

05-1395-CD

fst. B. Cuetara vs Tammy White

David Cuetera vs Tammy Fenush White
2005-1395-CD

Date: 2/4/2006

Time: 11:03 AM

Page 1 of 2

Clearfield County Court of Common Pleas

User: BILLSHAW

ROA Report

Case: 2005-01395-CD

Current Judge: No Judge

David C. Cuetara, Beatrice H. Cuetara vs. Tammy Louise Fenush White

Civil Other

Date	Judge
9/8/2005	New Case Filed.
	No Judge
/	X Filing: Praeclipe Writ of Summons Paid by: Durant, Timothy E. (attorney for Cuetara, David C.) Receipt number: 1908071 Dated: 09/08/2005 Amount: \$85.00 (Check) 2CC & 2 Writs to Atty.
	No Judge
/	X Filing: Praeclipe for Lis Pendens, situated in Lawrence Township. Paid by: Durant, Timothy E. (attorney for Cuetara, David C.) Receipt number: 1908074 Dated: 09/08/2005 Amount: \$20.00 (Check) 2CC Atty Durant.
10/7/2005	No Judge
/	X Praeclipe, filed. Please issue a Rule upon the Plaintiff to file a Complaint within twenty (20) days of the service of the Rule or suffer Judgement on of Non Pros., filed by s/ Richard A. Bell Esq. 1CC & 1 writ to Atty Bell.
10/10/2005	No Judge
/	X Certificate of Service, filed. That a copy of a Rule to File Complaint on behalf of Defendant, in the above matter was mailed on the 7th day of October 2005 to Timothy E. Durant Esq, filed by s/ Richard A. Bell Esq.
10/21/2005	No Judge
/	X Motion For Protective Order, filed by Atty. Bell 1 Cert. to Atty. Bell Rule to Show Cause AND NOW this 21st day of October 2005 upon consideration of the attached Motion for Protective Order, a Rule is hereby issued upon the Plaintiff to show Cause why the Motion should not be granted. Rule Returnable the 21st day of November 2005 for filing written response. BY THE COURT: /S/ Fredric J. Ammerman, P. Judge. 1CC Atty Bell
10/25/2005	Fredric Joseph Ammerman
/	X Certificate of Service, filed. Certify that a copy of Motion for Protective Order on behalf of Defendant, in the above matter was mailed the 24th day of October 2005 to Timothy E. Durant, Esq. filed by s/ Richard A. Bell Esq. No CC.
10/26/2005	No Judge
/	X Complaint, filed by Timothy E. Durant Esq. 3CC Atty Durant.
10/27/2005	No Judge
/	X Affidavit of Service filed. A true and correct copy, of the original Complaint filed in the above captioned action, to Richard A. Bell Esq., on October 26, 2005, filed by s/ Michael Luongo for Atty Durant. 2CC Atty Durant.
11/4/2005	No Judge
/	X Preliminary Objections of Defendant to the Complaint of Plaintiff, filed by s/ Richard A. Bell Esq. No CC.
11/21/2005	No Judge
/	X Reply To Motion For Protective Order, filed by s/ Timothy E. Durant, Esquire. 3CC Atty. Durant
11/28/2005	No Judge
11/29/2005	No Judge
/	X First Amended Complaint, filed by s/Timothy E. Durant, Esquire. No CC
11/29/2005	No Judge
/	X Affidavit of Service filed. That on November 29, 2005, I did deposit in the U.S. mail, postage prepaid, a certified copy of the First Amended Complaint filed in the above captioned action to Richard A. Bell, filed by Timothy E. Durant Esq. 3CC Atty Durant.
12/8/2005	No Judge
/	X Preliminary Objections of Defendant to the Amended Complaint of Plaintiff, filed by s/ Richard A. Bell Esq. No CC.
12/29/2005	No Judge
/	X Second Amended Complaint, filed by s/ Timothy E. Durant, Esquire. 3CC to Atty
12/30/2005	No Judge
/	X Affidavit of Service filed. That on December 29, 2005, a certified copy of the Second Amended Complaint filed in the above captioned action to Richard A. Bell Esq., Attorney for the Defendant, filed by s/ Timothy E. Durant Esq. No CC.

Date: 2/4/2006

Time: 11:03 AM

Page 2 of 2

Clearfield County Court of Common Pleas

User: BILLSHAW

ROA Report

Case: 2005-01395-CD

Current Judge: No Judge

David C. Cuetara, Beatrice H. Cuetara vs. Tammy Louise Fenush White

Civil Other

Date		Judge
1/11/2006	<input checked="" type="checkbox"/> Sheriff Return, October 5, 2005 at 8:52 am served the within Summons, Praecipes; plff. 1st requests etc. on defendant. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Durant \$50.71.	No Judge
	<input checked="" type="checkbox"/> Preliminary Objections Of Defendant To The Second Amended Complaint of Plaintiff, filed by s/ Richard A. Bell, Esquire. No CC	No Judge
1/16/2006	<input checked="" type="checkbox"/> Order AND NOW, this 12th day of January, 2006, upon consideration of Defendant's Preliminary Objections to the Amended Complaint of Plaintiff filed in the above matter, it is the Order of the Court that argument has been scheduled for the 6th day of February, 2006 at 11:30 a.m. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Attys: Durant and Bell.	Fredric Joseph Ammerman
1/30/2006	<input checked="" type="checkbox"/> Objections to Subpoena pursuant to Rule 4009.21-Clear-Care, filed by s/ Richard A. Bell Esq. No CC.	No Judge
1/31/2006	<input checked="" type="checkbox"/> Objections to Subpoena pursuant to Rule 4009.1-Dotts, filed by s/ Richard A. Bell Esq. No CC.	No Judge
	<input checked="" type="checkbox"/> Third Amended Complaint, filed by s/ Timothy E. Durant Esq. 3CC Atty Durant.	No Judge
2/2/2006	<input checked="" type="checkbox"/> Affidavit of Service filed. That on January 31, 2006, a certified copy of the Third Amended Complaint filed in the above captioned action was mailed to Richard A Bell Esq., filed by s/ Timothy E. Durant Esq. 2CC Atty Durant.	No Judge
2/3/2006	 <input checked="" type="checkbox"/> Preliminary Objections Of Defendant To The Third Amended Complaint of Plaintiff, filed by s/ Richard A. Bell, esquire. No CC	No Judge

Date: 03/23/2006

Clearfield County Court of Common Pleas

User: LBENDER

Time: 11:07 AM

ROA Report

Page 1 of 2

Case: 2005-01395-CD

Current Judge: Fredric Joseph Ammerman

David C. Cuetara, Beatrice H. Cuetara vs. Tammy Louise Fenush White

Civil Other

Date	Selected Items	Judge
02/03/2006	<input checked="" type="checkbox"/> Affidavit of Service, Notice of Deposition of Tammy Louise Fenush White served upon Richard A. Bell, Esquire, on Feb. 3, 2006. filed by s/ Timothy E. Durant, Esquire. No CC	No Judge
02/08/2006	<input checked="" type="checkbox"/> Order, NOW, this 6th day of Feb., 2006, the original Preliminary Objections are dismissed without prejudice to the Defendant to raise any of the same issues to any Amended Complaint which may be filed. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty: Durant, Bell	No Judge
02/23/2006	<input checked="" type="checkbox"/> Fourth Amended Complaint, filed by s/ Timothy E. Durant Esq. 3CC Atty	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Affidavit of Service filed. That on February 22, 2006, served on CSB Bank Fredric Joseph Ammerman a Subpoena to Produce Documents and Things for Discovery in the above captioned action, filed by s/ Michael Luongo. No CC.	
	<input checked="" type="checkbox"/> Affidavit of Service filed. That on February 22, 2006, served upon County National Bank a Subpoena to Produce Documents and Things for Discovery in the above captioned action, filed by s/ Michael Luongo. No CC.	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Affidavit of Service filed. That on February 22, 2006, served upon Northwest Savings Bank a Subpoena to Produce Documents and Things for Discovery in the above captioned action, filed by s/ Michael Luongo. No CC.	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Affidavit of Service filed. That on February 22, 2006 served upon Clearfield County Career and Technology Center a Subpoena to Produce Documents and Things for Discovery in the above captioned action, filed by s/ Michael Luongo. No CC.	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22 to Clearfield C. Career and Technology Center, filed by s/ Timothy E. Durant Esq. NO CC.	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22, to CNB Bank, filed by s/ Timothy E. Durant Esq. NO CC.	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22, to CSB Bank, filed by s/ Timothy E. Durant Esq. No CC.	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22, to Northwest Saving Bank, filed by s/ Timothy E. Durant Esq. No CC.	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Affidavit of Service filed. That on February 23, 2006, I did deposit a certified copy of the Fourth Amended Complaint filed in the above captioned action to Richard A. Bell Esq., filed by s/ Timothy E. Durant Esq. 3CC Atty Durant.	Fredric Joseph Ammerman
03/01/2006	<input checked="" type="checkbox"/> Motion Pursuant to R.C.P. 4009.21(d)(1) For Ruling Upon Objections Filed By Defendant to Two Subpoenas Proposed to be Served by Plaintiff, filed by s/ Timothy E. Durant, Esquire. 3CC to Atty	Fredric Joseph Ammerman
03/02/2006	<input checked="" type="checkbox"/> Preliminary Objections Of Defendant To The Fourth Amended Complaint Of Plaintiff, filed by s/ Richard A. Bell, Esquire. No CC	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Praeclipe To Withdraw Objections to Subpoenas, filed by s/ Richard A. Bell, Esquire. No CC	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22, filed by s/ Timothy E. Durant Esq. No CC. IN RE: DOTTS MOTOR COMPANY, INC.	Fredric Joseph Ammerman

Date: 03/23/2006

Time: 11:07 AM

Page 2 of 2

Clearfield County Court of Common Pleas

User: LBENDER

ROA Report

Case: 2005-01395-CD

Current Judge: Fredric Joseph Ammerman

David C. Cuetara, Beatrice H. Cuetara vs. Tammy Louise Fenush White

Civil Other

Date	Selected Items	Judge
03/02/2006	<input checked="" type="checkbox"/> Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22, filed by s/ Timothy E. Durant Esq. No CC. IN RE: CLEAR-CARE CORP.	Fredric Joseph Ammerman
03/03/2006	<input checked="" type="checkbox"/> Affidavit of Service filed. Served Dotts' Motor Company, Inc., a Subpoena To produce Documents and Things for Discovery in the above captioned matter, filed by s/ Michael Luongo. 2 CC Atty Durant. <input checked="" type="checkbox"/> Affidavit of Service filed. Served Clear-Care Corporation a Subpoena To Produce Documents and Things for Discovery in the above captioned action, filed by s/ Virginia Johnson. 2CC Atty Durant. <input checked="" type="checkbox"/> Praecipe To Withdraw Motion Pursuant to R.C.P. 4009.21(d)(1) For Ruling Upon Objections Filed by Defendant to Two Subpoenas Proposed to be Served By Plaintiff, filed by s/ Timothy E. Durant, Esquire. 2CC Atty. Durant	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Affidavit of Service filed. That on March 3, 2006 I did deposit a certified copy of the Praecipe to Withdraw Motion Pursuant to R.C.P. 4009.21 (d) (1) for Ruling Upon Objections filed by Defendant to Two Subpoenas Proposed to be Served by Plaintiff filed in the above captioned action to Richard A. Bell Esq., filed by s/ Timothy E. Durant Esq. 2CC Atty. Order, NOW, this 1st day of March, 200	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Order, NOW, this 1st day of March, 2006, rule is issued, respondent shall file and answer to the motion within 30 days of this date, argument shall be held on April 7, 2006 at 2:30 p.m. in Courtroom no. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Durant	Fredric Joseph Ammerman
03/08/2006	<input checked="" type="checkbox"/> Certificate of Service, filed. That a copy of a proposed Order of Court on Preliminary Objection of Defendant to the Fourth-Amended Complaint of Plaintiff, in the above matter was mailed on the 8th day of March, 2006 to Timothy E. Durant Esq., filed by s/ Richard A. Bell Esq. No CC.	Fredric Joseph Ammerman
03/09/2006	<input checked="" type="checkbox"/> Order, NOW, this 8th day of March, 2006, upon consideration of Defendant's Preliminary Objections to the Fourth Amended Complaint of Plaintiff, Ordered that Argument has been scheduled for the 28th day of March, 2006, at 10:30 a.m. in Courtroom No. 1. By The Court, /s/Fredric J. Ammerman, Pres. Judge. 3CC Atty. Bell	Fredric Joseph Ammerman
03/13/2006	<input checked="" type="checkbox"/> Certificate of Service, filed. That a copy of Order of Court dated March 8, 2006 with reference to Argument of the Preliminary Objections to the Fourth Amended Complaint of Plaintiff, in the above matter was mailed on the 13th day of March 2006 to Timothy E. Durant Esq., filed by s/ Richard A. Bell Esq. NO CC.	Fredric Joseph Ammerman

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

DAVID C. CUETARA, EXECUTOR OF THE

ESTATE OF BEATRICE H. CUETARA
(Plaintiff)

CIVIL ACTION

25687 Tropic Acres Drive
(Street Address)

No. 05-1395-CD

Bonita Springs, FL 34135
(City, State ZIP)

Type of Case: CIVIL

Type of Pleading: Praeclipe for Writ of Summons

vs.

TAMMY LOUISE FENUSH WHITE
(Defendant)

Filed on Behalf of:
DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA

(Plaintiff/Defendant)

1010 Country Club Rd.
(Street Address)

Clearfield, PA 16830
(City, State ZIP)

Timothy E. Durant, Esquire
(Filed by)

201 N. 2nd St., Clearfield, PA 16830
(Address)

(814)765-1711
(Phone)

Timothy E. Durant
(Signature)

FILED ^{IN}
03/30/05
SEP 08 2005
2CC & Writs
to Atty
Atty pd 85.00
William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID C. CUETARA, EXECUTOR OF THE *
ESTATE OF BEATRICE H. CUETARA *
Plaintiff *
*
vs * 05- -CD
*
TAMMY LOUISE FENUSH WHITE *
Defendant *

TO THE PROTHONOTARY:

PRAECIPE FOR WRIT OF SUMMONS

Kindly issue a writ of summons against the defendants in the
above-captioned action.

Dated: September 8, 2005


Timothy E. Durant, Esquire
Attorney for Plaintiff
201 North Second Street
Clearfield, PA 16830
814-765-1711
PA Sup. Ct. I.D. No. 21352

Address for Defendant is:

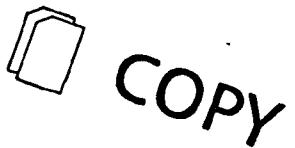
TAMMY LOUISE FENUSH WHITE
c/o Dr. Lynne D. Cosner
72 Maple Drive
Olanta, PA 16863
(814) 236-0892

FILED

SEP 08 2005

William A. Shaw
Prothonotary/Clerk of Courts

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

 COPY

SUMMONS

**David C. Cuetara, Executor of the
Estate of Beatrice H. Cuetara**

Vs.

NO.: 2005-01395-CD

Tammy Louise Fenush White

TO: TAMMY LOUISE FENUSH WHITE

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 09/08/2005

William A. Shaw
Prothonotary

Issuing Attorney:

Timothy E. Durant
201 North Second Street
Clearfield, PA 16830
(814) 765-1711

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

DAVID C. CUETARA, EXECUTOR OF THE

ESTATE OF BEATRICE H. CUETARA
(Plaintiff)

CIVIL ACTION

25687 Tropic Acres Drive
(Street Address)
Bonita Springs, FL 34135
(City, State ZIP)

No. 05-1395 CD

Type of Case: CIVIL

Type of Pleading: Praecipe for Lis Pendens

VS.

TAMMY LOUISE FENUSH WHITE
(Defendant)
1010 Country Club Rd.
(Street Address)
Clearfield, PA 16830
(City, State ZIP)

Filed on Behalf of:
DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA
(Plaintiff/Defendant)

Timothy E. Durant, Esquire
(Filed by)

201 N. 2nd St., Clearfield, PA 16830
(Address)

(814)765-1711
(Phone)

Timothy E. Durant
(Signature)

FILED 200

03:39 PM SEP 08 2005 Atty Durant

William A. Shaw
Atty pd 20.00
Prothonotary/Clerk of Courts

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

DAVID C. CUETARA, EXECUTOR OF THE	*	
ESTATE OF BEATRICE H. CUETARA	*	
Plaintiff	*	
	*	
VS	*	05-
	*	-CD
TAMMY LOUISE FENUSH WHITE	*	
Defendant	*	

TO THE PROTHONOTARY:

PRAECIPE FOR LIS PENDENS

Please index the above captioned action as a lis pendens against the real property with a street address of 1010 Country Club Road, Clearfield, PA and a legal description as follows:

ALL that certain lot or parcel of land, together with any improvements thereon, situate in Lawrence Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pipe on the southern line of Country Club Road; said pipe being the northwest corner of Lot #43 In Longmeadow, thence along the western tine of Lot #43, South four (4) degrees fifty (50) minutes West one hundred seventy (170) feet to an iron pipe on the line of Lot #63; thence along line of Lot #63, North eighty-five (85) degrees ten (10) minutes West, one hundred twenty-five (125.00) feet to an Iron pipe corner common with Lot #45; thence along eastern line of Lot #45, North four (4) degrees fifty (50) minutes East one hundred seventy (170. 0) feet to an iron pipe on the southern line of Country Club Road and a common corner with Lot #45; thence by the southern line of Country Club Road South eighty-five (85) degrees ten (10) minutes east one hundred twenty-five (125) feet to an iron pipe and place of beginning. Containing .49 acre.

BEING a parcel of land known as Lot #44 in the plan of Longmeadow.

SUBJECT to the restrictions of record recorded In Clearfield County Misc. Book 110, page 47, on January 18, 1959 and additional restrictions of record declared by

Pengard Construction, Inc. and recorded in Clearfield County on May 19, 1975 in Misc. Book 197, page 436.

As part of the rights being received by the Grantee from the Grantor and as part of the consideration paid by the Grantee hereunder, the Grantor hereby gives and grants unto the Grantee any and all rights she may possess in and to the private sewer line serving the lot conveyed herein, together with the right to discharge sewerage in said line, in perpetuity and without further charge or claim by the Grantor herein, excepting fees or charges made by Municipal Authorities for use or maintenance of the sewer line.

BEING the same premises which, Beatrice H. Cuetara, conveyed to Tammy Louise Fenush White by Deed dated the 21st day of February 2003, said Deed being recorded an the office of the Register and Recorder's office of Clearfield County, Pennsylvania in as Instrument # 200302750 on February 25, 2003

EXCEPTING AND RESERVING any exceptions and reservations in the chain of title.

I hereby certify that this action affects title to or other interest in the above described real property.

Dated: September 8, 2005


Timothy E. Durant, Esquire
Attorney for Plaintiffs
201 North Second Street
Clearfield, PA 16830
814-765-1711
PA Sup. Ct. I.D. No. 21352

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

Type of Pleading
PRAECIPE

Filed on Behalf of:
Defendant

Counsel of Record for
this Party:

Richard A. Bell, Esquire
PA I.D. #06808
BELL, SILBERBLATT &
WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

(814) 765-5537

FILED *1ccalwrit*
01/11/06 *to Atty Bell*
OCT 07 2005

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

TO: William A. Shaw, Prothonotary

PRAECIPE

Please issue a Rule upon the Plaintiff to file a Complaint within twenty (20) days of the service of the Rule or suffer Judgment Of Non Pros.

BELL, SILBERBLATT & WOOD
By

DATED: Oct. 7, 2005


Richard A. Bell, Esquire
Attorney for Defendant

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of my Praecipe behalf of Defendant, in the
above matter was mailed the 7th day of October, 2005,
by regular mail postage prepaid at the post office in Clearfield, PA 16830 to the
following:

Timothy E. Durant, Esquire
201 N. 2nd Street
Clearfield, PA 16830



Richard A. Bell, Esquire
Attorney for Plaintiff

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

 COPY

David C. Cuetara, Executor of the
Estate of Beatrice H. Cuetara

Vs.
Tammy Louise Fenush White

Case No. 2005-01395-CD

RULE TO FILE COMPLAINT

TO: David C. Cuetara, Executor of the Estate of Beatrice H. Cuetara, Plaintiff

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.

William A. Shaw, Prothonotary

Dated: October 7, 2005

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

Type of Pleading
CERTIFICATE OF SERVICE

Filed on Behalf of:
Defendant

Counsel of Record for
this Party:

Richard A. Bell, Esquire
PA I.D. #06808
BELL, SILBERBLATT &
WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

(814) 765-5537

FILED
O 11:29 a.m. 6K
OCT 10 2005

William A. Shaw
Prothonotary

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of a Rule To File Complaint on behalf of
Defendant, in the above matter was mailed the 7th day of October
2005, by regular mail postage prepaid at the post office in Clearfield, PA 16830 to
the following:

Timothy E. Durant, Esquire
201 N. 2nd Street
Clearfield, PA 16830


Richard A. Bell, Esquire
Attorney for Plaintiff

FILED

OCT 10 2005

William A. Shaw
Prothonotary

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

FILED

03:54 PM
OCT 21 2005

William A. Shaw
Prothonotary/Clerk of Courts
ICCA Amy Bell

RULE TO SHOW CAUSE

AND NOW this 21st day of October, 2005, upon consideration

of the attached Motion For Protective Order, a Rule is hereby issued upon the

Plaintiff to Show Cause why the Motion should not be granted. Rule Returnable

the 21st day of November, 2005, for filing written response.

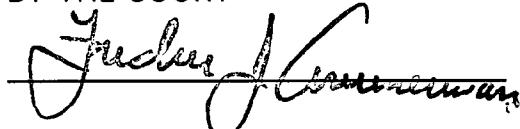
NOTICE

A PETITION OR MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING MOTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

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

COURT ADMINISTRATOR
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 5982

BY THE COURT



cot

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

Type of Pleading
MOTION FOR PROTECTIVE
ORDER

Filed on Behalf of:
Defendant

Counsel of Record for
this Party:

Richard A. Bell, Esquire
PA I.D. #06808
BELL, SILBERBLATT &
WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

(814) 765-5537

FILED

OCT 21 2005
0111:15 AM
William A. Shaw
Prothonotary/Clerk of Courts

1 CERT TO ATT

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

MOTION FOR PROTECTIVE ORDER

NOW COMES, Tammy Louise Fenush White, by her attorney Richard A. Bell, Esquire of Bell, Silberblatt & Wood, hereby moves your Honorable Court to issue a Protective Order for Tammy Louise Fenush White upon the following:

1. The Plaintiff in this lawsuit is David C. Cuetara, who has been appointed Executor of the Estate of Beatrice H. Cuetara.
2. Tammy Louise Fenush White is the Defendant in this lawsuit.
3. This lawsuit has been begun by a Writ Of Summons and no Complaint has been filed. The Defendant has served a Rule upon the Plaintiff to file a Complaint within twenty (20) days.
4. The Plaintiff has filed Discovery upon the Defendant consisting of a Request For Production Of Documents, and a Request For Admissions.
5. The Plaintiff has not stated the nature of the cause of action or what matters are to be inquired into as are required by Pa. R.C.P. 4005(a), and Pa. R.C.P. 4000.1(c). These protections are recognized as applicable to other types of Discovery by the note to Pa. R.C.P. 4009.1.
6. Since no Complaint has been filed, the Defendant is not aware of what constitutes the cause of action or what matters are to be inquired into and thus

cannot make a determination as to whether certain elements of the Discovery are improper and not relevant and are merely a fishing expedition.

7. In connection with the filing of this lawsuit by Writ Of Summons the Plaintiff has also filed a Lis Pendens.

8. The Defendant has listed the real estate that belongs to her for sale and the Lis Pendens has caused a cancellation of a projected sale.

9. The real estate in question belongs to the Defendant and is not in the Estate and further since there has been no Complaint filed or any statements to indicate what the Plaintiff seeks by his Writ Of Summons, the Defendant is unable to determine any basis for a Lis Pendens to be filed.

10. The Defendant believes that the Lis Pendens is improper as filed and requests that it be stricken from the record.

WHEREFORE, the Defendant respectfully requests that your Honorable Court enter a Protective Order holding that the Defendant shall be under no duty to answer the Request For Production Of Documents or the Request For Admissions until the Plaintiff has filed a Complaint or filed a statement identifying the cause of action, and the purpose and matters to be inquired into. The Defendant further requests that your Honorable Court rule that the Lis Pendens filed under the present state of the record is improper and that it be stricken from the record.

Respectfully submitted,

BELL, SILBERBLATT & WOOD
By


Richard A. Bell, Esquire
Attorney for Defendant

COMMONWEALTH OF PENNSYLVANIA:

:SS

COUNTY OF CLEARFIELD:

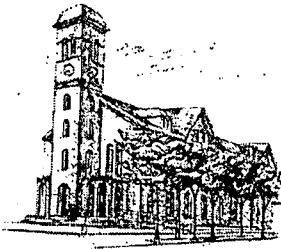
Before me, the undersigned officer, personally appeared TAMMY LOUISE FENUSH WHITE, who, being duly sworn according to law, deposes and says that the facts set forth in the foregoing Motion For Protective Order are true and correct to the best of her knowledge, information and belief.

Tammy Louise Fenush White
TAMMY LOUISE FENUSH WHITE

SWORN AND SUBSCRIBED before me,
this 21st day of October, 2005.

Sandra A. Diver

FILED
OCT 21 2005
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

Date: September 19, 2005

Over the past several weeks, 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

You are responsible for serving all appropriate parties.

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

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

Type of Pleading
CERTIFICATE OF SERVICE

Filed on Behalf of:
Defendant

Counsel of Record for
this Party:

Richard A. Bell, Esquire
PA I.D. #06808
BELL, SILBERBLATT &
WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

(814) 765-5537

FILED *No cc.*
0/10/48 LM *JK*
OCT 25 2005

William A. Shaw
Prothonotary

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of Motion For Protective Order on behalf of Defendant, in the above matter was mailed the 24th day of October 2005, by regular mail postage prepaid at the post office in Clearfield, PA 16830 to the following:

Timothy E. Durant, Esquire
201 N. 2nd Street
Clearfield, PA 16830



Richard A. Bell, Esquire
Attorney for Defendant

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * 05- 1395 -CD

vs * COMPLAINT

TAMMY LOUISE FENUSH WHITE

Defendant *

Filed on behalf of:

**DAVID C. CUETARA, EXECUTOR OF
THE ESTATE OF BEATRICE H.
CUETARA, Plaintiff**

Counsel of Record for Plaintiff

TIMOTHY E. DURANT, ESQ.
Pa. I.D. No. 21352
201 North Second Street
Clearfield, PA 16830
(814) 765-1711

Opposing Counsel: for **TAMMY LOUISE
FENUSH WHITE, Defendant**

RICHARD A. BELL, ESQ.
BELL, SILBERBLATT & WOOD
Pa I.D. No. 06808
318 East Locust Street
PO Box 670
Clearfield, PA 16830
(814) 765-5537

FILED 3cc
01/30/2005 Atty Durant
OCT 26 2005
William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID C. CUETARA, EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA	*	
	*	
	*	
	*	
Plaintiff	*	
	*	
	*	
vs	*	05- 1395 -CD
	*	
	*	
	*	
TAMMY LOUISE FENUSH WHITE	*	COMPLAINT
	*	
	*	
Defendant	*	

TO: DEFENDANT:
c/o RICHARD A. BELL, ESQ.
BELL, SILBERBLATT & WOOD
318 East Locust Street
PO Box 670
Clearfield, PA 16830

NOTICE TO DEFEND

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 First Amended 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 and for any other claims or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 5982

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

DAVID C. CUETARA, EXECUTOR OF THE *
ESTATE OF BEATRICE H. CUETARA *
Plaintiff *
vs *
TAMMY LOUISE FENUSH WHITE *
Defendant *

C O M P L A I N T

Plaintiff by his counsel Timothy E. Durant, Esq. avers the following:

1. Plaintiff is **DAVID C. CUETARA**, presently residing at 25687 Tropic Acres Drive, Bonita Springs, FL 34135. Plaintiff brings this action as **EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA**, deceased.
2. The said **BEATRICE H. CUETARA** departed this life testate on April 17, 2005 a resident of Clearfield County, Pennsylvania and on April 26, 2005 an estate was opened for her in Clearfield County, filed as Estate No. 1705-0231, wherein and whereby plaintiff, David C. Cuetara was duly appointed Executor of her estate.
3. Defendant **TAMMY LOUISE FENUSH WHITE** is a competent adult individual who is presently believed to be residing c/o Dr. Lynne D. Cosner, DVM at 72 Maple Drive, Olanta, PA 16863.
4. Plaintiff was appointed as Executor of the estate of **BEATRICE H. CUETARA** by the Clearfield County Register of Wills on April 26, 2005 and said estate is filed to Clearfield County Estate No. 1705-0231.
5. Decedent **BEATRICE H. CUETARA'S "LAST WILL AND TESTAMENT"** dated November 22, 2000 and her "FIRST CODICIL TO THE LAST WILL & TESTAMENT OF

BEATRICE H. CUETARA" dated February 25, 2002 were admitted to probate on April 26, 2005 by the Clearfield County Register of Wills to No. 1705-0231. Both of said documents are incorporated herein by reference as if set out in full.

6. Pursuant to the provisions of paragraph ONE of the "FIRST CODICIL TO THE LAST WILL & TESTAMENT OF BEATRICE H. CUETARA" paragraph SIX of the "LAST WILL AND TESTAMENT" was changed to read as follows:

ONE: *In paragraph six of my Last Will and Testament dated November 22, 2000, I desire to eliminate any reference to the garage located at the rear of 110 South Second Street, Clearfield, Clearfield Borough, Clearfield County, Pennsylvania. Therefore paragraph six of my Last Will and Testament shall read as follows:*

SIX: *I state that I have made an agreement dated the 22nd day of November 2000, with Tammy Louise Fenush, now Tammy Louise Fenush White concerning my property located at 1010 Country Club Road, Longmeadow, Clearfield, Clearfield County, Pennsylvania. Subject to the terms of that agreement, I hereby give, devise and bequeath the said property at 1010 Country Club Road, Longmeadow, together with the furniture, furnishings and appliances to Tammy Louise Fenush, now Tammy Louise Fenush White, provided she has fulfilled her obligations under the terms of that agreement. If the said Tammy Louise Fenush, now Tammy Louise Fenush White has not fulfilled her obligations under the said agreement, this devise and bequest is void and of no affect.*

7. By deed dated February 21, 2003, recorded on February 25, 2003 in the Clearfield County Recorder's Office as Instrument No. 2003-02750 **BEATRICE H. CUETARA** conveyed to **TAMMY LOUISE FENUSH WHITE**, for the recited consideration of One (\$1.00) Dollar, the remainder interest (with the life estate being retained by the grantor) in the premises identified (above) as 1010 Country Club Road, Clearfield, PA. The legal description of the subject property is as follows:

ALL that certain lot or parcel of land, together with any improvements thereon, situate in Lawrence Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pipe on the southern line of Country Club Road; said pipe being the northwest corner of Lot #43 In Longmeadow, thence along the western line of Lot #43, South four (4) degrees fifty (50) minutes West one hundred seventy (170) feet to an iron pipe on the line of Lot #63; thence along line of Lot #63,

North eighty-five (85) degrees ten (10) minutes West, one hundred twenty-five (125.00) feet to an Iron pipe corner common with Lot #45; thence along eastern line of Lot #45, North four (4) degrees fifty (50) minutes East one hundred seventy (170.0) feet to an iron pipe on the southern line of Country Club Road and a common corner with Lot #45; thence by the southern line of Country Club Road South eighty-five (85) degrees ten (10) minutes east one hundred twenty-five (125) feet to an iron pipe and place of beginning. Containing .49 acre.

BEING a parcel of land known as Lot #44 in the plan of Longmeadow.

SUBJECT to the restrictions of record recorded In Clearfield County Misc. Book 110, page 47, on January 18, 1959 and additional restrictions of record declared by Pengard Construction, Inc. and recorded in Clearfield County on May 19, 1975 in Misc. Book 197, page 436.

As part of the rights being received by the Grantee from the Grantor and as part of the consideration paid by the Grantee hereunder, the Grantor hereby gives and grants unto the Grantee any and all rights she may possess in and to the private sewer line serving the lot conveyed herein, together with the right to discharge sewerage in said line, in perpetuity and without further charge or claim by the Grantor herein, excepting fees or charges made by Municipal Authorities for use or maintenance of the sewer line.

EXCEPTING AND RESERVING any exceptions and reservations in the chain of title.

8. On March 28, 2003 an Agreement was executed between the decedent and Tammy Louise Fenush White and her husband William A. White III, which in it's paragraph 11 stated the following:

"11. Although this agreement incorporates many of the provisions of prior agreements, this agreement supercedes any of the prior agreements. Upon the execution of this agreement, all prior agreements are canceled and made void except insofar as their terms are incorporated in this present agreement."

A copy of the said Agreement dated March 28, 2003 is attached hereto as Exhibit "A" and incorporated herein as if set out in full.

9. William A. White III executed the Agreement of March 28, 2003 (hereinafter "Agreement") solely for the purpose of being permitted to live in the house at 1010 Country Club Road (see paragraph 7 of Agreement) and to subject his marital rights to the terms of the agreement (see paragraph 8 of Agreement).

10. William A. White III and **TAMMY LOUISE FENUSH WHITE** have become divorced

and he retains no claim upon the assets or premises described in this complaint.

11. **TAMMY LOUISE FENUSH WHITE** has listed the above described real property situate at 1010 Country Club Road, Clearfield, PA for sale with the Licensed Real Estate Brokerage firm known as "Amon, Shimel and Walsh Realtors" of 108 South Front Street, Clearfield, PA.

12. By that certain Power of Attorney dated July 18, 2000 Beatrice H. Cuetara appointed Tammy Louise Fenush to be her lawful agent subject to the provisions of 20 P.A.C.S.A. §5601. Tammy Louise Fenush is one and the same person as Tammy Louise Fenush White. A copy of the said Power of Attorney is attached hereto as Exhibit "B"

13. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** had one or more other Powers of Attorney from **BEATRICE H. CUETARA** to herself before or after the Power of Attorney dated July 18, 2000.

COUNT I

David C. Cuetara, Executor of the Estate of Beatrice H. Cuetara, deceased

vs. Tammy Louise Fenush White

[FOR ACCOUNTING AND RESTORATION]

Paragraphs 1-13 above are incorporated herein by reference as if set out in full

14. Defendant, **TAMMY LOUISE FENUSH WHITE** had a fiduciary duty to **BEATRICE H. CUETARA** during her lifetime and was thus required to act with due care for the benefit of **BEATRICE H. CUETARA** when utilizing funds belonging to **BEATRICE H. CUETARA**.

15. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** acted under and utilized the authority of one or more Powers of Attorney from **BEATRICE H. CUETARA** and by such authority transferred or expended monies of the decedent.

16. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** failed to keep the assets of **BEATRICE H. CUETARA** separate from her own.

17. It is demanded that **TAMMY LOUISE FENUSH WHITE** account for all funds spent or transferred from the **BEATRICE H. CUETARA** funds and explain how each of those

expenditures or transfers was in the best interests of the decedent.

WHEREFORE plaintiff demands judgment against Tammy Louise Fenush White as set forth below.

COUNT II

David C. Cuetara, Executor of the Estate of Beatrice H. Cuetara, deceased

vs. Tammy Louise Fenush White

[FOR ENFORCEMENT OF REVERTER AND RECLISON FOLLOWING FAILURE
OF CONDITIONAL TRANSFER]

Paragraphs 1-17 above are incorporated herein by reference as if set out in full

18. The conveyance of the remainder interest in the above described real estate and all of the furniture, furnishings and appliances in **BEATRICE H. CUETARA'S** residence was conditional.

19. The conveyance of the remainder interest in the above described real estate (and persoanl assets) was subject to a condition subsequent, i.e. that **TAMMY LOUISE FENUSH WHITE** care for **BEATRICE H. CUETARA** in accordance with the provisions of the Agreement dated March 28, 2003.

20. Failure to meet the condition subsequent effectively works a reverter of title, with the result that the property reverts or returns to **BEATRICE H. CUETARA** by her estate.

21 As part of the consideration for the conveyance of the remainder interest in 1010 Country Club Road, Defendant **TAMMY LOUISE FENUSH WHITE** was required to care for **BEATRICE H. CUETARA** every Saturday and Sunday and two (2) week days every week (see paragraph 1 of the Agreement) and that was to be her sole job on those days.

22. **TAMMY LOUISE FENUSH WHITE** failed to care for **BEATRICE H. CUETARA** the required minimum of 4 days per week from March 28, 2003 to April 17, 2005.

23. **TAMMY LOUISE FENUSH WHITE** utilized funds of **BEATRICE H. CUETARA** to hire others to take care of **BEATRICE H. CUETARA** so she, Tammy could work and attend schooling in place of meeting her obligations to **BEATRICE H. CUETARA**.

24. **TAMMY LOUISE FENUSH WHITE** had various other jobs including but not limited to working as a detailer for Dotts Motor Co., Inc. Of Clearfield, PA during the time when, according to the Agreement, she was to be caring for the decedent.

25. Prior to her death, **BEATRICE H. CUETARA'S** mental and physical condition was such that she was unable to take action on her own behalf either to enforce the Agreement or bring a legal action to rescind the transfer of the subject real estate and the items of personalty and thus it is necessary for this action to be brought by her Executor on her behalf.

26. The transfer of the subject real estate and the personal property (all of the furniture, furnishings and appliances in her residence) described in paragraph 7 of the Agreement must be rescinded or be deemed to have reverted due to a failure by defendant to meet the obligations of the condition subsequent as set forth in the Agreement.

27. It is demanded that **TAMMY LOUISE FENUSH WHITE** convey the real property situate at 1010 County Club Road, Clearfield, Pennsylvania to **DAVID C. CUETARA, EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA.**

28. All assets (net of inheritance taxes and expenses) returned to the estate by **TAMMY LOUISE FENUSH WHITE** shall be distributed equally to decedent's son David C. Cuetara and her grandson Kelly Lawhead pursuant to the provisions of paragraph NINE of her Last Will and Testament.

29. This action was originally filed as a Writ of Summons and Plaintiff served Defendant at the same time original process was served on her with certain discovery motions, i.e. requests for admissions and plaintiff's first request for production of documents.

30. To date the defendant has refused to respond to such plaintiff's discovery motions other than to issue a rule to file a complaint upon plaintiff and to file a motion for protective order requesting that she not be required to answer the plaintiff's discovery motion.

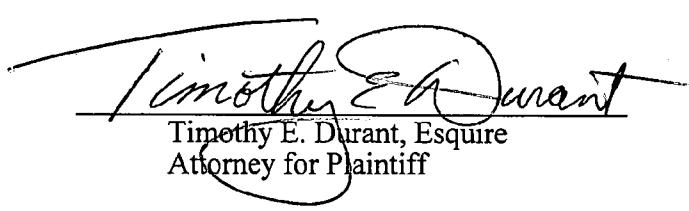
31. Plaintiff's complaint is due to be filed before the defendant's responses to plaintiff's discovery motions and thus defendant will have the benefit of the Plaintiff's full complaint prior to

her deadline.

32. Plaintiff requests prospectively, that this court permit him to file such amended complaint(s) as shall appear prudent after the conclusion of discovery.

WHEREFORE, plaintiff **DAVID C. CUETARA**, as **EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA**, deceased, demands the following relief:

- a. An accounting for all occasions when defendant, TAMMY LOUISE FENUSH WHITE used any Power of Attorney executed by the decent;
- b. An accounting for all funds expended or transferred from the funds of BEATRICE H. CUETARA;
- c. Order the return to the estate of BEATRICE H. CUETARA of all funds not properly expended or transferred in accordance with established fiduciary standards or all funds co-mingled with the funds of defendant TAMMY LOUISE FENUSH WHITE;
- d. Such other general relief as may be just and proper;
- e. A conveyance by Tammy Louise Fenuh White (or the court's designee, on her behalf) of the Lawrence Township property described above (1010 Country Club Drive, Clearfield, Pennsylvania) and all of the decedent's furniture, furnishings and appliances formerly in her residence, to the Executor of the Estate of Beatrice H. Cuetara.
- f. That defendant be enjoined and permanently from mortgaging or encumbering the described property in any way, and from selling or conveying the same or any part thereof to any person other than the plaintiff;
- g. That the defendant be required to pay cost of this action.


Timothy E. Durant, Esquire
Attorney for Plaintiff

DATE: October 26, 2005

OCT-26-2005 09:41 AM CUETARA
Oct. 26. 2005 10:29AM

2399473678

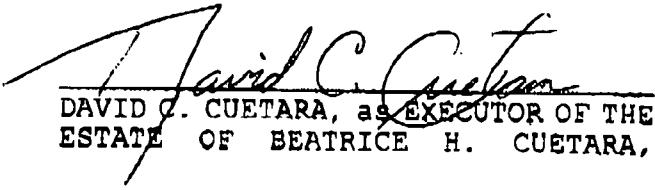
P. 01

No. 5804 P. 2

VERIFICATION

I, DAVID C. CUETARA, as EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA, verify that the statements made in this Pleading are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

DATED: 10/26/05


DAVID C. CUETARA, as EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA,

AGREEMENT

THIS AGREEMENT made this 28th day of March, 2003, by and
between BEATRICE H. CUETARA, party of the First Part, hereinafter called "Betty",

A

N

D

TAMMY LOUISE FENUSH WHITE, hereinafter called "Tammy" and her husband
WILLIAM A. WHITE, III, hereinafter called "William", parties of the Second Part

WHEREAS, Betty's present physical health requires that someone be present
with her to see to her needs, and

WHEREAS, Tammy has given up two (2) work days per week from her
employment in order to care for Betty as well as caring for her on the two (2)
weekend days, and

WHEREAS, Betty wants to insure that she will not have to leave her home, and
go to a hospital or nursing home, and

WHEREAS, Betty also wants to insure Tammy will be protected in continuing
to care for her should Betty become incompetent, and

WHEREAS, Betty has conveyed her residence at 1010 Country Club Road,
Clearfield, Pennsylvania, to Tammy by Deed dated February 21, 2003 and recorded
in the office of the Register and Recorder of Clearfield County, Pennsylvania at
Instrument No. 200302750.

NOW THEREFORE, in consideration of the mutual covenants and conditions
hereinafter set forth, the parties agree as follows:

1. At the present time, Tammy and William will live with Betty on a full-time

basis and will care for Betty two (2) week days per week as well as Saturday and Sunday. Betty will pay Tammy Fifty (\$50.00) Dollars per day for the weekdays that she cares for her. Betty will also allow Tammy and William to live with her rent free, and Betty will pay all of the expenses of maintaining the residence and all food costs.

2. It is agreed that if it is necessary for Tammy to stop working for her employer for additional days per week in order to care for Betty, including leaving her employment completely, and caring for Betty on a full-time basis, should Betty's need require, Tammy shall have the right to do that and shall be paid compensation of Fifty (\$50.00) Dollars per day for each week day that she cares for Betty.

3. Since Betty's very strong desire is to stay in her home, unless it is impossible for her to be cared for in her own home, Tammy shall have the right to employ other persons, and arrange for professional care in Betty's home, including renting or purchasing necessary equipment for Betty's care subject to approval of Betty's attorney-at-law Richard A. Bell and if he is unable to do so, by her attorney-at-law Daniel C. Bell

4. No one can terminate Tammy's employment with Betty unless Tammy fails to live with Betty and provide her with care. No one shall have the right to make the decision that Tammy is failing in her duties toward Betty unless that decision is agreed with and approved by Betty's attorney-at-law, Richard A. Bell and if he is unable to do so, by her attorney-at-law Daniel C. Bell.

5. Even if Betty is made a resident of a hospital, nursing home or similar facility, Tammy still shall be paid for living in the home and caring for it and maintaining contact with Betty so that she can supply all of Betty's needs of which

she is capable.

6. No one shall have the right to make Betty a permanent resident in a hospital, nursing home or similar facility unless Betty's physician attests that it is not possible to provide her with proper care in her own home.

7. In return for the covenant made by Tammy, Betty has conveyed to her, her residence property located at 1010 Country Club Road, Longmeadow, Clearfield, Pennsylvania subject to the reservation of a life estate for Betty. The transfer of Betty's residence to Tammy includes all of the furniture, furnishings and appliances in her residence, but subject to the same reservation of a life estate for Betty. During Betty's lifetime, Tammy will live with her at her residence at 1010 Country Club Road, and if he desires William shall live there also.

8. It is understood that Betty has transferred her property to Tammy in return for the covenant by Tammy to care for Betty. If Betty does not require any care prior to her death and Tammy has not refused to provide such care then the property shall still belong to Tammy. In the event however that Betty does require care and Tammy refuses or does not fulfill her obligation to provide such care, then Tammy and William are obligated to reconvey the property to Betty. If Tammy has not refused to provide care for Betty, but Tammy has died during Betty's lifetime, or Tammy is physically and/or mentally not capable of providing care for Betty, then Tammy and William will have the obligation to reconvey the property to Betty. William is joining in this agreement so that any rights he has in the property because of being married to Tammy will be subject to the obligations of this agreement.

9. This agreement shall be revocable by Betty until her death if Tammy fails to

fulfill her obligations as set forth herein in which event, Tammy and William will be obligated to reconvey the property to Betty. . Otherwise this agreement may only be revoked or modified by written agreement of the parties.

10. Tammy's rights under this agreement shall only be forfeited if she fails to fulfil her obligations under this agreement and that decision can only be made by Betty, if she is competent, and if she is incompetent, or otherwise unable to make that decision, by Betty's attorney-at-law, Richard A. Bell and if he is unable to do so, by her attorney-at-law Daniel C. Bell.

11. Although this agreement incorporates many of the provisions of prior agreements, this agreement supercedes any of the prior agreements. Upon the execution of this agreement, all prior agreements are canceled and made void except insofar as their terms are incorporated in this present agreement.

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

WITNESSES:

Richard A. Bell

as to all

Beatrice H. Cuetara (SEAL)
BEATRICE H. CUETARA

Party of the First Part

Tammy Louise Fenush White (SEAL)
TAMMY LOUISE FENUSH WHITE

WILLIAM A. White, III (SEAL)
WILLIAM A. WHITE, III
Parties of the Second Part

COMMONWEALTH OF PENNSYLVANIA:

SS:

STATE OF PENNSYLVANIA:

On this the 28th day of March 2003, before me, the undersigned officer, personally appeared, BEATRICE H. CUETARA, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement, and acknowledged that she has executed the same for the purposes therein contained.

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

Sandra A. Irwin
(Notary Public)

COMMONWEALTH OF PENNSYLVANIA:

SS:

STATE OF PENNSYLVANIA:

NOTARIAL SEAL
SANDRA A. IRWIN, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires June 3, 2005

On this the 28th day of March 2003, before me, the undersigned officer, personally appeared, TAMMY LOUISE FENUSH WHITE, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement, and acknowledged that she has executed the same for the purposes therein contained.

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

Sandra A. Irwin
(Notary Public)

COMMONWEALTH OF PENNSYLVANIA:

SS:

STATE OF PENNSYLVANIA:

NOTARIAL SEAL
SANDRA A. IRWIN, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires June 3, 2005

On this the 28th day of March 2003, before me, the undersigned officer, personally appeared, WILLIAM A. WHITE, III, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement, and acknowledged that he has executed the same for the purposes therein contained.

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

Sandra A. Irwin
(Notary Public)

NOTARIAL SEAL
SANDRA A. IRWIN, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires June 3, 2005

DANIE WEBER

KPS

POWER OF ATTORNEY

NOTICE

THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE PERSON YOU DESIGNATE ("YOUR AGENT") BROAD POWERS TO HANDLE YOUR PROPERTY, WHICH MAY INCLUDE POWERS TO SELL OR OTHERWISE DISPOSE OF ANY REAL OR PERSONAL PROPERTY WITHOUT ADVANCE NOTICE TO YOU OR APPROVAL BY YOU.

THIS POWER OF ATTORNEY DOES NOT IMPOSE A DUTY ON YOUR AGENT TO EXERCISE GRANTED POWERS, BUT WHEN POWERS ARE EXERCISED, YOUR AGENT MUST USE DUE CARE TO ACT FOR YOUR BENEFIT AND IN ACCORDANCE WITH THIS POWER OF ATTORNEY.

YOUR AGENT MAY EXERCISE THE POWERS GIVEN HERE THROUGHOUT YOUR LIFETIME, EVEN AFTER YOU BECOME INCAPACITATED, UNLESS YOU EXPRESSLY LIMIT THE DURATION OF THESE POWERS OR YOU REVOKE THESE POWERS OR A COURT ACTING ON YOUR BEHALF TERMINATES YOUR AGENT'S AUTHORITY.

YOUR AGENT MUST KEEP YOUR FUNDS SEPARATE FROM YOUR AGENT'S FUNDS.

A COURT CAN TAKE AWAY THE POWERS OF YOUR AGENT IF IT FINDS YOUR AGENT IS NOT ACTING PROPERLY.

THE POWERS AND DUTIES OF AN AGENT UNDER A POWER OF ATTORNEY ARE EXPLAINED MORE FULLY IN 20 P.A.C.S. CH.56.

IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER OF YOUR OWN CHOOSING TO EXPLAIN IT TO YOU.

I HAVE READ OR HAD EXPLAINED TO ME THIS NOTICE AND I UNDERSTAND ITS CONTENTS.

Beatrice H. Cuetara

BEATRICE H. CUETARA

DATED: 7/18/00

KNOW ALL MEN BY THESE PRESENTS, that I, BEATRICE H. CUETARA, of
1010 Country Club Road, Clearfield, Clearfield County, Pennsylvania, 16830 by these
presents do make, constitute and appoint, TAMMY LOUISE FENUSH my true and
lawful Agent for me and in my name, place and stead, to perform all and any acts of
a contractual nature and to have generally full power to act in any matters pertaining
to my business or personal affairs, past, present and future with the same force and
with the same power and obligations as if the said obligatory act and acts
hereby agreed into by me, it being my intention to give, such power as to entering into
obligations and giving the same effect as if entered into by me personally, and thereby
giving and granting unto my said agent by these presents authority to act as fully and
completely in the premises as I might do if personally present, and I hereby ratify and
confirm whatsoever my said agent, may lawfully do for me and in my name in the
premises.

The powers granted to my agent herein include, but are not limited to the
following powers:

To collect and receive any money and assets to which I may be entitled and
to deposit the same in any of my accounts; to draw and sign checks for me in my
name, and to open new accounts for me in my name at any bank or elsewhere; to act

as my representative payee for all social security, medicare and other federal and state benefits. Any checks made payable to my agent must also be signed by either Richard A. Bell, Daniel C. Bell or Sandra A. Irwin and I authorize and empower all three of them to countersign any checks made payable to my agent.

2. To buy, sell and/or manage my tangible personal property.

3: To lease, sell, convey, or mortgage any real estate I own; to purchase or otherwise acquire any interest in real property; and manage, maintain and develop any real property which I may now have or later acquire.

4. To have access to any and all safety deposit boxes, now or hereafter standing in my name and the contents thereof; to enter into leases for such safe deposit boxes.

5. To obtain, manage or cancel insurance against any and all risks affecting my property against liability, damage or other claims.

To prepare, execute and file in my name any federal and state tax returns necessary or desirable, and to represent me in any dealings with Federal and State Tax authorities.

7. To employ such professionals or other persons to render

services for me, and to pay the usual and reasonable compensation for those services.

8. To initiate, defend or compromise and/or appear for me in any proceedings
of equity.

To perform any duties or acts for me and in my name to
be permitted by law in all instances where I have been appointed a fiduciary,
not limited to an executrix, administratrix, trustee or guardian.

9. To do all other things which my attorney shall deem necessary and proper
in order to carry out the authority and powers set forth herein.

To exercise the following powers which shall be construed and
interpreted in accordance with the provisions of Chapter 56 of Title 20, Consolidated
Statutes in effect on the date of execution of this Power Of Attorney:

renounce Fiduciary positions,

(b) To withdraw and receive the income or corpus of a Trust,

to authorize my admission to a medical, nursing, residential or similar
facility and to enter into agreements for my care, but only if there is no
possibility of staying in my home.

(d) To authorize medical and surgical procedures,

e) To engage in real property transactions,

f) To engage in tangible personal property transactions,

g) To engage in banking and financial transactions,

(h) To enter safe deposit boxes,

(i) To engage in insurance transactions,

j) To engage in retirement plan transactions,

To handle interests in estates and trusts,

To pursue claims and litigation,

m) To receive government benefits, and

To pursue tax matters.

In addition to all other powers herein granted to my agent, I also empower my

... authorize my admission to a medical, nursing, residential or similar facility and

... agreements for my care, but only if there is no possibility of staying in my

... empower my agent to authorize medical and surgical procedures for

... out this paragraph of my Power of Attorney, if I am unable to

... decisions regarding my medical care, I authorize my agent to direct that

... medical procedures be withheld or withdrawn, if I have an illness, injury or

... mental deteriorations such as there is not reasonable expectation for

... or regarding a meaningful quality of life based on the opinions of two

... VSICANS.

Power Of Attorney shall not be affected by any subsequent disability,

... or incompetency incurred by me.

... copy of this Power Of Attorney may be used with the same force and

... original.

... BEATRICE H. CUETARA have hereunto set my hand and seal this 18th day of

... 2000.

Mrs Beatrice H. Cuetara
BEATRICE H. CUETARA

PENNSYLVANIA:

:SS

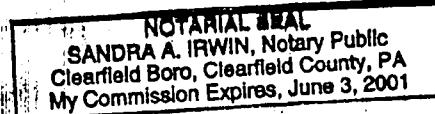
July, 2000 before me the undersigned officer

E. H. CUETARA known to me to be the person whose

Power of Attorney and acknowledged that she

poses therein contained.

Sandra



SH having attached power of attorney and am
ent for the principal. I hereby acknowledge that I do
not to the contrary, in the power of attorney or in 20

ers for

of the principal separate from my assets

able caution and prudence

rate reasonable expenses, actions, receipts and disbursements

Louise Fenish

LOUISE FENISH

(N.D.)

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * 05- 1395 -CD

vs *

TAMMY LOUISE FENUSH WHITE

Defendant *

AFFIDAVIT OF SERVICE

I, Michael Luongo, verify that on that on October 26, 2005, I did deliver by hand, a true and correct copy, of the original Complaint filed in the above captioned action. The said document was delivered to the office of Richard A. Bell, Esquire, Attorney for the Defendant, at his office located at 318 East Locust Street, Clearfield, PA 16830. I understand that false statements herein made subject to the penalties of 18 Pa.C.S. §4904, relating to falsification to authorities.

Michael Luongo
Michael Luongo

2005

FILED 2cc
OCT 27 2005
Atty Durant

William A. Shaw
Prothonotary

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

Type of Pleading
Preliminary Objections Of
Defendant To The Complaint
Of Plaintiff

Filed on Behalf of:
Defendant

Counsel of Record for
this Party:

Richard A. Bell, Esquire
PA I.D. #06808
BELL, SILBERBLATT &
WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

(814) 765-5537

FILED *No CC.*
0/2/15 cm
NOV - 4 2005 

William A. Shaw
Prothonotary

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

PRELIMINARY OBJECTIONS OF DEFENDANT TO THE COMPLAINT OF PLAINTIFF

NOW COMES the Defendant, Tammy Louise Fenush White by her attorney Richard A. Bell of Bell, Silberblatt & Wood and files the following Preliminary Objections.

DEMURRER

The Defendant demurrs to Count I of the Complaint for the following reasons:

1. There are no facts pled in Count I to support the claim that the Defendant did not act properly in carrying out her monetary duties to the decedent Beatrice H. Cuetara.

The Defendant demurrs to Count II of the Complaint for the following reasons:

2. The Plaintiff has attached to the Complaint and incorporated it into the Complaint the Agreement between Beatrice H. Cuetara and Tammy Louise Fenush White and William A. White, III dated March 28, 2003.

3. The Plaintiff has used the terms of this Agreement as a basis for claiming that the Defendant did not carry out her obligations under that Agreement, and therefore having so failed that the property conveyed to her should revert to the decedent's Estate.

4. Paragraph ten of that Agreement reads as follows:

10. Tammy's rights under this agreement shall only be forfeited if she fails to fulfil her obligations under this agreement and that decision can only be made by Betty, if she is competent, and if she is incompetent, or otherwise unable to make that decision, by Betty's attorney-at-law, Richard A. Bell and if he is unable to do so, by her attorney-at-law Daniel C. Bell.

5. Neither Betty (Beatrice H. Cuetara) nor her attorneys Richard A. Bell or Daniel C. Bell have made any decision that the Defendant failed to fulfill her obligations under the Agreement and do not do so at this time.

6. The Plaintiff has no standing or right to make a decision that the Defendant has failed to fulfill her obligations under the Agreement.

WHEREFORE, the Defendant demurrs to both counts and asks that either or both counts be dismissed.

MOTION TO STRIKE

The Defendant moves your Honorable Court to strike the following paragraphs of the Complaint as not being a proper pleading:

7. Paragraph 17 is not a factual pleading but merely a demand by the Plaintiff.
8. Paragraph 27 is merely a demand made by the Plaintiff.
9. Paragraph 28 is irrelevant to this case.
10. Paragraphs 30 and 31 are not properly involved in the claims made by the Plaintiff and are properly controlled by discovery procedures and rules.

MOTION FOR MORE SPECIFIC PLEADING

11. The Defendants requests your Honorable Court require the Plaintiff to plead specific facts that support the allegations of paragraph 16.

WHEREFORE, the Defendant respectfully requests that your Honorable Court dismiss the Complaint as to her, or in the alternative grant her Motion To Strike and her Motion For More Specific Pleading.

BELL, SILBERBLATT & WOOD
By



Richard A. Bell
Richard A. Bell, Esquire
Attorney for Defendant

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of Preliminary Objection Of Defendant To The
Complaint Of Plaintiff, in the above matter was mailed the 4th day of
November, 2005, by regular mail postage prepaid at the post office in
Clearfield, PA 16830 to the following:

Timothy E. Durant, Esquire
201 N. 2nd Street
Clearfield, PA 16830



Richard A. Bell, Esquire
Attorney for Defendant

FILED

NOV - 4 2005

William A. Shaw
Prothonotary

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * 05- 1395 -CD

vs

* REPLY TO MOTION FOR
* PROTECTIVE ORDER

TAMMY LOUISE FENUSH WHITE

Defendant *

Filed on behalf of:

**DAVID C. CUETARA, EXECUTOR OF
THE ESTATE OF BEATRICE H.
CUETARA, Plaintiff**

Counsel of Record for Plaintiff
TIMOTHY E. DURANT, ESQ.
Pa. I.D. No. 21352
201 North Second Street
Clearfield, PA 16830
(814) 765-1711

Opposing Counsel: for **TAMMY LOUISE
FENUSH WHITE, Defendant**

RICHARD A. BELL, ESQ.
BELL, SILBERBLATT & WOOD
Pa I.D. No. 06808
318 East Locust Street
PO Box 670
Clearfield, PA 16830
(814) 765-5537

Filed by:

Timothy E. Durant

FILED 3cc
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William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID C. CUETARA, EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA	*	
	*	05- 1395 -CD
	*	
Plaintiff	*	
	*	
vs	*	
	*	
	*	
TAMMY LOUISE FENUSH WHITE	*	
	*	
Defendant	*	

REPLY TO MOTION FOR PROTECTIVE ORDER

NOW COMES, David C. Cuetara by his attorney Timothy E. Durant, Esquire and hereby responds as follows to the Motion For Protective Order filed by Tammy Louise Fenush White on October 21, 2005:

1. Admitted.
2. Admitted.
3. Admitted that this lawsuit was begun by a Writ Of Summons but in response to Defendant's Rule To File a Complaint, a full complaint was timely filed by Plaintiff on October 26, 2005.
4. Admitted. The Plaintiff has filed Discovery upon the Defendant consisting of a Request For Production Of Documents, and a Request For Admissions.
5. Denied. On the contrary these Requests for Admission and Requests for Production of Documents were for the purpose of preparing a complaint and Defendant was well aware of the nature of the cause of action and what matters were to be inquired into from the Plaintiff's filing of

a Lis Pendens (identifying the subject real estate) and from the nature of the questions themselves as well as from Plaintiff's letter to James Naddeo dated October 17, 2005 wherein we rejected his attempt to purchase the estate property.

6. Denied. On the contrary a Complaint has now been filed and Defendant is aware of what constitutes the cause of action and what matters are to be inquired into. Defendant's Motion For Protective Order is now moot.

7. Admitted.

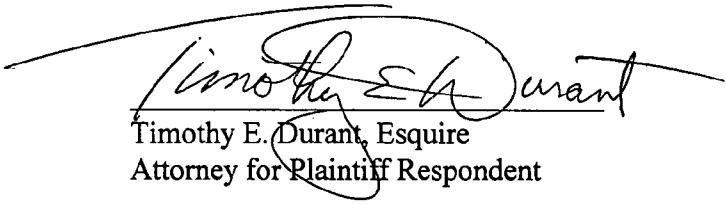
8. Admitted.

9. The real estate in question is subject to a condition subsequent as identified in the deed and in the agreement which defendant made with the decedent prior to decedent's death all as set out in the Complaint filed and to which Defendant has now filed Preliminary Objections.

10. Denied. On the contrary the Lis Pendens is proper as filed and serves to prevent the changing of the status quo pending the decision of this Court

WHEREFORE, the Plaintiff respectfully requests that your Honorable Court dismiss the request for a Protective Order as being moot.

Respectfully submitted,



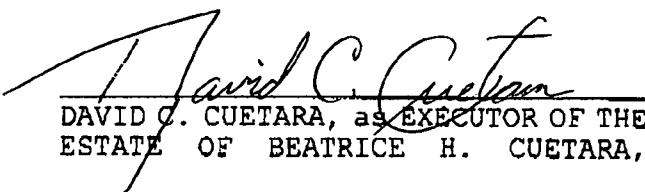
Timothy E. Durant
Attorney for Plaintiff Respondent

November 21, 2005

VERIFICATION

I, DAVID C. CUETARA, as EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA, verify that the statements made in this Pleading are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

DATED: Nov. 21, 2005



DAVID C. CUETARA, as EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA,

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * * * 05- 1395 -CD

vs * * * FIRST AMENDED
* * * COMPLAINT

TAMMY LOUISE FENUSH WHITE

Defendant * * *

Filed on behalf of:

**DAVID C. CUETARA, EXECUTOR OF
THE ESTATE OF BEATRICE H.
CUETARA, Plaintiff**

Counsel of Record for Plaintiff

TIMOTHY E. DURANT, ESQ.
Pa. I.D. No. 21352
201 North Second Street
Clearfield, PA 16830
(814) 765-1711

Opposing Counsel: for **TAMMY LOUISE
FENUSH WHITE, Defendant**

RICHARD A. BELL, ESQ.
BELL, SILBERBLATT & WOOD
Pa I.D. No. 06808
318 East Locust Street
PO Box 670
Clearfield, PA 16830
(814) 765-5537

FILED NO
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William A. Shaw
Prothonotary/Clerk of Courts

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff

vs

05- 1395 -CD

TAMMY LOUISE FENUSH WHITE

FIRST AMENDED
COMPLAINT

Defendant

TO: DEFENDANT:
c/o RICHARD A. BELL, ESQ.
BELL, SILBERBLATT & WOOD
318 East Locust Street
PO Box 670
Clearfield, PA 16830

NOTICE TO DEFEND

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 First Amended 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 and for any other claims or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 5982

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA** * 05- 1395 -CD

Plaintiff *

vs *

TAMMY LOUISE FENUSH WHITE *

Defendant *

FIRST AMENDED COMPLAINT

Plaintiff avers, by his counsel Timothy E. Durant, Esquire the following as his First Amended Complaint:

1. Plaintiff is **DAVID C. CUETARA**, presently residing at 25687 Tropic Acres Drive, Bonita Springs, FL 34135. Plaintiff brings this action as **EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA**, deceased.
2. The said **BEATRICE H. CUETARA** departed this life testate on April 17, 2005 a resident of Clearfield County, Pennsylvania and on April 26, 2005 an estate was opened for her in Clearfield County, filed as Estate No. 1705-0231, wherein and whereby plaintiff, David C. Cuetara was duly appointed Executor of her estate.
3. Defendant **TAMMY LOUISE FENUSH WHITE** is a competent adult individual who is presently believed to be residing c/o Dr. Lynne D. Cosner, DVM at 72 Maple Drive, Olanta, PA 16863.
4. Plaintiff was appointed as Executor of the estate of **BEATRICE H. CUETARA** by the Clearfield County Register of Wills on April 26, 2005 and said estate is filed to Clearfield County Estate No. 1705-0231.
5. Decedent **BEATRICE H. CUETARA'S "LAST WILL AND TESTAMENT"** dated

November 22, 2000 and her "FIRST CODICIL TO THE LAST WILL & TESTAMENT OF BEATRICE H. CUETARA" dated February 25, 2002 were admitted to probate on April 26, 2005 by the Clearfield County Register of Wills to No. 1705-0231. Both of said documents are incorporated herein by reference as if set out in full.

6. Pursuant to the provisions of paragraph ONE of the "FIRST CODICIL TO THE LAST WILL & TESTAMENT OF BEATRICE H. CUETARA" paragraph SIX of the "LAST WILL AND TESTAMENT" was changed to read as follows:

ONE: In paragraph six of my Last Will and Testament dated November 22, 2000, I desire to eliminate any reference to the garage located at the rear of 110 South Second Street, Clearfield, Clearfield Borough, Clearfield County, Pennsylvania. Therefore paragraph six of my Last Will and Testament shall read as follows:

SIX: I state that I have made an agreement dated the 22nd day of November 2000, with Tammy Louise Fenush, now Tammy Louise Fenush White concerning my property located at 1010 Country Club Road, Longmeadow, Clearfield, Clearfield County, Pennsylvania. Subject to the terms of that agreement, I hereby give, devise and bequeath the said property at 1010 Country Club Road, Longmeadow, together with the furniture, furnishings and appliances to Tammy Louise Fenush, now Tammy Louise Fenush White, provided she has fulfilled her obligations under the terms of that agreement. If the said Tammy Louise Fenush, now Tammy Louise Fenush White has not fulfilled her obligations under the said agreement, this devise and bequest is void and of no affect.

7. By deed dated February 21, 2003, recorded on February 25, 2003 in the Clearfield County Recorder's Office as Instrument No. 2003-02750 **BEATRICE H. CUETARA** conveyed to **TAMMY LOUISE FENUSH WHITE**, for the recited consideration of One (\$1.00) Dollar, the remainder interest (with the life estate being retained by the grantor) in the premises identified (above) as 1010 Country Club Road, Clearfield, PA. The legal description of the subject property is as follows:

ALL that certain lot or parcel of land, together with any improvements thereon, situate in Lawrence Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pipe on the southern line of Country Club Road; said pipe being the northwest corner of Lot #43 In Longmeadow, thence along the western line of Lot #43, South four

(4) degreesfifty (50) minutes West one hundred seventy (170)feet to an iron pipe on the line of Lot #63; thence along line of Lot #63, North eighty-five (85) degrees ten (10) minutes West, one hundred twenty-five (125.00)feet to an Iron pipe corner common with Lot #45; thence along eastern line of Lot #45, Northfour (4) degreesfifty (50) minutes East one hundred seventy (170. 0)feet to an ironpipe on the southern line of Country Club Road and a common corner with Lot #45; thence by the southern line of Country Club Road South eighty-five (85) degrees ten (10) minutes east one hundred twenty-five (125)feet to an iron pipe and place of beginning. Containing .49 acre.

BEING a parcel of land known as Lot #44 in the plan of Longmeadow.

SUBJECT to the restrictions of record recorded In Clearfield County Misc. Book 110,page 47, on January 18, 1959 and additional restrictions of record declared by Pengard Construction, Inc. and recorded in Clearfield County on May 19, 1975 in Misc. Book 197, page 436.

As part of the rights being received by the Grantee from the Grantor and as part of the consideration paid by the Grantee hereunder, the Grantor hereby gives and grants unto the Grantee any and all rights she may possess in and to the private sewer line serving the lot conveyed herein, together with the right to discharge sewerage in said line, in perpetuity and without further charge or claim by the Grantor herein, excepting fees or charges made by Municipal Authorities for use or maintenance of the sewer line.

EXCEPTING AND RESERVING any exceptions and reservations in the chain of title.

EXCEPTING AND RESERVING unto the Grantor herein a life estate in the premises herein described with the right to use and occupy the premises as her homefree and clear of all rents or charges of any kind whatsoever for so long as she may live.

8. The conveyance of the premises by the decedent (described in full above and known as 1010 Country Club Road, Clearfield, Pennsylvania) was conditional and understood by the parties to the conveyance to be subject to the conditions and provisions of the prior agreements, one of which was referred to in the decedent's Last Will and Testament as being dated November 22, 2000 and others which are known to defendant and have been requested by discovery but none of which have yet been provided to Plaintiff by Defendant.

9. On March 28, 2003 an Agreement was executed between the decedent and Tammy Louise Fenush White as well as William A. White III, which Agreement was intended to be a novation for the prior agreements and this March 28th Agreement dealt with the continuing covenants and

obligations undertaken by Defendant in return for her to be able to retain title to the subject premises at 1010 County Club Road as well as various items of equipment and furnishings.

10. In the Agreement of March 28, 2003 the Decedent, Tammy Louise Fenush White and her husband William A. White III, stated the following as paragraph 11 thereof:

"11. Although this agreement incorporates many of the provisions of prior agreements, this agreement supercedes any of the prior agreements. Upon the execution of this agreement, all prior agreements are canceled and made void except insofar as their terms are incorporated in this present agreement."

A copy of the said Agreement dated March 28, 2003 is attached to our original Complaint as Exhibit "A" and is incorporated herein as if set out in full.

11. William A. White III executed the Agreement of March 28, 2003 (hereinafter "Agreement") solely for the purpose of being permitted to live in the house at 1010 Country Club Road, Clearfield, PA (see paragraph 7 of Agreement) and to subject his marital rights to the terms of the agreement (see paragraph 8 of Agreement).

12. Since the execution of the aforesaid Agreement of March 28, 2003, William A. White III and **TAMMY LOUISE FENUSH WHITE** have become divorced and William A. White now retains no claim upon the assets or premises described in this complaint.

13. **TAMMY LOUISE FENUSH WHITE** has listed the above described subject real property situate at 1010 Country Club Road, for sale with the Licensed Real Estate Brokerage firm known as "Amon, Shimel and Walsh Realtors" of 108 South Front Street, Clearfield, PA.

14. By that certain Power of Attorney dated July 18, 2000 Beatrice H. Cuetara appointed Tammy Louise Fenush to be her lawful agent subject to the provisions of 20 P.A.C.S.A. §5601. Tammy Louise Fenush is one and the same person as Tammy Louise Fenush White. A copy of the said Power of Attorney is attached to our original Complaint as Exhibit "B" and is incorporated herein as if set out in full.

15. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** had one or more other Powers of Attorney from **BEATRICE H. CUETARA** to herself before or after the

Power of Attorney dated July 18, 2000 the details of which and copies of which Plaintiff does not have but which Defendant knows. Discovery requests for the provision of these other documents have not been responded to by Defendant.

COUNT I

David C. Cuetara, Executor of the Estate of Beatrice H. Cuetara, deceased

vs. Tammy Louise Fenush White

[FOR ACCOUNTING AND RESTORATION]

Paragraphs 1-15 above are incorporated herein by reference as if set out in full

16. Defendant, **TAMMY LOUISE FENUSH WHITE** had a fiduciary duty to **BEATRICE H. CUETARA** during her lifetime and was thus required to act with due care for the benefit of **BEATRICE H. CUETARA** when utilizing funds belonging to **BEATRICE H. CUETARA**.

17. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** acted under and utilized the authority of one or more Powers of Attorney from **BEATRICE H. CUETARA** and by such authority transferred or expended monies of the decedent.

18. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** transferred large sums of money from bank and brokerage accounts in the name of **BEATRICE H. CUETARA** alone or in the name of **BEATRICE H. CUETARA** and others and placed these funds into accounts in the name of **TAMMY LOUISE FENUSH WHITE** alone or jointly with **BEATRICE H. CUETARA**.

19. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** withdrew large sums of money from accounts which were contributed to those accounts solely by **BEATRICE H. CUETARA** and used these funds to buy motorcycles, four-wheelers and one or more motor vehicles and placed these items in her name alone and used them for her amusement and not for the benefit of decedent.

20. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** failed to keep the assets of **BEATRICE H. CUETARA** separate from her own which is in violation of her

obligations by Pennsylvania Statute as an Agent or Attorney in fact for the decedent.

21. Defendant has information unique to her as to what funds she utilized for the care of decedent and where the funds came from and how those funds were spent. This information is not available to the decedent's Executor and thus requires an accounting from the defendant.

WHEREFORE, it is demanded that **TAMMY LOUISE FENUSH WHITE** account for all funds spent or transferred from the **BEATRICE H. CUETARA** funds and further explain how each of those expenditures or transfers was in the best interests of the decedent and such other relief as the Court may require.

COUNT II

David C. Cuetara, Executor of the Estate of Beatrice H. Cuetara, deceased

vs. Tammy Louise Fenush White

[FOR ENFORCEMENT OF REVERTER AND RECISION FOLLOWING FAILURE

OF CONDITIONAL TRANSFER]

Paragraphs 1-21 above are incorporated herein by reference as if set out in full

22. The conveyance of the remainder interest in the above described real estate and all of the furniture, furnishings and appliances in **BEATRICE H. CUETARA'S** residence was conditional.

23. The conveyance of the remainder interest in the above described real estate (and personal assets) was subject to a condition subsequent, i.e. that **TAMMY LOUISE FENUSH WHITE** care for **BEATRICE H. CUETARA** in accordance with the provisions of the Agreement dated March 28, 2003.

24. Failure to meet the condition subsequent effectively works a reverter of title, with the result that the property reverts or returns to **BEATRICE H. CUETARA** by her estate.

25 As part of the consideration for the conveyance of the remainder interest in 1010 Country Club Road, Defendant **TAMMY LOUISE FENUSH WHITE** was required to care for **BEATRICE H. CUETARA** every Saturday and Sunday and two (2) week days every week (see paragraph 1 of the Agreement) and that was to be her sole job on those days.

26. **TAMMY LOUISE FENUSH WHITE** failed to care for **BEATRICE H. CUETARA** the required minimum of 4 days per week from March 28, 2003 to April 17, 2005.

27. **TAMMY LOUISE FENUSH WHITE** utilized funds of **BEATRICE H. CUETARA** to hire others to take care of **BEATRICE H. CUETARA** so she, Tammy could work and attend schooling in place of meeting her obligations to **BEATRICE H. CUETARA**.

28. **TAMMY LOUISE FENUSH WHITE** had various other jobs including but not limited to working as a detailer for Dotts Motor Co., Inc. Of Clearfield, PA during the time when, according to the Agreement, she was to be caring for the decedent.

29. Prior to her death, **BEATRICE H. CUETARA'S** mental and physical condition was such that she was unable to take action on her own behalf either to enforce the Agreement or bring a legal action to rescind the transfer of the subject real estate and the items of personalty and thus it is necessary for this action to be brought by her Executor on her behalf.

30. The transfer of the subject real estate and the personal property (all of the furniture, furnishings and appliances in her residence) described in paragraph 7 of the Agreement must be rescinded or be deemed to have reverted due to a failure by defendant to meet the obligations of the condition subsequent as set forth in the Agreement.

32. Defendant's counsel and his law firm are claimed to be the only ones who can determine whether their client failed to meet her obligations under the Agreement of March 28, 2003 and such is a clear case of conflict of interest. Decedent's rights are required to be protected by Plaintiff in this action.

33. All assets (net of inheritance taxes and expenses) returned to the estate by **TAMMY LOUISE FENUSH WHITE** shall be distributed equally to decedent's son David C. Cuetara and her grandson Kelly Lawhead pursuant to the provisions of paragraph NINE of her Last Will and Testament and do not pass to **TAMMY LOUISE FENUSH WHITE**.

34. This action was originally filed as a Writ of Summons and Plaintiff served Defendant at the same time original process was served on her with certain discovery motions, i.e. requests for

admissions and plaintiff's first request for production of documents.

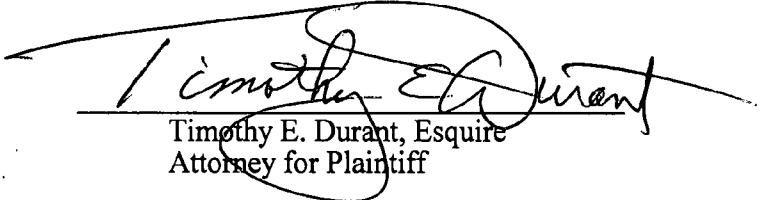
35. To date the defendant has refused to respond to such plaintiff's discovery motions other than to issue a rule to file a complaint upon plaintiff and to file a motion for protective order requesting that she not be required to answer the plaintiff's discovery motion. Therefore certain information necessary to be more specific is not yet available to Plaintiff.

36. Plaintiff requests prospectively, that this court permit him to file such amended complaint(s) as shall appear prudent after the conclusion of discovery.

WHEREFORE, plaintiff **DAVID C. CUETARA**, as **EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA**, deceased, demands the following relief:

- a. An accounting for all occasions when defendant, TAMMY LOUISE FENUSH WHITE used any Power of Attorney executed by the decedent;
- b. An accounting for all funds expended or transferred from the funds of BEATRICE H. CUETARA;
- c. Order the return to the estate of BEATRICE H. CUETARA of all funds not properly expended or transferred in accordance with established fiduciary standards or all funds co-mingled with the funds of defendant TAMMY LOUISE FENUSH WHITE;
- d. Such other general relief as may be just and proper;
- e. A conveyance by Tammy Louise Fenush White (or the court's designee, on her behalf) of the Lawrence Township property described above (1010 Country Club Drive, Clearfield, Pennsylvania) and all of the decedent's furniture, furnishings and appliances formerly in her residence, to the Executor of the Estate of Beatrice H. Cuetara.
- f. That defendant be enjoined and permanently from mortgaging or encumbering the described property in any way, and from selling or conveying the same or any part thereof to any person other than the plaintiff;

g. That the defendant be required to pay cost of this action.



Timothy E. Durant

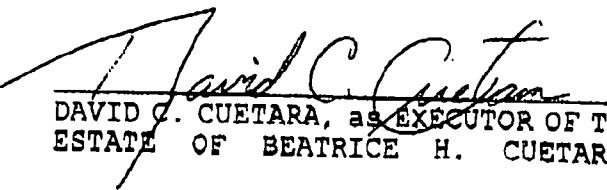
Timothy E. Durant, Esquire
Attorney for Plaintiff

DATE: November 28, 2005

VERIFICATION

I, DAVID C. CUETARA, as EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA, verify that the statements made in this Pleading are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

DATED: Nov. 28, 2005


DAVID C. CUETARA, as EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA,

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * * * 05- 1395 -CD

vs * * *

TAMMY LOUISE FENUSH WHITE

Defendant * * *

AFFIDAVIT OF SERVICE

I, Michael Luongo, verify that on that on November 29, 2005, I did deposit in the U. S Mail, postage prepaid, a certified copy of the First Amended Complaint filed in the above captioned action. The said document was mailed to the office of Richard A. Bell, Esquire, Attorney for the Defendant, at 318 East Locust Street, Clearfield, PA 16830. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Michael Luongo
Michael Luongo

Dated: November 29, 2005

FILED 3cc
012:57 AM
NOV 29 2005 *AS/AS*
William A. Shaw
Prothonotary/Clerk of Courts

CA

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

Type of Pleading
Preliminary Objections Of
Defendant To The
Amended Complaint
Of Plaintiff

Filed on Behalf of:
Defendant

Counsel of Record for
this Party:

Richard A. Bell, Esquire
PA I.D. #06808
BELL, SILBERBLATT &
WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

(814) 765-5537

FILED
01/11/2005
No CC.
DEC 08 2005 (W)

William A. Shaw
Prothonotary

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

PRELIMINARY OBJECTIONS OF DEFENDANT TO THE AMENDED COMPLAINT OF
PLAINTIFF

NOW COMES the Defendant, Tammy Louise Fenush White by her attorney Richard A. Bell of Bell, Silberblatt & Wood and files the following Preliminary Objections.

DEMURRER

The Defendant demurrs to Count I of the Amended Complaint for the following reasons:

1. There are no facts pled in Count I to support the claim that the Defendant did not act properly in carrying out her monetary duties to the decedent Beatrice H. Cuetara.

The Defendant demurrs to Count II of the Amended Complaint for the

following reasons:

2. The Plaintiff has attached to the Original Complaint and incorporated into the Amended Complaint the Agreement between Beatrice H. Cuetara and Tammy Louise Fenush White and William A. White, III dated March 28, 2003.

3. The Plaintiff has used the terms of this Agreement as a basis for claiming that the Defendant did not carry out her obligations under that Agreement, and therefore having so failed that the property conveyed to her should revert to the decedent's Estate.

4. Paragraph ten of that Agreement reads as follows:

10. Tammy's rights under this agreement shall only be forfeited if she fails to fulfil her obligations under this agreement and that decision can only be made by Betty, if she is competent, and if she is incompetent, or otherwise unable to make that decision, by Betty's attorney-at-law, Richard A. Bell and if he is unable to do so, by her attorney-at-law Daniel C. Bell.

5. Neither Betty (Beatrice H. Cuetara) nor her attorneys Richard A. Bell or Daniel C. Bell have made any decision that the Defendant failed to fulfill her obligations under the Agreement and do not do so at this time.

6. The Plaintiff has no standing or right to make a decision that the Defendant has failed to fulfill her obligations under the Agreement.

WHEREFORE, the Defendant demurrs to both counts and asks that either or both counts be dismissed.

MOTION TO STRIKE

The Defendant moves your Honorable Court to strike the following paragraphs of the Amended Complaint as not being a proper pleading:

9. Paragraph 33 is irrelevant to this case.

10. Paragraphs 33, 34 and 35 are not properly involved in the claims made by the Plaintiff and are properly controlled by discovery procedures and rules.

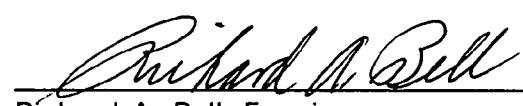
MOTION FOR MORE SPECIFIC PLEADING

11. The Defendants requests your Honorable Court require the Plaintiff to plead specific facts that support the allegations of paragraph 20.

WHEREFORE, the Defendant respectfully requests that your Honorable Court

dismiss the Amended Complaint as to her, or in the alternative grant her Motion To Strike and her Motion For More Specific Pleading.

BELL, SILBERBLATT & WOOD
By


Richard A. Bell, Esquire
Attorney for Defendant

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of Preliminary Objection Of Defendant To The
Amended Complaint Of Plaintiff, in the above matter was mailed the 8
day of December, 2005, by regular mail postage prepaid at the post
office in Clearfield, PA 16830 to the following:

Timothy E. Durant, Esquire
201 N. 2nd Street
Clearfield, PA 16830


Richard A. Bell, Esquire
Attorney for Defendant

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * * * 05- 1395 -CD

vs * * * SECOND AMENDED
* * * COMPLAINT

TAMMY LOUISE FENUSH WHITE

Defendant * * *

Filed on behalf of:

**DAVID C. CUETARA, EXECUTOR OF
THE ESTATE OF BEATRICE H.
CUETARA, Plaintiff**

Counsel of Record for Plaintiff

TIMOTHY E. DURANT, ESQ.
Pa. I.D. No. 21352
201 North Second Street
Clearfield, PA 16830
(814) 765-1711

Opposing Counsel: for **TAMMY LOUISE
FENUSH WHITE, Defendant**

RICHARD A. BELL, ESQ.
BELL, SILBERBLATT & WOOD
Pa I.D. No. 06808
318 East Locust Street
PO Box 670
Clearfield, PA 16830
(814) 765-5537

FILED

DEC 29 2005

073:466

William A. Shaw
Prothonotary/Clerk of Courts

3 cent to file

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA** *
Plaintiff *
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*
*
*
vs 05-1395-CD
TAMMY LOUISE FENUSH WHITE SECOND AMENDED
COMPLAINT
Defendant *

TO: DEFENDANT:
c/o RICHARD A. BELL, ESQ.
BELL, SILBERBLATT & WOOD
318 East Locust Street
PO Box 670
Clearfield, PA 16830

NOTICE TO DEFEND

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 First Amended 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 and for any other claims or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 5982

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

DAVID C. CUETARA, EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA	*	
	*	05- 1395 -CD
	*	
Plaintiff	*	
	*	
vs	*	
	*	
	*	
	*	
TAMMY LOUISE FENUSH WHITE	*	
	*	
Defendant	*	
	*	

SECOND AMENDED COMPLAINT

Plaintiff avers, by his counsel Timothy E. Durant, Esquire the following as his Second Amended Complaint:

1. Plaintiff is **DAVID C. CUETARA**, presently residing at 25687 Tropic Acres Drive, Bonita Springs, FL 34135. Plaintiff brings this action as **EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA**, deceased.
2. On April 17, 2005, at the age of 83 and $\frac{2}{3}$ years the said **BEATRICE H. CUETARA** departed this life testate, a resident of Clearfield County, Pennsylvania.
3. On April 26, 2005 an estate was opened for **BEATRICE H. CUETARA** in the Office of the Clearfield County Register of Wills, filed as Estate No. 1705-0231.
4. Plaintiff **DAVID C. CUETARA** was appointed as Executor of the estate of **BEATRICE H. CUETARA** by the Clearfield County Register of Wills on April 26, 2005
5. Defendant **TAMMY LOUISE FENUSH WHITE** is a competent adult individual who is presently believed to be residing c/o Dr. Lynne D. Cosner, DVM at 72 Maple Drive, Olanta, PA 16863.
6. Decedent **BEATRICE H. CUETARA'S "LAST WILL AND TESTAMENT"** dated November 22, 2000 and her "FIRST CODICIL TO THE LAST WILL & TESTAMENT OF

BEATRICE H. CUETARA" dated February 25, 2002 were admitted to probate on April 26, 2005 by the Clearfield County Register of Wills to No. 1705-0231. Both of said documents are incorporated herein by reference as if set out in full.

7. Pursuant to the provisions of paragraph ONE of the "FIRST CODICIL TO THE LAST WILL & TESTAMENT OF BEATRICE H. CUETARA" paragraph SIX of the "LAST WILL AND TESTAMENT" was changed to read as follows:

ONE: *In paragraph six of my Last Will and Testament dated November 22, 2000, I desire to eliminate any reference to the garage located at the rear of 110 South Second Street, Clearfield, Clearfield Borough, Clearfield County, Pennsylvania. Therefore paragraph six of my Last Will and Testament shall read as follows:*

SIX: *I state that I have made an agreement dated the 22nd day of November 2000, with Tammy Louise Fenush, now Tammy Louise Fenush White concerning my property located at 1010 Country Club Road, Longmeadow, Clearfield, Clearfield County, Pennsylvania. Subject to the terms of that agreement, I hereby give, devise and bequeath the said property at 1010 Country Club Road, Longmeadow, together with the furniture, furnishings and appliances to Tammy Louise Fenush, now Tammy Louise Fenush White, provided she has fulfilled her obligations under the terms of that agreement. If the said Tammy Louise Fenush, now Tammy Louise Fenush White has not fulfilled her obligations under the said agreement, this devise and bequest is void and of no effect.*

8. By deed dated February 21, 2003, recorded on February 25, 2003 in the Clearfield County Recorder's Office as Instrument No. 2003-02750 **BEATRICE H. CUETARA** conveyed to **TAMMY LOUISE FENUSH WHITE**, for the recited consideration of One (\$1.00) Dollar, the remainder interest (with the life estate being retained by the grantor) in the premises identified in the Codicil as 1010 Country Club Road, Clearfield, PA. The legal description of the subject property is as follows:

ALL that certain lot or parcel of land, together with any improvements thereon, situate in Lawrence Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pipe on the southern line of Country Club Road; said pipe being the northwest corner of Lot #43 In Longmeadow, thence along the western line of Lot #43, South four (4) degrees fifty (50) minutes West one hundred seventy (170) feet to an iron pipe on the line of Lot #63; thence along line of Lot #63,

North eighty-five (85) degrees ten (10) minutes West, one hundred twenty-five (125.00) feet to an Iron pipe corner common with Lot #45; thence along eastern line of Lot #45, North four (4) degrees fifty (50) minutes East one hundred seventy (170.0) feet to an iron pipe on the southern line of Country Club Road and a common corner with Lot #45; thence by the southern line of Country Club Road South eighty-five (85) degrees ten (10) minutes east one hundred twenty-five (125) feet to an iron pipe and place of beginning. Containing .49 acre.

BEING a parcel of land known as Lot #44 in the plan of Longmeadow.

SUBJECT to the restrictions of record recorded In Clearfield County Misc. Book 110, page 47, on January 18, 1959 and additional restrictions of record declared by Pengard Construction, Inc. and recorded in Clearfield County on May 19, 1975 in Misc. Book 197, page 436.

As part of the rights being received by the Grantee from the Grantor and as part of the consideration paid by the Grantee hereunder, the Grantor hereby gives and grants unto the Grantee any and all rights she may possess in and to the private sewer line serving the lot conveyed herein, together with the right to discharge sewerage in said line, in perpetuity and without further charge or claim by the Grantor herein, excepting fees or charges made by Municipal Authorities for use or maintenance of the sewer line.

EXCEPTING AND RESERVING any exceptions and reservations in the chain of title.

EXCEPTING AND RESERVING unto the Grantor herein a life estate in the premises herein described with the right to use and occupy the premises as her home free and clear of all rents or charges of any kind whatsoever for so long as she may live.

9. The conveyance of the premises by the decedent (described in full above and known as 1010 Country Club Road, Clearfield, Pennsylvania) was conditional and understood by the parties to the conveyance to be subject to the conditions and provisions of the prior agreements, one of which was referred to in the decedent's Last Will and Testament as being dated November 22, 2000 and others dated August 12, 1993, July 12, 2000, and February 25, 2002.

10. On March 28, 2003 an Agreement was executed between the decedent and Tammy Louise Fenush White as well as William A. White III, which Agreement was intended to be a novation for the prior agreements.

11. The said March 28th Agreement dealt with the continuing covenants and obligations undertaken by Defendant in return for her to be able to retain title to the subject premises at 1010

County Club Road as well as various items of equipment and furnishings.

12. In the said Agreement of March 28, 2003 the Decedent, Tammy Louise Fenush White and her husband William A. White III, recited the following as paragraph 11 thereof:

"11. Although this agreement incorporates many of the provisions of prior agreements, this agreement supercedes any of the prior agreements. Upon the execution of this agreement, all prior agreements are canceled and made void except insofar as their terms are incorporated in this present agreement."

A copy of the said Agreement dated March 28, 2003 is attached to our original Complaint as Exhibit "A" and is incorporated herein as if set out in full.

13. William A. White III executed the Agreement of March 28, 2003 (hereinafter "Agreement") solely for the purpose of being permitted to live in the house at 1010 Country Club Road, Clearfield, PA (see paragraph 7 of Agreement) and to subject his marital rights to the terms of the agreement (see paragraph 8 of Agreement).

14. Following the execution of the said Agreement of March 28, 2003, William A. White III and **TAMMY LOUISE FENUSH WHITE** became divorced by that certain Decree dated April 26, 2005 signed by Judge Paul A. Cherry and filed to Clearfield County No. 05-33-CD.

15. Subsequent to the said divorce of April 26, 2005 William A. White, III retained no claim upon the assets or premises described in this complaint.

16. **TAMMY LOUISE FENUSH WHITE** has listed the above described real property situate at 1010 Country Club Road, for sale with the Licensed Real Estate Brokerage firm known as "Amon, Shimmel and Walsh Realtors" of 108 South Front Street, Clearfield, PA.

17. By that certain Power of Attorney dated July 18, 2000 Beatrice H. Cuetara appointed Tammy Louise Fenush to be her lawful agent subject to all the provisions of 20 PA.C.S.A. §5601, et. seq.

18. Tammy Louise Fenush is one and the same person as Tammy Louise Fenush White and is also known as Tammy Louise White. A copy of the said Power of Attorney is attached to our original Complaint as Exhibit "B" and is incorporated herein as if set out in full.

COUNT I

*David C. Cuetara, Executor of the Estate of Beatrice H. Cuetara, deceased
vs. Tammy Louise Fenush White*

[FOR ACCOUNTING AND RESTORATION]

Paragraphs 1-18 above are incorporated herein by reference as if set out in full

19. Defendant, **TAMMY LOUISE FENUSH WHITE** had a fiduciary duty to **BEATRICE H. CUETARA** during her lifetime and was thus required to act with due care for the benefit of **BEATRICE H. CUETARA** when utilizing funds belonging to **BEATRICE H. CUETARA** as well as making decisions on behalf of **BEATRICE H. CUETARA**.

20. During the later years of her life, and particularly from and after July 2000, **BEATRICE H. CUETARA** reposed trust and confidence in the defendant.

21. The defendant accepted that trust and confidence which **BEATRICE H. CUETARA** had in her.

22. The defendant occupied a position of superiority, domination and influence in the life and daily activities of **BEATRICE H. CUETARA**.

23. Due to her advanced years and her declining health **BEATRICE H. CUETARA** became weak, dependant and trusting in the decisions of defendant.

24. Defendant became more influential and was seen as more important in the life of **BEATRICE H. CUETARA** after she moved in with her to her residence at 1010 Country Club Road and began to provide nursing care, companionship, accompaniment to shopping, doctors appointments, and banking chores among other tasks.

25. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** acted under and utilized the authority of a Power-of-Attorney from **BEATRICE H. CUETARA** dated July 18, 2000 and by such authority or by other means transferred or expended monies of the decedent.

26. Defendant has utilized the power of attorney to transfer funds from at least one account

of the decedent and possibly more and she has furthermore failed to disclose this in her response to Plaintiff's discovery requests.

27. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** transferred large sums of money from banking and brokerage accounts in the name of **BEATRICE H. CUETARA** alone or in the name of **BEATRICE H. CUETARA** and others and placed these funds into accounts in the name of **TAMMY LOUISE FENUSH WHITE** alone or jointly with **BEATRICE H. CUETARA**.

28. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** withdrew large sums of money from accounts in which the funds then and there existing were solely the property of **BEATRICE H. CUETARA** and used these funds to buy motorcycles, four-wheelers and one or more motor vehicles and placed these items in her name alone and used them for her amusement and not for the benefit of decedent.

29. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** failed to keep the assets of **BEATRICE H. CUETARA** separate from her own which is in violation of her obligations by Pennsylvania Statute and her express agreement in the acknowledgment which she signed as Agent or Attorney-in-fact for the decedent.

30. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** failed to obtain the approval of Richard A. Bell, Esq. or Daniel C. Bell, Esq. prior to employing other persons, arranging for professional care and prior to purchase and rental of equipment to be used for the care of **BEATRICE H. CUETARA** in violation of paragraph 3 of the Agreement of March 28, 2003.

31. Defendant has information unique to her as to what funds she utilized for the care of decedent and where the funds came from and how those funds were spent. This information is not available to the decedent's Executor and thus requires an accounting from the defendant.

WHEREFORE, it is demanded that **TAMMY LOUISE FENUSH WHITE** account for all funds spent or transferred from the **BEATRICE H. CUETARA** funds and further explain how each

of those expenditures or transfers was in the best interests of the decedent and such other relief as the Court may approve or require.

COUNT II

*David C. Cuetara, Executor of the Estate of Beatrice H. Cuetara, deceased
vs. Tammy Louise Fenush White*

[FOR ENFORCEMENT OF REVERTER AND REVISION FOLLOWING FAILURE OF CONDITIONAL TRANSFER]

Paragraphs 1-31 above are incorporated herein by reference as if set out in full

32. The conveyance of the remainder interest in the above described real estate and all of the furniture, furnishings and appliances in **BEATRICE H. CUETARA'S** residence was conditional.

33. The conveyance of the remainder interest in the above described real estate (and personal assets) was subject to a condition subsequent, i.e. that **TAMMY LOUISE FENUSH WHITE** care for **BEATRICE H. CUETARA** in accordance with the provisions of the Agreement dated March 28, 2003.

34. Failure to meet the condition subsequent effectively works a reverter of title and/or a revision of the deed into defendant, with the result that the property reverts or returns to **BEATRICE H. CUETARA** by her executor and into her estate.

35. As part of the consideration for the conveyance of the remainder interest in 1010 Country Club Road, Defendant **TAMMY LOUISE FENUSH WHITE** was required to care for **BEATRICE H. CUETARA** every Saturday and Sunday and two (2) week days every week (see paragraph 1 of the Agreement) and that was to be her sole job on those days.

36. **TAMMY LOUISE FENUSH WHITE** failed to care for **BEATRICE H. CUETARA** the required minimum of 4 days per week from March 28, 2003 to April 17, 2005.

37. **TAMMY LOUISE FENUSH WHITE** utilized funds of **BEATRICE H. CUETARA** to hire others to take care of **BEATRICE H. CUETARA** so she, Tammy could work and attend schooling in place of meeting her obligations to **BEATRICE H. CUETARA**.

38. **TAMMY LOUISE FENUSH WHITE** had various other jobs including but not limited

to working as a detailer for Dotts Motor Co., Inc. Of Clearfield, PA and providing nursing care for other individuals while she was on the payroll of Clear-Care Corporation during the time when, according to the Agreement, Tammy was to be caring for the decedent.

39. Prior to her death, **BEATRICE H. CUETARA'S** mental and physical condition was such that she was unable to take action on her own behalf either to enforce the Agreement or bring a legal action to rescind the transfer of the subject real estate and the items of personality and thus it is necessary for this action to be brought by her Executor on her behalf.

40. The transfer of the subject real estate and the personal property (all of the furniture, furnishings and appliances in her residence) described in paragraph 7 of the March 28th Agreement must be rescinded or be deemed to have reverted due to a failure by defendant to meet the obligations of the condition subsequent as set forth in the Agreement.

41. Paragraphs 4. and 10. of the Agreement of March 28, 2003 state as follows,

"4. No one can terminate Tammy's employment with Betty unless Tammy fails to live with Betty and provide her with care. No one shall have the right to make the decision that Tammy is failing in her duties toward Betty unless that decision is agreed with and approved by Betty's attorney-at-law, Richard A. Bell and if he is unable to do so, by her attorney-at-law Daniel C. Bell,"

"10. Tammy's rights under this agreement shall only be forfeited if she fails to fulfill her obligations under this agreement and that decision can only be made by Betty, if she is competent, and if she is incompetent, or otherwise unable to make that decision, by Betty's attorney-at-law, Richard A. Bell and if he is unable to do so, by her attorney-at-law Daniel C. Bell."

42. Defendant is now and at all times relevant hereto has been represented by Richard A. Bell, Esquire. Daniel A. Bell is the son of Richard A. Bell and both are employed by the same firm, i.e., BELL, SILBERBLATT & WOOD of Clearfield, Pennsylvania.

43. Defendant's counsel has claimed in his most recent Preliminary Objections that he or his son are the only ones who can determine whether their client failed to meet her obligations under the Agreement of March 28, 2003.

44. This Court cannot be excluded from consideration of the matters complained of in the instant law suit because the defendant has hired the only person and firm who are permitted to

determine that she has committed a wrong.

45. To avoid the patent conflict of interest, Decedent's rights are required to be protected by Plaintiff in this action.

46. Assets returned to the estate by **TAMMY LOUISE FENUSH WHITE** will not then be inherited by her but will instead be distributed equally to decedent's son David C. Cuetara and her grandson Kelly Lawhead pursuant to the provisions of paragraph NINE of her Last Will and Testament. This suit is being brought on behalf of the estate in the interest of the residuary beneficiaries.

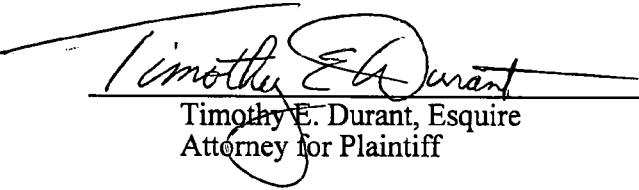
47. Certain information necessary to be more specific is not yet available to Plaintiff.

48. Plaintiff requests prospectively, that this court permit him to file such further amended complaint(s) as shall appear prudent after the conclusion of discovery.

WHEREFORE, plaintiff **DAVID C. CUETARA**, as **EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA**, deceased, demands the following relief:

- a. An accounting for all occasions when defendant, **TAMMY LOUISE FENUSH WHITE** used any Power of Attorney executed by the decedent;
- b. An accounting for all funds expended or transferred from the funds of **BEATRICE H. CUETARA**;
- c. Order the return to the estate of **BEATRICE H. CUETARA** of all funds not properly expended or transferred in accordance with established fiduciary standards or all funds co-mingled with the funds of defendant **TAMMY LOUISE FENUSH WHITE**;
- d. Such other general relief as may be just and proper;
- e. A conveyance by Tammy Louise Fenush White (or the court's designee, on her behalf) of the Lawrence Township property described above (1010 Country Club Drive, Clearfield, Pennsylvania) and all of the decedent's furniture, furnishings and appliances formerly in her residence, to the Executor of the Estate of Beatrice H. Cuetara.

- f. That defendant be enjoined and permanently from mortgaging or encumbering the described property in any way, and from selling or conveying the same or any part thereof to any person other than the plaintiff;
- g. That the defendant be required to pay cost of this action.
- h. Such other relief as the Court deems appropriate.



Timothy E. Durant

Timothy E. Durant, Esquire
Attorney for Plaintiff

DATE: December 29, 2005

VERIFICATION

I, DAVID C. CUETARA, as EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA, verify that the statements made in this Pleading are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

DATED: 12/29/05

DAVID C. CUETARA
DAVID C. CUETARA, as EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA,

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * 05- 1395 -CD

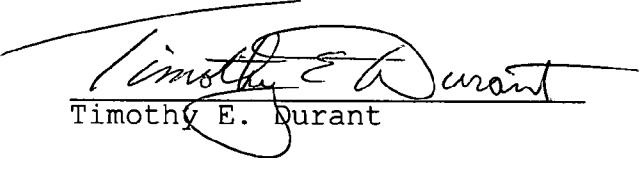
vs *

TAMMY LOUISE FENUSH WHITE

Defendant *

AFFIDAVIT OF SERVICE

I, Timothy E. Durant, verify that on that on December 29, 2005, I did deposit in the U. S Mail, postage prepaid, a certified copy of the Second Amended Complaint filed in the above captioned action. The said document was mailed to the office of Richard A. Bell, Esquire, Attorney for the Defendant, at 318 East Locust Street, Clearfield, PA 16830. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.



Timothy E. Durant

Dated: December 29, 2005

FILED No cc.
O/12:04 LM
DEC 30 2005 

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100797
NO: 05-1395-CD
SERVICE # 1 OF 1
SUMMONS;PRAECIPES; PLFF. 1st REQUESTS

etc.

PLAINTIFF: DAVID C. CUETARA, EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA
vs.
DEFENDANT: TAMMY LOUISE FENUSH WHITE

SHERIFF RETURN

NOW, October 05, 2005 AT 8:52 AM SERVED THE WITHIN SUMMONS;PRAECIPES; PLFF. 1st REQUESTS etc. ON TAMMY LOUISE FENUSH WHITE DEFENDANT AT SHERIFF'S OFFICE, 1 N. 2ND ST., SUITE 116, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO TAMMY WHITE, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS;PRAECIPES; PLFF. 1st REQUESTS etc. AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DAVIS / MORGILLO

FILED
08/58/06
JAN 11 2006
US
William A. Shaw
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	DURANT	5765	10.00
SHERIFF HAWKINS	DURANT	5765	40.71

Sworn to Before Me This

____ Day of _____ 2006

So Answers,

*Chester A. Hawkins
by Marlyze Hamps*
Chester A. Hawkins
Sheriff

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

Type of Pleading
Preliminary Objections Of
Defendant To The
Second Amended Complaint
Of Plaintiff

Filed on Behalf of:
Defendant

Counsel of Record for
this Party:

Richard A. Bell, Esquire
PA I.D. #06808
BELL, SILBERBLATT &
WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

(814) 765-5537

FILED

JAN 11 2006
07/11:30 (wm) (6)
William A. Shaw
Prothonotary/Clerk of Courts
nos C/C

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

PRELIMINARY OBJECTIONS OF DEFENDANT TO THE SECOND AMENDED
COMPLAINT OF PLAINTIFF

NOW COMES the Defendant, Tammy Louise Fenush White by her attorney Richard A. Bell of Bell, Silberblatt & Wood and files the following Preliminary Objections to the Second Amended Complaint Of The Plaintiff.

DEMURRER

The Defendant demurrs to Count I of the Amended Complaint for the following reasons:

1. There are no facts pled in Count I to support the claim that the Defendant did not act properly in carrying out her monetary duties to the decedent Beatrice H. Cuetara.

The Defendant demurrs to Count II of the Amended Complaint for the following reasons:

2. The Plaintiff has attached to the Original Complaint and incorporated into

the Amended Complaint the Agreement between Beatrice H. Cuetara and Tammy Louise Fenush White and William A. White, III dated March 28, 2003.

3. The Plaintiff has used the terms of this Agreement as a basis for claiming that the Defendant did not carry out her obligations under that Agreement, and therefore having so failed that the property conveyed to her should revert to the decedent's Estate.

4. Paragraph ten of that Agreement reads as follows:

10. Tammy's rights under this agreement shall only be forfeited if she fails to fulfil her obligations under this agreement and that decision can only be made by Betty, if she is competent, and if she is incompetent, or otherwise unable to make that decision, by Betty's attorney-at-law, Richard A. Bell and if he is unable to do so, by her attorney-at-law Daniel C. Bell.

5. Neither Betty (Beatrice H. Cuetara) nor her attorneys Richard A. Bell or Daniel C. Bell have made any decision that the Defendant failed to fulfill her obligations under the Agreement.

6. The Plaintiff has no standing or right to make a decision that the Defendant has failed to fulfill her obligations under the Agreement.

WHEREFORE, the Defendant demurrs to both counts and asks that either or both counts be dismissed.

MOTION TO STRIKE

The Defendant moves your Honorable Court to strike the following paragraphs of the Amended Complaint as not being a proper pleading:

9. Paragraph 46 is irrelevant to this case.

MOTION FOR MORE SPECIFIC PLEADING

11. The Defendants requests your Honorable Court require the Plaintiff to plead specific facts that support the allegations of paragraphs 26, 27, 28, and 29.

WHEREFORE, the Defendant respectfully requests that your Honorable Court dismiss the Amended Complaint as to her, or in the alternative grant her Motion To Strike and her Motion For More Specific Pleading.

BELL, SILBERBLATT & WOOD
By



Richard A. Bell, Esquire
Attorney for Defendant

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of Preliminary Objection Of Defendant To The
Second Amended Complaint Of Plaintiff, in the above matter was mailed the
11 day of January, 2006, by regular mail postage prepaid at the
post office in Clearfield, PA 16830 to the following:

Timothy E. Durant, Esquire
201 N. 2nd Street
Clearfield, PA 16830



Richard A. Bell, Esquire
Attorney for Defendant

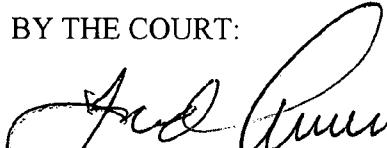
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

DAVID C. CUETARA, Executor of the :
Estate of BEATRICE H. CUETARA, :
: vs. : No. 05-1395-CD
: :
TAMMY LOUISE FENUSH WHITE :
:

ORDER

AND NOW, this 12 day of January, 2006, upon
consideration of Defendant's Preliminary Objections to the Amended Complaint
of Plaintiff filed in the above matter, it is the Order of the Court that argument has
been scheduled for the 6th day of February, 2006, at 11:30
A.M, in Courtroom No. 1, Clearfield County Courthouse, Clearfield,
PA.

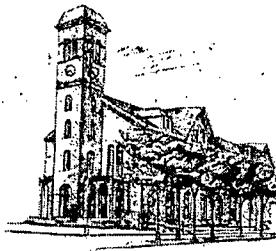
BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED *2cc*
01/16/2006 Atty's: Duran +
JAN 16 2006 Bell
WM
William A. Shaw
Prothonotary/Clerk of Courts

FILED
JAN 16 2006

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: 11/10/06

You are responsible for serving all appropriate parties.

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

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

Type of Pleading
OBJECTIONS TO
SUBPOENA PURSUANT
TO RULE 4009.21-CLEAR-CARE

Filed on Behalf of:
Defendant

Counsel of Record for
this Party:

Richard A. Bell, Esquire
PA I.D. #06808
BELL, SILBERBLATT & WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830
(814) 765-5537

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

~~JAN 30 2006~~

Attest

W.A. Shaw
Prothonotary/
Clerk of Courts

FILED
JAN 30 2006
0 3:20 PM
W
William A. Shaw
Prothonotary/Clerk of Courts
NO CERT TO APPY

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

OBJECTIONS TO SUBPOENA PURSUANT TO RULE 4009.21

Tammy Louise Fenush White, Defendant, objects to the proposed subpoena that is attached to these Objections for the following reasons:

1. Earnings Statement for the two week pay periods from April 15, 2004 to April 15, 2005 which covers the period of time which the Defendant was employed by Clear-Care Corporation within the time period stated in the subpoena have already been furnished to the Plaintiff in the Defendant's Response to a Request For Production Of Documents.

2. Requiring the deponent to furnish daily time cards for a period from April 15, 2003 to April 15, 2005, a period of one (1) year would cause unreasonable annoyance, oppression, burden, or expense to the deponent and the Defendant.

Date: 1-30-06

BELL, SILBERBLATT & WOOD
BY



Richard A. Bell, Esquire, Attorney for Defendant

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of Objections To Subpoena Pursuant To Rule 4009.21 directed to Clear-Care Corporation , in the above matter was mailed the 30th day of January, 2006, by regular mail postage prepaid at the post office in Clearfield, PA 16830 to the following:

Timothy E. Durant, Esquire
201 N. 2nd Street
Clearfield, PA 16830



Richard A. Bell, Esquire
Attorney for Defendant

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

Type of Pleading
OBJECTIONS TO
SUBPOENA PURSUANT
TO RULE 4009.21-DOTTS

Filed on Behalf of:
Defendant

Counsel of Record for
this Party:

Richard A. Bell, Esquire
PA I.D. #06808
BELL, SILBERBLATT &
WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

(814) 765-5537

FILED

JAN 30 2006

13:20 1/30/06
William A. Shaw
Prothonotary/Clerk of Courts

13:20 1/30/06
No CERT 7-ATT

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

OBJECTIONS TO SUBPOENA PURSUANT TO RULE 4009.21

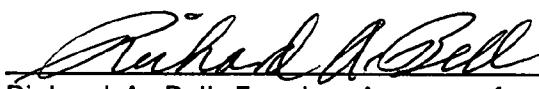
Tammy Louise Fenush White, Defendant, objects to the proposed subpoena that is attached to these Objections for the following reasons:

1. Earnings Statement for the two week pay periods from March 15, 2003 to April 23, 2004 which covers the period of time which the Defendant was employed by Dotts Motor Company within the time period stated in the subpoena have already been furnished to the Plaintiff in the Defendant's Response to a Request For Production Of Documents.

2. Requiring the deponent to furnish daily time cards for a period from March 15, 2003 to April 23, 2004, a period of one (1) year and eight (8) days would cause unreasonable annoyance, oppression, burden, or expense to the deponent and the Defendant.

Date: 1-30-06

BELL, SILBERBLATT & WOOD
BY


Richard A. Bell, Esquire, Attorney for Defendant

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of Objections To Subpoena Pursuant To Rule 4009.21 directed to Dotts Motors , in the above matter was mailed the 30th day of January 2006, by regular mail postage prepaid at the post office in Clearfield, PA 16830 to the following:

Timothy E. Durant, Esquire
201 N. 2nd Street
Clearfield, PA 16830



Richard A. Bell, Esquire
Attorney for Defendant

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * * * 05- 1395 -CD

vs

* * * THIRD AMENDED
COMPLAINT

TAMMY LOUISE FENUSH WHITE

Defendant * * *

Filed on behalf of:

**DAVID C. CUETARA, EXECUTOR OF
THE ESTATE OF BEATRICE H.
CUETARA, Plaintiff**

Counsel of Record for Plaintiff

TIMOTHY E. DURANT, ESQ.
Pa. I.D. No. 21352
201 North Second Street
Clearfield, PA 16830
(814) 765-1711

Opposing Counsel: for **TAMMY LOUISE
FENUSH WHITE, Defendant**

RICHARD A. BELL, ESQ.
BELL, SILBERBLATT & WOOD
Pa I.D. No. 06808
318 East Locust Street
PO Box 670
Clearfield, PA 16830
(814) 765-5537

FILED *3cc A/H Durant*
03:46pm *JM*
JAN 31 2006

William A. Shaw
Prothonotary

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

DAVID C. CUETARA, EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA	*
	*
	*
	*
Plaintiff	*
	*
	*
vs	*
	*
	*
	*
TAMMY LOUISE FENUSH WHITE	05- 1395 -CD
	*
	*
	*
Defendant	*

TO: DEFENDANT:
c/o RICHARD A. BELL, ESQ.
BELL, SILBERBLATT & WOOD
318 East Locust Street
PO Box 670
Clearfield, PA 16830

NOTICE TO DEFEND

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 First Amended 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 and for any other claims or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 5982

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

*

05- 1395 -CD

Plaintiff

*

*

vs

*

*

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*

*

Defendant

*

TAMMY LOUISE FENUSH WHITE

*

*

*

*

*

THIRD AMENDED COMPLAINT

Plaintiff avers, by his counsel Timothy E. Durant, Esquire the following as his Third Amended Complaint:

1. Plaintiff is **DAVID C. CUETARA**, presently residing at 25687 Tropic Acres Drive, Bonita Springs, FL 34135. Plaintiff brings this action as **EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA**, deceased.
2. On April 17, 2005, at the age of 83 and $\frac{2}{3}$ years the said **BEATRICE H. CUETARA** departed this life, testate, a resident of Clearfield County, in the Commonwealth of Pennsylvania.
3. On April 26, 2005 an estate was opened for **BEATRICE H. CUETARA** in the Office of the Clearfield County Register of Wills, filed as Estate No. 1705-0231.
4. Plaintiff **DAVID C. CUETARA** was appointed as Executor of the estate of **BEATRICE H. CUETARA** by the Clearfield County Register of Wills on April 26, 2005
5. Defendant **TAMMY LOUISE FENUSH WHITE** is a competent adult individual who is presently believed to be residing c/o Dr. Lynne D. Cosner, DVM at 72 Maple Drive, Olanta, PA 16863.
6. Decedent, **BEATRICE H. CUETARA'S "LAST WILL AND TESTAMENT"** dated November 22, 2000 and her "FIRST CODICIL TO THE LAST WILL & TESTAMENT OF

BEATRICE H. CUETARA" dated February 25, 2002 were admitted to probate on April 26, 2005 by the Clearfield County Register of Wills to No. 1705-0231. Both of said documents are incorporated herein by reference as if set out in full.

7. Pursuant to the provisions of paragraph ONE of the "FIRST CODICIL TO THE LAST WILL & TESTAMENT OF BEATRICE H. CUETARA" paragraph SIX of the "LAST WILL AND TESTAMENT" was changed to read as follows:

ONE: In paragraph six of my Last Will and Testament dated November 22, 2000, I desire to eliminate any reference to the garage located at the rear of 110 South Second Street, Clearfield, Clearfield Borough, Clearfield County, Pennsylvania. Therefore paragraph six of my Last Will and Testament shall read as follows:

SIX: I state that I have made an agreement dated the 22nd day of November 2000, with Tammy Louise Fenush, now Tammy Louise Fenush White concerning my property located at 1010 Country Club Road, Longmeadow, Clearfield, Clearfield County, Pennsylvania. Subject to the terms of that agreement, I hereby give, devise and bequeath the said property at 1010 Country Club Road, Longmeadow, together with the furniture, furnishings and appliances to Tammy Louise Fenush, now Tammy Louise Fenush White, provided she has fulfilled her obligations under the terms of that agreement. If the said Tammy Louise Fenush, now Tammy Louise Fenush White has not fulfilled her obligations under the said agreement, this devise and bequest is void and of no affect.

8. By deed dated February 21, 2003, recorded on February 25, 2003 in the Clearfield County Recorder's Office as Instrument No. 2003-02750 **BEATRICE H. CUETARA** conveyed to **TAMMY LOUISE FENUSH WHITE**, for the recited consideration of One (\$1.00) Dollar, the remainder interest (with the life estate being retained by the grantor) in the premises identified in the Codicil as 1010 Country Club Road, Clearfield, PA. The legal description of the subject property is as follows:

ALL that certain lot or parcel of land, together with any improvements thereon, situate in Lawrence Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pipe on the southern line of Country Club Road; said pipe being the northwest corner of Lot #43 In Longmeadow, thence along the western line of Lot #43, South four (4) degrees fifty (50) minutes West one hundred seventy (170) feet to an iron pipe on the line of Lot #63; thence along line of Lot #63,

North eighty-five (85) degrees ten (10) minutes West, one hundred twenty-five (125.00) feet to an Iron pipe corner common with Lot #45; thence along eastern line of Lot #45, North four (4) degrees fifty (50) minutes East one hundred seventy (170.0) feet to an iron pipe on the southern line of Country Club Road and a common corner with Lot #45; thence by the southern line of Country Club Road South eighty-five (85) degrees ten (10) minutes east one hundred twenty-five (125) feet to an iron pipe and place of beginning. Containing .49 acre.

BEING a parcel of land known as Lot #44 in the plan of Longmeadow.

SUBJECT to the restrictions of record recorded In Clearfield County Misc. Book 110, page 47, on January 18, 1959 and additional restrictions of record declared by Pengard Construction, Inc. and recorded in Clearfield County on May 19, 1975 in Misc. Book 197, page 436.

As part of the rights being received by the Grantee from the Grantor and as part of the consideration paid by the Grantee hereunder, the Grantor hereby gives and grants unto the Grantee any and all rights she may possess in and to the private sewer line serving the lot conveyed herein, together with the right to discharge sewerage in said line, in perpetuity and without further charge or claim by the Grantor herein, excepting fees or charges made by Municipal Authorities for use or maintenance of the sewer line.

EXCEPTING AND RESERVING any exceptions and reservations in the chain of title.

EXCEPTING AND RESERVING unto the Grantor herein a life estate in the premises herein described with the right to use and occupy the premises as her home free and clear of all rents or charges of any kind whatsoever for so long as she may live.

9. The conveyance of the premises by the decedent (described in full above and known as 1010 Country Club Road, Clearfield, Pennsylvania) was conditional and understood by the parties to the conveyance to be subject to the conditions and provisions of the prior agreements, one of which was referred to in the decedent's Last Will and Testament as being dated November 22, 2000 and others dated August 12, 1993, July 12, 2000, and February 25, 2002.

10. On March 28, 2003 an Agreement was executed between the decedent and Tammy Louise Fenush White as well as William A. White III, which Agreement was intended to be a novation for the prior agreements.

11. The said March 28th Agreement dealt with the continuing covenants and obligations undertaken by Defendant in return for her to be able to retain title to the subject premises at 1010

County Club Road as well as various items of equipment and furnishings.

12. In the said Agreement of March 28, 2003 the Decedent, Tammy Louise Fenush White and her then husband William A. White III, recited the following as paragraph 11 thereof:

"11. Although this agreement incorporates many of the provisions of prior agreements, this agreement supercedes any of the prior agreements. Upon the execution of this agreement, all prior agreements are canceled and made void except insofar as their terms are incorporated in this present agreement."

A copy of the said Agreement dated March 28, 2003 is attached to our original Complaint as Exhibit A and is incorporated herein as if set out in full.

13. William A. White III executed the Agreement of March 28, 2003 (hereinafter "Agreement") solely for the purpose of being permitted to live in the house at 1010 Country Club Road, Clearfield, PA (see paragraph 7 of Agreement) and to subject his marital rights to the terms of the agreement (see paragraph 8 of Agreement).

14. Subsequent to the execution of the said Agreement of March 28, 2003, William A. White III and **TAMMY LOUISE FENUSH WHITE** became divorced, by that certain Decree dated April 26, 2005, signed by Judge Paul A. Cherry and filed to Clearfield County No. 05-33-CD.

15. After the said divorce of April 26, 2005, William A. White, III retained no claim upon the assets or premises described in this complaint.

16. In or about August of 2005 **TAMMY LOUISE FENUSH WHITE** listed the above described real property situate at 1010 Country Club Road, for sale with the Licensed Real Estate Brokerage firm known as "Amon, Shimel and Walsh Realtors" of 108 South Front Street, Clearfield, PA.

17. By that certain Power of Attorney dated July 18, 2000 Beatrice H. Cuetara appointed Tammy Louise Fenush to be her lawful agent subject to all the provisions of 20 P.A.C.S.A. §5601, et. seq.

18. Tammy Louise Fenush is one and the same person as Tammy Louise Fenush White and is also known as Tammy Louise White and Tammy Fenush White. A copy of the said Power of

Attorney is attached to our original Complaint as Exhibit "B" and is incorporated herein as if set out in full.

COUNT I

*David C. Cuetara, Executor of the Estate of Beatrice H. Cuetara, deceased
vs. Tammy Louise Fenush White*

[FOR ACCOUNTING AND RESTORATION]

Paragraphs 1-18 above are incorporated herein by reference as if set out in full

19. Defendant, **TAMMY LOUISE FENUSH WHITE** had a fiduciary duty to **BEATRICE H. CUETARA** during her lifetime and was thus required to act with due care for the benefit of **BEATRICE H. CUETARA** when utilizing funds belonging to **BEATRICE H. CUETARA** as well as making decisions on behalf of **BEATRICE H. CUETARA**.

20. During the later years of her life, and particularly from and after July 2000, **BEATRICE H. CUETARA** reposed trust and confidence in the defendant.

21. The defendant accepted that trust and confidence which **BEATRICE H. CUETARA** had in her.

22. The defendant occupied a position of superiority, domination and influence in the life and daily activities of **BEATRICE H. CUETARA**.

23. Due to her advanced years and her declining health **BEATRICE H. CUETARA** became weak, dependant and trusting in the decisions of defendant.

24. Defendant became more influential and was seen as more important in the life of **BEATRICE H. CUETARA** after she moved in with her to her residence at 1010 Country Club Road and began to provide nursing care, companionship, accompaniment to shopping, doctors appointments, and banking chores among other tasks.

25. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** acted under and utilized the authority of a Power-of-Attorney from **BEATRICE H. CUETARA** dated

July 18, 2000 and by such authority or by other means transferred or expended monies of the decedent. Said Power of Attorney failed to provide for any authority in the agent to make gifts to herself or others.

26. At all times following the execution of the said Power-of-Attorney **TAMMY LOUISE FENUSH WHITE** was bound by 20 Pa.C.S.A. §5601, et. seq. and therefore inter alia she has a duty to account to her principal pursuant to 20 Pa.C.S.A. §5601(e) with, "a full and accurate record of all actions, receipts and disbursements on behalf of the principal."

27. Defendant has utilized the power of attorney to transfer funds from at least one account (i.e. County National Bank checking Account No. 0001083712) of the decedent and possibly other accounts of the decedent and she has furthermore failed to disclose this use of the Power of Attorney in her response to Plaintiff's discovery requests (i.e. in her Answer to Request For Production of Documents, ¶9 dated November 3, 2005).

28. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** transferred large sums of money from banking and brokerage accounts in the name of **BEATRICE H. CUETARA** alone or in the name of **BEATRICE H. CUETARA** and others and placed these funds into accounts in the name of **TAMMY LOUISE FENUSH WHITE** alone or jointly with **BEATRICE H. CUETARA** or others, i.e., including but not limited to:

a. \$24,690.53 taken on September 8, 2000 from the PaineWebber in Pittsburgh (Account No. VP 627551 M) account of the decedent to Tammy L Fenush.

b. \$22,474.73 taken on June 12, 2002 from CNB Certificate of Deposit (No. 210152) which was in name of Tammy L. Fenush and Beatrice H. Cuetara and placed \$20,000.00 of this in a 60 month Certificate of Deposit in the name of Todd A. Schickling and Tammy (CNB No. 233060) and took the remainder of the funds and made a cash deposit to the account of Tammy in her name alone (CNB Account No. 1635606) on June 12, 2002.

c. \$22,474.73 taken on June 12, 2002 from CNB Certificate of Deposit (No. 210153) which was in name of Tammy L. Fenush and Beatrice H. Cuetara and placed \$20,000.00 of this in

a 60 month Certificate of Deposit in the name of Tiffany F. Weitoish and Tammy (CNB No. 233059) and took the remainder of the funds and made a cash a cash deposit to the account of Tammy in her name alone (CNB Account No. 1635606) on June 12, 2002.

29. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** withdrew large sums of money from accounts in which the funds then and there existing were solely the property of **BEATRICE H. CUETARA** and used these funds to buy motorcycles, four-wheelers and one or more motor vehicles and placed these items in her name alone and used them for her amusement and not for the benefit of decedent.

30. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** failed to keep the assets of **BEATRICE H. CUETARA** separate from her own which is in violation of her obligations by Pennsylvania Statute and her express agreement in the acknowledgment which she signed as Agent or Attorney-in-fact for the decedent, i.e. including but not limited to the redemption on October 16, 2002 of a Certificate of Deposit (CNB No. 221109) valued at redemption as being worth \$11,078.53 which CD was in the name of decedent and Tammy L. Fenush (but had been funded by decedent) and on October 16, 2002 Tammy paid \$10,540.11 of said funds towards or on account for a payment of a personal loan solely in the name of Tammy White with CNB (Account No. 394817). The \$538.42 difference between the redemption and the payment on the loan is presently unaccounted for.

31. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** obtained made payable to her while acting as agent for **BEATRICE H. CUETARA** and negotiated these checks without the countersignature of Richard A. Bell, Daniel C. Bell, or Sandra A. Irwin as required by the ¶ numbered "1." in the aforesaid Power of Attorney, i.e. including but not limited to check No. 71156 dated September 8, 2000 in the amount of \$24,690.53 from Paine Webber to Tammy L. Fenush.

32. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** failed to obtain the approval of Richard A. Bell, Esq. or Daniel C. Bell, Esq. prior to employing other

persons, arranging for professional care and prior to purchase and rental of equipment to be used for the care of **BEATRICE H. CUETARA** in violation of paragraph 3 of the Agreement of March 28, 2003.

33. Defendant has information unique to her as to what funds she utilized for the care of decedent and where the funds came from and how those funds were spent. This information is not available to the decedent's Executor and thus requires an accounting from the defendant.

34. Plaintiff is entitled by law to an accounting of all funds and assets handled by or processed by defendant.

WHEREFORE, it is demanded that **TAMMY LOUISE FENUSH WHITE** account for all funds spent or transferred from the **BEATRICE H. CUETARA** funds and further explain how each of those expenditures or transfers was in the best interests of the decedent and such other relief as the Court may approve or require including the return of funds to the estate.

COUNT II

*David C. Cuetara, Executor of the Estate of Beatrice H. Cuetara, deceased
vs. Tammy Louise Fenush White*

[FOR ENFORCEMENT OF REVERTER AND REVISION FOLLOWING FAILURE OF CONDITIONAL TRANSFER]

Paragraphs 1-34 above are incorporated herein by reference as if set out in full

35. The conveyance of the remainder interest in the above described real estate and all of the furniture, furnishings and appliances in **BEATRICE H. CUETARA'S** residence was conditional.

36. The conveyance of the remainder interest in the above described real estate (and personal assets) was subject to a condition subsequent, i.e. that **TAMMY LOUISE FENUSH WHITE** care for **BEATRICE H. CUETARA** in accordance with the provisions of the Agreement dated March 28, 2003.

37. Failure to meet the condition subsequent effectively works a reverter of title and/or a revision of the deed into defendant, with the result that the property reverts or returns to **BEATRICE H. CUETARA** by her executor and into her estate.

38 As part of the consideration for the conveyance of the remainder interest in 1010 Country Club Road, Defendant **TAMMY LOUISE FENUSH WHITE** was required to care for **BEATRICE H. CUETARA** every Saturday and Sunday and two (2) week days every week (see paragraph 1 of the Agreement) and that was to be her sole job on those days.

39. **TAMMY LOUISE FENUSH WHITE** failed to care for **BEATRICE H. CUETARA** the required minimum of 4 days per week from March 28, 2003 to April 17, 2005.

40. **TAMMY LOUISE FENUSH WHITE** utilized funds of **BEATRICE H. CUETARA** to hire others to take care of **BEATRICE H. CUETARA** so she, Tammy could work and attend schooling in place of meeting her obligations to **BEATRICE H. CUETARA**. Further defendant hired such others without the prior approval of Richard A. Bell, Esq. or Daniel C. Bell, Esq. as required by the agreement.

41. **TAMMY LOUISE FENUSH WHITE** had various other jobs including but not limited to working as a detailer for Dotts Motor Co., Inc. Of Clearfield, PA and providing nursing care for other individuals while she was on the payroll of Clear-Care Corporation during the time when, according to the Agreement, Tammy was to be caring for the decedent.

42. Prior to her death, **BEATRICE H. CUETARA'S** mental and physical condition was such that she was unable to take action on her own behalf either to enforce the Agreement or bring a legal action to rescind the transfer of the subject real estate and the items of personalty and thus it is necessary for this action to be brought by her Executor on her behalf.

43. The transfer of the subject real estate and the personal property (all of the furniture, furnishings and appliances in her residence) described in paragraph 7 of the March 28th Agreement must be rescinded or be deemed to have reverted due to a failure by defendant to meet the obligations of the condition subsequent as set forth in the Agreement.

44. Paragraphs 4. and 10. of the Agreement of March 28, 2003 state as follows,

"4. No one can terminate Tammy's employment with Betty unless Tammy fails to live with Betty and provide her with care. No one shall have the right to make the decision that Tammy is failing in her

duties toward Betty unless that decision is agreed with and approved by Betty's attorney-at-law, Richard A. Bell and if he is unable to do so, by her attorney-at-law Daniel C. Bell."

"10. Tammy's rights under this agreement shall only be forfeited if she fails to fulfill her obligations under this agreement and that decision can only be made by Betty, if she is competent, and if she is incompetent, or otherwise unable to make that decision, by Betty's attorney-at-law, Richard A. Bell and if he is unable to do so, by she attorney-at-law Daniel C. Bell."

45. Defendant is now and at all times relevant hereto has been represented by Richard A. Bell, Esquire. Daniel A. Bell is the son of Richard A. Bell and both are employed by the same firm, i.e., BELL, SILBERBLATT & WOOD of Clearfield, Pennsylvania.

46. Richard A. Bell, Esq. has advised that he also represents Heather Lawhead and the decedent's grandson Kelly Lawhead both of whom are beneficiaries in this estate.

47. Defendant's counsel (Richard A. Bell, Esq.) has claimed in his most recent Preliminary Objections that he or his son are the only ones who can determine whether their client failed to meet her obligations under the Agreement of March 28, 2003.

48. Counsel for defendant no longer represents decedent nor her interests.

49. Counsel for defendant has no standing to prevent this law suit, he cannot both represent the decedent and the defendant.

50. To avoid the patent conflict of interest, Decedent's rights are required to be protected by Plaintiff in this action.

51. To permit defendant's counsel to determine whether defendant violated her obligations would be an injustice to the decedent and her estate.

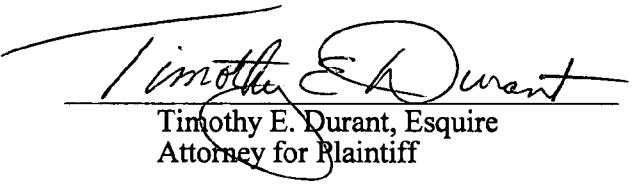
52. This suit is being brought because assets returned to the estate by **TAMMY LOUISE FENUSH WHITE** will not then be inherited by her but will instead be distributed equally to the residuary beneficiaries, i.e. decedent's son David C. Cuetara and her grandson Kelly Lawhead pursuant to the provisions of paragraph NINE of her Last Will and Testament.

53. Certain information necessary to be more specific is not yet available to Plaintiff.

54. Plaintiff requests prospectively, that this court permit him to file such further amended complaint(s) as shall appear prudent after the conclusion of discovery.

WHEREFORE, plaintiff **DAVID C. CUETARA**, as **EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA**, deceased, demands the following relief:

- a. An accounting for all occasions when defendant, TAMMY LOUISE FENUSH WHITE used any Power of Attorney executed by the decedent;
- b. An accounting for all funds expended or transferred from the funds of BEATRICE H. CUETARA;
- c. Order the return to the estate of BEATRICE H. CUETARA of all funds not properly expended or transferred in accordance with established fiduciary standards or all funds co-mingled with the funds of defendant TAMMY LOUISE FENUSH WHITE;
- d. Such other general relief as may be just and proper;
- e. A conveyance by Tammy Louise Fenush White (or the court's designee, on her behalf) of the Lawrence Township property described above (1010 Country Club Drive, Clearfield, Pennsylvania) and all of the decedent's furniture, furnishings and appliances formerly in her residence, to the Executor of the Estate of Beatrice H. Cuetara.
- f. That defendant be enjoined and permanently from mortgaging or encumbering the described property in any way, and from selling or conveying the same or any part thereof to any person other than the plaintiff;
- g. That the defendant be required to pay cost of this action.
- h. Such other relief as the Court deems appropriate.



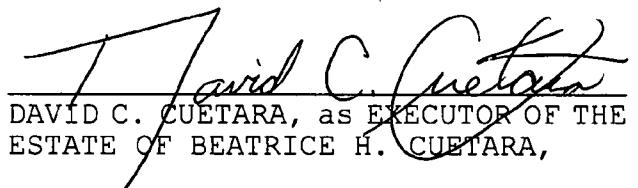
Timothy E. Durant
Attorney for Plaintiff

DATE January 31, 2006

VERIFICATION

I, DAVID C. CUETARA, as EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA, verify that the statements made in this Pleading are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

DATED: 1/31/06


DAVID C. CUETARA, as EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA,

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * 05- 1395 -CD

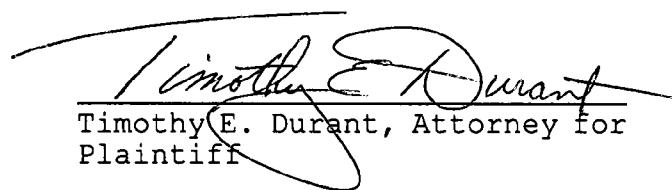
vs *

TAMMY LOUISE FENUSH WHITE

Defendant *

AFFIDAVIT OF SERVICE

I, Timothy E. Durant, verify that on that on January 31, 2006, I did deposit in the U. S Mail, postage prepaid, a certified copy of the Third Amended Complaint filed in the above captioned action. The said document was mailed to the office of Richard A. Bell, Esquire, Attorney for the Defendant, at 318 East Locust Street, PO Box 670, Clearfield, PA 16830. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.


Timothy E. Durant, Attorney for Plaintiff

Dated: February 1, 2006

FILED
01/31/06 2:22 PM
FEB 02 2006 Atty Durant


William A. Shaw
Prothonotary/Clerk of Courts

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

AFFIDAVIT OF SERVICE

I, Timothy E. Durant, verify that on that on February 3, 2006, I did deposit in the U. S Mail, postage prepaid, a Notice of Deposition of Tammy Louise Fenush White, in the above captioned action. The said document was mailed to the office of Richard A. Bell, Esquire, Attorney for the Defendant, at 318 East Locust Street, Clearfield, PA 16830. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Timothy E. Durant

Dated: Feb. 3, 2006

FILED

FEB 03 2006

67121057C
William A. Shaw
Notary/Clerk of Courts
4C

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DAVID C. CUETARA, Executor of the:

Estate of BEATRICE H. CUETARA :

VS. : NO. 05-1395-CD

TAMMY LOUISE FENUSH WHITE :

O R D E R

NOW, this 6th day of February, 2006, this being the date set for argument on the Defendant's Preliminary Objections to the Amended Complaint; the Court having been advised that a series of subsequent Amended Complaints have been filed along with other Preliminary Objections, it is the ORDER of this Court that the original Preliminary Objections be and are hereby dismissed without prejudice to the Defendant to raise any of the same issues to any Amended Complaint which may be filed.

BY THE COURT,

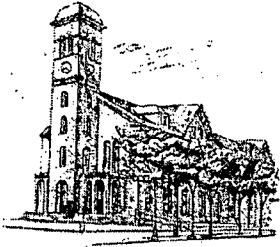


President Judge

FILED 2cc
01/4/2006 Attn: Stuart
FEB 08 2006 Bell

William A. Shaw
Prothonotary/Clerk of Courts

6



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: 2/8/06

You are responsible for serving all appropriate parties.

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

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * 05- 1395 -CD

vs * FOURTH AMENDED
* COMPLAINT

TAMMY LOUISE FENUSH WHITE

Defendant *

Filed on behalf of:
**DAVID C. CUETARA, EXECUTOR OF
THE ESTATE OF BEATRICE H.
CUETARA, Plaintiff**

Counsel of Record for Plaintiff

TIMOTHY E. DURANT, ESQ.
Pa. I.D. No. 21352
201 North Second Street
Clearfield, PA 16830
(814) 765-1711

Opposing Counsel: for **TAMMY LOUISE
FENUSH WHITE, Defendant**

RICHARD A. BELL, ESQ.
BELL, SILBERBLATT & WOOD
Pa I.D. No. 06808
318 East Locust Street
PO Box 670
Clearfield, PA 16830
(814) 765-5537

Filed by:

Timothy E. Durant

FILED 3 cc
07/5/08 Atty.Durant
FEB 23 2008
W.M. Shaw
William A. Shaw
Prothonotary/Clerk of Courts

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff

vs

TAMMY LOUISE FENUSH WHITE

Defendant

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*
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05- 1395 -CD

FOURTH AMENDED
COMPLAINT

TO: DEFENDANT:
c/o RICHARD A. BELL, ESQ.
BELL, SILBERBLATT & WOOD
318 East Locust Street
PO Box 670
Clearfield, PA 16830

NOTICE TO DEFEND

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 First Amended 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 and for any other claims or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 5982

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA** * 05- 1395 -CD

Plaintiff *

vs *

TAMMY LOUISE FENUSH WHITE *

Defendant *

FOURTH AMENDED COMPLAINT

Plaintiff avers, by his counsel Timothy E. Durant, Esquire the following as his Fourth Amended Complaint:

1. Plaintiff is **DAVID C. CUETARA**, presently residing at 25687 Tropic Acres Drive, Bonita Springs, FL 34135. Plaintiff brings this action as **EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA**, deceased.
2. On April 17, 2005, at the age of 83 and $\frac{2}{3}$ rds years the said **BEATRICE H. CUETARA** departed this life, testate, a resident of Clearfield County, in the Commonwealth of Pennsylvania.
3. On April 26, 2005 an estate was opened for **BEATRICE H. CUETARA** in the Office of the Clearfield County Register of Wills, filed as Estate No. 1705-0231.
4. Plaintiff **DAVID C. CUETARA** was appointed as Executor of the estate of **BEATRICE H. CUETARA** by the Clearfield County Register of Wills on April 26, 2005
5. Defendant **TAMMY LOUISE FENUSH WHITE** is a competent adult individual who is presently believed to be residing c/o Dr. Lynne D. Cosner, DVM at 72 Maple Drive, Olanta, PA 16863.
6. Decedent, **BEATRICE H. CUETARA'S "LAST WILL AND TESTAMENT"** dated November 22, 2000 and her "FIRST CODICIL TO THE LAST WILL & TESTAMENT OF

BEATRICE H. CUETARA" dated February 25, 2002 were admitted to probate on April 26, 2005 by the Clearfield County Register of Wills to No. 1705-0231. Both of said documents are incorporated herein by reference as if set out in full.

7. Pursuant to the provisions of paragraph ONE of the "FIRST CODICIL TO THE LAST WILL & TESTAMENT OF BEATRICE H. CUETARA" paragraph SIX of the "LAST WILL AND TESTAMENT" was changed to read as follows:

ONE: In paragraph six of my Last Will and Testament dated November 22, 2000, I desire to eliminate any reference to the garage located at the rear of 110 South Second Street, Clearfield, Clearfield Borough, Clearfield County, Pennsylvania. Therefore paragraph six of my Last Will and Testament shall read as follows:

SIX: I state that I have made an agreement dated the 22nd day of November 2000, with Tammy Louise Fenush, now Tammy Louise Fenush White concerning my property located at 1010 Country Club Road, Longmeadow, Clearfield, Clearfield County, Pennsylvania. Subject to the terms of that agreement, I hereby give, devise and bequeath the said property at 1010 Country Club Road, Longmeadow, together with the furniture, furnishings and appliances to Tammy Louise Fenush, now Tammy Louise Fenush White, provided she has fulfilled her obligations under the terms of that agreement. If the said Tammy Louise Fenush, now Tammy Louise Fenush White has not fulfilled her obligations under the said agreement, this devise and bequest is void and of no affect.

8. By deed dated February 21, 2003, recorded on February 25, 2003 in the Clearfield County Recorder's Office as Instrument No. 2003-02750 **BEATRICE H. CUETARA** conveyed to **TAMMY LOUISE FENUSH WHITE**, for the recited consideration of One (\$1.00) Dollar, the remainder interest (with the life estate being retained by the grantor) in the premises identified in the Codicil as 1010 Country Club Road, Clearfield, PA. The legal description of the subject property is as follows:

ALL that certain lot or parcel of land, together with any improvements thereon, situate in Lawrence Township, Clearfield County, Pennsylvania, bounded and described as follows:

BEGINNING at an iron pipe on the southern line of Country Club Road; said pipe being the northwest corner of Lot #43 In Longmeadow, thence along the western line of Lot #43, South four (4) degreesfifty (50) minutes West one hundred seventy (170)feet to an iron pipe on the line of Lot #63; thence along line of Lot #63,

North eighty-five (85) degrees ten (10) minutes West, one hundred twenty-five (125.00) feet to an Iron pipe corner common with Lot #45; thence along eastern line of Lot #45, North four (4) degrees fifty (50) minutes East one hundred seventy (170.0) feet to an iron pipe on the southern line of Country Club Road and a common corner with Lot #45; thence by the southern line of Country Club Road South eighty-five (85) degrees ten (10) minutes east one hundred twenty-five (125) feet to an iron pipe and place of beginning. Containing .49 acre.

BEING a parcel of land known as Lot #44 in the plan of Longmeadow.

SUBJECT to the restrictions of record recorded In Clearfield County Misc. Book 110, page 47, on January 18, 1959 and additional restrictions of record declared by Pengard Construction, Inc. and recorded in Clearfield County on May 19, 1975 in Misc. Book 197, page 436.

As part of the rights being received by the Grantee from the Grantor and as part of the consideration paid by the Grantee hereunder, the Grantor hereby gives and grants unto the Grantee any and all rights she may possess in and to the private sewer line serving the lot conveyed herein, together with the right to discharge sewerage in said line, in perpetuity and without further charge or claim by the Grantor herein, excepting fees or charges made by Municipal Authorities for use or maintenance of the sewer line.

EXCEPTING AND RESERVING any exceptions and reservations in the chain of title.

EXCEPTING AND RESERVING unto the Grantor herein a life estate in the premises herein described with the right to use and occupy the premises as her home, free and clear of all rents or charges of any kind whatsoever for so long as she may live.

9. The conveyance of the premises by the decedent (described in full above and known as 1010 Country Club Road, Clearfield, Pennsylvania) was conditional and understood by the parties to the conveyance to be subject to the conditions and provisions of the prior agreements, one of which was referred to in the decedent's Last Will and Testament as being dated November 22, 2000 and others dated August 12, 1993, July 12, 2000, and February 25, 2002.

10. On March 28, 2003 an Agreement was executed between the decedent and Tammy Louise Fenush White as well as William A. White III, which Agreement was intended to be a novation for the prior agreements.

11. The said March 28th Agreement dealt with the continuing covenants and obligations undertaken by Defendant in return for her to be able to retain title to the subject premises at 1010

County Club Road as well as various items of equipment and furnishings.

12. In the said Agreement of March 28, 2003, signed by the Decedent, Tammy Louise Fenush White, and William A. White III, there was contained as paragraph 11 thereof the following:

"11. Although this agreement incorporates many of the provisions of prior agreements, this agreement supercedes any of the prior agreements. Upon the execution of this agreement, all prior agreements are canceled and made void except insofar as their terms are incorporated in this present agreement."

A copy of said Agreement dated March 28, 2003 is attached to our original Complaint as Exhibit "A" and incorporated herein as if set out in full.

13. William A. White III executed the Agreement of March 28, 2003 (hereinafter "Agreement") solely for the purpose of being permitted to live in the house at 1010 Country Club Road, Clearfield, PA (see paragraph 7 of Agreement) and to subject his marital rights to the terms of the agreement (see paragraph 8 of Agreement).

14. Subsequent to the execution of the said Agreement of March 28, 2003, William A. White III and **TAMMY LOUISE FENUSH WHITE** became divorced, by that certain Clearfield County Decree dated April 26, 2005, signed by Judge Paul A. Cherry and filed in the Office of the Prothonotary to No. 05-33-CD.

15. After the said divorce of April 26, 2005, William A. White, III retained no claim upon the assets or premises described in this complaint.

16. In or about August of 2005 **TAMMY LOUISE FENUSH WHITE** listed the above described real property situate at 1010 Country Club Road, for sale with the Licensed Real Estate Brokerage firm known as "Amon, Shimel and Walsh Realtors" of 108 South Front Street, Clearfield, PA.

17. By that certain Power of Attorney dated July 18, 2000 Beatrice H. Cuetara appointed Tammy Louise Fenush to be her lawful agent subject to all the provisions of 20 P.A.C.S.A. §5601, et. seq. A copy of the said Power of Attorney is attached to our original Complaint as Exhibit "B" and is incorporated herein as if set out in full.

18. Tammy Louise Fenush is one and the same person as Tammy Louise Fenush White, Tammy Louise White, and Tammy Fenush White.

COUNT I

*David C. Cuetara, Executor of the Estate of Beatrice H. Cuetara, deceased
vs. Tammy Louise Fenush White*

[FOR ACCOUNTING AND RESTORATION OF ASSETS]

Paragraphs 1-18 above are incorporated herein by reference as if set out in full

19. Defendant, **TAMMY LOUISE FENUSH WHITE** had a fiduciary duty to **BEATRICE H. CUETARA** during her lifetime and was thus required to act with due care for the benefit of **BEATRICE H. CUETARA** when utilizing funds belonging to **BEATRICE H. CUETARA** as well as when she was making decisions on behalf of **BEATRICE H. CUETARA**.

20. During the later years of her life, and particularly from and after July 2000, **BEATRICE H. CUETARA** reposed trust and confidence in the defendant.

21. The defendant accepted that trust and confidence which **BEATRICE H. CUETARA** had in her particularly beginning on and after July 2000.

22. The defendant occupied a position of superiority, domination and influence in the life and daily activities of **BEATRICE H. CUETARA**.

23. Due to her advanced years and her declining health **BEATRICE H. CUETARA** became weak, dependant and trusting in the decisions of defendant.

24. Defendant became more influential and was seen as more important in the life of **BEATRICE H. CUETARA** after defendant moved in with **BEATRICE H. CUETARA** to her residence at 1010 Country Club Road and among other things began to provide nursing care, companionship, accompaniment to shopping, doctors appointments, and banking trips.

25. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** acted under and utilized the authority of a Power-of-Attorney from **BEATRICE H. CUETARA** dated

July 18, 2000 and by such authority or by other means transferred or expended monies of the decedent. Said Power of Attorney failed to provide for any authority in the agent to make gifts to herself or others.

26. At all times following the execution of the said Power-of-Attorney **TAMMY LOUISE FENUSH WHITE** was bound by 20 Pa.C.S.A. §5601, et. seq. and therefore inter alia she has a duty to account to her principal pursuant to 20 Pa.C.S.A. §5601(e) with, "a full and accurate record of all actions, receipts and disbursements on behalf of the principal."

27. Defendant has utilized the power of attorney to transfer funds from at least one account (i.e. County National Bank checking Account No. 0001083712) of the decedent and possibly other accounts of the decedent and she has furthermore failed to disclose this use of the Power of Attorney in her response to Plaintiff's discovery requests (i.e. contrary to her "Answer to Request For Production of Documents," in ¶9 as dated November 3, 2005).

28. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** transferred large sums of money from banking and brokerage accounts in the name of **BEATRICE H. CUETARA** alone or in the name of **BEATRICE H. CUETARA** and others and placed these funds into accounts in the name of **TAMMY LOUISE FENUSH WHITE** alone or jointly with **BEATRICE H. CUETARA** or others, i.e., including but not limited to:

- a. She took \$24,690.53 on September 8, 2000 from the PaineWebber in Pittsburgh (Account No. VP 627551 M) account of the decedent and paid to Tammy L Fenush, and
- b. She took \$22,474.73 on June 12, 2002 from CNB Certificate of Deposit (No. 210152) which was in name of Tammy L. Fenush and Beatrice H. Cuetara and placed \$20,000.00 of this in a 60 month Certificate of Deposit jointly in the name of Todd A. Schickling and Tammy (as CNB No. 233060) and took the remainder of the funds and made a cash deposit to the account of Tammy in her name alone (to CNB Account No. 1635606) on June 12, 2002, and
- c. She took \$22,474.73 on June 12, 2002 from CNB Certificate of Deposit (No. 210153) which was in name of Tammy L. Fenush and Beatrice H. Cuetara and placed \$20,000.00

of this in a 60 month Certificate of Deposit jointly in the name of Tiffany F. Weitoish and Tammy (as CNB No. 233059) and took the remainder of the funds and made a cash a cash deposit to the account of Tammy in her name alone (to CNB Account No. 1635606) on June 12, 2002.

29. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** withdrew large sums of money from accounts in which the funds then and there existing were solely the property of **BEATRICE H. CUETARA** and used these funds to buy motorcycles, four-wheelers and one or more motor vehicles and placed these items in her name alone and used them for her amusement and not for the benefit of decedent.

30. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** failed to keep the assets of **BEATRICE H. CUETARA** separate from her own which is in violation of her obligations by Pennsylvania Statute and her express agreement in the acknowledgment which she signed as Agent or Attorney-in-fact for the decedent, i.e. including but not limited to the redemption on October 16, 2002 of a Certificate of Deposit (CNB No. 221109) valued at redemption as being worth \$11,078.53 which CD was in the name of decedent and Tammy L. Fenush (but had been funded by decedent) and on October 16, 2002 Tammy paid \$10,540.11 of said funds towards or on account for a payment of a personal loan solely in the name of Tammy White with CNB (Account No. 394817). The \$538.42 difference between the redemption and the payment on the loan is presently unaccounted for.

31. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** obtained checks made payable to her, while acting as agent for **BEATRICE H. CUETARA**, and negotiated these checks without the countersignature of Richard A. Bell, Daniel C. Bell, or Sandra A. Irwin in derogation and disregard of the requirement set out by paragraph number "1." in the aforesaid Power of Attorney, e.g. including but not limited to check No. 71156 dated September 8, 2000 in the amount of \$24,690.53 from Paine Webber to Tammy L. Fenush.

32. It is believed and therefore averred that **TAMMY LOUISE FENUSH WHITE** failed to obtain the approval of Richard A. Bell, Esq. or Daniel C. Bell, Esq. prior to employing other

persons, arranging for professional care and prior to purchase and rental of equipment to be used for the care of **BEATRICE H. CUETARA** in violation of paragraph 3 of the Agreement of March 28, 2003.

33. During the period from November 10, 2003 through April 17, 2005 defendant caused \$62,479.82 of decedent's funds to be spent and obligated to be paid to the Clear-Care Corporation for care-giver services to decedent all of which was in violation of her contractual and her fiduciary obligations. A copy of a Clear-Care statement designated "Cash Receipts Register" is attached hereto as Exhibit "C" and incorporated herein as if set out in full.

34. Defendant has information unique to her as to what funds she utilized for the care of decedent and where the funds came from and how those funds were spent. This information is not available to the decedent's Executor and thus requires an accounting from the defendant.

35. Plaintiff is entitled by law to an accounting of all funds and assets handled by or processed by defendant.

WHEREFORE, it is demanded that **TAMMY LOUISE FENUSH WHITE** account for all funds spent or transferred from the **BEATRICE H. CUETARA** funds and further explain how each of those expenditures or transfers was in the best interests of the decedent and such other relief as the Court may approve or require including the return of funds to the estate.

COUNT II

*David C. Cuetara, Executor of the Estate of Beatrice H. Cuetara, deceased
vs. Tammy Louise Fenush White*

[FOR DAMAGES]

Paragraphs 1-35 above are incorporated herein by reference as if set out in full

36. Pursuant to paragraph 3 of the Agreement of March 28, 2003 **TAMMY LOUISE FENUSH WHITE** was required to obtain the prior approval of Richard A. Bell, Esq. or Daniel C. Bell, Esq. before employing other persons, arranging for professional care or purchasing or renting

equipment to be used for the care of **BEATRICE H. CUETARA**.

37. **TAMMY LOUISE FENUSH WHITE** failed to obtain the approval of Richard A. Bell, Esq. or Daniel C. Bell, Esq. prior to employing other persons and prior to arranging for professional care and prior to purchasing and renting equipment used for the care of **BEATRICE H. CUETARA**.

38. Based upon the behavior and subsequent activity of **TAMMY LOUISE FENUSH WHITE**, after she ensured and secured the transfer of the subject real estate and furniture into her own name, it is apparent that from that time onward, the said **TAMMY LOUISE FENUSH WHITE** had no further need of, nor regard for the personal needs of **BEATRICE H. CUETARA**.

39. Specifically, during the period from November 10, 2003 through April 17, 2005 defendant caused \$62,479.82 of decedent's funds to be spent or obligated to be paid to the Clear-Care Corporation for care-giver services to decedent without prior approval of Richard A. Bell, Esq. or Daniel C. Bell, Esq.

40. Defendant expended decedent's assets on professional care-givers and strangers in lieu of providing the care-giver services for which decedent and defendant had contracted.

41. Defendant took jobs as a care-giver for various other persons and was paid for this by Clear-Care Corporation instead of spending her time and energy on decedent's care as was the intent of the contractual arrangement between her and decedent.

42. Defendant took a job at Dotts Motor Co., Inc. Of Clearfield, Pennsylvania as a car "detailer" instead of spending her time and energy on decedent's care as was the intent of the contractual arrangement between her and decedent.

43. As a result of defendant's improper actions the Estate of the Decedent has suffered monetary damages in the amount of \$62,479.82.

44. Defendant is obligated to repay the estate of **BEATRICE H. CUETARA**.

WHEREFORE, it is demanded that **TAMMY LOUISE FENUSH WHITE** be required to repay the \$62,479.82 plus interest at the legal rate to the Estate of **BEATRICE H. CUETARA**.

COUNT III

*David C. Cuetara, Executor of the Estate of Beatrice H. Cuetara, deceased
vs. Tammy Louise Fenush White*

[FOR ENFORCEMENT OF REVERTER AND RECISION FOLLOWING FAILURE
OF CONDITIONAL TRANSFER]

Paragraphs 1-44 above are incorporated herein by reference as if set out in full

45. The conveyance of the remainder interest in the above described real estate and all of the furniture, furnishings and appliances in **BEATRICE H. CUETARA'S** residence was conditional.

46. The conveyance of the remainder interest in the above described real estate (and personal assets) was subject to a condition subsequent, i.e. that **TAMMY LOUISE FENUSH WHITE** care for **BEATRICE H. CUETARA** in accordance with the provisions of the Agreement dated March 28, 2003.

47. Failure to meet the condition subsequent effectively works a reverter of title and/or a recision of the deed into defendant, with the result that the property reverts or returns to **BEATRICE H. CUETARA** by her executor and into her estate.

48. As part of the consideration for the conveyance of the remainder interest in 1010 Country Club Road, Defendant **TAMMY LOUISE FENUSH WHITE** was required to care for **BEATRICE H. CUETARA** every Saturday and Sunday and two (2) week days every week (see paragraph 1 of the Agreement) and that was to be her sole job on those days.

49. **TAMMY LOUISE FENUSH WHITE** failed to care for **BEATRICE H. CUETARA** the required minimum of 4 days per week from March 28, 2003 to April 17, 2005.

50. **TAMMY LOUISE FENUSH WHITE** utilized funds of **BEATRICE H. CUETARA** to hire others to take care of **BEATRICE H. CUETARA** so she, Tammy could work and attend schooling in place of meeting her obligations to **BEATRICE H. CUETARA**. Further defendant hired such others without the prior approval of Richard A. Bell, Esq. or Daniel C. Bell, Esq. as required by the Agreement.

51. **TAMMY LOUISE FENUSH WHITE** had various other jobs including but not limited

to working as a detailer for Dotts Motor Co., Inc. Of Clearfield, Pennsylvania and providing nursing care for other individuals while she was on the payroll of Clear-Care Corporation during the time when, according to the Agreement, defendant was to be caring for **BEATRICE H. CUETARA**.

52. Prior to her death, **BEATRICE H. CUETARA'S** mental and physical condition was such that she was unable to take action on her own behalf either to enforce the Agreement or bring a legal action to rescind the transfer of the subject real estate and the items of personalty and thus it is necessary for this action to be brought by her Executor on her behalf.

53. The transfer of the subject real estate and the personal property (all of the furniture, furnishings and appliances in her residence) described in paragraph 7 of the March 28th Agreement must be rescinded or be deemed to have reverted due to a failure by defendant to meet the obligations of the condition subsequent as set forth in the Agreement.

54. Paragraphs 4. and 10. of the Agreement of March 28, 2003 state as follows,

"4. No one can terminate Tammy's employment with Betty unless Tammy fails to live with Betty and provide her with care. No one shall have the right to make the decision that Tammy is failing in her duties toward Betty unless that decision is agreed with and approved by Betty's attorney-at-law, Richard A. Bell and if he is unable to do so, by her attorney-at-law Daniel C. Bell,"

"10. Tammy's rights under this agreement shall only be forfeited if she fails to fulfill her obligations under this agreement and that decision can only be made by Betty, if she is competent, and if she is incompetent, or otherwise unable to make that decision, by Betty's attorney-at-law, Richard A. Bell and if he is unable to do so, by she (sic) attorney-at-law Daniel C. Bell."

55. Defendant is now and at all times relevant hereto has been represented by Richard A. Bell, Esquire. Daniel A. Bell is the son of Richard A. Bell and both are employed by the same firm, i.e., BELL, SILBERBLATT & WOOD of Clearfield, Pennsylvania.

56. Richard A. Bell, Esq. has advised that he also represents Heather Lawhead and the decedent's grandson Kelly Lawhead both of whom are beneficiaries in this estate.

57. Defendant's counsel (Richard A. Bell, Esq.) has repeatedly claimed in his Preliminary Objections to the Complaints, that he or his son are the only ones who can determine whether their

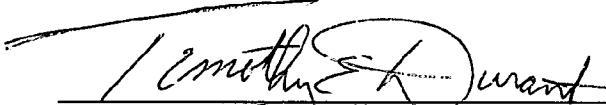
client failed to meet her obligations under the Agreement of March 28, 2003.

58. Counsel for defendant no longer represents decedent nor her interests.
59. Counsel for defendant has no standing to prevent this law suit.
60. Counsel for defendant cannot both represent the decedent and the defendant.
61. To avoid the patent conflict of interest, Decedent's rights are required to be protected by Plaintiff in this action.
62. To permit defendant's counsel to determine whether defendant violated her obligations would be an injustice to the decedent, her heirs and her estate.
63. This suit is being brought for the purpose of restoring assets improperly spent, taken or withheld from the Estate of **BEATRICE H. CUETARA** by defendant **TAMMY LOUISE FENUSH WHITE**.
64. Assets restored to the Plaintiff estate will, according to the provisions of paragraph NINE of the Last Will and Testament of **BEATRICE H. CUETARA**, be distributed equally to the residuary beneficiaries, i.e. decedent's son David C. Cuetara and her grandson Kelly Lawhead.
65. Certain information necessary to be more specific is not yet available to Plaintiff.
66. Plaintiff requests prospectively, that this court permit him to file such further amended complaint(s) as shall appear prudent after the conclusion of discovery.

WHEREFORE, plaintiff **DAVID C. CUETARA**, as **EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA**, deceased, demands the following relief:

- a. An accounting for all occasions when defendant, **TAMMY LOUISE FENUSH WHITE** used any Power of Attorney executed by the decedent;
- b. An accounting for all funds expended or transferred from the funds of **BEATRICE H. CUETARA**;
- c. Order the return to the estate of **BEATRICE H. CUETARA** of all funds not properly expended or transferred in accordance with established fiduciary standards or all funds co-mingled with the funds of defendant **TAMMY LOUISE FENUSH WHITE**;

- d. A conveyance by Tammy Louise Fenuh White (or the court's designee, on her behalf) of the Lawrence Township property described above (1010 Country Club Drive, Clearfield, Pennsylvania) and all of the decedent's furniture, furnishings and appliances formerly in her residence, to the Executor of the Estate of Beatrice H. Cuetara;
- e. That defendant be enjoined and permanently from mortgaging or encumbering the described property in any way, and from selling or conveying the same or any part thereof to any person other than the plaintiff;
- f. That defendant be required surcharged and required to repay to the Estate of Beatrice H. Cuetara the \$62,479.82 and any other funds improperly expended on decedent's care-givers or care;
- g. That the defendant be required to pay cost of this action; and
- h. Such other general or specific relief as the Court deems just, proper or appropriate.



Timothy E. Durant
Attorney for Plaintiff

DATE February 23, 2006

VERIFICATION

I, DAVID C. CUETARA, as EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA, verify that the statements made in this Pleading are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

DATED: 2/22/06

DAVID C. CUETARA, Esq.

DAVID C. CUETARA, as EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA,

Clear-Care Corporation
CASH RECEIPTS REGISTER
 For effective dates 11/01/2003 to 08/02/2005
 Customer: Estate Of Beatrice Cuetara

Printed on: 08/02/2005
 Page: 1

Receipt No.	Name	Date	Check Paid By	Net Amount	Sales Invoice No.
12543	Beatrice Cuetara	11/11/03	573	3,593.63	
12836	Beatrice Cuetara	12/29/03	577	3,295.78	14176
12836	Beatrice Cuetara	12/29/03	577	492.10	14061
12936	Beatrice Cuetara	01/16/04	578	3,483.55	14261
13059	Beatrice Cuetara	02/02/04	579	346.18	14013
13059	Beatrice Cuetara	02/02/04	579	1,405.08	14407
13117	Beatrice Cuetara	02/11/04	580	1,236.73	14469
13225	Beatrice Cuetara	03/01/04	581	1,165.50	14611
13318	Beatrice Cuetara	03/16/04	582	1,230.25	14672
13393	Beatrice Cuetara	03/29/04	583	1,353.28	14797
13488	Beatrice Cuetara	04/13/04	584	1,469.83	14859
13605	Beatrice Cuetara	04/29/04	586	1,356.51	15012
13749	Beatrice Cuetara	05/19/04	587	1,353.28	15084
13814	Beatrice Cuetara	05/27/04	588	1,346.80	15224
13916	Beatrice Cuetara	06/11/04	589	1,638.13	15285
14049	Beatrice Cuetara	06/30/04	590	1,586.38	15439
14166	Beatrice Cuetara	07/19/04	591	1,579.90	15495
14269	Beatrice Cuetara	07/30/04	592	1,579.90	15637
14358	Beatrice Cuetara	08/13/04	593	1,602.56	15700
14448	Beatrice Cuetara	08/27/04	594	1,463.35	15841
14616	Beatrice Cuetara	09/17/04	595	1,709.40	15919
14701	Beatrice Cuetara	09/29/04	596	1,625.18	16093
14810	Beatrice Cuetara	10/15/04	597	1,586.38	16165
14937	Beatrice Cuetara	11/01/04	150	2,376.33	16273
14988	Beatrice Cuetara	11/10/04	599	2,369.85	16359
15098	Beatrice Cuetara	11/29/04	754	1,903.65	16537
15190	Beatrice Cuetara	12/13/04	600	2,139.94	16588
15277	Beatrice Cuetara	12/27/04	227	2,706.55	16741
15366	Beatrice Cuetara	01/13/05	601	1,910.13	16799
15501	Beatrice Cuetara	01/31/05	157	1,515.13	16945
15597	Beatrice Cuetara	02/15/05	602	1,398.60	17045
15680	Beatrice Cuetara	02/28/05	603	1,392.13	17142
15802	Beatrice Cuetara	03/21/05	162	2,152.46	17229
15856	Beatrice Cuetara	03/29/05	163	2,195.08	17340
16474	Estate Of Beatrice Cuetara	07/06/05	142	2,920.29	Balance due

62,479.82

Exhibit "C"

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * 05- 1395 -CD

vs *

TAMMY LOUISE FENUSH WHITE

Defendant *

AFFIDAVIT OF SERVICE

I, Michael Luongo, verify that on that on February 22, 2006, I did serve, by personal service, upon the CSB Bank a Subpoena To Produce Documents and Things For Discovery in the above captioned action. The said document was handed to the receptionist at the main office of CSB Bank, located at 426-434 State Street Curwensville, PA 16833. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.



Michael Luongo

Dated: February 23, 2006

FILED *01/5/2011* *no cc*
FEB 23 2006
WS
William A. Shaw
Prothonotary/Clerk of Courts

13

FILED

FEB 23 2006

William A. Shaw
Prothonotary/Clerk of Courts

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * 05- 1395 -CD

vs *

TAMMY LOUISE FENUSH WHITE

Defendant *

AFFIDAVIT OF SERVICE

I, Michael Luongo, verify that on that on February 22, 2006, I did serve, by personal service, upon the County National Bank a Subpoena To Produce Documents and Things For Discovery in the above captioned action. The said document was handed to the receptionist at the main office of County National Bank, located at 1 south Second Street, Clearfield, PA 16830. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.



Michael Luongo

Dated: February 23, 2006

FILED
01/15/2011
FEB 23 2006
15

William A. Shaw
Prothonotary/Clerk of Courts

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * 05- 1395 -CD

vs *

TAMMY LOUISE FENUSH WHITE

Defendant *

AFFIDAVIT OF SERVICE

I, Michael Luongo, verify that on that on February 22, 2006, I did serve, by personal service, upon the Northwest Savings Bank a Subpoena To Produce Documents and Things For Discovery in the above captioned action. The said document was handed to the person in charge at the branch office Northwest Savings Bank, located at 1200 Old Town Road, Clearfield, PA 16830. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Michael Luongo
Michael Luongo

Dated: February 23, 2006

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William A. Shaw
Prothonotary/Clerk of Courts

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

**DAVID C. CUETARA, EXECUTOR OF THE *
ESTATE OF BEATRICE H. CUETARA ***

Plaintiff * 05- 1395 -CD

vs *

TAMMY LOUISE FENUSH WHITE *

Defendant *

AFFIDAVIT OF SERVICE

I, Michael Luongo, verify that on that on February 23, 2006, I did serve, by personal service, upon the Clearfield County Career and Technology Center a Subpoena To Produce Documents and Things For Discovery in the above captioned action. The said document was handed to the person in charge at the main office of the Clearfield County Career and Technology Center, located at 1620 River Road, Clearfield, PA 16830. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Michael Luongo
Michael Luongo

Dated: February 23, 2006

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William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA

Plaintiff *
*
*
* 05- 1395 -CD

vs *
*
*

TAMMY LOUISE FENUSH WHITE

Defendant * C/fd Co. Career & Tech Cntr
*
*

CERTIFICATE PREREQUISITE TO SERVICE OF A SUBPOENA PURSUANT TO RULE
4009.22

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Plaintiff certifies that:

1. a notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to the counsel for the defendant at least twenty days prior to the date on which the subpoena is sought to be served,
2. a copy of the notice of intent, including the proposed subpoena, is attached to this certificate,
3. no objection to the subpoena has been received, and
4. the subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

Date: 2/22/06


Timothy E. Durant, Esquire
Attorney for Plaintiff

FILED NO
01-5864
FEB 23 2006
JS

William A. Shaw
Prothonotary/Clerk of Courts

- FILE

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

DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA

Plaintiff * 05- 1395 -CD

VS *

TAMMY LOUISE FENUSH WHITE

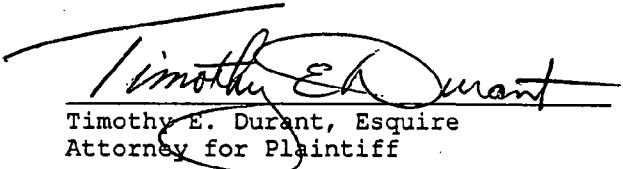
Defendant *

NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE DOCUMENTS AND THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.21

To: Richard A. Bell, Esquire
318 East Locust Street
Clearfield, PA 16830

DAVID C. CUETARA, EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the issuance of the subpoena. If no objection is made the subpoena may be served.

Date: 1/31/06



Timothy E. Durant

Timothy E. Durant, Esquire
Attorney for Plaintiff

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

DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA

Plaintiff * 05- 1395 -CD

vs *

TAMMY LOUISE FENUSH WHITE

Defendant *

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE 4009.22

TO: Custodian of the Records
Clearfield County Career & Technology Center
1620 River Road
Clearfield, PA 16830

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:
Copies of the attendance records for Tammy L. White showing the dates and starting and ending times when she attended training while enrolled at your facility in the Nurse Aide Program. Her period of attendance is believed to have been in early 2004 and her license is dated May 17, 2004 with a registration number of 9965265

at the law office of Timothy E. Durant, Esq., 201 N. Second Street, Clearfield, PA 16830.

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

NAME: Timothy E. Durant. Esquire
ADDRESS: 201 N. Second Street
Clearfield, PA 16830
TELEPHONE: (814) 765-1711
SUPREME COURT ID # 21352

BY THE COURT:

DATE: By _____

Prothonotary

Seal of the Court

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * * * * 05- 1395 -CD

vs

TAMMY LOUISE FENUSH WHITE

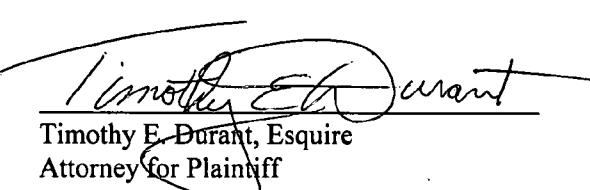
Defendant * * * * CNB

CERTIFICATE PREREQUISITE TO SERVICE OF A SUBPOENA PURSUANT TO RULE
4009.22

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Plaintiff certifies that:

1. a notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served,
2. a copy of the notice of intent, including the proposed subpoena, is attached to this certificate,
3. no objection to the subpoena has been received, and
4. the subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

Date: 2/22/06



Timothy E. Durant
Attorney for Plaintiff

FILED NO cc
01-58401
FEB 23 2006

JW

William A. Shaw
Prothonotary/Clerk of Courts

FILE

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

DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA

*

*

Plaintiff * 05- 1395 -CD

*

vs

*

*

*

*

*

TAMMY LOUISE FENUSH WHITE

*

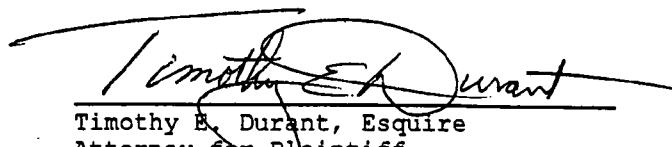
Defendant *

NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE DOCUMENTS AND THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.21

To: Richard A. Bell, Esquire
318 East Locust Street
Clearfield, PA 16830

DAVID C. CUETARA, EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the issuance of the subpoena. If no objection is made the subpoena may be served.

Date: 1/31/06



Timothy E. Durant
Attorney for Plaintiff

FILE

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

DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA

Plaintiff * 05-1395-CD

vs

TAMMY LOUISE FENUSH WHITE

Defendant *

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE 4009.22

TO: Custodian of the Records
County National Bank
P.O. Box 42
1 S. Second Street
Clearfield, PA 16830

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:
Copies of the following checks, both front and back, from Account No. 0001083712 in the name of Beatrice H. Cuetara. Check Nos. 2381, 2401, 2411, 2417, 2418, 2423, 2426, 2429, 2432, 2435, 2443, 2449, 2459, 2461, 2470, 2482, 2495, 2503, 2512, 2523, 2434, 2541, 2553, 2558, 2560, 2567, 2579, 2598, 2608, 2621, 2643, and 2723.

at the law office of Timothy E. Durant, Esq., 201 N. Second Street, Clearfield, PA 16830.

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

NAME: Timothy E. Durant. Esquire
ADDRESS: 201 N. Second Street
Clearfield, PA 16830
TELEPHONE: (814) 765-1711
SUPREME COURT ID # 21352

BY THE COURT:

DATE:

By _____
Prothonotary

Seal of the Court

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * 05- 1395 -CD

vs *

TAMMY LOUISE FENUSH WHITE

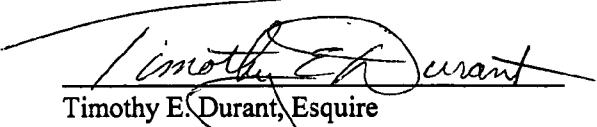
Defendant * CSB

CERTIFICATE PREREQUISITE TO SERVICE OF A SUBPOENA PURSUANT TO RULE
4009.22

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Plaintiff certifies that:

1. a notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served,
2. a copy of the notice of intent, including the proposed subpoena, is attached to this certificate,
3. no objection to the subpoena has been received, and
4. the subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

Date: 2/22/06


Timothy E. Durant, Esquire
Attorney for Plaintiff

FILED NOCC
01/15/06
FEB 23 2006
WM

William A. Shaw
Prothonotary/Clerk of Courts

FILE

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

DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA

Plaintiff * 05- 1395 -CD

vs

TAMMY LOUISE FENUSH WHITE

Defendant *

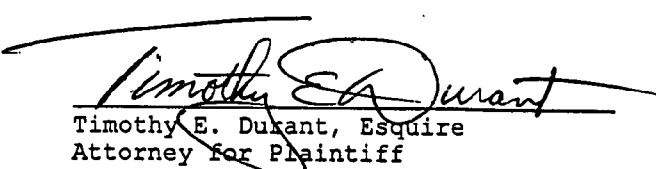
NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE DOCUMENTS AND THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.21

To: Richard A. Bell, Esquire
318 East Locust Street
Clearfield, PA 16830

DAVID C. CUETARA, EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the issuance of the subpoena. If no objection is made the subpoena may be served.

Date:

1/31/06



Timothy E. Durant
Attorney for Plaintiff

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

DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA

Plaintiff * 05- 1395 -CD

vs *

TAMMY LOUISE FENUSH WHITE

Defendant *

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE 4009.22

TO: Custodian of the Records
CSB Bank
P.O. Box 29
Curwensville, PA 16833

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:
Copies of the following numbered checks, both front and back, from Account No. 1136006 in the names of Beatrice H. Cuetara and Tammy L. White. Check Nos. 109, 110, 111, 112, 113, 114, 115, 117, 118, 119 and 120.

at the law office of Timothy E. Durant, Esq., 201 N. Second Street, Clearfield, PA 16830.

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

NAME: Timothy E. Durant. Esquire
ADDRESS: 201 N. Second Street
Clearfield, PA 16830
TELEPHONE: (814) 765-1711
SUPREME COURT ID # 21352

BY THE COURT:

DATE: By _____

Prothonotary

Seal of the Court

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * 05- 1395 -CD

vs

TAMMY LOUISE FENUSH WHITE

Defendant * *NW Savings Bank*

CERTIFICATE PREREQUISITE TO SERVICE OF A SUBPOENA PURSUANT TO RULE
4009.22

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Plaintiff certifies that:

1. a notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served,
2. a copy of the notice of intent, including the proposed subpoena, is attached to this certificate,
3. no objection to the subpoena has been received, and
4. the subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

Date: 2/22/06

Timothy E. Durant
Timothy E. Durant, Esquire
Attorney for Plaintiff

FILED
91586
FEB 23 2006
W.A. Shaw
Prothonotary/Clerk of Courts

~~FILE~~

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

DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA

Plaintiff * 05- 1395 -CD

vs

TAMMY LOUISE FENUSH WHITE

Defendant *

NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE DOCUMENTS AND THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.21

To: Richard A. Bell, Esquire
318 East Locust Street
Clearfield, PA 16830

DAVID C. CUETARA, EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the issuance of the subpoena. If no objection is made the subpoena may be served.

Date:

1/31/06

Timothy E. Durant
Timothy E. Durant, Esquire
Attorney for Plaintiff

FILE
COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

David C. Cuetara
Beatrice H. Cuetara
Plaintiff(s)

Vs.
Tammy Louise Fenush White
Defendant(s)

*

*

No. 2005-01395-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

Custodian of the records of:
TO: Northwest Savings Bank, 1200 Old Town Road, Clearfield, PA 16830
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things: From Account No. 554600544-Beatrice H. Cuetara Copies of the front & back of all checks signed by or payable to Tammy Louise Fenush White, a/k/a Tammy Fenush White, and front & back copies of the following check nos.: 524, 525, 526, 527, 534, 541, 602, and 603

Timothy E. Durant, Esq. (Address) at 201 North Second St., Clearfield, PA 16830

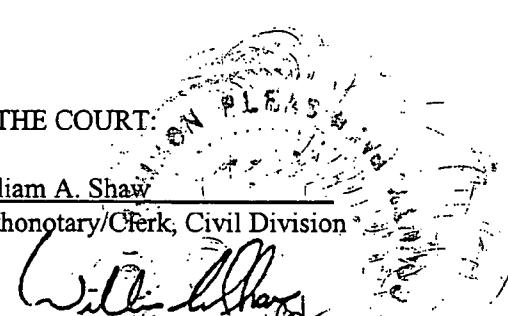
You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

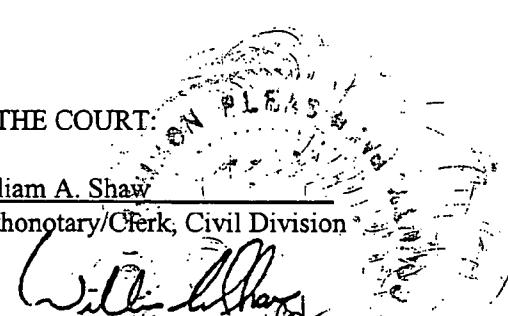
THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Timothy E. Durant, Esquire
ADDRESS: 201 North Second Street
Clearfield, PA 16830
TELEPHONE: 814-765-1711
SUPREME COURT ID # 21352
ATTORNEY FOR: David C. Cuetara Executor
for Beatrice H. Cuetara Estate

BY THE COURT:


William A. Shaw
Prothonotary/Clerk, Civil Division

Deputy


WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

DATE: Thursday, December 29, 2005
Seal of the Court

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * 05- 1395 -CD

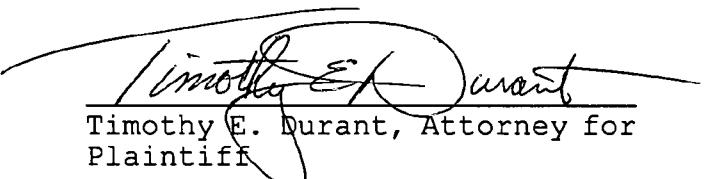
vs

TAMMY LOUISE FENUSH WHITE

Defendant *

AFFIDAVIT OF SERVICE

I, Timothy E. Durant, verify that on that on February 23, 2006, I did deposit in the U. S Mail, postage prepaid, a certified copy of the Fourth Amended Complaint filed in the above captioned action. The said document was mailed to the office of Richard A. Bell, Esquire, Attorney for the Defendant, at 318 East Locust Street, PO Box 670, Clearfield, PA 16830. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.



Timothy E. Durant, Attorney for Plaintiff

Dated: February 23, 2006

FILED 3cc
01/58/2014 Atty Durant
FEB 23 2006
JS

William A. Shaw
Prothonotary/Clerk of Courts

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Petitioner/Plaintiff

vs

TAMMY LOUISE FENUSH WHITE

Respondent/Defendant

*

*

* No. 05- 1395 -CD

*

* MOTION PURSUANT TO R.C.P.

* 4009.21(d)(1) FOR RULING UPON

* OBJECTIONS FILED BY DEFENDANT

* TO TWO SUBPOENAS PROPOSED TO

* BE SERVED BY PLAINTIFF

*

Filed on behalf of:

**DAVID C. CUETARA, EXECUTOR OF
THE ESTATE OF BEATRICE H.
CUETARA, Petitioner/Plaintiff**

Counsel of Record for Plaintiff
TIMOTHY E. DURANT, ESQ.

Pa. I.D. No. 21352

201 North Second Street

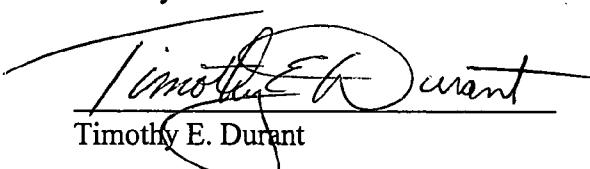
Clearfield, PA 16830

(814) 765-1711

Opposing Counsel: for **TAMMY LOUISE
FENUSH WHITE, Respondent/Defendant**

RICHARD A. BELL, ESQ.
BELL, SILBERBLATT & WOOD
Pa I.D. No. 06808
318 East Locust Street
PO Box 670
Clearfield, PA 16830
(814) 765-5537

Filed by:


Timothy E. Durant

Dated: March 1, 2006

FILED
O 11:34 AM 6K
MAR 01 2006 3 cc to ATTY
William A. Shaw
Prothonotary/Clerk of Courts
60

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

DAVID C. CUETARA, EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA	*	
	*	No. 05- 1395 -CD
	*	
Petitioner/Plaintiff	*	
	*	Action for: Accounting, Restoration,
vs	*	Damages, Reverter, and Revision
	*	
	*	
TAMMY LOUISE FENUSH WHITE	*	
	*	
Respondent/Defendant	*	

**MOTION PURSUANT TO R.C.P. 4009.21(d)(1) FOR RULING UPON
OBJECTIONS FILED BY DEFENDANT TO
TWO SUBPOENAS PROPOSED TO BE SERVED BY PLAINTIFF**

AND NOW comes the Petitioner, **DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**, by his attorney Timothy E. Durant, and files his Motion
requesting that this Honorable Court dismiss objections filed and for his reasons avers as follows:

1. On or about January 26, 2006 plaintiff, in accordance with Pa. Rules of Civil Procedure
Rule 4009.21(a) served two documents entitled, Notice of Intent to Serve Subpoena, pertaining to
two separate subpoenas, upon Richard A. Bell, Esquire, counsel for defendant. These subpoenas
were required to be held in abeyance for a 20 day period to allow for objections by any party.
2. A copy of the said subpoenas which were intended to be served upon the former
employers of defendant, i.e. Dotts Motor Co., Inc. Of Clearfield and the Clear-Care Corporation are
attached hereto as Exhibit "1" and "2" respectively and incorporated herein as if set out in full.

3. On January 31, 2006 counsel for the Petitioner received Objections to these subpoenas filed by the Defendant's counsel on January 30, 2006 in accordance with Pa. Rules of Civil Procedure Rule 4009.21(c).

4. The information sought pertains to time periods of attendance by defendant at each of her former employers' premises during a period relevant to the instant suit.

5. Defendant's first objection is that they have already provided pay records for the relevant time period.

6. Defendant's answer is irrelevant since what was provided does not show the attendance records, i.e., starting and ending times of each day on which the defendant was working for those employers.

7. Defendant's second objection is that the request would be an unreasonable annoyance, oppression, burden or expense to the "deponent" and the defendant.

8. Plaintiff does not know to whom the defendant is referring as "deponent" but it is averred that defendant has no standing to object on behalf of her former employers and that this request by plaintiff is a reasonable first time request upon each employer.

9. Furthermore, plaintiff avers that his subpoena works no unreasonable annoyance, oppression, burden or expense upon the defendant whatsoever as it requires her to do nothing.

10. Counsel for plaintiff avers that this discovery is sought in good faith and is intended to obtain relevant information necessary to his client's action pursuant to the Rules of Civil Procedure.

11. The relief requested is authorized by Pa. Rules of Civil Procedure Rule 4009.21(d)(1) which states in pertinent part, "The court upon motion shall rule upon the objections and enter an appropriate order."

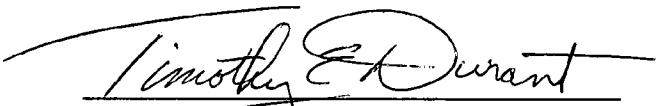
12. Counsel for plaintiff has spoken to counsel for defendant and asked him to withdraw his objections and permit discovery to proceed but counsel for defendant has refused the request.

WHEREFORE, it is respectfully requested that this Honorable Court:

- A. Dismiss the objections filed by defendant to the service of the two subpoenas described above and permit plaintiff to serve the said subpoenas upon the appropriate representatives of both Dotts Motor Co., Inc. Of Clearfield and Clear-Care Corporation, or in the alternative,
- B. Issue a Rule upon defendant to show cause why the subpoenas should not be issued and served as requested by plaintiff, and
- C. Such other relief as may seem appropriate to this Court.

Respectfully submitted,

Dated: March 1, 2006



Timothy E. Durant, Esquire
Attorney For Petitioner/Plaintiff

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

DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA

Plaintiff * 05- 1395 -CD

VS

TAMMY LOUISE FENUSH WHITE

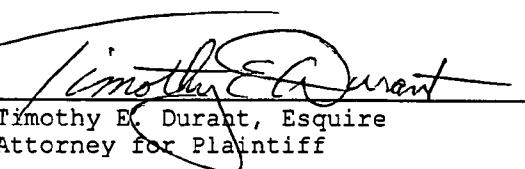
Defendant *

NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE DOCUMENTS AND THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.21

To: Richard A. Bell, Esquire
318 East Locust Street
Clearfield, PA 16830

DAVID C. CUETARA, EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the issuance of the subpoena. If no objection is made the subpoena may be served.

Date: 1/26/06



Timothy E. Durant, Esquire
Attorney for Plaintiff

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

DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA

Plaintiff * 05- 1395 -CD

vs *

TAMMY LOUISE FENUSH WHITE

Defendant *

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE 4009.22

TO: Dotts' Motor Company
316 E. Market Street
Clearfield, PA 16830

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:
Copies of your company records showing when Tammy Louise Fenush a/k/a Tammy Louise Fenush White worked for you, showing each date and the beginning and ending times and total number of hours for each shift worked on any particular day. If time cards were used copies of all those time cards or any similar evidence utilized by your company in determining Tammy's pay check must be provided. The dates for which information is required is from March 28, 2003 to April 17, 2005.

at the law office of Timothy E. Durant, Esq., 201 N. Second Street, Clearfield, PA 16830.

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

NAME: Timothy E. Durant. Esquire
ADDRESS: 201 N. Second Street
Clearfield, PA 16830
TELEPHONE: (814) 765-1711
SUPREME COURT ID # 21352

BY THE COURT:

DATE:

By _____
Prothonotary

Seal of the Court

EXHIBIT 1 Pg. 2 of 2

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

DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA

Plaintiff * 05- 1395 -CD

VS

TAMMY LOUISE FENUSH WHITE

Defendant *

NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE DOCUMENTS AND THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.21

To: Richard A. Bell, Esquire
318 East Locust Street
Clearfield, PA 16830

DAVID C. CUETARA, EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the issuance of the subpoena. If no objection is made the subpoena may be served.

Date: 1/26/06

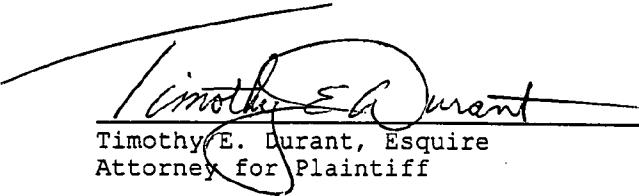

Timothy E. Durant
Attorney for Plaintiff

EXHIBIT 2 Pg. 1 of 2

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

DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA

Plaintiff * 05-1395 -CD

vs *

TAMMY LOUISE FENUSH WHITE

Defendant *

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE 4009.22

TO: Clear-Care Corporation
P.O. Box 1411
Clearfield, PA 16830

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:
Copies of your company records showing when Tammy Louise Fenush a/k/a Tammy Louise Fenush White worked for you, showing each date and the beginning and ending times and total number of hours for each shift worked on any particular day. If time cards were used copies of all those time cards or any similar evidence utilized by your company in determining Tammy's pay check must be provided. The dates for which information is required is from March 28, 2003 to April 17, 2005.

at the law office of Timothy E. Durant, Esq., 201 N. Second Street, Clearfield, PA 16830.

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

NAME: Timothy E. Durant. Esquire
ADDRESS: 201 N. Second Street
Clearfield, PA 16830
TELEPHONE: (814) 765-1711
SUPREME COURT ID # 21352

BY THE COURT:

DATE: By _____

Prothonotary

Seal of the Court

EXHIBIT 2 Pg 2

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

Type of Pleading
Preliminary Objections Of
Defendant To The
Fourth Amended Complaint
Of Plaintiff

Filed on Behalf of:
Defendant

Counsel of Record for
this Party:

Richard A. Bell, Esquire
PA I.D. #06808
BELL, SILBERBLATT &
WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

(814) 765-5537

FILED NOCC
04.28.06
MAR 02 2006 (6)

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

PRELIMINARY OBJECTIONS OF DEFENDANT TO THE FOURTH AMENDED
COMPLAINT OF PLAINTIFF

NOW COMES the Defendant, Tammy Louise Fenush White by her attorney Richard A. Bell of Bell, Silberblatt & Wood and files the following Preliminary Objections to the Third Amended Complaint Of The Plaintiff.

DEMURRER

The Defendant demurrs to Count I of the Amended Complaint for the following reasons:

1. There are no facts pled in Count I paragraphs 27, 29, & 31 to support the claim that the Defendant did not act properly in carrying out her monetary duties to the decedent Beatrice H. Cuetara.

The Defendant demurrs to Count II of the Amended Complaint for the following reasons:

2. The Plaintiff has attached to the Original Complaint and incorporated into the Amended Complaint the Agreement between Beatrice H. Cuetara and Tammy Louise Fenush White and William A. White, III dated March 28, 2003.

3. The Plaintiff has used the terms of this Agreement as a basis for claiming that the Defendant did not carry out her obligations under that Agreement, and therefore having so failed that the property conveyed to her should revert to the decedent's Estate.

4. Paragraph ten of that Agreement reads as follows:

10. Tammy's rights under this agreement shall only be forfeited if she fails to fulfil her obligations under this agreement and that decision can only be made by Betty, if she is competent, and if she is incompetent, or otherwise unable to make that decision, by Betty's attorney-at-law, Richard A. Bell and if he is unable to do so, by her attorney-at-law Daniel C. Bell.

5. Neither Betty (Beatrice H. Cuetara) nor her attorneys Richard A. Bell or Daniel C. Bell have made any decision that the Defendant failed to fulfill her obligations under the Agreement.

6. The Plaintiff has no standing or right to make a decision that the Defendant has failed to fulfill her obligations under the Agreement.

WHEREFORE, the Defendant demurrs to both counts and asks that either or both counts be dismissed.

MOTION TO STRIKE

The Defendant moves your Honorable Court to strike the following paragraphs of the Amended Complaint as not being a proper pleading:

9. Paragraph 38 as being an assumption not supported by pled facts.
10. Paragraphs 40, 41 & 42 as conclusions of law.
11. Paragraph 64 as not being relevant.

MOTION FOR MORE SPECIFIC PLEADING

12. The Defendants requests your Honorable Court require the Plaintiff to plead specific facts that support the allegations of paragraphs 27, 29 and 31 and 38.

WHEREFORE, the Defendant respectfully requests that your Honorable Court dismiss the Amended Complaint as to her, or in the alternative grant her Motion To Strike and her Motion For More Specific Pleading.

BELL, SILBERBLATT & WOOD
By


Richard A. Bell, Esquire
Attorney for Defendant

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of Preliminary Objection Of Defendant To The
Fourth Amended Complaint Of Plaintiff, in the above matter was mailed the
2 day of March, 2006, by regular mail postage prepaid at the post
office in Clearfield, PA 16830 to the following:

Timothy E. Durant, Esquire
201 N. 2nd Street
Clearfield, PA 16830



Richard A. Bell, Esquire
Attorney for Defendant

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

Type of Pleading
PRAECIPE TO WITHDRAW
OBJECTIONS TO SUBPOENAS

Filed on Behalf of:
Defendant

Counsel of Record for
this Party:

Richard A. Bell, Esquire
PA I.D. #06808
BELL, SILBERBLATT &
WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

(814) 765-5537

FILED
01/11/2006
MAR 02 2006
w/ce
GK

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

TO: WILLIAM SHAW, PROTHONOTARY

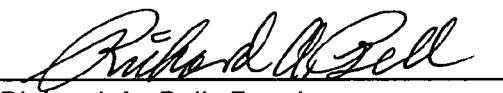
PRAECIPE

Please withdraw my Objections to the issuance of certain subpoenas as follows:

1. Objections to subpoena pursuant to Rule 4009.21-Dotts, and
2. Objections to subpoena pursuant to Rule 4009.21-Clear-Care.

BELL, SILBERBLATT & WOOD
BY

Dated: 3-1-06



Richard A. Bell, Esquire
Attorney for Defendant

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of Praecipe To Withdraw Subpoenas, in the
above matter was mailed the 1 day of March, 2006, by regular
mail postage prepaid at the post office in Clearfield, PA 16830 to the following:

Timothy E. Durant, Esquire
201 N. 2nd Street
Clearfield, PA 16830



Richard A. Bell, Esquire
Attorney for Defendant

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * 05- 1395 -CD

vs *

TAMMY LOUISE FENUSH WHITE

Defendant *

Dotts Motor Company, Inc

**CERTIFICATE PREREQUISITE TO SERVICE OF A SUBPOENA PURSUANT TO RULE
4009.22**

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Plaintiff certifies that:

1. a notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to the counsel for the defendant at least twenty days prior to the date on which the subpoena is sought to be served,
2. a copy of the notice of intent, including the proposed subpoena, is attached to this certificate,
3. the objection to the subpoena filed on January 30, 2006 has been withdrawn by Praecipe filed on March 1, 2006, and
4. the subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

Date: 3/2/06

Timothy E. Durant
Timothy E. Durant, Esquire
Attorney for Plaintiff

FILED
01/35/06
MAR 02 2006
cc
vs

William A. Shaw
Prothonotary/Clerk of Courts

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

THE *
*
*
Plaintiff * 05-1205-CD

VS

TAMMY LOUISE FENJUSH WHITE

Defendant

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE 4009.22

TO: Dotts' Motor Company, Inc.
316 E. Market Street
Clearfield, PA 16830

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:
Copies of your company records showing when Tammy Louise Fenush a/k/a Tammy Louise Fenush White worked for you, showing each date and the beginning and ending times and total number of hours for each shift worked on any particular day. If time cards were used copies of all those time cards or any similar evidence utilized by your company in determining Tammy's pay check must be provided. The dates for which information is required is from March 28, 2003 to April 17, 2005.

at the law office of Timothy E. Durant, Esq., 201 N. Second Street, Clearfield, PA 16830.

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

NAME: Timothy E. Durant. Esquire
ADDRESS: 201 N. Second Street
Clearfield, PA 16830
TELEPHONE: (814) 765-1711
SUPREME COURT ID # 21352

BY THE COURT:

DATE:

By _____
Prothonotary

Seal of the Court

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * 05- 1395 -CD

vs *

TAMMY LOUISE FENUSH WHITE

Clear-Care Corp

Defendant *

**CERTIFICATE PREREQUISITE TO SERVICE OF A SUBPOENA PURSUANT TO RULE
4009.22**

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Plaintiff certifies that:

1. a notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to the counsel for the defendant at least twenty days prior to the date on which the subpoena is sought to be served,
2. a copy of the notice of intent, including the proposed subpoena, is attached to this certificate,
3. the objection to the subpoena filed on January 30, 2006 has been withdrawn by Praecipe filed on March 1, 2006, and
4. the subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

Date: 3/2/06

Timothy E. Durant
Timothy E. Durant, Esquire
Attorney for Plaintiff

FILED NOCC
11:35 AM
MAR 02 2006
WAS

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA

Plaintiff * 05-1395 -CD

vs *

TAMMY LOUISE FENUSH WHITE

Defendant *

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO RULE 4009.22

TO: Clear-Care Corporation
P.O. Box 1411
Clearfield, PA 16830

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:
Copies of your company records showing when Tammy Louise Fenush a/k/a Tammy Louise Fenush White worked for you, showing each date and the beginning and ending times and total number of hours for each shift worked on any particular day. If time cards were used copies of all those time cards or any similar evidence utilized by your company in determining Tammy's pay check must be provided. The dates for which information is required is from March 28, 2003 to April 17, 2005.

at the law office of Timothy E. Durant, Esq., 201 N. Second Street, Clearfield, PA 16830.

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

NAME: Timothy E. Durant, Esquire
ADDRESS: 201 N. Second Street
Clearfield, PA 16830
TELEPHONE: (814)765-1711
SUPREME COURT ID # 21352

BY THE COURT:

DATE:

By _____
Prothonotary

Seal of the Court

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

**DAVID C. CUETARA, EXECUTOR OF THE *
ESTATE OF BEATRICE H. CUETARA ***

Plaintiff * 05- 1395 -CD

vs *

TAMMY LOUISE FENUSH WHITE *

Defendant *

AFFIDAVIT OF SERVICE

I, Michael Luongo, verify that on that on March 2, 2006, I did serve, by personal service, upon the Dotts' Motor Company, Inc. a Subpoena To Produce Documents and Things For Discovery in the above captioned action. The said document was handed to the receptionist at the main office of Dotts' Motor Company, Inc., located at 316 E. Market Street, Clearfield, PA 16830. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.



Michael Luongo

Dated: March 2, 2006

FILED ^{acc}
010:32 PM Atty Durant
MAR 03 2006 *lm*

William A. Shaw
Prothonotary/Clerk of Courts

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA** *
Plaintiff *
vs *
TAMMY LOUISE FENUSH WHITE *
Defendant *

AFFIDAVIT OF SERVICE

I, Virginia Johnson, verify that on that on March 2, 2006, I did serve, by personal service, upon the Clear-Care Corporation a Subpoena To Produce Documents and Things For Discovery in the above captioned action. The said document was handed to the receptionist at the main office of Clear-Care Corporation, located at 1229 S. Second Street, Clearfield, PA 16830. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Virginia Johnson
Virginia Johnson

Dated: March 2, 2006

FILED 01/10/3206 2cc
MAR 03 2006 Amy Durant
WM
William A. Shaw
Prothonotary/Clerk of Courts

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**
Petitioner/Plaintiff

vs

TAMMY LOUISE FENUSH WHITE
Respondent/Defendant

- * No. 05- 1395 -CD
- *
- * PRAECIPE TO WITHDRAW
- * MOTION PURSUANT TO R.C.P.
- * 4009.21(d)(1) FOR RULING UPON
- * OBJECTIONS FILED BY DEFENDANT
- * TO TWO SUBPOENAS PROPOSED TO
- * BE SERVED BY PLAINTIFF
- *

Filed on behalf of:

**DAVID C. CUETARA, EXECUTOR OF
THE ESTATE OF BEATRICE H.
CUETARA**, Petitioner/Plaintiff

Counsel of Record for Plaintiff
TIMOTHY E. DURANT, ESQ.
Pa. I.D. No. 21352
201 North Second Street
Clearfield, PA 16830
(814) 765-1711

Opposing Counsel: for **TAMMY LOUISE
FENUSH WHITE**, Respondent/Defendant

RICHARD A. BELL, ESQ.
BELL, SILBERBLATT & WOOD
Pa I.D. No. 06808
318 East Locust Street
PO Box 670
Clearfield, PA 16830
(814) 765-5537

Filed by:


Timothy E. Durant

Dated: March 2, 2006

FILED 01/03/2006 AMY DURANT
MAR 03 2006 GJ

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID C. CUETARA, EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA	*	
	*	No. 05- 1395 -CD
	*	
Petitioner/Plaintiff	*	
	*	
vs	*	
	*	
	*	
	*	
TAMMY LOUISE FENUSH WHITE	*	
	*	
	*	
Respondent/Defendant	*	

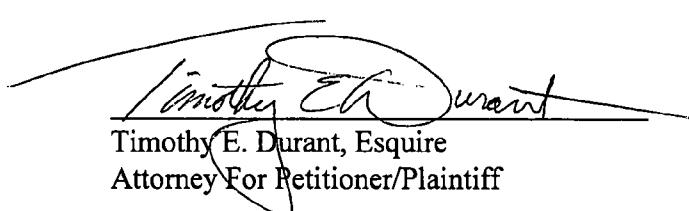
PRAECIPE TO WITHDRAW MOTION PURSUANT TO R.C.P. 4009.21(d)(1) FOR
RULING UPON OBJECTIONS FILED BY DEFENDANT TO TWO SUBPOENAS
PROPOSED TO BE SERVED BY PLAINTIFF

TO: WILLIAM A. SHAW, PROTHONOTARY

Please withdraw my Motion filed on March 1, 2006 pursuant to R.C.P. 4009.21(d)(1) for ruling upon objections filed by defendant to two subpoenas proposed to be served by plaintiff, the defendant having by Praecipe filed on March 2, 2006 withdrawn their objections to the issuance of the two subpoenas which were the subject of the said Motion.

Respectfully submitted,

Dated: March 2, 2006


Timothy E. Durant, Esquire
Attorney For Petitioner/Plaintiff

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * 05- 1395 -CD

vs *

TAMMY LOUISE FENUSH WHITE

Defendant *

AFFIDAVIT OF SERVICE

I, Timothy E. Durant, verify that on that on March 3, 2006, I did deposit in the U. S Mail, postage prepaid, a certified copy of the PRAECIPE TO WITHDRAW MOTION PURSUANT TO R.C.P. 4009.21(d)(1) FOR RULING UPON OBJECTIONS FILED BY DEFENDANT TO TWO SUBPOENAS PROPOSED TO BE SERVED BY PLAINTIFF filed in the above captioned action. The said document was mailed to the office of Richard A. Bell, Esquire, Attorney for the Defendant, at 318 East Locust Street, PO Box 670, Clearfield, PA 16830. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.



Timothy E. Durant, Attorney for Plaintiff

Dated: March 3, 2006

FILED

MAR 03 2006
01 12:15p
William A. Shaw
Prothonotary/Clerk of Courts

2 WKO to Att

FILED

MAR 03 2006

William A. Shaw
Prothonotary/Clerk of Courts

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

No. 05 - 1395 - CD

Petitioner/Plaintiff

vs

TAMMY LOUISE FENUSH WHITE

Respondent/Defendant

ORDER OF COURT

AND NOW, this 1st day of March, 2006, upon consideration of Petitioner's Motion Pursuant to R.C.P. 4009.21(d)(1) for ruling upon objections filed by defendant to two subpoenas proposed to be served by plaintiff, it is hereby ordered that:

- (1) a rule is issued upon the defendant/respondent to show cause why the moving party is not entitled to the relief requested;
- (2) the respondent shall file an answer to the motion within 30 days of this date;
- (3) the motion shall be decided under Pa. R.C.P. 206.7;
- (4) argument shall be held on April 7, 2006 in Courtroom No. 1 of the Clearfield County Courthouse; and
- (5) notice of the entry of this order shall be provided to all parties by the moving party.

BY THE COURT.

FILED 3cc
01/10/2006 Atty Durant
MAR 03 2006 EJD

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

Type of Pleading
CERTIFICATE OF SERVICE
PROPOSED COURT ORDER

Filed on Behalf of:
Defendant

Counsel of Record for
this Party:

Richard A. Bell, Esquire
PA I.D. #06808
BELL, SILBERBLATT &
WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

(814) 765-5537

FILED NO
010-5484 CC
MAR 08 2006
LM

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of a proposed Order Of Court on Preliminary
Objection Of Defendant To The Fourth-Amended Complaint Of Plaintiff, in the
above matter was mailed the 8th day of March, 2006, by regular
mail postage prepaid at the post office in Clearfield, PA 16830 to the following:

Timothy E. Durant, Esquire
201 N. 2nd Street
Clearfield, PA 16830


Richard A. Bell, Esquire
Attorney for Defendant

FILED

MAR 08 2006

William A. Shaw,
Prothonotary/Clerk of Courts

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

ORDER OF COURT

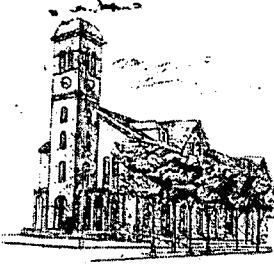
AND NOW, this 8 day of March, 2006, upon consideration
of Defendant's Preliminary Objections to the Fourth Amended Complaint of Plaintiff
filed in the above matter, it is the Order of the Court that Argument has been
scheduled for the 28th day of March, 2006, at 10:30, A. M.,
in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN,
President Judge

FILED 3CC
04:00 PM MAR 09 2006 Atty Bell
GJ

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: 3/9/06

You are responsible for serving all appropriate parties.

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

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

Type of Pleading
Court Order dated
March 8, 2006

Filed on Behalf of:
Defendant

Counsel of Record for
this Party:

Richard A. Bell, Esquire
PA I.D. #06808
BELL, SILBERBLATT &
WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

(814) 765-5537

FILED *No CC.*
011:23 am *jm*
MAR 13 2006

William A. Shaw
Prothonotary

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of Order Of Court dated March 8, 2006 with
reference to Argument of the Preliminary Objections To The Fourth Amended
Complaint Of Plaintiff, in the above matter was mailed the 13th day
of March, 2006, by regular mail postage prepaid at the post office in
Clearfield, PA 16830 to the following:

Timothy E. Durant, Esquire
201 N. 2nd Street
Clearfield, PA 16830



Richard A. Bell, Esquire
Attorney for Defendant

FILED

MAR 13 2006

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

DAVID C. CUETARA, Executor :
of the Estate of BEATRICE :
H. CUETARA :
.....

-VS- : No. 05-1395-CD

TAMMY LOUISE FENUSH WHITE :
.....

O R D E R

NOW, this 28th day of March, 2006, following
argument on the Defendant's Preliminary Objections to the
Fourth Amended Complaint, it is the ORDER of this Court
that the said Preliminary Objections be and are hereby
dismissed.

BY THE COURT,



President Judge

FILED

MAR 29 2006

010100/

William A. Shaw
Prothonotary/Clerk of Courts

(2K)

2 CENTS TO ATTY DURMAN

2 CENTS TO ATTY BEN

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

Type of Pleading
ANSWER, NEW MATTER AND
COUNTERCLAIM OF
DEFENDANT TO PLAINTIFF'S
FOURTH AMENDED
COMPLAINT

Filed on Behalf of:
Defendant

Counsel of Record for
this Party:

Richard A. Bell, Esquire
PA I.D. #06808
BELL, SILBERBLATT &
WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

(814) 765-5537

FILED
04/21/2006
APR 21 2006
NO CC
S

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

NOTICE TO PLEAD

TO: DAVID C. CUETARA
Timothy E. Durant, Esquire
201 N. 2nd Street
Clearfield, PA 16830

You are hereby notified to file a written response to the enclosed New Matter and Counterclaim within twenty (20) days from service hereof or a judgment may be entered against you.



Richard A. Bell, Esquire
Attorney for Defendant

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

ANSWER, NEW MATTER AND COUNTERCLAIM
TO THE FOURTH AMENDED COMPLAINT

NOW COMES, the Defendant by and with her attorney Richard A. Bell, Esquire of Bell, Silberblatt & Wood and answers the Fourth Amended Complaint of the Plaintiff as follows:

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Denied as stated. The conveyance of the premises was absolute, but subject to the obligations of the Defendant as stated in the various Agreements.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted

16. Admitted.

17. Admitted.

18. Admitted.

COUNT I

19. Paragraph nineteen is a Conclusion Of Law and does not require an answer, but to the extent that an answer is required, the Defendant Tammy Louise Fenush White, always acted for the benefit and well-being of Beatrice H. Cuetara.

20 Admitted.

21. Admitted.

22. Paragraph twenty-two is denied. At no time did Defendant Tammy Louise Fenush White exercise superiority, domination, and influence in the life of Beatrice H. Cuetara. Beatrice H. Cuetara was a strong willed woman and nobody dominated her.

23. Denied. Without a doubt Beatrice H. Cuetara did trust Tammy Louise Fenush White, but until she was unable to care for herself she never allowed any decisions to be made for her that she did not participate in.

24. Denied as stated. Without a doubt after Defendant Tammy Louise Fenush White moved in with Beatrice H. Cuetara they had a close relationship, but Beatrice H. Cuetara did not allow anyone to influence her decisions unless she agreed with them.

25. Paragraph twenty-five is admitted, but in further answer thereto, any actions that Tammy Louise Fenush White took was for the benefit solely of Beatrice H. Cuetara.

26. Paragraph twenty-six is a conclusion of law, and does not require an answer, but to the extent that an answer is required, it is averred that Defendant Tammy Louise Fenush White went far beyond Statutory duties in her relationship with Beatrice H. Cuetara.

27. To the extent that paragraph twenty-seven intimates an improper use of funds of the decedent by the Defendant, it is denied. When Defendant used the Power Of Attorney to use funds of the decedent, it was always for the sole benefit of the decedent. It is specifically denied that the Defendant failed to disclose the use of the Power Of Attorney since, Plaintiff's request ask that she disclose the use of the Power

Of Attorney in executing documents. The Defendant did not consider checks as documents, but in any event has supplied the Plaintiff with the necessary information to show for what purposes she used her Power Of Attorney for using funds of the decedent.

28. Paragraph twenty-eight is specifically denied that Defendant Tammy Louise Fenush White ever transferred sums of money of Beatrice H. Cuetara from any accounts into her name alone, or if into joint accounts, the said accounts were not considered as belonging to Tammy Louise Fenush White by her. There is no factual basis for the allegation at all.

(A). Paragraph (a) is denied as being absolutely untrue. The funds that Defendant Tammy Louise Fenush White transferred from a Paine-Webber account as alleged was an account in her name alone, and funds that belonged to her.

(B). It is admitted that Defendant Tammy Louise Fenush White did transfer funds from the Certificates Of Deposit as alleged in this subparagraph, but the money did not belong to Beatrice H. Cuetara and were funds belonging solely to Defendant Tammy Louise Fenush White.

(C) It is admitted that Defendant Tammy Louise Fenush White did transfer funds from the Certificates Of Deposit as alleged in this subparagraph, but the money did not belong to Beatrice H. Cuetara and were funds belonging solely to Defendant Tammy Louise Fenush White.

29. It is specifically denied that Tammy Louise Fenush White at any time withdrew sums of money belonging to Beatrice H. Cuetara and used the funds for her own purposes, and particularly to buy motorcycles, four wheelers, motor vehicles, etc.

There is absolutely no basis for the Plaintiff to make this allegation, and it is a frivolous and irresponsible allegation.

30. Paragraph thirty is denied. Defendant did redeem a Certificate Of Deposit as alleged, but the Certificate Of Deposit was funded, not by Beatrice H. Cuetara, as alleged by the Plaintiff, but was funded with funds of Defendant Tammy Louise Fenush White. There was no basis in fact for the Plaintiff to make this allegation.

31. It is true that certain checks were made payable to Tammy Louise Fenush White, but not by her acting as Agent for Beatrice H. Cuetara. The Defendant was not required to obtain any counter signatures on checks, unless they were payable to her.

32. Denied. It is absolutely untrue that Defendant Tammy Louise Fenush White failed to obtain the approval of Richard A. Bell prior to employing other persons or purchasing equipment. On the contrary she did contact Richard A. Bell, and he gave her permission to do that in accordance with the various Agreement that the Defendant had with Beatrice H. Cuetara.

33. It is admitted that during a certain period of time the Defendant transferred the decedent's funds to Clear-Care Corporation in return for the services which Clear-Care Corporation provided to the decedent. This was done as part of Defendant Tammy Louise Fenush White's duties to provide care for Beatrice H. Cuetara as provided in the various Agreements between them.

34. Paragraph thirty-four is denied as stated. Defendant Tammy Louise Fenush White did utilize funds for the care of the decedent, but always from funds of the decedent. This information has been made available to the decedent's Executor, either voluntarily or in response to Discovery requests.

35. This paragraph is a conclusion of law, but to the extent an answer is required, the Defendant has supplied the information to the Plaintiff.

COUNT II

36. Paragraph thirty-six is admitted.

37. Paragraph thirty-seven is specifically denied, and in further answer thereto the Defendant did obtain the approval of Richard A. Bell as stated in an answer to a previous allegation.

38. The allegations of paragraph thirty-eight are specifically denied. This is a blasphemous and irresponsible allegation, since all evidence shows that Tammy Louise Fenush White loved and cared for Beatrice H. Cuetara until the time of the death of Mrs. Cuetara.

39. Denied as stated in answers to previous allegations.

40. It is true that the Defendant provided for care that Beatrice H. Cuetara needed and paid for that care to Clear-Care Corporation, but it was not in lieu of any duty owed by Defendant Tammy Louise Fenush White to the decedent.

41. It is admitted that Defendant did take some employment from Clear-Care Corporation, but it is specifically denied that this was in contradiction to her duties to the decedent at the time this took place.

42. It is admitted that Defendant did work for Dotts Motor Company, but again it was not in contradiction of any duties of care that she owed to decedent.

43. It is denied that the Estate of the decedent has suffered monetary damage as alleged, but rather the funds were expended for the care of the decedent, the mother of Plaintiff. Further, if Tammy Louise Fenush White had provided care in place of Clear-Care Corporation, she would have been paid for it.

44. Paragraph forty-four is a conclusion of law, but it is specifically denied.

COUNT III

45. Admitted but to the extent that the Agreements in question speak for themselves.

46. Admitted as stated, but it is stated that Tammy Louise Fenush White did act in accordance with the provisions of the Agreement dated March 28, 2003, and to the extent applicable the previous Agreements.

47. Paragraph forty-seven is a conclusion of law but to the extent that an answer is necessary, it is denied that there was any failure on the part the Defendant to any duty that she owed to Beatrice H. Cuetara, and it is further alleged that the Defendant went beyond any duties she owed in caring for Beatrice H. Cuetara.

48. Paragraph forty-eight is denied as stated. As the Agreement plainly states the arrangement of the Defendant Tammy Louise Fenush White to care for Mrs. Cuetara on Saturday and Sunday and two week days was plainly stated to be "at the present time". The Agreement goes on to give Tammy Louise Fenush White authority to hire other professional care when needed.

49. It is denied that Tammy Louise Fenush White failed to care for Beatrice H. Cuetara as alleged in this paragraph. The intent of the paragraph was to provide that

if Defendant Tammy Louise Fenush White worked more than the minimum number of days that she was to be paid for the additional days. In further answer thereto the required minimum was not a continuing obligation, it was only a statement of what was happening at the present time as plainly appears from the rest of this Agreement and the intent of the decedent as expressed in prior Agreements.

50. Paragraph fifty is denied. Tammy Louise Fenush White did not utilize funds of Beatrice H. Cuetara to hire others so that she could work and attend schooling. The care provided by Clear-Care was considered necessary for the proper care of Beatrice H. Cuetara, and thus the agreement was entered into with Clear-Care. Furthermore as already has been answered in several other paragraphs she did have the approval of Richard A. Bell..

51. Paragraph fifty-one is denied as stated. It is true that Defendant Tammy Louise Fenush White had two other jobs at various times, but at the time this took place there was not an obligation on the Defendant to continue to care for Beatrice H. Cuetara as far as a number of days is concerned. The Defendant still cared for Beatrice H. Cuetara for the rest of the twenty-four hours each day.

52. For a period of time prior to her death it is true that Beatrice H. Cuetara was not capable of making her own decisions, but that was not true when Defendant Tammy Louise Fenush White went to work on a more or less full-time basis. At that time Beatrice H. Cuetara was capable of making her own decisions and never voiced any objections to Tammy Louise Fenush White working full-time and in fact approved of her doing so.

53. Paragraph fifty-three is a conclusion of law and does not require an answer, but to the extent that an answer is required, there was no failure by Defendant Tammy Louise Fenush White to meet the obligations of any of the Agreements that she had

with Beatrice H. Cuetara.

54. Admitted.

55. Paragraph fifty-five is not true and is therefore denied as stated. Richard A. Bell did represent the Defendant in a consensual divorce action between her and her husband which had no relevance to the matters here at hand. He also represented her in obtaining payment of a loan she had made which was not relevant to these matters. Other than that Richard A. Bell has not represented the Defendant in any matters affecting her relationship with Beatrice H. Cuetara, until after the death of Beatrice H. Cuetara, when this lawsuit was filed by the Plaintiff.

56. Paragraph fifty-six is not true and is therefore denied. At the death of Beatrice H. Cuetara Richard A. Bell did represent Heather and Kelly Lawhead for a short period of time, but after the lawsuit was filed, he informed Heather and Kelly Lawhead he could not represent them any further as he felt there would be a conflict, and he so advised counsel for Plaintiff.

57. Paragraph fifty-seven is denied as stated because Beatrice H. Cuetara the decedent had the first right to make any decisions as to whether Tammy Louise Fenush White has failed in her obligations. Only when the decedent was incapable of making such a decision did Richard A. Bell have any right then to make that decision. Daniel C. Bell is not involved in this matter because he was only authorized to make decisions, if Richard A. Bell could not.

58. Counsel for Defendant does not represent the Estate of the decedent. The decedent Beatrice H. Cuetara had requested and entrusted counsel for Defendant to see that her wishes and intentions were carried out, and to that extent counsel is representing her interest.

59. Paragraph fifty-nine is denied. Under certain circumstances the Defendant stands in the shoes of the decedent as opposed to the Estate of the decedent. Under those circumstances counsel Richard A. Bell has the duty to advise Defendant as to her rights and actions she should take.

60. Paragraph sixty is denied as stated. The decedent Beatrice H. Cuetara is not living at the present time and no one can represent her personally. As previously stated there are certain circumstances when the Defendant stands in the shoes of the decedent, and to that extent Richard A. Bell as counsel for the Defendant can act to protect the interest of the decedent.

61. Paragraph sixty-one is a conclusion of law and does not require an answer, but to the extent an answer is required, it is alleged that there is no conflict of interest in Richard A. Bell representing the Defendant in this action, but rather the conflict of interest occurs by David C. Cuetara acting as Executor for Beatrice H. Cuetara in bringing this lawsuit to defeat the intentions of the decedent which are obvious to all for his own personal gain.

62. Paragraph sixty-two is a conclusion of law and does not require an answer, but to the extent an answer is required, Defendant's counsel's position to determine whether the Defendant violated her obligations was a position and condition that Beatrice H. Cuetara determined during her competent lifetime, and to not do so would be to defeat the intentions of the decedent, and violating a condition created by her.

63. Paragraph sixty-three is a conclusion of law and does not require an answer, but to the extent an answer is required, there were no assets of the decedent improperly spent, taken or withheld from the Estate of Beatrice H. Cuetara by Defendant Tammy Louise Fenush White.

64. Paragraph sixty-four is admitted to the extent that David C. Cuetara and Kelly Lawhead are to share equally in the residual estate.

65. Paragraph sixty-five does not really require an answer because the Defendant has no idea as to what Plaintiff has in mind.

66. Paragraph sixty-six is neither an allegation of fact or a conclusion of law, but to the extent that an answer is required the Defendant believes that since the Plaintiff has already filed five Complaints that should be sufficient.

NEW MATTER

In further answer to the Fourth Amended Complaint of the Plaintiff the Defendant pleads the following New Matter:

67. The Defendant pleads all of the Agreements between Beatrice H. Cuetara and Tammy Louise Fenush White that have not been pled and attached to a Complaint and specifically the Agreements of August 12, 1993, July 12, 2000, November 22, 2000 and February 25, 2002, copies of which are attached hereto marked Exhibits 1, 2, 3, & 4 and made a part hereof.

68. At sometime after the decedent Beatrice H. Cuetara conveyed her property at 1010 Country Club Road to the Defendant, and on or about August of 2003, Defendant Tammy Louise Fenush White and her husband William White began paying for the food and other house expenses for the property including anything as food and house expenses that benefitted Beatrice H. Cuetara.

69. Prior to the time that Tammy Louise Fenush White began working full time for others, the Plaintiff David C. Cuetara told her that she had to get other help, that

she couldn't continue to do as she had been doing and he agreed with the employment of others.

70. The decedent Beatrice H. Cuetara and the Defendant Tammy Louise Fenush White had a relationship close to that of mother and daughter and each placed the other's name on CD's and bank accounts. They created a code to designate to whom the funds belonged by placing the owner of the fund first. For example any funds belonging to Beatrice H. Cuetara had her name first in the title of the owner of the account and any funds belonging to Tammy Louise Fenush White had her name first in the designation of the owner of the funds.

71. Defendant Tammy Louise Fenush White never transferred any of Beatrice H. Cuetara's money to herself or for her benefit using the Power Of Attorney, or signing checks on a joint account where the funds belonged to Beatrice H. Cuetara.

72. Defendant Tammy Louise Fenush White had funds of her own previous to living with Beatrice H. Cuetara, and Defendant Tammy Louise Fenush White used those funds to establish accounts either in her name or in a joint account with her name first, and also used these funds to purchase items for her personal use. Her husband William White contributed for some of these items.

73. From and after the time that Defendant Tammy Louise Fenush White began to live with the decedent Beatrice H. Cuetara their relationship became very close to that of mother and daughter.

74. At some point in time after November of 2003, the decedent Beatrice H. Cuetara would sometimes awake at night and be frightened, and so Defendant Tammy Louise Fenush White began sleeping in Beatrice H. Cuetara's bedroom so that she could sooth and calm her, if she awakened.

COUNTERCLAIM

The Defendant Tammy Louise Fenush White files the following Counterclaim against the Plaintiff.

75. After the death of Beatrice H. Cuetara Defendant Tammy Louise Fenush White found that she could not afford the expense of keeping the house located at 1010 Country Club Road and therefore listed it for sale with a realtor.

76. Previous to listing the property for sale, Defendant Tammy Louise Fenush White had two appraisals done of the property and listed the house at a price based on those appraisals.

77. As a result of listing the property for sale, a prospective purchaser was found and an Agreement Of Sale was entered into between Defendant Tammy Louise Fenush White and the prospective purchaser.

78. When this lawsuit was filed, Plaintiff filed a Lis Pendente to defeat the sale of the property and as the result the sale was blocked and the Agreement Of Sale cancelled.

79. At the present time Defendant Tammy Louise Fenush White cannot sell the house which belongs to her because of the Lis Pendente filed by the Plaintiff.

80. Even though she is not living there, Defendant Tammy Louise Fenush White has had to pay for heat and other expenses of maintaining the property.

81. To the date of filing this Counterclaim, Defendant Tammy Louise Fenush White has incurred expenses for maintenance of the property in the amount of

\$17,827.89 to date and claims that amount and any other expenses in the future from the Plaintiff.

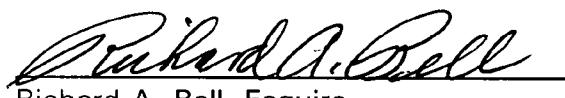
82. Defendant Tammy Louise Fenush White further claims any loss she may suffer from not being able to sell the property for the price as agreed with the prospective purchaser.

83. There was and is no reasonable factual basis for the lawsuit which the Plaintiff has filed and therefore, it is alleged that this lawsuit is a frivolous lawsuit.

84. Because this is a frivolous lawsuit, Defendant Tammy Louise Fenush White claims her attorney's fees and costs she has expended to defend the lawsuit from the Plaintiff.

WHEREFORE, the Defendant respectfully requests that Complaints filed against her be dismissed and she be granted Judgment against the Plaintiff for her Counterclaim.

BELL, SILBERBLATT & WOOD
BY



Richard A. Bell, Esquire
Attorney for Defendant

COMMONWEALTH OF PENNSYLVANIA:

:SS

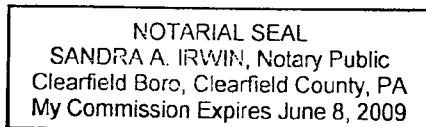
COUNTY OF CLEARFIELD:

Before me, the undersigned officer, personally appeared Tammy Louise Fenush White, who, being duly sworn according to law, deposes and says that the facts set forth in the foregoing ANSWER, NEW MATTER and COUNTERCLAIM are true and correct to the best of her knowledge, information and belief.

Tammy Louise Fenush White
TAMMY LOUISE FENUSH WHITE

SWORN AND SUBSCRIBED before me,
this 20th day of April, 2006.

Sandra A. Irwin



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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Answer, New Matter and Counterclaim of the Defendant To The Fourth Amended Complaint Of Plaintiff, in the above matter was hand delivered the 21st day of April, to the following:

Timothy E. Durant, Esquire
201 N. 2nd Street
Clearfield, PA 16830


Richard A. Bell, Esquire
Attorney for Defendant

AGREEMENT

This Agreement made the 12th day of August, 1993, by a
between BEATRICE H. CUETARA, of 1010 County Club Road,
Clearfield, Clearfield County, Pennsylvania 16830, party of the
First Part, hereinafter called "CUETARA"

A

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D

TAMMY LOUISE FENUSH, of 110 South Second Street, Clearfield,
Clearfield County, Pennsylvania 16830, hereinafter called
"FENUSH".

WHEREAS, Cuetara desires to make provision for her care in
the event that she is unable to care for herself, and

WHEREAS, Cuetara does not want to be placed in a nursing
home, but desires that she remain in her own home to the extent
possible, and

WHEREAS, Fenuh has agreed that she will provide such care
either herself, or by arrangement, and/or supervision of others,

NOW, THEREFORE, in consideration of the mutual covenants and
conditions hereinafter set forth, the parties have agreed as
follows:

1. In the event that Cuetara becomes unable for physical, mental or any other reason, to adequately care for herself, Fenush covenants that she will care for Cuetara herself, to the extent she is able and make arrangements with others to provide such additional care that is necessary in the present home of Cuetara.

2. Any expenses made necessary for such care will be paid by Cuetara, including reasonable compensation to Fenush for the services she renders. It is understood that the obligation of Fenush hereunder is for her personal efforts, and not for any financial contribution.

3. Cuetara will be kept in her present home to the extent possible, and will not be removed from her home for care unless no other option is available.

4. In return for the covenant made by Fenush, Cuetara agrees that she will arrange for the transfer at her death of her property located at 110 South Second Street, Clearfield, Pennsylvania to Fenush, either by Will, Trust, Escrow Deed, or such other means as will assure Fenush a title to the premises. During the lifetime of Cuetara, Fenush may occupy the apartment she is presently occupying for rent not in excess of One Hundred and Fifty (\$150.00) Dollars per month.

5. It is understood that the obligation of Cuetara to arrange for the transfer of the said property to Fenush is in return for the covenant by Fenush to care for Cuetara. If, Cuetara does not require any care prior to her death, and Fenush has not refused to provide such care, then the property will be transferred to Fenush. In the event that Cuetara does require care and Fenush refuses or does not fulfill her obligation to provide such care, then the obligation of Cuetara to transfer the said property shall be void and of no effect.

6. This agreement shall be revocable by Cuetara until her death or such time as she requires the care provided by Fenush. After such time, if Fenush provides the care required, the agreement may only be revoked or modified by written agreement of the parties.

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

Beatrice H. Cuetara (SEAL)
BEATRICE H. CUETARA

"CUETARA"

Tammy Louise Fenush (SEAL)
TAMMY LOUISE FENUSH

"FENUSH"

COMMONWEALTH OF PENNSYLVANIA:

:SS

COUNTY OF CLEARFIELD:

On this, the 12th day of August, 1993 before me, the undersigned officer, personally appeared BEATRICE H. CUETARA, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement and acknowledged that she has executed the same for the purposes therein contained.

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

Sandra A. Irwin
(Notary Public)

COMMONWEALTH OF PENNSYLVANIA:

:SS

COUNTY OF CLEARFIELD:

NOTARIAL SEAL
SANDRA A. IRWIN, Notary Public
Clearfield Boro., Clearfield County, PA
My Commission Expires, June 3, 1997

On this, the 12th day of August, 1993 before me, the undersigned officer, personally appeared TAMMY LOUISE FENUSH, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement and acknowledged that she has executed the same for the purposes therein contained.

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

Sandra A. Irwin
(Notary Public)

NOTARIAL SEAL
SANDRA A. IRWIN, Notary Public
Clearfield Boro., Clearfield County, PA
My Commission Expires, June 3, 1997

AGREEMENT

THIS AGREEMENT made this 12th day of July, 2000, by and
between BEATRICE H. CUETARA, party of the First Part, hereinafter called "Betty",

A

N

D

TAMMY LOUISE FENUSH, party of the Second Part, hereinafter called "Tammy".

WHEREAS, Betty's present physical health requires that someone be present
with her to see to her needs, and

WHEREAS, Tammy has given up two (2) work days per week from her
employment in order to stay with Betty as well as staying on the two (2) weekend
days, and

WHEREAS, Betty wants to insure that she will not have to leave her home, and
go to a hospital or nursing home, and

WHEREAS, Betty also wants to insure Tammy will be protected in continuing
to care for her should Betty become incompetent.

NOW THEREFORE, in consideration of the mutual covenants and conditions
hereinafter set forth, the parties agree as follows:

1. At the present time, Tammy will stay with Betty two (2) week days per
week as well as Saturday and Sunday. Betty will pay Tammy Fifty (\$50.00) Dollars
per day for the weekdays that she cares for her. Betty will also allow Tammy to live
with her rent free, and Betty will pay all of the expenses of maintaining the residence

and all food costs.

2. It is agreed that if it is necessary for Tammy to stop working for her employer for additional days per week in order to care for Betty, including leaving her employment completely, and staying with Betty on a full-time basis, should Betty's need require, Tammy shall have the right to do that and shall be paid compensation of Fifty (\$50.00) Dollars per day for each week day that she cares for Betty.

3. Since Betty's very strong desire is to stay in her home, unless it is impossible for her to be cared for in her own home, Tammy shall have the right to employ other persons, and arrange for professional care in Betty's home, including renting or purchasing necessary equipment for Betty's care subject to approval of my attorneys-at-law Richard A. Bell and/or Daniel C. Bell

4. No one can terminate Tammy's employment with Betty unless Tammy fails to live with Betty and provide her with care. No one shall have the right to make the decision that Tammy is failing in her duties toward Betty unless that decision is agreed with and approved by Betty's attorneys-at-law, Richard A. Bell and/or Daniel C. Bell.

5. Even if Betty is made a resident of a hospital, nursing home or similar facility, Tammy still shall be paid for living in the home and caring for it and maintaining contact with Betty so that she can supply all of Betty's needs of which she is capable.

6. No one shall have the right to make Betty a permanent resident in a hospital, nursing home or similar facility unless Betty's physician attests that it is not possible to provide her with proper care in her own home.

7. Tammy's rights under this agreement shall only be forfeited if she fails to fulfil her obligations under this agreement and that decision can only be made by Betty, if she is competent, and if she is incompetent, by Betty's attorneys-at-law, Richard A. Bell and/or Daniel C. Bell.

8. This Agreement is made with both parties cognisient of the prior contract made between these parties dated April 12, 1993. This Agreement is not in place of that Agreement, but only supplementary to it, and the earlier Agreement shall be carried out in all of its terms.

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

WITNESSES:

Richard A. Bell

Richard A. Bell

Beatrice H. Cuetara (SEAL)
BEATRICE H. CUETARA

Party of the First Part

Tammy Louise Fenush (SEAL)
TAMMY LOUISE FENUSH

Party of the Second Part

COMMONWEALTH OF PENNSYLVANIA:

SS:

STATE OF PENNSYLVANIA:

On this the 12th day of July, 2000, before me, the undersigned officer, personally appeared, BEATRICE H. CUETARA, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement, and acknowledged that she has executed the same for the purposes therein contained.

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

Sandra A. Irwin
(Notary Public)

NOTARIAL SEAL
SANDRA A. IRWIN, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires, June 3, 2001

COMMONWEALTH OF PENNSYLVANIA:

SS:

STATE OF PENNSYLVANIA:

On this the 12th day of July, 2000, before me, the undersigned officer, personally appeared, TAMMY LOUISE FENUSH, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement, and acknowledged that she has executed the same for the purposes therein contained.

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

Sandra A. Irwin
(Notary Public)

NOTARIAL SEAL
SANDRA A. IRWIN, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires, June 3, 2001

X

AGREEMENT

THIS AGREEMENT made this 22nd day of November, 2000, by and
between BEATRICE H. CUETARA, party of the First Part, hereinafter called "Betty",

A

N

D

TAMMY LOUISE FENUSH, party of the Second Part, hereinafter called "Tammy".

WHEREAS, Betty's present physical health requires that someone be present
with her to see to her needs, and

WHEREAS, Tammy has given up two (2) work days per week from her
employment in order to care for Betty as well as caring for her on the two (2)
weekend days, and

WHEREAS, Betty wants to insure that she will not have to leave her home, and
go to a hospital or nursing home, and

WHEREAS, Betty also wants to insure Tammy will be protected in continuing
to care for her should Betty become incompetent.

NOW THEREFORE, in consideration of the mutual covenants and conditions
hereinafter set forth, the parties agree as follows:

1. At the present time, Tammy will live with Betty on a full-time basis and will
care for Betty two (2) week days per week as well as Saturday and Sunday. Betty
will pay Tammy Fifty (\$50.00) Dollars per day for the weekdays that she cares for her.
Betty will also allow Tammy to live with her rent free, and Betty will pay all of the

expenses of maintaining the residence and all food costs.

2. It is agreed that if it is necessary for Tammy to stop working for her employer for additional days per week in order to care for Betty, including leaving her employment completely, and caring for Betty on a full-time basis, should Betty's need require, Tammy shall have the right to do that and shall be paid compensation of Fifty (\$50.00) Dollars per day for each week day that she cares for Betty.

3. Since Betty's very strong desire is to stay in her home, unless it is impossible for her to be cared for in her own home, Tammy shall have the right to employ other persons, and arrange for professional care in Betty's home, including renting or purchasing necessary equipment for Betty's care subject to approval of my attorney-at-law Richard A. Bell and if he is unable to do so, by my attorney-at-law Daniel C. Bell

4. No one can terminate Tammy's employment with Betty unless Tammy fails to live with Betty and provide her with care. No one shall have the right to make the decision that Tammy is failing in her duties toward Betty unless that decision is agreed with and approved by Betty's attorneys-at-law, Richard A. Bell and if he is unable to do so, by my attorney-at-law Daniel C. Bell.

5. Even if Betty is made a resident of a hospital, nursing home or similar facility, Tammy still shall be paid for living in the home and caring for it and maintaining contact with Betty so that she can supply all of Betty's needs of which she is capable.

6. No one shall have the right to make Betty a permanent resident in a hospital, nursing home or similar facility unless Betty's physician attests that it is not possible

to provide her with proper care in her own home.

7. In return for the covenant made by Tammy, Betty agrees that she will arrange for the transfer at her death of her property located at 1010 Country Club Road, Longmeadow, Clearfield, Pennsylvania and the garage at the rear of 110 South Second Street, Clearfield, Pennsylvania to Tammy, either by Will, Trust, Escrow Deed, or other such means as will assure Tammy a title to the premises. The transfer of Betty's residence to Tammy shall include all of the furniture, furnishings and appliances in her residence. During Betty's lifetime, Tammy will live with her at her residence at 1010 Country Club Road. If Tammy marries, both she and her husband will reside with Betty.

8. It is understood that Betty's obligation to arrange for the transfer of the said property to Tammy is in return for the covenant by Tammy to care for Betty. If Betty does not require any care prior to her death, and Tammy has not refused to provide such care, then the property will be transferred to Tammy. In the event that Betty does require care and Tammy refuses or does not fulfill her obligation to provide such care, then Betty's obligation to transfer the said property shall be void and of no effect.

9. This agreement shall be revocable by Betty until her death if Tammy fails to fulfill her obligations as set forth herein. Otherwise this agreement may only be revoked or modified by written agreement of the parties.

10. Tammy's rights under this agreement shall only be forfeited if she fails to fulfil her obligations under this agreement and that decision can only be made by Betty,

if she is competent, and if she is incompetent, or otherwise unable to make that decision, by Betty's attorneys-at-law, Richard A. Bell and if he is unable to do so, by my attorney-at-law Daniel C. Bell.

11. The parties agree that this agreement incorporates many of the terms and is in place of two (2) prior agreements, one of which was dated August 12, 1993 and the other dated July 12, 2000. Upon the execution of this agreement, the two (2) prior agreements are canceled and made void except insofar as their terms are incorporated in this present agreement.

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

WITNESSES:

Richard A. Bell

as to both

Beatrice H. Cuetara (SEAL)
BEATRICE H. CUETARA

Party of the First Part

Tammy Louise Fenush (SEAL)
TAMMY LOUISE FENUSH

Party of the Second Part

COMMONWEALTH OF PENNSYLVANIA:

SS:

STATE OF PENNSYLVANIA:

On this the 21 day of November, 2000, before me, the undersigned officer, personally appeared, BEATRICE H. CUETARA, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement, and acknowledged that she has executed the same for the purposes therein contained.

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

Sandra A. Irwin
(Notary Public)

NOTARIAL SEAL
SANDRA A. IRWIN, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires, June 3, 2001

COMMONWEALTH OF PENNSYLVANIA:

SS:

STATE OF PENNSYLVANIA:

On this the 22 day of November, 2000, before me, the undersigned officer, personally appeared, TAMMY LOUISE FENUSH, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement, and acknowledged that she has executed the same for the purposes therein contained.

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

Sandra A. Irwin
(Notary Public)

NOTARIAL SEAL
SANDRA A. IRWIN, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires, June 3, 2001

ADDENDUM TO AGREEMENT

THIS ADDENDUM dated this 25th day of February 2002, to the
AGREEMENT made November 22, 2000, by and between by and between BEATRICE
H. CUETARA, party of the First Part, hereinafter called "Betty",

A

N

D

TAMMY LOUISE FENUSH WHITE party of the Second Part, hereinafter called
"Tammy".

WHEREAS, the parties to the Agreement dated November 22, 2000, desire to
modify the said Agreement by eliminating any reference to the garage at the rear of
110 South Second Street, Clearfield, Clearfield Borough, Clearfield County,
Pennsylvania, and

NOW THEREFORE, in consideration of the mutual covenants and conditions
hereinafter set forth, the parties agree as follows:

1. Paragraph seven of the original Agreement will now read as follows:

7. In return for the covenant made by Tammy, Betty agrees
that she will arrange for the transfer at her death of her
property located at 1010 Country Club Road, Longmeadow,
Clearfield, Pennsylvania to Tammy either by Will, Trust,

Escrow Deed or other such means as to assure Tammy title to the premises. The transfer of Betty's residence to Tammy shall include all of the furniture, furnishings, and appliances in her residence. During Betty's lifetime Tammy will live with her at her residence at 1010 Country Club Road. If Tammy marries, both she and her husband will reside with Betty.

2. All the remaining provisions of the Agreement dated November 22, 2000, shall remain in full force and affect except as changed by this Addendum.

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

WITNESSES:

Richard A. Bell

Beatrice H. Cuetara (SEAL)
BEATRICE H. CUETARA

Party of the First Part

as to both

Tammy Louise Fenush White
TAMMY LOUISE FENUSH WHITE

Party of the Second Part

COMMONWEALTH OF PENNSYLVANIA:

SS:

STATE OF PENNSYLVANIA:

On this the 25th day of February, 2002, before me, the undersigned officer, personally appeared, BEATRICE H. CUETARA, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement, and acknowledged that she has executed the same for the purposes therein contained.

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

Sandra A. Irwin
(Notary Public)

NOTARIAL SEAL
SANDRA A. IRWIN, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires, June 3, 2005

COMMONWEALTH OF PENNSYLVANIA:

SS:

STATE OF PENNSYLVANIA:

On this the 25th day of February, 2002, before me, the undersigned officer, personally appeared, TAMMY LOUISE FENUSH WHITE, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within Agreement, and acknowledged that she has executed the same for the purposes therein contained.

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

Sandra A. Irwin
(Notary Public)

NOTARIAL SEAL
SANDRA A. IRWIN, Notary Public
Clearfield Boro, Clearfield County, PA
My Commission Expires, June 3, 2005

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * 05- 1395 -CD

vs.

TAMMY LOUISE FENUSH WHITE

Defendant *

* PLAINTIFF'S REPLY TO
* NEW MATTER AND ANSWER
* TO COUNTERCLAIM

Filed on behalf of:

**DAVID C. CUETARA, EXECUTOR OF
THE ESTATE OF BEATRICE H.
CUETARA, Plaintiff**

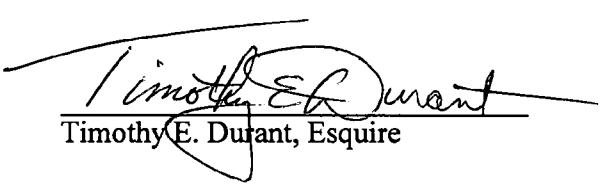
Counsel of Record for Plaintiff

TIMOTHY E. DURANT, ESQ.
Pa. I.D. No. 21352
201 North Second Street
Clearfield, PA 16830
(814) 765-1711

Opposing Counsel: for **TAMMY LOUISE
FENUSH WHITE, Defendant**

RICHARD A. BELL, ESQ.
BELL, SILBERBLATT & WOOD
Pa I.D. No. 06808
318 East Locust Street
PO Box 670
Clearfield, PA 16830
(814) 765-5537

Filed by:


Timothy E. Durant, Esquire

FILED
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MAY 11 2006
11 2cc to
William A. Shaw
Prothonotary/Clerk of Courts
AMM
GK

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

DAVID C. CUETARA, EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA	*	
	*	05- 1395 -CD
	*	
Plaintiff	*	
	*	
	*	
vs.	*	
	*	
	*	
	*	
TAMMY LOUISE FENUSH WHITE	*	
	*	
Defendant	*	

PLAINTIFF'S REPLY TO NEW MATTER

AND NOW comes the plaintiff, David C. Cuetara as executor of the estate of Beatrice H. Cuetara, by and through his attorney, Timothy E. Durant, Esquire and replies to the defendant's New Matter as follows:

67. Admitted.

68. Denied. On the contrary, after reasonable investigation, Plaintiff David C. Cuetara is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof is demanded at trial if relevant. In further answer hereto it is believed and averred that Beatrice C Cuetara continued to pay for house expenses after August 2003.

69. Admitted that on various occasions Plaintiff told defendant to obtain help from or employ others to assist with Beatrice C Cuetara, but Plaintiff never told her to discontinue taking care of his mother nor did he impliedly, expressly or otherwise tell her to breach her contract with his mother, for the reason that he did not on any of those occasions know Tammy Fenush White was under contract to care for his mother. Defendant's working full time for others in November 2003 after Beatrice became sick and was hospitalized at the Geriatric Psychiatric Ward of the Brookville Hospital was a clear breach of her contract of March 28, 2003 and thus requires the return of the consideration given by Beatrice C Cuetara (i.e. the house).

70. Denied. On the contrary, after reasonable investigation, Plaintiff David C. Cuetara is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof is demanded at trial if relevant. In further answer hereto it is believed and averred that all of the money defendant claims to be hers was in fact originally the money of Beatrice C Cuetara, the name positioning on the account was and is irrelevant, and commingling of such funds was a continuing violation of the law of Pennsylvania and the fiduciary standards as set forth in 20Pa.C.S.A. §5601, et. seq.

71. Denied. On the contrary, after reasonable investigation, Plaintiff David C. Cuetara is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof is demanded at trial if relevant. In further answer hereto it is believed and averred that all of the money in joint accounts was actually the money of Beatrice C. Cuetara. The use of any money from any joint account on other than the health, maintenance and welfare of Beatrice was a violation of defendant's fiduciary duty as aforesaid.

72. Denied. On the contrary, after reasonable investigation, Plaintiff David C. Cuetara is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof is demanded at trial if relevant. In further answer hereto it is believed and averred that all of the money defendant claims to be hers was in fact originally the money of Beatrice C Cuetara.

73. Denied. On the contrary, after reasonable investigation, Plaintiff David C. Cuetara is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof is demanded at trial if relevant. It is unknown exactly when defendant began living with decent.

74. Admitted that Plaintiff was informed that at some time Tammy began sleeping in Beatrice's bedroom but it is not known when. The proof and particulars of this are demanded at trial if relevant.

PLAINTIFF'S ANSWER TO COUNTERCLAIM

Plaintiff answers the Defendant's Counterclaim as follows:

75. Denied. On the contrary, Defendant Tammy Louise Fenush White alleges that she has funds from other sources than from Beatrice H. Cuetara, in particular she alleges that her grandmother Agatha Guydosik gave her \$150,000.00 in cash in a shoebox and she has since that time invested it. Furthermore Defendant inherited approximately \$116,585.00 in cash from decedent as reflected in the in joint accounts listed in decedent's Schedule "F" of the REV-1500 filed on February 17, 2006 and incorporated herein by reference as if set out in full. It is admitted that defendant listed the house for sale with a realtor but denied that this was because she could not afford the house. Other considerations motivated defendant.

76. Denied. On the contrary, after reasonable investigation, Plaintiff David C. Cuetara is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof is demanded at trial if relevant. Plaintiff has not been provided with the appraisals. The reason for the pricing chosen is unknown.

77. Admitted.

78. Admitted that a Lis Pendens was filed and the sale was cancelled.

79. Denied that the house belongs to defendant for all the reasons contained in the pleadings filed in this matter heretofore but Admitted that defendant cannot sell the house at the present time and this is proper since she has forfeited her right to the house and the matter is being litigated with the reasonable expectation on the part of plaintiff that the house will be returned to the estate of Beatrice H. Cuetara.

80. Admitted. In further answer hereto it is averred that if defendant would convey the house to the estate of Beatrice H. Cuetara the estate would then pay all the expenses for heat, etc. until sale or conveyance to the proper parties. Defendant has voluntarily chosen to move out of the house and leave it vacant and she did this even prior to the filing of the instant suit.

81. Denied. On the contrary, after reasonable investigation, Plaintiff David C. Cuetara is without knowledge or information sufficient to form a belief as to the truth of this averment. Strict proof thereof is demanded at trial if relevant. Plaintiff has not been provided with the expenses or

the reason for the expenses. Defendant is not entitled to have plaintiff pay her expenses for all the reasons set out above.

82. Denied. This a conclusion of law and therefore no answer is required. To the extent that an answer is required, Plaintiff denies that defendant is entitled to damages as she is the one who has breached the contract and is in default for all the reasons as set forth above and in the pleadings heretofore filed by plaintiff.

83. Denied. This a conclusion of law and therefore no answer is required. To the extent that an answer is required, Plaintiff reaffirms that there is a clear factual basis for his lawsuit and he reasonably expects to prevail at trial. Plaintiff avers that defendant has breached the contract and is in default for all the reasons as set forth above and in the pleadings heretofore filed by plaintiff.

84. Denied. This a conclusion of law and therefore no answer is required. To the extent that an answer is required, Plaintiff reaffirms that there is a clear factual basis for his lawsuit and he reasonably expects to prevail at trial. Plaintiff avers that defendant has breached the contract and is in default for all the reasons as set forth above and in the pleadings heretofore filed by plaintiff. Defendant is not entitled to recover attorney's fees or costs against Plaintiff but she must bear her own such expenses as is the American Rule.

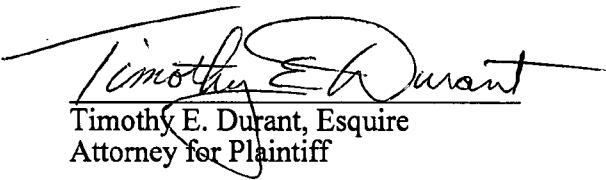
WHEREFORE, plaintiff DAVID C. CUETARA, as **EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA**, deceased, demands the following relief:

- a. An accounting for all occasions when defendant, TAMMY LOUISE FENUSH WHITE used any Power of Attorney executed by the decedent;
- b. An accounting for all funds expended or transferred from the funds of BEATRICE H. CUETARA;
- c. Order the return to the estate of BEATRICE H. CUETARA of all funds not properly expended or transferred in accordance with established fiduciary standards or all funds co-mingled with the funds of defendant TAMMY LOUISE FENUSH WHITE;
- d. A conveyance by Tammy Louise Fenush White (or the court's designee, on her

behalf) of the Lawrence Township property described above (1010 Country Club Drive, Clearfield, Pennsylvania) and all of the decedent's furniture, furnishings and appliances formerly in her residence, to the Executor of the Estate of Beatrice H. Cuetara.

- e. That defendant be enjoined permanently from mortgaging or encumbering the described property in any way, and from selling or conveying the same or any part thereof to any person other than the plaintiff;
- f. That defendant be surcharged and required to repay to the estate of Beatrice H. Cuetara the \$62,479.82 and any other funds improperly expended on decedent's care-givers or decedent's care;
- g. That defendant be required to pay the cost of this action; and
- h. Such other or general relief as the Court deems just, proper or appropriate.

Respectfully submitted,



Timothy E. Durant
Attorney for Plaintiff

DATE: May 11, 2006

VERIFICATION

I, DAVID C. CUETARA, as EXECUTOR OF THE ESTATE OF BEATRICE H. CUETARA, verify that the statements made in this Pleading are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

DATED: May 10, 2006

DAVID C. CUETARA, as EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA,

David C. Cuetara, Esq.

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

**DAVID C. CUETARA, EXECUTOR OF THE
ESTATE OF BEATRICE H. CUETARA**

Plaintiff * 05- 1395 -CD

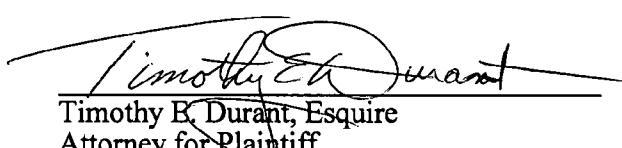
vs *

TAMMY LOUISE FENUSH WHITE

Defendant *

AFFIDAVIT OF SERVICE

I, Timothy E. Durant, verify that on that on May 11, 2006, I did deposit in the U.S Mail, postage prepaid, a certified copy of the PLAINTIFF'S REPLY TO NEW MATTER AND ANSWER TO COUNTERCLAIM filed in the above captioned action. The said document was mailed to the office of Richard A. Bell, Esquire, Attorney for the Defendant, at 318 East Locust Street, PO Box 670, Clearfield, PA 16830. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.



Timothy E. Durant, Esquire
Attorney for Plaintiff

Dated: May 11, 2006

FILED

MA 2003

William A. Shaw
Prothonotary/Clerk of Courts

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

Type of Pleading
PRAECIPE

Filed on Behalf of:
Defendant

Counsel of Record for
this Party:

Richard A. Bell, Esquire
PA I.D. #06808
BELL, SILBERBLATT &
WOOD
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830

(814) 765-5537

FILED
0/10:35 am
AUG 16 2008
Copy to C/A
S/

William A. Shaw
Prothonotary

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

TAMMY LOUISE FENUSH WHITE
Defendant

TO: WILLIAM A. SHAW, PROTHONOTARY

PRAECIPE TO WITHDRAW APPEARANCE

Please withdraw my Appearance as counsel on behalf of the above named
Defendant and enter Appearance as shown below.

BELL, SILBERBLATT & WOOD
BY

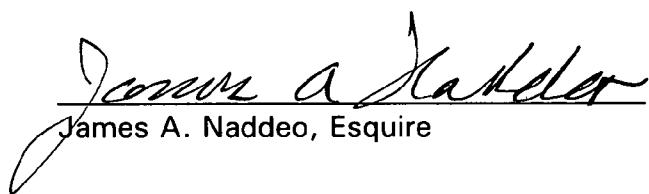
DATED: 8-14-06


Richard A. Bell, Esquire

PRAECIPE TO ENTER APPEARANCE

Please enter my Apperance as counsel for the above named Defendant in the
above cpationed matter.

DATED: 8/15/06


James A. Naddeo, Esquire

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

DAVID C. CUETARA, Executor
Of The Estate of BEATRICE H. CUETARA
Plaintiff

NO. 05-1395-CD

Vs.

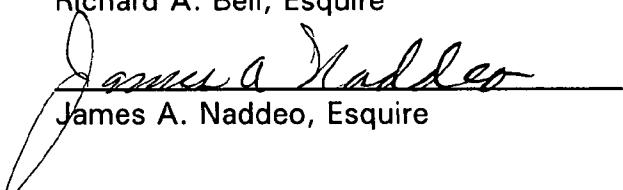
TAMMY LOUISE FENUSH WHITE
Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Appearance To Withdraw, and entrance of
Appearance of James A. Naddeo, Esquire on behalf of the Defendant in the
above matter was mailed the 16th day of August, 2006, by
regular mail postage prepaid at the post office in Clearfield, PA 16830 to the
following:

Timothy E. Durant, Esquire
201 N. 2nd Street
Clearfield, PA 16830


Richard A. Bell, Esquire


James A. Naddeo, Esquire

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

DAVID C. CUETARA, EXECUTOR OF THE *
ESTATE OF BEATRICE H. CUETARA, *
Plaintiff, *
*
v. * No. 05-1395-CD

TAMMY LOUISE FENUSH WHITE, *
Defendant. *

* Type of Pleading:

* PRAECIPE TO SETTLE
* AND DISCONTINUE

* Filed on behalf of:
* Defendant

* Counsel of Record for
* this party:

* James A. Naddeo, Esquire
* Pa ID No. 06820
* 207 East Market Street
* PO Box 552
* Clearfield, PA 16830
* 814-765-1601

FILED NOCC
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SEP 19 2005 to Atty
William A. Shaw
Prothonotary/Clerk of Courts
Copy to CIA

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

DAVID C. CUETARA, EXECUTOR OF THE *
ESTATE OF BEATRICE H. CUETARA, *
Plaintiff, *
*
v. * No. 05-1395-CD
*
TAMMY LOUISE FENUSH WHITE, *
Defendant. *

PRAECIPE TO SETTLE, DISCONTINUE
AND END WITH PREJUDICE

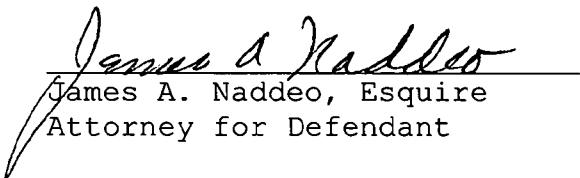
TO THE PROTHONOTARY:

Please mark the above-captioned action, discontinued,
settled and ended for all time, with prejudice.

Date: 09/19/06


Timothy E. Durant, Esquire
Attorney for Plaintiff

Date: 09/19/06


James A. Naddeo, Esquire
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

**David C. Cuetara, Executor of the
Estate of Beatrice H. Cuetara**

Vs. **No. 2005-01395-CD**
Tammy Louise Fenush White

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 September 19, 2006, marked:

Discontinued, Settled and Ended for all time, with Prejudice

Record costs in the sum of \$105.00 have been paid in full by Timothy E. Durant, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 19th day of September A.D. 2006.



William A. Shaw, Prothonotary