

05-199-CD

Joseph Chiek et al vs. David Maholtz et al

Trz, et al.

2005-199-CD

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

JOSEPH W. CHICK and WANDA J. CHICK, Plaintiffs : No. 05 - 199 - C.D.  
vs. : Type of Case: EJECTMENT  
DAVID F. MAHOLTZ and PATTI J. MAHOLTZ, Defendants : Type of Pleading: COMPLAINT  
: Filed on Behalf of: JOSEPH W. CHICK and WANDA J. CHICK, Plaintiffs  
: Counsel of Record for these Parties:  
: 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

FEB 11 2005  
072:25 AM  
William A. Shaw  
Prothonotary/Clerk of Courts  
3 Client to Atty

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOSEPH W. CHICK and WANDA J. :  
CHICK, :  
Plaintiffs :  
vs. : No. 05 - \_\_\_\_\_ C.D.  
DAVID F. MAHOLTZ and PATTI J. :  
MAHOLTZ, :  
Defendants :  
;

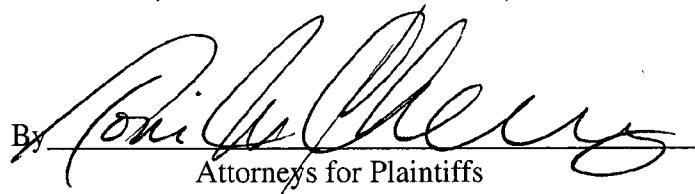
**NOTICE**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Notice and Complaint 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 claims or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator  
Office of the Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641 (Ext. 88-89)

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

By   
Lori A. Gleason  
Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOSEPH W. CHICK and WANDA J.	:
CHICK,	:
Plaintiffs	:
vs.	:
DAVID F. MAHOLTZ and PATTI J.	:
MAHOLTZ,	:
Defendants	:

No. 05 - \_\_\_\_\_ C.D.

**C O M P L A I N T**

AND NOW, come the Plaintiffs, JOSEPH W. CHICK and WANDA J. CHICK, by and through their attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and bring this Complaint on causes of action whereof the following are statements:

**COUNT I - EJECTMENT**

1. Plaintiffs are JOSEPH W. CHICK and WANDA J. CHICK, husband and wife, who reside at 2190 Oklahoma Salem Road, DuBois, Clearfield County, Pennsylvania 15801.
2. Defendants, DAVID F. MAHOLTZ and PATTI J. MAHOLTZ, are husband and wife, who reside at 70 Sloping View Drive, DuBois, Clearfield County, Pennsylvania 15801.
3. Plaintiffs are the owners of real property situate in the Township of Sandy, Clearfield County, Pennsylvania, that is more completely described in Exhibit "A" which is attached hereto and made a part hereof.

4. Plaintiffs acquired title to the above-described property by deed of Mary Jo Nido and Joseph Chick, Co-Executors of the Estate of Mary Hazel Chick, deceased, dated August 17, 1982, and recorded in the Offices of the Register and Recorder of Deeds of Clearfield County, Pennsylvania, in Deed Book Vol. 889, page 461.

5. That by deed dated February 18, 1988, and recorded in the Offices of the Register and Recorder of Deeds of Clearfield County, Pennsylvania, to Vol. 1209, page 267, on March 1, 1988, Defendants acquired title to the premises upon which they reside containing .55 acre of ground.

6. Plaintiffs' property and Defendants' property are adjacent and share 153 feet of a common boundary being the southern boundary line of Defendants' land and 153 feet along the northern boundary of the Plaintiffs' property and the description in Defendants' deed specifically recites that Defendants' land runs to and along the lands owned by Plaintiffs.

7. That sometime after October 13, 2003, Plaintiffs became aware that Defendants had entered onto their lands and had cleared the northern portion directly adjacent to Defendants' property of trees and had built an extension onto their shed that extended onto the property of the Plaintiffs, extending approximately 18 feet onto the premises of the Plaintiffs.

8. That Plaintiffs have also discovered that Defendants have exercised and continue to exercise exclusive possession and control over the northern 65 feet of Plaintiffs' property by continuing to mow the area.

9. That Plaintiffs have attempted to reclaim the lands owned by them by erecting a fence along their northern boundary line but they have been precluded from completing the erection of said fence by the encroachment of Defendants' outbuilding upon their property.

10. That despite Plaintiffs' repeated requests, Defendants have failed and refused to remove the above-described outbuilding or shed from Plaintiffs' property and has wholly failed and/or refused to repair the damage caused thereto.

WHEREFORE, Plaintiffs request that Your Honorable Court:

(a) enter judgment in favor of Plaintiffs and against Defendants, DAVID F. MAHOLTZ and PATTI J. MAHOLTZ, for possession of that portion of the northern boundary of Plaintiffs' land over which Defendants have encroached; and

(b) enter an Order directing Defendants to remove that portion of their outbuilding and all other obstacles placed by them on Plaintiffs' property.

## **COUNT II - TRESPASS**

11. Plaintiffs incorporate herein by reference the averments contained in Paragraphs 1 through 10 inclusive of COUNT I of this Complaint as if the same had been set forth at length herein.

12. As a result of maintaining the above-described shed or outbuilding on Plaintiffs' property, Defendants have destroyed a portion of Plaintiffs' land and felled Plaintiffs' trees to Plaintiffs' damage in an amount to be determined.

13. As a result of maintaining the above-described shed or outbuilding on Plaintiffs' property and destroying Plaintiffs' trees, Defendants have deprived Plaintiffs of the use and enjoyment of their property to Plaintiffs' damage in an amount to be determined.

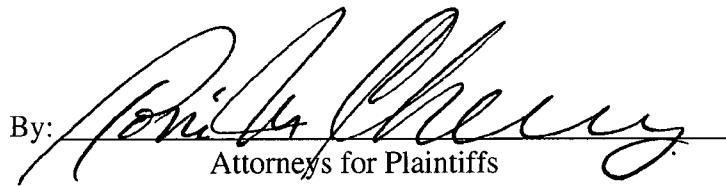
WHEREFORE, Plaintiffs request that Your Honorable Court enter judgment in favor of Plaintiffs and against Defendants, DAVID F. MAHOLTZ and PATTI J. MAHOLTZ, for

money damages in an amount not exceeding TWENTY-FIVE THOUSAND DOLLARS  
(\$25,000.00).

Respectfully submitted,

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

By:



Roni B. Cherry

Attorneys for Plaintiffs

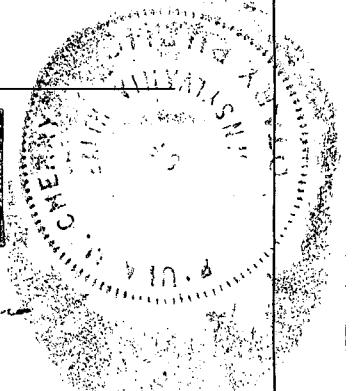
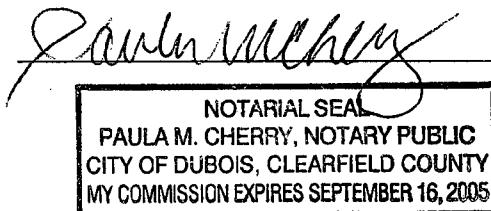
COMMONWEALTH OF PENNSYLVANIA :  
: SS.  
COUNTY OF CLEARFIELD :  
:

Personally appeared before me, a Notary Public in and for the County and State aforesaid, JOSEPH W. CHICK and WANDA J. CHICK, who, being duly sworn according to law, depose and say that the facts set forth in the foregoing Complaint are true and correct to the best of their knowledge, information and belief.

Joseph W. Chick  
Joseph W. Chick

Wanda J. Chick  
Wanda J. Chick

Sworn to and subscribed before me this 9<sup>th</sup> day of February, 2005.



VOL 889 PAGE 457

VOL 889 PAGE 457

THIS DEED, made the 17th day of August, 1982, by and between MARY JO NIDO and JOSEPH CHICK, Co-Executors of the Estate of MARY HAZEL CHICK, deceased, late of Sandy Township, Clearfield County, Pennsylvania, Grantors, parties of the first part;

A  
N  
D

JOSEPH W. CHICK and WANDA J. CHICK, husband and wife, of Sandy Township, Clearfield County, Pennsylvania, as Tenants by the Entireties, Grantees, parties of the second part;

WITNESSETH, that in consideration of the sum of One and 00/100----  
Dollar (\$1.00), in hand paid, the receipt whereof, is hereby acknowledged,  
the said Grantors do hereby grant and convey to the said Grantees,  
ALL that certain piece or parcel of land situate in Sandy Township,  
Clearfield County, Pennsylvania, being bounded and described as follows,  
to wit:

BEGINNING at the South West corner of said land; thence by  
land now or formerly of William Bogle, North 1° West, 52.8  
perches to a Pone Stump; thence North, 88° 58' West, 42.4  
perches to a post; thence North, 45° East, 49.8 perches to  
a post; thence South, 87° East 34.9 perches to Public Road;  
thence along said Public Road, 86 perches, more or less, to  
a corner of cross roads; thence North, 89° 25' East, 49  
perches to a post; thence South, 181.16 perches to a post;  
thence West, 88.44 perches to a post, the place of beginning.  
Containing 50 $\frac{1}{2}$  Acres.

EXCEPTING AND RESERVING from the above described premises a parcel of  
land consisting of 5 acres which was this day conveyed to Jay Nido and Mary  
Jo Nido by the Grantors herein.

EXHIBIT "A"

BEING a portion of the same premises which were conveyed to Joseph L. Chick and Mary Hazel Chick, a/k/a Mary H. Chick, by deed of Margaret Chick et vir., dated September 12, 1936, and recorded in Deed Book No. 313, page 464, on September 16, 1936.

The said Joseph L. Chick having died, the same remained unto Mary H. Chick. The said Mary H. Chick died testate on January 14, 1982, and Mary Jo Nido and Joseph Chick were granted Letters Testamentary in her estate by the Register of Wills of Clearfield County, Pennsylvania, on January 20, 1982. This Deed is being made by virtue of the Will of the said Mary Hazel Chick.

NOTICE

To comply with the Act of July 17, 1957 (52 P.S. Supp. Sec. 1551-1554) notice is hereby given as follows:

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

662 B

NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1966", I/we, the undersigned grantee/grantees, hereby certify that I/we know and understand that I/we may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal. I/we further certify that this certification is in a color contrasting with that in the deed proper and is printed in twelve point type preceded by the word "notice" printed in twenty-four point type.

Witness:

*Joseph L. Chick* ..... *Joseph L. Chick* .....  
*Mary Jo Nido* ..... *Mary Jo Nido* .....

This ..... 23<sup>rd</sup> day of May, 1982 .....

AND the said MARY JO NIDO and JOSEPH CHICK, Co-Executors of the Estate of MARY HAZEL CHICK, deceased, for themselves, their heirs, executors, administrators and assigns, do covenant, promise and agree to and with the

- 3 -

said Grantees, their heirs and assigns, by these presents, that they, the said Co-Executors, have not done, committed, or knowingly or willingly suffered to be done or committed any act, matter or thing whatsoever, whereby the premises hereby granted, or any part thereof, is, are, shall or may be impeached, charged or encumbered in title, charge, estate or otherwise howsoever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto affixed their hands and seals the day and year first above written.

Signed, sealed, and delivered  
in the presence of:

Laura M. Cherry mary jo xido (SEAL)  
Laura M. Cherry Joseph Chick (SEAL)  
Co-Executors of the Estate of  
MARY HAZEL CHICK, deceased

CERTIFICATE OF RESIDENCE

We hereby certify that the precise residence address of the  
above named Grantees is R. D. #3, DuBois, PA 15801.  
N.T.S.

GLEASON, CHERRY AND CHERRY, P. C.

By Edward V. Cherry  
Attorneys for Grantees

VOL 889 PAGE 460

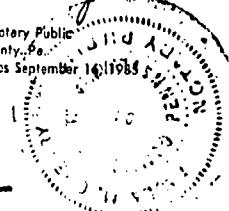
COMMONWEALTH OF PENNSYLVANIA : SS.  
COUNTY OF CLEARFIELD

On this, the 23<sup>rd</sup> day of May, 1983, before me,  
the undersigned officer, personally appeared MARY JO NIDO and JOSEPH CHICK,  
Co-Executors of the Estate of MARY HAZEL CHICK, deceased, known to me (or  
satisfactorily proven) to be the persons whose names are subscribed to the  
within instrument, and acknowledged that they executed the same for the  
purposes therein contained.

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

Paula M. Cherry

PAULA M. CHERRY, Notary Public  
DuBois, Clearfield County, Pa.  
My Commission Expires September 16, 1983



AFFIDAVIT NO. 12601

STATE OF PENNSYLVANIA:  
COUNTY OF CLEARFIELD: 83  
RECORDED in the Recorders Office in and for said  
County in Deeds and Records Book No. 889

Page 45 WITNESS my hand and seal of office this

26<sup>th</sup> day of May A.D. 1983

CLEARFIELD COUNTY  
ENTERED OF RECORD  
TIME 2:32 P.M. 586-B  
BY Paula M. Cherry  
FEES 140  
TIM MORGAN, Recorder

My Commission Expires  
First Monday in January 1984

Entered of Record 5-26 1983, 2:37 P.M. Tim Morgan, Recorder

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH W. CHICK and WANDA J.  
CHICK,

Plaintiff

vs.

DAVID F. MAHOLTZ and PATTI J.  
MAHOLTZ,

Defendants

CIVIL ACTION - AT LAW

No. 05-199-C.D.

Type of Pleading:

Answer, New Matter and  
Counterclaim

Filed on Behalf of:

Defendants

Counsel of Record for This  
Party:

Matthew B. Taladay, Esq.  
Supreme Court No. 49663  
Hanak, Guido and Taladay  
498 Jeffers Street  
P. O. Box 487  
DuBois, PA 15801

814-371-7768

You are hereby notified to plead  
to the within pleading within twenty  
(20) days of service thereof or default  
judgment may be entered against you.

Matthew B. Taladay *K*

FILED

MAR 14 2005  
10:15 AM  
William A. Shaw  
Prothonotary/Clerk of Courts

1 CEN & TUMTLC

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

JOSEPH W. CHICK and WANDA J. :  
CHICK, :  
Plaintiff :  
vs. : No. 05-199-C.D.  
DAVID F. MAHOLTZ and PATTI J. :  
MAHOLTZ, :  
Defendants :

**ANSWER**

AND NOW, come the Defendants, David F. Maholtz and Patti J. Maholtz, by their attorneys, Hanak, Guido and Taladay, and hereby respond to Plaintiffs' Complaint as follows:

**Count I - Ejectment**

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted. A copy of Defendants' deed is attached hereto as Exhibit "A".
6. Admitted.
7. Denied. Defendants deny entering on the lands of Plaintiffs or knowingly conducting any other activities on the land or lands of Plaintiffs as more fully set forth in New Matter hereto.
8. Denied. Defendants verily believe that they are lawfully entitled to exercise possession and control over all property

which they mow and maintain as more fully set forth in New Matter hereto.

9. Admitted in part and denied in part. It is admitted that Plaintiffs have attempted to erect a fence on or near the premises of Defendants. Defendants are unaware of as to whether the location of the partial fence constructed by the Plaintiffs constitutes a northern boundary line of Plaintiffs' property. By way of further answer, Defendants have taken no affirmative action to prevent the Plaintiffs from constructing a fence.

10. Denied. The Defendants have attempted to discuss the Plaintiffs concerns and complaints and to reach an amicable resolution to this matter, but as yet have been unable to do so.

WHEREFORE, Defendants demand judgment in their favor.

#### **Count II - Trespass**

11. Defendants incorporate by reference their responses to paragraphs 1 through 10 of the Complaint as if set forth in full.

12. Defendants deny destroying or damaging Plaintiffs' property for reasons set forth in New Matter hereto.

13. Defendants deny destroying Plaintiffs' property and deny depriving Plaintiffs the use and enjoyment of the property as more fully set forth in New Matter hereto.

WHEREFORE, Defendants demand judgment in their favor.

#### **NEW MATTER**

14. Defendants incorporate paragraphs 1 through 13 of the Complaint as if set forth in full.

15. Defendants' predecessors-in-title obtained ownership of the parcel now owned by Defendants in 1977 and constructed their dwelling house in 1978.

16. At the time the Defendants acquired ownership of the subject property, the Defendants' predecessors had been visibly, openly, utilizing, maintaining and improving the lot whose southern boundary line was recognized as the southern boundary of the Defendants' property. These improvements included the construction of a storage/play shed, mowing, removal of dead fall, brush clearing and debris removal.

17. From at least 1988 and continuing for a number of years, the Plaintiffs, prior to the opening day of deer season, would customarily post "No Hunting" signs on a row of trees constituting what was believed by all parties to be the southern boundary of Defendants' and northern boundary of Plaintiffs' property.

18. In the Fall of 1994, the Defendants constructed an 8' by 16' addition on the back of the existing storage shed, which was in the area historically recognized by the parties as being on Defendants' property. The Plaintiffs had knowledge of this construction and made no complaint to Defendants.

19. Defendants continued to use, maintain and claim the disputed area until November, 2004 when Plaintiffs erected a fence which restricted the Defendants' access.

WHEREFORE, Defendants demand judgment in their favor.

**Laches**

20. Plaintiffs' Complaint is barred or limited by the Doctrine of Laches in that Plaintiffs knew or should have known of the alleged actual boundaries of the property and failed to act to assert these rights.

21. Defendants have been prejudiced by Plaintiffs' failure to act in that Defendants have been permitted to expend time, money and effort in improving, maintaining and erecting buildings and structures upon the property with Plaintiffs' knowledge and without objection.

**COUNTERCLAIM - IN EJECTMENT**

**Consentable Boundary**

22. Defendants incorporate by reference their responses to paragraphs 1 through 13 of the Complaint as well as paragraphs 14 through 21 of the New Matter as if set forth in full.

23. The Plaintiffs' Complaint seeks to wrongfully exclude the Defendants and their family from an area of property which has historically been recognized by Plaintiffs, Defendants, and Defendants' predecessors as belonging to Defendants' property.

24. The parties are bound by the Doctrine of "Consentable Boundary" to accept the boundary line historically recognized for a period of time exceeding 21 years by Plaintiffs, Defendants, and Defendants' predecessors as being the line of trees regularly marked by Plaintiffs during the hunting season.

WHEREFORE, it is respectfully requested that the Court enter an Order declaring that the historically recognized consentable

boundary line is the actual and legal boundary between the parties' properties.

Respectfully submitted,  
HANAK, GUIDO and TALADAY

By Matthew B. Taladay  
Matthew B. Taladay  
Attorney for Defendants

**VERIFICATION**

I, **David F. Maholtz** and **Patti J. Maholtz**, do hereby verify that I have read the foregoing Answer & New Matter. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 3/11/05

David F. Maholtz  
David F. Maholtz

Patti J. Maholtz  
Patti J. Maholtz

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

JOSEPH W. CHICK and WANDA J. :  
CHICK, :  
Plaintiff :  
vs. :  
No. 05-199-C.D.  
DAVID F. MAHOLTZ and PATTI J. :  
MAHOLTZ, :  
Defendants :

**CERTIFICATE OF SERVICE**

I certify that on the 14<sup>th</sup> day of March, 2005, a true  
and correct copy of Defendants' Answer and New Matter was sent via  
first class mail, postage prepaid, to the following:

Toni M. Cherry, Esq.  
Attorney for Plaintiffs  
Gleason, Cherry and Cherry, L.L.P.  
P.O. Box 505  
DuBois, PA 15801

Matthew B. Taladay  
Matthew B. Taladay  
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100222  
NO: 05-199-CD  
SERVICE # 1 OF 2  
COMPLAINT IN EJECTMENT

PLAINTIFF: JOSEPH W. CHICK and WANDA J. CHICK  
vs.  
DEFENDANT: DAVID F. MAHOLTZ and PATTI J. MAHOLTZ

**SHERIFF RETURN**

---

NOW, February 16, 2005 AT 1:10 PM SERVED THE WITHIN COMPLAINT IN EJECTMENT ON DAVID F. MAHOLTZ DEFENDANT AT 70 SLOPING VIEW DRIVE, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO DAVID MAHOLTZ, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN EJECTMENT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

FILED  
MAR 17 2005 60  
073:30 AM  
William A. Shaw  
Prothonotary/Clerk of Courts

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

DOCKET # 100222  
NO: 05-199-CD  
SERVICE # 2 OF 2  
COMPLAINT IN EJECTMENT

PLAINTIFF: JOSEPH W. CHICK and WANDA J. CHICK  
vs.  
DEFENDANT: DAVID F. MAHOLTZ and PATTI J. MAHOLTZ

**SHERIFF RETURN**

---

NOW, February 16, 2005 AT 1:10 PM SERVED THE WITHIN COMPLAINT IN EJECTMENT ON PATTI J. MAHOLTZ DEFENDANT AT 70 SLOPING VIEW DRIVE, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO DVID MAHOLTZ, HUSBAND A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN EJECTMENT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100222  
NO: 05-199-CD  
SERVICES 2  
COMPLAINT IN EJECTMENT

PLAINTIFF: JOSEPH W. CHICK and WANDA J. CHICK  
vs.  
DEFENDANT: DAVID F. MAHOLTZ and PATTI J. MAHOLTZ

**SHERIFF RETURN**

---

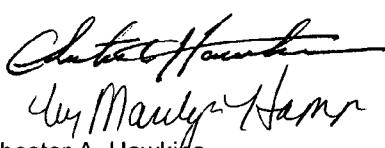
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	GLEASON	9820	20.00
SHERIFF HAWKINS	GLEASON	9820	39.76

Sworn to Before Me This

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

So Answers,

  
Chester A. Hawkins  
Sheriff

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH W. CHICK and WANDA J.  
CHICK,

Plaintiff

vs.

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MAHOLTZ,

Defendants

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Type of Pleading:

Amended Answer, New  
Matter and Counterclaim

Filed on Behalf of:

Defendants

Counsel of Record for This  
Party:

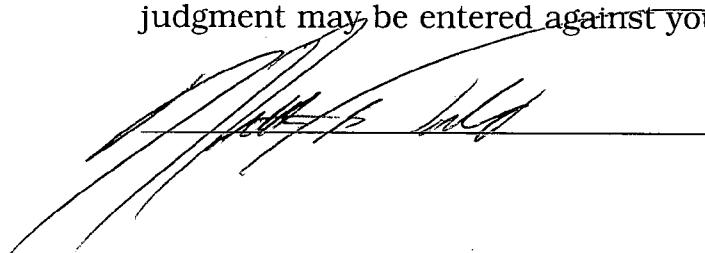
Matthew B. Taladay, Esq.  
Supreme Court No. 49663  
Hanak, Guido and Taladay  
498 Jeffers Street  
P. O. Box 487  
DuBois, PA 15801

814-371-7768

FILED

APR 13 2005  
M 10:30 AM  
William A. Shaw  
Prothonotary/Clerk of Courts  
no e/c.

You are hereby notified to plead  
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judgment may be entered against you.



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CHICK, :  
Plaintiff :  
vs. : No. 05-199-C.D.  
DAVID F. MAHOLTZ and PATTI J. :  
MAHOLTZ, :  
Defendants :

**ANSWER**

AND NOW, come the Defendants, David F. Maholtz and Patti J. Maholtz, by their attorneys, Hanak, Guido and Taladay, and hereby respond to Plaintiffs' Complaint as follows:

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2. Admitted.
3. Admitted.
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WHEREFORE, Defendants demand judgment in their favor.

**Laches**

20. Plaintiffs' Complaint is barred or limited by the Doctrine of Laches in that Plaintiffs knew or should have known of the alleged actual boundaries of the property and failed to act to assert these rights.

21. Defendants have been prejudiced by Plaintiffs' failure to act in that Defendants have been permitted to expend time, money and effort in improving, maintaining and erecting buildings and structures upon the property with Plaintiffs' knowledge and without objection.

**COUNTERCLAIM - IN EJECTMENT**

**Consentable Boundary**

22. Defendants incorporate by reference their responses to paragraphs 1 through 13 of the Complaint as well as paragraphs 14 through 21 of the New Matter as if set forth in full.

23. The Plaintiffs' Complaint seeks to wrongfully exclude the Defendants and their family from an area of property which has historically been recognized by Plaintiffs, Defendants, and Defendants' predecessors as belonging to Defendants' property.

24. The parties are bound by the Doctrine of "Consentable Boundary" to accept the boundary line historically recognized for a period of time exceeding 21 years by Plaintiffs, Defendants, and Defendants' predecessors as being the line of trees regularly marked by Plaintiffs during the hunting season.

WHEREFORE, it is respectfully requested that the Court enter an Order declaring that the historically recognized consentable

boundary line is the actual and legal boundary between the parties' properties.

Respectfully submitted,

HANAK, GUIDO and TALADAY

By

Matthew B. Taladay  
Attorney for Defendants

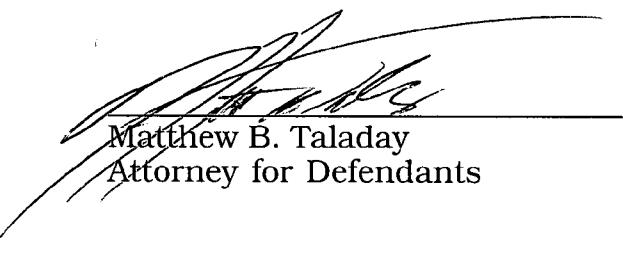
IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JOSEPH W. CHICK and WANDA J.	:	
CHICK,	:	
Plaintiff	:	
vs.	:	No. 05-199-C.D.
DAVID F. MAHOLTZ and PATTI J.	:	
MAHOLTZ,	:	
Defendants	:	

**CERTIFICATE OF SERVICE**

I certify that on the 12th day of April, 2005, a true and correct copy of Defendants' Amended Answer, New Matter and Counterclaim was sent via first class mail, postage prepaid, to the following:

Toni M. Cherry, Esq.  
Attorney for Plaintiffs  
Gleason, Cherry and Cherry, L.L.P.  
P.O. Box 505  
DuBois, PA 15801

  
Matthew B. Taladay  
Attorney for Defendants

County Parcel No. \_\_\_\_\_

1-1000

VOL 1209 PAGE 267

## This Deed,

MADE the 18th day of February

in the year nineteen hundred and eighty eight (1988)

BETWEEN DAVID J. REED and DONNA M. REED, husband and wife,  
of DuBois, Clearfield County, PA,

Grantors

AND DAVID F. MAHOLTZ and PATTI J. PETERMAN, as joint tenants  
with the right of survivorship and not as tenants in  
common,

Grantees

WITNESSETH, That in consideration of

EIGHTY SEVEN THOUSAND NINE HUNDRED (\$87,900.00) ----- Dollars,  
in hand paid, the receipt whereof is hereby acknowledged, the said grantor s do hereby grant  
and convey to the said grantee s, their heirs and assigns,ALL that certain parcel or piece of land lying, situated and being in Sandy  
Township, Clearfield County, Pennsylvania, bounded and described as follows,  
to-wit:

BEGINNING at the East corner of Gerald E. Meloon lot on South side of Sloping View Drive; thence along Sloping View Drive, South 56° 51' East 70.9 feet; thence along cul-de-sac by a curve to the left the chord of which is South 34° 25' East 40.0 feet; thence along Russell Ashburn lot South 25° 38' West 117.5 feet; thence along Joseph W. Chick land, North 83° 56' West 153.0 feet; thence through the office lot North 6° 20' West 74.0 feet and North 43° 15' West 41.0 feet; thence along cul-de-sac by a curve to the left the chord of which is North 17° 45' East 19.0 feet; thence along Gerald Meloon lot by a curve to the left the following three chords South 63° 55' East 76.7 feet, North 74° 00' East 29.5 feet and North 52° 55' East 31.5 feet; thence still along Gerald Meloon lot North 33° 09' East 55.0 feet to the place of beginning. Containing 0.55 acre.

A survey of the same as performed by Gary B. Thurston, dated May 5, 1986, being attached hereto and made a part of this description, such survey duly approved by the Supervisors of Sandy Township for subdivision purposes, the same having been a re-division of the subdivision originally surveyed by E. James McNight, dated November 13, 1975.

EXCEPTING AND RESERVING all exceptions and reservations as per prior deeds, and also subject to a right-of-way for ingress and egress which was included in the conveyance from the Grantors herein to Robert R. Harris in their Deed dated the 27th day of May, 1986, as recorded in Deed Book 1085, Page 363.

BEING part of the premises conveyed to the Grantors herein by Deed of Larry R. Reed, et ux., dated the 1st day of April, 1977, as recorded in Deed Book Volume 735, Page 550, and also being a part of the premises conveyed to the Grantors herein by Deed of Larry R. Reed, et ux., dated the 15th day of September, 1987, as recorded in Deed Book Volume 1181, Page 589.

## NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1966", I/we, the undersigned grantees, hereby certify that I/we know and understand that I/we may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal. I/we further certify that this certification is in a color contrasting with that in the deed proper and is printed in twelve point type preceded by the word "notice" printed in twenty-four point type.

Witness:

*Paul E. Cherry*

*David F. Maholtz*

*Patti J. Peterman*

Patti J. Peterman

This 29th day of February, 1988.

THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. (This Notice is set forth pursuant to Act No. 255, approved September 10, 1965, as amended.)

AND the said grantors will GENERALLY WARRANT AND FOREVER DEFEND the property hereby conveyed.

IN WITNESS WHEREOF, said grantors have hereunto set their hands and seals, the day and year first above-written.

Sealed and delivered in the presence of

Margaret J. Puhala  
as to both

David J. Reed (SEAL)  
David J. Reed  
Donna M. Reed (SEAL)  
Donna M. Reed  
..... (SEAL)  
..... (SEAL)  
..... (SEAL)  
..... (SEAL)

#### CERTIFICATE OF RESIDENCE

I hereby certify, that the precise residence of the grantees herein is as follows:  
R. D. #2, Box 1, DuBois, PA 15801

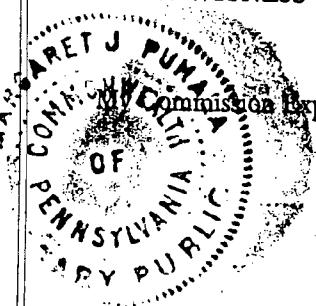
Paul E. Cherry  
Attorney or Agent for Grantee

Commonwealth of Pennsylvania  
County of Clearfield } ss.

On this, the 18th day of February, 1988, before me, a Notary Public, the undersigned officer, personally appeared David J. Reed and Donna M. Reed, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

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

MARGARET J. PUHALA, NOTARY PUBLIC  
DuBOIS, CLEARFIELD COUNTY  
MY COMMISSION EXPIRES OCT. 20, 1990  
Member, Pennsylvania Association of Notaries



Margaret J. Puhala

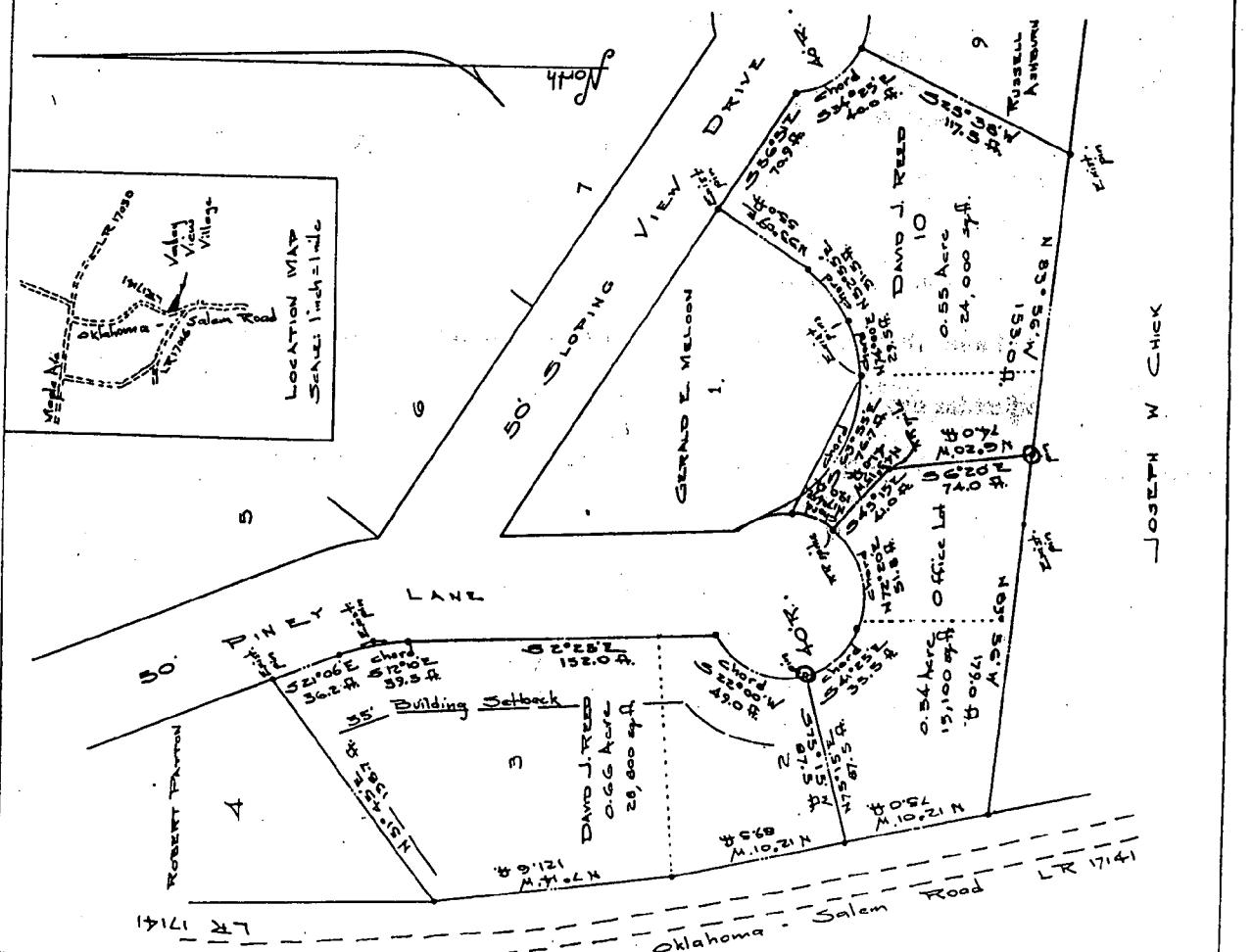
3 day of Aug, 1936.  
*Howard M. Pack*

STATE OF PENNSYLVANIA : 55  
COUNTY OF CLEARFIELD :  
Before Howard M. Pack, Notary Public in and for said state and county personally  
appeared John C. Dill and acknowledged the foregoing affidavit,  
and release to be their act and deed and desired the same be recorded as such  
deed and release and for the public record on the 3 day of August, 1936.  
WITNESS my hand and notary seal this 3 day of August, 1936.

Mr. Commissioner Eighteenth District  
5/1/96  
The County Commission of Sandy Township, Chesterfield County, Maryland, do hereby approve this plan.  
The Governing Body of Sandy Township, Chesterfield County hereby gives public notice that in approving  
the plan for recording purposes only, the municipality assumes no obligation, legal or otherwise,  
implied or otherwise, to accept said streets as official streets or roads, or to construct  
or maintain any such streets or roads, or to construct, maintain, or repair any such  
streets or roads, or to maintain any other such service.

Note: Original Survey Nov 13, 1975  
 by E. Jones & Night  
 Approved May 27, 1976

LARRY K. REED SUBDIVISION  
VALLEY VIEW VILLAGE  
 Lots: 2, 3, 10, & Office Lot  
 BEING RE-DIVIDED into  
3, 10, & Office Lots  
 SANTA TOWNSHIP CLEARFIELD COUNTY  
SCALE 1 inch = 60 feet  
 MAY 5, 1986 CARRY & THURSTON



State of ..... }  
County of ..... } ss.

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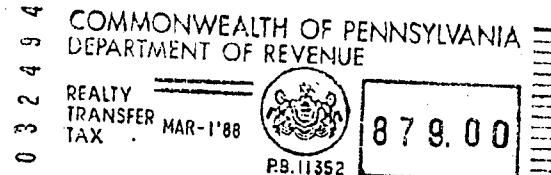
On this, the day of 19 , before me  
the undersigned officer, personally appeared  
known to me (or satisfactorily proven) to be the person  
instrument, and acknowledged that  
contained.

whose name subscribed to the within  
executed the same for the purpose therein

IN WITNESS WHEREOF, I have hereunto set my hand and

seal.

My Commission Expires .....



CLEARFIELD COUNTY  
ENTERED OF RECORD  
TIME 10:49 AM 3-1-88  
BY Paul E Cheary  
FEES 15.50  
Michael R. Lytle, Recorder

Commonwealth of Pennsylvania  
County of Clearfield } ss.

RECORDED in the Office for Recording of Deeds, etc., in and for said County,  
in Deed Book No. 1209 , Page 267  
WITNESS my hand and official seal this 1st day of March , 1988

Michael R. Lytle

Recorder of Deeds

My Commission Expires  
First Monday in January, 1992

DUBOIS AREA SCHOOL DISTRICT

1% REALTY TRANSFER TAX

AMOUNT \$ 879.00

PAID 3-1-88

MICHAEL R. LYtle

Date Agent

Real Tax 517.00  
Deductible Tax 439.50  
Surch Tax 439.50

Deed

WARRANTY DEED  
The Plankenhorn Co., Williamsport, Pa.

DAVID J. REED and DONNA M.  
REED, husband and wife  
TO  
DAVID F. MAHOLTZ and PATTI J.  
PETERMAN

Dated ..... For ..... Consideration ..... Recorded .....  
Entered for Record in the Recorder's  
Office of ..... day of ..... Tar. \$ .....  
County, the ..... 19 ..... Fees, \$ .....  
Recorder .....  
.....

Entered of Record May 1988, 10:49 AM Michael R. Lytle Recorder

DAVID P. KING  
ATTORNEY AT LAW  
201 BEAVER DRIVE  
P.O. BOX 1016  
DUBOIS, PA. 15801

County Parcel No. \_\_\_\_\_

## This Deed,

MADE the 8<sup>th</sup> day of February,

in the year nineteen hundred and eighty-nine (1989)

BETWEEN DAVID F. MAHOLTZ and PATTI J. PETERMAN, now married and known as PATTI J. MAHOLTZ, of Sandy Township, Clearfield County, Pennsylvania, as joint tenants with the right of survivorship, parties of the first part, hereinafter referred to as the GRANTORS

A  
N  
D

DAVID F. MAHOLTZ and PATTI J. MAHOLTZ, husband and wife, of Sandy Township, Clearfield County, Pennsylvania, as tenants by the entireties, parties of the second part, hereinafter referred to as the GRANTEEES

WITNESSETH, That in consideration of One and 00/100-----  
-----(\$1.00)----- Dollars,

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

ALL that certain parcel or piece of land lying, situated and being in Sandy Township, Clearfield County, Pennsylvania, bounded and described as follows, to-wit:

BEGINNING at the East corner of Gerald E. Meloon lot on South side of Sloping View Drive; thence along Sloping View Drive, South 56° 51' East 70.9 feet; thence along cul-de-sac by a curve to the left the chord of which is South 34° 25' East 40.0 feet; thence along Russell Ashburn lot South 25° 38' West 117.5 feet; thence along Joseph W. Chick land, North 83° 56' West 153.0 feet; thence through the office lot North 6° 20' West 74.0 feet and North 43° 15' West 41.0 feet; thence along cul-de-sac by a curve to the left the chord of which is North 17° 45' East 19.0 feet; thence along Gerald Meloon lot by a curve to the left the following three chords South 63° 55' East 76.7 feet, North 74° 00' East 29.5 feet and North 52° 55' East 31.5 feet; thence still along Gerald Meloon lot North 33° 09' East 55.0 feet to the place of beginning. Containing 0.55 acre.

EXCEPTING AND RESERVING all exceptions and reservations as per prior deeds, and also subject to a right-of-way for ingress and egress which was included in the conveyance from David J. Reed, et ux., to Robert R. Harris in their Deed dated the 27th day of May, 1986, as recorded in Deed Book 1085, Page 363.

**VERIFICATION**

I, **David F. Maholtz** and **Patti J. Maholtz**, do hereby verify that I have read the foregoing Amended Answer, New Matter and Counterclaim. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 4/8/05

David F. Maholtz  
David F. Maholtz

Patti J. Maholtz  
Patti J. Maholtz

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOSEPH W. CHICK and WANDA J.  
CHICK,

Plaintiffs

vs.

DAVID F. MAHOLTZ and PATTI J.  
MAHOLTZ,

Defendants

: No. 05 - 199 C.D.

: Type of Case: EJECTMENT

: Type of Pleading: PRELIMINARY  
: OBJECTION TO DEFENDANTS' ANSWER,  
: NEW MATTER AND COUNTERCLAIM  
: PURSUANT TO Pa. R.C.P. 1028(a)(2)

: Filed on Behalf of: JOSEPH W. CHICK and  
: WANDA J. CHICK, Plaintiffs

: Counsel of Record for these Parties:

: 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

2cc

01234871  
APR 04 2005

Atty

T. Cherry

W.A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOSEPH W. CHICK and WANDA J.	:
CHICK,	:
Plaintiffs	:
	: No. 05 - 199 C.D.
vs.	:
	:
DAVID F. MAHOLTZ and PATTI J.	:
MAHOLTZ,	:
Defendants	:

**PRELIMINARY OBJECTION TO DEFENDANTS'**  
**ANSWER, NEW MATTER AND COUNTERCLAIM**  
**PURSUANT TO Pa. R.C.P. 1028(a)(2)**

1. Plaintiffs filed a Complaint against the Defendants in this matter on grounds of ejectment.
2. Defendants filed an Answer, New Matter and Counterclaim and averred that a copy of their deed was attached to their Answer, New Matter and Counterclaim as Exhibit "A".
3. That Plaintiffs were purportedly served with a certified copy of the Answer, New Matter and Counterclaim allegedly filed by Defendants on March 14, 2005.
4. That the certified copy of the Answer, New Matter and Counterclaim served upon Plaintiffs did not contain a copy of Defendants' deed as Exhibit "A".
5. That Pa. R.C.P.(i) requires that when a defense is based upon a writing, the pleader shall attach a copy of the writing.
6. That despite the fact that Defendants aver that said writing by way of their deed is attached, no such copy was attached to their pleading.

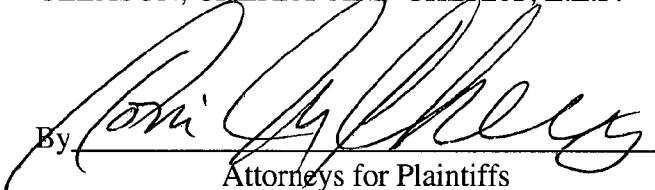
7. Under Pa. R.C.P. 1028(a)(2), a party may preliminarily object by way of a motion to strike off a pleading because of lack of conformity to Rule of Court.
8. That Defendants' Answer, New Matter and Counterclaim is defective and must be stricken.

WHEREFORE, Plaintiffs respectfully request that Defendants' Answer, New Matter and Counterclaim be stricken.

Respectfully submitted,

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

By

  
Toni Gleason  
Attorneys for Plaintiffs

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

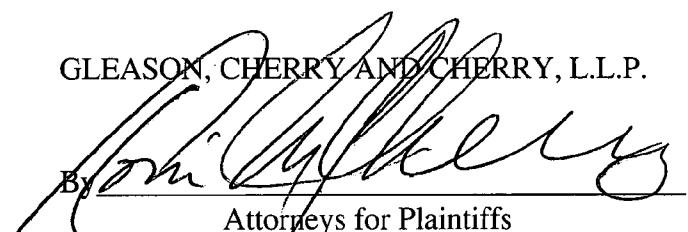
JOSEPH W. CHICK and WANDA J. :  
CHICK, :  
Plaintiffs :  
vs. : No. 05 - 199 C.D.  
DAVID F. MAHOLTZ and PATTI J. :  
MAHOLTZ, :  
Defendants :

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4<sup>th</sup> day of April, 2005, a true and correct copy of Plaintiffs' Preliminary Objection to Defendants' Answer, New Matter and Counterclaim Pursuant to Pa. R.C.P. 1028(a)(2) was served upon MATTHEW B. TALADAY, ESQ., counsel for Defendants, by mailing the same to him by United States First Class Mail, Postage Prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

MATTHEW B. TALADAY, ESQ.  
Hanak, Guido and Taladay  
Attorneys at Law  
498 Jeffers Street  
P. O. Box 487  
DuBois, PA 15801

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

  
Brian J. Gleason  
Attorneys for Plaintiffs

Dated: April 4, 2005

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

JOSEPH W. CHICK and WANDA J. CHICK, Plaintiffs : No. 05 - 199 C.D.  
vs. : Type of Case: EJECTMENT  
DAVID F. MAHOLTZ and PATTI J. MAHOLTZ, Defendants : Type of Pleading: REPLY TO NEW MATTER  
: AND COUNTERCLAIM  
: Filed on Behalf of: JOSEPH W. CHICK  
: and WANDA J. CHICK, Plaintiffs  
: Counsel of Record for these Parties:  
: 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 *01/10/3781* *Atty T. Cherry*  
JUL 14 2005 *2cc*

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOSEPH W. CHICK and WANDA J.	:
CHICK,	:
Plaintiffs	:
	: No. 05 - 199 C.D.
vs.	:
	:
DAVID F. MAHOLTZ and PATTI J.	:
MAHOLTZ,	:
Defendants	:

**REPLY TO NEW MATTER AND COUNTERCLAIM**

AND NOW, come the Plaintiffs, JOSEPH W. CHICK and WANDA J. CHICK, by and through their attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and reply to Defendants' New Matter and Counterclaim as follows:

**NEW MATTER**

14. Plaintiffs reply to Paragraphs 1 through 13 inclusive of Paragraphs 1 through 13 inclusive of the answers to their Complaint as the same have been incorporated into Defendants' New Matter as follows:

Insofar as Paragraphs 1 through 6 inclusive of Plaintiffs' Complaint have been ADMITTED by Defendants in their Answer, no reply is required.

7. DENIED. By way of further answer, Plaintiffs incorporate herein by reference the averments set forth in Paragraph 7 of their original Complaint as if the same were set forth at length herein.

8. DENIED. Defendants are not entitled to exercise possession and control over the lands of the Plaintiffs and have not been in actual, continuous, exclusive, visible, notorious, distinct and hostile possession of the lands of the Plaintiffs for the prescriptive period of twenty-one years so as to give Defendants any right to possession or control over the lands of the Plaintiffs.

9. DENIED. Defendants know that the location of the fence that Plaintiffs erected is on the property line because there are survey markers at the place where Plaintiffs erected the fence that were placed there by Defendants' predecessor in title, which markers were shown to Defendants by their predecessor in title at the time of Defendants' purchase of their land. It is further DENIED that Defendants have taken no affirmative action to prevent the Plaintiffs from constructing the fence. On the contrary, the shed extension that Defendants constructed is located on lands of the Plaintiffs and has prevented Plaintiffs from completing the erection of their fence.

10. DENIED. Defendants have failed and refused to remove the outbuilding or shed from Plaintiffs' property and have wholly failed and/or refused to repair the damage caused to Plaintiffs' property by Defendants. There can be no amicable resolution of Plaintiffs' claims until such time as Defendants remove the outbuilding or shed from Plaintiffs' property and repair the damages caused thereto.

#### **Count II - Trespass**

11. Plaintiffs incorporate herein by reference the foregoing responses to Paragraphs 1 through 10 inclusive as previously set forth in this Reply to New Matter.

12. DENIED. Defendants have destroyed and/or damaged Plaintiffs' property by felling Plaintiffs' trees and by clearing Plaintiffs' land and by erecting thereon a shed. Defendants cannot deny their liability nor can they assert a claim of adverse possession because Defendants have not been in actual, continuous, exclusive, visible, notorious, distinct and hostile possession of Plaintiffs' land for the prescriptive period of twenty-one years nor can they claim that any predecessor in title of theirs has been in actual, continuous, exclusive, visible, notorious, distinct and hostile possession of the lands of the Plaintiffs for such a period of time or for such period in addition to the time of the Defendants which would give Defendants a claim to the land superior to that of the Plaintiffs.

13. DENIED. As a result of maintaining the above-described shed or outbuilding on Plaintiffs' property and destroying Plaintiffs' trees and clearing Plaintiffs' land, Defendants have deprived Plaintiffs of the use and enjoyment of their property to Plaintiffs' damage in an amount to be determined. Defendants cannot assert any reason which would relieve them of their obligation to pay damages to Plaintiffs nor can they deny their liability nor assert any claim of ownership over the lands of the Plaintiffs for the reasons set forth above and the averments contained in Paragraph 12 of this Reply to New Matter are incorporated herein by reference as if the same were set forth at length herein.

15. DENIED as stated. Defendants' predecessors in title obtained ownership of a portion of the premises now owned by Defendants in 1977 but did not have ownership of all of the premises that they sold to Defendants until 1987. The original shed that the Defendants later extended to encroach upon the lands of the Plaintiffs was not even erected by Defendants'

predecessor in title until after 1987 as the shed is located on the eastern boundary line of lands not acquired by Defendants' predecessor in title until 1987.

**16. DENIED.** Defendants' predecessors in title had never been in actual, continuous, exclusive, visible, notorious, distinct and hostile possession of any lands legally owned by Plaintiffs at any time during their ownership of the same. On the contrary, when Defendants' predecessors in title purchased their land, they caused a survey to be performed and confirmed with Plaintiffs that the pins were properly placed and that Plaintiffs were in agreement with the lines that Defendants' predecessors in title had caused to be surveyed. At all times during the period when Defendants' predecessors in title were the owners of the premises now owned by Defendants, the survey pins were in plain sight and the boundary lines resulting from the survey were respected by Plaintiffs and Defendants' predecessors in title. Defendants' predecessors in title never trimmed any of Plaintiffs' trees and did not begin to mow any area not belonging to Defendants' predecessors in title until 1987 with the consent of Plaintiffs.

However, at no time did Defendants' predecessor in title ever claim to own the property he was mowing. On the contrary, he only mowed the area above the shed in his backyard. He never mowed behind the shed on Plaintiffs' property because there was no grass behind the shed that Defendants' predecessor had erected and the area past the shed that was owned by the Plaintiffs was composed of woods and unenclosed woodlands.

Prior to the time that Defendants' predecessors in title conveyed the premises to Defendants, Defendants' predecessors in title walked Defendants along the surveyed boundaries and specifically pointed out the survey pins that were openly visible at the time prior to the conveyance to Defendants in February of 1988. Evidence that Defendants'

predecessors in title made no claim to the lands owned by Plaintiffs and only intended to convey to Defendants the lands contained within the survey is the fact that the survey is specifically mentioned in the deed and made a part of the description of the premises that Defendants' predecessors in title were conveying to Defendants. The deed does not contain any description of any additional lands and; in particular, does not contain any description of lands owned by Plaintiffs because Defendants' predecessor in title never attempted to claim the lands owned by Plaintiffs which are the subject of this lawsuit as their own property. It was not until sometime after Defendants took possession of the premises that any attempt to claim the lands of the Plaintiffs was made. Consequently, Defendants cannot argue that they have met the prescriptive period no matter what use they have made of Plaintiffs' lands.

**17. DENIED.** Plaintiffs never posted "No Hunting" signs on any trees located on their property. While it is true that Plaintiffs' son and his grandfather placed "No Trespassing" signs on various trees to prevent hunters from trespassing on the property prior to 1988, it is DENIED that the trees were boundary lines or that any indication was ever given that the trees were boundary lines. On the contrary, it is simply easier to put signs on a tree than to erect separate signs on the ground.

**18. DENIED.** Plaintiffs are without knowledge as to when Defendants constructed the 8' by 16' addition and can neither admit nor deny that the same was constructed in the Fall of 1994 because Plaintiffs have been unable to discover any building permit issued to Defendants by the Township of Sandy for the construction of such an addition in the Fall of 1994 and strict proof of same is required at trial. It is further DENIED that the addition was constructed on any area that was recognized by Plaintiffs as being on Defendants' property. On the contrary,

the property upon which Defendants constructed the addition is owned by the Plaintiffs and Plaintiffs have always claimed the same as their own and have never relinquished their claim of ownership. Plaintiffs had no knowledge of the construction of the addition until they had occasion to discover the addition in the Spring of 2004 and once they noticed the addition and verified that it was upon their lands, they most certainly did make complaint to Defendants.

**19. DENIED.** Defendants continue to use and maintain the area that is owned by the Plaintiffs to this day because they have refused to remove the 8' by 16' addition and have prevented Plaintiffs from completing the fence over their lands. Defendants have no right to access the lands of the Plaintiffs and by the very description of their lands contained in the deed attached to their Amended Answer, New Matter and Counterclaim, Defendants know that their lands only extend to the boundary lines set forth in the survey which is contained in their deed and made a part thereof. Defendants further know that their southern boundary line is the northern boundary line of Plaintiffs' land as the same is clearly set forth in the description of the property conveyed to them by the deed which is attached to their Amended Answer, New Matter and Counterclaim as Exhibit "A"

WHEREFORE, Plaintiffs demand judgment against Defendants for money damages and for an order directing Defendants to remove the addition and all other obstacles placed by them on Plaintiffs' property.

#### **Laches**

**20. DENIED** as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that laches as an equitable remedy is available to

Defendants as a defense in this case as this is a claim for ejectment brought at law within the statutory period after Plaintiffs verified their boundaries and that Defendants have trespassed onto the lands of the Plaintiffs and erected thereon an addition and other obstacles for which they have no defense.

**21. DENIED.** Defendants cannot claim a prejudice resulting from their own wrongdoing and cannot blame Plaintiffs for the fact that Defendants wrongfully erected an addition and other obstacles upon the land of the Plaintiffs. Defendants knew when they erected the addition that they did not own the land upon which they put the addition because their deed and the survey attached to and recorded as a part of said deed clearly show their boundaries. Moreover, Defendants were shown the survey pins when they purchased their property and those survey pins are still located on the premises and prove that Defendants knew that they were encroaching upon the lands of the Plaintiffs when they erected said addition. Their actions in erecting the buildings and structures and in felling trees owned by Plaintiffs was knowing, willful and intentional giving Plaintiffs a right to punitive damages.

### **REPLY TO COUNTERCLAIM - IN EJECTMENT**

#### **Consentable Boundary**

**22.** Plaintiffs incorporate herein by reference the responses they have set forth in Paragraphs 14 through 21 inclusive of this Reply as if the same had been set forth at length herein.

**23. DENIED.** Plaintiffs' Complaint seeks to drive Defendants off Plaintiffs' land and to force Defendants to remove buildings and other obstacles they have wrongfully erected upon

the lands owned by Plaintiffs. Plaintiffs' Complaint also seeks damages from Plaintiffs for the property damage their encroachment upon the land of Plaintiffs has caused Plaintiffs to suffer.

**24.** DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that the doctrine of "Consentable Boundary" has any application to the case at hand or that such doctrine could be used as a defense by Defendants to excuse their wrongdoing. In discussing the requirements of a consentable boundary line, the Superior Court in the case of Newton v. Smith, 40 Pa.Super. 615, 616 (1909) stated that: "In order, however, to make such a line binding, it is necessary that there should be, first, a dispute; second, the establishment of a line settling the dispute; third, the consent of both parties to that line and the giving up of their respective claims which are inconsistent therewith." In order for Defendants to be able to use the defense of a consentable boundary line and to bind the Plaintiffs to such a line, all of the foregoing elements must be present and it must be shown to be the intention of the parties to settle permanently a dispute or uncertainty as to the boundary in question. See Ross v. Golden, 146 Pa.Super. 417, 22 A.2d 310 (1941) affirmed by the Supreme Court at 344 Pa. 487, 25 A.2d 700 (1942).

The only dispute that has ever arisen between the parties is the dispute which has given rise to the instant action. As soon as Plaintiffs discovered that Defendants had encroached upon their lands, they notified Defendants and when Defendants refused to remove the offending structure and obstacles, commenced the instant action. There has never been a new boundary line established between the lands of Defendants and the lands of Plaintiffs and Plaintiffs have never consented to the establishment of a new boundary line nor will they ever consent to the establishment of a new boundary line. On the contrary, Plaintiffs have filed the

instant action to enforce the proper boundary lines as established not only by Plaintiffs' survey but by the survey attached to Defendants' deed which Defendants have made a part of their Amended Answer, New Matter and Counterclaim as Exhibit "A" and by which Defendants admit the superior title of the Plaintiffs.

It is further DENIED that Defendants' predecessors in title ever exercised any dominion or control over the lands of the Plaintiffs but at all times the said predecessors in title acknowledged the superior title of the Plaintiffs to the land in question. Defendants cannot therefore rely upon any actions of their predecessors in title to claim ownership of the subject premises by adverse possession. Defendants knew and acknowledged the proper boundary line and the limits of their property and the superior title of the Plaintiffs when they took title through the deed which is attached to their Amended Answer as Exhibit "A". In that deed is a description clearly referencing that Defendants' land is bordered by the lands of the Plaintiffs and that the only land conveyed to Defendants by their predecessors in title is the land which is described in said deed and shown on the survey map included in said deed and made a part thereof.

Plaintiffs deny that there was any other boundary line recognized by Plaintiffs and Defendants' predecessors in title other than the boundary line reflected in the description contained in Defendants' deed or by the survey map attached thereto. Plaintiffs deny that they ever marked any line of trees for any reason and at no time did Plaintiffs ever consent to their boundary being a line of trees or being any other line than the line marked on the ground by the survey pins and the line reflected in the deeds and survey maps of record.

instant action to enforce the proper boundary lines as established not only by Plaintiffs' survey but by the survey attached to Defendants' deed which Defendants have made a part of their Amended Answer, New Matter and Counterclaim as Exhibit "A" and by which Defendants admit the superior title of the Plaintiffs.

It is further DENIED that Defendants' predecessors in title ever exercised any dominion or control over the lands of the Plaintiffs but at all times the said predecessors in title acknowledged the superior title of the Plaintiffs to the land in question. Defendants cannot therefore rely upon any actions of their predecessors in title to claim ownership of the subject premises by adverse possession. Defendants knew and acknowledged the proper boundary line and the limits of their property and the superior title of the Plaintiffs when they took title through the deed which is attached to their Amended Answer as Exhibit "A". In that deed is a description clearly referencing that Defendants' land is bordered by the lands of the Plaintiffs and that the only land conveyed to Defendants by their predecessors in title is the land which is described in said deed and shown on the survey map included in said deed and made a part thereof.

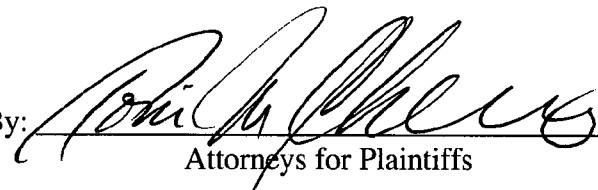
Plaintiffs deny that there was any other boundary line recognized by Plaintiffs and Defendants' predecessors in title other than the boundary line reflected in the description contained in Defendants' deed or by the survey map attached thereto. Plaintiffs deny that they ever marked any line of trees for any reason and at no time did Plaintiffs ever consent to their boundary being a line of trees or being any other line than the line marked on the ground by the survey pins and the line reflected in the deeds and survey maps of record.

WHEREFORE, Plaintiffs demand judgment against Defendants for money damages and for an order directing Defendants to remove all buildings and other obstacles placed by them on Plaintiffs' property.

Respectfully submitted,

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

By:

  
John H. Gleason  
Attorneys for Plaintiffs

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

Personally appeared before me, a Notary Public in and for the County and State aforesaid, JOSEPH W. CHICK and WANDA J. CHICK, who, being duly sworn according to law, depose and say that the facts set forth in the foregoing Reply to New Matter and Counterclaim are true and correct to the best of their knowledge, information and belief.

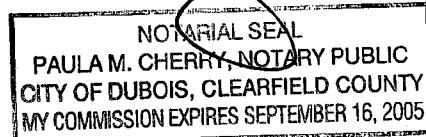
Joseph W. Chick

Joseph W. Chick

Wanda J. Chick

Wanda J. Chick

Sworn to and subscribed before me this 8<sup>th</sup> day of July, 2005.



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOSEPH W. CHICK and WANDA J.	:
CHICK,	:
Plaintiffs	:
	:
vs.	:
	:
DAVID F. MAHOLTZ and PATTI J.	:
MAHOLTZ,	:
Defendants	:

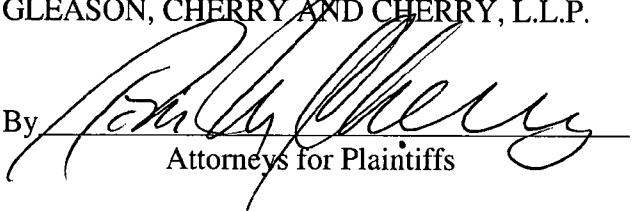
**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of July, 2005, a true and correct copy of Plaintiffs' Reply to New Matter and Counterclaim was served upon MATTHEW B. TALADAY, ESQ., counsel for Defendants, by mailing the same to him by United States First Class Mail, Postage Prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

MATTHEW B. TALADAY, ESQ.  
Hanak, Guido and Taladay  
Attorneys at Law  
498 Jeffers Street  
P. O. Box 487  
DuBois, PA 15801

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

By

  
Attorneys for Plaintiffs

Dated: July 8, 2005

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

JOSEPH W. CHICK and WANDA J.  
CHICK,

Plaintiffs

vs.

DAVID F. MAHOLTZ and PATTI J.  
MAHOLTZ,

Defendants

: No. 05 - 199 C.D.

: Type of Case: EJECTMENT

: Type of Pleading: CERTIFICATE OF  
READINESS AND PRAECIPE FOR CASE  
TO BE LISTED FOR NON-JURY TRIAL

: Filed on Behalf of: JOSEPH W. CHICK  
and WANDA J. CHICK, Plaintiffs

: Counsel of Record for these Parties:

: 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 *cc Aty, Cherry*  
0/230cm  
MAR 07 2007

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL TRIAL LISTING

CERTIFICATE OF READINESS

TO THE PROTHONOTARY

(To be executed by Trial  
Counsel Only)

3/07/07  
DATE PRESENTED

CASE NUMBER  
No. 05 - 199 C.D.

TYPE TRIAL REQUESTED

ESTIMATED TRIAL TIME

( ) Jury (X) Non-jury

Date Complaint filed:

( ) Arbitration

1 DAY(S)

2/11/05

PLAINTIFF(S)

JOSEPH W. CHICK and WANDA J. CHICK

( )

DEFENDANT(S)

DAVID F. MAHOLTZ and PATTI J. MAHOLTZ

( ) Check Block  
if a Minor  
is a Party  
( ) to the Case

JURY DEMAND FILED BY:

DATE JURY DEMAND FILED:

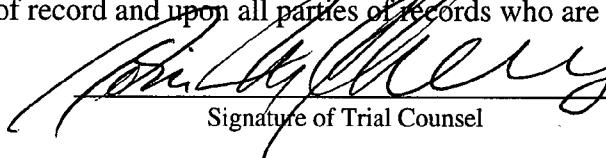
AMOUNT AT ISSUE CONSOLIDATION

DATE CONSOLIDATION ORDERED

over  
\$25,000.00 ( ) Yes (X) No

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST:

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

  
Signature of Trial Counsel

COUNSEL WHO WILL ACTUALLY TRY THE CASE

FOR THE PLAINTIFFS  
TONI M. CHERRY, ESQ.

TELEPHONE NUMBER  
(814) 371-5800

FOR THE DEFENDANTS  
MATTHEW B. TALADAY, ESQ.

TELEPHONE NUMBER  
(814) 371-7768

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOSEPH W. CHICK and WANDA J.	:
CHICK,	:
Plaintiffs	:
	: No. 05 - 199 C.D.
vs.	:
	:
DAVID F. MAHOLTZ and PATTI J.	:
MAHOLTZ,	:
Defendants	:

**PRAECIPE FOR CASE TO BE LISTED FOR**  
**NON-JURY TRIAL**

TO WILLIAM A. SHAW, PROTHONOTARY

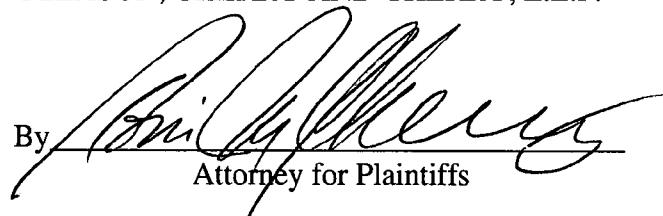
Sir:

Kindly place the above-captioned case on the non-jury trial list. Certificate of Readiness has been filed.

Respectfully submitted,

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

By



Attorney for Plaintiffs

Dated: March 7, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOSEPH W. CHICK and WANDA J.	:
CHICK,	:
Plaintiffs	:
	: No. 05 - 199 C.D.
vs.	:
	:
DAVID F. MAHOLTZ and PATTI J.	:
MAHOLTZ,	:
Defendants	:

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of March, 2007, a true and correct copy of the Certificate of Readiness and Praecipe For Case to be Listed for Non-Jury Trial was served upon counsel for Defendants, MATTHEW B. TALADAY, ESQ., by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

MATTHEW B. TALADAY, ESQ.  
Hanak, Guido and Taladay  
Attorneys at Law  
P. O. Box 487  
DuBois, PA 15801

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

By

Attorneys for Plaintiffs

Dated: March 7, 2007

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400 Atlantic Avenue

Boston, Massachusetts 02110-3300

Telephone (617) 522-2600

Fax (617) 522-2602

C. O. D. 10000

CLERK'S OFFICE, STATE OF MASSACHUSETTS

CLERK OF THE DISTRICT COURT, BOSTON

400 Atlantic Avenue

CLERK'S OFFICE, STATE OF MASSACHUSETTS, CIRCUIT AND DISTRICT COURTS

CLERK OF THE DISTRICT COURT, BOSTON, MASSACHUSETTS

400 Atlantic Avenue, Boston, Massachusetts 02110-3300

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CLERK'S OFFICE, STATE OF MASSACHUSETTS, CIRCUIT AND DISTRICT COURTS

CLERK OF THE DISTRICT COURT, BOSTON, MASSACHUSETTS

400 Atlantic Avenue, Boston, Massachusetts 02110-3300

FILED

MAR 07 2007

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

JOSEPH W. CHICK and WANDA J. : CIVIL ACTION - AT LAW  
CHICK,

Plaintiffs : No. 05-199-C.D.

vs. : Type of Pleading:

DAVID F. MAHOLTZ and PATTI J. : Praeclipe for  
MAHOLTZ, : Discontinuance

Defendants : Filed on Behalf of:

Plaintiffs

Counsel of Record for This  
Party:

Toni M. Cherry, Esq.  
Supreme Court No. 30205  
GLEASON, CHERRY AND  
CHERRY, LLP  
One North Franklin Street  
P. O. Box 505  
DuBois, PA 15801

814-371-5800

FILED No CC.  
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MAY 07 2007 issued to  
William A. Shaw  
Prothonotary/Clerk of Courts  
M. Taladay  
Copy to C/A

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

JOSEPH W. CHICK and WANDA J. :  
CHICK, :  
Plaintiffs :  
vs. : No. 05-199-C.D.  
DAVID F. MAHOLTZ and PATTI J. :  
MAHOLTZ, :  
Defendants :  
:

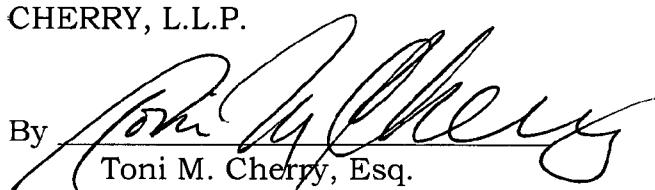
**PRAECIPE FOR DISCONTINUANCE**

TO THE PROTHONOTARY:

Kindly mark the above case settled and discontinued.

GLEASON, CHERRY and  
CHERRY, L.L.P.

By

  
Toni M. Cherry, Esq.  
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

**Joseph W. Chick**  
**Wanda J. Chick**

**Vs.**  
**David F. Maholtz**  
**Pattie J. Maholtz**

**No. 2005-00199-CD**

**CERTIFICATE OF DISCONTINUATION**

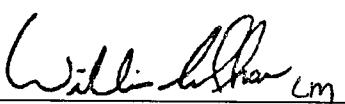
Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on May 7, 2007, marked:

Settled and Discontinued

Record costs in the sum of \$85.00 have been paid in full by Gleason Cherry & Cherry.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 7th day of May A.D. 2007.

  
\_\_\_\_\_  
William A. Shaw, Prothonotary