

05-1412-CD
D. McCullough vs S. Spuck et al

Delbert McCullough et al vs Sheila Spuck
2005-1412-CD

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

DELBERT McCULLOUGH and AMY
McCULLOUGH,

Plaintiffs

NO. 2005-1412-C0

vs.

SHEILA M. SPUCK and DAWN E.
SPUCK,

Defendants

Type of Case: Civil

Type of Pleading: Complaint

Filed on behalf of: Plaintiffs

Counsel of Record for this Party:
David P. King, Esquire
23 Beaver Drive
P. O. Box 1016
DuBois, PA 15801
(814) 371-3760

Supreme Court No. 22980

FILED *(initials)*

SEP 13 2005
m12:45pm
William A. Shaw
Prothonotary/Clerk of Courts

3 cent to file

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

DELBERT McCULLOUGH and AMY	:	
McCULLOUGH,	:	
Plaintiffs	:	
vs.	:	NO.
SHEILA M. SPUCK and DAWN E.	:	
SPUCK,	:	
Defendants	:	

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by Attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator
Clearfield County Courthouse
230 East Market Street, Suite 228
Clearfield, PA 16830
(814) 765-2641 Ext. 5982

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

DELBERT McCULLOUGH and AMY :
McCULLOUGH, :
Plaintiffs :
: :
vs. : NO. _____ C.D.
: :
SHEILA M. SPUCK and DAWN E. :
SPUCK, :
Defendants :
: :
COMPLAINT
COUNT I
(BREACH OF CONTRACT)

AND NOW, come the Plaintiffs, DELBERT McCULLOUGH and AMY McCULLOUGH, through their Attorney, David P. King, and for their cause of action respectfully represent as follows:

1. The Plaintiffs are DELBERT McCULLOUGH and AMY McCULLOUGH, and they reside at 1320 Hickory Road, Penfield, PA 15849.
2. The Defendant, SHEILA M. SPUCK, is an adult individual residing at 182 Spuck Road, DuBois, PA 15801.
3. The Defendant, DAWN E. SPUCK, is an adult individual residing at either 182 Spuck Road, DuBois, PA 15801, or 14344 North Road, Loxahatchee, FL 33470.
4. That at all times relevant hereto, the Defendants were the owners in interest of a certain commercial establishment known as the Green Ridge Drive In, located on Route 255, in Huston Township, Clearfield County, PA.
5. The business conducted by the Defendants upon said premises consisted of the sales of ice cream, food and related products.
6. The real estate which the Defendants owned and where they operated their business, consisted of a dairy store for the sale of products as aforesaid, as well as an apartment used by the Defendants as a rental on the second floor of the structure.

7. On or about March 10, 2005, an Agreement of Sale was entered into between the Plaintiffs and the Defendants for the purchase of the business, including the real estate used in conjunction with the same as described above.

8. The closing on the sell and purchase of the business and its premises was scheduled to be on or before April 29, 2005.

9. However, because of problems which became apparent prior to closing, the closing did not take place until May 19, 2005.

10. More specifically, when the buyers/Plaintiffs had the septic system inspected, it was determined that the same was deficient, not acceptable and not in compliance with applicable laws and regulations.

11. Therefore, the Defendants agreed to remedy the situation and rectify the septic system so that the Plaintiffs could acquire the property with an acceptable and operating septic system in compliance with applicable laws and regulations.

12. The said septic system was eventually completed, and the Plaintiffs purchased the subject matter premises on May 19, 2005.

13. Notwithstanding, the Defendants had failed, neglected and refused to pay for the costs incurred in remedying the deficient and defective septic system. Specifically, there is an outstanding invoice from Mike's Compact Excavating for the sum of \$2,090.00; and from "Mr. Frans B. Johnson III" for the sum of \$3,964.72, with copies of such Invoices being attached hereto as Exhibits "A" and "B"; and intending to be used by Plaintiffs at time of hearing and trial.

WHEREFORE, Plaintiffs pray your Honorable Court to enter judgment in their favor and against the Defendants for the sum of \$6,054.72, and they will so ever pray.

COUNT II
(MISREPRESENTATION OR FRAUD)

14. The averments in Plaintiffs' Paragraphs 1 through 13 above are hereby incorporated by reference as if fully set forth herein.

15. At all times relevant hereto, the Defendants were well aware of the intended use and purpose of the premises by the Plaintiffs.

16. More specifically, as the Defendants had done, the Plaintiffs intended to operate the Drive In business selling ice cream, food and related items, as well as to rent the apartment on the second floor of the structure.

17. The Plaintiffs did specifically ask the Defendants if the water well on the premises was adequate for such purposes.

18. The Defendants assured the Plaintiffs that the quality, quantity and flow of water produced by the well was adequate for all of such purposes intended.

19. Notwithstanding, shortly after the Plaintiffs took possession of the premises, it was discovered that the well was not adequate as to quantity and quality, nor flow, for the purposes which were clearly understood and intended by all parties.

20. As a result, the Plaintiffs were required to extend additional monies for the re-drilling of the well and installation of equipment for the same, at a total cost to them of \$2,156.80, copies of the Invoices for the same being attached hereto and marked as Exhibits "C", "D" and "E", and which are intended to be used at time of hearing or trial.

21. However, the Plaintiffs have also been advised that the existing well which was re-drilled in the same place as the original well will never be adequate, and a new well will have to be drilled at the cost of \$2,276.00, with an Estimate

for the same being attached hereto and marked as Exhibit "F", and which is intended to be used at the time of hearing or trial by the Plaintiffs.

22. Plaintiffs have, after taking possession and finding out about the deficient well as described above, discovered that the Defendants were well aware that the existing well when the property was sold was inadequate, substandard and that the quality, quantity and flow of water was not sufficient for the intended use by the Plaintiffs, and which was understood by all parties.

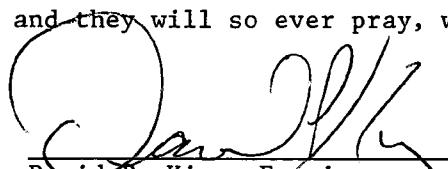
23. Because of the septic system and the water well problems as described herein, the Plaintiffs suffered loss of revenues in their business from their intended time of opening until actual opening, in the amount of \$4,700.00.

24. Further, and in addition, the Plaintiffs have lost fair rental value for the apartment upstairs of the structure because adequate water is not available to supply the same for normal living and dwelling.

25. The Plaintiffs estimate lost rentals to currently be in the approximate amount of \$1,800.00, and will continue to increase in the future.

26. Because of the fraud and misrepresentations of the Defendants as recited herein, the Plaintiffs believe that they are entitled to not only compensatory damages, but exemplary damages for the fraud and/or misrepresentations perpetrated by the Defendants.

WHEREFORE, Plaintiffs pray your Honorable Court to enter an amount for compensatory damages for \$10,932.80, as well as for future damages occurring hereafter, and also award unto them exemplary or punitive damages against the Defendants, in an amount in excess of \$20,000.00, and they will so ever pray, with costs assessed against the Defendants.



David P. King, Esquire
Attorney for Plaintiffs

We verify that the statements made in this Complaint are true and correct.

We understand that false statements herein are made subject to the penalties of
18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Date: September 12, 2005

Delbert McCullough
Delbert McCullough
Plaintiff

Amy McCullough
Amy McCullough
Plaintiff

122861

STATEMENT		DATE	TERMS
TO	Sheila Spuck/Greenridge Drive in		
ADDRESS	7560 Bennett's Valley Highway		
	DUBUQUE IA 52001		
IN ACCOUNT WITH	MIKE'S COMPACT EXCAVATING		
	30 Sabula Lake Rd		
	DUBUQUE IA 52001		
86 hrs	Machine Hours	17.50/hr	1505.00
39 hrs	Man Hours	15.00/hr	585.00
for Sandman -			
<u>TO TA #2090</u>			

adams DC5812

Exhibit "A"

Invoice

for monies due to Mr. Frans B. Johnson III

Engineering plans for septic	\$195.00
Septic Permit	\$275.00
J. M. Delullo for septic sand	\$2332.00
Brockport Yard for septic tank 1250 gallon	\$1083.32
Gertz Electric	\$62.37
Kohlhepp's for cement and access fittings	\$17.03

On behalf of Shiela Spuck for this property of Green Ridge Drive-in	
Down payment loan still owed	\$606.68
March April May mortgage payments of	\$788.82x 3=\$2366.46

Grand Total \$6331.18



ALLAN J. POLOHONKI HEATING & PLUMBING

1915 Kyle Run Road • Falls Creek, PA 15840

(814) 371-1043

Water Conditioning, Filtration & Purification, Electric Eel Sewer & Drain Cleaning, Pump Sales

5-29 2005

Sold To: GREEN RIDGE DRIVE INN

1320 HICKORY ROAD

Dubois, Pa 15801

325-2770

DSL Modem
Phone 555-2433

ALL ACCOUNTS CASH PAYABLE 10 DAYS

2% CARRYING CHARGE ADDED AFTER 30 DAYS.

ALL LABOR CHARGES - PORTAL TO PORTAL

Exhibit "C"

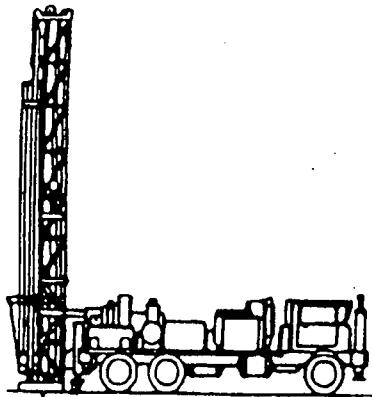
Forsyth Drilling, Inc.

Invoice

2750 Oklahoma Salem Road
DuBois, PA 15801

DATE

6/6/2005



TERMS

Due on receipt

BILL TO

Delbert McCullough
Green Ridge Drive-In
Green Ridge Drive
DuBois, PA 15801

(Handwritten signature)

FT/QTY	ITEM	DESCRIPTION	RATE	AMOUNT
50	Clean-out 6" Drilling	Cleaned Well drilled well from 230 ft. to 280 ft., 50 ft. of drilling	300.00 6.00	300.00 300.00
<p><i>(Handwritten signature)</i></p>				
Thank you for your business.			Total	\$600.00



ALLAN J. POLOHONKI
HEATING & PLUMBING

1915 Kyle Run Road • Falls Creek, PA 15840
(814) 371-1043

Water Conditioning, Filtration & Purification, Electric Eel Sewer & Drain Cleaning, Pump Sales

C - 6 2005

Sold To: GREEN Ridge Drive Inn
1320 Hickory Road
DUBOIS, PA 15801 Phone 375-2770
570-0947

ALL ACCOUNTS CASH, PAYABLE 10 DAYS.

2% CARRYING CHARGE ADDED AFTER 30 DAYS.

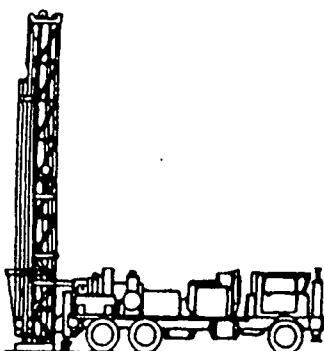
ALL LABOR CHARGES - PORTAL TO PORTAL

Exhibit "E"

Forsyth Drilling, Inc.

Estimate

2750 Oklahoma Salem Road
DuBois, PA 15801



NAME / ADDRESS

Delbert McCullough
Green Ridge Drive-In
Green Ridge Drive
DuBois, PA 15801

DATE

8/1/2005

FT/QTY	ITEM	DESCRIPTION	RATE	AMT
		ESTIMATE FOR NEW WATER WELL		
400	6" Drilling	Water Well	5.00	2,000.00
40	6 1/4" PVC	6 1/4" PVC Casing	6.00	240.00
1	Cap	6" Well Cap	18.00	18.00
1	Grout	Bag(s) Bentonite Grout	18.00	18.00
Payable upon Completion.			TOTAL	\$2,276.00

For outstanding service, please contact us at (814)
371-7960.

SIGNATURE

Raymond L. Moore

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

DELBERT McCULLOUGH and AMY
McCULLOUGH,

) NO. 05 - 1412- C.D.

1

) Type of Case: CIVIL ACTION

1

-) Type of Pleading: ANSWER, NEW
-) MATTER & COUNTERCLAIM

1

) Filed on Behalf of:

) Filed on Behalf
) DEFENDANTS

1

) Counsel of Record:

) Counsel of Record.

1

Supreme Court no. 20
)

BLAKLEY & JONES

BERKELEY & JONES
90 Beaver Drive, Box 6

90 Beaver Drive, B
Du Bois Pa 15801

Da Bois, Pa 15631
(814) 371-2730

(811) 371-2730

NOTICE TO PLEAD

TO: THE WITHIN NAMED

You are notified to file a written response to the within.

New Matter & Counterclaim within twenty (20) days from

service hereof or a default Judgment may be entered

against you.

~~BLAKLEY & JONES~~

Benjamin S. Blakley, III
Attorney for Defendants

FILED NO
m 12:17 PM
OCT 21 2005
cc
William A. Shaw
Prothonotary/Clerk of Courts

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

DELBERT McCULLOUGH and AMY) 05 - 1412- C.D.
McCULLOUGH,)
)
Plaintiffs,)
)
vs.)
)
SHIELA M. SPUCK and DAWN E.)
SPUCK,)
)
Defendants)

ANSWER

AND NOW come Defendants, **SHIELA M. SPUCK and DAWN E. SPUCK**, by and
through their attorneys, **BLAKLEY & JONES**, and file the following Answer to Plaintiffs'
Complaint, of which the following is a statement:

COUNT I
(BREACH OF CONTRACT)

1. Admitted.
2. Admitted.
3. It is denied that Defendant, **DAWN E. SPUCK**, is residing at either 182 Spuck
Road, DuBois, Pa, 15801, or 14344 North Road, Loxahatchee, FL, 33470, and on the contrary, it
is averred that the said Defendant resides at 2204 Ridge Top Drive, Round Rock, Texas, 78664.
4. Admitted.
5. Admitted.
6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. It is denied that the Defendants have failed, neglected and refused to pay for costs incurred in remedying the allegedly deficient and defective septic system, and on the contrary, it is averred that the invoice from Mike's Compact Excavating was for services not performed upon the subject real property or for services that were overbilled by the said company, and further, that no amounts are owed to Frans B. Johnson, III, as all monies due and owing the said Johnson had been paid. Further, it is denied that the Plaintiffs are in any manner responsible for any amounts due and owing, as set forth in Exhibits A and B to Plaintiffs' Complaint, as the same were billed to the Defendants and not to the Plaintiffs and that the alleged claims are of the individual service providers, and not of the Plaintiffs.

WHEREFORE, Defendants respectfully request this Honorable Court enter judgment in Defendants' favor and against the Plaintiffs and dismiss the Plaintiffs' Complaint as set forth in Count I.

COUNT II
MISREPRESENTATION

14. Requires no answer.
15. Admitted.
16. Admitted; however, it is further averred that the Plaintiffs, prior to the closing of the sale of the subject property, were advised by Sewage Enforcement Officer James M. Wischuck that, after perk testing, the apartment on the second floor of the structure should not be rented. Therefore, the Plaintiffs were well aware that the said apartment should not be rented at the time of the sale of the property.
17. Admitted.
18. It is admitted that the Defendants informed the Plaintiffs that the quality, quantity and flow of water produced by the well on the subject property had been adequate for the purposes for which the property was used by the Defendants during their period of occupancy.
19. After reasonable investigation, the Defendants are unable to determine the truth or falsity of the allegations contained within Paragraph 19 of Plaintiffs' Complaint and therefore deny the same and demand strict proof thereof at trial. To the extent that an answer is required, the Defendants believe, and therefore aver, that after the Plaintiffs took possession of the premises, the Plaintiffs parked heavy machinery on top of the water well located on the subject premises, thereby causing the same to collapse, thereby adversely affecting the quantity, quality and flow of the subject well.

20. After reasonable investigation, the Defendants are unable to determine the truth or falsity of the allegations contained within Paragraph 20 of Plaintiffs' Complaint and therefore deny the same and demand strict proof thereof at trial. To the extent that an answer is required, it is denied that any monies expended by the Plaintiffs for the redrilling of the well and the installation of equipment for the same was the result of Plaintiffs' negligent parking of heavy vehicles upon the subject well, causing its collapse, through no fault of the Defendants.

21. After reasonable investigation, the Defendants are unable to determine the truth or falsity of the allegations contained within Paragraph 21 of Plaintiffs' Complaint and therefore deny the same and demand strict proof thereof at trial. To the extent that an answer is required, it is denied that any monies expended by the Plaintiffs for the redrilling of the well and the installation of equipment for the same was the result of Plaintiffs' negligent parking of heavy vehicles upon the subject well, causing its collapse, through no fault of the Defendants.

22. Denied, and on the contrary, it is averred that Defendants, at no time, were aware of any deficiencies in the existing well, and on the contrary, it is averred that at all times during the Defendants' ownership and occupancy of the said premises, the existing well was adequate and up to standard in quality, quantity and flow of water and at all times was sufficient for the Defendants' use.

23. After reasonable investigation, the Defendants are unable to determine the truth or falsity of the allegations contained within Paragraph 23 of Plaintiffs' Complaint and therefore deny the same and demand strict proof thereof at trial. To the extent that an answer is required, it

is denied that the Plaintiffs suffered any loss of revenue in their business as the result of any actions on the part of the Defendants, and on the contrary, it is averred that any alleged loss of revenue was the result of the negligent actions of the Plaintiffs.

24. After reasonable investigation, the Defendants are unable to determine the truth or falsity of the allegations contained within Paragraph 24 of Plaintiffs' Complaint and therefore deny the same and demand strict proof thereof at trial. To the extent that an answer is required, it is denied that the Plaintiffs have lost any fair rental value for the apartment upstairs of the structure due to any actions on the part of the Defendants, and on the contrary, it is averred that any losses of fair rental value are the result of the negligent actions of the Plaintiffs.

25. The allegations contained within Paragraph 25 of the Plaintiffs' Complaint represent a conclusion of law and requires no answer. To the extent that an answer is required, it is denied that the Plaintiffs have suffered any losses or will continue to suffer any losses as the result of any actions of the Defendants, and on the contrary, it is averred that any losses that have been sustained by the Plaintiffs were as the result of their own negligent actions.

26. It is denied that the Defendants in any manner committed any fraud or misrepresentations in their dealings with the Plaintiffs which would entitle the Plaintiffs to any damages whatsoever, and on the contrary, it is averred that any damages suffered by the Plaintiffs were as the result of the Plaintiffs' own negligent conduct.

WHEREFORE, Defendants respectfully request this Honorable Court enter judgment on behalf of the Defendants and against the Plaintiffs and dismiss the Plaintiffs' Complaint.

NEW MATTER

27. Defendants incorporate by reference all prior paragraphs as if the same were set forth fully herein.

28. The Plaintiffs' Complaint fails to set forth a claim upon which relief can be granted.

29. At the time of the completion of the repairs to the septic system located on the subject real property, the said septic system was inspected by Sewage Enforcement Officer James E. Wischuck of Rockton, Pennsylvania.

30. After the inspection of the septic system by the said James E. Wischuck, the Plaintiffs were advised by said Wischuck that the septic system was inadequate to service any apartments located above the subject premises, and the Plaintiffs were advised not to utilize the space above the subject premises for residential rental purposes.

31. The Plaintiffs acknowledged to the Defendants their understanding of the directives of said Wischuck and did indicate to the Defendants that they would not be using the second story of the subject premises as rental units, but would rather be utilizing a portion of the first floor as a gift shop in order to maximize the income on the subject premises.

32. Following the representations of said Wischuck, the Defendants offered to cancel the sales transaction between the Plaintiffs and Defendants; however, the Plaintiffs agreed that they would proceed with the closing on the property, knowing that they had been advised not to rent the second story of the subject premises.

33. Shortly after the Plaintiffs took possession of the subject premises, the Plaintiffs did park heavy trucks upon the well servicing the subject property in order to unload propane tanks for use on the subject property.

34. As a result of the weight placed upon the well by the delivery trucks, the said well collapsed, thereby requiring the Plaintiffs to make repairs to the said well and to drill a new well on the subject premises.

35. During the Defendants' ownership of the subject real property, the Defendants had placed metal posts around the well servicing the property to block vehicular traffic from parking upon the said well and causing the collapse of the same; however, it is believed, and therefore averred, that after taking possession of the subject real property, the Plaintiffs removed the said metal posts and did allow vehicular traffic to park upon the said well, thereby causing its collapse and the damages set forth within the Plaintiffs' Complaint.

36. Any damages incurred by the Plaintiffs were the result of the Plaintiffs' own negligent conduct in permitting vehicular traffic to park upon the well servicing the subject premises, and not as the result of any of the actions of the Defendants nor of any fraud or misrepresentations of the Defendants.

WHEREFORE, Defendants demand judgment in their favor.

COUNTERCLAIM

37. Defendants incorporate by reference all prior paragraphs as if the same were set forth fully herein.

38. In their sales agreement for the subject property, the Plaintiffs agreed to pay to the Defendants the sum of \$75,000.00 for the purchase of the said property. A copy of said sales agreement is attached hereto and made a part hereof.

39. The closing of the subject property took place on or about May 19, 2005.

40. To date, the Plaintiffs have paid to the Defendants the sum of \$68,393.30, thereby leaving a balance due and owing to the Plaintiffs of \$6,606.70.

41. Despite repeated demands for the payment of said amount, the Plaintiffs have failed and refused to pay the balance due for the purchase of the subject real property pursuant to the parties' sales agreement of March 10, 2005.

42. The Defendants brought suit against the Plaintiffs before Magistrate Patrick N. Ford, for which they incurred costs of \$178.52.

WHEREFORE, Defendants respectfully request this Honorable Court grant judgment in their favor and against the Plaintiffs in the amount of \$6,606.70, plus Magistrate's costs of \$178.52, plus interest from May 19, 2005, to present at the statutory rate of interest.

Respectfully Submitted,

BLAKLEY & JONES

Benjamin S. Blakley, III
Attorney for Defendants

VERIFICATION

I, SHIELA M. SPUCK, hereby state that I am the Defendant in this action and verify that the statements made in the foregoing Answer, New Matter & Counterclaim are true and correct to the best of my knowledge, information, and belief. I understand that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.


SHIELA M. SPUCK

Dated: 10-19-05

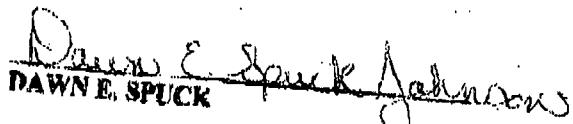
BLRKE JONES ATTY.

ID: 814-375-1082

OCT 12 '05 12:07 NO.010 P.11

VERIFICATION

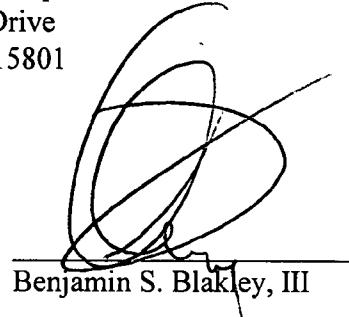
I, DAWN E. SPUCK, hereby state that I am the Defendant in this action and verify that the statements made in the foregoing Answer, New Matter & Counterclaim are true and correct to the best of my knowledge, information, and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Dated: 10-16-05
DAWN E. SPUCK

CERTIFICATE OF SERVICE

This will certify that the undersigned served a copy of Defendant's Answer,
New Matter & Counterclaim a in the above-captioned matter on the following parties at the
addresses shown below by first-class U.S. Mail on the 20th day of October, 2005:

David P. King, Esquire
23 Beaver Drive
DuBois PA 15801



Benjamin S. Blakley, III

AGREEMENT FOR THE SALE OF COMMERCIAL REAL ESTATE

A/S-C

This form recommended and approved for, but not restricted to use by, the members of the Pennsylvania Association of REALTORS® (PAR).

SELLER'S BUSINESS RELATIONSHIP WITH PA LICENSED BROKER
 BROKER (Company) COLDWELL BANKER DEVELOPAC PHONE 814-375-1167
 ADDRESS 998 BEAVER DR., DUBOIS, PA 15801 FAX 814-375-9842
 BROKER IS THE AGENT FOR SELLER. Designated Agent(s) for Seller, if applicable:
 OR

Broker is NOT the Agent for Seller and is a/an: AGENT FOR BUYER TRANSACTION LICENSEE

BUYER'S BUSINESS RELATIONSHIP WITH PA LICENSED BROKER
 BROKER (Company) COLDWELL BANKER DEVELOPAC PHONE 814-375-1167
 ADDRESS 998 BEAVER DR., DUBOIS, PA 15801 FAX 814-375-9842
 BROKER IS THE AGENT FOR BUYER. Designated Agent(s) for Buyer, if applicable:
 OR

Broker is NOT the Agent for Buyer and is a/an: AGENT FOR SELLER SUBAGENT FOR SELLER TRANSACTION LICENSEE

When the same Broker is Agent for Seller and Agent for Buyer, Broker is a Dual Agent. All of Broker's licenses are also Dual Agents UNLESS there are separate Designated Agents for Buyer and Seller. If the same Licensee is designated for Seller and Buyer, the Licensee is a Dual Agent.

1. **This Agreement**, dated MARCH 10, 2005

is between

2. **SELLER(S):** SARITA M. SPAUCK DAVID A.
DAWN E. SPAUCK DAVID B.1
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593. **BUYER(S):** DEBBIE C. L. AND AMY MC CALLOUGH
1320 HICKORY ROAD
PENFIELD, PA 15849, called "Buyer."2. **PROPERTY.** Seller hereby agrees to sell and convey to Buyer, who hereby agrees to purchase:

ALL THAT CERTAIN lot or piece of ground with buildings and improvements thereon erected, if any, known as:

MAP# E03-000-013a, DB INST # 2004082151.63 ACRES AND A DRIVE THRU RESTAURANTin the TOWNSHIP of HUSTON County of CEMERICK

Commonwealth of Pennsylvania, Zip Code

MAP# E03-000-013a, DB INST # 2004082153. **TERMS (10-01)**

FIVE

17. **(A) Purchase Price** SEVENTY FIVE THOUSAND U.S. Dollars

18. which will be paid to Seller by Buyer as follows:

19. (1) Cash or check at signing this Agreement: \$ 500.00

20. (2) Cash or check within days of the execution of this Agreement: \$

21. (3) \$

22. (4) \$

23. (5) Cash, cashier's or certified check at time of settlement: \$ 74,500.0024. **TOTAL \$ 75,000.00**25. **(B) Deposits paid on account of purchase price to be held by Broker for Seller, unless otherwise stated here:**26. **(C) Seller's written approval on or before:** MARCH 11, 200527. **(D) Settlement to be on:** APRIL 29, 2005, or before if Buyer and Seller agree.28. **(E) Conveyance from Seller will be by fee simple deed of special warranty unless otherwise stated here:**29. **(F) Payment of transfer taxes will be divided equally between Buyer and Seller unless otherwise stated here:**30. **(G) At time of settlement, the following will be adjusted pro-rata on a daily basis between Buyer and Seller, reimbursing where applicable:**
 taxes (see Notices and Information Regarding Tax Proration); rents; interest on mortgage assumptions; condominium fees, if any; water and/or sewer fees, if any; together with any other licensable municipal service. The charges are to be pro-rated for the period(s) covered:
 Seller will pay up to and including the date of settlement; Buyer will pay for all days following settlement, unless otherwise stated here:31. **(H) Buyer shall reimburse Seller for the actual costs of any remaining heating, cooking or other fuels stored on the Property at the time of settlement, unless otherwise stated here:**4. **FIXTURES & PERSONAL PROPERTY (1-00)**41. **(A) INCLUDED** in this sale and purchase price are all existing items permanently installed in the Property, free of liens, including plumbing, HVAC equipment; lighting fixtures (including chandeliers and ceiling fans); and water treatment systems, unless otherwise stated below.42. **Also included:** ALL ITEMS ON INVENTORY LIST, PLUS TRACTOR OUTSIDE, FOR SALE DS
IN THE APARTMENT APPLIANCES IN THE APARTMENT43. **(B) LEASED items:** ALL ITEMS WITH PEPSI LABELS ARE PROPERTY OF PEPSI CO.
COLLECTOR ITEMS BELONG TO GALTIGER ICE CREAM CO.44. **(C) EXCLUDED** fixtures and items: 1 SMALL FREEZER5. **SPECIAL CLAUSES:**51. **(A) The following are part of this Agreement if checked:**52. 53. 54. **(B) SPECIAL PROVISIONS (IF ANY):**55. **Buyers understand that sellers have equitable title to real estate and have the right to sell the property**56. **PROPERTY NOT APPRAISE FOR \$75,000 OR BETTER**57. **Property and contents are to be sold AS IS, WHERE IS, WITH ALL FAULTS**58. **Seller Initials: 55-DS**59. **Buyer Initials: DMT X AM**

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1001


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6. POSSESSION (5-01)

(A) Possession is to be delivered by deed, keys and:

1. Physical possession to vacant Property free of debris, with all structures broom clean, at day and time of settlement UNLESS otherwise stated here: _____, AND/OR
2. Assignment of existing lease(s), together with any security deposits and interest, at time of settlement, if Property is leased at the execution of this Agreement or unless otherwise specified here: _____

Buyer will acknowledge existing lease(s) by initialing said lease(s) at time of signing this Agreement if Property is leased.

(B) Seller will not enter into any new leases, written extension of existing leases, if any, or additional leases for the Property without written consent of the Buyer.

7. DATES/TIME IS OF THE ESSENCE (5-01)

(A) The said date for settlement and all other dates and times referred to for the performance of any of the obligations of this Agreement are hereby agreed to be of the essence of this Agreement.

(B) For the purposes of this Agreement, number of days will be counted from the date of execution, by excluding the day this Agreement was executed and including the last day of the time period.

(C) The date of settlement is not extended by any other provision of this Agreement and may only be extended by written agreement of the parties.

8. FINANCING CONTINGENCY (5-01)

 WAIVED. This sale is NOT contingent on financing. ELECTED

(A) This sale is contingent upon Buyer obtaining financing as follows:

1. Amount of loan \$ 56,8002. Minimum Term 20 years3. Type of loan CONVENTIONAL LOAN BASED ON ASSETS

4. Buyer agrees to accept the interest rate as may be committed by the lender, not to exceed a maximum interest rate of _____ %.

(B) Within 10 days of the execution of this Agreement, Buyer will make a completed, written application to a responsible lender according to the terms above. The Broker for Buyer, if any, otherwise the Broker for Seller, is authorized to communicate with the lender for the purposes of assisting in the loan process.

(C) 1. Upon receipt of a financing commitment, Buyer will promptly deliver a copy of the commitment to Seller.

2. Financing commitment date MARCH 31, 2005.

Unless otherwise agreed to in writing by Buyer and Seller, if a written commitment is not received by Seller by the above date, all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID. Buyer will be responsible for any premiums for mechanics lien insurance and/or title search, or fee for cancellation of same, if any; AND/OR any premiums for flood insurance and/or fire insurance with extended coverage, insurance binder charges or cancellation fee, if any; AND/OR any appraisal fees and charges paid in advance to lender.

9. ZONING CLASSIFICATION (5-01)

Failure of this Agreement to contain the zoning classification (except in cases where the property (and each parcel thereof, if subdividable) is zoned solely or primarily to permit single-family dwellings) will render this Agreement voidable at the option of the Buyer, and, if voided, any deposits tendered by the Buyer will be returned to the Buyer without any requirement for court action.

Zoning Classification: NONE

10. ZONING CONTINGENCY (5-01)

 WAIVED ELECTED. Within _____ days of the execution of this Agreement by all parties, Buyer will verify that the proposed use of the Property

as _____ is permitted. In the event the proposed use is not permitted, Buyer will, within the time given for verification, notify Seller in writing that the proposed use of the Property is not permitted and Buyer will (check only one):

 Option 1. Within the time for verifying the zoning classification, notify Seller, in writing, of Buyer's decision of proceed with the purchase of the Property or terminate the Agreement. Should Buyer elect to terminate the Agreement all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID. Failure of Buyer to provide written notice of Buyer's decision will constitute a WAIVER of this contingency and Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement. Option 2. Make application for approval (or variance/non-conforming use/conditional use/special exception) from _____ (municipality) to use the Property as _____ (proposed use).

(A) Such application will be made on or before _____.

(B) Buyer will pay for applications, legal fees, engineering and any other cost associated with obtaining approval.

(C) If the municipality requires the application to be signed by the current owner, Seller agrees to do so.

(D) If a final, unappealable approval is not obtained by _____, all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

11. STATUS OF WATER (5-01)

Seller represents that Property is served by:

 Public water On-site water Community Water None

Seller further warrants that the system(s) is/are fully paid for as of the execution date of this Agreement.

12. STATUS OF SEWER (5-01)

Seller represents that Property is served by:

 Public Sewer Community Sewage Disposal System Off-Property Sewage Disposal System Individual On-Lot Sewage Disposal System (See Sewage Notice 1) Individual On-Lot Sewage Disposal System in Proximity to Well (See Sewage Notice 1; see Sewage Notice 4, if applicable) Ten-acre Permit Exemption (See Sewage Notice 2) Holding Tank (See Sewage Notice 3) None (See Sewage Notice 1) None Available (See Sewage Notice 5 or Sewage Notice 6, as applicable) BUYER WILL HAVE A WELL AND SEPTIC INSPECTED 15 DAYS AFTER SETTLEMENTSeller further warrants that the system(s) is/are fully paid for as of the execution date of this Agreement. ACCEPTANCE OF OFFERBuyer Initials: AM AM

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Seller Initials: SS DD

141 13. PROPERTY DEFECTS DISCLOSURE (10-01)

142 (A) Seller represents and warrants that Seller has no knowledge except as noted in this Agreement that: (1) The premises have been con- 141
143 taminated by any substance in any manner which requires remediation; (2) The Property contains wetlands, flood plains, or any other 142
144 environmentally sensitive areas, development of which is limited or precluded by law; (3) The Property contains asbestos, polychlori- 143
145 nated biphenyls, lead-based paint or any other substance, the removal or disposal of which is subject to any law or regulation; and 144
146 (4) Any law has been violated in the handling or disposing of any material or waste or the discharge of any material into the soil, air, 145
147 surface water, or ground water. 146
148 (B) Seller and Buyer acknowledge that any Broker identified in this Agreement: (1) Is a licensed real estate broker; (2) Is not an expert in 147
149 construction, engineering, or environmental matters; and (3) Has not made and will not make any representations or warranties nor con- 148
150 duct investigations of the environmental condition or suitability of the Property or any adjacent property, including but not limited to 149
151 those conditions listed in paragraph 13(A). 150
152 (C) Seller agrees to indemnify and to hold Broker harmless from and against all claims, demands, or liabilities, including attorneys fees and 151
153 court costs, which arise from or are related to the environmental condition or suitability of the Property prior to, during, or after Seller's 152
154 occupation of the Property including without limitation any condition listed in paragraph 13(A). 153
155 (D) The provisions of this Section will survive the performance of this Agreement. 154

156 14. NOTICES AND ASSESSMENTS (5-01)

157 (A) Seller represents as of Seller's execution of this Agreement, that no public improvement, condominium or owner association assessments 156
158 have been made against the Property which remain unpaid and that no notice by any government or public authority has been served 157
159 upon Seller or anyone on Seller's behalf, including notices relating to violations of zoning, housing, building, safety or fire ordinances 158
160 which remain uncorrected, and that Seller knows of no condition that would constitute violation of any such ordinances which remains 159
161 uncorrected, unless otherwise specified here: 160

162 (B) Seller knows of no other potential notices (including violations) and assessments except as follows: 161

163 (C) Any notice of improvements or assessments received on or before the date of Seller's acceptance of this Agreement, unless improve- 162
164 ments consist of sewer or water lines not in use, shall be the responsibility of the Seller; any notices received thereafter shall be the 163
165 responsibility of the Buyer. 164
166 (D) If required by law, Seller will deliver to Buyer, on or before settlement, a certification from the appropriate municipal department or 165
167 departments disclosing notice of any uncorrected violation of zoning, building, safety, or fire ordinances. 166
168 (E) Buyer is advised that access to a public road may require issuance of a highway occupancy permit from the Department of Transportation. 167

169 15. TITLE AND COSTS (1-00)

170 (A) The Property is to be conveyed free and clear of all liens, encumbrances, and easements, EXCEPTING HOWEVER the following: 169
171 existing deed restrictions, historic preservation restrictions or ordinances, building restrictions, ordinances, easements of roads, easements 170
172 visible upon the ground, easements of record, privileges or rights of public service companies, land use restrictions pursuant to property 171
173 enrollment in a preferential tax program, if any; otherwise the title to the above described real estate will be good and marketable and such 172
174 as will be insured by a reputable Title Insurance Company at the regular rates. 173
175 (B) In the event Seller is unable to give a good and marketable title and such as will be insured by a reputable Title Insurance Company at 174
176 the regular rates, as specified in paragraph 15(A), Buyer will have the option of: (1) Taking such title as Seller can give, with no change 175
177 to the selling price; or (2) Being repaid all monies paid by Buyer to Seller on account of purchase price and being reimbursed by Seller 176
178 for any costs incurred by Buyer for those items specified in paragraph 15(C) and in paragraph 15(D) items (1), (2), (3), in which case 177
179 there will be no further liability or obligation on either of the parties hereto and this Agreement will become VOID. 178
180 (C) Any survey or surveys which may be required by the Title Insurance Company or the abstracting attorney, for the preparation of an 179
181 adequate legal description of the Property (or the correction thereof), will be secured and paid for by Seller. However, any survey or 180
182 surveys desired by Buyer or required by the mortgage lender will be secured and paid for by Buyer. 181
183 (D) Buyer will pay for the following: (1) Title search, title insurance and/or mechanics lien insurance or fee for cancellation of same, if any; 182
184 (2) Flood insurance, fire insurance with extended coverage, mine subsidence insurance, and cancellation fees, if any; (3) Appraisal fees 183
185 and charges paid in advance to mortgage lender, if any; (4) Buyer's customary settlement costs and accruals. 184

186 16. COAL NOTICE

187 NOT APPLICABLE 186
188 APPLICABLE. THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHTS OF SUPPORT UNDER- 187
189 NEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL 188
190 RIGHT TO REMOVE ALL SUCH COAL AND IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR 189
191 OTHER STRUCTURE ON OR IN SUCH LAND. (This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P.L. 984.) 190
192 "Buyer acknowledges that he may not be obtaining the right of protection against subsidence resulting from coal mining operations, and 191
193 that the property described herein may be protected from damage due to mine subsidence by a private contract with the owners of the eco- 192
194 nomic interests in the coal. This acknowledgement is made for the purpose of complying with the provisions of Section 14 of the Bituminous 193
195 Mine Subsidence and the Land Conservation Act of April 27, 1966." Buyer agrees to sign the deed from Seller which deed will contain the 194
196 aforesaid provision. 195

197 17. TAX DEFERRED EXCHANGE (10-01)

198 NOT APPLICABLE 197
199 APPLICABLE. In the event Seller wishes to enter into a tax deferred exchange for the Property pursuant to Section 1031 of the Internal 198
200 Revenue Code, Buyer agrees to cooperate with Seller in connection with such exchange, including the execution of such documents as may 200
201 be reasonably necessary to conduct the exchange, provided that there shall be no delay in the agreed-to settlement date, and that any addi- 201
202 tional costs associated with the exchange are paid solely by Seller. Buyer is aware that Seller anticipates assigning its interest in this 202
203 Agreement to a third party under an Exchange Agreement and does hereby consent to such assignment. Buyer shall not be required to ex- 203
204 ecute any note, contract, deed or other document providing any liability which would survive the exchange, nor shall Buyer be obligated to 204
205 take title to any property other than the Property described in this Agreement. Seller shall indemnify and hold harmless Buyer against any 205
206 liability which arises or is claimed to have arisen from any aspect of the exchange transaction. 206

207 18. COMMERCIAL CONDOMINIUM (10-01)

208 NOT APPLICABLE 207
209 APPLICABLE. Buyer acknowledges that the condominium unit to be transferred by the terms of this Agreement is intended for nonresi- 208
210 dential use, and that Buyer may agree to modify or waive the applicability of certain provisions of the Uniform Condominium Act of 210
211 Pennsylvania (68 P.L.C.S. §3101 *et. seq.*). 211

212 19. RECORDING (5-01) This Agreement will not be recorded in the Office of the Recorder of Deeds or in any other office or place of public 212
213 record. If Buyer causes or permits this Agreement to be recorded, Seller may elect to treat such act as a breach of this Agreement. 213214 20. ASSIGNMENT (3-85) This Agreement will be binding upon the parties, their respective heirs, personal representatives, guardians and suc- 214
215 cessors, and, to the extent assignable, on the assigns of the parties hereto. It is expressly understood, however, that the Buyer will not transfer or 215
216 assign this Agreement without the written consent of the Seller. 216

222 21. DEPOSIT AND RECOVERY FUND (1-00)

(A) Deposits paid by Buyer within 30 days of settlement will be by cash, cashier's or certified check. Deposits, regardless of the form of payment and the person designated as payee, will be paid in U.S. Dollars to Broker or party identified in paragraph 3(B), who will retain them in an escrow account until consummation or termination of this Agreement in conformity with all applicable laws and regulations. Any uncashed check tendered as deposit may be held pending the acceptance of this offer.

(B) In the event of a dispute over entitlement to deposit monies, a broker holding the deposit is required by the Rules and Regulations of the State Real Estate Commission (49 Pa. Code §35.327) to retain the monies in escrow until the dispute is resolved. In the event of litigation for the return of deposit monies, a broker will distribute the monies as directed by a final order of court or the written agreement of the parties. Buyer and Seller agree that, in the event any broker or affiliated licensee is joined in litigation for the return of deposit monies, the attorneys fees and costs of the broker(s) and licensee(s) will be paid by the party joining them.

(C) A Real Estate Recovery Fund exists to reimburse any persons who have obtained a final civil judgment against a Pennsylvania real estate licensee owing to fraud, misrepresentation, or deceit in a real estate transaction and who has been unable to collect the judgment after exhausting all legal and equitable remedies. For complete details about the Fund, call (717) 783-3658, or (800) 822-2113 (within Pennsylvania) and (717) 783-4854 (outside Pennsylvania).

223 22. MAINTENANCE AND RISK OF LOSS (5-01)

(A) Seller will maintain the Property, and any personal property specified herein, in its present condition, normal wear and tear excepted.

(B) Seller will promptly notify the Buyer if, at any time prior to the time of settlement, all or any portion of the Property is destroyed, or damaged as a result of any cause whatsoever.

(C) Seller will bear risk of loss from fire or other causes until time of settlement. In the event that damage to any property included in this sale is not repaired or replaced prior to settlement, Buyer will have the option of rescinding this Agreement and receiving all monies paid on account of or accepting the Property in its then condition together with the proceeds of any insurance recovery obtained by Seller. Buyer is hereby notified that he/she may insure his/her equitable interest in this Property as of the time this Agreement is accepted.

224 23. CONDEMNATION (5-01)

Seller has no knowledge of any current or pending condemnation or eminent domain proceedings that would affect the Property. If any portion of the Property should be subject to condemnation or eminent domain proceedings after the signing of this Agreement, Seller shall immediately advise Buyer, in writing, of such proceedings. Buyer shall have the option to terminate this Agreement by providing written notice to Seller within fifteen (15) days after Buyer learns of the filing of such proceedings, in which case Seller shall return to Buyer all money paid on account of the purchase price by Buyer. Buyer's failure to provide notice of termination within the time stated will constitute a WAIVER of this contingency and all other terms of this Agreement remain in full force and effect.

225 24. WAIVER OF CONTINGENCIES (1-00)

In the event this Agreement is contingent on Buyer's right to inspect and/or repair the Property, Buyer's failure to exercise any of Buyer's options specified in the contingency provision(s) within the time limits will constitute a WAIVER of that contingency and Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

226 25. RELEASE (1-00)

Buyer hereby releases, quit claims and forever discharges SELLER, ALL BROKERS, their LICENSEES, EMPLOYEES, and any OFFICER or PARTNER of any one of them and any other PERSON, FIRM, or CORPORATION who may be liable by

or through them, from any and all claims, losses or demands, including, but not limited to, personal injuries and property damage and

all of the consequences thereof, whether now known or not, which may arise from the presence of termites or other wood-boring insects,

radon, lead-based paint hazards, environmental hazards, any defects in the individual on-lot sewage disposal system or deficiencies in

the on-site water service system, or any defects or conditions on the Property. This release will survive settlement.

227 26. REPRESENTATIONS (5-01)

(A) Buyer understands that any representations, claims, advertising, promotional activities, brochures or plans of any kind made by Seller, Brokers, their licensees, employees, officers, or partners are not a part of this Agreement unless expressly incorporated or stated in this Agreement. It is further understood that this Agreement contains the whole agreement between Seller and Buyer and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise of any kind whatsoever concerning this sale. Furthermore, this Agreement will not be altered, amended, changed or modified except in writing executed by the parties.

(B) It is understood that Buyer has inspected the Property before signing this Agreement (including fixtures and any personal property specifically scheduled herein), or has waived the right to do so, and has agreed to purchase it in its present condition unless otherwise stated in this Agreement. Buyer acknowledges that Brokers, their licensees, employees, officers or partners have not made an independent examination or determination of the structural soundness of the Property, the age or condition of the components, environmental conditions, the permitted uses, or of conditions existing in the locale where the Property is situated; nor have they made a mechanical inspection of any of the systems contained therein.

(C) Broker(s) may perform services to assist unrepresented parties in complying with the terms of this Agreement.

(D) The headings, captions, and line numbers in this Agreement are meant only to make it easier to find the paragraphs.

228 27. DEFAULT (1-00)

Should Buyer:

(A) Fail to make any additional payments as specified in paragraph 3; OR

(B) Furnish false or incomplete information to Seller, Broker for Seller, Broker for Buyer, or the lender, if any, concerning the Buyer's legal or financial status, or fail to cooperate in the processing of the loan application, which acts would result in the failure to obtain the approval of a loan commitment; OR

(C) Violate or fail to fulfill and perform any other terms or conditions of this Agreement; then in such case, Seller has the option of retaining all sums paid by Buyer, including the deposit monies, 1) on account of purchase price, or 2) as monies to be applied to Seller's damages, or 3) as liquidated damages for such breach, as Seller may elect, unless otherwise checked below.

Seller is limited to retaining sums paid by Buyer, including deposit monies, as liquidated damages. If Seller elects to retain all sums paid by Buyer, including deposit monies, as liquidated damages, Buyer and Seller will be released from further liability or obligation and this Agreement will be VOID.

229 28. CERTIFICATION OF NON-FOREIGN INTEREST (10-01)

Seller IS a foreign person, foreign corporation, foreign partnership, foreign trust, or foreign estate subject to Section 1445 of the Internal Revenue Code, which provides that a transferee (Buyer) of a U.S. real property interest must withhold tax if the transferor (Seller) is a foreign person.

Seller is NOT a foreign person, foreign corporation, foreign partnership, foreign trust, or a foreign estate as defined by the Internal Revenue Code, or is otherwise not subject to the tax withholding requirements of Section 1445 of the Internal Revenue Code. To inform Buyer that the withholding of tax is not required upon the sale/disposition of the Property by Seller, Seller hereby agrees to furnish Buyer, at or before closing, with the following:

An affidavit stating, under penalty of perjury, the Seller's U.S. taxpayer identification number and that the Seller is not a foreign person.

A "qualifying statement," as defined by statute, that tax withholding is not required by Buyer.

Other _____

Seller understands that any documentation provided under this provision may be disclosed to the Internal Revenue Service by Buyer, and that any false statements contained therein could result in punishment by fine, imprisonment, or both.

Buyer Initials: DM + AM

104 29. **ARBITRATION OF DISPUTES (1-00)** Buyer and Seller agree to arbitrate any dispute between them that cannot be amicably resolved. After
 105 written demand for arbitration by either Buyer or Seller, each party will select a competent and disinterested arbitrator. The two so selected will
 106 select a third. If selection of the third arbitrator cannot be agreed upon within 30 days, either party may request that selection be made by a
 107 judge of a court of record in the county in which arbitration is pending. Each party will pay its chosen arbitrator, and bear equally expenses for
 108 the third and all other expenses of arbitration. Arbitration will be conducted in accordance with the provisions of Pennsylvania Common Law
 109 Arbitration 42 Pa. C.S.A. §7341 et. seq. This agreement to arbitrate disputes arising from this Agreement will survive settlement.

110 30. **BROKER INDEMNIFICATION (10-01)**
 111 Buyer and Seller represent that the only Brokers involved in this transaction are: DISCLOSED DUE TO AGENCY

112 and that the transaction has not been brought about through the efforts of anyone other than said Brokers. It is agreed that if any claims for
 113 brokerage commissions or fees are ever made against Buyer or Seller in connection with this transaction, each party shall pay its own legal
 114 fees and costs in connection with such claims. It is further agreed that Buyer and Seller agree to indemnify and hold harmless each other and
 115 the above-listed Brokers from and against the non-performance of this Agreement by either party, and from any claim of loss or claim for
 116 brokerage commissions, including all legal fees and costs, that may be made by any person or entity. This paragraph shall survive settlement.

117 31. **GOVERNING LAW (10-01)**

118 This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

119 32. **NOTICE BEFORE SIGNING (5-01)**

120 Buyer and Seller acknowledge that Brokers have advised them to consult and retain experts concerning the legal and tax effects of this
 121 Agreement and the completion of the sale, as well as the condition and/or legality of the Property, including, but not limited to, the Property's
 122 improvements, equipment, soil, tenancies, title and environmental aspects. Return by facsimile transmission (FAX) of this Agreement, and
 123 all addenda, bearing the signatures of all parties, constitutes acceptance of this Agreement.

124 33. **NOTICE**

125 All notice requirements under the provisions of this Agreement or by application of statutory or common law will be addressed to the appropriate party, at the addresses listed below via any means of delivery as mutually agreed upon by the parties and stated here:

126 If to Seller: _____

127 With a copy to: _____

128 If to Buyer: _____

129 With a copy to: _____

130 Buyer has received the Consumer Notice as adopted by the State Real Estate Commission at 49 Pa. Code §35.336.

131 Buyer has received a statement of Buyer's estimated closing costs before signing this Agreement.

132 Buyer has received the Deposit Money Notice (for cooperative sales when Broker for Seller is holding deposit money) before
 133 signing this Agreement.

134 Buyer acknowledges receiving a copy of this Agreement at the time of signing.

135 **WITNESS/ATTEST** Shelly Haytor **BUYER** Debra M. McCullough **DATE** _____
 136 **BUYER(S) NAME** _____ **SS/TI #** _____

137 Mailing Address _____

138 Phone #s _____ **FAX #** _____ **E-Mail** _____

139 **WITNESS/ATTEST** Shelly Haytor **BUYER** Debra M. McCullough **DATE** _____
 140 **BUYER(S) NAME** _____ **SS/TI #** _____

141 Mailing Address _____

142 Phone #s _____ **FAX #** _____ **E-Mail** _____

143 **WITNESS/ATTEST** _____ **BUYER** _____ **DATE** _____
 144 **BUYER(S) NAME** _____ **SS/TI #** _____

145 Mailing Address _____

146 Phone #s _____ **FAX #** _____ **E-Mail** _____

147 Seller has received the Consumer Notice as adopted by the State Real Estate Commission at 49 Pa. Code §35.336.
 148 Seller has received a statement of Seller's estimated closing costs before signing this Agreement.

149 **VOLUNTARY TRANSFER OF CORPORATE ASSETS** (if applicable): The undersigned acknowledges that he/she is authorized by the Board of Directors to sign this Agreement on behalf of the Seller corporation and that this sale does not constitute a
 150 sale, lease, or exchange of all or substantially all the property and assets of the corporation, such as would require the authorization
 151 or consent of the shareholders pursuant to 15 P.S. §1311.

152 **SELLER'S ACCEPTANCE:** Seller hereby accepts the above contract this (date) _____

153 **WITNESS/ATTEST** _____ **SELLER** Debra M. McCullough **DATE** _____
 154 **SELLER(S) NAME** _____ **SS/TI #** _____

155 Mailing Address _____

156 Phone #s _____ **FAX #** _____ **E-Mail** _____

157 **WITNESS/ATTEST** _____ **SELLER** Debra M. McCullough **DATE** _____
 158 **SELLER(S) NAME** _____ **SS/TI #** _____

159 Mailing Address _____

160 Phone #s _____ **FAX #** _____ **E-Mail** _____

161 **WITNESS/ATTEST** _____ **SELLER** _____ **DATE** _____
 162 **SELLER(S) NAME** _____ **SS/TI #** _____

163 Mailing Address _____

164 Phone #s _____ **FAX #** _____ **E-Mail** _____

ADDENDUM/ENDORSEMENT TO AGREEMENT OF SALE

Form 102-6L

RE: PROPERTY Green Ridge Drive-In
SELLERS: Shiela M. Spuck and Dawn E. Spuck
BUYERS: Delbert C. L. McCullough and Amy McCullough
DATE OF AGREEMENT March 10 19 2005

The Contract dated March 10, 2005 is amended to set forth the allocation of the purchase price as follows:

Real Estate	\$62,000.00
Equipment	10,000.00
Goodwill	<u>3,000.00</u>
Total	\$75,000.00

All other terms and conditions of the said agreement shall remain unchanged and in full force and effect.

WITNESS	BUYER	DATE
WITNESS	BUYER	DATE
WITNESS	BUYER	DATE
WITNESS	SELLER <i>Mutha McGauley</i>	DATE
WITNESS	SELLER	DATE
WITNESS	SELLER	DATE

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

DELBERT McCULLOUGH and AMY
McCULLOUGH,

Plaintiffs

NO. 2005-1412-CD

vs.

SHEILA M. SPUCK and DAWN E.
SPUCK,

Defendants

Type of Case: Civil

Type of Pleading: Reply to New
Matter and Counterclaim

Filed on behalf of: Plaintiffs

Counsel of Record for this Party:
David P. King, Esquire
23 Beaver Drive
P. O. Box 1016
DuBois, PA 15801
(814) 371-3760

Supreme Court No. 22980

FILED ^{cc}
M 19 27 2005 Amy King
JAN 16 2005 

William A. Shaw
Prothonotary/Clerk of Courts

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

REPLY

AND NOW, come the Plaintiffs, DELBERT McCULLOUGH and AMY McCULLOUGH, through their Attorney, David P. King, and Reply to the Defendants' New Matter and Counterclaim as follows:

REPLY TO NEW MATTER

27. The Plaintiffs deny the averments in Defendants' Paragraph 27 for the reasons as set forth in their Complaint, this Reply and also specifically deny the allegations in Defendants' Answer.

28. The averments in Paragraph 28 amount to a conclusion of law requiring no responsive pleading.

29. The septic system was inspected, but all other allegations in Defendants' Paragraph 29 are denied.

30. Defendants' Paragraph 30 is specifically denied as Plaintiffs were not so advised by James E. Wischuck or anyone else as set forth by the Defendants.

31. The Plaintiffs also deny Paragraph 31 of Defendants' New Matter, in that they did not acknowledge any such thing as represented by the Defendants.

32. All of the averments of Defendants' Paragraph 32 are denied as stated.

33. Defendants' Paragraph 33 is also denied in that no such trucks were

parked to unload propane or anything else, at least as to where Defendants imply.

34. Defendants' Paragraph 34 is also denied in that the well did not collapse because of delivery trucks, and the drilling of a new well was not precipitated by a collapse in the well per se, but because it was inadequate as set forth in Plaintiffs' Complaint.

35. Plaintiffs specifically deny that there was any removal by them of metal posts as described by the Defendants, nor were vehicles allowed to park upon the said well.

36. The averments in Defendants' Paragraph 36 are specifically denied for all the reasons as set forth above and in their Complaint.

REPLY TO COUNTERCLAIM

37. Plaintiffs incorporate all of their Replies as well as their averments in their Complaint, as well as the Replies hereafter to specifically deny Defendants' Paragraph 37.

38. Admitted.

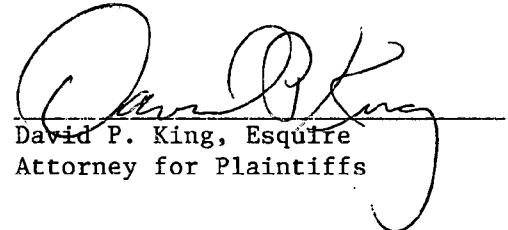
39. Admitted.

40. The averments in Paragraph 40 are admitted to the extent that the Defendants have been paid \$68,393.30, but denied that any balance is due and owing to them for all of the reasons as set forth in their Complaint, and their Replies herein and above.

41. The Plaintiffs have not failed or refused to pay any balance due to the Defendants. In fact, the Defendants are indebted to the Plaintiffs for all the reasons as set forth in their Complaint and their Replies herein.

42. The Defendants did file before District Magistrate Ford, although the costs involved are at this time unknown to the Plaintiffs. Nevertheless, Plaintiffs did not appear before the Magistrate, as the juridical amount of their Complaint at this term and number exceeded the Magistrate's jurisdiction, and for judicial economy, their Complaint was filed directly in the Court of Common Pleas of Clearfield County.

WHEREFORE, the Plaintiffs respectfully request this Honorable Court to grant judgment in their favor and against the Defendants in the amount as originally prayed for in their Complaint totaling \$10,932.80 for compensatory damages, and for whatever amounts are calculated thereon thereafter as prayed for, and further to grant them judgment in an amount in excess of \$20,000.00 as punitive, and exemplary in nature, and they will so ever pray.



David P. King, Esquire
Attorney for Plaintiffs

We verify that the statements made in this Reply to New Matter and Counterclaim are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Date: January 12, 2006

Delbert McCullough
Delbert McCullough
Plaintiff

Amy McCullough
Amy McCullough
Plaintiff

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

DELBERT McCULLOUGH and AMY
McCULLOUGH,
Plaintiffs,
vs.
SHIELA M. SPUCK and DAWN E.
SPUCK,
Defendants.

) NO. 05 - 1412- C.D.
)
)
Type of Case: CIVIL ACTION
)
)
Type of Pleading:
)
MOTION TO WITHDRAW
)
)
Filed on Behalf of:
)
DEFENDANTS
)
)
Counsel of Record:
)
BENJAMIN S. BLAKLEY, III, ESQ.
)
Supreme Court no. 26331
)
)
BLAKLEY & JONES
)
90 Beaver Drive, Box 6
)
Du Bois, Pa 15801
)
(814) 371-2730

FILED

JUN 20 2006

0/11:40/06
William A. Shaw
Prothonotary/Clerk of Courts

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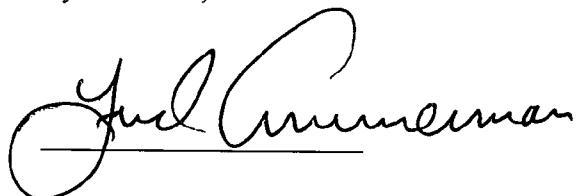
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DELBERT McCULLOUGH and AMY) 05 - 1412- C.D.
McCULLOUGH,)
)
Plaintiffs,)
)
vs.)
)
SHIELA M. SPUCK and DAWN E.)
SPUCK,)
)
Defendants)

ORDER

AND NOW, this 21 day of June, 2006, in consideration of the within Motion to Withdraw, it is the ORDER of this Court that the same is hereby granted, and that the Movant, **BENJAMIN S. BLAKLEY, III**, is hereby granted leave to withdraw his appearance for Defendants in this action.

By the Court,



FILED
014:0081 JUN 21 2006
3cc Amy Blakley
3cc Amy King
1cc S. Spuck
443 Parish Rd.
DuBois, PA 15801

William A. Shaw
Prothonotary/Clerk of Courts

1cc S. Spuck
2004 Ridge Top Dr.
Round Rock, TX
78664
GR

FILED DATE: 6/21/06

JUN 21 2006 You are responsible for serving all appropriate parties.

William A. Shaw The Prothonotary's office has provided service to the following parties:
Prothonotary/Clerk of Courts Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

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

DELBERT McCULLOUGH and AMY) 05 - 1412- C.D.
McCULLOUGH,)
)
Plaintiffs,)
)
vs.)
)
SHIELA M. SPUCK and DAWN E.)
SPUCK,)
)
Defendants)

MOTION TO WITHDRAW

AND NOW comes Movant, **BENJAMIN S. BLAKLEY, III**, who moves this Honorable Court to withdraw as counsel for Defendants, **SHIELA M. SPUCK and DAWN E. SPUCK**, in the above captioned matter, and in support thereof the following is averred:

1. Defendants, **SHIELA M. SPUCK and DAWN E. SPUCK**, and her attorney, **BENJAMIN S. BLAKLEY, III**, entered into a Fee Agreement, whereby Defendants agreed to pay a specified sum of Money for legal representation and court costs.
2. **BENJAMIN S. BLAKLEY, III**, and the law firm of **BLAKLEY & JONES** conducted ongoing settlement negotiations and filed documents on behalf of Defendants.
3. Despite a written understanding requiring payment by Defendants for your Movant's services on an hourly fee basis, and despite repeated written and oral demands, Movant has not received payment for fees and costs advanced on behalf of Defendants.

4. Defendants have been notified of their failure to fulfill their obligation to Movant and have been given written warnings that Movant will withdraw as counsel unless Defendant's obligations under the agreement are timely.

5. Defendants have indicated to Movant on at least two (2) prior occasions that payment has been or will be sent; however, said payment has not been received by Movant.

6. Continued representation of Defendants without payment of Movant's fees and costs, or the prospect of such payments, has resulted and will further result in an unreasonable financial burden on Movant, and good cause exists therefore under Rule 1.16(b)(5) of the Pennsylvania Rules of Professional Conduct for Movant's withdrawal.

7. Good cause exists under Rule 1.16(b)(4) of the Pennsylvania Rules of Professional Conduct for Movant's withdrawal, insofar as Defendants have failed to fulfill their obligation to Movant.

WHEREFORE, Movant respectfully requests that this Court grant Movant leave to withdraw his appearance for Defendants in this action, as it appears that the clients cannot abide by the terms of the Fee Agreement governing representation.

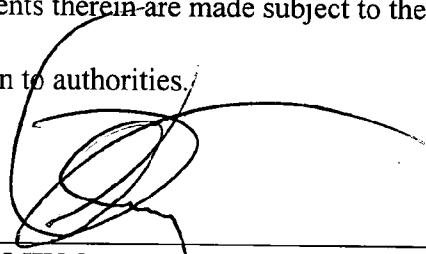
Respectfully Submitted,

BLAKLEY & JONES

Benjamin S. Blakley, III

VERIFICATION

I, **BENJAMIN S. BLAKLEY, III**, hereby verify that the statements made in the foregoing Motion to Withdraw as Counsel are true and correct to the best of my knowledge, information, and belief. I understand that the statements therein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



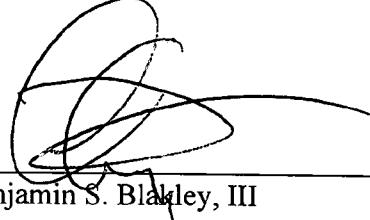
BENJAMIN S. BLAKLEY, III

Dated: 6/19/06

CERTIFICATE OF SERVICE

This will certify that the undersigned served a copy of the foregoing Motion to Withdraw in the above-captioned matter on the following parties at the addresses shown below by first-class U.S. Mail on the 20th day of June, 2006:

David P. King, Esquire
23 Beaver Drive
DuBois PA 15801



Benjamin S. Blakley, III

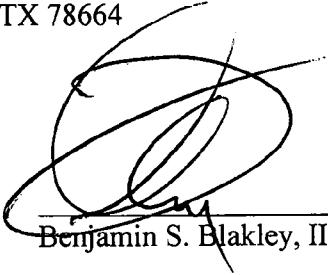
CERTIFICATE OF SERVICE

This will certify that the undersigned served a copy of the foregoing Motion to Withdraw in the above-captioned matter on the following parties at the addresses shown below by first-class U.S. Mail on the 21st day of June, 2006:

David P. King, Esquire
23 Beaver Drive
DuBois PA 15801

Ms. Sheila Spuck
443 Parish Road
DuBois PA 15801

Ms. Dawn E. Spuck
2004 Ridge Top Drive
Round Rock TX 78664



Benjamin S. Blakley, III

FILED

DEC 24 2008

11-001-00000
William A. Shaw
Prothonotary/Clerk of Courts
S/Court to Attn

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

DELBERT McCULLOUGH and AMY
McCULLOUGH,) NO. 05 - 1412- C.D.
Plaintiffs,)
vs.) Type of Case: CIVIL ACTION
SHIELA M. SPUCK and DAWN E.)
SPUCK,) Type of Pleading: PRAECIPE TO SETTLE,
Defendants.) DISCONTINUE AND END
) Filed on Behalf of:
) DEFENDANTS
) Counsel of Record:
) BENJAMIN S. BLAKLEY, III
) Supreme Court no. 26331
)
) BLAKLEY & JONES
) 90 Beaver Drive, Box 6
) DuBois, Pa 15801
) (814) 371-2730

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

DELBERT McCULLOUGH and AMY) NO. 05 - 1412- C.D.
McCULLOUGH,)
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Plaintiffs,)
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SPUCK,)
)
Defendants)

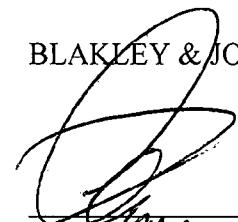
PRAECIPE TO SETTLE, DISCONTINUE AND END

TO: WILLIAM A. SHAW, PROTHONOTARY

Please mark the above matter as settled, discontinued and ended.

Respectfully submitted,

BLAKLEY & JONES



Benjamin S. Blakley, III
Attorney for Defendants

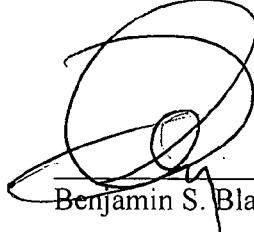
CERTIFICATE OF SERVICE

This will certify that the undersigned served a copy of the foregoing Praeclipe to Settle, Discontinue and End in the above-captioned matter on the following parties at the addresses shown below by first-class U.S. Mail on the 23rd day of December, 2008:

David P. King, Esquire
23 Beaver Drive
DuBois PA 15801

Ms. Sheila Spuck
443 Parish Road
DuBois PA 15801

Ms. Dawn E. Spuck
2004 Ridge Top Drive
Round Rock TX 78664



Benjamin S. Blakley, III

FILED
DEC 24 2008
William A. Shaw
Prothonotary/Clerk of Courts