

05-199-CD
Joseph Chick et al vs. David Maholtz et al

LR2, et al.

2005-199-CD

Joseph Chick et al vs. David Maholtz et al

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: 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/w
William A. Shaw

Prothonotary/Clerk of Courts

3 cert to ATT

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

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: No. 05 - _____ C.D.
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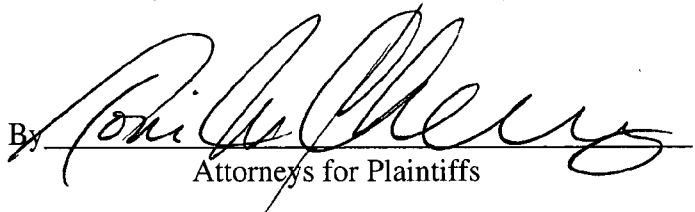
NOTICE

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 
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.
:
:
:
:

COMPLAINT

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.

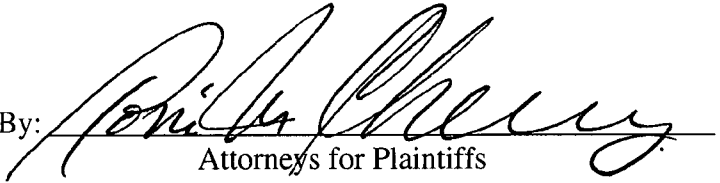
13. As a result of maintaining the above-described shed or outbuilding on Plaintiffs' property and destroying Plaintiffs' trees, Defendants have deprived Plaintiffs of the use and enjoyment of their property to Plaintiffs' damage in an amount to be determined.

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).

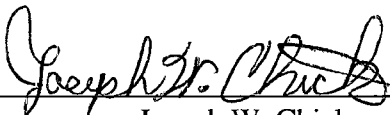
Respectfully submitted,

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

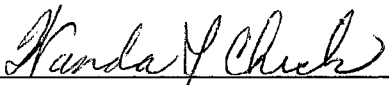
By: 
Attorneys for Plaintiffs

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.

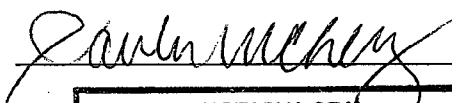


Joseph W. Chick

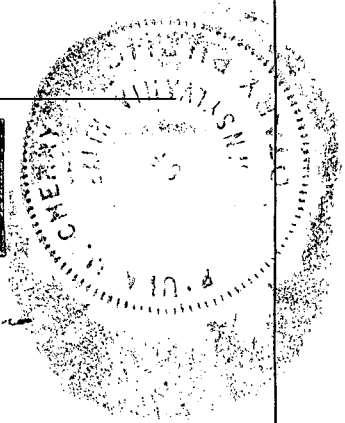


Wanda J. Chick

Sworn to and subscribed before me this 9th day of February, 2005.



NOTARIAL SEAL
PAULA M. CHERRY, NOTARY PUBLIC
CITY OF DUBOIS, CLEARFIELD COUNTY
MY COMMISSION EXPIRES SEPTEMBER 16, 2005



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 Pine 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 50½ 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.

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.

442 B

NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1966", I/we, the undersigned grantees/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:

Paula M. Cherry

Paula M. Cherry

This

23rd day of May, 1982

Joseph L. Chick

Mary H. Chick

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:

Laurel M. Cherry Mary Jo Hido (SEAL)

Laurel 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

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

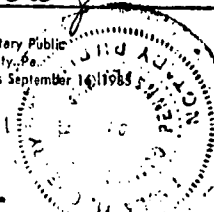
SS.

On this, the 23rd 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 14, 1985



AFFIDAVIT NO. 12601

STATE OF PENNSYLVANIA: SS
COUNTY OF CLEARFIELD: SS
RECORDED in the Recorder's Office in and for said
County in Deeds and Records Book No. 889
Page 457

WITNESSES my hand and seal of office this
26th day of May A.D. 19 83

Tim Morgan Recorder

CLEARFIELD COUNTY
ENTERED OF RECORD
TIME 2:32 PM 526-83
BY Paula M. Cherry
FEES 14.00
TIM MORGAN, Recorder

My Commission Expires
First Monday in January 1984

Entered of Record 526 19 83, 2:37 PM 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

William A. Shaw
Prothonotary/Clerk of Courts

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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 14th 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
6/3:30 PM
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.

DAVID F. MAHOLTZ and PATTI J.
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CIVIL ACTION - AT LAW

No. 05-199-C.D.

Type of Pleading:

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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.

FILED

APR 13 2005

WJ 10:30 am
William A. Shaw
Prothonotary/Clerk of Courts
no c/c.

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

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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.

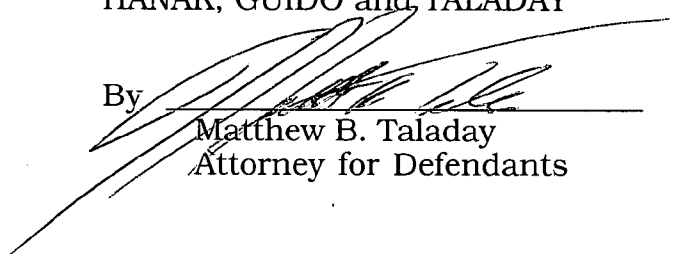
WHEREFORE, it is respectfully requested that the Court enter an Order declaring that the historically recognized consentable

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

Respectfully submitted,

HANAK, GUIDO and TALADAY

By

A large, stylized handwritten signature in black ink, appearing to read 'Matthew B. Taladay', is written over a horizontal line.

Matthew B. Taladay
Attorney for Defendants

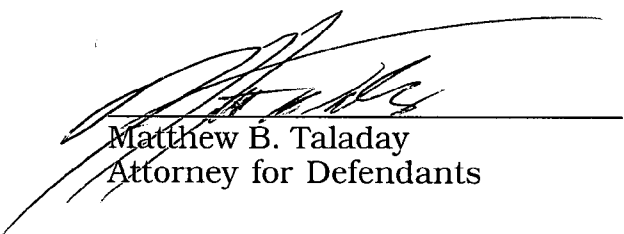
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

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. _____

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 suveyed 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.

EXHIBIT "A"

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 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:

Paul E Cherry

David F Maholtz
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.

Scaled 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.

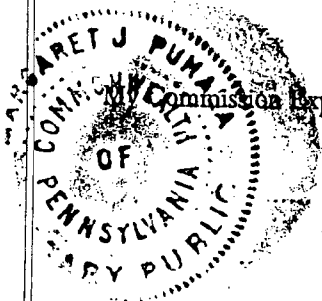
On this, the 18th day of February, 1988, before me, a Notary Public, the undersigned officer, personally appeared David J. Reed and Donna M. Reed, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same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

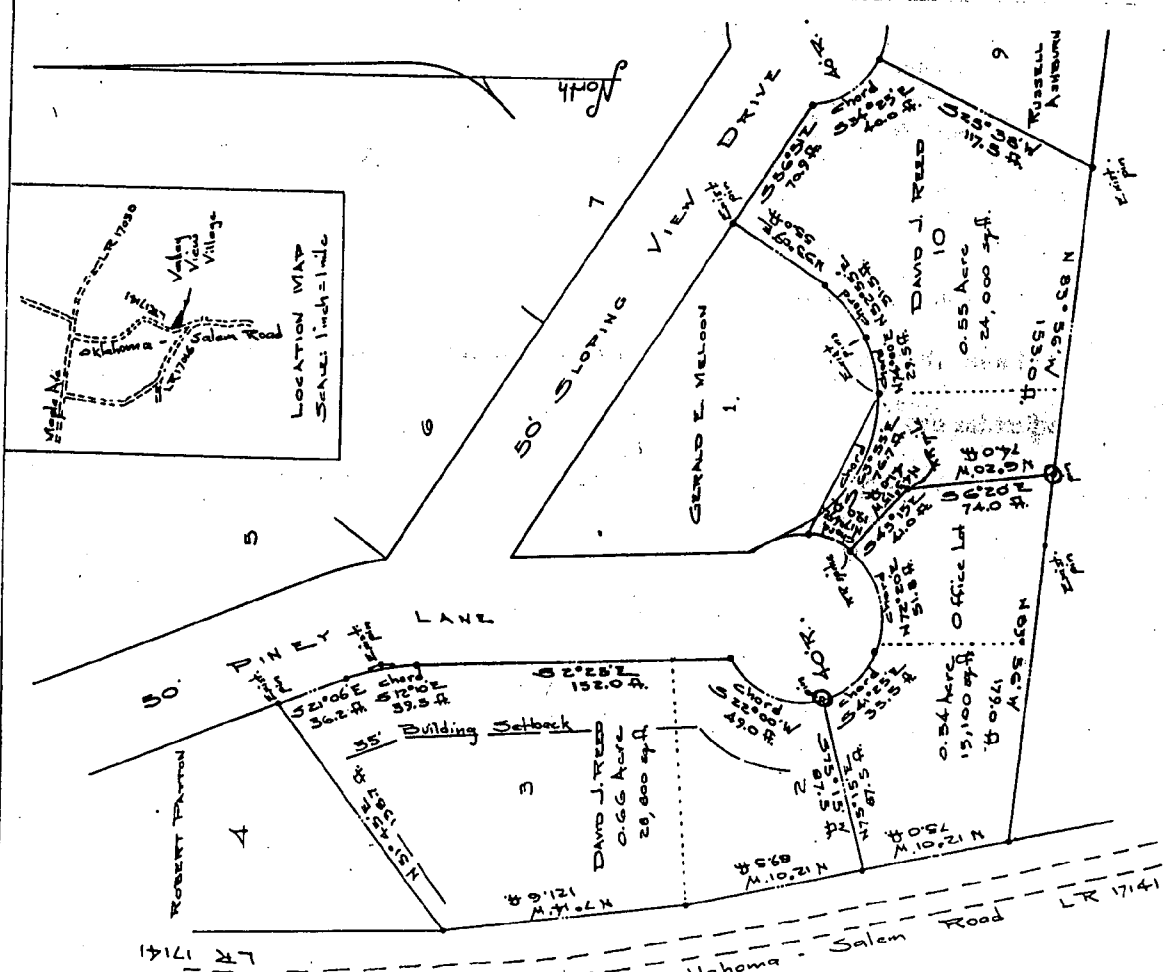
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

MARGARET J. PUHALA, NOTARY PUBLIC
DuBOIS, CLEARFIELD COUNTY

MY COMMISSION EXPIRES OCT. 20, 1990
Member, Pennsylvania Association of Notaries

Margaret J. Puhala





JOSEPH W CHICK

Know all men by these presents that (Subj) David J. Reed County, Pennsylvania, for (myself, executor), (my-or) heirs, executors, administrators, assigns do hereby adopt this as (my-or) plan of lots for property owned by (me-or) in Sandy Township, Clearfield County, Pennsylvania and for divers advantages accruing to (me-or) do hereby dedicate for public use for highway purposes the streets shown upon this plan with the same force and effect as if the same had been agreed through legal proceedings, and (I, we) further do hereby consent and agree to and by these presents to release and discharge the said Sandy Township, its successors and heirs from the appropriation of said ground for public highways and the physical grading thereof and any grades that may be established.

This adoption, dedication, and release shall be binding upon (me-or) (my-or) heirs, executors, administrators, assigns and purchasers of lots in this plan.

In witness whereof (I, we) here affix to these presents (my-or) hands and seals this 8 day of May, 1976.

Attorney: Joseph W. Chick

STATE OF PENNSYLVANIA : SS
COUNTY OF CLEARFIELD : SS

Before me, the undersigned, Notary Public in and for said state and county, personally appeared David J. Reed and acknowledged the foregoing adoption, dedication and release to be their act and deed and desired the same be recorded as such.

WITNESS my hand and notary seal this 8 day of May, 1976.

Notary Public
My Commission Expires 12/31/1980

The Planning Commission of Sandy Township, Clearfield County, hereby approves this plan. 5/11/76
David J. Reed Chairman

The Governing Body of Sandy Township, Clearfield County, hereby gives public notice that in approving this plan for recording purposes only, the municipality assumes no obligation, legal or otherwise, expressed or implied, either to accept said streets as official streets or roads, grade, pave and install the streets in said plan or to construct sewers thereon, or to install any other such service ordinarily installed in official streets or roads.

Approved by the Governing Body of Sandy Township, Clearfield County, Pennsylvania
by a resolution adopted this 10 day of May, 1976.
Joseph W. Chick Secretary

I, Gary B. Thurston, a registered Surveyor in the Commonwealth of Pennsylvania do hereby certify that this plan correctly represents the lots, lands, streets, alleys and highways as surveyed and plotted by me for the owner or owners.

Gary B. Thurston Registration No. 16566-E
Surveyor

Note:
Original survey Nov. 13, 1975
by E. James McNight

Approved May 27, 1976

LAUREY T. REED SUBDIVISION
VALLEY VIEW VILLAGE
LOTS: 2, 3, 10, & Office Lot
BEING RE-DIVIDED INTO
3, 10, & Office Lot
SANDY TOWNSHIP CLEARFIELD CO., PA.

SCALE: 1 inch = 60 feet
MAY 3, 1976
GARY B. THURSTON
SURVEYOR

State of _____ } ss.
County of _____ }

VOL 1209 PAGE 271

On this, the _____ day of _____, 19____, before me
the undersigned officer, personally appeared
known to me (or satisfactorily proven) to be the person _____ whose name _____ subscribed to the within
instrument, and acknowledged that _____ executed the same for the purpose therein
contained.

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

My Commission Expires _____

032494
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE
REALTY TRANSFER TAX MAR-1'88
PS.11352
879.00

CLEARFIELD COUNTY
ENTERED OF RECORD
TIME 10:49 AM 3-1-88
BY Paul E Cherry
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

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 _____, 19____

Tax, \$

Fees, \$

Recorder

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

Entered of Record Mar 1 1988, 10:49am Michael R. Lytle Recorder

879.00
439.50
439.50
DUBOIS
SUNDY TWP



County Parcel No. _____

This Deed,

MADE the 8th 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 GRANTEES

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

012:34871
APR 04 2005

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	:	

**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.

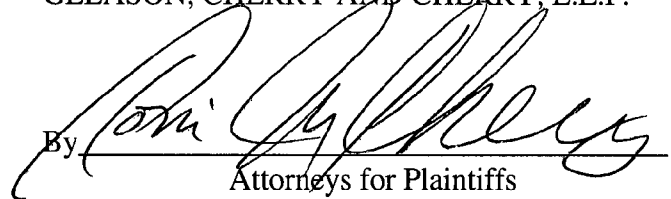
7. Under Pa. R.C.P. 1028(a)(2), a party may preliminarily object by way of a motion to strike off a pleading because of lack of conformity to Rule of Court.

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 
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 - 199 C.D.
:
:
:

CERTIFICATE OF SERVICE

I hereby certify that on this 4th 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.

By 

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

vs.

DAVID F. MAHOLTZ and PATTI J.
MAHOLTZ,

Defendants

: No. 05 - 199 C.D.

: Type of Case: EJECTMENT

: 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

010:37/31
JUL 14 2005

2cc
Amy T. Cherry

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.

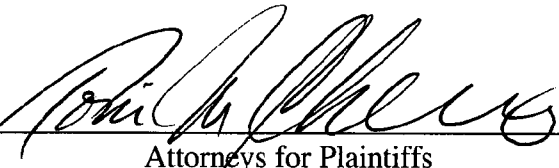
It is further DENIED that Defendants' predecessors in title ever exercised any dominion or control over the lands of the Plaintiffs but at all times the said predecessors in title acknowledged the superior title of the Plaintiffs to the land in question. Defendants cannot therefore rely upon any actions 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.

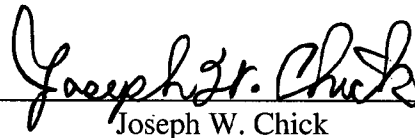
Respectfully submitted,

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

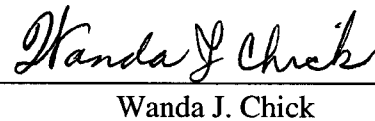
By: 
Attorneys for Plaintiffs

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.



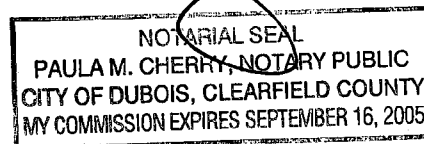
Joseph W. Chick



Wanda J. Chick

Sworn to and subscribed before me this 8th 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

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

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of July, 2005, a true and correct copy of

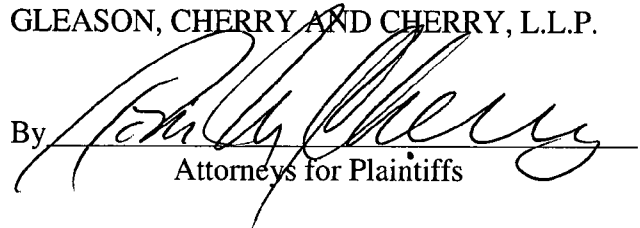
Plaintiffs' Reply to New Matter and Counterclaim was served upon MATTHEW B.

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

CA

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.

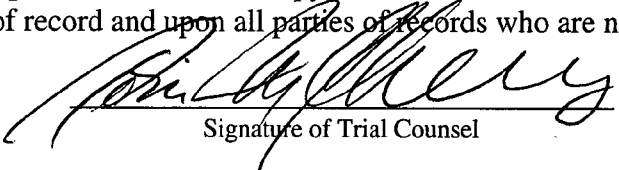
: Attorneys at Law
: P. O. Box 505
: One North Franklin Street
: DuBois, PA 15801

: (814) 371-5800

FILED *icL Atty Cherry*
9/2:30 am
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 () Jury (X) Non-jury () Arbitration	ESTIMATED TRIAL TIME <u>1 DAY(S)</u>
Date Complaint filed: 2/11/05		
PLAINTIFF(S) JOSEPH W. CHICK and WANDA J. CHICK		
DEFENDANT(S) DAVID F. MAHOLTZ and PATTI J. MAHOLTZ		
ADDITIONAL DEFENDANT(S)		() Check Block if a Minor is a Party to the Case
JURY DEMAND FILED BY:		DATE JURY DEMAND FILED:
AMOUNT AT ISSUE over \$25,000.00	CONSOLIDATION () Yes (X) No	DATE CONSOLIDATION ORDERED
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

vs.

DAVID F. MAHOLTZ and PATTI J.
MAHOLTZ,

Defendants

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

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PRAECIPE FOR CASE TO BE LISTED FOR
NON-JURY TRIAL

TO WILLIAM A. SHAW, PROTHONOTARY

Sir:

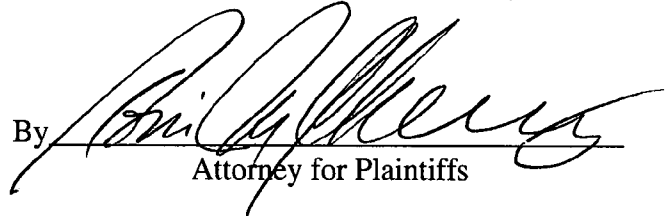
Kindly place the above-captioned case on the non-jury trial list. Certificate of

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	:	

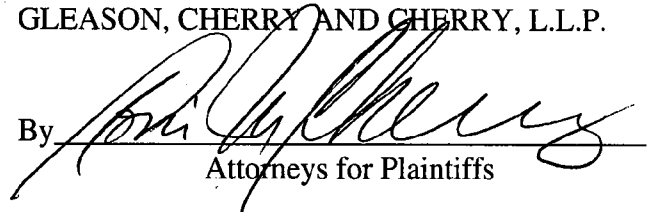
CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 2007, a true and correct copy of the Certificate of Readiness and Praecept 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

4-3-07

IN RE: [Illegible] [Illegible] [Illegible] [Illegible] [Illegible] [Illegible] [Illegible] [Illegible] [Illegible] [Illegible]

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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.
CHICK,

Plaintiffs

vs.

DAVID F. MAHOLTZ and PATTI J.
MAHOLTZ,

Defendants

CIVIL ACTION - AT LAW

No. 05-199-C.D.

Type of Pleading:

Praecipe for
Discontinuance

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.

m/9:55 am 1 Cert of disc
MAY 07 2007 issued to

William A. Shaw
Prothonotary/Clerk of Courts

(m) Atty. T. Cherry
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

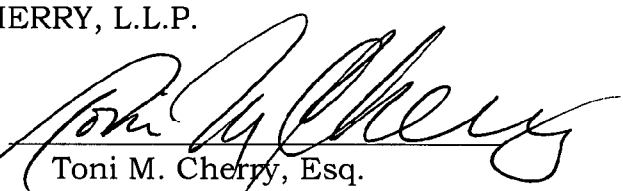
PRAECIPE FOR DISCONTINUANCE

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

LE

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Joseph W. Chick
Wanda J. Chick

Vs.

No. 2005-00199-CD

David F. Maholtz
Pattie J. Maholtz

CERTIFICATE OF DISCONTINUATION

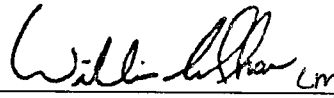
Commonwealth of PA
County of Clearfield

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