. DENIED. At no time did Defendant Mast know that Plaintiffs Swistock and Bodle

claimed any interest in the subject premises and at all times up to the filing of the instant lawsuit believed that Defendant Witherow and/or the Estate of Gerald Witherow were the sole owners of the subject premises.

63. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Defendant Mast was reckless in failing to check the property records at the Clearfield County Courthouse as he had an agreement signed by Defendant Witherow on behalf of herself and/or the Estate of Gerald Witherow wherein she guaranteed her title to the subject premises and Defendant Mast had no reason to doubt her word.

64. DENIED. At no time has Defendant Mast ever knowingly taken anything without the consent of and without compensation to the owners of that property and Plaintiffs' accusation of such action on the part of Defendant Mast is both reckless and slanderous.

65. DENIED. Defendant Mast never acted in any way in concert with either Defendant London or Defendant Witherow. Defendant Mast never met with or spoke to Defendant Witherow nor did he ever discuss the subject contract with Defendant London.

66. DENIED. Defendant Mast never discussed the matter of the subject premises with Defendant London. He offered to purchase timber from Defendant Witherow that he believed was the sole property of Defendant Witherow. Defendant Witherow executed a contract to sell said timber to Defendant Mast at the price Defendant Mast offered and Defendant Witherow guaranteed her title to said timber. Defendant Mast had no reason to believe that Defendant Witherow did not own all of the timber she agreed to sell to Defendant Mast.

67. DENIED. As this averment is directed to a defendant other than the answering Defendant, no response is required.

68. DENIED. As this averment is directed to a defendant who is not the answering Defendant, no response is required.

69. As Paragraph 69 of Plaintiffs' Amended Complaint has been stricken by Order of Court dated June 23, 2005, no response is required.

70. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, Defendant Mast never acted with malice as to Plaintiffs Swistock and Bodle as he never knew that Plaintiffs made any claim to the subject premises or to the timber standing thereon as Defendant had no knowledge that Plaintiffs made any claim to the subject premises and Defendant had a contract wherein Defendant Witherow guaranteed her full title to the subject premises.

71. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Defendant Mast acted in an outrageous manner as Defendant had no knowledge that Plaintiffs made any claim to the subject premises and Defendant had a contract wherein Defendant Witherow guaranteed her full title to the subject premises.

72. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Defendant Mast is liable to Plaintiffs for (i) the timber's value; (ii) punitive damages or (iii) attorney's fees.

WHEREFORE, Defendant Mast respectfully requests that Count VII of Plaintiffs' Amended Complaint be dismissed.

**Miscellaneous**

73. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Defendant Mast is liable to Plaintiffs.

74. ADMITTED.

75. ADMITTED.

WHEREFORE, Defendant Mast respectfully requests that Plaintiffs' Amended Complaint as to him be dismissed.

**NEW MATTER IN THE NATURE OF A COMPLAINT  
TO JOIN ANN MARIE WITHEROW AND THE ESTATE  
OF GERALD WITHEROW AS ADDITIONAL DEFENDANTS  
PURSUANT TO RULE 2252 OF THE PENNSYLVANIA  
RULES OF CIVIL PROCEDURE**

AND NOW, comes the Defendant, DAVID MAST, by and through his attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and joins the herein identified individual and legal entity as Additional Defendants under Pa. R.C.P. 2252 and, in support thereof, avers the following:

1. Defendant, DAVID MAST, asserts this New Matter pursuant to Pa. R.C.P. No. 2252(d) and joins Defendant, ANN MARIE WITHEROW, individually and as Administratrix of the Estate of GERALD WITHEROW, as Additional Defendants in this action on the following basis:

(a) The Defendants are Ann Marie Witherow and the Estate of Gerald Witherow, who at the times and places relevant hereto were believed and therefore averred, to be represented by John Sughrue, a duly licensed lawyer in the Commonwealth of Pennsylvania, who was the attorney for and who acted in an agency capacity for Ann Marie Witherow and the Estate of Gerald Witherow.

(b) That upon information and belief, it is averred that in or about April of 2002, Ann Marie Witherow and Joseph London, who is the son of Defendant, Olan London, were visiting the Defendant London at his home and at that time engaged in a conversation with Defendant London during the course of which Witherow asked London to sell a piece of timber over which she held the ownership rights. No reference was made during this conversation to any ownership interests owned by anyone other than Defendant, Ann Marie Witherow.

(c) Upon information and belief, it is averred that during the course of the conversation, Defendant London advised Defendant Witherow that he would contact Melvin Mast, whom London believed was involved in the local timber industry, for the purpose of determining if the said Melvin Mast would be interested in purchasing the timber located on the property that Defendant, Ann Marie Witherow, advised Defendant London she owned.

(d) Upon information and belief, it is averred that at or about the time of this conversation, Defendants London and Witherow drove to the subject property where Defendant Witherow showed Defendant London the approximate location of the property lines. Defendant London, in turn, communicated the location of these boundary lines to Melvin Mast and Mast's brother, both of whom accompanied Defendant London to the said property of

Defendant, Ann Marie Witherow, to walk the property lines. At that time, Melvin Mast made an offer of \$24,000.00 for the timber which offer Defendant London communicated to Defendant, Ann Marie Witherow, for her consideration and possible approval.

(e) That upon information and belief, it is averred that said offer was accepted by Defendant, Ann Marie Witherow, and thereafter Melvin Mast produced a blank contract form which Defendant, Ann Marie Witherow, assisted in completing and which was then signed in the presence of Melvin Mast and his brother as well as Defendant London and Defendant, Ann Marie Witherow.

(f) That upon information and belief, it is averred that Defendant, Ann Marie Witherow, then requested that Defendant London meet with Mast in order to collect the money, which Mast provided to London in cash. Defendant London then delivered said cash payment to Defendant, Ann Marie Witherow, who questioned Defendant London concerning the amount of commission which Defendant London intended to charge.

(g) Upon information and belief, it is averred that at that time, Defendant London advised Defendant Witherow that he wanted no commission for his services but Defendant Witherow insisted that London accept ten percent (10%) of the total sale price.

(h) Upon information and belief, it is averred that Defendant, Ann Marie Witherow, within several days of this meeting, delivered the balance of the money she received to Attorney John Sughrue's office, at which time Mr. Sughrue informed Defendant, Ann Marie Witherow, that she did not own the entire premises nor did she own all of the timber located thereon.

(i) Upon information and belief, it is averred that thereafter, Mr. Sughrue, who it is believed was acting as an agent for Defendant, Ann Marie Witherow, contacted Defendant London by telephone and information Defendant London for the first time that Defendant, Ann Marie Witherow, did not own the property and/or the timber exclusively and questioned Defendant London concerning a means by which he could contact Melvin Mast.

(j) That upon information and belief, it is averred that London advised Mr. Sughrue, as agent for Defendant, Ann Marie Witherow, that Mast did not have a telephone but did give Mr. Sughrue Mast's address from the contract that was signed by Defendant, Ann Marie Witherow.

(k) That upon information and belief, it is averred that Mr. Sughrue then advised Defendant London that Mr. Sughrue intended to contract Mast, Swistock and/or Bodle on behalf of Defendant, Ann Marie Witherow, in an effort to "straighten this mess out".

(l) At no time subsequent to Defendant London's discussion with Attorney Sughrue did Attorney Sughrue ever contact Defendant, David Mast, or his son, Melvin Mast, to advise either of them that Defendant, Ann Marie Witherow, and/or the Estate of Gerald Witherow, did not have the sole ownership rights and/or interest in the subject premises and/or the timber located thereon.

(m) That Defendant, David Mast, did not timber the subject premises for nearly a year after the contract was signed in April of 2002, which time would have allowed Defendant, Ann Marie Witherow, and/or her attorney and agent, John Sughrue, Esq., more than enough time in which to contact Defendant Mast to advise him that the said Ann Marie

Witherow and/or the Estate of Gerald Witherow were not the sole owners of the subject premises and the timber located thereon.

(n) That had Defendant, Ann Marie Witherow, and/or her agent and attorney, John Sughrue, Esq., notified Defendant Mast that Defendant, Ann Marie Witherow, was not the sole owner of the premises and the timber situate thereon and that she had no authority to sell the same, Defendant Mast would not have cut and removed the timber.

(o) That by executing the timber sale agreement, Additional Defendant, Ann Marie Witherow and the Estate of Gerald Witherow, guaranteed their title to the timber purchased by Defendant, David Mast, and did assure him that they were the sole owners of the same and would defend their title against any and all claims.

(p) That Defendant, David Mast, relied upon the written guarantees of the Additional Defendants, Ann Marie Witherow and the Estate of Gerald Witherow, that they had sole title to the timber and would not have purchased said timber nor entered into the timber sale agreement with Additional Defendants had such guarantees not been made by Additional Defendants.

2. That in good faith and in reliance upon the guarantees of the Additional Defendants named herein that they had title to all of the timber they were offering to sell, Defendant, David Mast, did agree to purchase the same for the sum of \$24,000.00 and to remove the same from the premises Additional Defendants claimed to own within two years.

3. That in good faith and in reliance upon the guarantees of the Additional Defendants named herein, that they had title to all of the timber they were offering to sell, Defendant, David Mast, did enter into the timber sale agreement with Additional Defendants that is

attached to Plaintiffs' Amended Complaint as Exhibit "A" and did pay the full and fair consideration for said timber to Additional Defendants.

4. That Additional Defendants did accept the consideration paid by Defendant, David Mast, and did allow Defendant, David Mast, to enter upon the premises knowing that he was relying upon their guarantees that they were the sole owners of the subject timber and the subject premises and that they had the right to sell the same to him.

5. That Defendant, David Mast, did not enter upon the premises to commence removing the timber until March of 2003, nearly a year after he entered into the timber sale agreement and during that time neither Plaintiffs nor Additional Defendants notified him that Additional Defendants were not the sole owners of the premises although all of them had ample time in which to do so.

6. That although Additional Defendants knew that they had a duty to notify Defendant, David Mast, that they were not the sole owners of the subject property on which the timber that they had sold to Defendant, David Mast, was located and that they could not guarantee their title to all of the same, they wholly failed to so advise Defendant, David Mast, and did allow him to cut said timber, with the knowledge that such action would subject Defendant, David Mast, to the claims of the Plaintiffs.

7. That if Plaintiffs establish that they suffered injuries and damages as alleged in their Complaint, which allegations said David Mast denies, said injuries and damages were caused solely by the negligence, recklessness and carelessness of the Additional Defendants, their agents, servants, workmen, counsel and/or employees, by their acts and/or omissions in failing

to apprise all other parties, including the Plaintiffs, of the existence of the timber harvesting contract and by other acts and failures to act as herein specified.

8. As a result of the aforesaid actions and/or omissions, Additional Defendants Witherow and the Estate of Gerald Witherow are solely liable and/or jointly and severally liable to Plaintiffs for any alleged injuries and damages Plaintiffs may have suffered.

9. If as a result of the matters alleged in Plaintiffs' Complaint, Defendant, David Mast, is held liable to Plaintiffs for all or part of such injuries or damages as they may have sustained, Additional Defendants Witherow and the Estate of Gerald Witherow are the parties primarily liable for such injuries and damages and are liable over to Defendant Mast by way of contribution and/or indemnification, for all such damages as he may be required to pay to Plaintiffs.

10. In the alternative, if as a result of the matters alleged in Plaintiffs' Amended Complaint, Defendant, David Mast, is held liable to Plaintiffs for all or part of such injuries or damages as Plaintiffs may have sustained, Additional Defendants, Ann Marie Witherow and the Estate of Gerald Witherow, are jointly and/or severally liable to Plaintiffs based upon the foregoing allegations for such injuries and damages and liable over to Defendant Mast by way of contribution for all such damages Defendant Mast may be required to pay to Plaintiffs.

11 As a result of the same transactions upon which Plaintiffs' causes of action are based, Additional Defendants, Ann Marie Witherow and the Estate of Gerald Witherow, are liable directly to Defendant, David Mast, in that the Additional Defendants engaged in various acts which were negligent, careless and reckless and resulted in their failure to advise all parties of the existence of the timber sale agreement as aforesaid and to advise Defendant,

David Mast, of the claims of the Plaintiffs to the timber that was the subject of said timber sale agreement.

WHEREFORE, Defendant, David Mast, demands:

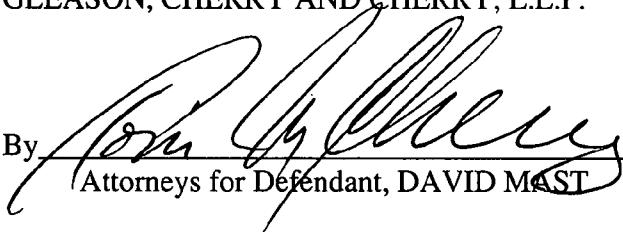
(a) judgment that, if there is any liability to Plaintiffs, Additional Defendants, Ann Marie Witherow and the Estate of Gerald Witherow, are solely liable to Plaintiffs; and

(b) in the event that a verdict is recovered by Plaintiffs against Defendant Mast, that Defendant Mast may have judgment over and against Additional Defendants, Ann Marie Witherow and the Estate of Gerald Witherow, by way of indemnification and/or contribution for any amount recovered by Plaintiffs against Defendant, David Mast, together with costs.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By

  
Attorneys for Defendant, DAVID MAST

## **VERIFICATION**

I, DAVID MAST, verify that the information provided in the foregoing Answer and New Matter is true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.



David Mast  
David Mast

DATED: July 8, 2005

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

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of July, 2005, a true and correct copy of the Answer and New Matter of Defendant, David Mast, to Plaintiffs' Amended Complaint was served upon the following persons by mailing the same to them by United States First Class Mail, Postage

Prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania,  
addressed as follows:

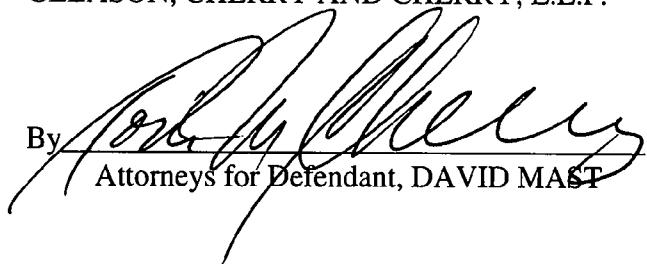
THERON G. NOBLE, ESQ.  
Ferraraccio & Noble  
Attorneys at Law  
301 East Pine Street  
Clearfield, PA 16830

JOHN SUGHRUE, ESQ.  
Attorney at Law  
23 North Second Street  
Clearfield, PA 16830

OLAN L. LONDON  
320 Stony Lonesome Road  
Luthersburg, PA 15848

GLEASON, CHERRY AND CHERRY, L.L.P.

By

  
Attorneys for Defendant, DAVID MAST

Dated: July 8, 2005

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

JAMES W. SWISTOCK, an adult individual, :  
and RONALD R. BODLE, an adult individual, :  
PLAINTIFFS, :  
: No. 04- 2032 -CD  
v. : In Equity and at Law  
DAVID MAST, an adult individual, :  
OLIN L. LONDON, an adult individual, and :  
ANN MARIE WITHEROW, individually and :  
as Administrator of the Estate of Gerald Witherow, :  
DEFENDANT. :  
: Type of Pleading:  
: :  
: **REPLY TO NEW MATTER OF  
DEFENDANT DAVID MAST**  
: :  
: Filed By:  
: Plaintiff  
: :  
: Counsel of Record:  
: Theron G. Noble, Esquire  
: Ferraraccio & Noble  
: 301 East Pine Street  
: Clearfield, PA 16830  
: (814)-375-2221  
: PA I.D.#: 55942

FILED <sup>64</sup>  
m/12/5084  
JUL 22 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
PLAINTIFFS, ) ) No. 04- 02032 -CD  
v. ) ) In Equity and at Law  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
DEFENDANTS. )

**PLAINTIFFS' REPLY TO NEW MATTER OF DEFENDANT MAST**

AND NOW, comes the Plaintiffs, James W. Swistock and Ronald R. Bodle, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows as their REPLY TO NEW MATTER OF DEFENDANT MAST:

1 - 11. Plaintiffs believe that these averments are directed at other parties in this case and as such no response is necessary from Plaintiff.

**WHEREFORE, Plaintiffs request that judgment be entered in their favor as requested in their CIVIL COMPLAINT.**

Respectfully Submitted,



\_\_\_\_\_  
Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. )  
 )  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )  
 )  
No. 04- 02032 -CD  
In Equity and at Law

**PLAINTIFFS' CERTIFICATE OF SERVICE**

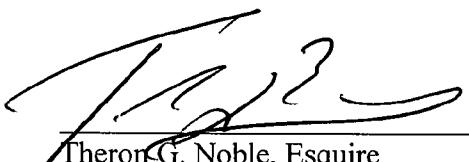
I, Theron G. Noble, Esquire of Ferraraccio & Noble, counsel for Plaintiffs, does hereby certify this 21st day of July, 2005, that I did send a true and correct copy of Plaintiffs' REPLY TO NEW MATTER OF DEFENDANT MAST to the below indicated persons, being all counsels of record, via United States Mail, first class, postage prepaid.

Mr. Olin L. London  
Pro Se  
320 Stony Lonesome Rd.  
Luthersburg, PA 15848

Toni M. Cherry, Esquire  
Counsel for Defendant Mast  
P.O. Box 505  
DuBois, PA 15801

John Sughrue, Esquire  
Counsel for Defendant Witherow  
23 N. 2nd Street  
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY,  
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(CIVIL DIVISION)

JAMES W. SWISTOCK, an adult individual, )  
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v. ) ) In Equity and at Law  
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ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
DEFENDANTS. )

**PLAINTIFFS' CERTIFICATE OF SERVICE**

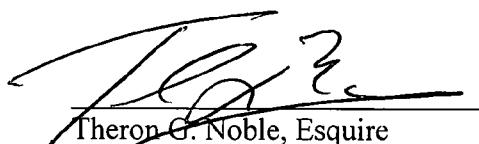
I, Theron G. Noble, Esquire of Ferraraccio & Noble, counsel for Plaintiffs, does hereby certify this 15th day of August, 2005, that I did send either the original or true and correct copies (as applicable) Plaintiffs' NOTICES OF DEPOSITIONS to the below indicated persons, being all counsels of record or pro se litigants, via United States Mail, first class, postage prepaid.

Mr. Olin L. London  
Pro Se  
320 Stony Lonesome Rd.  
Luthersburg, PA 15848

Toni M. Cherry, Esquire  
Counsel for Defendant Mast  
P.O. Box 505  
DuBois, PA 15801

John Sughrue, Esquire  
Counsel for Defendant Witherow  
23 N. 2nd Street  
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

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William A. Shaw  
Prothonotary/Clerk of Courts

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

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JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )

William A. Shaw  
Prothonotary/Clerk of Courts

PLAINTIFFS, )

No. 04- 02032 -CD

v. )

In Equity and at Law

DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )

DEFENDANTS. )

**PLAINTIFFS' CERTIFICATE OF SERVICE**

I, Theron G. Noble, Esquire of Ferraraccio & Noble, counsel for Plaintiffs, does hereby certify this 18th day of August, 2005, that I did send either the original or true and correct copies (as applicable) Plaintiffs' AMENDED NOTICES OF DEPOSITIONS to the below indicated persons, being all counsels of record or pro se litigants, via United States Mail, first class, postage prepaid.

Mr. Olin L. London  
Pro Se  
320 Stony Lonesome Rd.  
Luthersburg, PA 15848

Toni M. Cherry, Esquire  
Counsel for Defendant Mast  
P.O. Box 505  
DuBois, PA 15801

John Sughrue, Esquire  
Counsel for Defendant Witherow  
23 N. 2nd Street  
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JAMES W. SWISTOCK, an adult individual  
and RONALD R. BODLE, an adult individual,

Plaintiffs,

vs.

DAVID MAST, an adult individual,  
OLIN L. LONDON, an adult individual, and  
ANN MARIE WITHEROW, individually and  
as Administrator of the Estate of Gerald Witherow,

Defendants.

) No. 04 - 02032 C.D.  
)  
) In Equity and at Law  
)  
) Type of Pleading: CERTIFICATE  
) OF SERVICE  
)  
) Filed on Behalf of: Defendant, DAVID  
) MAST  
)  
) Counsel of Record for this Party:  
)  
) TONI M. CHERRY, ESQ.  
) Supreme Court No.: 30205  
)  
) GLEASON, CHERRY AND  
) CHERRY, L.L.P.  
) Attorneys at Law  
) P. O. Box 1  
) One North Franklin Street  
) DuBois, PA 15801  
)  
) (814) 371-5800

FILED NO CC  
0140081  
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William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JAMES W. SWISTOCK, an adult individual )  
and RONALD R. BODLE, an adult individual, )  
Plaintiffs, )  
vs. )  
DAVID MAST, an adult individual, ) No. 04 - 2032 C.D.  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and ) In Equity and at Law  
as Administrator of the Estate of Gerald Witherow, )  
Defendants )

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21<sup>st</sup> day of September, 2005, a true and correct copy of the Response of David Mast to Plaintiff's First Request for Production of Documents was served upon each of the following by handing the same to each of the undersigned at the Offices of Sara Sargent Court Reporting Service, Market Street, Clearfield, Pennsylvania, on September 21, 2005:

**THERON G. NOBLE, ESQ.**  
Attorney for Plaintiffs

OLIN L. LONDON

JOHN SUGHRUE, ESQ.  
Attorney for Ann Marie Witherow, individually and as  
Administrator of the Estate of Gerald Witherow

GLEASON, CHERRY AND CHERRY, L.L.P.

Dated: September 21, 2005

By David Mast  
Attorneys for Defendant, DAVID MAST

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

JAMES W. SWISTOCK, an adult individual, :  
and RONALD R. BODLE, an adult individual, :  
PLAINTIFFS, :  
v. : No. 04- 2032 -CD

DAVID MAST, an adult individual, :  
OLIN L. LONDON, an adult individual, and :  
ANN MARIE WITHEROW, individually and :  
as Administrator of the Estate of Gerald Witherow, :  
In Equity and at Law

DEFENDANT. :  
: Type of Pleading:

**AFFIDAVIT OF SERVICE**

Filed By:

Plaintiff

Counsel of Record:

Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.#: 55942

**FILED**

DEC 06 2005

11:55 AM (JW)

William A. Shaw  
Prothonotary  
NO C/C

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
)  
PLAINTIFFS, )  
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v. )  
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DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
)  
DEFENDANTS. )  
)

No. 04- 02032 -CD  
In Equity and at Law

**PLAINTIFFS' AFFIDAVIT OF SERVICE**

I, Theron G. Noble, Esquire, counsel for plaintiff do hereby swear and affirm, pursuant to 18 Pa.C.S.A. 4904, relating to unsworn falsification to authorities, that I did on December 3, 2005, at approximately 11:00A.M., personally serve upon upon Mr. David Colbentz, who was identified as the son and employee of Any Colbentz, t/d/b/a Andy's Sawmill, at said sawmill, located at 2691 Pike Rd., Big Run, Jefferson County, Pennsylvania, and who did appear to be in charge of the operations at said time, a NOTICE OF DEPOSITION, SUBPOENA and check in the amount of \$9.90, representing the applicable, witness fee to compel Mr. Colbentz attendance and production of documents at a deposition scheduled for December 23, 2005 at 11:15 A.M, in the above captioned case. I did so after attempts to otherwise contact Mr. Colbentz failed in that his business has no telephone listing, at least under the name of Andy's Sawmill; and documents which have previously been introduced as evidence in this case and testimonial evidence provided claims said documents were generated by said fails to contain either an address or telephone number.

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
PLAINTIFFS, )  
v. ) No. 04- 02032 -CD  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
DEFENDANTS. )  
In Equity and at Law

**PLAINTIFFS' CERTIFICATE OF SERVICE**

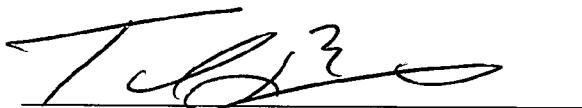
I, Theron G. Noble, Esquire of Ferraraccio & Noble, counsel for Plaintiffs, does hereby certify this 3rd day of December, 2005, that I did send a true and correct copy of Plaintiff's AFFIDAVIT OF SERVICE to the below indicated persons, being all counsels of record or pro se litigants, via United States Mail, first class, postage prepaid, as well as non-party Mr. Andy Colbentz.

Mr. Olin L. London  
Pro Se  
320 Stony Lonesome Rd.  
Luthersburg, PA 15848

Toni M. Cherry, Esquire  
Counsel for Defendant Mast  
P.O. Box 505  
DuBois, PA 15801

John Sughrue, Esquire  
Counsel for Defendant Witherow  
23 N. 2nd Street  
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

**FILED**

DEC 06 2005

*William A. Shaw*  
Prothonotary

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

JAMES W. SWISTOCK, an adult individual,  
and RONALD R. BODLE, an adult individual,

**PLAINTIFFS,**

: No. 04- 2032 -CD

v.

DAVID MAST, an adult individual,  
OLIN L. LONDON, an adult individual, and  
ANN MARIE WITHEROW, individually and  
as Administrator of the Estate of Gerald Witherow,

**DEFENDANT.**

: Type of Pleading:

: **PRAECIPE**

: Filed By:

: Plaintiffs

: Counsel of Record:

: Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.#: 55942

**FILED**

*Pa*  
MAR 15 2006

*11-301*  
William A. Shaw  
Prothonotary/Clerk of Courts

*W.C.C.*

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
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 )  
DEFENDANTS. )

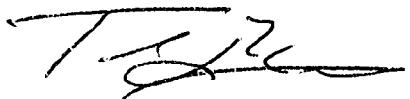
**PRAECIPE TO FILE DEPOSITION TRANSCRIPTS**

To: William A. Shaw, Prothonotary

Date: March 15, 2006

Please file the original deposition transcripts for Defendant Ann Marie Witherow,  
Melvin D. Mast, Joseph D. Mast, and Andy Colbentz.

Respectfully Submitted,



\_\_\_\_\_  
T. G. Noble  
Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY,  
PENNSYLVANIA  
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JAMES W. SWISTOCK, an adult individual, )  
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PLAINTIFFS, )  
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)  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
)  
DEFENDANTS. )  
)

No. 04- 02032 -CD  
In Equity and at Law

**PLAINTIFFS' CERTIFICATE OF SERVICE**

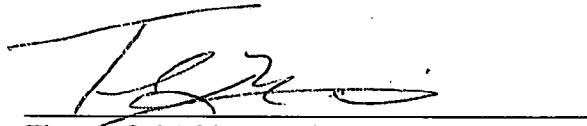
I, Theron G. Noble, Esquire of Ferraraccio & Noble, counsel for Plaintiffs, does hereby certify this 15th day of March, 2006, that I did send true and correct copies of Plaintiffs' PRAECIPE TO FILE DEPOSITION TRANSCRIPTS to the below indicated persons, being all counsels of record or pro se litigants, via United States Mail, first class, postage prepaid.

Mr. Olin L. London  
Pro Se  
320 Stony Lonesome Rd.  
Luthersburg, PA 15848

Toni M. Cherry, Esquire  
Counsel for Defendant Mast  
P.O. Box 505  
DuBois, PA 15801

John Sughrue, Esquire  
Counsel for Defendant Witherow  
23 N. 2nd Street  
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

## 68 P.S. § 111

### Note 6

interest therein, which was sent after such interest had vested, stating that trustee which had loaned money to owner had assigned to itself two mortgages, that certain amount had been loaned to owner, and that owner had certain interest in mortgages, did not amount to accounting so as to make trustee and owner joint owners entitling owner's assignee to partition of mortgages under statute, in absence of averment that trustee agreed to accept interest in mortgage for satisfaction of loan, or of facts establishing change in conditions that would affect status of the parties. *Tioga No. 2 Building Ass'n v. North Philadelphia Trust Co.*, 189 A. 708, 125 Pa.Super. 234, Super.1937. Partition  $\Leftrightarrow$  13

Assignee of mortgages which had theretofore been pledged to secure loan, and pledgee, were not joint owners so as to permit partition of mortgages under this section. *Tioga No. 2 Building Ass'n v. North Philadelphia Trust Co.*, 189 A. 708, 125 Pa.Super. 234, Super.1937. Partition  $\Leftrightarrow$  13

## REAL AND PERSONAL PROPERTY

### 7. Proceedings

In proceeding to partition mortgage alleged to be jointly owned by owner, pledgee and owner's subsequent assignee, whether pledgee could hold mortgages as collateral for future advances for loan was not a matter which was determinable by the court, under this section. *Tioga No. 2 Building Ass'n v. North Philadelphia Trust Co.*, 189 A. 708, 125 Pa.Super. 234, Super.1937. Partition  $\Leftrightarrow$  65

Where the spouses own an automobile titled in joint names the one holding possession thereof is not in a position to bring an action for partition without the consent of the other. *Tyson v. Tyson*, 223 Pa. 166, 68 Pa. D. & C.2d 627 (1974). Partition  $\Leftrightarrow$  13

Where husband and wife, separated but not divorced, hold a bank account in joint names, a substantial withdrawal by one without the consent of the other constitutes an offer to partition, which the other accepts by instituting an action for partition, and partition will accordingly be ordered. *Tyson v. Tyson*, 223 Pa. 166, 68 Pa. D. & C.2d 627 (1974). Partition  $\Leftrightarrow$  13

## § 115. Tenants in common; cutting or removing timber, without consent of co-tenants

From and after this date it shall be unlawful for any owner or owners of any undivided interest in timber land within this commonwealth to cut or to remove, or to cause to be cut or removed from the said land, any timber trees, without first obtaining the written consent of all co-tenants in said premises.

1869, May 4, P.L. 1251, § 1. Editorially renumbered from 12 P.S. § 1479 in 1981.

### Rules of Civil Procedure

*This section is not suspended or affected by the Rules of Civil Procedure governing civil actions or actions to prevent waste. See Pa.R.C.P. Nos. 1549, 1580.*

### Library References

Tenancy in Common  $\Leftrightarrow$  24.  
Westlaw Topic No. 373.  
C.J.S. Tenancy In Common § 20.

For Title 68 Pa.C.S.A., see Appendix following this Title

## LAND PERSONAL PROPERTY

### Proceedings

In proceeding to partition mortgages alleged to be jointly owned by owner's donee and owner's subsequent assignee, either pledgee could hold mortgages as lateral for future advances for taxes as not a matter which was determinable by the court, under this section. *Tioga 2 Building Ass'n v. North Philadelphia Trust Co.*, 189 A. 708, 125 Pa. Super. 1, Super. 1937. Partition  $\Leftrightarrow$  65

Where the spouses own an automobile in joint names the one holding possession thereof is not in a position to bring an action for partition without the consent of the other. *Tyson v. Tyson*, 22 Est. 166, 68 Pa. D. & C.2d 627 (1974). Partition  $\Leftrightarrow$  13

Where husband and wife, separated but not divorced, hold a bank account in joint names, a substantial withdrawal by one without the consent of the other constitutes an offer to partition, which the other accepts by instituting an action for partition, and partition will accordingly be ordered. *Tyson v. Tyson*, 22 Chest. 68 Pa. D. & C.2d 627 (1974). Partition  $\Leftrightarrow$  13

### or removing timber, without

It is unlawful for any owner or taker of land within this Commonwealth to be cut or removed, from without first obtaining the written consent.

numbered from 12 P.S. § 1479 in

### Procedure

is not affected by the Rules of Procedure or actions to prevent waste. See Pa.R.C.P. Nos. 1549, 1580.

### References

Index following this Title

## TIMBER REMOVAL

## 68 P.S. § 116

### Research References

Encyclopedias  
Summary Pa. Jur. 2d Property § 6:22, Standard Pennsylvania Practice 2d  
Timber. § 123:1, Generally.

Treatises and Practice Aids  
Goodrich-Amram 2d Rule 1580, Goodrich Explanatory Comment.

### Notes of Decisions

Construction and application 1 line. *Miller v. Holland*, 13 C.C. 622, 3 Dist. 449, 1893.

1. Construction and application  
The phrase timber trees, within this section, includes a tree on a boundary

## § 116. Sale of timber without consent of co-tenant

No sale of any timber cut or removed from such undivided lands, before or without such consent, shall pass any title thereto; and the parties injured shall have every remedy in law and equity for the recovery of the said timber trees, and of all square timber, boards, lumber, ties, shingles and other articles whatsoever manufactured therefrom; and also for the recovery of damages for the cutting or removing of the same, which they now have against an entire stranger to the title.

1869, May 4, P.L. 1251, § 2. Editorially renumbered from 12 P.S. § 1480 in 1981.

### Rules of Civil Procedure

*This section is not suspended or affected by the Rules of Civil Procedure governing civil actions or actions to prevent waste. See Pa.R.C.P. Nos. 1549, 1580.*

### Library References

Tenancy in Common  $\Leftrightarrow$  24.  
Westlaw Topic No. 373.  
C.J.S. Tenancy In Common § 20.

### Research References

Encyclopedias  
Summary Pa. Jur. 2d Property § 6:22, Standard Pennsylvania Practice 2d  
Timber. § 123:1, Generally.

Treatises and Practice Aids  
Goodrich-Amram 2d Rule 1580, Goodrich Explanatory Comment.

For Title 68 Pa.C.S.A., see Appendix following this Title

## 68 P.S. § 116

### REAL AND PERSONAL PROPERTY

#### Notes of Decisions

Construction and application 1  
Evidence 2  
Recovery 3

##### 1. Construction and application

Timber cut in violation of this act by an owner of an undivided interest in the land without the consent of his cotenant, and still lying upon the land at the time of a judicial sale of the undivided interest in the land of the non-consenting owner, remains part of the freehold, unless the non-consenting owner has elected to treat it as personalty; and the interest therein of the defendant in the execution passes to the purchaser of the realty at the sale. Duff v. Bindley, W.D.Pa.1883, 16 F. 178. Waste ↳ 9; Waste ↳ 13

Under this act, if, in any given case, trover, trespass, or replevin might be maintained against a stranger, the same remedy is available to a tenant in common in like case against his co-tenant, or against any other person acting for or under the co-tenant. Bush v. Gamble, 17 A. 865, 127 Pa. 43, Sup.1889. Waste ↳ 13; Waste ↳ 15

##### 2. Evidence

In an action of trespass under this act, the record of a prior ejectment in which

the plaintiff recovered against the defendant an undivided three-fourths of the premises in question, with the habere cias issued thereon, and the returning, that he had been put in possession, establishes actual possession of the premises at the time of bringing the action, trespass, and the right of possession and title when the writ of ejectment issued. Bush v. Gamble, 17 A. 865, 127 Pa. Sup.1889. Waste ↳ 20

##### 3. Recovery

This act does not authorize the recovery of double or treble damages, as provided by the act of 1824, March 29, P.L. 152, § 3; compensation is the measured recovery. Wheeler v. Carpenter, 107 Pa. 271, 1884; Dexter v. Lathrop, 20 A. 56, 136 Pa. 565, 1890; Bush v. Gamble, 17 A. 865, 127 Pa. 43, 1889.

In an action of trover by a non-consenting part owner against the vendee of timber cut in violation of this act, the plaintiff may recover the value of his interest in the lumber, as of the date of the conversion by the defendant, with no allowance for the expense and labor of the vendor. Duff v. Bindley, W.D.Pa.1883, 16 F. 178. Waste ↳ 18

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123. Repeal  
124. Estates  
125. When i  
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## REAL AND PERSONAL PROPERTY

## 4. Severance

In the context of realty, an act must be a sufficient manifestation of an intent to sever the joint tenancy that the actor is unable to retreat from the position of creating a severance of the joint tenancy. Nicholson v. Johnston, 855 A.2d 97, Super.2004. Joint Tenancy ↗ 4

Joint tenancy in realty with right of survivorship is severable by the act, voluntary or involuntary, of either of the parties. Nicholson v. Johnston, 855 A.2d 97, Super.2004. Joint Tenancy ↗ 4

Joint tenancy is severed when one or more of the four unities is destroyed. Nicholson v. Johnston, 855 A.2d 97, Super.2004. Joint Tenancy ↗ 4

## 5. Partition

In apportioning parties' respective interests upon partition of joint tenancy after expected marriage failed to occur between engaged joint tenants, trial court acted within its discretion in using the mortgage balance as of the date of the parties' separation, rather than the balance at the time of partition. Nicholson v. Johnston, 855 A.2d 97, Super.2004. Partition ↗ 88

## CHAPTER 3.7

## TIMBER REMOVAL AND SALE WITHOUT CO-TENANTS' CONSENT

## § 111. Partition of personal property jointly owned

## Research References

## Encyclopedias

Summary Pa. Jur. 2d Property § 6:17, Partition.

## Treatises and Practice Aids

Standard Pennsylvania Practice 2d § 122:4, Partition of Personal Property.

## Forms

1 West's Pennsylvania Forms § 16.30, In General.

## § 115. Tenants in common; cutting or removing timber, without consent of co-tenants

## Research References

## Encyclopedias

Summary Pa. Jur. 2d Property § 6:22, Timber.

Standard Pennsylvania Practice 2d § 123:1, Generally.

## Treatises and Practice Aids

Goodrich-Amram 2d Rule 1580.

## § 116. Sale of timber without consent of co-tenant

## Research References

## Encyclopedias

Summary Pa. Jur. 2d Property § 6:22, Timber.

Standard Pennsylvania Practice 2d § 123:1, Generally.

## Treatises and Practice Aids

Goodrich-Amram 2d Rule 1580.

## CHAPTER 4

## ESTATES TAIL

## § 124. Estates tail to vest a fee simple

## Research References

## Encyclopedias

Summary Pa. Jur. 2d Property § 5:6, Estate Tail or Fee Tail.

CA

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

JAMES W. SWISTOCK, an adult individual,  
and RONALD R. BODLE, an adult individual,

PLAINTIFFS,

v.

DAVID MAST, an adult individual,  
OLIN L. LONDON, an adult individual, and  
ANN MARIE WITHEROW, individually and  
as Administrator of the Estate of Gerald Witherow,

DEFENDANT.

: No. 04- 2032 -CD

: In Equity and at Law

: **MOTION FOR PARTIAL  
SUMMARY JUDGMENT  
AS TO ALL DEFENDANTS**

: Filed By:

: Plaintiffs

: Counsel of Record:

: Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.#: 55942

FILED NO  
0114780  
MAR 14 2006  
60

William A. Shaw  
Prothonotary/Clerk of Courts

CA

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
)  
PLAINTIFFS, )  
) No. 04- 02032 -CD  
v. )  
)  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
)  
DEFENDANTS. )  
)

**RULE TO SHOW CAUSE**

Now, this 15<sup>th</sup> day of March, 2006, upon consideration of the attached Defendant's MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO ALL DEFENDANTS, a RULE is hereby issued upon each defendant to SHOW CAUSE why the MOTION should not be granted. RULE RETURNABLE, for filing written response, is set for the 17<sup>th</sup> day of April, 2006 and argument on the MOTION set for the 25<sup>th</sup> day of April, 2006, at 9 : 00, A.M., in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

**NOTICE**

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CAN NOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator  
Second & Market Streets  
Clearfield, PA 16830  
(814)-765-2641

By The Court,

Judge...

**FILED**

MAR 15 2006  
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William A. Shaw  
Prothonotary/Clerk of Courts  
3 cent to 14 cent  
w/memo for  
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PANTING

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
PLAINTIFFS, )  
v. )  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
DEFENDANTS. )  
No. 04- 02032 -CD  
In Equity and at Law

**PLAINTIFFS' MOTION FOR PARTIAL  
SUMMARY JUDGMENT AS TO ALL DEFENDANTS**

**AND NOW, comes the Plaintiffs, James W. Swistock and Ronald R. Bodle, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of their MOTION FOR PARTIAL SUMMARY JUDGMENT, pursuant to Pa. R. Civ. P. 1035:**

1. This matter was commenced on December 28, 2004, by the filing of a CIVIL COMPLAINT, which has been amended.
2. That Plaintiffs alleged causes of action, at issue for purposes of the present motion, for conversion, as to all three named defendants.
3. In support of said action, Plaintiffs pled the following background information, which is italicized and in bold, which is now supported by pleadings and deposition testimony as noted and follows:

*A. That this matter involves the removal of timber from premises best described as 70 acres situated in Knox Township, Clearfield County, Pennsylvania, identified as Tax Map No. 122-H13-19, hereinafter referred to as "the subject premises". Furthermore, that said averment, being 6 of Plaintiff's Amended Complaint, was admitted by each Defendant.*

*B. That Defendant Mast, did, and upon information and belief, does operate a timbering business, called David Mast & Son Logging. Furthermore, that said averment, being 7 of Plaintiff's Amended Complaint, was admitted by each Defendant, solely excepting Defendant London. However, at hearing held on this matter on Defendant Mast testified to the same at lines 11 - 18, page 3 (See Exhibit "A") and no contradictory evidence has been presented.*

*C. That upon information and belief, a transaction was entered into by and between Defendants Mast and Witherow, as Administrator of the Estate of Gerald Witherow, on or about April 19, 2002, whereby Mast was to and did perform timbering on the subject premises, as contained in a certain contract entitled "TIMBER SALE AGREEMENT". Although such averment was denied by each and every defendant, the contractual relationship is amply supported as follows: By Defendant Mast, see Lines 21 - 1, pages 3 and 4, of Exhibit "A"; see also David Mast Deposition transcript, lines 6 - 6, pages 14 - 20; by Defendant Witherow, see lines 17 - 20, page 22 of her deposition; and by Defendant London, see lines 5 - 25, pages 8 and 9 of his deposition. Attached hereto as Exhibit "B" is said TIMBER SALES AGREEMENT. There is also no doubt that Defendant Mast did perform the timbering on the subject premises. See lines 6 and 7, page 5 of Exhibit "A"; see also lines 4 - 6, pages 41 and 42 of Defendant Mast*

Deposition.

*D. That the deal between Defendants Mast and Witherow was orchestrated by Defendant London, for which he was paid a fee by Defendant Witherow, of \$2,400, being 10% (ten percent) of the consideration paid by Defendant Mast to Defendant Witherow.* Although Defendant's role in the contract formation and timbering operation it will remain as an issue at trial, for purposes of the present motion, it is uncontested that Defendant London received \$2,400 from the contract formation and timbering. See lines 11 - 9, pages 30 and 31 of Defendant London deposition; and see also Deposition of Defendant Witherow, lines 9 - 16, page 25.

*E. That upon information and belief, the timbering operations performed by Mast on the subject premises ended sometime in the spring of 2004.* That in fact the timbering operations ended in March 2003. See answer by Defendant Mast.

*F. That as a result of the timbering operations performed by Mast on the subject premises, timber having fair market value of approximately \$108,752.84, in an amount to be more fully determined at time of trial, was harvested by cutting down standing trees and removing the resulting timber from the subject premises.* Although an issue remains as to the value of the timber which was removed, it is also uncontested that Defendant Mast received \$66,228.23 for the harvesting and removal of the timber from the subject premises. See lines 17 -4 , pages 76 and 77 of Defendant Mast Deposition.

*G. That at all relevant and material times, the subject premises was jointly owned by Plaintiffs Swistock and Bodle and the Estate of Gerald Witherow.* See Defendant Witherow's

answer as well as Exhibit "C", being Schedule "A" of the Witherow Estate Inheritance Tax, specifically item 2. It is also noted that no other defendant or party to this action contests such ownership, nor has any contrary evidence been presented.

**H. *That upon information and belief, the Estate of Gerald Witherow owned a 1/2 interest in the subject premises at all relevant and material times.*** See Defendant Witherow's answer as well as Exhibit "C", being Schedule "A" of the Witherow Estate Inheritance Tax, specifically item 2. It is also noted that no other defendant or party to this action contests such ownership, nor has any contrary evidence been presented.

**I. *That Plaintiff Swistock, at all relevant and material times, owned a 1/4 interest in the subject premises.*** See Defendant Witherow's answer. It is also noted that no other defendant or party to this action contests such ownership, nor has any contrary evidence been presented.

**J. *That Plaintiff Bodle also owned a 1/4 interest in the premises at all relevant and material times.*** See Defendant Witherow's answer. It is also noted that no other defendant or party to this action contests such ownership, nor has any contrary evidence been presented

**K. *That the ownership rights by Plaintiffs Swistock and Bodle are, and at all relevant and material times, were reflected in the records of the Clearfield County Recorder's Office, by the recording and filing of their various deeds with Plaintiff Swistock's Deed being recorded at Volume 897 and Page 506, while Plaintiff Bodle's deed is recorded at Volume 751, Page 538.***

Although Defendants Mast and London have denied the same, while Defendant Witherow has admitted while even exemplifying said fact, the same is a matter of public record of which this Court can take judicial notice.

L. *That neither Plaintiff Swistock nor Bodle consented, or were even aware, of the timbering operation being performed by Defendant Mast nor that Defendant Witherow had entered into any type of agreement with Defendant Mast.* See answers filed by Defendants Mast and London, as well as deposition testimony of Defendant Witherow at lines 4 -14, page 52 and lines 17 -22, pages 53; and deposition of Defendant Mast, lines 23 -6, pages 98 and 99.

M. *That upon information and belief, Defendant Witherow, at all relevant and material times knew that the subject premises were not completely owned by the Estate of Gerald Witherow and that others, namely the Plaintiffs in this action, owned the other combined 1/2 interest.* See Defendant Witherow's answer.

N. *That upon information and belief, Defendant Mast, at all relevant and material times knew that the subject premises were not completely owned by the Estate of Gerald Witherow.*

The same is not at issue for purposes of this motion.

O. *That upon information and belief, Defendant London, at all relevant and material times, knew that the subject premises were not completely owned by the Estate of Gerald Witherow.* The same is not at issue for purposes of this motion.

P. *That upon information and belief, Defendant Witherow informed Defendant Mast prior to, or contemporaneous with the execution of the certain "Timber Sale Agreement", that the Estate of Gerald Witherow only owned a 1/2 interest in the subject premises.* The same is not at issue for purposes of this motion.

Q. *That neither Plaintiff Swistock or Bodle received any compensation for the harvesting of the timber from the subject premises.* See deposition of Defendant Mast, lines 23 -6, pages

98 and 99.

**Part I: v. Defendant Mast**

4. 42 Pa.C.S.A. 8311 (a) provides that "**In lieu of all other damages or civil remedies provided by law, a person who cuts or removes the timber of another person without the consent of that person shall be liable to that person in a civil action for an amount equal to...**".
5. That Plaintiffs Swistock and Bodle each owned a quarter (1/4) interest in the subject premises.
6. That neither Plaintiff Swistock or Bodle gave defendant Mast permission to cut or remove the timber from the subject premises.
7. That although Plaintiffs Swistock and Bodle have additional causes of action and damage claims as to this defendant, based upon (i) other theories; (ii) issue as to the value of timber; (iii) 42 Pa.C.S.A. 8311(a)(1.1) (relating to forester costs) ; and (iv) a jury determination that if the conversion was deliberate or negligent additional multiples of the timber value, it can not be disputed that Plaintiffs are entitled at this juncture to a partial judgment as to Defendant Mast, each in the amount of \$16,557.06, being twenty-five percent (25%) of the money admitted by said defendant to have been received from the timber harvest.
8. That Pa.R.Civ.P. 1035(c) permits judgment to be entered on a part of the case, and proceeding with the issues for which summary judgment is not appropriate.

**WHEREFORE, Plaintiffs request that as to Defendant David Mast, their MOTION FOR PARTIAL SUMMARY JUDGMENT be GRANTED and judgments be entered in**

**their favor, each in the amount of \$16,557.06.**

**Part II: v. Defendant Witherow**

9. That the averments of paragraphs 1 - 8, inclusive, are hereby incorporated as if again fully set forth at length.
10. 68 Pa.C.S.A. 115 provides that: "**From and after this date it shall be unlawful for any owner or owners of any undivided interest in timber land within this commonwealth to cur or to remove, or to cause to be cut or removed, from said land, any timber trees, without first obtaining the written consent of all co-tenants in said premises."**
11. That Defendant Witherow, individually and as Executrix of the Estate of Gerald Witherow, violated said statute when she entered into the TIMBER SALES AGREEMENT (Exhibit B hereto), causing Defendant Mast to timber said land.
12. 68 Pa.C.S.A.116 provides that: "**No sale of any timber cur or removed from such undivided lands, before or without such consent, shall pass any title thereto; and *the parties injured shall have every remedy in law and equity* for the recovery of said timber trees, and of all square timber, boards, lumber, ties, shingles and other articles whatsoever manufactured therefrom; *and also for the recovery of damages for the cutting or removing of the same, which they now have against an entire stranger to the title.*"** [emphasis added].
13. That pursuant to Part I hereof and per 68 Pa.C.S.A. 115 and 116, Plaintiffs Swistock and Bodle are entitled to partial summary judgment, with the same issues remaining as to other causes of action and additional damages, against Defendant Ann Marie Witherow, individually

and as Executrix of the Estate of Gerald Witherow, each in the amount of \$16,557.06.

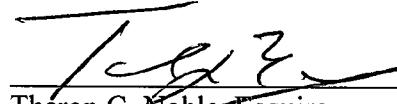
**WHEREFORE, Plaintiffs request that as to Defendant Ann Marie Witherow, individually and as Executrix of the Estate of Gerald Witherow, , their MOTION FOR PARTIAL SUMMARY JUDGMENT be GRANTED and judgments be entered in their favor, each in the amount of \$16,557.06.**

**Part III: v. Defendant Olin London**

14. That the averments of paragraphs 1 - 13, inclusive, are hereby incorporated as if again fully set forth at length.
15. That Defendant London received \$2,400 from Defendant Witherow, which she had received from Defendant Mast, for the conversion of the subject timber.
16. That this money rightfully belongs to Plaintiffs Swistock and Bodle as it is proceeds from the conversion of their timber, and should be paid equally to them, each in the amount of \$1,200.

**WHEREFORE, Plaintiffs request that as to Defendant Olin London, their MOTION FOR PARTIAL SUMMARY JUDGMENT be GRANTED and judgments be entered in their favor, each in the amount of \$1,200.00.**

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

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

COPY

JAMES W. SWISTOCK, an adult :  
ind., and RONALD R. BODLE, an :  
adult individual :  
:  
V. : NO. 04-2032-CD  
:  
DAVID MAST, an adult ind., and:  
ANN MARIE WITHEROW, ind. and :  
Administrator of the ESTATE :  
OF GERALD WITHEROW :  
:

EXCERPT OF PROCEEDINGS  
TESTIMONY OF DAVID MAST

HELD BEFORE THE HONORABLE  
FREDRIC J. AMMERMAN, PRESIDENT JUDGE  
on Wednesday, February 23, 2005

A P P E A R A N C E S :

FOR THE PLAINTIFFS: — Exhibit "A"  
THERON G. NOBLE, ESQUIRE —

FOR THE DEFENDANT (MAST) :  
TONI M. CHERRY, ESQUIRE

FOR THE DEFENDANT (LONDON) :  
JOHN R. CARFLEY, ESQUIRE

FOR THE DEFENDANT (WITHEROW) :  
JOHN SUGHRUE, ESQUIRE

Reported by: Cathy Warrick Provost, RMR  
Official Court Reporter

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DAVID MAST

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8	Recross by Attorney Sughrue	13

1 -- P R O C E E D I N G S --

2 ATTORNEY NOBLE: I would call Mr. David Mast to the  
3 witness stand.

4 DAVID MAST,

5 having first been duly sworn, was examined and  
6 testified as follows:

**DIRECT EXAMINATION**

8 | BY ATTORNEY NOBLE:

9 Q. Would you please state your name.

10 A. David Mast.

11 Q. Mr. Mast, are you involved with a business called  
12 David Mast & Sons Logging?

13 A. Yes.

14 Q. In what capacity are you involved with that  
15 business?

16 A. Well, we've been in business for 11 years logging.

17           Q.        Okay.  Do you own that business?

18 A. Yes.

19 Q. Does anybody else have an ownership interest in it?

20 A. No.

21 Q. Mr. Mast, I'm going to hand you a document. And if  
22 you would take a look at that while I'm distributing these out.  
23 Are you familiar with that document?

24 A. Yes.

25 Q. Can you tell us what it is?

1           A.       It's a Timber Sale Agreement.

2           Q.       Is that the one that you entered into with  
3 Mrs. Witherow?

4           A.       No. I did this with Mr. London.

5           Q.       Can you explain to me what you mean by that.

6           A.       Yes. Mr. London come over to us and said that he  
7 found a piece of timber, would we be interested? I said yes.  
8 He said, well, he knows where's this piece of timber. Showed  
9 it to us. And we walked it, scaled it, give him a price.

10           And he said he'll talk to the lady and see if it's  
11 agreeable, and, if it is, then we can pay the money.

12           Q.       Let's talk about that conversation with Mr. London  
13 for a second. Did he indicate that he had any ownership  
14 interest in that property that he was discussing with you?

15           A.       Not ownership, no.

16           Q.       How was it that he was going to make that  
17 arrangement?

18           A.       He said he would talk with Mrs. Witherite (sic) and  
19 said that he would take care of it for us. We have never met  
20 the lady. I have today not met the lady.

21           Q.       So you never, throughout this deal, met  
22 Mrs. Witherow?

23           A.       No.

24           Q.       Did you meet with anybody else besides Mr. London  
25 concerning this agreement?

1 A. Just Mr. London.

2 Q. Who did you pay?

3 A. Mr. London.

4 Q. And how much did you pay him?

5 A. 24,000.

6 Q. Now, did you do the timbering up on the property?

7 A. Yes.

8 Q. How much money did you receive from the timbering?

9 A. I'd have to look. We have the receipts.

10 Q. Okay, you have the receipts?

11 A. Yes.

12 Q. Where did you sell the timber to?

13 A. To my cousin.

14 Q. And what's your cousin's name or business?

15 A. It's Andy's Sawmill.

16 Q. Pardon me?

17 A. Andy's Sawmill.

18 Q. Andy's Sawmill?

19 A. Uh-huh (yes).

20 ATTORNEY SUGHRUE: Excuse me, I didn't hear that

21 last name.

22 ATTORNEY NOBLE: Andy Sawmill.

23 ATTORNEY SUGHRUE: How do you spell that?

24 THE COURT: S-a-w-m-i-l-l.

25 ATTORNEY NOBLE: It's not a last name; it's a

1 sawmill, I assume.

2 BY ATTORNEY NOBLE:

3 Q. Anyway, of the money that -- strike that. Did  
4 Mr. London indicate to you that anybody else besides  
5 Mrs. Witherow had an interest in this property?

6 A. No, sir.

7 Q. And when were these conversations, a time frame,  
8 when were they occurring?

9 A. It would have been before we signed the contract.  
10 Would have been like March, like February or March of 2002.

11 Q. And how many conversations did you have with  
12 Mr. London?

13 A. I would say two, maybe three.

14 Q. The first conversation, he approaches you and tells  
15 you about the property; correct?

16 A. Uh-huh (yes).

17 Q. At that point, did you give him the contract form?

18 A. No.

19 Q. I assume that's your form of contract?

20 A. Yes.

21 Q. When did you give Mr. London that form?

22 A. When we decided that we were going to buy the  
23 timber.

24 Q. Who filled in the blanks, if you will, on that?

25 A. That would be my son, my son and I. I let him fill

1 in for me. I fill in for myself, like, he helps me out.

2 Q. So then at the second meeting you give Mr. London  
3 that?

4 A. Yes. When he went to take the money over to  
5 Mrs. Witherite, we gave him the contract so --

6 Q. You gave him money and the contract to take to her  
7 to sign?

8 A. Right.

9 Q. Okay. And that was \$24,000 in cash, I believe?

10 A. Correct.

11 Q. Coming back, do you have any of the proceeds that  
12 Andy's Sawmill gave you for the timber on this property left?

13 A. No.

14 ATTORNEY NOBLE: Thank you: That's all I would  
15 have.

16 THE COURT: I'm assuming that, for purposes of what  
17 we're dealing with here this morning -- maybe I shouldn't  
18 assume anything. Do any of counsel have any questions for this  
19 gentleman?

20 ATTORNEY CHERRY: I have none, Your Honor.

21 ATTORNEY SUGHRUE: I have one.

22 CROSS-EXAMINATION

23 BY ATTORNEY SUGHRUE:

24 Q. You said that you went to the property and cruised  
25 it, reviewed it and made a decision on the timber located. How

1 did you identify the property that you were cruising? Who  
2 showed it to you?

3 A. Mr. London had walked it with us and showed us the  
4 property.

5 Q. Mr. London took you to the property?

6 A. Right.

7 Q. And was there anybody with you besides Mr. London?

8 A. Just my son.

9 Q. That's Joseph Mast?

10 A. Melvin. It could have been Melvin or Joseph. I'm  
11 not sure which one it was.

12 Q. One of your sons?

13 A. Yes.

14 Q. One of your business associates?

15 A. Yes.

16 Q. Now, as you cruised it, how did you tell where the  
17 boundaries were? Did Mr. London make any representation to you  
18 as to the boundaries?

19 A. Yes. He showed us where the boundary was.

20 Q. Mrs. Witherow wasn't there?

21 A. No.

22 Q. And you never met Mrs. Witherow?

23 A. I never met her, no.

24 Q. You didn't call her or try to reach her?

25 A. No. We figured, why should we? We thought it was

1 all taken care of.

2 ATTORNEY SUGHRUE: I have no further questions.

3 THE COURT: Mr. Carfley.

4 ATTORNEY CARFLEY: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY ATTORNEY CARFLEY:

7 Q. Mr. Mast, my name is John Carfley. I'm  
8 representing Mr. London. Just a couple questions for you, sir.  
9 How long have you been in the timbering business?

10 A. Will be 11 years, going on.

11 Q. Did you have this property surveyed after you  
12 signed the contract with Mrs. Witherow?

13 A. No.

14 Q. Did you have a title search completed of the  
15 property to determine ownership interest?

16 A. No. We thought London did all that, cause he was  
17 our agent for us for that property.

18 Q. I'm sorry, sir?

19 A. London was our agent for that property.

20 Q. He was your agent?

21 A. Right.

22 Q. The contract you signed in 2002, when did you do  
23 that on the property?

24 A. It was in the fall or the winter of 2002. It was  
25 almost, well, not quite, 2003 we started.

1 Q. Was there any reason for the delay in going on the  
2 property?

3 A. No.

4 Q. Did you ever have any conversations with  
5 Mr. Sughrue personally concerning the contract?

6 A. No.

7 Q. The form that was presented to you as an exhibit,  
8 that is your form, and you or your son, or one of your agents,  
9 filled it in?

10 A. Right.

11 Q. Mr. London did not do that?

12 A. No.

13 Q. You gave that to Mr. London and asked them to take  
14 it back to Mrs. Witherow?

15 A. Yes.

16 Q. Thank you, sir.

17 ATTORNEY CARFLEY: That's all the follow-up I have,  
18 Your Honor, all the questions I have, Your Honor.

19 ATTORNEY NOBLE: Just two follow-up along those  
20 lines, Your Honor.

21 REDIRECT EXAMINATION

22 BY ATTORNEY NOBLE:

23 Q. Mr. Mast, when you normally go out to the property  
24 on a timbering business, do you go to the courthouse to check  
25 out the records to see who owns the property?

1       A.       We usually don't.  We usually take the owners  
2 truthfully -- you know, try to be honest.  And this was an  
3 honest mistake, that we had nothing -- didn't know anything  
4 about.

5               And this is the first it's ever happened 11 years  
6 we've been in it.  We never had this problem.  Always when we  
7 went to the owner, that's the first thing we do, is walk the  
8 line with him so we know where the boundary is, and then we  
9 sign a contract.  And this is the first we ever dealt with  
10 something like this.

11       Q.       But in this circumstance, you understood, when you  
12 were dealing with Mr. London, that he was not the owner of this  
13 property; right?

14       A.       Oh, yes.  Yes.

15       Q.       And the second line of questioning I wanted to ask  
16 you.  How did you determine the amount of money that you  
17 offered Mrs. Witherow on here?  Is it like a percentage of what  
18 you estimate the timber's worth, or how is that determined?

19       A.       You have to figure all your expense, okay.  And you  
20 have to figure your help.  This is just like any business.

21               ATTORNEY CHERRY:  I'm going to raise an objection.  
22 Your Honor, I think we've now gone way beyond the issue of  
23 injunction.  I don't see how this Plaintiff has proven any --

24               THE COURT:  I think we have.  I'll sustain the  
25 objection.

1 ATTORNEY NOBLE: Thank you.

2 THE COURT: Thank you, sir.

3 ATTORNEY SUGHRUE: I have one question, Your Honor.

4 THE COURT: Wait a minute. You said that before,  
5 but you had a lot more than one.

6 ATTORNEY SUGHRUE: Well, a document was presented.

7 Is it going to be marked and entered? If Mr. Noble isn't going  
8 to enter that exhibit that we discussed --

9 THE COURT: And what you're talking about, I  
10 believe, is the copy of the one-page logging agreement that he  
11 had handed to everyone, --

12 ATTORNEY SUGHRUE: Right.

13 THE COURT: -- which is the same document that is  
14 attached to Plaintiff's complaint as Exhibit A; correct?

15 ATTORNEY SUGHRUE: Correct. And I'd like -- If  
16 he's not, I'd like to have it marked and made an exhibit for  
17 today's hearing.

18 THE COURT: Any objection to Mr. Sughrue proceeding  
19 in that fashion?

20 ATTORNEY CHERRY: I have no objection, sir.

21 THE COURT: Sir, could you hand that to the court  
22 reporter, please. That's a copy of the agreement.

23 And can you mark that as Mr. Sughrue directs. How  
24 do you wish to mark that?

25 ATTORNEY SUGHRUE: Mark that Defendant's Exhibit

1 Witherow's A.

2 RECROSS-EXAMINATION

3 BY ATTORNEY SUGHRUE:

4 Q. Mr. Mast, I show you that document that's just been  
5 marked Witherow Exhibit A. You're familiar with it?

6 A. Uh-huh (yes).

7 Q. Is the name at the bottom marked witness, Joseph D.  
8 Mast, is that your son's signature?

9 A. That's my son's, yes.

10 Q. Did Mr. London sign that document in your presence?

11 A. Yes. Yes, he did.

12 Q. Now, is this the entire timber sale agreement?

13 A. Yes.

14 Q. This is the entire writing?

15 A. Yes.

16 Q. This is the document you were relying upon?

17 A. That's what we've used all these years.

18 ATTORNEY SUGHRUE: Thank you, Your Honor. I'd ask  
19 that that document be offered into evidence as Defendant  
20 Witherow Exhibit A.

21 THE COURT: Any objection?

22 ATTORNEY CHERRY: No, sir.

23 ATTORNEY CARFLEY: No.

24 THE COURT: Defendant Witherow's A is admitted.

25 Anything further for this witness, please?

1 ATTORNEY SUGHRUE: Not I.

2 THE COURT: Thank you, sir. You may step down.

3 -- END OF PROCEEDINGS --

4

5 -- C E R T I F I C A T E --

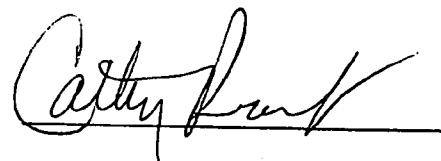
6

7 I hereby certify that the proceedings and evidence  
8 are contained fully and accurately in the notes taken by me  
9 upon the hearing of the within matter, and that this transcript  
10 is a correct copy of the same.

11

12 Date: May 18, 2005

13



14 Cathy Warrick Provost, RMR

15

16

17

18

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20

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22

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24

25

Official Court Reporter

DAVID MAST  
& SON LOGGING  
Rte. 1, Box 172-B  
Luthersburg, PA 15848

TIMBER SALE AGREEMENT

Made and entered into this day April 19, 2002  
between Landowner: Tom McFerrow, Exec.

and Contractor: David Mast and Sons Logging enters  
into contract to buy timber as to the following agreement.

Contractor agrees to pay Twenty-four Thousand Dollars  
..... \$24,000.00  
and remove timber within a 2 year period.

The Contractor shall be responsible for any damage occurring beyond the limits of the sale area  
being caused by his operations, including severe deterioration of the access roads on the timber sale  
area. Reparation of damages shall be made as soon as practicable.

The Landowner guarantees title to the said timber and will defend it at his expense against any  
and all claims for taxes, mortgages, contracts and any other encumbrances.

The Landowner grants to the Contractor the freedom of entry and right-of-way on and across  
the area covered by this contract.

Small wood products, pulpwood, firewood, etc. from timber sale area only, may be removed  
by the Contractor as part of his normal operations. At the completion of operations, all wood left on  
the sale area shall be the property of the Landowner for his personal use and disposal.

LANDOWNER: Tom McFerrow, Exec.  
CONTRACTOR: David Mast and Sons Logging  
Other specifications: Cut anything that makes sawlogs.



Witness John L. Loder  
Witness Joseph D. Mast

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------



COMMONWEALTH OF PENNSYLVANIA  
INHERITANCE TAX RETURN  
RESIDENT DECEDENT

ESTATE OF

## SCHEDULE A REAL ESTATE

Witherow, Gerald Q.

FILE NUMBER

All real property owned solely or as a tenant in common must be reported at fair market value. Fair market value is defined as the price at which property would be exchanged between a willing buyer and a willing seller, neither being compelled to buy or sell, both having reasonable knowledge of the relevant facts. Real property which is jointly-owned with right of survivorship must be disclosed on Schedule F.

ITEM NUMBER	DESCRIPTION	VALUE AT DATE OF DEATH
1.	Two acre parcel situate Pike Township, Clearfield County, Pennsylvania, improved with single-family dwelling, garage, out building and barn. Tax Assessment Map No. 126-I11-51 assessed currently at \$11,175.00 and appraised by William T. Bensor of Coldwell Bankers. Copy of appraisal attached.	\$ 82,000.00
2.	One-half undivided interest in 70 acres, more or less, unimproved, situate Knox Township, Clearfield County, Pennsylvania. Tax Assessment Map No. 122-H13-19, assessed 50% interest to Decedent, 25% interest James W. Swistock and 25% interest to Ronald Bodle, as evidenced by Map Assessment cards attached, including minerals. Appraised by Clearfield County at \$28,000 for 100%. Appraised by William T. Bensor, of Coldwell Banker at \$32,000 for 100% interest. Decedent's interest valued at one-half of the appraisal plus 15% premium for non-minority interest. Copy of appraisal attached.	\$ 18,500.00
3.	50% interest in 108 acre coal rights located Knox Township, Clearfield County, Pennsylvania. Assessed as Tax Map No. 122-H13-17-MN, copy of assessment attached. Decedent does not have ownership of surface. Current assessment of \$634 times 1998 common level ratio of 4.55 equals \$2,885. Tax Assessment cards attached. Not subject to lease; however, valued minimally on the premises that surface owner would pay reasonable price for the same. 100% interest valued at \$10,800. 50% valued at \$5,400.	\$ 5,400.00
4.	50% undivided interest in one lot, approximately 80' X 125', unimproved, located Pike Township, Clearfield County, Pennsylvania, owned jointly with ex-wife, Jean E. Witherow. Assessed as Tax Map No. 126-I11-38. Fronting on public road between Olanta and Curwensville. More particularly described in Deed, dated November 22, 1946, from the Pennsylvania Conference and recorded in DBV 381, page 70. Suitable as building lot. Copy of tax assessment cards attached. 100% interest valued at 50% of the whole less 20% discount for lack of majority interest.	\$ 4,000.00

Exhibit "C"

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. )  
 )  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )  
 )

No. 04- 02032 -CD  
In Equity and at Law

**PLAINTIFFS' CERTIFICATE OF SERVICE**

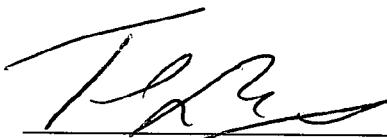
I, Theron G. Noble, Esquire of Ferraraccio & Noble, counsel for Plaintiffs, does hereby certify this 13th day of March, 2006, that I did send true and correct copies (as applicable) Plaintiffs' MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO ALL DEFENDANTS to the below indicated persons, being all counsels of record or pro se litigants, via United States Mail, first class, postage prepaid.

Mr. Olin L. London  
Pro Se  
320 Stony Lonesome Rd.  
Luthersburg, PA 15848

Toni M. Cherry, Esquire  
Counsel for Defendant Mast  
P.O. Box 505  
DuBois, PA 15801

John Sughrue, Esquire  
Counsel for Defendant Witherow  
23 N. 2nd Street  
Clearfield, PA 16830

Respectfully Submitted,



\_\_\_\_\_  
TGN  
Teron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

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

JAMES W. SWISTOCK, an adult individual,  
and RONALD R. BODLE, an adult individual,

PLAINTIFFS,

v.

DAVID MAST, an adult individual,  
OLIN L. LONDON, an adult individual, and  
ANN MARIE WITHEROW, individually and  
as Administrator of the Estate of Gerald Witherow,

DEFENDANT.

: No. 04- 2032 -CD

: In Equity and at Law

: Type of Pleading:

: **CERTIFICATE OF SERVICE**

: Filed By:

: Plaintiffs

: Counsel of Record:

: Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D.#: 55942

FILED NO  
m12:19 PM  
MAR 17 2006  
CC  
GK

William A. Shaw  
Prothonotary/Clerk of Courts

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. )  
 )  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )  
 )

No. 04- 02032 -CD  
In Equity and at Law

**PLAINTIFFS' CERTIFICATE OF SERVICE**

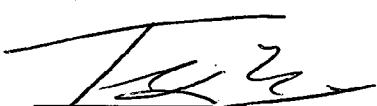
I, Theron G. Noble, Esquire of Ferraraccio & Noble, counsel for Plaintiffs, does hereby certify this 16th day of March, 2006, that I did propound a certified copy of the RULE RETURNABLE issued upon Plaintiffs' MOTION FOR PARTIAL SUMMARY JUDGMENT (as to all defendants) to the below indicated persons, being all counsels of record or pro se litigants, via United States Mail, first class, postage prepaid.

Mr. Olin L. London  
Pro Se  
320 Stony Lonesome Rd.  
Luthersburg, PA 15848

Toni M. Cherry, Esquire  
Counsel for Defendant Mast  
P.O. Box 505  
DuBois, PA 15801

John Sughrue, Esquire  
Counsel for Defendant Witherow  
23 N. 2nd Street  
Clearfield, PA 16830

Respectfully Submitted,

  
\_\_\_\_\_  
Teron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

FILED

MAR 17 2006

Prothonotary/Clerk of Courts  
William A. Shaw

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

JAMES W. SWISTOCK, an adult individual,  
and RONALD R. BODLE, an adult individual,

PLAINTIFFS,

v.

DAVID MAST, an adult individual,  
OLIN L. LONDON, an adult individual, and  
ANN MARIE WITHEROW, individually and  
as Administrator of the Estate of Gerald Witherow,

DEFENDANTS.

- )
- )
- ) No. 04-2032-CD
- )
- ) In Equity and at Law
- )
- )
- ) Type of Case: **Civil Action**
- )
- )
- )
- )
- )
- )
- ) Type of Pleading: **Defendant, Ann**
- ) **Marie Witherow's Answer in**
- ) **Opposition to Plaintiff's Motion for**
- ) **Partial Summary Judgment**
- )
- ) Filed on Behalf of: **Defendant,**
- ) **Ann Marie Witherow**
- )
- ) **Counsel of Record for this Party:**
- ) John Sughrue, Esq.
- ) Supreme Court No. 01037
- ) 23 North Second Street
- ) Clearfield, PA 16830
- ) Phone: (814) 765-1704
- ) Fax: (814) 765-6959
- )
- ) **Other Counsel of Record:**
- ) Theron G. Noble, Esq.
- ) Supreme Court No. 55942
- ) 301 E. Pine St.
- ) Clearfield, PA 16830
- ) Phone: (814) 375-2221
- )
- ) Olan London, Pro Se
- ) 320 Sloney Lonesome Rd.
- ) Luthersburg, PA 15848
- )
- ) Toni M. Cherry, Esq.
- ) 1 North Franklin Street
- ) PO Box 505
- ) DuBois, PA 15801
- ) Phone: (814) 371-5800
- ) Fax: (814) 371-0936

FILED

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William A. Shaw  
Prothonotary/Clerk of Courts

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. ) No. 04-2032-CD  
 )  
DAVID MAST, an adult individual, ) In Equity and at Law  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )

**DEFENDANT, ANN MARIE WITHEROW'S ANSWER IN OPPOSITION TO**  
**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

AND NOW, comes Defendant, Ann Marie Witherow, individually and as Administrator, (hereafter "Witherow") by her attorney, John Sughrue, and responds in opposition to Plaintiff's Motion for Partial Summary Judgment as follows:

1. Admitted.
2. Admitted.
3. Witherow responds to the allegations as follows:
  - A. Admitted. Further, in her Answer to the Complaint Witherow alleges that the premises were described and that Witherow owned a one-half undivided interest in the same pursuant to Deed recorded in DBV 388, page 236 and attached a copy of said Deed as Exhibit 1. Said Deed establishes those facts of record and is attached hereto and incorporated herein by reference as **Exhibit 1**.
  - B. Admitted.

C. It is admitted that said allegation is contained in the Amended Complaint, Paragraph 8. The allegations are denied by Witherow as stated. On the contrary, the relevant facts are as follows:

- 1) Witherow signed the Timber Sale Agreement;
- 2) The Timber Sale Agreement speaks for itself;
- 3) The Timber Sale Agreement is for the sale and buying of standing timber;
- 4) The Timber Sale Agreement does not describe the timber being sold or purchased;
- 5) By said Timber Sale Agreement, Witherow sold standing timber owned by the Estate, which in fact was a one-half undivided interest in the timber;
- 6) Mast testified in deposition that he intended and believed he was buying all of the timber, meaning a 100% interest;
- 7) Witherow testified in deposition that she intended and by the Timber Sale Agreement was selling only that standing timber owned by the Estate; to wit: a one-half undivided interest;
- 8) There is a dispute of fact as to what was sold and what was purchased;**
- 9) The Timber Sale Agreement was prepared on a David Mast form agreement and prepared by David Mast, authorized agents, specifically his sons, Joseph Mast and Melvin Mast, who are in business with him. See Mast deposition.
- 10) Defendant, London, presented the Timber Sale Agreement to Witherow;
- 11) Defendant, London, presented the money to Witherow;

12) Mast admitted in court hearing testimony that London was his agent.

See Court transcript February 23, 2005, **Exhibit A to Plaintiffs' Motion**;

13) London admits in his answer and deposition that shortly after the signing of the Timber Sale Agreement, Witherow's lawyer, John Sughrue, called London and confirmed to London that the Estate only owned a one-half interest in the standing timber in the 70 acre, Knox Township tract; that the other one-half interest was owned by Swistock and Bodle; that Witherow was only selling the Estate's interest in the timber; and that the timber could not lawfully be removed without Swistock and Bodle's consent.

14) In said phone call to London, Attorney Sughrue confirmed orally to London the facts that the Witherow Estate only owned a one-half interest in the standing timber in the 70 acre, Knox Township tract; that the other one-half interest was owned by Swistock and Bodle; that the Estate was only selling the Estate's interest in the standing timber; that the timber should not be removed without Swistock's and Bodle's consent and could not be lawfully removed without that consent; asked London for Mast's phone number; directed London to communicate the foregoing facts; that London and Mast would have to negotiate a deal with Swistock and Bodle before the timber could be removed and directed London to not remove the timber without Swistock's and Bodle's consent and participation.

See Affidavit of John Sughrue.

15) Mast admits that the Timber Sale Agreement was signed on his behalf by an authorized individual, specifically his son, Joseph Mast. Olan London admits

that he signed as a witness. Ann Witherow admits that she signed the Timber Sale Agreement as Executor.

A copy of said Timber Sale Agreement is attached hereto as **Exhibit 2** and incorporated herein by reference.

D. Witherow has admitted that London suggested to Witherow that she could raise needed money for the Estate by selling the timber in the Estate and London offered to contact an individual he knew. Mast and London admit that London contacted Mast about the Witherow timber and showed the timber to Mast. Mast and London admit that Mast prepared an agreement and directed London to offer Witherow Twenty four thousand and 00/100 (\$24,000.00) Dollars for the Witherow timber. Witherow admits that Witherow accepted the proposal offered by London on behalf of Mast, believing it was for the Estate's one-half undivided interest in standing timber and received Twenty four thousand and 00/100 (\$24,000.00) Dollars. Witherow admits that upon inquiry, London indicated that he should be paid ten (10%) percent, (which he represented to be customary) and that Witherow accordingly gave him Two thousand four hundred and 00/100 (\$2,400.00) Dollars. Witherow admits receiving Twenty four thousand and 00/100 (\$24,000.00) Dollars in cash from London and giving or permitting London to retain Two thousand four hundred and 00/100 (\$24,000.00) Dollars of it.

E. The record reveals that at all relevant times, Witherow did not have personal knowledge as to whether or not the timber was removed by Mast, when timbering began or when timbering concluded. Witherow agrees that Mast acknowledged removing timber from acreage in Knox Township, which Mast represented as being from the

Witherow/Swistock/Bodle tract. The actual location of the timber in fact removed and sold by Mast has not been established on the record by the necessary and proper survey.

F. Denied as stated. Mast testified that he received Sixty six thousand two hundred twenty-eight and 23/100 (\$66,228.23) Dollars for timber removed from property in Knox Township, which he testified he understood to be the Witherow/Swistock/Bodle tract. However, Mast further testified that he did not survey the Witherow/Swistock/Bodle tract to establish the boundaries; did not contact adjacent land owners to confirm mutually recognized boundaries; and did not reference any existing documents of record to establish the location and boundaries of the subject premises. Accordingly, the exact location and ownership of the timber that was in fact removed remains to be established. Witherow agrees that in addition to the location and ownership of the timber removed, the value of it continues to be at issue.

G. Admitted.

H. Admitted.

I. Admitted.

J. Admitted.

K. Admitted. Further, Witherow believes and therefore affirms, on advice of counsel that Mast and London are, as a matter of law, charged with knowledge of the same.

L. Denied as stated. Evidence thus far establishes only that Witherow did not contact Swistock or Bodle prior to executing the Timber Sale Agreement or to the standing timber apparently being removed and in addition, that Witherow did not have knowledge as to whether or not Swistock and Bodle consented to the timbering or had

communications with Mast and/or London prior to timber removal for the reasons that such information was exclusively within the knowledge of Plaintiffs and Co-Defendants. See Witherow's Answer, Paragraph 17.

M. Admitted.

N. Denied. On the contrary, Witherow believes said fact is relevant to the subject motion. In particular, Witherow avers that Mast, as a matter of law, knew or should have known that the standing timber was owned one-half by the Plaintiffs and as a matter of law is charged with said knowledge under the applicable recording statutes of the Commonwealth of Pennsylvania. Witherow agrees and London admits that he knew at all relevant and material times that the standing timber was not completely owned by the Gerald Witherow Estate. See London Answer and New Matter.

O. Denied. On the contrary, London's knowledge is at issue for purpose of this Motion. London at all relevant times knew that Witherow only owned one-half of the standing timber on the Knox tract and that accordingly, the Timber Sale Agreement only covered that one-half interest. See Subparagraph N above. London had a legal duty to communicate said knowledge to Mast.

P. Witherow agrees that the same is not at issue for this motion.

Q. Witherow believes that Swistock and/or Bodle did not in fact receive any compensation for the harvesting of the timber from the subject premises; however, said knowledge is based wholly on the Amended Complaint and testimony of Mast and/or London.

**Part 1: v. Defendant Mast**

4. Witherow, on advice of counsel, admits that the paragraph sets forth the correct language of that part of the said statute.
5. Admitted.
6. Admitted.
7. Admitted.
8. Said paragraph contains a conclusion of law to which no response is required.

**Part II: v. Defendant Witherow**

9. Witherow's response to Paragraphs 1 through 8 above is incorporated herein by reference as if the same was set forth herein at length verbatim.
10. Witherow, on advice of counsel, believes and therefore acknowledges that said paragraphs accurately set forth the words contained in said statute.
11. Denied. Witherow in her answer and her deposition does not admit any fact that supports a legal conclusion that she violated said statute or engaged in any unlawful or improper conduct by entering into the aforesaid Timber Sale Agreement, **Exhibit 2** to this answer. Witherow denies that she and/or the Timber Sale Agreement caused Defendant Mast to timber Bodle and Swistock's timber without their consent. On the contrary, Witherow states in her answer and deposition that she told the purchasers and believed that the purchasers knew that she only had one-half undivided interest in the timber to sell. On the contrary, Witherow contends that the facts of the case requires the Court to conclude that a condition of said Timber Sale Agreement was that London and Mast were obligated to secure the consent of Swistock and Bodle prior to removing the timber and London's and Mast's failure to do so constituted a breach of the Timber Sale Agreement, if the

Timber Sale Agreement, in fact, was a contract. See Witherow answer, deposition and Sughrue affidavit. Further, Witherow on advice of counsel suggests and therefore avers that under the facts of this case said Timber Sale Agreement may not have constituted a valid contract between the parties because of its failure to set forth an adequate description of what was being sold and being purchased and the subsequent misunderstanding between the parties, specifically, Mast's allegation that he was purchasing all of the standing timber (i.e. 100% interest) on the premises and Witherow's contention that she intended and was selling only that standing timber, which was vested in Gerald Witherow at his death (i.e. a one-half undivided interest).

12. Witherow, on advice of counsel, acknowledges that said paragraph sets forth accurately the words of said statute.

13. Denied. Witherow denies that she is civilly liable to Plaintiffs or that they are entitled to a partial summary judgment against her individually or as Administrator for the reasons set forth above. Although she denies any unlawful conduct, in the event the Court concludes that she did engage in unlawful conduct, she could not and would not have been authorized by law to do so as Administrator of the Estate and accordingly, any judgment entered should be individually only.

WHEREFORE, Defendant, Ann Marie Witherow, moves the Honorable Court to deny Plaintiffs' request for partial summary judgment against her individually and/or as Administrator of the Estate in any amount.

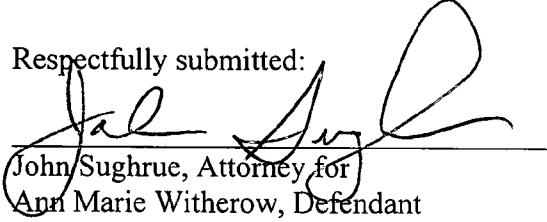
**Part III: v. Defendant Olan London**

14. Witherow's response to Paragraphs 1 through 13 above is incorporated herein by reference as though the same were set forth herein at length verbatim.

15. Denied as stated. On the contrary, the record establishes that Witherow delivered Two thousand four hundred and 00/100 (\$2,400.00) Dollars from money received for entering into the Timber Sale Agreement and at London's suggestion, as set forth above. She has not admitted the intent or the act of converting the subject timber.

16. Denied as stated. As set forth in Paragraph 15 above, the records support that the money is part of the proceeds for entering into a Timber Sale Agreement. Considering London's conduct in this matter, it would be unjust to permit him to retain these funds and should either return it to Witherow, the rightful owner of the money and the individual who gave it to London, or to the Plaintiffs.

Respectfully submitted:



John Sughrue, Attorney for  
Ann Marie Witherow, Defendant

Made the — second day of September —————, in the year  
Nineteen hundred and forty seven (1947) —————

Witherow George E. Erhard and Laura N. Erhard, his wife, of the Township of Knox, County of Clearfield and State of Pennsylvania, hereinafter called the grantors, parties of the first part, and —————

Gerald Q. Witherow, of the Township of Pike, County of Clearfield and State of Pennsylvania, and Raymond S. Fleck, of the Township of Boggs, County of Clearfield and State of Pennsylvania, as tenants in common, hereinafter called the grantees, parties of the second part, —————

Witnessed, That in consideration of \$600.00 Six hundred Dollars,

in hand paid, the receipt whereof is hereby acknowledged, the said grantors do hereby grant and convey to the said grantees, their heirs and assigns, —————

All those two certain tracts or parcels of land situate formerly in the Township of Jordan, now in the Township of Knox, County of Clearfield and State of Pennsylvania, bounded and described as follows:

THE FIRST THEREOF: Beginning at a hemlock in line of land of Christian Neff; thence south forty (40) degrees east one hundred (100) perches to a sugar; thence south fifty (50) degrees west by land conveyed to I. McKee one hundred and six (106) perches to a beech; thence north forty (40) degrees west one hundred (100) perches to pile of stones; thence north fifty (50) degrees east by land of P. Kloninger one hundred and six (106) perches to the place of beginning. Containing sixty two (62) acres and eighty four (84) perches and allowance of six (6%) per cent for roads.

BEING the same premises which Horatio Wilkes, by deed dated in the year 1840, recorded at Clearfield on February 7, 1840, in Deed Book G, page 413, granted and conveyed to George Erhard; and the said George Erhard, did by Article of Agreement dated the 1st day of October, A. D. 1875, recorded at Clearfield in Miscellaneous Book

, page 403, agree to sell said land unto David Erhard upon certain conditions which were subsequently performed, and the said David Erhard did thereafter, to wit: on the 12th day of July A. D. 1895, die testate and by his will dated the 2nd day of November, 1880, recorded at Clearfield in Will Book E, page 174, in Item Five, devise the said land to his widow, Jennie D. Erhard for and during her life and thereafter to George Erhard, the present owner. And the heirs of George Erhard, deceased, did by deed dated the 14th day of November, 1899, recorded at Clearfield in Deed Book No. 109, page 3, grant and convey the said premises to Jennie D. Erhard the executrix of the said David Erhard. And the said Jennie Erhard having died on the 1st day of November, 1901, title to said land vested in George Erhard, the present grantor, by reason of provision five in the will above mentioned.

THE SECOND THEREOF: Also situate in the Township of Jordan and being particularly that portion of land being between the original line to the resurvey along line of resurvey to meadow as it existed in 1883, thence west to corner of land now or formerly of Robert Witherow. Containing ten (10) acres, more or less, and being a part of a larger survey in the name of Christian Neff.

BEING the same premises which Louis Erhard and others by Quit-Claim Deed dated the 3rd day of February, 1883, recorded at Clearfield in Deed Book No. 54, page 533, conveyed to George Erhard, who by agreement dated as heretofore stated and by subsequent conveyances as heretofore recited caused the same to vest in the persons through whom title vested in George E. Erhard, the present grantor, all as heretofore recited.

The foregoing two parcels are contiguous in location, and combined represent an area of seventy five (75) acres of land, more or less.

EXCEPTING AND RESERVING, however, unto Hazen H. Owens, for a period of two years from April 15, 1947, all of the timber of every kind and character eight inches or more in diameter one foot from the ground; together with the right of ingress, egress and regress, in, over and upon said parcel of land for the purpose of cutting, pealing, skidding and removing such timber and bark, with the right to construct such roads over the premises hereby conveyed within such period of two years as may be necessary to remove such timber and including the right to erect and maintain a saw mill for the manufacturing of the timber into lumber, with the right to remove the saw mill and appurtenances thereto and other improvements placed upon the ground by Hazen H. Owens at or before the expiration of such two year period. Any timber not cut down and removed from the premises within the said period of two years from April 15, 1947, and all timber which was not eight inches or more in diameter one foot above the ground on April 15, 1947, shall be the property of the present grantees.

the said grantor s - do hereby will it -specially — the property  
hereby conveyed, —

In Witness Whereof, said grantors have hereunto set their hands  
and seals the day and year first above written.

Signed, Sealed and Delivered  
In the Presence of

P. W. Heist

George E. Erhard  
Laura N. Erhard



Commonwealth of Pennsylvania  
County of CLEARFIELD } SS.

On this, the 3<sup>rd</sup> day of September 1947, before me, Paul Heist, Justice of the  
Peace,  
the undersigned officer, personally appeared George E. Erhard and Laura N. Erhard,  
his wife,

known to me (or satisfactorily proven) to be the person s whose names are subscribed to the within  
instrument, and acknowledged that they executed the same for the purpose therein contained.

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

My COMMISSION EXPIRES  
1st Mar Jan 1950

P. W. Heist

Justice of the Peace

I, George E. Erhard, certify, that the precise address of the grantee s herein is  
Olanta, Pa. and West Decatur, Pa. respectively.



卷之三

GEORGE E. ERHARD and  
LAURA N. ERHARD, his  
wife

三

GERALD Q. WITHEROW and  
RAYMOND S. FLECK, as  
tenants in common

Julyed - September 2, - 1947

CLARENCE R. KRAMER  
ATTORNEY AT LAW  
CLEARFIELD, PA.

# Constituencies of Yorkshire, } County of Cleveland } 33.

ReCORDED on this 21 day of Oct A.D. 1903

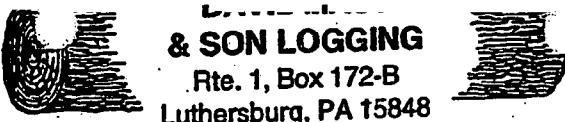
in the Recorder's Office of said County  
in DEED Book 12 Vol. 12 PAGE 12.

Given under my hand and seal of the said office  
the date above written.

Mark W. Pease

---

**RECORDER-**



& SON LOGGING  
Rte. 1, Box 172-B  
Luthersburg, PA 15848

## TIMBER SALE AGREEMENT

Made and entered into this day April 19, 2002  
between Landowner: John D. Mast

and Contractor: David Mast and Sons Logging enters  
into contract to buy timber as to the following agreement.

Contractor agrees to pay Twenty four Thousand Dollars  
\$24,000.00

and remove timber within a 2 year period.

The Contractor shall be responsible for any damage occurring beyond the limits of the sale area being caused by his operations, including severe deterioration of the access roads on the timber sale area. Reparation of damages shall be made as soon as practicable.

The Landowner guarantees title to the said timber and will defend it at his expense against any and all claims for taxes, mortgages, contracts and any other encumbrances.

The Landowner grants to the Contractor the freedom of entry and right-of-way on and across the area covered by this contract.

Small wood products, pulpwood, firewood, etc. from timber sale area only, may be removed by the Contractor as part of his normal operations. At the completion of operations, all wood left on the sale area shall be the property of the Landowner for his personal use and disposal.

LANDOWNER: John D. Mast

CONTRACTOR: David Mast and Sons Logging

Other specifications: Not anything that makes sense.

Witness: John D. Mast

Witness: David Mast

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on April 17, 2006, I caused a true and correct copy of DEFENDANT, ANN MARIE WITHEROW'S ANSWER IN OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT to be served on the following and in the manner indicated below:

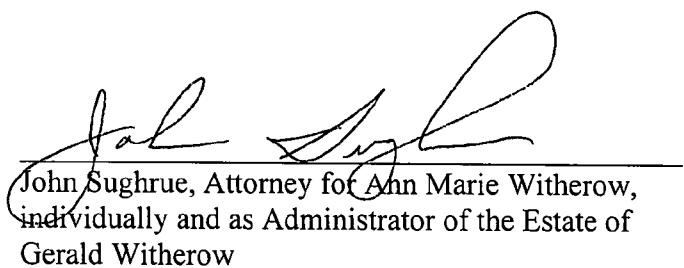
By United States Mail, First Class, Postage Prepaid  
Addressed as Follows:

Mr. Theron Noble, Esq.  
301 E. Pine St.  
Clearfield, PA 16830

Mr. Olan L. London  
320 Sloney Lonesome Rd.  
Luthersburg, PA 15848

Toni M. Cherry, Esq.  
1 N. Franklin St.  
DuBois, PA 15801

Date: April 17, 2006



John Sughrue, Attorney for Ann Marie Witherow,  
individually and as Administrator of the Estate of  
Gerald Witherow

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JAMES W. SWISTOCK, an adult individual  
and RONALD R. BODLE, an adult individual,

Plaintiffs,

vs.

DAVID MAST, an adult individual,  
OLAN L. LONDON, an adult individual, and  
ANN MARIE WITHEROW, individually and  
as Administrator of the Estate of Gerald Witherow,

Defendants,

vs.

ANN MARIE WITHEROW, individually and as  
Administrator of the Estate of Gerald Witherow,

Additional Defendants,

vs.

DAVID MAST, individually and t/a  
DAVID MAST & SON LOGGING, and  
OLAN L. LONDON, individually,

Additional Defendants

) No. 04 - 2032 C.D.  
)  
) In Equity and at Law  
)  
) Type of Pleading: DEFENDANT,  
) DAVID MAST'S ANSWER TO  
) MOTION FOR PARTIAL  
) SUMMARY JUDGMENT  
)  
) Filed on Behalf of: Defendant, DAVID  
) MAST  
)  
) Counsel of Record for this Party:  
)  
) TONI M. CHERRY, ESQ.  
) Supreme Court No.: 30205  
)  
) GLEASON, CHERRY AND  
) CHERRY, L.L.P.  
) Attorneys at Law  
) P. O. Box 1  
) One North Franklin Street  
) DuBois, PA 15801  
)  
) (814) 371-5800  
)  
)  
)  
)  
)  
)  
)

**FILED**

APR 17 2006  
073-451 was  
William A. Shaw  
(68)  
Prothonotary/Clerk of Courts

4 CENTS TO ATTY

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

JAMES W. SWISTOCK, an adult individual )  
and RONALD R. BODLE, an adult individual, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
DAVID MAST, an adult individual, ) No. 04 - 2032 C.D.  
OLAN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and ) In Equity and at Law  
as Administrator of the Estate of Gerald Witherow, )  
 )  
Defendants )  
 )  
vs. )  
 )  
ANN MARIE WITHEROW, individually and as )  
Administrator of the Estate of Gerald Witherow, )  
 )  
Additional Defendants )  
 )  
vs. )  
 )  
DAVID MAST, individually and t/a )  
DAVID MAST & SON LOGGING, and )  
OLAN L. LONDON, individually, )  
 )  
Additional Defendants )

**DEFENDANT, DAVID MAST'S ANSWER TO  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

AND NOW, comes the Defendant, DAVID MAST, by and through his attorneys, GLEASON, CHERRY AND CHERRY, L.L.P. and, in accordance with the Rule issued by the

Court on March 15, 2006, for the filing of a written response, does hereby make the following

Answer:

1. ADMITTED.
2. DENIED as a conclusion of law to which no response is required.
3. DENIED as a conclusion of law to which no response is required generally.

Specifically, Defendant makes the following answers:

- A. ADMITTED.
- B. ADMITTED.
- C. ADMITTED.
- D. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that the "deal" to which Plaintiff refers came about by any means other than at the request of Defendant Witherow who advised Defendant London that she wished to sell the timber she advised that she owned.
- E. DENIED. The timbering operations commenced and ended in the Spring of 2003 without Plaintiffs or Defendant, Ann Marie Witherow, ever having notified Defendant Mast that Plaintiffs had or claimed an interest in said timber.
- F. DENIED. The value of said timber in place was \$24,000.00.
- G. ADMITTED.
- H. ADMITTED.
- I. ADMITTED.
- J. ADMITTED.
- K. ADMITTED.

L. DENIED as after reasonable investigation, Defendant Mast is without sufficient knowledge to attest to the truth or falsity of the averments contained in Paragraph L and strict proof of same is required at trial.

M. DENIED. Defendant Mast is without sufficient knowledge to attest to the truth or falsity of the averments contained in subparagraph M. of Plaintiffs' Motion for Partial Summary Judgment as Defendant Witherow never advised Defendant Mast at any time that the subject premises were not completely owned by the Estate of Gerald Witherow.

N. DENIED. On the contrary, at no time prior to the commencement of the instant lawsuit did Defendant Mast ever know that the subject premises were not completely owned by the Estate of Gerald Witherow.

O. DENIED. At no time prior to being advised by the attorney for Defendant Witherow did Defendant London know that the subject premises was not completely owned by the Estate of Gerald Witherow. At the time that he was advised that the Estate of Gerald Witherow did not own all of the subject premises, he was also advised that Defendant Witherow's attorney would take care of the matter and would notify Defendant Mast of this information.

P. DENIED. At no time did Defendant Witherow ever inform Defendant Mast that the Estate of Gerald Witherow only owned a one-half interest in the subject premises. Defendant Mast was not advised that Plaintiffs had a claim in the subject premises until Plaintiffs filed the instant lawsuit, after the timber was removed from the premises.

Q. DENIED as after reasonable investigation, Defendant Mast is without sufficient knowledge to attest to the truth or falsity of the averments contained in subparagraph

Q. because he does not know if Defendant Witherow and Defendant London provided compensation to Plaintiffs.

**Part I: v. Defendant Mast**

4. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Plaintiffs can make demand from Defendant Mast for any more than the timber was worth at the time that Defendant Mast cut the same and Defendant Mast has already paid that amount to Defendant Witherow. Plaintiffs are not entitled to a measure of any profit that Defendant Mast might have made from his labors as that would not have been included in the price paid to the Plaintiffs.

5. ADMITTED.

6. ADMITTED.

7. DENIED. On the contrary, the total value of the timber to the landowner is \$24,000.00 which amount has already been paid by Defendant Mast. Plaintiffs are not entitled to a money judgment for more than the timber was worth to a landowner. Plaintiffs are not entitled to the improvement or increase in value generated solely by the efforts of Defendant Mast.

8. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Plaintiffs are entitled to a judgment for more than their one-quarter interest in the amount paid for the timber.

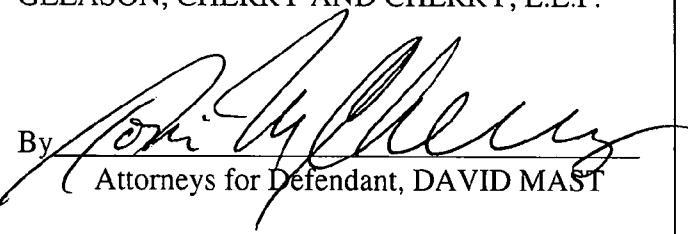
WHEREFORE, Defendant Mast respectfully requests that Plaintiffs' Motion for Partial

Summary Judgment be denied.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By

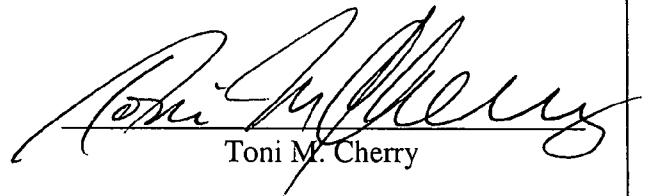
A handwritten signature in black ink, appearing to read "John P. Gleason".

John P. Gleason

Attorneys for Defendant, DAVID MAST

## **VERIFICATION**

I, TONI M. CHERRY, ESQ., counsel for Defendant, DAVID MAST, verify that the information provided in the foregoing Defendant, David Mast's Answer to Motion for Partial Summary Judgment is true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.



A handwritten signature in black ink, appearing to read "Toni M. Cherry".

Toni M. Cherry

DATED: April 17, 2006

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA

## CIVIL DIVISION

JAMES W. SWISTOCK, an adult individual )  
and RONALD R. BODLE, an adult individual, )  
Plaintiffs, )  
vs. )  
DAVID MAST, an adult individual, ) No. 04 - 2032 C.D.  
OLAN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and ) In Equity and at Law  
as Administrator of the Estate of Gerald Witherow, )  
Defendants )  
vs. )  
ANN MARIE WITHEROW, individually and as )  
Administrator of the Estate of Gerald Witherow, )  
Additional Defendants )  
vs. )  
DAVID MAST, individually and t/a )  
DAVID MAST & SON LOGGING, and )  
OLAN L. LONDON, individually, )  
Additional Defendants )

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of April, 2006, a true and correct copy of Defendant, David Mast's Answer to Motion for Partial Summary Judgment was served upon the following persons by mailing the same to them by United States First Class Mail, Postage

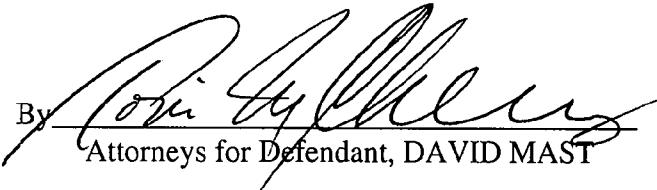
Prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania,  
addressed as follows:

THERON G. NOBLE, ESQ.  
Ferraraccio & Noble  
Attorneys at Law  
301 East Pine Street  
Clearfield, PA 16830

JOHN SUGHRUE, ESQ.  
Attorney at Law  
23 North Second Street  
Clearfield, PA 16830

OLAN L. LONDON  
320 Stony Lonesome Road  
Luthersburg, PA 15848

GLEASON, CHERRY AND CHERRY, L.L.P.

By   
Attorneys for Defendant, DAVID MAST

Dated: April 17, 2006

FILED  
APR 17 2006  
William A. Shaw  
Prothonotary/Clerk of Courts

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

JAMES W. SWISTOCK, an adult individual,  
and RONALD R. BODLE, an adult individual,

PLAINTIFFS,

v.

DAVID MAST, an adult individual,  
OLIN L. LONDON, an adult individual, and  
ANN MARIE WITHEROW, individually and  
as Administrator of the Estate of Gerald Witherow,

DEFENDANTS.

- )
- )
- ) No. 04-2032-CD
- )
- ) In Equity and at Law
- )
- )
- ) Type of Case: **Civil Action**
- )
- )
- )
- )
- )
- )
- )
- ) Type of Pleading: **Affidavit of**
- ) **John Sughrue**
- )
- ) Filed on Behalf of: **Defendant,**
- ) **Ann Marie Witherow**
- )
- ) **Counsel of Record for this Party:**
- ) John Sughrue, Esq.
- ) Supreme Court No. 01037
- ) 23 North Second Street
- ) Clearfield, PA 16830
- ) Phone: (814) 765-1704
- ) Fax: (814) 765-6959
- )
- ) **Other Counsel of Record:**
- ) Theron G. Noble, Esq.
- ) Supreme Court No. 55942
- ) 301 E. Pine St.
- ) Clearfield, PA 16830
- ) Phone: (814) 375-2221
- )
- ) Olan London, Pro Se
- ) 320 Sloney Lonesome Rd.
- ) Luthersburg, PA 15848
- )
- ) Toni M. Cherry, Esq.
- ) 1 North Franklin Street
- ) PO Box 505
- ) DuBois, PA 15801
- ) Phone: (814) 371-5800
- ) Fax: (814) 371-0936

FILED

APR 24 2006

01 2:30 PM

William A. Shaw  
Prothonotary/Clerk of Courts

41 COPIES TO ATT

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
PLAINTIFFS, )  
v. ) No. 04-2032-CD  
DAVID MAST, an adult individual, ) In Equity and at Law  
OLAN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
DEFENDANTS. )

## **AFFIDAVIT OF JOHN SUGHRUE**

COMMONWEALTH OF PENNSYLVANIA :  
COUNTY OF CLEARFIELD : SS.

I, the undersigned, John Sughrue, an attorney practicing law in Clearfield County, Pennsylvania, being duly sworn according to law deposes and says as follows:

1. In late April 2002 Ann Marie Witherow, (hereafter "Witherow") Administrator of the Estate of Gerald Witherow brought to my law office the "Timber Sale Agreement" dated April 19, 2002 and Twenty one thousand six hundred and 00/100 (\$21,600.00) Dollars in cash.

2. Witherow came alone to my office on the second floor of 23 N. 2<sup>nd</sup> Street, Clearfield, PA.

3. At that time, Witherow advised me that she had sold at the suggestion of Olan London, the Estate's timber located on a seventy-acre tract in Knox Township, Clearfield County, PA in order to raise needed cash.

4. Witherow indicated that Olan London had brought the Timber Sale Agreement to her and recommended she sign it and later brought her the cash.

5. Witherow gave the cash to me to deposit in the Estate's checking account.
6. Witherow knew at that time that the Estate only owned one-half interest in the standing timber on the seventy-acre tract.
7. At that meeting, I reviewed the Timber Sale Agreement with Witherow and noted that the Agreement did not describe or indicate the timber being sold or purchased.
8. At my request, Witherow provided me with Olan London's phone number. She did not have a phone number for David Mast Logging.
9. Shortly after my meeting with Witherow, I phoned Olan London at his home and was successful in reaching him and having a conversation with him.
10. In that conversation, I advised London that the Agreement was incomplete and that it didn't describe the timber which was the subject of the agreement. In that conversation, I confirmed to him that the Estate only owned a one-half undivided interest in the standing timber on the Knox Township tract and I wanted to make sure that he understood what the Estate owned and was selling.
11. In that conversation, I told London that the timber couldn't be lawfully removed without the agreement of co-owners, James Swistock and Ronald Bodle and specifically directed him that the timber should not be removed until London and/or David Mast secured the agreement of the co-owners.
12. In that conversation, I told London that he was to convey to David Mast the information that I was giving him and to make sure that David Mast did not remove the timber without the consent of the co-owners.
13. In that conversation, I asked London for David Mast's phone number and was advised that he did not have a telephone. At the same time, London confirmed that David Mast's address was the address set forth on the Timber Sale Agreement.

14. I concluded the conversation by suggesting to London that he or David Mast could contact the co-owners and try to work out an agreement with them. I indicated I would hold the money until they were either successful or unsuccessful in working out a deal and told him to let me know what was happening.

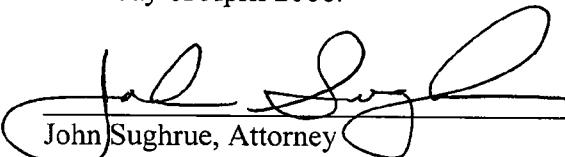
15. In that conversation, London did not indicate any belief that the Estate owned more than one-half of the timber and he did not give me any indication that he disagreed with me and/or would not follow my directions.

16. Following that conversation, I expected London to convey the information to Mast and seek to conclude an agreement with the co-owners. I had no reason to believe London would not convey the information to Mast.

17. After that phone conversation, I never heard from Olan London or David Mast on the deal.

18. Subsequently, I tried to ascertain if timber had been removed and was unable to do so. Thereafter, I contacted co-owner, James Swistock, to determine if he had any information and he did not. Subsequently, Swistock investigated and determined the timber had been removed without his consent.

WHEREOF, I have set my hand and seal this 24<sup>th</sup> day of April 2006.



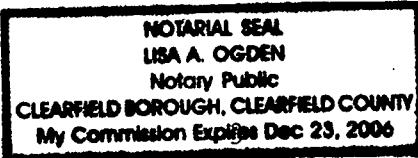
John Sughrue, Attorney

Sworn to and subscribed before me this 24<sup>th</sup> day of April, 2006.



Lisa A. Ogden  
Notary Public

My Commission Expires:



**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on April 24, 2006, I caused a true and correct copy of  
AFFIDAVIT OF JOHN SUGHRUE to be served on the following and in the manner indicated  
below:

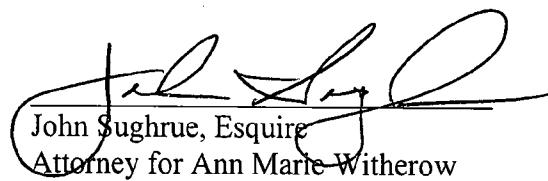
**By United States Mail, First Class, Postage Prepaid**  
**Addressed as Follows:**

Mr. Theron Noble, Esq.  
301 E. Pine St.  
Clearfield, PA 16830

Mr. Olan L. London  
320 Sloney Lonesome Rd.  
Luthersburg, PA 15848

Toni M. Cherry, Esq.  
1 N. Franklin St.  
DuBois, PA 15801

Date: April 24, 2006



John Sughrue, Esquire  
Attorney for Ann Marie Witherow

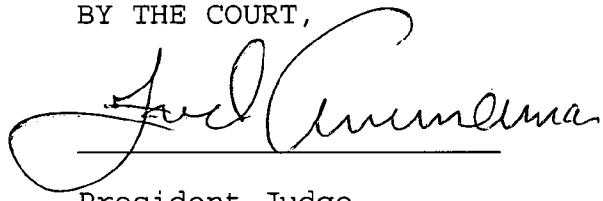
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES W. SWISTOCK, an adult :  
individual, and RONALD R. BODLE, :  
an adult individual :  
VS. : NO. 04-2032-CD  
DAVID MAST, an adult individual:  
OLIN L. LONDON, an adult individual, and ANN MARIE WITHEROW, :  
individually and as :  
Administrator of the Estate of :  
GERALD WITHEROW :  
:

O R D E R

AND NOW, this 25th day of April, 2006, following argument on the Plaintiffs' Motion for Partial Summary Judgment; with the Court noting that Defendant Olin L. London is proceeding without counsel, he has failed to appear for this Court proceeding and he has failed to file an answer to the Plaintiffs' Motion for Partial Summary Judgment; following argument, it is the ORDER of this Court that the said motion be and is hereby granted to the extent that the Court hereby grants summary judgment on the issue of liability on the part of all Defendants listed above.

BY THE COURT,

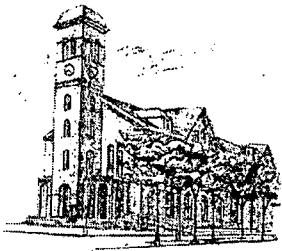


President Judge

FILED  
010:48/34  
APR 27 2006

6W  
cc  
Attn: Noble  
T. Cherry  
Sughrue

William A. Shaw  
Prothonotary/Clerk of Courts, CC  
1CC Joseph Mast  
1CC Melvin Mast  
Rte 1, Box 172 B 320 Stony Lonesome Road  
Luthersburg, PA Luthersburg, PA 15848  
David Mast & Sons Logging



## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

DATE: 4/27/06

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. ) No. 04-2032-CD  
 )  
DAVID MAST, an adult individual, )  
OLAN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )

ORDER

AND NOW, to wit: this 26<sup>th</sup> day of May, 2006, upon consideration of the attached  
Motion to Vacate Partial Summary Judgment and to Reconsider Motion for Partial  
Summary Judgment a Rule is hereby issued upon the Plaintiffs, to show cause, if any, why the  
prayer of the said Motion should not be granted.

**RULE RETURNABLE** on the 26<sup>th</sup> day of June, 2006, for filing written response.

NOTICE

A petition or motion has been filed against you in Court. If you wish to defend against the claims set forth in the following petition, you must do so by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the matter set forth against you. You are warned that if you fail to do so, the case may proceed without you and an order for relief requested by the Petitioner or Movant. You may lose rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

Court Administrator's Office  
Clearfield County Courthouse  
1 North Second Street  
Clearfield, PA 16830  
(814) 765-2641, Ext. 32

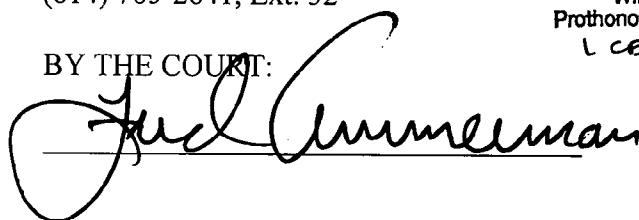
**FILED**

**MAY 26 2006**

**013:30 (w)**

William A. Shaw  
Prothonotary/Clerk of Courts  
1 cent TO AIR

BY THE COURT:

  
Judge James A. Cummelman



## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

DATE: 5-26-06

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

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

JAMES W. SWISTOCK, an adult individual,  
and RONALD R. BODLE, an adult individual,

PLAINTIFFS,

v.

DAVID MAST, an adult individual,  
OLIN L. LONDON, an adult individual, and  
ANN MARIE WITHEROW, individually and  
as Administrator of the Estate of Gerald Witherow,

**DEFENDANTS.**

)  
) No. 04-2032-CD  
)  
) In Equity and at Law  
)  
)  
) Type of Case: **Civil Action**  
)  
)  
)  
) Type of Pleading: **Motion To**  
) **Vacate Partial Summary**  
) **Judgment and To Reconsider**  
) **Motion For Partial Summary**  
) **Judgment**  
)  
) Filed on Behalf of: **Defendant,**  
) **Ann Marie Witherow**  
)  
) **Counsel of Record for this Party:**  
) John Sughrue, Esq.  
) Supreme Court No. 01037  
) 23 North Second Street  
) Clearfield, PA 16830  
) Phone: (814) 765-1704  
) Fax: (814) 765-6959  
)  
) **Other Counsel of Record:**  
) Theron G. Noble, Esq.  
) Supreme Court No. 55942  
) 301 E. Pine St.  
) Clearfield, PA 16830  
) Phone: (814) 375-2221  
)  
) Olan London, Pro Se  
) 320 Stoney Lonesome Rd.  
) Luthersburg, PA 15848  
)  
) Toni M. Cherry, Esq.  
) 1 North Franklin Street  
) PO Box 505  
) DuBois, PA 15801  
) Phone: (814) 371-5800  
) Fax: (814) 371-0936

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William A. Shaw  
Prothonotary/Clerk of Courts

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. ) No. 04-2032-CD  
 )  
DAVID MAST, an adult individual, ) In Equity and at Law  
OLAN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )

**MOTION TO VACATE PARTIAL SUMMARY JUDGMENT  
AND TO RECONSIDER MOTION FOR PARTIAL SUMMARY JUDGMENT**

To The Honorable Frederic J. Ammerman, President Judge of said Court.

**AND NOW**, comes the Defendant, Ann Marie Witherow, individually and as  
Administrator of the Estate of Gerald Witherow and moves the Honorable Court to vacate Order  
granting Partial Summary Judgment dated April 25, 2006 and to reconsider the legal issues on  
Plaintiffs' Motion for Partial Summary Judgment and in support thereof represents the following:

1. By Order dated April 25, 2006, copy attached as **Exhibit A** (hereafter, "Order"), this  
Court granted Plaintiffs' Motion for Partial Summary Judgment ("hereafter, "Judgment Motion")  
on the issue of liability as between Plaintiffs and Defendant, Ann Marie Witherow.
2. Said Order does not specify and the Court has not otherwise ruled on the Cause of  
Action or Actions upon which the Order was entered. However, a reading of the Motion for  
Summary Judgment indicates the Cause of Action as conversion and an alleged violation of a  
statute set forth at 68 Pa. C.S.A. 115.

3. That Plaintiffs sole basis for requesting Judgment against Witherow was necessarily based upon Plaintiffs' allegation that Witherow violated her duty as a Co-Owner as established by statute contained at 68 Pa. C.S.A. 115. (See Judgment Motion, Para.11) That statute provides, "from and after this date it shall be unlawful for any owner or owners of any undivided interest in timber land within this Commonwealth to cut or to remove, or to cause to be cut or removed from said land any timber trees, without first obtaining the written consent of all co-tenants in said premises". (See Judgment Motion paragraph 10.)

4. That this is a case of first impression in this Commonwealth. There is no Appellate Court case applying that statute to the facts of this case.

5. In their Judgment Motion, the Plaintiffs failed to provide any facts or cases to support their legal conclusion that Witherow, as a matter of law violated said statute. Without such actual proof and proper legal authority, said Partial Judgment should not have been entered as a matter of law. In passing upon a Motion for Summary Judgment, the Court's function is not to decide any issues of disputed fact or resolve conflicting inferences, but solely to determine whether there is an issue of fact to be tried or whether facts essential to the Cause of Action or defense have been produced. The Court is not permitted to attempt to resolve conflicting contentions of fact or conflicting inferences. See Goodrich Amram 2d §1035.3 (c ) and cases cited therein. The Court is required to examine the entire record in the light most favorable to the party opposing the Motion (Witherow). The Court must accept as true all well pleaded facts in Witherow's pleadings as well as any admissions of record and must resolve all disputed facts and inferences therefrom in favor of the adverse party (Witherow). See Goodrich Amram §1035.3 (c ): 1 and 2 and the cases cited therein.

6. In accordance with Civil Rule 1035.2 et. seq., there are certain relevant facts that are admitted and one key fact that is disputed. They are as follows:

A. Witherow admits that she is the owner of only a one-half (1/2) undivided interest in the property as successor to Gerald Q. Witherow, said ownership being established by deed dated September 2, 1947 and duly recorded, copy attached as

**Exhibit B.** See Witherow Answer and Deposition.

B. Witherow admits that said deed reflects the other one-half (1/2) undivided interest as being vested in Raymond S. Fleck and further admits that Ronald Bodle succeeded to the interest of Raymond S. Fleck (DBV 751, p. 538) and that Bodle subsequently sold a one-quarter (1/4) undivided interest in the property to Swistock. (See DBV 897, p. 506)

C. Witherow admits that as of April 18, 2002 she was a Co-Owner with the Plaintiffs in the land and the timber. (See Witherow Answer and Deposition);

D. Witherow admits that on April 19, 2002 she signed a document titled "Timber Sale Agreement" copy attached as **Exhibit C.** See Witherow Deposition p.22 where she acknowledges executing the Timber Sale Agreement.

E. There is a disputed fact as to whether or not Witherow, by said Timber Sale Agreement, sold her one-half (1/2) undivided interest as alleged and testified to by her or whether she attempted to sell a one hundred percent (100%) interest in the timber as alleged by Defendant Mast. In considering this Motion, the Court is obligated under the law to assume the disputed facts and reasonable inferences therefrom in favor of Witherow the party against who Partial Judgment is sought.

See Witherow Answer paras.\_\_\_\_\_, Witherow's Deposition at pg. \_\_\_\_\_.

7. The Timber Sale Agreement does not specify or describe the timber being sold and purchased.

Under the law cited above, the Court must accept as true Witherow's testimony and evidence that she sold only her one-half (1/2) undivided interest in the property.

8. The Timber Sale Agreement has to be interpreted by this Court. A fair and proper interpretation of the agreement establishes the following legal conclusions:

A. That it constituted a sale and purchase of standing timber and as such was a conveyance of an interest in land. See In Re Vought's Estate, 103

A. 2d 445, 448 citing Havens v. Pearson, 6 A. 2d 84. Vought involved the sale of an undivided one-ninth (1/9) interest in timber as opposed to the sale of a one-ninth (1/9) interest in the land including timber.

B. That the Timber Sale Agreement passed such title as Witherow had in the timber to Mast. In Havens, supra the Supreme Court ruled that ordinarily a contract for the sale of standing timber to be cut and removed, indefinite as to the time for cutting and removal or one that gives the Purchaser discretion as to the time of removal is a sale of land within the meaning of the statute of frauds. pg. 86

C. That the sale of the standing timber to Mast was a lawful act. Havens, supra makes it clear that it is lawful to sell standing timber. Timber Sales Contract was valid and enforceable. See Lubecki v. Omega Logging, Inc. **674 FSUPP. 501, WDPa. 1987.**

D. The sale of the standing timber did not violate said statute;

E. That upon title to the timber passing to Mast and thereafter, Mast not Witherow, became the Co-Owner of the timber with Plaintiffs; The Havens Court cited a Pennsylvania statute 21 P.S. §521 et seq. which provided that deeds or written contract for the sale of timber is deemed to convey and vest an interest in land. See note 2. Pursuant to either the Uniform Commercial Code or Pre-code law, timber on owner's land was

“constructively severed” and title to timber, passed to timber company when contract for logging of timber was made. See Lubecki, *supra*.

F. Mast acquisition of ownership of a one-half (1/2) undivided interest in the timber caused him to be a Co-Tenant with Plaintiffs and caused him to be the responsible party under said statute. It did not cause him or authorize him to cut the timber without his Co-Tenant’s consent.

9. As a result of the foregoing, it was in fact Mast not Witherow who was the Co-Tenant who violated 68 Pa C.S.A. 115.

10. In order for the Court to enter Judgment for the Plaintiff and against the Defendant, the Court must necessarily rule that the sale of the standing timber by Witherow violated the statute. Surely the Court did not intend to rule that the statute prohibits an owner from selling his land or an interest in his land. If said statute forbids a Co-Owner to sell his interest in the timber, said statute is unconstitutional as it surely violates the Pennsylvania and Federal Constitutions.

11. Article I Section 1 of the Pennsylvania Constitution guarantees to an owner the right to acquire, own, and deal with their property, including the sale of the property as he chooses so long as the use harms nobody. This is a natural right which does not owe its origin to Constitutions but is part of a citizen’s natural liberty which is guaranteed as inviolate by every American Bill of Rights. See Com. ex rel. Woodside v. Sun Ray Drug Company, 116 A 2d 833.

12. In the absence of a reasonable basis for restraint on exercise of private property rights, a statute which is construed to restrict those rights must be held to be unconstitutional as so construed. See Woodside, *supra*.

13. Accordingly, the right to sell an interest in land is a constitutionally protected property right.

14. By granting Plaintiffs Judgment on liability, this Court has ruled that Witherow could not sell her interest in the timber without violating said statute.

15. By analogy, Bodle sold a one-fourth (1/4) undivided interest in the land to Swistock. Nobody would seriously argue that Bodle could not sell his interest in the land. Why then should Witherow be forbidden to sell her interest in the timber? That is the issue.

16. Mast's liability to Plaintiffs under both statutes is clear and has been established by uncontested facts.

17. The Court in considering the Judgment Motion, did not invite briefs and did not require Plaintiffs to brief or establish law that supports Plaintiff's conclusion that the Timber Sale Agreement violated the statute.

18. For the foregoing reasons, Witherow respectfully suggests that the interest of justice requires that the Court vacate its Order granting Partial Summary Judgment as to liability against her and reconsider the underlying legal issue as described above.

19. Witherow respectfully suggests that the Court should reconsider its ruling and in doing so, require Plaintiffs to brief the legal issues and cite the law upon which they rely.

WHEREFORE, Defendant Witherow respectfully moves the Honorable Court to execute the attached Order vacating the Order of Partial Summary Judgment entered against her and in favor of the Plaintiffs; to reconsider Plaintiffs Motion for Partial Summary Judgment filed against Defendant Witherow and to forthwith issue a rule, directed to the Plaintiffs, to show cause why the Prayer of this Petition should not be granted.

Respectfully submitted

  
John Sughrue  
Attorney for Defendant, Ann Witherow

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

JAMES W. SWISTOCK, an adult :  
individual, and RONALD R. BODLE, :  
an adult individual :  
VS. : NO. 04-2032-CD  
DAVID MAST, an adult individual:  
OLIN L. LONDON, an adult indi- :  
vidual, and ANN MARIE WITHEROW, :  
individually and as :  
Administrator of the Estate of :  
GERALD WITHEROW :

O R D E R

AND NOW, this 25th day of April, 2006, following argument on the Plaintiffs' Motion for Partial Summary Judgment; with the Court noting that Defendant Olin L. London is proceeding without counsel, he has failed to appear for this Court proceeding and he has failed to file an answer to the Plaintiffs' Motion for Partial Summary Judgment; following argument, it is the ORDER of this Court that the said motion be and is hereby granted to the extent that the Court hereby grants summary judgment on the issue of liability on the part of all Defendants listed above.

BY THE COURT,

President Judge

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APR 27 2006

Ice  
A. Hys. Noble  
T. Cherry  
Sugar

William A. Shaw  
Prothonotary/Clerk of Courts  
ICC Joseph Mast  
ICC Melvin Mast  
Rt+1, Box 172 B 320 Stony Lonesome Road  
Luthersburg PA Luthersburg, PA 15848  
15848  
David Mast Sons Logging Co

Exhibit A

Made the — second day of September —————, in the year  
Nineteen hundred and forty seven (1947) —————

Grantor George E. Erhard and Laura N. Erhard, his wife, of the  
Township of Knox, County of Clearfield and State of Pennsylvania,  
hereinafter called the grantors, parties of the first part, and —————

Grantee Gerald Q. Witherow, of the Township of Pike, County of Clearfield and  
State of Pennsylvania, and Raymond S. Fleck, of the Township of Boggs,  
County of Clearfield and State of Pennsylvania, as tenants in common,  
hereinafter called the grantees, parties of the second part, —————

Witnesseth, That in consideration of (600.00) Six hundred

Dollars,

in hand paid, the receipt whereof is hereby acknowledged, the said grantors do  
hereby grant and convey to the said grantees, their heirs and assigns, —————

All those two certain tracts or parcels of land situate formerly  
in the Township of Jordan, now in the Township of Knox, County of  
Clearfield and State of Pennsylvania, bounded and described as follows:

THE FIRST THEREOF: Beginning at a hemlock in line of  
land of Christian Neff; thence south forty (40) degrees east one  
hundred (100) perches to a sugar; thence south fifty (50) degrees  
west by land conveyed to I. McKee one hundred and six (106) perches to  
a beech; thence north forty (40) degrees west one hundred (100) perches  
to pile of stones; thence north fifty (50) degrees east by land of P.  
Kloninger one hundred and six (106) perches to the place of beginning.  
Containing sixty two (62) acres and eighty four (84) perches and  
allowance of six (6%) per cent for roads.

BEING the same premises which Horatio Wilkes, by deed  
dated in the year 1840, recorded at Clearfield on February 7, 1840,  
in Deed Book G, page 413, granted and conveyed to George Erhard; and  
the said George Erhard, did by Article of Agreement dated the 1st day  
of October, A. D. 1875, recorded at Clearfield in Miscellaneous Book

, page 40, agree to sell said land unto David Erhard upon certain conditions which were subsequently performed, and the said David Erhard did thereafter, to wit: on the 12th day of July, A. D. 1895, die testate and by his will dated the 2nd day of November, 1880, recorded at Clearfield in Will Book E, page 174, in Item Five, devise the said land to his widow, Jennie D. Erhard for and during her life and thereafter to George Erhard, the present owner. And the heirs of George Erhard, deceased, did by deed dated the 14th day of November, 1899, recorded at Clearfield in Deed Book No. 109, page 3, grant and convey the said premises to Jennie D. Erhard the executrix of the said David Erhard. And the said Jennie Erhard having died on the 1st day of November, 1901, title to said land vested in George Erhard, the present grantor, by reason of provision five in the will above mentioned.

THE SECOND THEREOF: Also situate in the Township of Jordan and being particularly that portion of land being between the original line to the resurvey along line of resurvey to meadow as it existed in 1883, thence west to corner of land now or formerly of Robert Witherow. Containing ten (10) acres, more or less, and being a part of a larger survey in the name of Christian Neff.

BEING the same premises which Louis Erhard and others by Quit-Claim Deed dated the 3rd day of February, 1883, recorded at Clearfield in Deed Book No. 54, page 533, conveyed to George Erhard, who by agreement dated as heretofore stated and by subsequent conveyances as heretofore recited caused the same to vest in the persons through whom title vested in George E. Erhard, the present grantor, all as heretofore recited.

The foregoing two parcels are contiguous in location, and combined represent an area of seventy five (75) acres of land, more or less.

EXCEPTING AND RESERVING, however, unto Hazen H. Owens, for a period of two years from April 15, 1947, all of the timber of every kind and character eight inches or more in diameter one foot from the ground; together with the right of ingress, egress and regress, in, over and upon said parcel of land for the purpose of cutting, peeling, skidding and removing such timber and bark, with the right to construct such roads over the premises hereby conveyed within such period of two years as may be necessary to remove such timber and including the right to erect and maintain a saw mill for the manufacturing of the timber into lumber, with the right to remove the saw mill and appurtenances thereto and other improvements placed upon the ground by Hazen H. Owens at or before the expiration of such two year period. Any timber not cut down and removed from the premises within the said period of two years from April 15, 1947, and all timber which was not eight inches or more in diameter one foot above the ground on April 15, 1947, shall be the property of the present grantees.

in the said grantor's, to - nerevy with - specially - the property  
hereby conveyed, \_\_\_\_\_

In witness whereof, said grantors have hereunto set their hands  
and seals the day and year first above written.

Signed, Sealed and Delivered  
In the Presence of

P. W. Heist

George E. Erhard  
Wife  
Laura N. Erhard



Commonwealth of Pennsylvania  
County of CLEARFIELD } 332

On this, the 3<sup>rd</sup> day of September 1947, before me, Paul Heist, Justice of the  
the undersigned officer, personally appeared George E. Erhard and Laura N. Erhard,  
his wife, \_\_\_\_\_

known to me (or satisfactorily proven) to be the person(s) whose names are subscribed to the within  
instrument, and acknowledged that they executed the same for the purpose therein contained.  
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

MY COMMISSION EXPIRES  
Mon Jan 1958

P. W. Heist

Justice of the Peace

I hereby certify, that the precise address of the grantee herein is  
Olanta, Pa. and West Decatur, Pa. respectively.



卷之六

GEORGE E. ERHARD and  
LAURA N. ERHARD, his  
wife

9

GERALD Q. WITHEROY and  
RAYMOND S. FLEOK, as  
Tenants in Common

Dated: - September 2, - 1947 -

245 1976

CLARENCE R. KRAMER  
ATTORNEY AT LAW  
CLEARFIELD, PA.

Commonwealth of Pennsylvania  
County of Chester

Received on this 21 day of Dec AD 1902

in the Recorder's Office of said County  
in Dunn Rock, if I. C. 1871.

Given under my hand and seal of the said office  
the date above written.

DAVID MAST  
& SON LOGGING  
Rte. 1, Box 172-B  
Luthersburg, PA 15848

**TIMBER SALE AGREEMENT**

Made and entered into this day April 19, 2002  
between Landowner John H. Hester, Jr.

and Contractor David Mast and Sons Logging enters  
into contract to buy timber as to the following agreement.

Contractor agrees to pay Twenty-four Thousand Dollars  
\$24,000.00  
and remove timber within a 2 year period.

The Contractor shall be responsible for any damage occurring beyond the limits of the sale area  
being caused by his operations, including severe deterioration of the access roads on the timber sale  
area. Reparation of damages shall be made as soon as practicable.

The Landowner guarantees title to the said timber and will defend it at his expense against any  
and all claims for taxes, mortgages, contracts and any other encumbrances.

The Landowner grants to the Contractor the freedom of entry and right-of-way on and across  
the area covered by this contract.

Small wood products, pulpwood, firewood, etc. from timber sale area only, may be removed  
by the Contractor as part of his normal operations. At the completion of operations, all wood left on  
the sale area shall be the property of the Landowner for his personal use and disposal.

LANDOWNER: John H. Hester, Jr.

CONTRACTOR: David Mast and Sons Logging

Other specifications: Cut anything that makes sawlogs.

EXHIBIT C

Witness

Witness

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on May 25, 2006, I caused a true and correct copy of  
MOTION TO VACATE PARTIAL SUMMARY JUDGMENT AND TO RECONSIDER  
MOTION FOR PARTIAL SUMMARY JUDGMENT to be served on the following and in the  
manner indicated below:

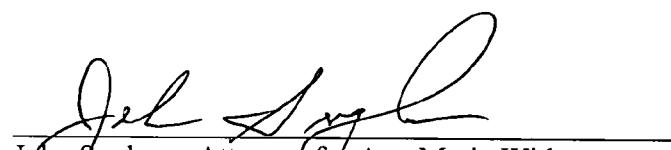
By United States Mail, First Class, Postage Prepaid  
Addressed as Follows:

Mr. Theron Noble, Esq.  
301 E. Pine St.  
Clearfield, PA 16830

Mr. Olan L. London  
320 Stoney Lonesome Rd.  
Luthersburg, PA 15848

Toni M. Cherry, Esq.  
1 N. Franklin St.  
DuBois, PA 15801

Date: May 25, 2006



John Sughrue, Attorney for Ann Marie Witherow,  
individually and as Administrator of the Estate of  
Gerald Witherow

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

JAMES W. SWISTOCK, an adult individual,  
and RONALD R. BODLE, an adult individual,

PLAINTIFFS,

v.

DAVID MAST, an adult individual,  
OLIN L. LONDON, an adult individual, and  
ANN MARIE WITHEROW, individually and  
as Administrator of the Estate of Gerald Witherow,

DEFENDANTS.

- )
- )
- ) No. 04-2032-CD
- )
- ) In Equity and at Law
- )
- )
- ) Type of Case: **Civil Action**
- )
- )
- )
- )
- )
- )
- ) Type of Pleading: **Affidavit of Service**
- )
- ) Filed on Behalf of: **Defendant,**
- ) **Ann Marie Witherow**
- )
- ) **Counsel of Record for this Party:**
- ) John Sughrue, Esq.
- ) Supreme Court No. 01037
- ) 23 North Second Street
- ) Clearfield, PA 16830
- ) Phone: (814) 765-1704
- ) Fax: (814) 765-6959
- )
- ) **Other Counsel of Record:**
- ) Theron G. Noble, Esq.
- ) Supreme Court No. 55942
- ) 301 E. Pine St.
- ) Clearfield, PA 16830
- ) Phone: (814) 375-2221
- )
- ) Olan London, Pro Se
- ) 320 Stoney Lonesome Rd.
- ) Luthersburg, PA 15848
- )
- ) Toni M. Cherry, Esq.
- ) 1 North Franklin Street
- ) PO Box 505
- ) DuBois, PA 15801
- ) Phone: (814) 371-5800
- ) Fax: (814) 371-0936

FILED 4/19/04  
019:41:371  
JUN 01 2004  
Amy Sughrue

William A. Shaw  
Prothonotary/Clerk of Courts

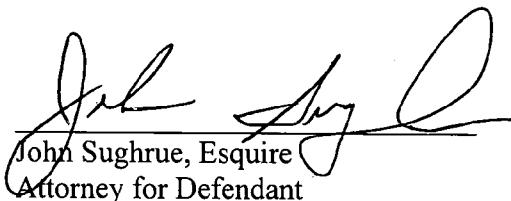
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION—LAW

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
 )  
PLAINTIFFS, )  
v. ) No. 04-2032-CD  
 )  
 )  
DAVID MAST, an adult individual )  
OLAN L. LONDON, an adult individual )  
and ANN MARIE WITHEROW, individually and ) In Equity and at Law  
as Administrator of the Estate of Gerald Witherow, )  
 )  
 )  
 )  
DEFENDANTS. )

**AFFIDAVIT OF SERVICE**

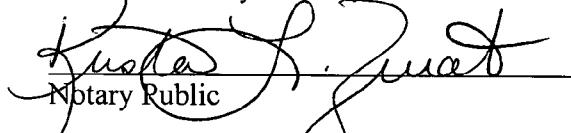
COMMONWEALTH OF PENNSYLVANIA :  
: SS.  
COUNTY OF CLEARFIELD :  
:

The undersigned, John Sughrue, Attorney for Defendant, Ann Marie Witherow, in the above-captioned matter, being duly sworn according to law, deposes and says that he caused a true and correct copy of Court Order dated May 26, 2006 issuing Rule on Motion to Vacate etc. returnable June 26, 2006 to be served on Theron Noble, Attorney for Plaintiffs, Toni M. Cherry, Attorney for David Mast, and Olan London, Pro Se, by United States mail, first class, postage prepaid, on May 30, 2006 at the addresses indicated on transmittal memos attached hereto and incorporated herein by reference.



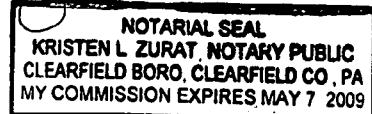
John Sughrue, Esquire  
Attorney for Defendant

Sworn to and subscribed before me this 1<sup>st</sup> day of June, 2006.



Notary Public

My Commission Expires:



*Transmittal Memorandum*

*Date:* May 30, 2006

**RE:** Swistock and Bodle vs. Mast, London and Witherow

*Enclosed please find* the Order to Vacate Partial Summary Judgment and to Reconsider Motion for Partial Summary Judgment.

*TO:*  *Toni M. Cherry, Esq.*  
1 N. Franklin St.  
DuBois, PA 15801

*FROM:* John Sughrue, Esq.  
23 N. 2<sup>nd</sup> St.  
Clearfield, PA 16830  
Ph. (814)765-1704  
Fax (814)765-6959

*Transmittal Memorandum*

*Date:* May 30, 2006

**RE:** Swistock and Bodle vs. Mast, London and Witherow

*Enclosed please find* the Order to Vacate Partial Summary Judgment and to Reconsider Motion for Partial Summary Judgment.

*TO:*  *Mr. Olan London*  
320 Stoney Lonesome Rd.  
Luthersburg, PA 15848

*FROM:* John Sughrue, Esq.  
23 N. 2<sup>nd</sup> St.  
Clearfield, PA 16830  
Ph. (814)765-1704  
Fax (814)765-6959

*Transmittal Memorandum*

*Date:* May 30, 2006

*RE:* Swistock and Bodle vs. Mast, London and Witherow

*Enclosed please find* the Order to Vacate Partial Summary Judgment and to Reconsider Motion for Partial Summary Judgment.

*TO:*

*Mr. Theron Noble, Esq.*  
301 E. Pine Street  
Clearfield, PA 16830

*FROM:*

John Sughrue, Esq.  
23 N. 2<sup>nd</sup> St.  
Clearfield, PA 16830  
Ph. (814)765-1704  
Fax (814)765-6959

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on June 1, 2006, I caused a true and correct copy of Affidavit of Service to be served on the following and in the manner indicated below:

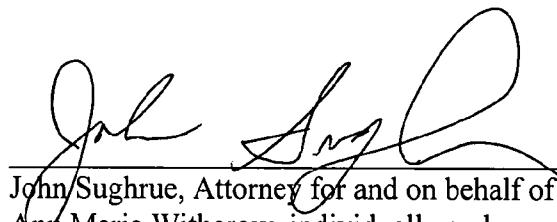
By United States Mail, First Class, Postage Prepaid  
Addressed as Follows:

Mr. Theron Noble, Esq.  
301 E. Pine St.  
Clearfield, PA 16830

Ms. Toni M. Cherry, Esq.  
1 N. Franklin St.  
DuBois, PA 15801

Mr. Olan L. London  
320 Stoney Lonesome Rd.  
Luthersburg, PA 15848

Date: June 1, 2006

  
John Sughrue, Attorney for and on behalf of  
Ann Marie Witherow, individually and as  
Administrator of the Estate of Gerald Witherow

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

JAMES W. SWISTOCK, an adult individual, :  
and RONALD R. BODLE, an adult individual, :  
PLAINTIFFS, :  
: No. 04- 2032 -CD  
v. : In Equity and at Law  
DAVID MAST, an adult individual, :  
OLIN L. LONDON, an adult individual, and :  
ANN MARIE WITHEROW, individually and :  
as Administrator of the Estate of Gerald Witherow, :  
DEFENDANT. :  
: Type of Pleading:  
: :  
: **REPLY TO DEFENDANT'S**  
**MOTION TO VACATE PARTIAL**  
**SUMMARY JUDGMENT**  
: Filed By:  
: Plaintiffs  
: :  
: Counsel of Record:  
: Theron G. Noble, Esquire  
: Ferraraccio & Noble  
: 301 East Pine Street  
: Clearfield, PA 16830  
: (814:-375-2221  
: PA I.D.#: 55942  
:

**FILED**

JUN 06 2006  
6/6/06 30/6/06  
William A. Shaw  
Prothonotary/Clerk of Courts  
w. c/c

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, ) ) No. 04- 02032 -CD  
v. ) )  
 ) In Equity and at Law  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )

**PLAINTIFFS' REPLY TO DEFENDANT WITHEROW'S MOTION TO  
VACATE PARTIAL SUMMARY JUDGMENT AND TO RECONSIDER  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

AND NOW, comes the Plaintiffs, James W. Swistock and Ronald R. Bodle, by  
and though their counsel of record, Theron G. Noble, Esquire, of Ferraraccio &  
Noble, who responds as follows to Defendant Witherow's MOTION TO VACATE  
PARTIAL SUMMARY JUDGMENT:

1. Admitted.
2. In that said ORDER speaks for itself, no response is necessary.
3. Plaintiffs' Motion speaks for itself, as such no response is necessary.
4. The same is a legal argument for which no response is deemed necessary.
5. Denied. Plaintiffs presented ample facts by way of deposition testimony and pleadings  
as well as statutory support as the basis for its requested relief.

6 A - D. Admitted.

6 E. Denied. Defendant Witherow overlooks one important issue in its defense theory that the “Timber Sales Agreement” was a “sale of timber”, arguing that it could sell its interest in the standing timber. Said “Timber Sales Agreement” was not a sale of standing timber but was an agreement to harvest the timber, in violation of the statute relied upon Plaintiffs. The agreement specifically states: “Contractor agrees to pay \$24,000 and **REMOVE TIMBER** within a 2 years period”. [Emphasis added; see 2nd paragraph of Timber Sale Agreement, Exhibit “C” to Defendant’s Motion] Given the contractual language and the action of the parties to the contract, the Court was well within its province in a motion for summary judgment to determine Defendant Witherow violated 68 Pa.C.S.A. §115.

7. For the reason stated in 6E, the same is denied. Furthermore, no party, including Defendant Witherow has attempted to show, nor produced any evidence which tends to show that the wrong timber was harvested or that the harvested timber was misidentified.

8. For the reasons stated in 6E, the same is DENIED. In fact, the Court can not so interpret the contract in the manner suggested by counsel for Defendant Witherow in that it is contrary to (i) the contract itself; and (ii) the actions of the parties in reliance upon the contract.

9. The same is a legal conclusion for which no response is deemed necessary.

10. For the reasons stated in 6E, the same is denied.

11. The same is a legal conclusion for which no response is deemed necessary.

12. The same is a legal conclusion for which no response is deemed necessary.

13. The same is a legal conclusion for which no response is deemed necessary.

14. For the reasons stated in 6E, the same is denied.

15. Again, Plaintiff Bodle sold a portion of his interest in the premises to Plaintiff Swistock. The reason said statute was not violated in such a sale was he sold a portion of his interest in the entire premises, not just the timber, and did so without the clear and demonstrable intent to cause the timber to be harvested, in degradation of a co-tenant's rights and interest.

16. The same is directed to another party for which no response is deemed necessary.

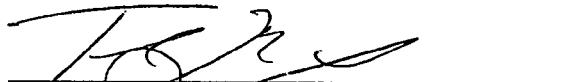
17. Denied. Plaintiffs supplied ample law and facts to support its motion by way of its pleading as well as at argument.

18. Denied. The interests of justice would require Defendant Witherow as well as the other defendant make the Plaintiff's whole in their loss, not to allow one defendant to escape liability based upon a faulty argument of her counsel.

19. Denied. The Court should not reconsider its ruling as the same was correct under the applicable law and facts of this case.

**WHEREFORE, Plaintiffs would request that Defendant Witherow's MOTION  
TO VACATE PARTIAL SUMMARY JUDGMENT be DISMISSED.**

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. )  
 )  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )  
 )

No. 04- 02032 -CD  
In Equity and at Law

**PLAINTIFFS' CERTIFICATE OF SERVICE**

I, Theron G. Noble, Esquire of Ferraraccio & Noble, counsel for Plaintiffs, does hereby certify this 6th day of June, 2006, that I did propound a certified copy of the REPLY issued upon Defendant's MOTION TO VACATE PARTIAL SUMMARY JUDGMENT (as to all defendants) to the below indicated persons, being all counsels of record or pro se litigants, via United States Mail, first class, postage prepaid.

Mr. Olin L. London  
Pro Se  
320 Stony Lonesome Rd.  
Luthersburg, PA 15848

Toni M. Cherry, Esquire  
Counsel for Defendant Mast  
P.O. Box 505  
DuBois, PA 15801

John Sughrue, Esquire  
Counsel for Defendant Witherow  
23 N. 2nd Street  
Clearfield, PA 16830

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

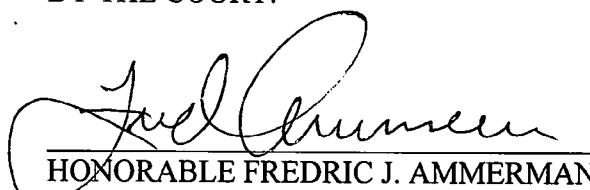
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

JAMES W. SWISTOCK, an adult :  
individual, and RONALD R. BODLE, :  
an adult individual, :  
vs. : No. 04-2032-CD  
DAVID MAST, an adult individual, :  
OLAN L. LONDON, an adult individual, :  
and ANN MARIE WITHEROW, :  
individually and as Administrator of the :  
Estate of Gerald Witherow :  
:

**O R D E R**

AND NOW, this 20<sup>th</sup> day of June, 2006, the Court noting that thirty days has passed from service of this Courts Order of April 25, 2006 and that the Court is no longer in a position to grant reconsideration, it is the ORDER of Court that the Motion to Vacate Partial Summary Judgment and to Reconsider Motion for Partial Summary Judgment be and is hereby dismissed.

BY THE COURT:

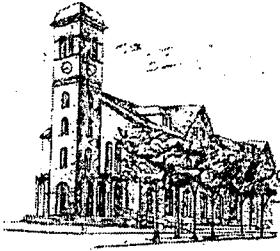
  
HONORABLE FREDRIC J. AMMERMAN  
President Judge

FILED  
12:41 PM  
JUN 21 2006

cc: Atty: Noble  
T. Cherry (D. Mast)  
Sughrue (A. Witherow)

William A. Shaw  
Prothonotary/Clerk of Courts

cc: Olan London  
320 Stoney Lonesome Rd.  
Luthersburg, PA 15848  
cc: Melvin Mast  
Joseph Mast  
David Mast & Sons Logging  
Rte. 1 Box 172-B  
Luthersburg, PA 15848



## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

DATE: 6/21/06

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)  Plaintiff(s) Attorney  Other

Defendant(s)  Defendant(s) Attorney  
(O. London, M. Mast, J. Mast,  
David Mast & Sons Logging) (T. Cherry, J. Sughrue)

Special Instructions:

CA

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

JAMES W. SWISTOCK, an adult individual,  
and RONALD R. BODLE, an adult individual,

PLAINTIFFS,

v.

DAVID MAST, an adult individual,  
OLIN L. LONDON, an adult individual, and  
ANN MARIE WITHEROW, individually and  
as Administrator of the Estate of Gerald Witherow,

DEFENDANT.

: No. 04- 2032 -CD

: In Equity and at Law

: Type of Pleading:

: PRAECIPE TO LIST  
FOR TRIAL

: Filed By:

: Plaintiffs

: Counsel of Record:

: Theron G. Noble, Esquire  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814-375-2221  
PA I.D.#: 55942

8-22-06 List N.J.  
per Terry & see  
if anyone wants  
to have it changed  
to Jury  
R.J.W.

FILED NOCC  
M/14/2006  
AUG 21 2006  
6K

William A. Shaw  
Prothonotary/Clerk of Courts

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
)  
PLAINTIFFS, )  
) No. 04- 02032 -CD  
v. )  
)  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
)  
DEFENDANTS. )  
)

In Equity and at Law

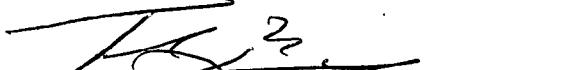
**PRAECIPE TO LIST FOR TRIAL**

To: William A. Shaw, Prothonotary

Date: August 17, 2006

I, Theron G. Noble, Esquire, counsel for Plaintiff, does hereby certify that in the above captioned matter, (i) pleadings are closed; (ii) there is no outstanding discovery requests; and (iii) attempts to amicably resolve this matter have failed or would be non-productive. Therefore, request is hereby made that the same be placed on the trial list and listed for a two (2) trial.

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

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

JAMES W. SWISTOCK, an adult individual, )  
and RONALD R. BODLE, an adult individual, )  
 )  
PLAINTIFFS, )  
 )  
v. )  
 )  
DAVID MAST, an adult individual, )  
OLIN L. LONDON, an adult individual, and )  
ANN MARIE WITHEROW, individually and )  
as Administrator of the Estate of Gerald Witherow, )  
 )  
DEFENDANTS. )  
 )  
No. 04- 02032 -CD  
In Equity and at Law

**PLAINTIFFS' CERTIFICATE OF SERVICE**

I, Theron G. Noble, Esquire of Ferraraccio & Noble, counsel for Plaintiffs, does hereby certify this 17th day of August, 2006, that I did propound a certified copy of the REPLY issued upon Defendant's MOTION TO VACATE PARTIAL SUMMARY JUDGMENT (as to all defendants) to the below indicated persons, being all counsels of record or pro se litigants, via United States Mail, first class, postage prepaid.

Mr. Olin L. London  
Pro Se  
320 Stony Lonesome Rd.  
Luthersburg, PA 15848  
Unknown

Toni M. Cherry, Esquire  
Counsel for Defendant Mast  
P.O. Box 505  
DuBois, PA 15801  
(814)-371-5800

John Sughrue, Esquire  
Counsel for Defendant Witherow  
23 N. 2nd Street  
Clearfield, PA 16830  
(814)-765-1704

Respectfully Submitted,



Theron G. Noble, Esquire  
Attorney for Plaintiffs  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830  
(814)-375-2221  
PA I.D. No.: 55942

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

JAMES W. SWISTOCK, an individual, and  
RONALD R. BODLE, an adult individual,  
Plaintiffs

vs.

DAVID MAST, an individual, OLIN L. LONDON,  
an adult individual, and ANN MARIE WITHEROW,  
individually and as Administrator of the Estate of  
Gerald Witherow,

Defendants

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

NO. 04-2032-CD

ORDER

AND NOW, this 2<sup>nd</sup> day of January, 2007, it is the ORDER of this Court that the  
Pre-Trial Conference in the above matter shall be held on the **16<sup>th</sup> day of January,**  
**2007, at 9:00 a.m. in Chambers.**

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

FILED

01/04/07 10:00 AM 2007  
JAN 03 2007 cc: Atty's:  
Noble  
T. Cherry  
William A. Shaw  
Sughrue  
Prothonotary/Clerk of Courts  
cc: Olan London  
320 Stoney Lonesome Rd.  
Luthersburg, PA 15848  
cc: David Mast and Sons Logging  
Rte. 1, Box 172-B  
Luthersburg, PA 15848

**FILED**

JAN 03 2007

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 1/30/07

— You are responsible for serving all appropriate parties.  
X The Prothonotary's office has provided service to the following parties:  
— Plaintiff(s)  Plaintiff(s) Attorney — Other  
X Defendant(s)  Defendant(s) Attorney  
0 London, J. Mass. Sons Legg, Jr., n. Mass. and J. Mass.  
Special Instructions:

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

JAMES W. SWISTOCK, an adult individual,  
and RONALD R. BODLE, an adult individual,

PLAINTIFFS,

v.

DAVID MAST, an adult individual,  
OLIN L. LONDON, an adult individual, and  
ANN MARIE WITHEROW, individually and  
as Administrator of the Estate of Gerald Witherow,

DEFENDANTS.

- )
- )
- ) No. 04-2032-CD
- )
- ) In Equity and at Law
- )
- )
- ) Type of Case: **Civil Action**
- )
- )
- )
- )
- )
- )
- ) Type of Pleading: **Answer of Ann  
Marie Witherow, individually and as  
Administrator, Additional Defendant  
to Complaint filed by David Mast**
- )
- )
- ) Filed on Behalf of: **Defendant,  
Ann Marie Witherow**
- )
- )
- ) **Counsel of Record for this Party:**
- ) John Sughrue, Esq.
- ) Supreme Court No. 01037
- ) 23 North Second Street
- ) Clearfield, PA 16830
- ) Phone: (814) 765-1704
- ) Fax: (814) 765-6959
- )
- ) **Other Counsel of Record:**
- ) Theron G. Noble, Esq.
- ) Supreme Court No. 55942
- ) 301 E. Pine St.
- ) Clearfield, PA 16830
- ) Phone: (814) 765-4990
- )
- ) Olan London, Pro Se
- ) 320 Stony Lonesome Rd.
- ) Luthersburg, PA 15848
- )
- ) Toni M. Cherry, Esq.
- ) 1 North Franklin Street
- ) PO Box 505
- ) DuBois, PA 15801
- ) Phone: (814) 371-5800
- ) Fax: (814) 371-0936

FILED

1/3/2001 ICS  
JAN 10 2001 Atty Sughrue

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William A. Shaw  
Prothonotary/Clerk of Courts

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

JAMES W. SWISTOCK, an adult individual,	)	
and RONALD R. BODLE, an adult individual,	)	
Plaintiffs,	)	
vs.	)	No. 04-2032-CD
DAVID MAST, an adult individual,	)	
OLAN L. LONDON, an adult individual, and	)	
ANN MARIE WITHEROW, individually and	)	
as Administrator of the Estate of Gerald Witherow,	)	
Defendants,	)	
vs.	)	
ANN MARIE WITHEROW, individually	)	
and as Administrator of the Estate of	)	
GERALD WITHEROW,	)	
Additional Defendants,	)	
vs.	)	
DAVID MAST, individually and t/a	)	
DAVID MAST & SON LOGGING, and	)	
OLIN L. LONDON, individually,	)	
Additional Defendants.	)	

**ANSWER OF ANN MARIE WITHEROW, INDIVIDUALLY  
AND AS ADMINISTRATOR, ADDITIONAL DEFENDANT  
TO COMPLAINT FILED BY DAVID MAST**

AND NOW, comes Ann Marie Witherow, individually and as the Administrator of the Estate of Gerald Witherow and responds to the Complaint filed by David Mast to join them as additional defendants pursuant to Pa. R.Civ. Rule 2252 as follows:

1-11. Denied. On the contrary, the facts are as set forth in the Complaint and New Matter filed by Ann Marie Witherow in response to Plaintiff's Amended Complaint and to join David Mast and Olan L. London as Additional Defendants which was filed in this Court on April 28, 2005, all of which is incorporated herein by reference as though the same were set forth herein at length verbatim. Further, specific responses to certain allegations are as follows:

1. (a): Denied as stated. On the contrary, John Sughrue was employed by Witherow and acted at all times as attorney for the Estate of Gerald Witherow.

1. (b): Denied as stated. On the contrary, Witherow and Defendant London discussed timber owned by Gerald Witherow and then in his Estate. In that conversation, Defendant London suggested that he may know an individual who would be interested in purchasing the Estate's timber and Witherow acquiesced in London contacting this timber person who at that point was not identified by London. It's admitted that during this conversation with Defendant London and subsequent conversations that Witherow and London were discussing solely the ownership interest of Witherow and the Estate, specifically a one-half undivided interest.

1. (c): Denied. Witherow never advised Defendant London that she owned all of the timber or a 100% interest in the timber located on any property. Witherow only owned and/or controlled a one-half undivided interest. Witherow did accept London's suggestion that he would talk to a timber man. No name was initially given. At this time and at all times relevant, Witherow advised London that the Estate only owned one-half interest in the timber, believed that Defendant London understood that fact and believed that Defendant London conveyed that fact to the principals with whom he was dealing directly, specifically David Mast.

1. (d): Denied. On the contrary, Witherow drove with London to property in Knox Township, which was owned one-half by Witherow interest and showed London generally the location of the property. Witherow did not know the location of the property lines and at no time represented the location of the property lines. Witherow is without knowledge as to whether or not London communicated boundary lines to Mast for such information is solely within their knowledge. Witherow is without knowledge as to whether or not London, Melvin Mast and Joseph Mast inspected the property and/or determined or walked any property lines, for such facts are exclusively within their knowledge. Subsequently, Mast Lumber authorized and directed their

agent, London, to offer Witherow \$24,000.00 for the Estate's timber on the seventy-acre tract and Defendant London communicated that offer on behalf of Mast to Witherow.

1. (e): Admitted in part and denied in part. Witherow did accept said offer with the understanding that it was offered to purchase the Estate's one-half interest in the timber and she accepted said offer and entered into a written agreement with the intention of agreeing to sell to Mast the Estate's one-half undivided interest in the standing timber located on the seventy-acre Knox tract. If Mast intended or thought they were purchasing a 100% interest in said timber, they were mistaken. Mast did not produce a blank contract. On the contrary, a contract on Mast's form, prepared by Mast was presented to Witherow for her signature. Witherow did not assist in completing the contract. Specifically, London produced a contract on behalf of Mast in which they inadvertently or intentionally failed to set forth and describe the timber that they intended to purchase.

1. (f): Denied. On the contrary, after the contract was signed, which was done in London's presence only, by Witherow, London returned the signed agreement to Mast. At that point, Mast elected to deliver \$24,000.00 in cash to Witherow by giving the same to London and directing London to deliver it for them. London did deliver the cash to Witherow, at which time Witherow asked London if she owed him any money.

1. (g): Denied as stated. London indicated that it was not necessary to pay him but that a 10% commission was standard and that he would accept it. At that point, Witherow allowed London to take \$2,400.00 of the money.

1. (h): Denied. After receiving the cash, Witherow delivered the cash to attorney Sughrue's office for the purpose of having it deposited in the Estate account and advising attorney Sughrue of the transaction. At that point, Sughrue noted that the written agreement failed to describe the timber being sold and/or the timber being purchased. It is denied that Sughrue

advised Witherow at that time that she did not own all of the timber. On the contrary, Witherow then and at all relevant times, knew that the Estate only owned one-half of the standing timber and had previously filed documents in the Estate to that effect, including a complete inheritance tax return.

1. (i): Denied as stated. At all times relevant, Sughrue acted as attorney for the Estate. Witherow advised Sughrue that she had not negotiated or met Mast but rather the transaction was negotiated by London on behalf of Mast. At that time, Sughrue called London and was successful in reaching him by phone. At that time, Sughrue advised London that the contract was deficient in that it failed to describe the timber being sold, and confirmed to London that the Estate only owned and only was selling by that Agreement, its one-half undivided ownership interest in the standing timber on the Knox Township tract. Sughrue further advised London specifically that the timber could not lawfully be removed from the property under that agreement and should not be removed without securing additional agreements with the co-owners of the timber. Further, Sughrue asked London for Mast's phone number, was told Mast did not have a telephone and Sughrue specifically directed London to convey the aforesaid information to Mast. London indicated to Sughrue that he understood, did not dispute the information and directions given and indicated he would inform Mast.

1. (j): Denied as stated. Sughrue was advised that Mast did not have a telephone and Mast's address was already known to Sughrue as it was on the contract.

1. (k): Denied. On the contrary, Sughrue advised London that it was his and Mast's responsibility to contact the co-owners and to secure an agreement to timber with the co-owners. Sughrue never used the words "straighten this mess out".

1. (l): It is admitted that Sughrue did not contact Mast. On the contrary, Witherow and Sughrue relied upon London to convey the appropriate information to Mast and believed and therefore aver that London did in fact convey to Mast such information.

1. (m): Witherow and her attorney are without knowledge as to when Mast commenced timbering the property; the timber taken or when the timbering was concluded. Mast did not, at any time, communicate with Witherow or her attorney regarding his entry onto the land. It was also more than enough time for Mast's agent, London, to communicate the necessary information to Mast and for Mast to ascertain the proper ownership, identification and location of the timber that he apparently cut.

1. (n): Denied. Witherow and her attorney are without knowledge sufficient to form a belief as to what action Mast would have taken if contacted directly for the reason that such is exclusively within his knowledge. However, Witherow believes and therefore avers that Mast did in fact know the ownership situation or should have known the ownership status by the exercise of ordinary diligence; that his agent London gave or should have given the necessary information to Mast; and that Mast is charged with knowledge of the ownership status by virtue of the public records located at the Clearfield County Courthouse. Further, Witherow believes and therefore avers that if London did not convey the ownership status to Mast, that London breached a duty to Mast as a result thereof and in that event, Mast's cutting of the timber was the direct result of London's breach of his duty. Further, Mast had or should have had knowledge of the ownership of the tract by simply consulting the tax assessment records of Clearfield County.

1. (o): Denied. On the contrary, by executing the Timber Sale Agreement, Witherow guaranteed title only to the timber, which was the subject of the agreement, specifically, the one-half undivided interest in the standing timber, which the Estate did in fact own. It is denied that Witherow assured Mast that Witherow was the sole owner of all the timber and would defend title