

05-361-CD  
Leo Wise vs. Corey J. Wise et al

Leo Wise v. Corey Wise et al  
2005-361-CD

Date: 06/08/2005

Clearfield County Court of Common Pleas

User: CROWLES

Time: 03:03 PM

ROA Report

Page 1 of 1

Case: 2005-00361-CD

Current Judge: Fredric Joseph Ammerman

Leo P. Wise vs. Corey J. Wise, Craig L. Wise, Johnston's Nursery

Civil Other

Date		Judge
03/16/2005	New Case Filed.	No Judge
	✓ Filing: Civil Complaint Paid by: Naddeo, James A. (attorney for Wise, Leo P.) Receipt number: 1897609 Dated: 03/16/2005 Amount: \$85.00 (Check) 1 Cert. to Atty.	No Judge
03/31/2005	✓ Praecipe For Entry of Appearance, filed on behalf of Corey J. Wise and Craig L. Wise t/d/b/a Johnston's Nursery, Defendants. filed by s/ John Sughrue, Esquire. 3CC Atty	No Judge
	✓ Acceptance of Service, John Sughrue accepts service of Plaintiff's Complaint on behalf of Defs. Filed by s/ John Sughrue, Esquire. 2CC Atty	No Judge
04/20/2005	✓ Preliminary Objections, filed by Atty. Sughrue 3 Cert. to Atty.	No Judge
05/25/2005	✓ Praecipe To Schedule Argument on Preliminary Objections, filed by s/ John Sughrue, Esquire. 3CC to Atty Sughrue	Fredric Joseph Ammerman
05/26/2005	✓ Order, AND NOW, this 26th day of May, 2005, on motion of Defendants, Argument on Preliminary Objections filed by Defendants shall be heard on the 15th day of June, 2005 at 1:30 p.m. in Court Room No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty Sughrue	Fredric Joseph Ammerman

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

LEO P. WISE,  
an individual,  
Plaintiff,

v.

COREY J. WISE and  
CRAIG L. WISE, t/d/b/a  
JOHNSTON'S NURSERY,  
Defendants.

No. 05 - 361 - CD

Type of Pleading:

**COMPLAINT TO REFORM  
SETTLEMENT AGREEMENT**

Filed on behalf of:  
Plaintiff

Counsel of Record for  
this party:

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

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

FILED

01/04/05  
MAR 16 2005

William A. Shaw  
Prothonotary/Clerk of Courts

Att'y Naddeo  
Att'y pd.  
85.00

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

LEO P. WISE,  
an individual,  
Plaintiff,

v.

COREY J. WISE and  
CRAIG L. WISE, t/d/b/a  
JOHNSTON'S NURSERY,  
Defendants.

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No. 05 - - CD

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 Complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

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

(814) 765-2641, ext. 5982

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

LEO P. WISE,  
an individual,  
Plaintiff,

v.

COREY J. WISE and  
CRAIG L. WISE, t/d/b/a  
JOHNSTON'S NURSERY,  
Defendants.

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No. 05 - - CD

**COMPLAINT TO REFORM SETTLEMENT AGREEMENT**

NOW COMES the Plaintiff, Leo P. Wise, and by his attorney, James A. Naddeo, Esquire, sets forth the following:

1. That the Plaintiff, Leo P. Wise, is a sui juris, adult individual who resides at 6401 Anderson Creek Road, Penfield, Pennsylvania 15849.

2. That the Defendant, Corey J. Wise, is a sui juris, adult individual who resides at 187 Treasure Lake, DuBois, Pennsylvania 15801.

3. That the Defendant, Craig L. Wise, is a sui juris, adult individual who resides at 207 Charles Road, Clearfield, Pennsylvania 16830.

4. That by Deed dated November 3, 1997, attached hereto as Exhibit "A", Plaintiff conveyed a piece or parcel of land to Defendants with the following reservation:

"EXCEPTING and RESERVING house and 1.2 acres surrounding said house along with right-of-way for access to the house."

5. That said conveyance was made to Defendants pursuant to an Agreement of Sale dated April 15, 1997, a copy of which is attached hereto as Exhibit "B".

6. That differences arose between the parties concerning the terms and conditions of the Agreement of Sale which resulted in suit being filed by Plaintiff in the Court of Common Pleas of Clearfield County to No. 03-741-CD.

7. That the suit filed in the Court of Common Pleas of Clearfield County to No. 04-741-CD was resolved by a Settlement Agreement dated January 22, 2004, a copy of which is attached hereto as Exhibit "C".

8. That Paragraph 4 of the said Settlement Agreement attempted to establish metes and bounds for the reservation contained in the Deed attached hereto as Exhibit "A" by incorporating in said Settlement Agreement a copy of a map prepared by Curry & Associates.

9. That subsequent to the Settlement Agreement the parties caused Curry & Associates to set pins for the configuration attached to their Settlement Agreement.

10. That when the pins were set, the parties discovered that the eastern boundary bisected a retaining wall used to support the bank adjacent to Plaintiff's swimming pool.

11. That the parties further discovered that the western boundary encroached upon land occupied by the adjoining neighbor, Jody McCluskey.

12. That as a direct result of the parties mutual mistake, the Settlement Agreement results in a configuration that will cause potential disputes between the parties concerning maintenance and use of the retaining wall and likewise places Plaintiff into a potential dispute with his adjoining property owner to the West.

13. That the purpose of the Settlement Agreement was to resolve controversy not to create controversy.

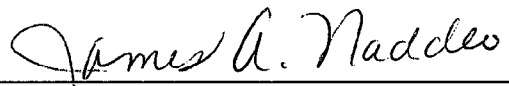
14. That Plaintiff believes and therefore avers that the proper configuration for the area reserved in the Deed attached hereto as Exhibit "A" appears on the survey of Gary Thurston, a copy of which is attached hereto as Exhibit "D".

WHEREFORE, Plaintiffs requests your Honorable Court to:

A. Reform the parties' Settlement Agreement dated January 22, 2004, to set aside Paragraph 4 of said Agreement;

B. Determine the proper configuration of the land reserved in the Deed between the parties dated November 3, 1997, as depicted in the survey of Gary Thurston; and

C. Grant any additional relief as the Court deems appropriate.

  
James A. Naddeo, Esquire  
Attorney for Plaintiff

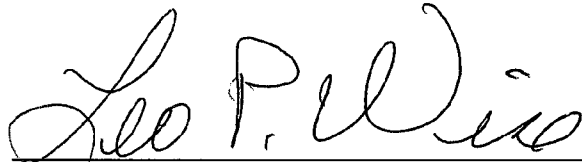


COMMONWEALTH OF PENNSYLVANIA)

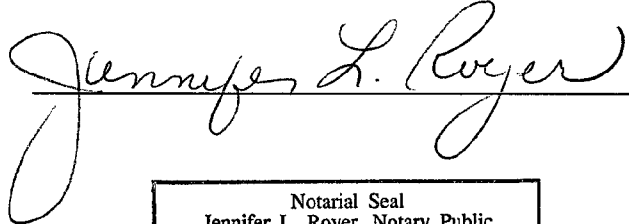
ss.

COUNTY OF CLEARFIELD )

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

  
Leo P. Wise

SWORN and SUBSCRIBED before me this 14th day of March, 2005.



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

18851587

N.T.S.

**DEED**

**THIS INDENTURE** made the 3rd day of November 1997

BETWEEN LEO P. WISE, a single individual, of R. D., Penfield, Clearfield County, Pennsylvania, Party of the First Part, hereinafter referred to as "GRANTOR",

AND

CRAIG L. WISE and COREY J. WISE, co-partners, trading and doing business as Johnston's Nursery, of R. D., Penfield, Clearfield County, Pennsylvania, Parties of the Second Part, hereinafter referred to as "GRANTEES",

WITNESSETH, that the said party of the first part, in consideration of the sum of ONE (\$1.00) DOLLAR to him now paid by the parties of the second part, does grant, bargain, sell and convey unto the parties of the second part, their heirs, executors and assigns,

ALL those certain pieces or parcels of land situate in the Township of Huston, Clearfield County, Pennsylvania, bounded and described as follows:

THE FIRST THEREOF: BEGINNING at an iron pin on the east side of Route 153, between Penfield and Clearfield at the southern line of land now or formerly of Joseph W. Colby; thence along line of land now or formerly of Joseph W. Colby South, eighty-two (82°) degrees forty-one (41') minutes East 760.5 feet to an iron pin; thence by land now or formerly of John F. Lawson South seven (7°) degrees nineteen (19') minutes West 236 feet to an iron pin; thence by Lawson land South eighty-eight (88°) degrees forty-four (44') minute East 198 feet; thence continuing by Lawson North seven (7°) degrees nineteen (19') minutes East to line now or formerly

EXHIBIT "A"

of Colby; thence South eighty-two (82°) degrees forty-one (41') minutes East 20 feet to an iron pin; thence by line of land now or formerly of Harry Cupplo, et al., the following courses and distances: South seven (7°) degrees nineteen (19') minutes West 250 feet, South eighty-two (82°) degrees forty-one (41') minutes East 244.9 feet, North sixty-four (64°) degrees thirty-five (35') minutes East 284.8 feet, North six (6°) degrees twenty-five (25') minutes east 96.3 feet to iron pin at line of land now or formerly of Adam Barnett; thence South eighty-two (82°) degrees forty-one (41') minutes East 20 feet to land now or formerly of Germain W. Gill; thence by line now or formerly of Gill South six (6°) degrees thirty-five (35') minutes West 250 feet to iron pin; thence continuing by land now or formerly of Gill South twenty-eight (28°) degrees forty-one (41') minutes East 250 feet to State Forest Land; thence South six (6°) degrees thirty-five (35') minutes West on painted and blazed line 759.76 feet to old iron pin; thence by line of land now or formerly of Dominic Lodo and Edward Bell North eighty-three (83°) degrees thirteen (13') minutes West to a post at line of other land now or formerly of Leo P. Wise; thence by line of other land now or formerly of Wise in a northwesterly direction to iron pin on the east side of Pennsylvania State Highway Route 153; thence North fourteen (14°) degrees twelve (12') minutes West 682 feet along said route to an iron pin the place of beginning.

Under and Subject to the right of grantors and those claiming under them to the use in common with the grantees herein of a 16 foot road, the north side of which is the northern boundary line of the above described premises together with two twenty foot roads leading therefrom, the first being situate between the premises of John F. Lawson and Harry Cupplo, et al, and the second being between the premises of harry Cupplo, et al., and Germain W. Gill.

THE SECOND THEREOF: BEGINNING at a point on the west side of Route 153 on the south line of land now or formerly of Joseph W. Colby; thence South fourteen (14°) degrees twelve (12') minutes East 245 feet to an iron pin on land now or formerly of Andrew M. Johnston; thence along land now or

formerly Andrew W. Johnston the following courses and distances: South seventy-five (75°) degrees forty-six (46') minutes West 202.4 feet to iron pin, South eight (8°) degrees five (5') minutes West 362.6 feet to iron pin, North fifty-six (56°) degrees fifty-five (55') minutes East 359.1 feet to iron pin at Route 153; thence along Route 153 South fourteen (14°) degrees twelve (12') minutes East 411.4 feet to iron pin at the northeast corner of land now or formerly of Gerald A. Kephart; thence along land now or formerly of Kephart the following course and distances: South seventy-three (73°) degrees fifty-four (54') minutes West 214.2 feet, North twenty-three (23°) degrees forty (40') minutes West 92 feet, North eighty-three (83°) degrees thirteen (13') minutes West 207.8 feet, South nine (9°) degrees fourteen (14') minutes East 194.26 feet to iron pin on line of land now or formerly of Berton Thompson; thence along land now or formerly of Thompson by line blazed and painted North eighty-three (83°) degrees thirteen (13') minutes West 766 feet to an iron pin; thence along State Forest Lands by line blazed and painted North seven (7°) degrees seven (7') minutes East 1034.96 feet to iron pin; thence south eighty-two (82°) degrees forty-one (41') minutes East by line blazed and painted 450 feet to iron pin; thence by land now or formerly of Donald L. Whaling the following courses and distances: South thirteen (13°) degrees thirty-five (35') minutes West 163.4 feet; South eighty-nine (89°) degrees twenty (20') minutes East 174.7 feet; North six (6°) degrees twenty-six (26') minutes East 142 feet to line of land now or formerly of Joseph W. Colby; thence south eighty-two (82°) degrees forty-one (41') East 220 feet more or less to point on west side of Route 153, the place of beginning.

EXCEPTING and RESERVING camp and one acre surrounding said camp along with right-of-way for access to the camp.

Assessment Map Nos. 119-H4-4 and 4.1.

BEING the same premises conveyed to the Grantor herein by deed of Leo P. Wise, et al dated February

9, 1990 and recorded in Clearfield County Deed and Record Book 1329, page 172.

ALL that certain piece or parcel of land situate in the Township of Pine, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING in center of LR 17092 at southeast corner of 1.0 acre lot to be conveyed to Leo Wise and Karen Wise; thence along said lot North six (6°) degrees zero (0') minutes West 245 feet; thence along said lot and land to be conveyed to Karen Wise North twenty (20°) degrees ten (10') minutes West 407 feet; thence along land now or formerly of Joe Owens South eighty-three (83°) degrees fifty (50') minutes East 306 feet; thence along center of old road the following: South seventeen (17°) degrees forty (40') minutes East 141 feet, South twenty (20°) degrees ten (10') minutes East 104 feet, South twelve (12°) degrees thirty (30') minutes East 122 feet, South sixteen (16°) degrees five (5') minutes East 100 feet, and South thirteen (13°) degrees forty (40') minutes East 212 feet; thence along center of LR 17092 by a curve to the right the chord of which is North seventy-nine (79°) degrees forty (40') minutes West 326 feet to the place of beginning. Containing 3.9 acres.

EXCEPTING and RESERVING house and 1.2 acres surrounding said house along with right-of-way for access to the house.

Assessment Map No. 127-H4-9.

BEING the same premises conveyed to the Grantor herein by deed of Leo P. Wise, et al dated February 9, 1990 and recorded in Clearfield County Deed and Record Book 1329, page 167.

This is a transfer between father and sons and is therefore exempt from transfer tax.

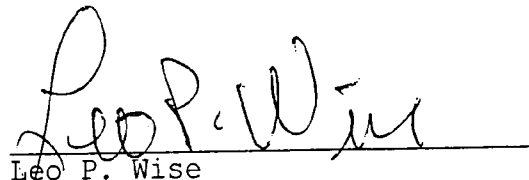
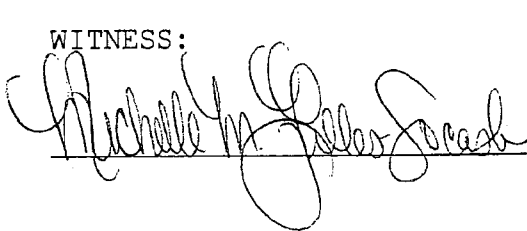
with the appurtenances: TO HAVE AND TO HOLD the same unto and for the use of the said parties of the second part their heirs, executors and assign forever, And the said party of the

first part for himself, his heirs, executors and administrators covenant with the said parties of the second part their heirs, executors and assigns against all lawful claimants SPECIALLY WARRANT the same and every part thereof to Warrant and Defend.

NOTICE-THIS DOCUMENT MAY NOT/DOES 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/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.

WITNESS the hand and seal of the said party of the first part.

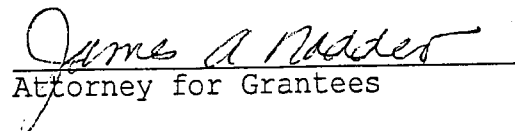
WITNESS:

  
Leo P. Wise

CERTIFICATE OF RESIDENCE

I, James A. Naddeo, Esquire do hereby certify that the precise residence of the Grantees herein is as follows:

R. D. , Penfield, PA 15849

  
Attorney for Grantees

COMMONWEALTH OF PENNSYLVANIA

\*

SS.

\*

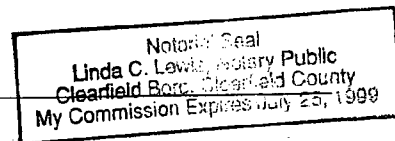
COUNTY OF CLEARFIELD

\*

On this 3rd day of Nov., 1997, before me, the undersigned officer, personally appeared LEO P. WISE, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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

*Linda C. Lewis*



AGREEMENT OF SALE

THIS AGREEMENT made the 15<sup>th</sup> day of April, 1997, by and between LEO P. WISE, a single individual, of R. D., Box 187, Penfield, Pennsylvania, hereinafter referred to as "SELLER",

AND

COREY J. WISE and CRAIG L. WISE, co-partners, trading and doing business as Johnston's Nursery, of R. D., Penfield, Pennsylvania, hereinafter referred to as "BUYERS".

WHEREAS, Leo P. Wise is the owner of certain land and buildings located in Huston Township and Pine Township, Clearfield County, Pennsylvania, which property is more particularly hereinafter described; and

WHEREAS, Leo P. Wise is the owner of inventory and equipment which is more particularly described in Exhibit "A"; and

WHEREAS, Seller desires to sell the various assets owned by him upon the terms and conditions hereinafter set forth; and

WHEREAS, Buyers have agreed to purchase the assets of Seller upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the sum of One (\$1.00) Dollar, the parties agree as follows:

EXHIBIT "B"



1. Purchase and Sale. Seller agrees to sell and deliver to Buyers who agree to purchase for the considerations and under the terms and conditions hereinafter set forth, the following assets:

A. All those certain pieces or parcels of land situate in the Township of Huston, Clearfield County, Pennsylvania, bounded and described as follows:

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Assessment Map No. 127-H4-9.

BEING the same premises conveyed to the Grantor herein by deed of Leo P. Wise, et al dated February 9, 1990 and recorded in Clearfield County Deed and Record Book 1329, page 167.

B. Equipment as set forth in Exhibit "A" which is attached hereto and made a part hereof;

C. Inventory.

2. Purchase Price. The total consideration for this sale is Three hundred twenty-three thousand eight hundred fifty-six (\$323,856.00) Dollars to be allocated as follows:

A. Land	\$ 50,000.00
B. Building	123,905.00
C. Vehicles & Equipment	86,638.00
D. Goodwill	5,000.00
E. Inventory	69,948.75

3. Method of Payment. Buyers shall deliver to Seller at time of closing, a mortgage and note in the amount of Two hundred sixty-seven thousand four hundred eighteen (\$267,418.00)

Dollars with interest at Eight (8%) per cent per annum payable on March 15, 2013.

Buyers shall also deliver to Seller an Installment Note in the amount of Sixty-Nine thousand nine hundred forty-eight and 75/100 (\$69,948.75) Dollars with interest at the rate of 6.8% payable in quarterly installments for purchase of inventory.

Buyers shall also deliver to Seller a Demand Judgment Note in the amount of Sixteen thousand (\$16,000.00) Dollars with interest at the rate of 6.23%.

4. At settlement Seller agrees to deliver to buyers a good and sufficient deed in fee simple conveying the above-described land with buildings to Buyers free and clear of all liens and encumbrances. Seller further agrees to deliver to buyers at settlement a bill of sale conveying to Buyers the equipment and inventory herein agreed to be sold free and clear of all liens and encumbrances.

5. Transfer Taxes. All real estate transfer taxes, if any, will be divided equally between Buyers and Seller.

6. Real Estate Taxes. All real estate taxes shall be apportioned between Buyers and Seller as of the date of settlement.

7. Medical Insurance. Buyers shall at all times maintain Blue Cross/Blue Shield insurance upon the Seller.

8. Heirs and Assigns. The said parties hereby bind themselves, their heirs, executors and administrators, and assigns for the faithful performance of this Agreement as set forth above.

9. Assignability. It is expressly understood that the Buyers shall not transfer or assign this Agreement without the prior written consent of Seller.

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

WITNESS:

Michael M. Geller-Sorach

SELLER:

Leo P. Wise (SEAL)  
Leo P. Wise

BUYERS:

Michael M. Geller-Sorach

Corey P. Wise (SEAL)  
Corey P. Wise

Michael M. Geller-Sorach

Craig L. Wise (SEAL)  
Craig L. Wise

Schedule "A"

1991 Ford F350 Truck, Serial No. 1FDKF37GOMNB01491

1991 Ford F350 Truck, Serial No. 1FDKF37GZMNA97394

1980 Ford F600 Truck, Serial No. F61HVGA1309

Ford Tractor 3600, Serial No. D4NN6015F

Skidsteer Loader - New Holland L 785, Serial No. 847942

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

LEO P. WISE

:

VS.

: NO. 03-741-CD

COREY J. WISE, et al

:

SETTLEMENT AGREEMENT

NOW, this 22nd day of January, 2004, the parties agree to settle this case as follows:

1. With respect to Count I, it is agreed that Defendants will pay to Plaintiff the sum of \$10,600, said sum to be added to the current outstanding principal balance of mortgage between the parties dated November 3, 1997, and recorded DRBV 1885, Page 587, and thereafter to be paid as additional monthly installment with interest as provided in said mortgage until the total principal sum is due;

2. With respect to Count II, the \$16,000 note is deemed paid in full;

3. With respect to Count III, Defendants acknowledge that they owe the Plaintiff \$300 per month commencing February 2002 through the date the mortgage referred to in Paragraph 1 hereof is paid in full. Defendants will pay to Plaintiff within thirty (30) days of the date of this Order the amount due through February 2004, with credit due in the amount of \$1,500, which Plaintiff acknowledges. Thereafter, Defendants shall continue to pay to Plaintiff the sum of \$300



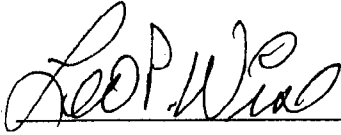
per month on or before the 15th day of each month until the mortgage referred to herein has been fully paid;

4. Defendants shall deliver to Plaintiff a quitclaim deed for the property located in Pine Township, Clearfield County, PA, consisting of 1.207 acres as described in the map attached hereto, said property constituting a more specific description of the 1.2 acres reserved by Plaintiff in a prior deed to Defendants. Defendants will also deliver to Plaintiff an easement for the term of Plaintiff's life for the property depicted on the map attached hereto consisting of .277 acres;

5. Defendants shall deliver to Plaintiff a quitclaim deed for the property located in Huston Township, Clearfield County, PA, described in the subdivision prepared by Curry and Associates in the form previously approved by counsel for Plaintiff, which deed shall include the easement depicted in the subdivision, said property constituting a more specific description of the one acre and right of way reserved by Plaintiff in a prior deed to Defendants;

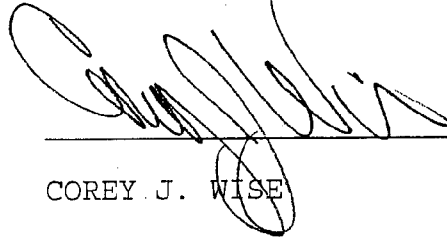
6. Upon implementation of this settlement, Plaintiff agree to mark the case settled and discontinued.

We, the undersigned, do hereby agree and consent to  
the foregoing:



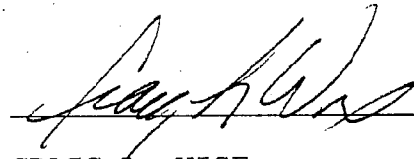
LEO P. WISE

PLAINTIFF



COREY J. WISE

DEFENDANT

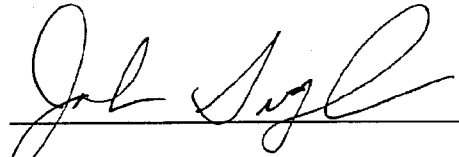


CRAIG L. WISE

DEFENDANT



ATTORNEY FOR PLAINTIFF



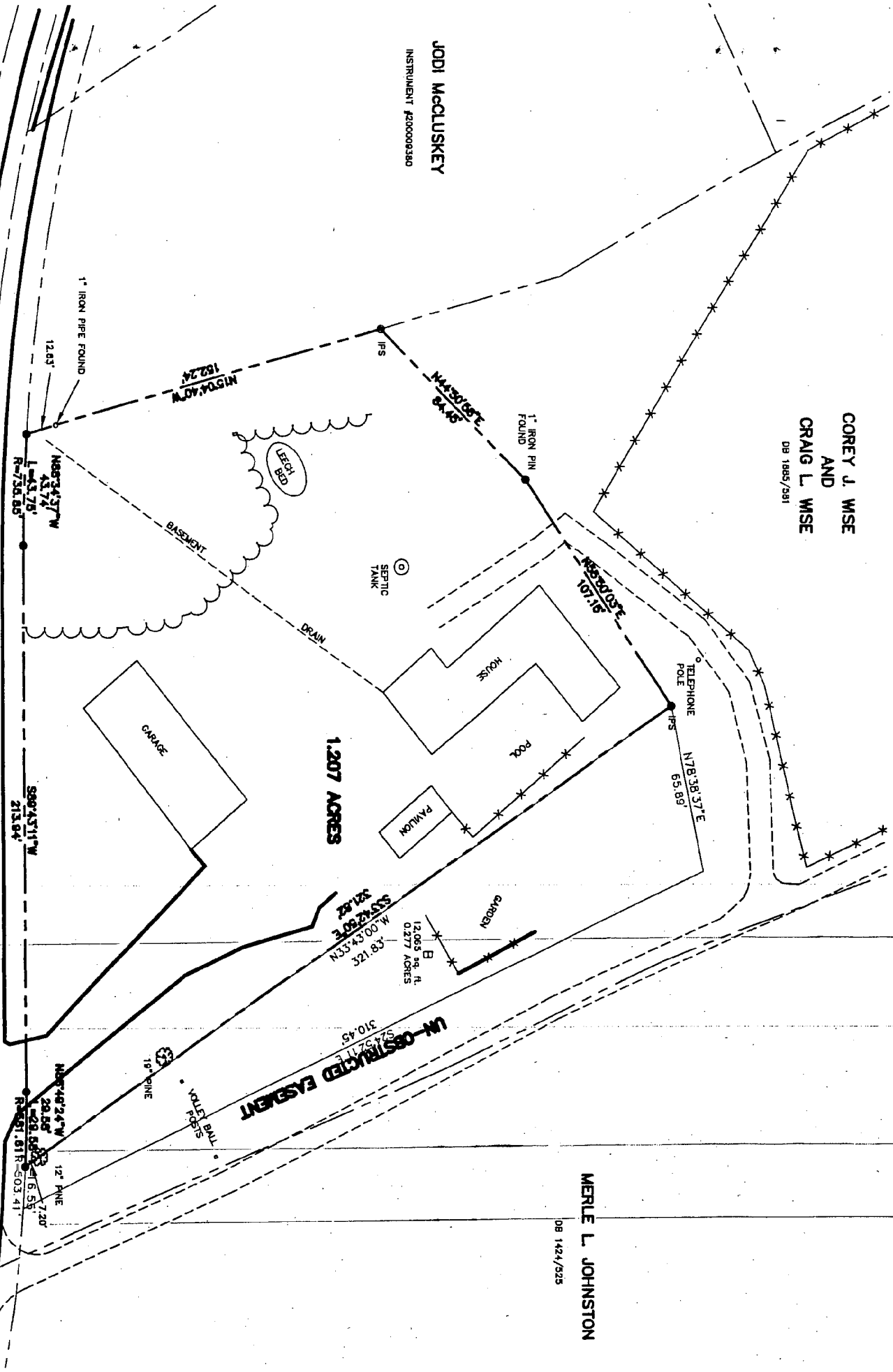
ATTORNEY FOR DEFENDANT

COREY J. WISE  
AND  
CRAIG L. WISE  
DB 1885/381

JODI McCLUSKEY  
INSTRUMENT #200008380

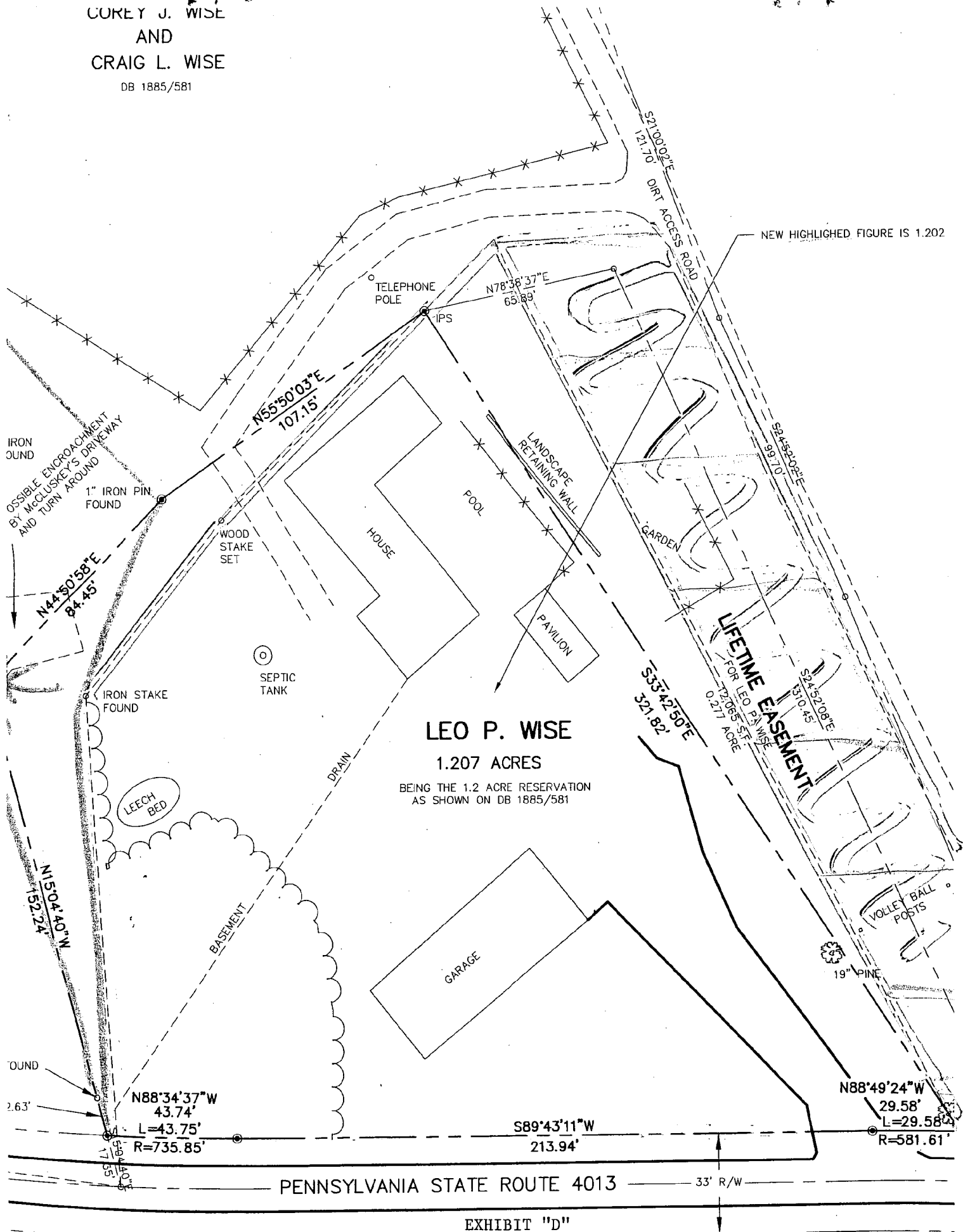
MERLE L. JOHNSTON  
DB 1424/525

PENNSYLVANIA STATE ROUTE 4013



COREY J. WISE  
AND  
CRAIG L. WISE

DB 1885/581



JAMES A. NADDEO

ATTORNEY AT LAW

207 EAST MARKET STREET

P.O. BOX 552

CLEARFIELD, PENNSYLVANIA 16830

Lap over margin

FILED

MAR 16 2005

William A. Shay  
Prothonotary/Clerk of Courts

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

LEO P. WISE  
an individual,

Plaintiff

v.

COREY J. WISE and  
CRAIG L. WISE, t/d/b/a  
JOHNSTON'S NURSERY,

Defendants

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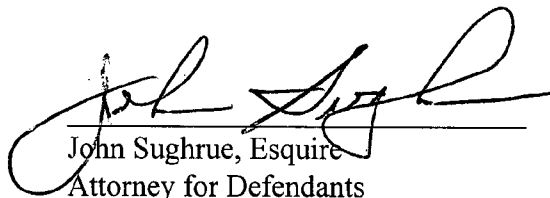
No. 05-361-CD

**PRAECIPE FOR APPEARANCE**

TO WILLIAM A. SHAW, PROTHONOTARY.

Kindly enter my appearance on behalf of COREY J. WISE and CRAIG L. WISE, t/d/b/a  
JOHNSTON'S NURSERY, Defendants in the above-captioned matter. Direct all pleadings and  
matters concerning the foregoing to the undersigned.

Date: March 31, 2005



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

cc: James A. Naddeo, Esq.  
Court Administrator

**FILED** 3cc  
@ 10:40 AM  
MAR 31 2005  
William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

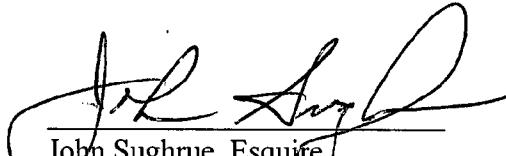
AND NOW, I do hereby certify that on March 31, 2005 I caused a true and correct copy of Defendants' Praecipe for Appearance, to be served on the following and in the manner indicated below:

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

James A. Naddeo Esquire  
207 E. Market St.  
Clearfield, PA 16830

Court Administrator  
Clearfield County Courthouse  
1 N. 2<sup>nd</sup> St.  
Clearfield, PA 16830

Date: March 31, 2005

  
John Sughrue, Esquire  
Attorney for Defendants

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

LEO P. WISE,  
an individual,  
Plaintiff,

v.

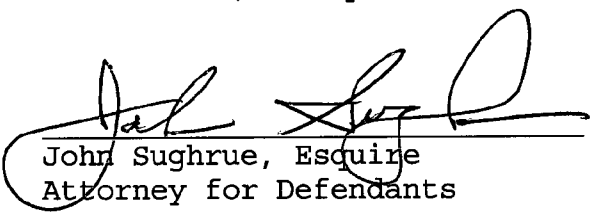
COREY J. WISE and  
CRAIG L. WISE, t/d/b/a  
JOHNSTON'S NURSERY,  
Defendants.

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No. 05 - 361 - CD

ACCEPTANCE OF SERVICE

I, John Sughrue, Esquire, do hereby accept service of  
Plaintiff's Complaint on behalf of Defendants, Corey J. Wise and  
Craig L. Wise.

  
John Sughrue, Esquire  
Attorney for Defendants

Date:

3/31/05

FILED

010:46  
MAR 31 2005

William A. Shaw  
Prothonotary/Clerk of Courts

2cc  
Amy

(6K)



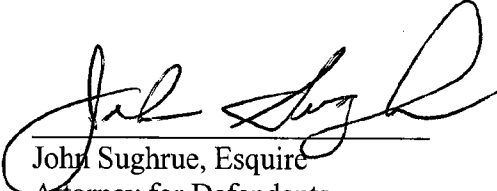
**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on March 31, 2005 I caused a true and correct copy of Defendants' Acceptance of Service, to be served on the following and in the manner indicated below:

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

James A. Naddeo Esquire  
207 E. Market St.  
Clearfield, PA 16830

Date: March 31, 2005

  
\_\_\_\_\_  
John Sughrue, Esquire  
Attorney for Defendants

CA

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

LEO P. WISE  
an individual,

Plaintiff

v.

COREY J. WISE and  
CRAIG L. WISE, t/d/b/a  
JOHNSTON'S NURSERY,

Defendants

No. 05-361-CD

Type of Case: **Civil Action**

Type of Pleading: **Preliminary Objections**

Filed on Behalf of: **Defendants**

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
23 North Second Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**Other Counsel of Record:**

James A. Naddeo, Esq.  
207 E. Market St.  
Clearfield, PA 16830  
Phone: (814) 765-1601  
Fax: (814) 8142

FILED

APR 20 2005

0/2:45/0

William A. Shaw  
Prothonotary

3 CEN TO ATT

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

LEO P. WISE  
an individual,

Plaintiff

v.

COREY J. WISE and  
CRAIG L. WISE, t/d/b/a  
JOHNSTON'S NURSERY,

Defendants

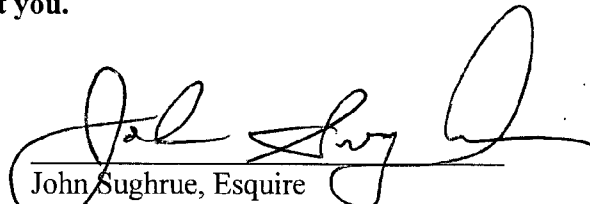
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No. 05-361-CD

**NOTICE**

**TO: Leo P. Wise,**

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

  
John Sughrue, Esquire  
Attorney for Defendants

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

LEO P. WISE  
an individual,

Plaintiff

v.

COREY J. WISE and  
CRAIG L. WISE, t/d/b/a  
JOHNSTON'S NURSERY,

Defendants

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No. 05-361-CD

**PRELIMINARY OBJECTIONS**

AND NOW, comes Defendants, by their attorney, John Sughrue, and responds to Plaintiff's original Complaint pursuant to Pa.R.C.P. No. 1028 as follows:

1. This case arises out of and brings before the Court a settlement agreement between the same parties which concluded by compromise settlement, a prior lawsuit filed by Plaintiff against the same Defendants in this Court at No. 03-741-CD (hereafter referred to as "prior lawsuit"). A copy of the Settlement Agreement is attached as **Exhibit 1**.

2. As a result of said Settlement Agreement, the prior lawsuit was marked settled and discontinued by the parties. No appeal was taken. A certified copy of the docket entries of the prior lawsuit is attached hereto as **Exhibit 2**.

3. Paragraph 4 of the Settlement Agreement specifically resolved, by proper survey, the description of the 1.2 acres owned by the Plaintiff and reserved by him in the Deed referenced in the Complaint.

4. A copy of the proper survey and description of the Plaintiff's land as prepared by Curry & Associates, professional surveyors, is attached to the Settlement Agreement, **Exhibit 1**.

5. The survey of Gary Thurston referenced in paragraph 14 of the Complaint, as Exhibit D, and attached hereto as **Exhibit 3**, does not contain an identification and if assumed to be accurate, is clearly a description of property other than the property set forth in the Settlement Agreement.

6. The Complaint alleges in paragraph 12, “parties mutual mistake”. The Complaint does not allege with particularity a specific mistake or mistakes by the Plaintiff or Defendants, individually or jointly, at the time each party entered into the Settlement Agreement.

7. By this action, Plaintiff seeks to re-litigate an issue previously resolved with clarity by litigation.

8. The prior lawsuit was filed by Plaintiff and his counsel, placed on the Court’s trial list by Plaintiff, pre-tried before this Court on or about January 22, 2004, all of which resulted in the Settlement Agreement, which Plaintiff now seeks to void in part. See **Exhibit 2**.

9. Paragraphs 9, 10 and 11 of the Complaint refer to the setting of pins by a surveyor and by implication indicates that an additional survey was conducted after the Settlement Agreement, which allegedly indicates a “bisected a retaining wall” and “encroached upon land occupied by the adjoining neighbor, ...”.

10. Without a survey supporting the allegations of paragraphs 9, 10 and 11, the alleged material facts cannot be known by the Plaintiff nor properly alleged to this Court as material facts.

#### **I – Legal Insufficiency Of The Complaint**

11. Defendants hereby incorporate by reference paragraphs 1 through 10 of these Preliminary Objections, as if fully set forth herein.

12. Averment of mistake by the Defendants or the Plaintiff must be plead with particularity, including identity of the person who made the mistake, the nature of the mistake and the date, time and place the mistake was made. See Pa.R.C.P. Nos. 1019(b) and (f).

13. The Complaint does not set forth material facts sufficient to give rise to a cause of action upon which relief may be granted by the Court, as required by Pa.R.C.P No. 1019(a) and the laws of this Commonwealth.

WHEREFORE, Defendants respectfully move the Honorable Court to forthwith enter an order dismissing the Complaint.

**II –Failure to Conform to Rule of Court and  
Insufficient Specificity in a Pleading**

14. Defendants hereby incorporate by reference paragraphs 1 through 13 of these Preliminary Objections, as if fully set forth herein.

15. The survey map or drawing referenced in paragraph 9 upon which such material allegations are based, is not attached to the Complaint as required by Pa.R.C.P. 1019(i).

16. The averments of mistake or mistakes by Plaintiff and/or Defendants individually or jointly are not averred with particularity as required by Pa.R.C.P. 1019(b) and (f).

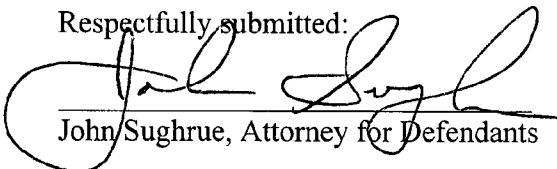
WHEREFORE, in the alternative to the relief requested in Item I above, Defendant moves the Honorable Court to require the Plaintiff to amend his Complaint to include the following:

1. A copy of the survey or map indicating the location, nature and extent of the obstructions and/or encroachments complained of; or, in the event such a map or survey does not exist to require the Plaintiff to provide the same twenty (20) days prior to an answer to the Complaint being due;

2. To provide and attach to the Complaint a copy of the complete survey alleged to have been prepared by Gary Thurston, attached as Exhibit D to the Complaint;

3. To set forth with specificity each mistake alleged to have been made by the Plaintiff and each of the Defendants, including the nature or description of the mistake, the day, time, place and context in which the mistake is alleged to have been made.

Respectfully submitted:



John Sughrue, Attorney for Defendants

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

LEO P. WISE :  
VS. : NO. 03-741-CD  
COREY J. WISE, et al :

SETTLEMENT AGREEMENT

NOW, this 22nd day of January, 2004, the parties agree to settle this case as follows:

1. With respect to Count I, it is agreed that Defendants will pay to Plaintiff the sum of \$10,600, said sum to be added to the current outstanding principal balance of mortgage between the parties dated November 3, 1997, and recorded DRBV 1885, Page 587, and thereafter to be paid as additional monthly installment with interest as provided in said mortgage until the total principal sum is due;

2. With respect to Count II, the \$16,000 note is deemed paid in full;

3. With respect to Count III, Defendants acknowledge that they owe the Plaintiff \$300 per month commencing February 2002 through the date the mortgage referred to in Paragraph 1 hereof is paid in full. Defendants will pay to Plaintiff within thirty (30) days of the date of this Order the amount due through February 2004, with credit due in the amount of \$1,500, which Plaintiff acknowledges. Thereafter, Defendants shall continue to pay to Plaintiff the sum of \$300

*Exhibit 1*



per month on or before the 15th day of each month until the mortgage referred to herein has been fully paid;

4. Defendants shall deliver to Plaintiff a quitclaim deed for the property located in Pine Township, Clearfield County, PA, consisting of 1.207 acres as described in the map attached hereto, said property constituting a more specific description of the 1.2 acres reserved by Plaintiff in a prior deed to Defendants. Defendants will also deliver to Plaintiff an easement for the term of Plaintiff's life for the property depicted on the map attached hereto consisting of .277 acres;

5. Defendants shall deliver to Plaintiff a quitclaim deed for the property located in Huston Township, Clearfield County, PA, described in the subdivision prepared by Curry and Associates in the form previously approved by counsel for Plaintiff, which deed shall include the easement depicted in the subdivision, said property constituting a more specific description of the one acre and right of way reserved by Plaintiff in a prior deed to Defendants;

6. Upon implementation of this settlement, Plaintiff agree to mark the case settled and discontinued.

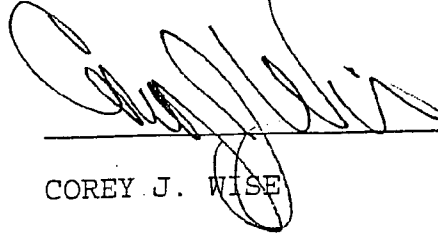
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We, the undersigned, do hereby agree and consent to  
the foregoing:



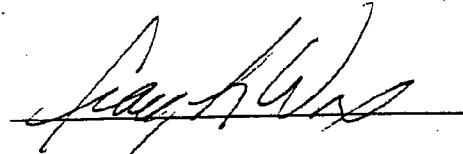
LEO P. WISE

PLAINTIFF



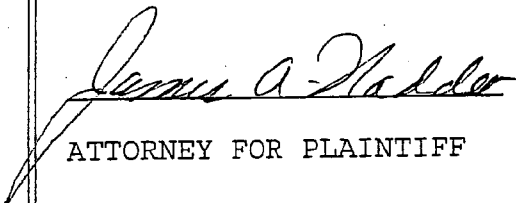
COREY J. WISE

DEFENDANT

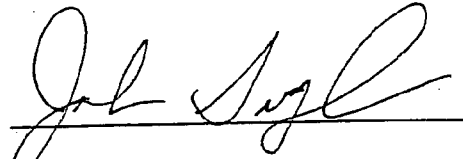


CRAIG L. WISE

DEFENDANT



ATTORNEY FOR PLAINTIFF



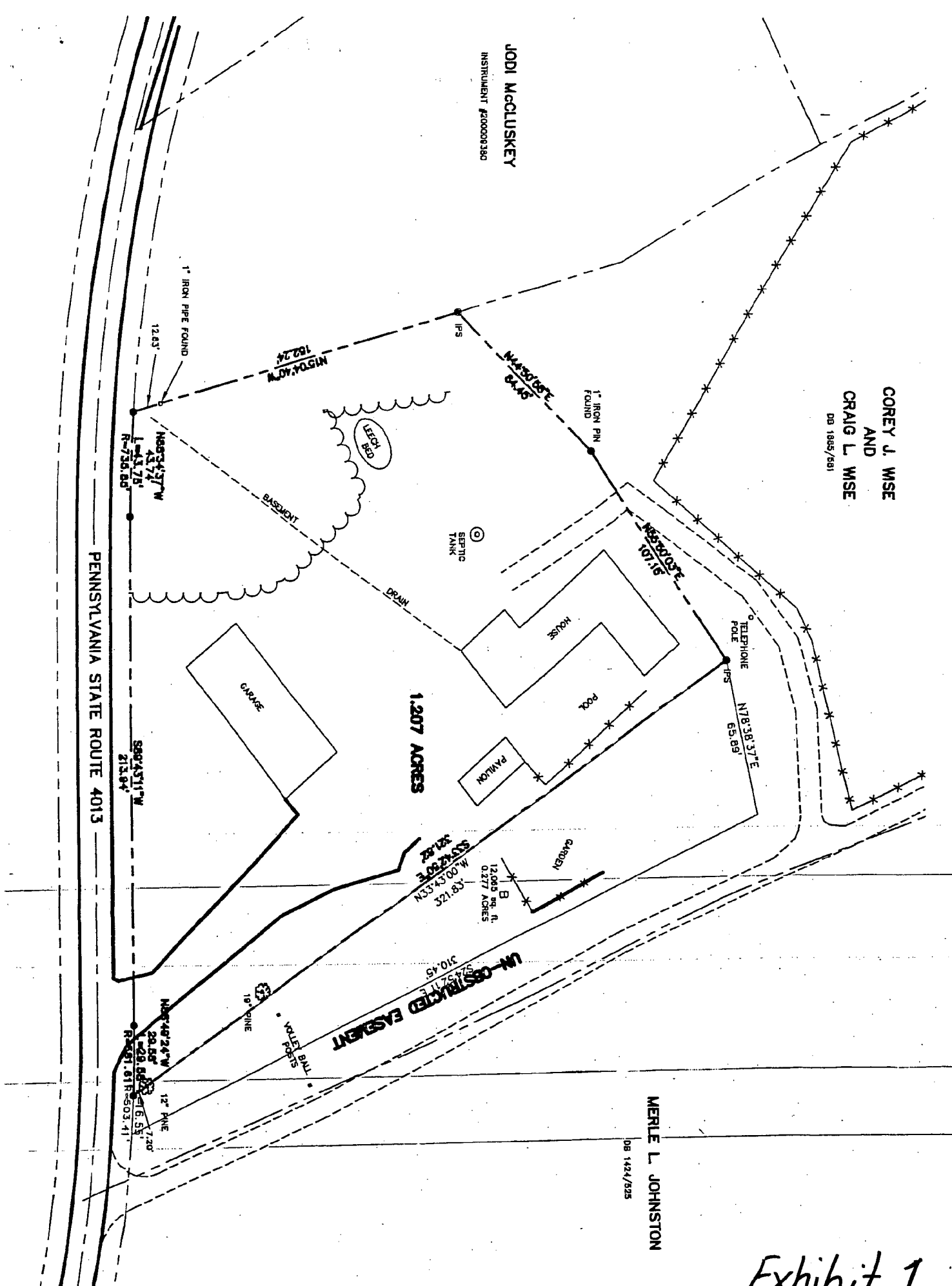
ATTORNEY FOR DEFENDANT

DB 1885/581

INSTRUMENT #2000009380

10B 1424/525

Exhibit 1



Leo P. Wise vs. Corey J. Wise, Craig Wise

## Civil Other

Date		Judge
05/15/2003	Filing: Civil Complaint Paid by: James Naddeo, Esq. Receipt number: 1860240 Dated: 05/15/2003 Amount: \$85.00 (Check) 2 cc to Shff.	No Judge
06/02/2003	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
06/03/2003	Praeipce for Appearance on behalf of Defendant filed by John Sughrue, Esq. 1 CC to Atty.	Paul E. Cherry
06/10/2003	Answer and New Matter. filed by s/John Sughrue, Esquire Verification s/Corey J. Wise, s/Craig L. Wise Certificate of Service 1 cc to Atty	No Judge
07/03/2003	Answer To New Matter. filed by s/James A. Naddeo, Esquire Certificate of Service Verification s/Leo P. Wise 1 cc to atty	No Judge
09/03/2003	Praeipce To List For Trial. filed by s/James A. Naddeo, Esquire. Certificate of Service 1 cc Copy to CA	No Judge
10/15/2004	Settlement Agreement: Now, this 22nd day of January, 2004, the parties agree to settle this case as follows: (see original for details of settlement). Signed, Leo P. Wise, Plaintiff, Corey and Craig Wise, Defendants, and Attys. No CC.	Paul E. Cherry
10/18/2004	Praeipce for Discontinuance filed by Atty. Naddeo. 1 Cert. to Atty. Copy to CA	Paul E. Cherry

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

APR 20 2005

Attest.

*William D. Prothro*  
Prothonotary/  
Clerk of Courts

*Exhibit 2*

COREY J. WISE  
AND  
CRAIG L. WISE

DB 1885/581

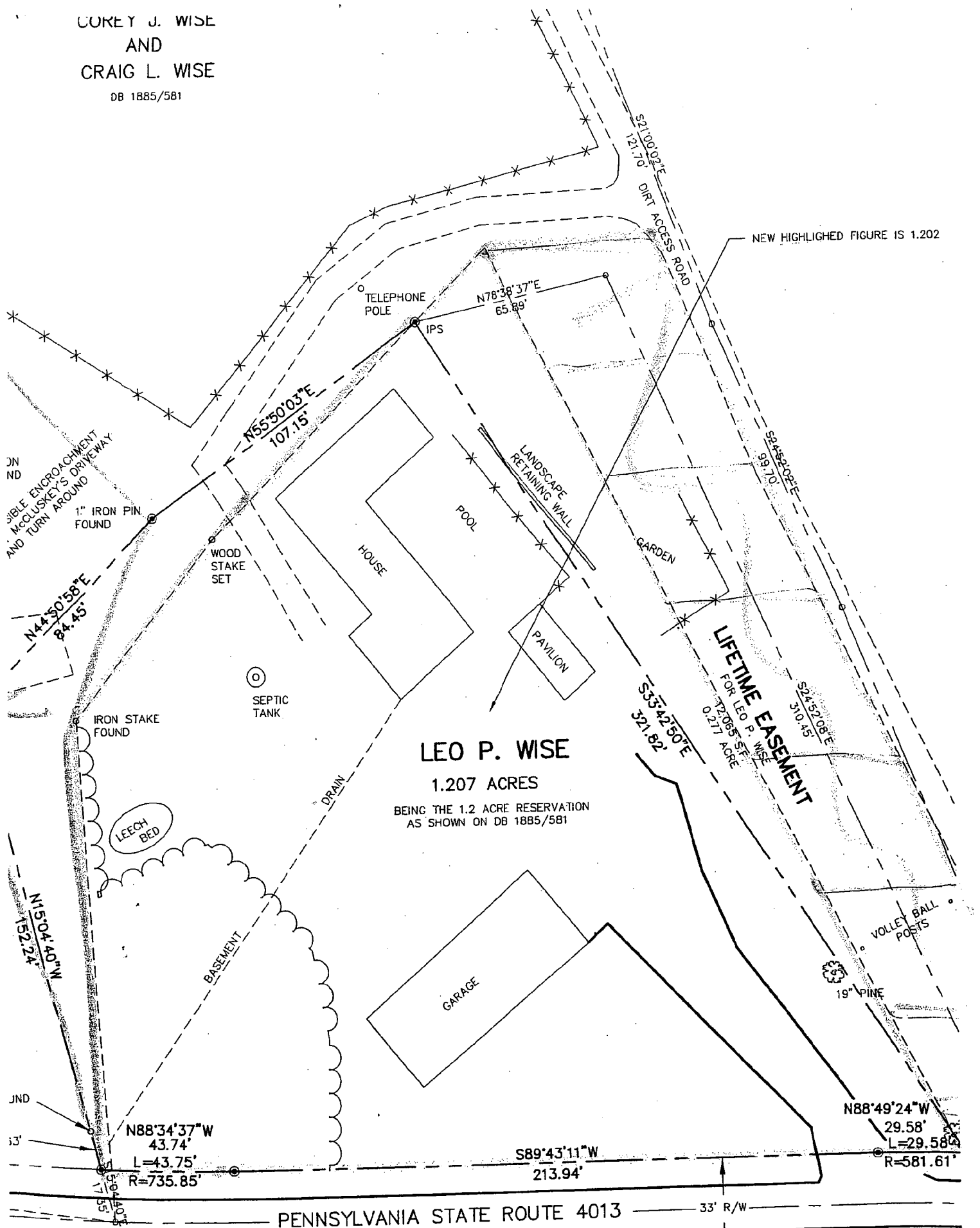


Exhibit 3

**CERTIFICATE OF SERVICE**

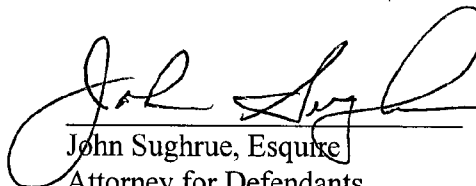
AND NOW, I do hereby certify that on April 20, 2005 I caused a true and correct copy of Defendants' PRELIMINARY OBJECTIONS, to be served on the following and in the manner indicated below:

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

James A. Naddeo, Esquire  
207 E. Market St.  
Clearfield, PA 16830

Court Administrator  
Clearfield County Courthouse  
1 N. 2<sup>nd</sup> St.  
Clearfield, PA 16830

Date: April 20, 2005

  
\_\_\_\_\_  
John Sughrue, Esquire  
Attorney for Defendants

**FILED**

APR 20 2005

William A. Shaw  
Prothonotary

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

LEO P. WISE  
an individual,

Plaintiff

v.

COREY J. WISE and  
CRAIG L. WISE, t/d/b/a  
JOHNSTON'S NURSERY,

Defendants

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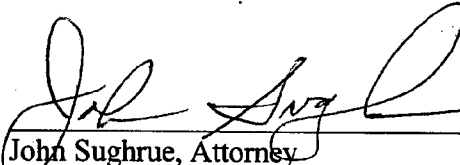
No. 05-361-CD

**PRAECIPE TO SCHEDULE ARGUMENT**  
**ON PRELIMINARY OBJECTIONS**

To David S. Meholick, Court Administrator,

Pursuant to Local Rules 1028(c)(1) and 211, Defendants, by their attorney, John Sughrue, hereby requests the Court to schedule **ARGUMENT** on the **PRELIMINARY OBJECTIONS** filed by both Defendants in the above captioned matter. A proposed **SCHEDULING ORDER** is attached.

Respectfully submitted:


  
John Sughrue, Attorney  
for all Defendants

cc: James A. Naddeo, Attorney for Plaintiff

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

MAY 25 2005

Attest.

  
Prothonotary/  
Clerk of Courts



**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on May 25, 2005, I caused a true and correct copy of Defendants' PRAECIPE TO SCHEDULE ARGUMENT ON PRELIMINARY OBJECTIONS and SCHEDULING ORDER to be served on the following and in the manner indicated below:

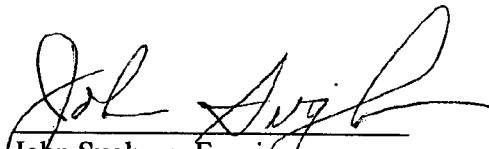
By United States Mail, First Class, Postage Prepaid  
Addressed as Follows:

James A. Naddeo, Esquire  
207 E. Market St.  
Clearfield, PA 16830

By Personal Delivery to the Following at the location specified

David S. Meholick, Court Admin.  
Clearfield County Courthouse  
1 N. 2<sup>nd</sup> St.  
Clearfield, PA 16830

Date: May 25, 2005

  
John Sughrue, Esquire  
Attorney for Defendants

CA

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

LEO P. WISE  
an individual,

Plaintiff

v.

COREY J. WISE and  
CRAIG L. WISE, t/d/b/a  
JOHNSTON'S NURSERY,

Defendants

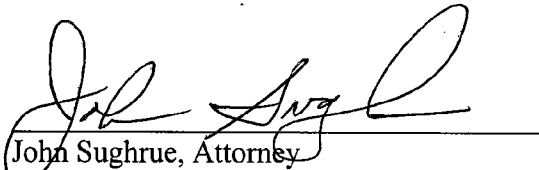
No. 05-361-CD

**PRAECIPE TO SCHEDULE ARGUMENT**  
**ON PRELIMINARY OBJECTIONS**

To David S. Meholick, Court Administrator,

Pursuant to Local Rules 1028(c)(1) and 211, Defendants, by their attorney, John Sughrue, hereby requests the Court to schedule **ARGUMENT** on the **PRELIMINARY OBJECTIONS** filed by both Defendants in the above captioned matter. A proposed **SCHEDULING ORDER** is attached.

Respectfully submitted:

  
John Sughrue, Attorney  
for all Defendants

cc: James A. Naddeo, Attorney for Plaintiff

**FILED**

0 10:30 6K  
MAY. 25 2005

3 CC TO ATTY

William A. Shaw  
Prothonotary (6K)

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on May 25, 2005, I caused a true and correct copy of Defendants' PRAECIPE TO SCHEDULE ARGUMENT ON PRELIMINARY OBJECTIONS and SCHEDULING ORDER to be served on the following and in the manner indicated below:

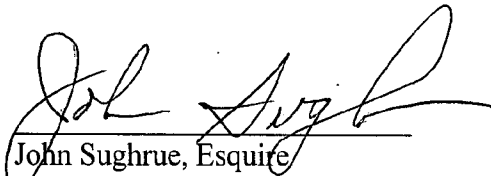
By United States Mail, First Class, Postage Prepaid  
Addressed as Follows:

James A. Naddeo, Esquire  
207 E. Market St.  
Clearfield, PA 16830

By Personal Delivery to the Following at the location specified

David S. Meholick, Court Admin.  
Clearfield County Courthouse  
1 N. 2<sup>nd</sup> St.  
Clearfield, PA 16830

Date: May 25, 2005

  
John Sughrue, Esquire  
Attorney for Defendants

CA

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

LEO P. WISE  
an individual,

Plaintiff

v.

COREY J. WISE and  
CRAIG L. WISE, t/d/b/a  
JOHNSTON'S NURSERY,

Defendants

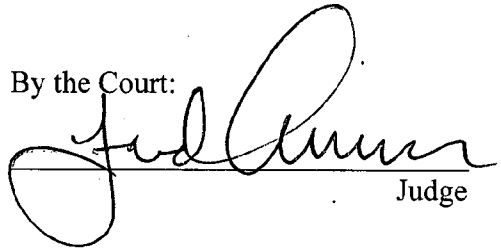
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No. 05-361-CD

**SCHEDULING ORDER**

AND NOW, this 26 day of May, 2005, on Motion of Defendants, Argument on Preliminary Objections filed by Defendants shall be heard on the 15<sup>th</sup> day of June, 2005 at 1:30 o'clock P.m. in Court Room No. 1, Clearfield County Courthouse, 1 North 2<sup>nd</sup> Street, Clearfield, PA 16830.

By the Court:

  
Judge

**FILED**

*2cc*  
*0/2:26/01*  
MAY 26 2005

*Atty Sughrue*  
*62*

William A. Shaw  
Prothonotary/Clerk of Courts

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

LEO P. WISE,  
Plaintiff

vs.

NO. 05-361-CD

COREY J. WISE and CRAIG L. WISE,  
t/d/b/a JOHNSTON'S NURSERY,  
Defendants

**ORDER**

NOW, this 16<sup>th</sup> day of June, 2005, following argument on the Preliminary Objections filed on behalf the Defendants, it is the ORDER of this Court that the said Preliminary Objections be and are hereby DISMISSED.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

FILED

JUN 16 2005

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William A. Shaw  
Prothonotary/Clerk of Courts

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William A. Shaw

Prothonotary/Clerk of Courts

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

LEO P. WISE,  
an individual,  
Plaintiff,

v.

COREY J. WISE and  
CRAIG L. WISE, t/d/b/a  
JOHNSTON'S NURSERY,  
Defendants.

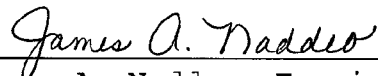
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No. 05 - 361 - CD

**PRAECIPE TO SETTLE AND DISCONTINUE**

TO THE PROTHONOTARY:

Please mark the above-captioned case settled and  
discontinued.

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

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

LEO P. WISE,  
an individual,  
Plaintiff,

v.

COREY J. WISE and  
CRAIG L. WISE, t/d/b/a  
JOHNSTON'S NURSERY,  
Defendants.

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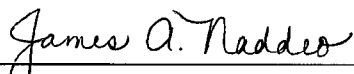
No. 05 - 361 - CD

**CERTIFICATE OF SERVICE**

I, James A. Naddeo, Esquire, do hereby certify that a true and certified copy of Praecept to Settle and Discontinue filed in the above-captioned action was served on the following person and in the following manner on the 16<sup>th</sup> day of November, 2006:

First-Class Certified Mail, Postage Prepaid

John Sughrue, Esquire  
23 North Second Street  
Clearfield, PA 16830

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



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

**CIVIL DIVISION**

**Leo P. Wise**

**Vs.**

**No. 2005-00361-CD**

**Corey J. Wise**

**Craig L. Wise**

**Johnston's Nursery**

**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 November 16, 2006, marked:

Settle and jDiscontinue

Record costs in the sum of \$85.00 have been paid in full by James A. Naddeo, Esq..

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 16th day of November A.D. 2006.

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William A. Shaw, Prothonotary