

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

HOUTZDALE LINE RAILS TO TRAILS,
INC.,

Plaintiff

vs.

MARVIN W. HOCKENBERRY and
BRIDGET FLEMING,

Defendants

No. 05- 909-CD

Type of Case: Action in Ejectment

Type of Pleading: Complaint

Filed on behalf of: Plaintiff

Counsel of Record for this Party:

Kim C. Kesner, Esquire

Supreme Ct. I.D. #28307

23 North Second Street

Clearfield, PA 16830

814-765-1706

FILED

JUN 24 2005

07/11/36/W
William A. Shaw

Prothonotary/Clerk of Courts

4 Cent to Att

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

HOUTZDALE LINE RAILS TO TRAILS, INC.,	:	No. 05-	-CD
	:		
Plaintiff	:		
	:		
vs.	:		
	:		
MARVIN W. HOCKENBERRY and	:		
BRIDGET FLEMING,	:		
Defendants	:		

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this 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 process 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 HELP.

Court Administrator's Office
Clearfield County Courthouse
1 North Second Street
Clearfield, PA 16830
Telephone: (814) 765-2641, ext. 5982

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

HOUTZDALE LINE RAILS TO TRAILS, INC.,	:	No. 05-	-CD
	:		
Plaintiff	:		
	:		
vs.	:		
	:		
MARVIN W. HOCKENBERRY and	:		
BRIDGET FLEMING,	:		
Defendants	:		

COMPLAINT

NOW COMES the Plaintiff, Houtzdale Line Rails to Trails, Inc. by its counsel Kim C. Kesner, Esquire, and files this Action in Ejectment in accordance with Pa.R.Civ.P Rule 1051, et seq. and in support hereof avers as follows:

1. Plaintiff is Houtzdale Line Rails to Trails, Inc., a Pennsylvania non-profit corporation with its office at 501 David Street, Houtzdale, Clearfield County, Pennsylvania, 16651.

2. Defendant is Marvin W. Hockenberry, is an adult individual residing at 426 Water Street, Philipsburg, Centre County, Pennsylvania, 16866. Defendant "Hockenberry".

3. Defendant Bridget Fleming, is an adult individual residing at 701 ½ Don Street, Houtzdale, Pennsylvania 16651. Defendant "Fleming".

4. Plaintiff is the owner in fee and in possession of a parcel of land located in Houtzdale Borough, Clearfield County, Pennsylvania, identified by Clearfield County Tax Assessment Map No. M14-392 Parcel 89 which Plaintiff obtained by that deed dated August 18, 1994 from Clearfield County Rails to Trails Association recorded on March 22, 1995 in the Office of the Recorder of Deeds of Clearfield County in Deed and Record Book Volume 1664, page 294 (the "Premises" or "Plaintiff's property").

5. Defendant Hockenberry is the record and assessed owner of a parcel bounding the premises on the South identified by Clearfield County Tax Assessment Map No. M14-392 Parcel 27, which Defendant obtained by Deed dated November 8, 1993 from Allen Lynn Hopkins and Claudia A. Hopkins recorded in the Office of the Recorder of Deeds of Clearfield County on November 10, 1993 at Deed and Record Book Volume 1568, page 71 ("Defendant Hockenberry's parcel").

6. Defendant Fleming occupies a trailer located on Defendant Hockenberry's parcel. Plaintiff believes and therefore avers that Defendant Hockenberry and Defendant Fleming maintain a landlord tenant relationship.

7. The porch of the trailer occupied by Defendant Fleming which Plaintiff believes and therefore avers is owned by Defendant Hockenberry encroaches into and upon the premises.

9. Defendant Hockenberry's parcel is also improved with a two-story building.

10. Defendants have constructed a service sewer line connected to the aforesaid building encroaches into and upon the Premises.

11. Other structures which Plaintiff believes and therefore avers are owned by Defendant Fleming including by way of illustration but not limitation a clothesline, dog pen, and swing set, are located on and/or encroach into and upon the Premises.

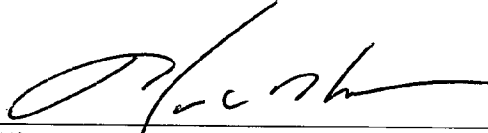
12. Despite several requests, Defendant Hockenberry and/or Defendant Fleming have refused to remove or remedy the encroachments.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter a judgment in its favor against Defendants in Ejectment as follows:

- a. Ordering Defendants to remove all structures encroaching into and upon the premises;
- b. Enjoining the Defendants from all future encroachments;

c. Such other relief as is just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kim C. Kesner', written over a horizontal line.

Kim C. Kesner, Attorney for Plaintiff
Supreme Ct. I.D. No. 28307

23 North Second Street
Clearfield, PA 16830

814-765-1706

VERIFICATION

I, Dennis Kasubick, President, Houtzdale Line Rails to Trails, Inc., verify that the statements made in this Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsifications to authorities.

Date: 6/22/05

Dennis Kasubick
Dennis Kasubick, President
Houtzdale Line Rails to Trails, Inc.

FILED

JUN 24 2005

William A. Shaw
Prothonotary/Clerk of Courts

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

HOUTZDALE LINE RAILS TO
TRAILS, INC.

Plaintiff

Vs.

MARVIN W. HOCKENBERRY and
BRIDGET FLEMING,

Defendants

No.: 05-909-CD

Type of Case: Action in
Ejectment

Type of Pleading: Answer to
Complaint

Filed on behalf of: Defendants

Counsel of Record for this party:

John R. Carfley, Esq.
Supreme Court No. 17621
P. O. Box 249
Philipsburg, PA 16866

FILED⁶²
01126 BT 200
AUG 08 2005 *Atty*

William A. Shaw
Prothonotary/Clerk of Courts

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

HOUTZDALE LINE RAILS TO
TRAILS, INC.

No.: 05-909-CD

Plaintiff

Vs.

MARVIN W. HOCKENBERRY and
BRIDGET FLEMING,

Defendants

ANSWER

AND NOW comes the Defendants, Marvin W. Hockenberry and Bridget Fleming, who by and through their attorney, John R. Carfley, Esq., respond to the Complaint of the Plaintiff in the following manner:

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied. On the contrary, it is averred that after reasonable investigation,

Defendants are without knowledge sufficient to form a belief as to the truth of the averment set forth in Paragraph 4 and insofar as relevant, proof of ownership and all other factual averments is demanded at time of trial.

5. It is admitted that Defendant Hockenberry is the owner of certain property situate in the Borough of Houtzdale, Clearfield County, Pennsylvania, which property is more specifically identified by Clearfield County Tax Assessment Map No. M14-392-27. Insofar as the averments of ownership and Defendants' chain of title or location by survey are relevant to this proceeding, proof thereof is demanded at time of trial.

6. Denied. On the contrary, it is averred that after reasonable investigation Defendants are without knowledge sufficient to form a belief as to the relevancy of the factual averments set forth in Paragraph 6 and insofar as the same may relate to the incident suit, proof thereof is demanded at time of trial.

7. It is denied that the trailer and /or any appurtenances to the trailer owned by the Defendants or occupied by the Defendants encroach into or upon the premises which are alleged to be owned by the Plaintiff. By way of further answer, it is averred that the said encroachments exist and have existed for a sufficient period of time to warrant a claim by the Defendants to ownership by adverse possession or other legal theory, including the doctrines of estoppel, laches, the statute of limitations, statute of frauds or other defenses.

9. It is admitted that the Defendant Hockenberry owns real estate which is improved with a two-story building. It is denied that the improvement is located on the property which is the subject of this suit and insofar as the averments may be relevant, proof thereof is demanded at time of trial.

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

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

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

WHEREFORE, Defendants request this Honorable Court to enter judgment in favor of the Defendants and to dismiss Plaintiff's Complaint, including the prayer for relief set forth in sub-paragraphs a., b., and c. together with costs of this proceeding.

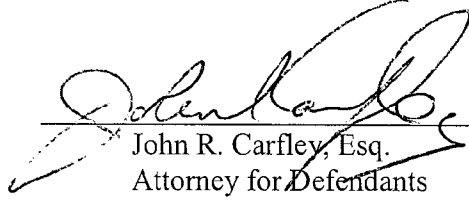
NEW MATTER

13. The answers to paragraphs 1 through 12 are herein incorporated by reference as fully as though set forth at length.

14. It is believed that the Houtzdale Line Rails to Trails, Inc. acquired the property rights herein asserted by virtue of a deed dated the 18th day of August, 1994 between the Clearfield County Rails to Trails Association and the aforesaid Houtzdale Line Rails to Trails, which document was recorded in Deed Book 1664, page 294. It is further believed that the said deed contains certain exceptions and reservations and other restrictive covenants which recognized rights in the public superior to that of those rights acquired by the Plaintiff, including Defendant's right to use roads, alleys, bridges, streets, crossing the premises, streams or any other rights of way, including pipes, wires, poles, cables and culverts, which rights exist in the Defendant from the time of he and his predecessors in title acquisition of the subject premises.

15. The rights which the Defendant now asserts through their deed create a waiver of any rights argued by the Plaintiff and further constitute an estoppel of the Plaintiff from attempting to remove the Defendant from the use of the subject premises.

16. Defendant further asserts the doctrine of laches.
17. Defendant further asserts the doctrine of estoppel.
18. Defendant further asserts the doctrine of the statute of limitations.
19. Defendant further asserts the doctrine of the statute of fraud.


John R. Carfley, Esq.
Attorney for Defendants

Dated: August 8, 2005

VERIFICATION

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



Marvin W. Hockenberry

Dated: *August 4, 2005*

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

HOUTZDALE LINE RAILS TO
TRAILS, INC.

Plaintiff

No.: 05-909-CD

Vs.

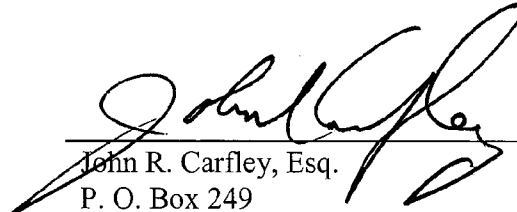
MARVIN W. HOCKENBERRY and
BRIDGET FLEMING,

Defendants

CERTIFICATE OF SERVICE

I hereby certify that I forwarded a copy of the Answer by regular mail, postage prepaid to the following attorney of record for Plaintiff, this 8th day of August, 2005.

Kim C. Kesner, Esq.
23 North Second Street
Clearfield, PA 16830



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

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

HOUTZDALE LINE RAILS TO TRAILS,
INC.,

Plaintiff

vs.

MARVIN W. HOCKENBERRY and
BRIDGET FLEMING,

Defendants

No. 05-909-CD

Type of Case: Action in Ejectment

Type of Pleading: Reply to New
Matter

Filed on behalf of: Plaintiff

Counsel of Record for this Party:
Kim C. Kesner, Esquire
Supreme Ct. I.D. #28307

23 North Second Street
Clearfield, PA 16830
814-765-1706

FILED

0/11:54 Lm

SEP 06 2005

2005 Atty Kesner
CR

William A. Shaw
Prothonotary

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

HOUTZDALE LINE RAILS TO TRAILS, INC.,	:	No. 05-909-CD
	:	
Plaintiff	:	
	:	
vs.	:	
	:	
MARVIN W. HOCKENBERRY and	:	
BRIDGET FLEMING,	:	
Defendants	:	

REPLY TO NEW MATTER

AND NOW, comes Plaintiff, Houtzdale Line Rails to Trails, Inc., by its counsel, Kim C. Kesner, Esquire and files this Reply to Defendant's New Matter.

13. The averments contained in paragraph 13 of Defendant's New Matter require no reply.

14. It is admitted that Plaintiff's color of title derives from the recited deed. It is specifically denied that Plaintiff's deed contains exceptions and/or reservations and/or restrictive covenants supporting defendant's encroachments as averred in Plaintiff's Complaint.

15. The averments contained in paragraph 15 of Defendant's New Matter constitute contentions or conclusions of law to which no reply is required. To the extent that a reply is required and is relevant, it is specifically denied that rights by Plaintiff's deed "create a waiver of any rights argued by the Plaintiff" and/or "constitute an estoppel of the Plaintiff from attempting to remove the Defendant..." from the property being the subject matter of this action.

16. The averments contained in paragraph 16 constitute contentions or conclusions of law to which no response is required. To the extent that a reply is required

and is relevant, it is specifically denied that Plaintiff's claims are barred or limited by the doctrine of laches.

17. The averments contained in paragraph 16 constitute contentions or conclusions of law to which no response is required. To the extent that a reply is required and is relevant, it is specifically denied that Plaintiff's claims are barred or limited by the doctrine of estoppel.

18. The averments contained in paragraph 16 constitute contentions or conclusions of law to which no response is required. To the extent that a reply is required and is relevant, it is specifically denied that Plaintiff's claims are barred or limited by the doctrine of the statute of limitations.

19. The averments contained in paragraph 16 constitute contentions or conclusions of law to which no response is required. To the extent that a reply is required and is relevant, it is specifically denied that Plaintiff's claims are barred or limited by the doctrine of the statute of frauds.

Respectfully submitted,

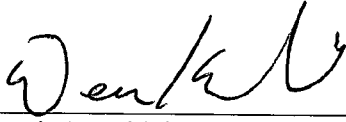
A handwritten signature in black ink, appearing to read 'Kim C. Kesner', is written over a horizontal line.

Kim C. Kesner, Esquire
Attorney for Plaintiff Houtzdale Line
Rails to Trails

VERIFICATION

I, Dennis Kasubick, President, Houtzdale Line Rails to Trails, Inc., verify that the statements made in this Reply to New Matter are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsifications to authorities.

Date: 8/23/05


Dennis Kasubick, President
Houtzdale Line Rails to Trails, Inc.

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

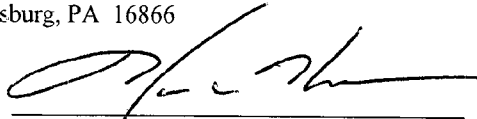
HOUTZDALE LINE RAILS TO TRAILS, INC.,	:	No. 05-909-CD
	:	
Plaintiff	:	
	:	
vs.	:	
	:	
MARVIN W. HOCKENBERRY and	:	
BRIDGET FLEMING,	:	
Defendants	:	

CERTIFICATE OF SERVICE

AND NOW, I do hereby certify that on the 6th day of September, 2005, I caused to be served a true and correct copy of the Plaintiff's Reply to New Matter by U.S. First Class Mail, Postage Prepaid on the following:

John R. Carfley, Esquire
Attorney for Defendants
FO Box 249
Philipsburg, PA 16866

Date: 9/4/05



Kim C. Kysner, Esquire
Attorney for Plaintiff
23 North Second Street
Clearfield, PA 16830
(814) 765-1706

FILED

SEP 06 2005

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100581
NO: 05-909-CD
SERVICE # 1 OF 2
COMPLAINT IN EJECTMENT

PLAINTIFF: HOUTZDALE LINE RAILS TO TRAILS INC.
vs.
DEFENDANT: MARVIN W. HOCKENBERRY and BRIDGET FLEMING

SHERIFF RETURN

NOW, July 12, 2005, SHERIFF OF CENTRE COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT IN EJECTMENT ON MARVIN W. HOCKENBERRY.

NOW, July 15, 2005 AT 6:00 AM SERVED THE WITHIN COMPLAINT IN EJECTMENT ON MARVIN W. HOCKENBERRY, DEFENDANT. THE RETURN OF CENTRE COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

FILED No
cc
9/2:15/05
OCT 11 2005 (m)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100581
NO: 05-909-CD
SERVICE # 2 OF 2
COMPLAINT IN EJECTMENT

PLAINTIFF: HOUTZDALE LINE RAILS TO TRAILS INC.

vs.

DEFENDANT: MARVIN W. HOCKENBERRY and BRIDGET FLEMING

SHERIFF RETURN

NOW, July 19, 2005 AT 1:25 PM SERVED THE WITHIN COMPLAINT IN EJECTMENT ON BRIDGET FLEMING DEFENDANT AT 701 1/2 DON ST., HOUTZDALE, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO BRIDGET FLEMING, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN EJECTMENT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DAVIS / MORGILLO

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100581
NO: 05-909-CD
SERVICES 2
COMPLAINT IN EJECTMENT

PLAINTIFF: HOUTZDALE LINE RAILS TO TRAILS INC.
vs.
DEFENDANT: MARVIN W. HOCKENBERRY and BRIDGET FLEMING

SHERIFF RETURN

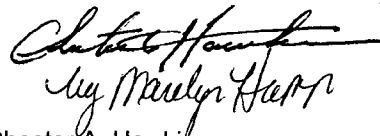
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	KESNER	1749	20.00
SHERIFF HAWKINS	KESNER	1749	50.58
CENTRE CO.	KESNER	1752	55.00

Sworn to Before Me This

_____ Day of _____ 2005

So Answers,



Chester A. Hawkins
Sheriff

SHERIFF'S OFFICE

CENTRE COUNTY

Rm 101 Court House, Bellefonte, Pennsylvania, 16823 (814) 355-6803

SHERIFF SERVICE				INSTRUCTIONS FOR SERVICE OF PROCESS: You must file one instruction sheet for each defendant. please type or print legibly. Do Not detach any copies.					
PROCESS RECEIPT, AND AFFIDAVIT OF RETURN									
1. Plaintiff(s) <u>Houtzdale Line Rails to Trails</u>				2. Case Number <u>05-909</u>					
3. Defendant(s) <u>Marvin Hockenberry et al</u>				4. Type of Writ or Complaint: <u>Complaint</u>					
SERVE → AT {				5. Name of Individual, Company, Corporation, Etc., to Serve or Description of Property to be Levied, Attached or Sold. <u>Marvin Hockenberry</u>					
				6. Address (Street or RFD, Apartment No., City, Boro, Twp., State and Zip Code) <u>426 Water St. Philipsburg, Pa 16866</u>					
7. Indicate unusual service: <input type="checkbox"/> Reg Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Deputize <input type="checkbox"/> Post <input type="checkbox"/> Other									
Now, _____ 20____, I SHERIFF OF CENTRE COUNTY, PA., do hereby deputize the Sheriff of _____ County to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff. _____ Sheriff of Centre County									
8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE									
NOTE ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN - Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction or removal of any such property before sheriff's sale thereof.									
9. Print/Type Name and Address of Attorney/Originator				10. Telephone Number		11. Date			
				12. Signature					
SPACE BELOW FOR USE OF SHERIFF ONLY - DO NOT WRITE BELOW THIS LINE									
13. I acknowledge receipt of the writ or complaint as indicated above.		SIGNATURE of Authorized CCSD Deputy of Clerk and Title		14. Date Filed		15. Expiration/Hearing Date			
TO BE COMPLETED BY SHERIFF									
16. Served and made known to <u>Dorothy Litzinger</u> , on the <u>15</u> day of <u>July</u> , 20 <u>05</u> , at <u>6:00</u> o'clock, <u>P</u> m., at <u>SAME AS ABOVE</u> , County of Centre Commonwealth of Pennsylvania, in the manner described below: <input type="checkbox"/> Defendant(s) personally served. <input type="checkbox"/> Adult family member with whom said Defendant(s) resides(s). Relationship is _____ <input checked="" type="checkbox"/> Adult in charge of Defendant's residence. <input type="checkbox"/> Manager/Clerk of place of lodging in which Defendant(s) resides(s). <input type="checkbox"/> Agent or person in charge of Defendant's office or usual place of business. <input type="checkbox"/> _____ and officer of said Defendant company. <input type="checkbox"/> Other _____									
On the _____ day of _____, 20____, at _____ o'clock, _____ M. Defendant not found because: <input type="checkbox"/> Moved <input type="checkbox"/> Unknown <input type="checkbox"/> No Answer <input type="checkbox"/> Vacant <input type="checkbox"/> Other _____									
Remarks:									
Advance Costs	Docket	Service	Sur Charge	Affidavit	Mileage	Postage	Misc.	Total Costs	Costs Due or Refund
<u>75.00</u>	<u>9.00</u>	<u>14.00</u>	<u>20.00</u>	<u>3.50</u>	<u>25.50</u>	<u>1.00</u>	<u>2.00</u>	<u>55.00</u>	<u>20.00</u>
17. AFFIRMED and subscribed to before me this <u>28</u>				So Answer.					
20. day of <u>July</u> , 20 <u>05</u>				18. Signature of Dep. Sheriff <u>[Signature]</u>				19. Date <u>7/20/05</u>	
23. <u>[Signature]</u> Notary Public Corinne Peters, Notary Public Bellefonte Boro, Centre County My Commission Expires Sept. 5, 2005				21. Signature of Sheriff <u>[Signature]</u>				22. Date	
				SHERIFF OF CENTRE COUNTY					
				Amount Pd. _____ Page _____					
24. Member Pennsylvania Association of Sheriffs OF AUTHORIZED AUTHORITY AND TITLE.								25. Date Received	



CHESTER A. HAWKINS
SHERIFF

Sheriff's Office Clearfield County

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641 EXT. 5986
AFTER 4:00 P.M. (814) 765-1533
FAX (814) 765-5915
ROBERT SNYDER
CHIEF DEPUTY
MARILYN HAMM
DEPT. CLERK
CYNTHIA AUGHENBAUGH
OFFICE MANAGER
PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 100581

TERM & NO. 05-909-CD

HOUTZDALE LINE RAILS TO TRAILS INC.

COMPLAINT IN EJECTMENT

VS.

MARVIN W. HOCKENBERRY and BRIDGET FLEMING

SERVE BY: 07/24/05

MAKE REFUND PAYABLE TO KIM C. KESNER, ESQ.

SERVE: MARVIN W. HOCKENBERRY

ADDRESS: 426 WATER ST., PHILIPSBURG, PA 16866

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF CENTRE COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, July 12, 2005.

RESPECTFULLY,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

93154-PA
PA 75.2

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

HOUTZDALE LINE RAILS TO TRAILS, INC.,	:	No. 05-909-CD
	:	
Plaintiff	:	Type of Case: Action in Ejectment
	:	
vs.	:	Type of Pleading: Praecipe to List for Trial
	:	NONJURY TRIAL
MARVIN W. HOCKENBERRY and	:	
BRIDGET FLEMING,	:	
	:	
Defendants	:	Filed on behalf of: Plaintiff
	:	
	:	Counsel of Record for this Party:
	:	Kim C. Kesner, Esquire
	:	Supreme Ct. I.D. #28307
	:	
	:	23 North Second Street
	:	Clearfield, PA 16830
	:	814-765-1706
	:	
	:	
	:	Opposing Counsel of Record:
	:	
	:	John R. Carfley, Esquire
	:	P.O. Box 249
	:	Philipsburg, PA 16866
	:	814-342-5581
	:	

FILED 4 cc
10/10/05
OCT 26 2005
William A. Shaw
Prothonotary/Clerk of Courts
Ang Kesner
610

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

HOUTZDALE LINE RAILS TO TRAILS, INC.,	:	No. 05-909-CD
	:	
Plaintiff	:	
	:	NONJURY TRIAL
vs.	:	
	:	
MARVIN W. HOCKENBERRY and	:	
BRIDGET FLEMING,	:	
Defendants	:	

PRAECIPE FOR TRIAL

TO: WILLIAM A. SHAW, PROTHONOTARY

Please list the above-captioned matter for trial on the civil nonjury trial list.

I hereby certify that no motions are outstanding; that discovery has been completed; and/or I reasonably believe completion of remaining discovery will not obstruct proceedings in this case; and that the case is ready for trial. A Certificate of Readiness is attached hereto and is incorporated herein by reference.

I further certify that notice of this Praecipe has been given to the attorney of record representing the Defendants.



Kim C. Kesner, Esquire
Attorney for Plaintiff

Dated: October 26, 2005

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL TRIAL LISTING

CERTIFICATE OF READINESS

TO THE PROTHONOTARY

05-909-CD Action in Ejectment DATE PRESENTED 10/28/2005
CASE NUMBER TYPE TRIAL REQUESTED ESTIMATED TRIAL TIME

() Jury (XX) Non-Jury
Date Complaint () Arbitration 1 Days
Filed: June 24, 2005

PLAINTIFF(S)

Houtzdale Line Rails to Trails, Inc. ()

DEFENDANT(S)

Marvin W. Hockenberry ()

ADDITIONAL DEFENDANT(S)

Bridget Fleming ()

Check Block if
a Minor is a
Party to the
Case

JURY DEMAND FILED BY:

N/A

DATE JURY DEMAND FILED:

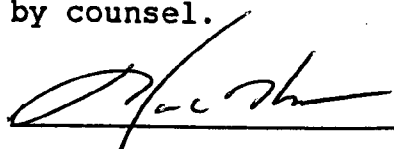
N/A

AMOUNT AT ISSUE CONSOLIDATION DATE CONSOLIDATION ORDERED

more than
\$ () yes () no

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

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


Kim C. Kesner, Esquire, 23 N. 2nd St, Clearfield, PA 16830 814-765-1706

FOR THE PLAINTIFF

TELEPHONE NUMBER

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

FOR THE DEFENDANT

TELEPHONE NUMBER

FOR ADDITIONAL DEFENDANT

TELEPHONE NUMBER

CERTIFICATE OF SERVICE

AND NOW, I do hereby certify that on the 26th day of October, 2005, I caused to be served a true and correct copy of Plaintiff's Certification of Readiness and Praeceptum For Trial on the following and in the manner indicated below:

BY PERSONAL SERVICE

Court Administrator's Office
Clearfield County Courthouse
Clearfield, PA 16830

BY UNITED STATES MAIL, FIRST CLASS, POSTAGE PREPAID

John R. Carfley, Esquire
Attorney for Defendants
P.O. Box 249
Philipsburg, PA 16866

Date: October 26, 2005



Kim C. Kesner, Esquire
Attorney for Plaintiff

CA

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

HOUTZDALE LINE RAILS TO TRAILS, INC., *
Plaintiff *

vs. *

NO. 05-909-CD

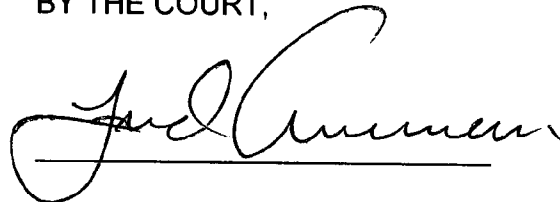
MARVIN W. HOCKENBERRY and *
BRIDGET FLEMING, *
Defendants *

ORDER

NOW, this 19th day of January, 2006, following pre-trial conference among the Court and counsel, it is the ORDER of this Court as follows:

1. Non-Jury Trial shall be held before the Court commencing at 9:00 a.m. on Friday, March 24, 2006 in Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pennsylvania.

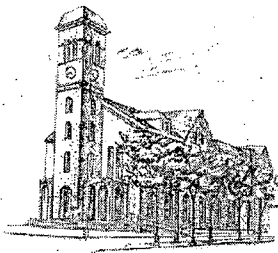
BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED, cc, Atty:
01/20/2006 Kesner
JAN 20 2006 Carfley

William A. Shaw
Prothonotary/Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

DATE: 1/20/06

_____ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

X Plaintiff(s)/Attorney(s)

X Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

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

HOUTZDALE LINE RAILS TO TRAILS, INC.,
Plaintiff

vs.

MARVIN HOCKENBERRY, et al,
Defendants

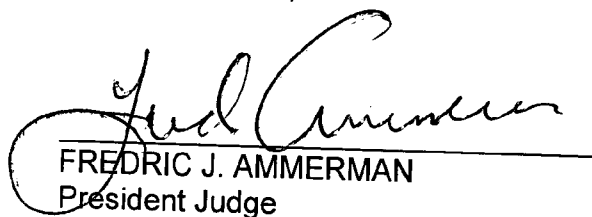
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NO. 05-909-CD

ORDER

NOW, this 15th day of February, 2006, upon verbal request of John Carfley, Esquire, counsel for Defendants, it is the ORDER of this Court that a Settlement Conference be and is hereby scheduled for the 22nd day of February, 2006 at 9:00 a.m. at the Clearfield County Courthouse, Clearfield, Pennsylvania. Each party, or a person with authority to settle the matter, is to be present. One-half hour has been scheduled for this matter.

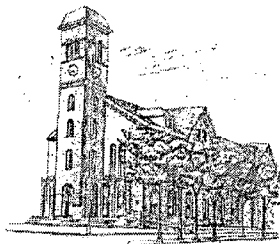
BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED *icc Atty's:*
2/2/2006 *Carfley*
FEB 16 2006 *Kesner*

William A. Shaw *Fax 214606*
Prothonotary/Clerk of Courts *to Carfley & Kesner*

CR



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

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Sincerely,

William A. Shaw
Prothonotary

DATE: 2/16/06

_____ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

X Plaintiff(s)/Attorney(s)

X Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

Prothonotary
PO Box 549
Clearfield, PA 16830
Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659

**Clearfield County
Courthouse**

Fax

To: Kim C. Kesner

From: William A. Shaw

Fax: 765-2957

Date: 2/16/06

Phone: _____

Pages: 2

Re: _____

CC: _____

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

•Comments: _____

*** TRANSMISSION REPORT ***

Feb.16 '06 14:21

DATE	START	TIME	PARTNER	MODE	PAGE	RESULT
Feb.16	14:20	1'09	8147652957	G3	02	OK

Prothonotary
PO Box 549
Clearfield, PA 16830
Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659

**Clearfield County
Courthouse**

Fax

To: John Costley	From: William A. Shaw
Fax: 342-1127	Date: 2/16/06
Phone:	Pages: 2
Re:	CC:

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

•Comments:

*** TRANSMISSION REPORT ***

Feb.16 '06 14:23

DATE	START	TIME	PARTNER	MODE	PAGE	RESULT
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OK

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

HOUTZDALE LINE RAILS TO TRAILS,
INC.,

Plaintiff

vs.

MARVIN W. HOCKENBERRY and
BRIDGET FLEMING,

Defendants

: No. 05-909-CD
:
: Type of Case: Action in Ejectment
:
: Type of Pleading: Stipulation and Order
:
:
: Filed on behalf of: Plaintiff
:
: Counsel of Record for this Party:
: Kim C. Kesner, Esquire
: Supreme Ct. I.D. #28307
:
: 23 North Second Street
: Clearfield, PA 16830
: 814-765-1706
:
:
: Opposing Counsel of Record:
:
: John R. Carfley, Esquire
: P.O. Box 249
: Philipsburg, PA 16866
: 814-342-5581
:
:

FILED 3cc Atty Kesner
0/11:11am
MAR 13 2006 (un)

William A. Sh...
Prothonotary

CR

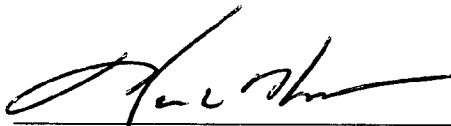
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

HOUTZDALE LINE RAILS TO TRAILS, INC.,	:	No. 05-909-CD
	:	
Plaintiff	:	
	:	
vs.	:	
	:	
MARVIN W. HOCKENBERRY and	:	
BRIDGET FLEMING,	:	
Defendants	:	

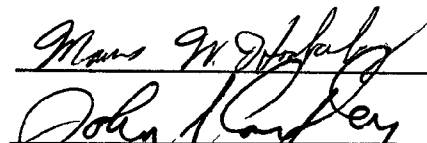
STIPULATION

TO: The Honorable Fredric J. Ammerman, President Judge

AND NOW COMES, Kim C. Kesner, Esquire for Plaintiff and John Carfley Esquire for Defendants and with full authority from their respective clients to do so, request this Court to enter the following Order as a final adjudication of the above captioned matter in lieu of nonjury trial scheduled for March 24, 2006.



Kim C. Kesner, Esquire
Attorney for Plaintiff



John Carfley
Attorney for Defendants

ORDER

AND NOW, this 9 day of March, 2006 after the Settlement Conference conducted by this Court on February 22, 2006 and upon the foregoing Stipulation, this matter being scheduled for nonjury trial on March 24, 2006, it is hereby ORDERED and DECREED in adjudication of the claims made in this action as follows:

1. Plaintiff's ownership of its property described in Paragraph 4 of its Complaint is confirmed in accordance with the survey of Land & Mapping Services dated May 24, 2004. As such, the sewer line constructed by Defendant Hockenberry to serve the trailer on Defendant Hockenberry's property and the porch of the trailer encroach upon Plaintiff's property.

2. Defendant Hockenberry shall pay Plaintiff the sum of Two Hundred Fifty (\$250.00) Dollars in consideration for the grant by Plaintiff to Defendant Hockenberry of a permanent easement for the encroaching sewer line. The present grant of this easement is hereby confirmed without further deed or easement. This easement shall be for the benefit of Defendant Hockenberry, his heirs and assigns and shall run with the land. This easement shall be for the purpose of operating, maintaining, repairing and replacing the existing sewer service line to the trailer.

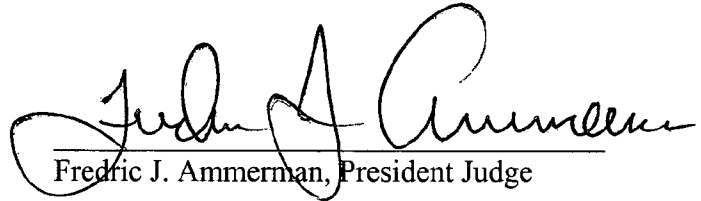
3. Defendant Hockenberry shall reconstruct the porch of the trailer so that it no longer encroaches upon Plaintiff's property in accordance with Plaintiff's survey as set forth in Paragraph 1 above.

4. During the period of the sewage easement provided for in Paragraph 2 above, Defendant Hockenberry, his heirs, administrators, executors and assigns shall comply with the following covenants and restrictions:

- a. Defendant Hockenberry shall keep his land (including but not limited to the easement) free of litter, debris, junk, and any other type(s) of unsightly, unsanitary, or inappropriate condition(s) or material, which would in any way cause inconvenience, annoyance or alarm, whether by sight or smell, to the public using the trail.
- b. No animals of any type shall be kept, stored, penned or secured at the trailer or on the Hockenberry land which could in any way cause inconvenience, annoyance or alarm, whether by sight or smell, to the public using the trail and no animal owned by Defendant Hockenberry, his heirs, administrators, executors or assigns or any occupant(s) or invitee(s) of the trailer shall be permitted to deposit any animal waste on the trail.

- c. In the event Defendant Hockenberry, his heirs, administrators, executors or assigns (or any occupant or invitee of the trailer) violates any provision(s) of these restrictions it could be punishable as contempt of the Order and Defendant Hockenberry shall be responsible for the payment of any reasonable attorney's fees actually incurred to enforce them

BY THE COURT:



Fredric J. Ammerman, President Judge

FILED

MAR 13 2006

William A. Shaw
Prothonotary

KIM C. KESNER

23 NORTH SECOND STREET, CLEARFIELD, PA 16830

ATTORNEY AT LAW

attykesner@atlanticbbn.net

kzurat@atlanticbbn.net

(814) 765-1706

FAX (814) 765-7006

March 9, 2006

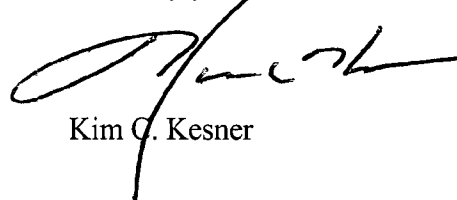
Honorable Fredric J. Ammerman, President Judge
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

**RE: Houtzdale Line Rails to Trails, Inc. vs. Marvin W. Hockenberry and Bridget Fleming
No. 05-909-CD**

Dear Judge Ammerman:

To be delivered to you with this is an original Stipulation and Consent Order to memorialize and confirm the settlement agreement reached between the parties at the settlement conference conducted by you on February 22, 2006. If the Order meets with your approval, we would respectfully request its execution and entry. This will free the scheduled trial date of March 24, 2006 on your schedule. Please contact me if you would require anything further to consider this matter.

Sincerely yours,



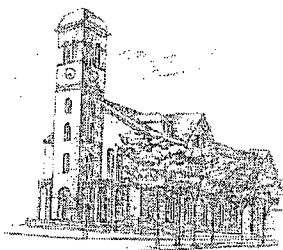
Kim C. Kesner

KCK/klz

Enclosure

cc: John R. Carfley, Esquire
Dennis Kasubick, President
Houtzdale Line Rails to Trails, Inc.

VIA HAND DELIVERY



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary


Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

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Sincerely,


William A. Shaw
Prothonotary

DATE: 03-13-2004

Y You are responsible for serving all appropriate parties.

 The Prothonotary's office has provided service to the following parties:

 Plaintiff(s)/Attorney(s)

 Defendant(s)/Attorney(s)

 Other

 Special Instructions: