

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

LAUREN E. KIM and JOHN J. AHN
Plaintiffs

Vs.

J.W. RICE CONSTRUCTION, INC.
Defendants

No. 2005-1538-CD

Type of Pleading:

**PRAECIPE FOR
DISCONTINUANCE**

Filed on Behalf of:
PLAINTIFF

Counsel of Record for This Party:

Jeffrey S. DuBois, Esquire
Supreme Court No. 62074
210 McCracken Run Road
DuBois, PA 15801
(814) 375-5598

FILED

0 11:34am GK

APR 14 2008

3cc Amy

William A. Shaw
Prothonotary/Clerk of Courts

OK

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

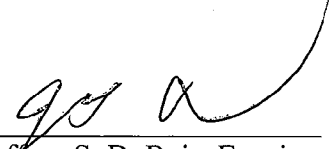
LAUREN E. KIM and JOHN J. AHN	:	No. 2005-1538-CD
Plaintiffs	:	
	:	
Vs.	:	
	:	
J.W. RICE CONSTRUCTION, INC.	:	
Defendants	:	

PRAECIPE FOR DISCONTINUANCE

TO THE PROTHONOTARY:

Please discontinue this case on behalf of LAUREN E. KIM and JOHN J. AHN in
the above captioned matter as it has been settled.

Respectfully submitted,



Jeffrey S. DuBois, Esquire
Attorney for Plaintiff


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

LAUREN E. KIM and JOHN J. AHN	:	No. 2005-1538-CD
Plaintiffs	:	
	:	
Vs.	:	
	:	
J.W. RICE CONSTRUCTION, INC.	:	
Defendants	:	

CERTIFICATE OF SERVICE

I do hereby certify that on the 14th day of April, 2008, I served a true and correct copy of the within Plaintiff's Praeipe for Discontinuance by first class mail, postage prepaid, on the following:

Christopher E. Mohny, Esquire
25 East Park Avenue, Suite 6
DuBois, PA 15801



Jeffrey S. DuBois

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Lauren E. Kim
John J. Ahn

Vs.
J.W. Rice Construction, Inc.

No. 2005-01538-CD

CERTIFICATE OF DISCONTINUATION

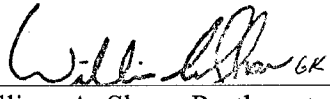
Commonwealth of PA
County of Clearfield

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 April 15, 2008, marked:

Discontinued

Record costs have been paid in full by: \$85.00 by Christopher E. Mohney, Esquire; \$20.00 by Lauren E. Kim, Plaintiff; and \$20.00 by Jeffrey S. DuBois, Esquire .

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 15th day of April A.D. 2008.



William A. Shaw, Prothonotary

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

LAUREN KIM and JOHN AHN,
Plaintiff

Vs.

J.W. RICE CONSTRUCTION, INC.,
Defendant

No. 05-1538-CD

Type of Pleading:

Preacipe for Entry of Appearance

Filed on behalf of:
PLAINTIFF

Counsel of Record for This Party:

Jeffrey S. DuBois, Esquire
Supreme Court No. 62074
190 West Park Avenue, Suite #5
DuBois, PA 15801
(814) 375-5598

FILED 1ccAhy
9/11/07
JAN 08 2007
Copy to CIA
UM

William A. Shaw
Prothonotary/Clerk of Courts

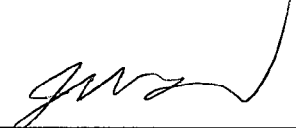
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

LAUREN KIM and JOHN AHN,	:	No. 05-1538-CD
Plaintiff	:	
	:	
Vs.	:	
	:	
	:	
J.W. RICE CONSTRUCTION, INC.,	:	
Defendant	:	

PREACIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter my appearance on behalf of the Plaintiff John Ahn in the above captioned matter.



Jeffrey S. DuBois, Esquire
190 West Park Avenue, Suite #5
DuBois, PA 15801

CA

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

LAUREN E. KIM and JOHN J. AHN,	:	NO. 2005-1538-C.D.
	:	
Plaintiffs,	:	Type of Case: CIVIL
	:	
vs.	:	Type of Pleading: CONSENT MOTION TO
	:	JOIN ADDITIONAL DEFENDANTS
J. W. RICE CONSTRUCTION, INC.,	:	
	:	Filed on Behalf of: DEFENDANTS
Defendants.	:	
	:	Counsel of Record:
	:	CHRISTOPHER E. MOHNEY, ESQUIRE
	:	
	:	Supreme Court No.: 63494
	:	
	:	25 EAST PARK AVENUE, SUITE 6
	:	DUBOIS, PA 15801
	:	(814) 375-1044
	:	

FILED *no cc*
m/10:48/61
FEB 22 2007
William A. Shaw
Prothonotary/Clerk of Courts
(GK)

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

LAUREN E. KIM and JOHN J. AHN,

Plaintiffs,

vs.

J. W. RICE CONSTRUCTION, INC.,

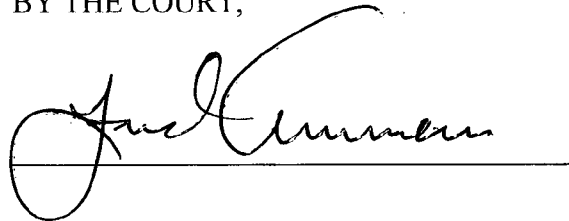
Defendants.

NO. 2005-1538-C.D.

CONSENT ORDER

AND NOW, this 22 day of Feb, 2007, upon consideration of the foregoing Consent Motion to Join Additional Defendants, it is hereby **ORDERED AND DECREED** that said Motion is granted and that Defendant J. W. Rice Construction, Inc. shall have twenty (20) days from notice of the entry of this Order within which to file a Complaint to join John J. Garner and Helen U. Garner as Additional Defendants. This Order is without prejudice to the right of Additional Defendants John J. Garner and Helen U. Garner to timely object to this joinder.

BY THE COURT,



FILED ICC Atty's:
9/2:40cm Mohney
FEB 23 2007 Du Bois
(CR)

William A. Shaw
Prothonotary/Clerk of Courts

2-23-2007

____ You are responsible for serving all appropriate parties.

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

____ Plaintiff(s) ☒ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ☒ Defendant(s) Attorney

____ Special Instructions:

FILED

FEB 23 2007

William A. Shaw
Prothonotary/Clerk of Courts

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

LAUREN E. KIM and JOHN J. AHN,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	NO. 2005-1538-C.D.
	:	
J. W. RICE CONSTRUCTION, INC.,	:	
	:	
Defendants.	:	
	:	

CONSENT MOTION TO JOIN ADDITIONAL DEFENDANTS

AND NOW, comes Defendant, *J. W. RICE CONSTRUCTION, INC.*, by its attorney, **CHRISTOPHER E. MOHNEY, ESQUIRE**, and Plaintiffs *LAUREN E. KIM and JOHN J. AHN*, by and through their attorney, **JEFFREY S. DUBOIS, ESQUIRE**, and files the following Consent Motion to Join Additional Defendants:

1. Plaintiff Lauren E. Kim initiated this action by filing a Complaint on October 25, 2005 to the above-captioned case number.
2. Plaintiff filed an Amended Complaint.
3. Defendant filed Preliminary Objections, which this Court granted in part, and denied in part.
4. By agreement of the parties, pursuant to PA. R.C.P. 2253, the parties agree and consent to Defendant J. W. Rice Construction, Inc.'s joinder of additional defendants John P. Garner and Helen U. Garner.

5. The undersigned consent to this Motion, and by said consenting certify that they are authorized to consent to the joinder of additional defendants by their respective clients, and respectfully request that the Court enter the attached Order.

WHEREFORE, the parties, by and through their counsel, respectfully request that the Court enter the attached Order.

Respectfully submitted,

LAUREN E. KIM and JOHN J. AHN, Plaintiffs

By: 

JEFFREY S. DUBOIS, ESQUIRE,
Attorney for Plaintiffs

J. W. RICE CONSTRUCTION, INC.

By: 

Christopher E. Mohnhey, Esquire
Attorney for Defendant

FILED

FEB 22 2007

William A. Shaw
Prothonotary/Clerk of Courts

6A
FILED *Atty DuBois*
018:57301
OCT 31 2007 *20.00*
William A. Shaw
Prothonotary/Clerk of Courts *2cc Atty*
(6K)

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CIVIL TRIAL LISTING

CERTIFICATE OF READINESS (To be executed by Trial Counsel Only)	TO THE PROTHONOTARY DATE PRESENTED
CASE NUMBER 2005-1538 Date Complaint filed: 10-25-2005	TYPE TRIAL REQUESTED () Jury () Non-jury (X) Arbitration ESTIMATED TRIAL TIME ____ 1 ____ DAYS

PLAINTIFF(S)

LAUREN E. KIM and JOHN J. AHN ()

DEFENDANT(S)

Check Block
if a Minor

J.W. RICE CONSTRUCTION, INC. () is a Party

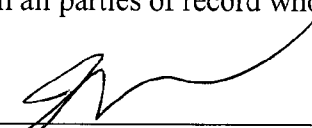
ADDITIONAL DEFENDANT(S)

to the Case

()	
JURY DEMAND FILED BY:	DATE JURY DEMAND FILED:
AMOUNT AT ISSUE CONSOLIDATION	DATE CONSOLIDATION ORDERED
\$6,697.69 () Yes () No	

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

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


Signature of Trial Counsel **Jeffrey S. DuBois**

COUNSEL WHO WILL ACTUALLY TRY THE CASE	
FOR THE PLAINTIFF Jeffrey S. DuBois, Esquire	TELEPHONE NO. 814-375-5598
FOR THE DEFENDANT Christopher E. Mohny, Esquire	TELEPHONE NO. 814-375-1044
FOR ADDITIONAL DEFENDANT	TELEPHONE NO.

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

LAUREN E. KIM and JOHN J. AHN :
 :
vs. : No. 05-1538-CD
 :
J.W. RICE CONSTRUCTION, INC. :

ORDER

NOW, this 7th day of January, 2008, it is the ORDER of the Court that
the above-captioned matter is scheduled for Arbitration on **Thursday, January 31, 2008 at**
9:00 A.M. The following have been appointed as Arbitrators:

Chris A. Pentz, Esquire, Chairman


Ronald L. Collins, Esquire

Kimberly M. Kubista, Esquire

Pursuant to Local Rule 1306A, you must submit your Pre-Trial Statement seven
(7) days prior to the scheduled Arbitration. **The original should be forwarded to the Court**
Administrator's Office and copies to opposing counsel and each member of the Board of
Arbitrators. For your convenience, a Pre-Trial (Arbitration) Memorandum Instruction Form
in enclosed as well as a copy of said Local Rule of Court.

Please report to Hearing Room No. 3, 2nd Floor, Clearfield County Courthouse,
Clearfield, PA.

BY THE COURT:


FREDRIC J. HAMMERMAN
President Judge

FILED

012:4630
JAN 07 2008

William A. Shaw
Prothonotary/Clerk of Courts

(60)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

Lauren E. Kim and John J. Ahn
vs.
J.W. Rice Construction, Inc.

No. 2005-01538-CD

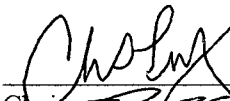
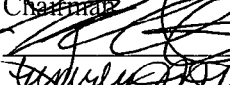
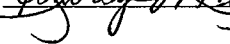
OATH OR AFFIRMATION OF ARBITRATORS

Now, this 31st day of January, 2008, we the undersigned, having been appointed arbitrators in the above case do hereby swear, or affirm, that we will hear the evidence and allegations of the parties and justly and equitably try all matters in variance submitted to us, determine the matters in controversy, make an award, and transmit the same to the Prothonotary within twenty (20) days of the date of hearing of the same.

Chris A. Pentz, Esq.

Ronald L. Collins, Esq.

Kimberly M. Kubista, Esq.


Chairman



Sworn to and subscribed before me this
January 31, 2008



Prothonotary

FILED
01/31/2008
JAN 31 2008



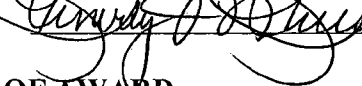
William A. Shaw
Prothonotary/Clerk of Courts

Notice to Attys: DuBois
Mehney

AWARD OF ARBITRATORS

Now, this 31 day of Jan, 2008, we the undersigned arbitrators appointed in this case, after being duly sworn, and having heard the evidence and allegations of the parties, do award and find as follows: for plaintiffs in the amount of

\$ 6697.69 plus costs.


Chairman



(Continue if needed on reverse.)

ENTRY OF AWARD

Now, this 31ST day of January, 2008, I hereby certify that the above award was entered of record this date in the proper dockets and notice by mail of the return and entry of said award duly given to the parties or their attorneys.

WITNESS MY HAND AND THE SEAL OF THE COURT



Prothonotary

By _____

Lauren E. Kim
John J. Ahn

: IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY

Vs.

: No. 2005-01538-CD

J.W. Rice Construction, Inc.

COPY

NOTICE OF AWARD

TO: JEFFREY S. DUBOIS, ESQ.

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on January 31, 2008, and have awarded:

For Plaintiffs in the amount of \$6,697.69 plus costs

William A. Shaw

Prothonotary

By 

January 31, 2008

Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

Lauren E. Kim
John J. Ahn

: IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY

Vs.

: No. 2005-01538-CD

J.W. Rice Construction, Inc.

COPY

NOTICE OF AWARD

TO: CHRISTOPHER E. MOHNEY, ESQ.

You are herewith notified that the Arbitrators appointed in the above case have filed their award in this office on January 31, 2008, and have awarded:

For Plaintiffs in the amount of \$6,697.69 plus costs

William A. Shaw

Prothonotary

By



January 31, 2008

Date

In the event of an Appeal from Award of Arbitration within thirty (30) days of date of award.

COURT OF COMMON PLEAS

Clearfield County
JUDICIAL DISTRICT

46th


FROM

DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No. 2005-1538-CD

NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case mentioned below.

NAME OF APPELLANT <u>Jeffrey W. Rice</u>		MAG. DIST. NO. OR NAME OF D.J. <u>46-3-01</u>	
ADDRESS OF APPELLANT <u>90 Beaver Drive</u>		CITY <u>DuBois</u>	STATE <u>PA</u>
DATE OF JUDGMENT <u>9/9/05</u>		ZIP CODE <u>15801</u>	
IN THE CASE OF (Plaintiff) <u>Lauren E. Kim</u>		(Defendant) <u>Jeffrey W. Rice</u>	
CLAIM NO. CV <u>332-05</u> LT _____		SIGNATURE OF APPELLANT OR HIS ATTORNEY OR AGENT 	

This block will be signed ONLY when this notation is required under Pa. R.C.P.J.P. No. 1008B.

This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.

If appellant was CLAIMANT (see Pa. R.C.P.J.P. No. 1001(6) in action before District Justice, he MUST FILE A COMPLAINT within twenty (20) days after filing his NOTICE of APPEAL.

Signature of Prothonotary or Deputy

PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa. R.C.P.J.P. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee).

PRAECIPE: To Prothonotary

Enter rule upon Lauren E. Kim, appellee(s), to file a complaint in this appeal
Name of appellee(s)

(Common Pleas No. 2005-1538-CD) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

RULE: To Lauren E. Kim, appellee(s).
Name of appellee(s)

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS WILL BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of mailing.

Date: 10-5-05

Signature of Prothonotary or Deputy

FILED

OCT 05 2005

0/2:20/0

William A. Shaw

Prothonotary/Clerk of Courts

CENT. COPIES MAILED TO

M.D.J. Ford & Kim

PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT

(This proof of service **MUST BE FILED WITHIN TEN (10) DAYS AFTER** filing the notice of appeal. Check applicable boxes)

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF _____; SS _____

AFFIDAVIT: I hereby swear or affirm that I served

- ☐ a copy of the Notice of Appeal, Common Pleas No. _____, upon the District Justice designated therein on (date of service) _____, ☐ by personal service ☐ by (certified) (registered) mail, sender's receipt attached hereto, and upon the appellee, (name) _____, on _____, ☐ by personal service ☐ by (certified) (registered) mail, sender's receipt attached hereto.
- ☐ and further that I served the Rule to File a Complaint accompanying the above Notice of Appeal upon the appellee(s) to whom the Rule was addressed on _____, ☐ by personal service ☐ by (certified) (registered) mail, sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME

THIS _____ DAY OF _____, _____

Signature of affiant

Signature of official before whom affidavit was made

Title of official

My commission expires on _____

Mag. Dist. No.:

46-3-01

MDJ Name: Hon.

PATRICK N. FORD

Address: **309 MAPLE AVENUE**

PO BOX 452

DUBOIS, PA

Telephone: **(814) 371-5321 15801**

ATTORNEY DEF PRIVATE :

CHRISTOPHER E. MOHNEY

90 BEAVER DRIVE APT/STE 111B

DUBOIS, PA 15801

**NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE**

PLAINTIFF:

NAME and ADDRESS

KIM, LAUREN E
1405 TREASURE LAKE
DUBOIS, PA 15801

VS.

DEFENDANT:

NAME and ADDRESS

RICE, JEFFREY W.
90 BEAVER DRIVE
RICE CONSTRUCTION COMPANY
DUBOIS, PA 15801

Docket No.: **CV-0000332-05**

Date Filed: **7/18/05**



THIS IS TO NOTIFY YOU THAT:

Judgment:

FOR PLAINTIFF

☒ Judgment was entered for: (Name) **KIM, LAUREN E**

☒ Judgment was entered against: (Name) **RICE, JEFFREY W.**

in the amount of \$ **5,257.02** on: (Date of Judgment) **9/09/05**

☐ Defendants are jointly and severally liable. (Date & Time) _____

☐ Damages will be assessed on:

☐ This case dismissed without prejudice.

☐ Amount of Judgment Subject to
Attachment/42 Pa.C.S. § 8127 \$ _____

☐ Portion of Judgment for physical
damages arising out of residential
lease \$ _____

Amount of Judgment	\$ 5,136.52
Judgment Costs	\$ 120.50
Interest on Judgment	\$.00
Attorney Fees	\$.00
Total	\$ 5,257.02

Post Judgment Credits \$ _____

Post Judgment Costs \$ _____

Certified Judgment Total \$ _____

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

EXCEPT AS OTHERWISE PROVIDED IN THE RULES OF CIVIL PROCEDURE FOR MAGISTERIAL DISTRICT JUDGES, IF THE JUDGMENT HOLDER ELECTS TO ENTER THE JUDGMENT IN THE COURT OF COMMON PLEAS, ALL FURTHER PROCESS MUST COME FROM THE COURT OF COMMON PLEAS AND NO FURTHER PROCESS MAY BE ISSUED BY THE MAGISTERIAL DISTRICT JUDGE.

UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE MAGISTERIAL DISTRICT JUDGE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

9-9-05 Date **Patrick N. Ford-NF**, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

_____, Date _____, Magisterial District Judge

My commission expires first Monday of January, **2006**.

SEAL

COURT OF COMMON PLEAS *of*
Clearfield County
 JUDICIAL DISTRICT
46th

FROM

DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No. *2005-1538-CD*

NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case mentioned below.

NAME OF APPELLANT <i>Jeffrey W. Rice</i>		MAG. DIST. NO. OR NAME OF D.J. <i>46-3-01</i>	
ADDRESS OF APPELLANT <i>90 Beaver Drive</i>		CITY <i>DuBois</i>	STATE <i>PA</i>
DATE OF JUDGMENT <i>9/9/05</i>		ZIP CODE <i>15801</i>	
IN THE CASE OF (Plaintiff) <i>Lauren E. Kim</i>		(Defendant) <i>vs. Jeffrey W. Rice</i>	
CLAIM NO. CV <i>332-05</i> LT		SIGNATURE OF APPELLANT OR HIS ATTORNEY OR AGENT <i>[Signature]</i>	

This block will be signed ONLY when this notation is required under Pa. R.C.P.J.P. No. 1008B.

This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.

If appellant was CLAIMANT (see Pa. R.C.P.J.P. No. 1001(6)) in action before District Justice, he MUST FILE A COMPLAINT within twenty (20) days after filing his NOTICE of APPEAL.

 Signature of Prothonotary or Deputy

PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa. R.C.P.J.P. No. 1001(7)) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee).

PRAECIPE: To Prothonotary

Enter rule upon *Lauren E. Kim*, appellee(s), to file a complaint in this appeal
Name of appellee(s)

(Common Pleas No. *2005-1538-CD*) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

 Signature of appellant or his attorney or agent

RULE: To *Lauren E. Kim*, appellee(s).
Name of appellee(s)

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS WILL BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of mailing.

Date: *10-5-05*

 Signature of Prothonotary or Deputy

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

OCT 05 2005

Attest.

[Signature]
 Prothonotary/
 Clerk of Courts

PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT

(This proof of service MUST BE FILED WITHIN TEN (10) DAYS AFTER filing the notice of appeal. Check applicable boxes)

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF _____; SS

AFFIDAVIT: I hereby swear or affirm that I served

- ☐ a copy of the Notice of Appeal, Common Pleas No. _____, upon the District Justice designated therein on
(date of service) _____, ☐ by personal service ☐ by (certified) (registered) mail, sender's
receipt attached hereto, and upon the appellee, (name) _____, on
_____, ☐ by personal service ☐ by (certified) (registered) mail, sender's receipt attached hereto.
- ☐ and further that I served the Rule to File a Complaint accompanying the above Notice of Appeal upon the appellee(s) to whom
the Rule was addressed on _____, _____, ☐ by personal service ☐ by (certified) (registered)
mail, sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME

THIS _____ DAY OF _____, _____

Signature of affiant

Signature of official before whom affidavit was made

Title of official

My commission expires on _____, _____

FILED

OCT 05 2005

William A. S. J.
Prothonotary/Clerk of Courts

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.: **46-3-01**
MDJ Name: Hon. **PATRICK N. FORD**
Address: **309 MAPLE AVENUE**
PO BOX 452
DUBOIS, PA
Telephone: **(814) 371-5321** **15801**

PATRICK N. FORD
309 MAPLE AVENUE
PO BOX 452
DUBOIS, PA 15801

NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE

PLAINTIFF: **KIM, LAUREN E**
NAME and ADDRESS
1405 TREASURE LAKE
DUBOIS, PA 15801

VS.
DEFENDANT: **RICE, JEFFREY W.**
NAME and ADDRESS
90 BEAVER DRIVE
RICE CONSTRUCTION COMPANY
DUBOIS, PA 15801

Docket No.: **CV-0000332-05**
Date Filed: **7/18/05**



05-1538-CD

THIS IS TO NOTIFY YOU THAT:

Judgment: **FOR PLAINTIFF**

☒ Judgment was entered for: (Name) **KIM, LAUREN E**

☒ Judgment was entered against: (Name) **RICE, JEFFREY W.**

in the amount of \$ **5,257.02** on: (Date of Judgment) **9/09/05**

☐ Defendants are jointly and severally liable. (Date & Time) _____

☐ Damages will be assessed on:

☐ This case dismissed without prejudice.

☐ Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127 \$ _____
William A. Shaw
Prothonotary/Clerk of Courts

☐ Portion of Judgment for physical damages arising out of residential lease \$ _____

FILED
mha:2005
OCT 12 2005

Amount of Judgment	\$ 5,136.52
Judgment Costs	\$ 120.50
Interest on Judgment	\$.00
Attorney Fees	\$.00
Total	\$ 5,257.02

Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
=====	

Certified Judgment Total \$ _____

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

EXCEPT AS OTHERWISE PROVIDED IN THE RULES OF CIVIL PROCEDURE FOR MAGISTERIAL DISTRICT JUDGES, IF THE JUDGMENT HOLDER ELECTS TO ENTER THE JUDGMENT IN THE COURT OF COMMON PLEAS, ALL FURTHER PROCESS MUST COME FROM THE COURT OF COMMON PLEAS AND NO FURTHER PROCESS MAY BE ISSUED BY THE MAGISTERIAL DISTRICT JUDGE.

UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE MAGISTERIAL DISTRICT JUDGE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

9-9-05 Date *Patrick N. Ford*, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.
_____, Date _____, Magisterial District Judge

My commission expires first Monday of January, **2006**.

SEAL

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

CIVIL COMPLAINT

Mag. Dist. No.: **46-3-01**
DJ Name: Hon.
PATRICK N. FORD
Address: **309 MAPLE AVENUE**
P.O. BOX 452
DUBOIS, PA 15801
Telephone: **(814) 371-5321**

PLAINTIFF: NAME and ADDRESS

Lauren E. Kim
1405 Treasure Lake
DuBois, PA 15801

DEFENDANT: VS. NAME and ADDRESS

Jeffrey W. Rice
Rice Construction Company
90 Beaver Drive
DuBois, PA 15801

	AMOUNT	DATE PAID
FILING COSTS	\$ <u>120.50</u>	<u>7/18/05</u>
POSTAGE	\$ _____	<u>/ /</u>
SERVICE COSTS	\$ _____	<u>/ /</u>
CONSTABLE ED.	\$ _____	<u>/ /</u>
 TOTAL	\$ _____	<u>/ /</u>

Docket No.: **CV-33205**
Date Filed: **7-18-05**



Pa.R.C.P.D.J. No. 206 sets forth those costs recoverable by the prevailing party.

TO THE DEFENDANT: The above named plaintiff(s) asks judgment against you for \$ 6,819.00 together with costs upon the following claim (Civil fines must include citation of the statute or ordinance violated):

See attached page.

I, Lauren E. Kim verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of Section 4904 of the Crimes Code (18 PA. C.S. § 4904) related to unsworn falsification to authorities.

Lauren E. Kim
(Signature of Plaintiff or Authorized Agent)

Plaintiff's
Attorney:

Address:

Telephone: 375-4565

IF YOU INTEND TO ENTER A DEFENSE TO THIS COMPLAINT, YOU SHOULD NOTIFY THIS OFFICE IMMEDIATELY AT THE ABOVE TELEPHONE NUMBER. YOU MUST APPEAR AT THE HEARING AND PRESENT YOUR DEFENSE. UNLESS YOU DO, JUDGMENT MAY BE ENTERED AGAINST YOU BY DEFAULT.

If you have a claim against the plaintiff which is within district justice jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office at least five days before the date set for the hearing.

If you are disabled and require a reasonable accommodation to gain access to the Magisterial District Court and its services, please contact the Magisterial District Court at the above address or telephone number. We are unable to provide transportation.

Explanation of Claim

Lauren Kim, Plaintiff
Jeff Rice and Rice Construction Company, Defendants

Plaintiff respectfully requests judgment against Defendants to pay \$6819 for the costs of excavating Plaintiff's back yard, replacing french drains in the yard and repairing resulting damage to the yard (plus \$120 in court costs).

In 2001-2002, Defendants built Plaintiff's house (located on Treasure Lake) and improperly installed french drains (approximately three feet underground and under the house) that were supposed to take water away from the house out to the lake.

Defendants negligently sloped the drains toward the house because a large boulder would have had to have been removed or jack-hammered through in order to properly slope the pipes toward the lake. Sloping the drains toward the house caused the pipes to hold water rather than move the water away from the house and eventually caused leaks into the basement through an opening that developed between two foundation cinder blocks just above the basement floor. Water leaked inside and flooded the basement each time there was more than about 1/2 inch of rain in a day starting in late 2003. Plaintiff agreed to pay for the above-described repairs. Relying on this, in September 2004, Plaintiff made and paid for the necessary repairs. Dr. Rice even saw the repair work being done and spoke to the repairmen. Only after being informed that Defendants' insurance company would not pay for the repairs, Defendants refused to pay and told Plaintiff to file a claim instead.

COMPLAINT COVER SHEET

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY,
PENNSYLVANIA

Lauren E. Kim
Plaintiff/Appellee

vs.

Dr. Jeffrey W. Rice and
Rice Construction Company
Defendant/Appellant

:
:
: District Justice Appeal
: CASE NO. 2005-1538-C.D.
:
:
: Type of Pleading:
: **COMPLAINT**
:
:
: Filed on Behalf of
: **PLAINTIFF**
:
:
: Plaintiff's address:
: 1405 Treasure Lake
: Du Bois, PA 15801
: (814) 375-4565

FILED

OCT 25 2005

0/11:20/11
William A. Shaw

Prothonotary/Clerk of Courts

3 cert to App.

COMPLAINT

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY,
PENNSYLVANIA

<u>Lauren E. Kim</u>	:	
Plaintiff/Appellee	:	
vs.	:	District Justice Appeal
	:	CASE NO. 2005-1538-C.D.
Dr. Jeffrey W. Rice and	:	
<u>Rice Construction Company</u>	:	Type of Pleading:
Defendant/Appellant	:	COMPLAINT

COMPLAINT

NOW, comes the **Plaintiff, Lauren E. Kim** who hereby avers as follows:

1. Lauren E. Kim is an adult individual whose address is 1405 Treasure Lake, Du Bois, PA 15801.
2. Defendants are Dr. Jeffrey W. Rice ("Dr. Rice"), an adult individual, and Rice Construction Company, which is owned by Dr. Jeffrey W. Rice (together with Dr. Rice, referred to as the "Defendant"), both of whose address is 90 Beaver Drive, Du Bois, PA 15801.
3. In 2001, Defendant owned two adjacent lakefront lots identified as lots 742 and 743 in Section 14C in the community of Treasure Lake, in Du Bois, Pennsylvania. These lots are located on the northern tip of Treasure Lake. The lots are basically rectangular in shape, each measuring about 70 feet wide at the road and at the lake and about 200 feet long from road to the lake. In 2001, as builder/contractor, Defendant completed construction of a two-story, 3500 square-foot colonial style "spec home" in the middle of these above-mentioned double lots. The house has four bedrooms, three and one-half baths, two fireplaces and an attached two-car garage. The front of the house faces Treasure Lake Road and the back of the house faces the lake.
4. On July 3, 2003, Plaintiff, though unfamiliar with central Pennsylvania, Du Bois or Treasure Lake, purchased the above-mentioned house for \$325,000 from a former business associate of Dr. Rice and at that time, the owners and occupants of the house, Mr. and Mrs. John Garner of Treasure Lake, Du Bois, Pennsylvania. Mr. Garner is an executive of a local Du Bois bank. Plaintiff has occupied this house as her primary residence since then. At the time Plaintiff purchased the house,

it had numerous upgraded features throughout, including granite and marble countertops, hardwood and ceramic tile floors, and a walk-out basement that is finished (other than a large storage room) with wall-to-wall carpeting and extensive kitchen and bar area with built-in maple cabinetry. Plaintiff purchased the house because of these features and because Plaintiff, with two young children, wanted a young, low-maintenance house.

5. The house is graded for a walk-out basement. Thus, the grading on either side of the house slopes down toward the back yard and away from the sides of the house. From the back of the house, there are three stories above grade, the basement walk-out, the main living area on the first floor and the bedrooms on the second floor.

6. The front of the house consists of (looking from left to right, if one's back is to the lake), the two-car garage, and adjacent to it, the dining room and then the foyer. The rest of the living space on the first floor sits behind the garage, dining room, and foyer. Directly below the dining room and foyer is a painted, but unfinished basement room used as a storage room. The front facing and side walls of the storage room are foundation walls made of cinder blocks. These walls are entirely below grade, that is, underground. On the outside part of the left side foundation wall of the storage room (if one's back is to the lake) is dirt fill above which sits the two-car garage.

7. In September 2003, after being away for the weekend, Plaintiff came home to discover water (about one to two inches in depth) on the floor of the basement storage room. The water had also soaked more than half of the carpeted portion of the basement. Water had soaked up through about two inches of the bottom of the maple cabinetry and bar area which is adjacent to the storage room. Plaintiff was dismayed that a two-year old house would have water coming in through the basement.

8. Plaintiff found that the water had come in from the left (if one's back is to the lake), side foundation wall of the storage room. Plaintiff found that the water had come in through an approximately two inch tall opening in the mortar between two foundation cinder blocks in that side wall. The opening or crack is about 1 inch above the floor of the storage room.

9. The water caused damage to Plaintiff's property, including the wall-to-wall carpeting, the foundation wall and floor of the storage room, and certain furnishings and other personal property.

10. Plaintiff informed Dr. Rice about the leak by phone and Dr. Rice promptly came to Plaintiff's house and inspected the leak.

11. After the leak was initially discovered, each time it rained more than ½ inch in a 12 to 24-hour period, water poured into the basement through the same opening like an open faucet. Water leaked into the basement on at least six raining nights from October 2003 through August 2004.

12. To prevent a repeat of the damage caused by the first flooding, with each subsequent rain of ½ inch or more in a day or night, Plaintiff had to vacuum up and drag outside from the storage room 18 gallons of water every 15 to 20 minutes throughout the day and night. Most times that flooding occurred, the rain, and therefore the leak, did not stop for 12 to 24 hours.

13. Plaintiff was distraught and in tears each time it rained and water poured into the basement. The sheer physical demands and emotional toll associated with vacuuming and pouring out so much water every 15 minutes throughout the night without sleep in order to prevent further water damage was devastating. The home should be one's refuge, but with the leaks, Plaintiff's house became her worst torture and nightmare.

14. In addition to the emotional pain and suffering and physical demands on Plaintiff caused by these leaks, Plaintiff must face the inevitable decline in property value of the house as a result of the leaks, resulting weakness in the foundation wall and inevitable concern about possible repeat leaks that will exist in the minds of prospective buyers. A history of water in the basement is one of the biggest detractors for potential home buyers, especially when no such events would be normally expected in such a young house.

15. Each time that water came into the basement, Plaintiff desperately called Defendant to inform him of the extent of the leaks and asked him to find the reason for the leaks and make necessary repairs as Defendant was the contractor/builder of the house. Dr. Rice said he would try to find someone to make necessary repairs.

16. When Dr. Rice responded to Plaintiff's request to try to find the cause of the leak, he informed Plaintiff that he had personally installed at the foundation floor and footer level, a french drain system around the perimeter of the foundation of the house. The drains have perforations or slits in them to collect water in the ground. And, if properly installed, the drains are supposed to be sloped to move the collected water away from around the house, down the length of the backyard, and out into the lake.

17. On October 9 and 15, 2003, upon Plaintiff's request, Fred Boyce, owner and operator of Roto-Rooter, and his employee came to Plaintiff's house and attempted to locate and assess the french drain system. Roto-Rooter inserted a camera through the openings in the drains, but could not feed the camera through the entire length of the backyard because of obstructions of some kind in the pipes. Roto-Rooter identified one obstruction located at the left (if one's back is to the lake), rear corner of the house.

18. Dr. Rice sent one of Defendant's employees to Plaintiff's house to dig up the pipes at the left rear corner of the house that was identified by Roto-Rooter. After digging down about three feet and uncovering the pipes, Defendant's employee did not appear to have the equipment or expertise to break open and repair the pipes and he left the property without making further progress.

19. On October 22, 2003, Fred Boyce of Roto-Rooter and his associate drilled a hole in the drain pipes that were uncovered by Defendant's employee and inserted a camera through the pipes. Roto-Rooter was able to determine that a french drain runs along the entire front foundation wall of the house. The drain then makes a 90 degree turn to run along the perimeter (that is, on the exterior side) of the left, side foundation wall where the leak is located, then goes under the basement floor and out from under the house at the left, rear corner of the house at a depth about three feet below grade (this drain is referred to as "Drain A"). Another drain runs along the entire back of the house, meets Drain A at the left rear corner of the house and then runs parallel with Drain A down the length of the back yard to the lake ("Drain B"). Drains A and B are 4 inches in diameter.

20. Roto-Rooter also found that a boulder two feet tall, three feet wide and three feet deep was sitting right on top of and had crushed Drains A and B. Because the drains were completely crushed, no water could travel from the front of the house and out to the lake. Roto-Rooter removed the boulder and repaired the pipes. Dr. Rice submitted a claim with Defendant's excavator's insurance company for the costs of the repairs described in this and the immediately prior paragraph. That insurance company agreed to pay for such repairs and for the damage to Plaintiff's property resulting from the initial flooding.

21. After repairing the crushed pipes, using their camera, Roto-Rooter could see that while some water was moving down to the lake from Drains A and B, these pipes were still holding water just outside the rear corner of the house rather than swiftly moving out toward the lake. To monitor the water movement in these pipes, Roto-Rooter attached vertical pipes to Drains A and B just outside the left, rear corner of house. These vertical pipes let anyone look down into Drains A and B and see the water moving through these pipes, even after dirt was backfilled to original grade. Fred Boyce of Roto-Rooter added the vertical pipes because he reasoned that during the next substantial rain and leakage into the basement, if the water level in the vertical pipes rises, then that means that while water is being collected into the drain from around the front of the house, the "downstream" portion of the drains buried in the backyard is not carrying the water fast enough to the lake to prevent a buildup of water against the left, side foundation wall of the storage room.

22. After the spring thaw in 2004, when it rained, water began to leak again into the basement at the same location in the left, side foundation wall of the storage room. When water was leaking into the basement, Roto-Rooter and Plaintiff each measured and saw that the water level in the vertical pipes attached to Drains A and B rose by at least two inches. That meant that water was indeed being collected into Drains A and B from further upstream (that is, from the perimeter of the house), but some problem with Drains A and B buried under and running down the length of the backyard was preventing the water from exiting the pipes fast enough at the lake, causing a buildup of water next to the left, side foundation wall of the storage room.

23. Plaintiff informed Dr. Rice about these further findings and Dr. Rice agreed that Drains A and B would have to be dug up along the length of the backyard to see exactly what was causing the water to build up and back up into the vertical pipes and the left, side foundation wall of the storage room. Dr. Rice also stated he would take responsibility for the continued leaks and the cost of making the necessary repairs. Plaintiff requested that Defendant do the repairs or choose the repairman for the job since Defendant is the responsible party. Dr. Rice chose Fred Boyce of Roto-Rooter because Dr. Rice said Roto-Rooter was the most knowledgeable about the situation and therefore best suited to make the repairs.

24. Relying on Dr. Rice's choice of repairman, acceptance of responsibility and confirmation on multiple occasions that he would pay for the repairs, on September 3-5, 2004, Roto-Rooter used a backhoe and digger to dig in the backyard three feet underground to uncover Drains A and B, starting at the vertical pipes (at the rear corner of the house) and moving down the length of the backyard to the lake. Plaintiff urgently requested that Roto-Rooter make the repairs as soon as Dr. Rice approved of the plan because Hurricane Frances was due to come through the region a few days later and Plaintiff knew that her vacuuming efforts would not be able to keep up with the water that would flood into the basement if it rained more than one or two inches in a day or night.

25. On or about September 3, 2004, when Roto-Rooter uncovered Drains A and B, to Plaintiff's shock, they found that Defendant had simply set Drains A and B right on top of a very large boulder about midway between Plaintiff's house and the lake. The problem was that the depth at the top of the boulder was higher than the depth of Drains A and B at the rear corner of the house, causing the drains to be sloped *toward* the house rather than toward the lake. Thus, gravity was pushing the water in the drains toward the foundation walls rather than away from the perimeter of the house. Only after a sufficient amount of water built up in the drains and particularly, next to the left, side foundation wall could water move through the drains, up over the "hump" caused by the boulder and back down to exit at the lake. Thus, when ½ inch or more of rain, since the water could not move through the pipes fast enough over the "hump", the water built up around the foundation wall until eventually and foreseeably the water found a weak point in the foundation wall and started pouring into the house.

26. To make matters worse, in addition to improperly sloping the drains, Defendant had overburdened Drain A. Not only was Drain A intended to collect water from the perimeter of the house, it was also installed just outside the left rear corner of the house with perforations in it in order to collect water that seeped into the ground from the following sources:

- a) the roof, collected into two gutter/downspouts located on the same (left) side of house as Drain A;

b) the driveway (which is located on the same (left) side as Drain A), with water moving to the left side and down the grass to the left, rear corner of the house; and

c) the front and side yards. As the house was built and graded to have a walk-out basement, water naturally travels from the front and side yards of the house down to the left rear corner of the house.

27. Because the grading of the lot was for a walk-out basement, the yard immediately surrounding the left, rear corner of the house was a low point relative to the front and left sides of the house. The backyard is relatively flat and very gently sloped toward the lake. Thus, water from the above-mentioned areas tended to seep down below grade and pool at this low point at the rear corner of the house. A reasonable person, especially a builder, should have expected this water movement and installed french drains of the proper size to handle the water and, at the very least, not slope the drains so that the water runs *toward* the house.

28. By sloping Drains A and B toward the house and making matters worse by overburdening the Drain A, all the water from the sources described above could not exit fast enough at the lake, built up against the left, side foundation wall of the storage room and caused water to come into the house.

29. Upon Plaintiff's request, Dr. Rice came to Plaintiff's house and inspected the boulder and the repair work being done by Roto-Rooter. He agreed that the boulder should have been jack-hammered or otherwise addressed to allow the drains to be sloped toward the lake rather than toward the house. He also reconfirmed his prior promises to pay for the repairs.

30. After identifying the problems, and showing and explaining the problems to Dr. Rice, Roto-Rooter made the necessary repairs. Roto-Rooter installed a solid, non-perforated Drain A, larger in diameter than the old Drain A, starting at the point the drain comes out from underneath the house and extending through the backyard and down to the lake. Thus, Drain A has a larger capacity to move water and is now devoted solely to moving water from the front and left side of the house out to the lake. This function was of critical importance to curing the water problem. Roto-Rooter also installed a separate pipe, with holes drilled into it, starting at the left, rear corner of the house, where the water from the roof, driveway and yard tended to pool at this low point. This was the location where the old Drain A had perforations to try to handle this anticipated additional volume of water. That way, Drain A would not be overburdened by this additional water during moderate or heavy rains, making it more difficult for the water in the front and side of the house to travel down the length of the backyard and out into the lake. A pipe separate from Drain A that is devoted to removing this additional water also eliminated the risk that problems upstream might cause this additional water to back into the house or prevent any water from the front and side of the house from exiting properly. Finally, these two drains as well as Drain B and a drain servicing the

hot water heater, which was also all found to be sloped toward the house, were reinstalled to slope away from the house.

31. Plaintiff knows that Roto-Rooter correctly diagnosed and made necessary repairs to cure the water problem because on September 9, 2004, less than a week after repairs were completed, the remnants of Hurricane Frances brought extremely heavy rains to Du Bois and no water leaked into Plaintiff's basement. Then again on September 18, 2004, Hurricane Ivan dumped even more rain, approximately 5 inches of rain, on Du Bois and still no water entered Plaintiff's basement. Since repairs were completed in September 2004 to the present, no water has entered Plaintiff's basement.

32. In late September 2004, Plaintiff sent Dr. Rice the invoices for Roto-Rooter's repairs totaling \$5980.00, a bill for \$107.42 for repairing an underground electrical conduit which had to be pulled out by Roto-Rooter to complete their repairs, and a note to expect an estimate for repairing the landscaping disturbed by Roto-Rooter's repairs. The landscaper's estimate of \$610.27 was later provided to Dr. Rice. The three amounts total \$6697.69. When provided the invoices, Dr. Rice did not object to or dispute the total cost of the repairs or his agreement to pay.

33. In October 2004, Plaintiff received a written letter from Erie Insurance Company, Dr. Rice's insurance company stating that a claim submitted by Defendant relating to Plaintiff's property was denied. Plaintiff informed Dr. Rice of the denial and Dr. Rice said he would discuss with Erie directly.

34. Defendant's insurance company informed Plaintiff that only accidental matters were covered and that the improper installation of the drain pipes did not fall into that category.

35. Dr. Rice's submission of the claims to Defendant's insurance company shows that Defendant, as builder of the house and installer of the french drain system, accepted full responsibility for the leaks into the house caused by the improper installation of the drains and was acting to fulfill Defendant's promises to Plaintiff to pay for the repairs.

36. Only after receiving confirmation that Defendant's insurance company would not pay for the repairs and Defendant would have to pay Plaintiff out-of-pocket, did Dr. Rice break his prior promises to pay Plaintiff for the repairs.

37. At the hearing before the District Court in Du Bois, PA on September 8, 2005, Dr. Rice admitted that the drains were improperly installed and that he had promised Plaintiff he would pay for the repairs to the drains.

38. At the above-mentioned hearing, Dr. Rice tried to argue that he is only partially responsible because Mr. Garner had added a fireplace to the right side of the house after the house was built, thereby possibly disturbing the portion of the french drain that Defendant alleges he installed at that location. However, the fireplace is

located on the right side of the house, the opposite side of the location of the leak site. In addition, the fireplace is located very close to the rear of the house. As stated before, the house is graded for a walk-out basement and there is a resulting steep slope at both sides of the house toward the rear of the house. Thus, Dr. Rice's allegation that the installation of the fireplace (at the right side and toward the rear of the house), caused the leak (at the left side and toward the front of the house) is highly implausible, if not impossible. The water in the drains near the fireplace would have to defy gravity to travel up the right side of the house and leak into the storage room foundation wall on the left side of the house. This argument would also require any reasonable person to simply ignore the fact that Defendant sloped Drains A and B toward the house, thereby preventing the water that accumulated around the house during rains from flowing out into the lake.

39. Fred Boyce of Roto-Rooter, an expert in repairing drain systems, testified at the District Court hearing that he was satisfied that after inserting his camera through Drain A down the entire length of the front of the house, from corner to corner and down the left, side foundation wall of the storage room (next to the location of the leak) and out from under the house down to the lake, the addition of the fireplace and any possible (but not confirmed) disturbance of the french drain at that site (near the *right*, rear corner of the house) was not relevant to the leaks described in this Complaint.

40. The lack of further water in the basement to date since Roto-Rooter's repairs despite heavy rains further goes to prove that Defendant's faulty installation of the drains directly and proximately caused water to come into Plaintiff's basement.

41. Defendant negligently and improperly sloped and installed the drains. Sloping the drains toward the house caused water to build up next to the left, side foundation wall of the storage room and leak into the basement. Defendant, the builder/contractor of the house, could have and should have easily foreseen that sloping the pipes toward the house would only cause water to leak into the basement foundation wall.

42. As a direct and proximate result of Defendant's negligent installation of the french drains, breach of promise to pay, purposeful deception and fraud, and Plaintiff's detrimental reliance on Defendant's promises, Plaintiff has sustained damages of \$6697.69 for the costs associated with repairing the french drains.

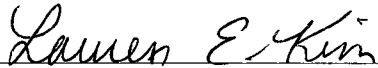
WHEREFORE, Plaintiff demands judgment against Defendant in the amount of \$6697.69, plus interest, \$120.00 in district court costs and such other reasonable costs as the court may allow.


Plaintiff

COMPLAINT-VERIFICATION

VERIFICATION

I verify that the statements in this Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to Unsworn Falsification to Authorities.



Lauren E. Kim

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

Lauren E. Kim
(Plaintiff)

1405 Treasure Lake
(Street Address)

DuBois, PA 15801
(City, State ZIP)

VS.

Rice Construction Company
and Dr. Jeffrey W. Rice
(Defendant)

90 Beaver Drive
(Street Address)

DuBois, PA 15801
(City, State ZIP)

CIVIL ACTION


No. 2005-1538-C.D.

Type of Case: District Justice Appeal

Type of Pleading: Certificate of Service

Filed on Behalf of:

Plaintiff
(Plaintiff/Defendant)

FILED 
OCT 25 2005
0/12:55/2
William A. Shaw
Prothonotary/Clerk of Courts
1 cent to Rice

Lauren E. Kim
(Filed by)

1405 Treasure Lake, DuBois PA
(Address) 15801

814-375-4565
(Phone)

Lauren E. Kim
(Signature)

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY,
PENNSYLVANIA

Lauren E. Kim
Plaintiff/Appellee

vs.

Dr. Jeffrey W. Rice and
Rice Construction Company
Defendant/Appellant

:
:
: District Justice Appeal
: CASE NO. 2005-1538-C.D.

CERTIFICATE OF SERVICE

I, Lauren E. Kim, Plaintiff above named, do hereby certify that on the 25th day of October, 2005, I caused a certified copy of the Complaint to be mailed, first class – postage prepaid, to the Defendant at his address as follows:

Dr. Jeffrey W. Rice and
Rice Construction Company
both of
90 Beaver Drive, Du Bois, PA 15801

Lauren E. Kim
Lauren E. Kim

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

Lauren E. Kim
(Plaintiff)

1405 Treasure Lake
(Street Address)

DuBois, PA 15801
(City, State ZIP)

vs. Dr. Jeffrey W. Rice and
Rice Construction Company
(Defendant)

90 Beaver Drive
(Street Address)

DuBois, PA 15801
(City, State ZIP)

CIVIL ACTION

No. 2005-1538-C.D.

Type of Case: Appeal

Type of Pleading: Praecipe for
Entry of Default
Judgment

Filed on Behalf of:

Lauren E. Kim
(Plaintiff/Defendant)

Lauren E. Kim
Lauren E. Kim
(Filed by)

1405 Treasure Lake, DuBois PA
(Address) 15801

814-375-4565
(Phone)

FILED P/ff pd. 20.00

DEC 02 2005

William A. Shaw
Prothonotary/Clerk of Courts
Notice to Atty Mohnney
and Def.
Statement to Piff

Lauren E. Kim
(Signature)

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

Lauren E. Kim
Plaintiff/Appellee

vs.

Dr. Jeffrey W. Rice and
Rice Construction Company
Defendant/Appellant

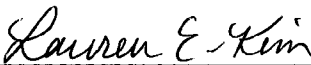
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: District Justice Appeal
: CASE NO. 2005-1538-C.D.
:

PRAECIPE FOR ENTRY OF DEFAULT JUDGMENT

TO THE PROTHONOTARY:

Kindly enter judgment against the Defendants above named in the amount of \$6,697.69 plus costs for the Defendants' failure to answer the Complaint within twenty (20) days of service thereof.

I hereby certify that a Notice of Intention to Enter Default Judgment was mailed or delivered to the Defendants on November 21, 2005, being at least ten (10) days prior to the date of the filing of this Praecipe. A true and correct copy of the Notice of Intention to Enter Default Judgment mailed or delivered in this case is attached to this Praecipe.



Lauren E. Kim

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY,
PENNSYLVANIA

Lauren E. Kim
Plaintiff/Appellee

vs.

Dr. Jeffrey W. Rice and
Rice Construction Company
Defendant/Appellant

:
:
:
District Justice Appeal
CASE NO. 2005-1538-C.D.

To: Dr. Jeffrey W. Rice and
Rice Construction Company

Date of Notice: November 21, 2005

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANCE RIGHTS. YOU SHOULD TAKE THIS NOICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641, EXTENSION 1300


Lauren E. Kim
Lauren E. Kim

1405 Treasure Lake
Du Bois, PA 15801
Address

NOTICE OF JUDGMENT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL DIVISION

 COPY

Lauren E. Kim

Vs.

No. 2005-01538-CD


Jeffrey W. Rice and
Rice Construction Company

To: DEFENDANT(S)

NOTICE is given that a JUDGMENT in the above captioned matter has been entered against you in the amount of \$6,697.69 on December 2, 2005.

William A. Shaw
Prothonotary

William A. Shaw

 COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY ,
PENNSYLVANIA
STATEMENT OF JUDGMENT

Lauren E. Kim
Plaintiff(s)

No.: 2005-01538-CD

Real Debt: \$6,697.69

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Jeffrey W. Rice
Rice Construction Company
Defendant(s)

Entry: \$20.00

Instrument: Default Judgment

Date of Entry: December 2, 2005

Expires: December 2, 2010

Certified from the record this 2nd day of December, 2005.

William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

Received on _____, _____, of defendant full satisfaction of this Judgment,
Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

Plaintiff/Attorney

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

LAUREN E. KIM,

Plaintiff,

vs.

DR. JEFFREY W. RICE and RICE
CONSTRUCTION COMPANY,

Defendants.

: NO. 2005-1538-C.D.

: Type of Case: CIVIL

: Type of Pleading: PETITION TO STRIKE
JUDGMENT AND FOR SANCTIONS

: Filed on Behalf of: DEFENDANTS

: Counsel of Record:
CHRISTOPHER E. MOHNEY, ESQUIRE

: Supreme Court No.: 63494

: 90 BEAVER DRIVE
SUITE 111B
DUBOIS, PA 15801
(814) 375-1044

FILED ^{2cc}
013:48301 Atty Mohney
DEC 08 2005

William A. Shaw
Prothonotary/Clerk of Courts

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09/32/01
Any Mohney
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led
 William A. Shaw
 Prothonotary/Clerk of Courts

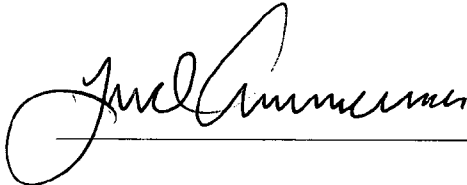
NOTICE

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE MATTER SET FORTH IN THE FOLLOWING PETITION, YOU MUST ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE AN ANSWER IN WRITING WITH THE PROTHONOTARY SETTING FORTH YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU AND SERVE A COPY ON THE ATTORNEY OR PERSON FILING THE PETITION. 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 THE RELIEF REQUESTED BY THE PETITIONER. 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. 50-51

BY THE COURT:



1. Petitioner is Dr. Jeffrey W. Rice and Rice Construction Company.
2. Respondent is Lauren E. Kim.
3. Respondent Lauren E. Kim filed a Complaint initiating this lawsuit on October 25, 2005. A certified copy of Respondent's Complaint that was served on the undersigned is attached hereto and marked Exhibit "A".
4. Respondent's Complaint failed to include a Notice to defend as required by Pa. R.C.P. 1018.1.
5. Inasmuch as the mandatory notice to defend being attached to Respondent's Complaint, Petitioners were under no duty to plead to the Complaint, the default judgment against Petitioners were improperly entered and, accordingly, must be struck off.

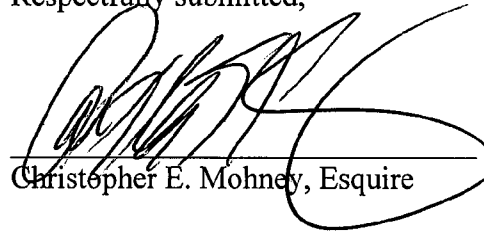
6. Respondent's 10-Day Important Notice pursuant to Pa. R.C.P. 237.1 were not served in accordance with rule of court, inasmuch as Respondent failed to serve all Petitioners and counsel of record. Attached is copy of 10-Day Important Notice received by the undersigned, marked Exhibit "B".
7. Pursuant to Pa. R.C.P. 237.1, notice is required to be mailed or delivered both to the party against whom judgment is to be entered and, and if represented, to the party's attorney of record. *See* Pa. R.C.P. 237.1, Explanatory Comment.
8. Because Respondent has failed to comply with Pa. R.C.P. 1018.1 and Pa. R.C.P. 237.1, the default judgments against Petitioners were improperly entered and, accordingly, must be struck off.
9. Respondent has made the decision to represent herself, without counsel.
10. Under Pennsylvania Law, Respondent is held to the same standard, in terms of following Rules of Court, as an attorney.
11. After receipt of the 10-Day Notice, the undersigned sent letter to Respondent advising that she failed to Comply with Rule of Court, and that if she moved to obtain default judgment, the undersigned would move to open the judgment and also for sanctions. Attached and marked Exhibit "C" is copy of the aforementioned letter.
12. Respondent's response to the undersigned aforementioned letter was to file a Praecipe for Entry of Default Judgment.
13. The undersigned has had to expend time and effort in the preparation and presentation of this Petition, for which Respondent should have to pay Petitioner's attorneys fees in light of Respondent's failure to follow Rules of Court.

WHEREFORE, Petitioners, Dr. Jeffrey W. Rice and Rice Construction Company pray this Honorable Court to enter the following relief.

1. Strike judgment entered in favor of Lauren E. Kim against Jeffrey W. Rice and Rice Construction Company on December 2, 2005, in the amount of \$6,697.69;
2. Directing Plaintiff/Respondent, Lauren E. Kim pay attorney's fees in the amount of \$500.00 to Christopher E. Mohny, Esquire, within ten (10) days from date of Order;
and
3. For such other relief deemed appropriate.

Respectfully submitted,

By:



Christopher E. Mohny, Esquire

COMPLAINT COVER SHEET

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY,
PENNSYLVANIA

Lauren E. Kim
Plaintiff/Appellee

vs.

Dr. Jeffrey W. Rice and
Rice Construction Company
Defendant/Appellant

:
:
:
: District Justice Appeal
: CASE NO. 2005-1538-C.D.

:
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: Type of Pleading:
: **COMPLAINT**

:
:
: Filed on Behalf of
: **PLAINTIFF**

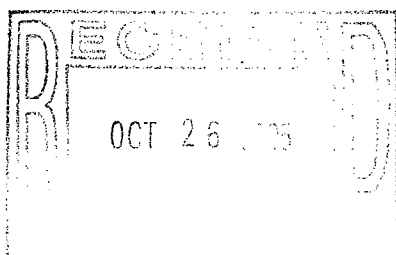
:
:
: Plaintiff's address:
: 1405 Treasure Lake
: Du Bois, PA 15801
: (814) 375-4565

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

OCT 25 2005

Attest.

William L. Shaw
Prothonotary/
Clerk of Courts



EXHIBIT

"A"

COMPLAINT
IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY,
PENNSYLVANIA

<u>Lauren E. Kim</u>	:	
Plaintiff/Appellee	:	
vs.	:	District Justice Appeal
	:	CASE NO. 2005-1538-C.D.
Dr. Jeffrey W. Rice and	:	
<u>Rice Construction Company</u>	:	Type of Pleading:
Defendant/Appellant	:	COMPLAINT

COMPLAINT

NOW, comes the **Plaintiff, Lauren E. Kim** who hereby avers as follows:

1. Lauren E. Kim is an adult individual whose address is 1405 Treasure Lake, Du Bois, PA 15801.
2. Defendants are Dr. Jeffrey W. Rice ("Dr. Rice"), an adult individual, and Rice Construction Company, which is owned by Dr. Jeffrey W. Rice (together with Dr. Rice, referred to as the "Defendant"), both of whose address is 90 Beaver Drive, Du Bois, PA 15801.
3. In 2001, Defendant owned two adjacent lakefront lots identified as lots 742 and 743 in Section 14C in the community of Treasure Lake, in Du Bois, Pennsylvania. These lots are located on the northern tip of Treasure Lake. The lots are basically rectangular in shape, each measuring about 70 feet wide at the road and at the lake and about 200 feet long from road to the lake. In 2001, as builder/contractor, Defendant completed construction of a two-story, 3500 square-foot colonial style "spec home" in the middle of these above-mentioned double lots. The house has four bedrooms, three and one-half baths, two fireplaces and an attached two-car garage. The front of the house faces Treasure Lake Road and the back of the house faces the lake.
4. On July 3, 2003, Plaintiff, though unfamiliar with central Pennsylvania, Du Bois or Treasure Lake, purchased the above-mentioned house for \$325,000 from a former business associate of Dr. Rice and at that time, the owners and occupants of the house, Mr. and Mrs. John Garner of Treasure Lake, Du Bois, Pennsylvania. Mr. Garner is an executive of a local Du Bois bank. Plaintiff has occupied this house as her primary residence since then. At the time Plaintiff purchased the house,

it had numerous upgraded features throughout, including granite and marble countertops, hardwood and ceramic tile floors, and a walk-out basement that is finished (other than a large storage room) with wall-to-wall carpeting and extensive kitchen and bar area with built-in maple cabinetry. Plaintiff purchased the house because of these features and because Plaintiff, with two young children, wanted a young, low-maintenance house.

5. The house is graded for a walk-out basement. Thus, the grading on either side of the house slopes down toward the back yard and away from the sides of the house. From the back of the house, there are three stories above grade, the basement walk-out, the main living area on the first floor and the bedrooms on the second floor.

6. The front of the house consists of (looking from left to right, if one's back is to the lake), the two-car garage, and adjacent to it, the dining room and then the foyer. The rest of the living space on the first floor sits behind the garage, dining room, and foyer. Directly below the dining room and foyer is a painted, but unfinished basement room used as a storage room. The front facing and side walls of the storage room are foundation walls made of cinder blocks. These walls are entirely below grade, that is, underground. On the outside part of the left side foundation wall of the storage room (if one's back is to the lake) is dirt fill above which sits the two-car garage.

7. In September 2003, after being away for the weekend, Plaintiff came home to discover water (about one to two inches in depth) on the floor of the basement storage room. The water had also soaked more than half of the carpeted portion of the basement. Water had soaked up through about two inches of the bottom of the maple cabinetry and bar area which is adjacent to the storage room. Plaintiff was dismayed that a two-year old house would have water coming in through the basement.

8. Plaintiff found that the water had come in from the left (if one's back is to the lake), side foundation wall of the storage room. Plaintiff found that the water had come in through an approximately two inch tall opening in the mortar between two foundation cinder blocks in that side wall. The opening or crack is about 1 inch above the floor of the storage room.

9. The water caused damage to Plaintiff's property, including the wall-to-wall carpeting, the foundation wall and floor of the storage room, and certain furnishings and other personal property.

10. Plaintiff informed Dr. Rice about the leak by phone and Dr. Rice promptly came to Plaintiff's house and inspected the leak.

11. After the leak was initially discovered, each time it rained more than ½ inch in a 12 to 24-hour period, water poured into the basement through the same opening like an open faucet. Water leaked into the basement on at least six raining nights from October 2003 through August 2004.

12. To prevent a repeat of the damage caused by the first flooding, with each subsequent rain of ½ inch or more in a day or night, Plaintiff had to vacuum up and drag outside from the storage room 18 gallons of water every 15 to 20 minutes throughout the day and night. Most times that flooding occurred, the rain, and therefore the leak, did not stop for 12 to 24 hours.

13. Plaintiff was distraught and in tears each time it rained and water poured into the basement. The sheer physical demands and emotional toll associated with vacuuming and pouring out so much water every 15 minutes throughout the night without sleep in order to prevent further water damage was devastating. The home should be one's refuge, but with the leaks, Plaintiff's house became her worst torture and nightmare.

14. In addition to the emotional pain and suffering and physical demands on Plaintiff caused by these leaks, Plaintiff must face the inevitable decline in property value of the house as a result of the leaks, resulting weakness in the foundation wall and inevitable concern about possible repeat leaks that will exist in the minds of prospective buyers. A history of water in the basement is one of the biggest detractors for potential home buyers, especially when no such events would be normally expected in such a young house.

15. Each time that water came into the basement, Plaintiff desperately called Defendant to inform him of the extent of the leaks and asked him to find the reason for the leaks and make necessary repairs as Defendant was the contractor/builder of the house. Dr. Rice said he would try to find someone to make necessary repairs.

16. When Dr. Rice responded to Plaintiff's request to try to find the cause of the leak, he informed Plaintiff that he had personally installed at the foundation floor and footer level, a french drain system around the perimeter of the foundation of the house. The drains have perforations or slits in them to collect water in the ground. And, if properly installed, the drains are supposed to be sloped to move the collected water away from around the house, down the length of the backyard, and out into the lake.

17. On October 9 and 15, 2003, upon Plaintiff's request, Fred Boyce, owner and operator of Roto-Rooter, and his employee came to Plaintiff's house and attempted to locate and assess the french drain system. Roto-Rooter inserted a camera through the openings in the drains, but could not feed the camera through the entire length of the backyard because of obstructions of some kind in the pipes. Roto-Rooter identified one obstruction located at the left (if one's back is to the lake), rear corner of the house.

18. Dr. Rice sent one of Defendant's employees to Plaintiff's house to dig up the pipes at the left rear corner of the house that was identified by Roto-Rooter. After digging down about three feet and uncovering the pipes, Defendant's employee did not appear to have the equipment or expertise to break open and repair the pipes and he left the property without making further progress.

19. On October 22, 2003, Fred Boyce of Roto-Rooter and his associate drilled a hole in the drain pipes that were uncovered by Defendant's employee and inserted a camera through the pipes. Roto-Rooter was able to determine that a french drain runs along the entire front foundation wall of the house. The drain then makes a 90 degree turn to run along the perimeter (that is, on the exterior side) of the left, side foundation wall where the leak is located, then goes under the basement floor and out from under the house at the left, rear corner of the house at a depth about three feet below grade (this drain is referred to as "Drain A"). Another drain runs along the entire back of the house, meets Drain A at the left rear corner of the house and then runs parallel with Drain A down the length of the back yard to the lake ("Drain B"). Drains A and B are 4 inches in diameter.

20. Roto-Rooter also found that a boulder two feet tall, three feet wide and three feet deep was sitting right on top of and had crushed Drains A and B. Because the drains were completely crushed, no water could travel from the front of the house and out to the lake. Roto-Rooter removed the boulder and repaired the pipes. Dr. Rice submitted a claim with Defendant's excavator's insurance company for the costs of the repairs described in this and the immediately prior paragraph. That insurance company agreed to pay for such repairs and for the damage to Plaintiff's property resulting from the initial flooding.

21. After repairing the crushed pipes, using their camera, Roto-Rooter could see that while some water was moving down to the lake from Drains A and B, these pipes were still holding water just outside the rear corner of the house rather than swiftly moving out toward the lake. To monitor the water movement in these pipes, Roto-Rooter attached vertical pipes to Drains A and B just outside the left, rear corner of house. These vertical pipes let anyone look down into Drains A and B and see the water moving through these pipes, even after dirt was backfilled to original grade. Fred Boyce of Roto-Rooter added the vertical pipes because he reasoned that during the next substantial rain and leakage into the basement, if the water level in the vertical pipes rises, then that means that while water is being collected into the drain from around the front of the house, the "downstream" portion of the drains buried in the backyard is not carrying the water fast enough to the lake to prevent a buildup of water against the left, side foundation wall of the storage room.

22. After the spring thaw in 2004, when it rained, water began to leak again into the basement at the same location in the left, side foundation wall of the storage room. When water was leaking into the basement, Roto-Rooter and Plaintiff each measured and saw that the water level in the vertical pipes attached to Drains A and B rose by at least two inches. That meant that water was indeed being collected into Drains A and B from further upstream (that is, from the perimeter of the house), but some problem with Drains A and B buried under and running down the length of the backyard was preventing the water from exiting the pipes fast enough at the lake, causing a buildup of water next to the left, side foundation wall of the storage room.

23. Plaintiff informed Dr. Rice about these further findings and Dr. Rice agreed that Drains A and B would have to be dug up along the length of the backyard to see exactly what was causing the water to build up and back up into the vertical pipes and the left, side foundation wall of the storage room. Dr. Rice also stated he would take responsibility for the continued leaks and the cost of making the necessary repairs. Plaintiff requested that Defendant do the repairs or choose the repairman for the job since Defendant is the responsible party. Dr. Rice chose Fred Boyce of Roto-Rooter because Dr. Rice said Roto-Rooter was the most knowledgeable about the situation and therefore best suited to make the repairs.

24. Relying on Dr. Rice's choice of repairman, acceptance of responsibility and confirmation on multiple occasions that he would pay for the repairs, on September 3-5, 2004, Roto-Rooter used a backhoe and digger to dig in the backyard three feet underground to uncover Drains A and B, starting at the vertical pipes (at the rear corner of the house) and moving down the length of the backyard to the lake. Plaintiff urgently requested that Roto-Rooter make the repairs as soon as Dr. Rice approved of the plan because Hurricane Frances was due to come through the region a few days later and Plaintiff knew that her vacuuming efforts would not be able to keep up with the water that would flood into the basement if it rained more than one or two inches in a day or night.

25. On or about September 3, 2004, when Roto-Rooter uncovered Drains A and B, to Plaintiff's shock, they found that Defendant had simply set Drains A and B right on top of a very large boulder about midway between Plaintiff's house and the lake. The problem was that the depth at the top of the boulder was higher than the depth of Drains A and B at the rear corner of the house, causing the drains to be sloped *toward* the house rather than toward the lake. Thus, gravity was pushing the water in the drains toward the foundation walls rather than away from the perimeter of the house. Only after a sufficient amount of water built up in the drains and particularly, next to the left, side foundation wall could water move through the drains, up over the "hump" caused by the boulder and back down to exit at the lake. Thus, when ½ inch or more of rain, since the water could not move through the pipes fast enough over the "hump", the water built up around the foundation wall until eventually and foreseeably the water found a weak point in the foundation wall and started pouring into the house.

26. To make matters worse, in addition to improperly sloping the drains, Defendant had overburdened Drain A. Not only was Drain A intended to collect water from the perimeter of the house, it was also installed just outside the left rear corner of the house with perforations in it in order to collect water that seeped into the ground from the following sources:

- a) the roof, collected into two gutter/downspouts located on the same (left) side of house as Drain A;

b) the driveway (which is located on the same (left) side as Drain A), with water moving to the left side and down the grass to the left, rear corner of the house; and

c) the front and side yards. As the house was built and graded to have a walk-out basement, water naturally travels from the front and side yards of the house down to the left rear corner of the house.

27. Because the grading of the lot was for a walk-out basement, the yard immediately surrounding the left, rear corner of the house was a low point relative to the front and left sides of the house. The backyard is relatively flat and very gently sloped toward the lake. Thus, water from the above-mentioned areas tended to seep down below grade and pool at this low point at the rear corner of the house. A reasonable person, especially a builder, should have expected this water movement and installed french drains of the proper size to handle the water and, at the very least, not slope the drains so that the water runs *toward* the house.

28. By sloping Drains A and B toward the house and making matters worse by overburdening the Drain A, all the water from the sources described above could not exit fast enough at the lake, built up against the left, side foundation wall of the storage room and caused water to come into the house.

29. Upon Plaintiff's request, Dr. Rice came to Plaintiff's house and inspected the boulder and the repair work being done by Roto-Rooter. He agreed that the boulder should have been jack-hammered or otherwise addressed to allow the drains to be sloped toward the lake rather than toward the house. He also reconfirmed his prior promises to pay for the repairs.

30. After identifying the problems, and showing and explaining the problems to Dr. Rice, Roto-Rooter made the necessary repairs. Roto-Rooter installed a solid, non-perforated Drain A, larger in diameter than the old Drain A, starting at the point the drain comes out from underneath the house and extending through the backyard and down to the lake. Thus, Drain A has a larger capacity to move water and is now devoted solely to moving water from the front and left side of the house out to the lake. This function was of critical importance to curing the water problem. Roto-Rooter also installed a separate pipe, with holes drilled into it, starting at the left, rear corner of the house, where the water from the roof, driveway and yard tended to pool at this low point. This was the location where the old Drain A had perforations to try to handle this anticipated additional volume of water. That way, Drain A would not be overburdened by this additional water during moderate or heavy rains, making it more difficult for the water in the front and side of the house to travel down the length of the backyard and out into the lake. A pipe separate from Drain A that is devoted to removing this additional water also eliminated the risk that problems upstream might cause this additional water to back into the house or prevent any water from the front and side of the house from exiting properly. Finally, these two drains as well as Drain B and a drain servicing the

hot water heater, which was also all found to be sloped toward the house, were reinstalled to slope away from the house.

31. Plaintiff knows that Roto-Rooter correctly diagnosed and made necessary repairs to cure the water problem because on September 9, 2004, less than a week after repairs were completed, the remnants of Hurricane Frances brought extremely heavy rains to Du Bois and no water leaked into Plaintiff's basement. Then again on September 18, 2004, Hurricane Ivan dumped even more rain, approximately 5 inches of rain, on Du Bois and still no water entered Plaintiff's basement. Since repairs were completed in September 2004 to the present, no water has entered Plaintiff's basement.

32. In late September 2004, Plaintiff sent Dr. Rice the invoices for Roto-Rooter's repairs totaling \$5980.00, a bill for \$107.42 for repairing an underground electrical conduit which had to be pulled out by Roto-Rooter to complete their repairs, and a note to expect an estimate for repairing the landscaping disturbed by Roto-Rooter's repairs. The landscaper's estimate of \$610.27 was later provided to Dr. Rice. The three amounts total \$6697.69. When provided the invoices, Dr. Rice did not object to or dispute the total cost of the repairs or his agreement to pay.

33. In October 2004, Plaintiff received a written letter from Erie Insurance Company, Dr. Rice's insurance company stating that a claim submitted by Defendant relating to Plaintiff's property was denied. Plaintiff informed Dr. Rice of the denial and Dr. Rice said he would discuss with Erie directly.

34. Defendant's insurance company informed Plaintiff that only accidental matters were covered and that the improper installation of the drain pipes did not fall into that category.

35. Dr. Rice's submission of the claims to Defendant's insurance company shows that Defendant, as builder of the house and installer of the french drain system, accepted full responsibility for the leaks into the house caused by the improper installation of the drains and was acting to fulfill Defendant's promises to Plaintiff to pay for the repairs.

36. Only after receiving confirmation that Defendant's insurance company would not pay for the repairs and Defendant would have to pay Plaintiff out-of-pocket, did Dr. Rice break his prior promises to pay Plaintiff for the repairs.

37. At the hearing before the District Court in Du Bois, PA on September 8, 2005, Dr. Rice admitted that the drains were improperly installed and that he had promised Plaintiff he would pay for the repairs to the drains.

38. At the above-mentioned hearing, Dr. Rice tried to argue that he is only partially responsible because Mr. Garner had added a fireplace to the right side of the house after the house was built, thereby possibly disturbing the portion of the french drain that Defendant alleges he installed at that location. However, the fireplace is

located on the right side of the house, the opposite side of the location of the leak site. In addition, the fireplace is located very close to the rear of the house. As stated before, the house is graded for a walk-out basement and there is a resulting steep slope at both sides of the house toward the rear of the house. Thus, Dr. Rice's allegation that the installation of the fireplace (at the right side and toward the rear of the house), caused the leak (at the left side and toward the front of the house) is highly implausible, if not impossible. The water in the drains near the fireplace would have to defy gravity to travel up the right side of the house and leak into the storage room foundation wall on the left side of the house. This argument would also require any reasonable person to simply ignore the fact that Defendant sloped Drains A and B toward the house, thereby preventing the water that accumulated around the house during rains from flowing out into the lake.

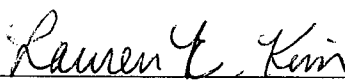
39. Fred Boyce of Roto-Rooter, an expert in repairing drain systems, testified at the District Court hearing that he was satisfied that after inserting his camera through Drain A down the entire length of the front of the house, from corner to corner and down the left, side foundation wall of the storage room (next to the location of the leak) and out from under the house down to the lake, the addition of the fireplace and any possible (but not confirmed) disturbance of the french drain at that site (near the *right*, rear corner of the house) was not relevant to the leaks described in this Complaint.

40. The lack of further water in the basement to date since Roto-Rooter's repairs despite heavy rains further goes to prove that Defendant's faulty installation of the drains directly and proximately caused water to come into Plaintiff's basement.

41. Defendant negligently and improperly sloped and installed the drains. Sloping the drains toward the house caused water to build up next to the left, side foundation wall of the storage room and leak into the basement. Defendant, the builder/contractor of the house, could have and should have easily foreseen that sloping the pipes toward the house would only cause water to leak into the basement foundation wall.

42. As a direct and proximate result of Defendant's negligent installation of the french drains, breach of promise to pay, purposeful deception and fraud, and Plaintiff's detrimental reliance on Defendant's promises, Plaintiff has sustained damages of \$6697.69 for the costs associated with repairing the french drains.

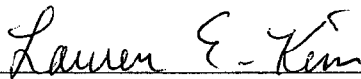
WHEREFORE, Plaintiff demands judgment against Defendant in the amount of \$6697.69, plus interest, \$120.00 in district court costs and such other reasonable costs as the court may allow.


Plaintiff

COMPLAINT-VERIFICATION

VERIFICATION

I verify that the statements in this Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to Unsworn Falsification to Authorities.



Lauren E. Kim

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY,
PENNSYLVANIA

Lauren E. Kim
Plaintiff/Appellee

vs.

Dr. Jeffrey W. Rice and
Rice Construction Company
Defendant/Appellant

District Justice Appeal
CASE NO. 2005-1538-C.D.

To: Dr. Jeffrey W. Rice and
Rice Construction Company

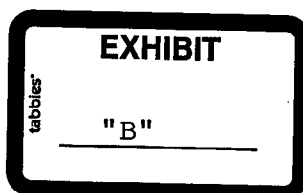
Date of Notice: November 21, 2005

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANCE RIGHTS. YOU SHOULD TAKE THIS NOICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2641, EXTENSION 1300

Lauren E. Kim
Lauren E. Kim

1405 Treasure Lake
Du Bois, PA 15801
Address



CHRISTOPHER E. MOHNEY
ATTORNEY AT LAW
90 BEAVER DRIVE
SUITE 111B
DUBOIS, PA 15801

TELEPHONE: (814) 375-1044

FACSIMILE: (814) 375-1088

November 29, 2005

Ms. Lauren E. Kim
1405 Treasure Lake
DuBois, PA 15801

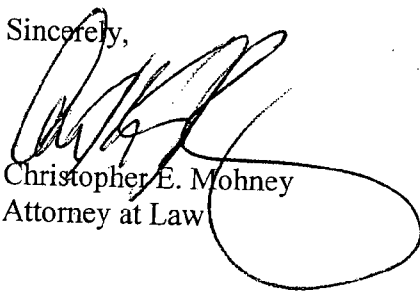
RE: Lauren E. Kim vs. Dr. Jeffrey W. Rice and Rice
Construction Company
No. 2005-1538-CD

Dear Ms. Kim:

This will acknowledge receipt of the Important Notice you prepared dated November 21, 2005. The certified copy of the Complaint with which I was served did not contain a Notice to Defend, nor is it endorsed with a Notice to Plead. Consequently, pursuant to Pennsylvania law, my client need not file a responsive pleading because the Complaint you filed is defective on its face.

Should you move to obtain default judgment as matters now stand, I will immediately petition the court to open the judgment and also for sanctions in the form of reimbursement of attorneys fees.

Sincerely,


Christopher E. Mohney
Attorney at Law

CEM:lle

cc: Jeffrey W. Rice



IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY,
PENNSYLVANIA

Lauren E. Kim
Plaintiff/Appellee

vs.

Dr. Jeffrey W. Rice and
Rice Construction Company
Defendant/Appellant

:
:
: District Justice Appeal
: CASE NO. 2005-1538-C.D.

PRAECIPE FOR ENTRY OF DEFAULT JUDGMENT

TO THE PROTHONOTARY:

Kindly enter judgment against the Defendants above named in the amount of \$6,697.69 plus costs for the Defendants' failure to answer the Complaint within twenty (20) days of service thereof.

I hereby certify that a Notice of Intention to Enter Default Judgment was mailed or delivered to the Defendants on November 21, 2005, being at least ten (10) days prior to the date of the filing of this Praecipe. A true and correct copy of the Notice of Intention to Enter Default Judgment mailed or delivered in this case is attached to this Praecipe.

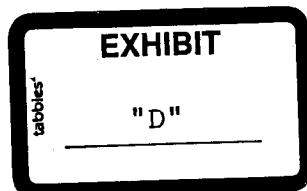
Lauren E. Kim
Lauren E. Kim

I hereby certify this to be a true
and signed copy of the original
and verified in this case

DEC 02 2005

ATTEST

Elizabeth A. Rice
Prothonotary/
Clerk of Courts



NOTICE OF JUDGMENT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL DIVISION

Lauren E. Kim

Vs.

No. 2005-01538-CD

Jeffrey W. Rice and
Rice Construction Company

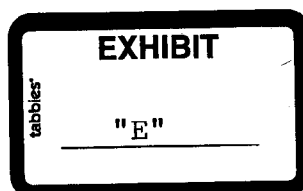
To: DEFENDANT(S)

NOTICE is given that a JUDGMENT in the above captioned matter has been entered against you in the amount of \$6,697.69 on December 2, 2005.

William A. Shaw
Prothonotary



William A. Shaw



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

LAUREN E. KIM,	:	NO. 2005-1538 C.D.
	:	
PLAINTIFF	:	TYPE OF CASE: CIVIL
	:	
VS.	:	TYPE OF PLEADING:
	:	PETITION TO STRIKE
DR. JEFFREY W. RICE and	:	JUDGMENT AND FOR
RICE CONSTRUCTION COMPANY,	:	SANCTIONS
	:	
DEFENDANTS	:	FILED ON BEHALF OF:
	:	DEFENDANTS
	:	
	:	COUNSEL OF RECORD:
	:	CHRISTOPHER E. MOHNEY, ESQ
	:	
	:	SUPREME COURT NO. 63494
	:	
	:	90 Beaver Drive
	:	Suite 111B
	:	DuBois, PA 15801
	:	(814) 375-1044

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William A. Shaw
Prothonotary/Clerk of Courts

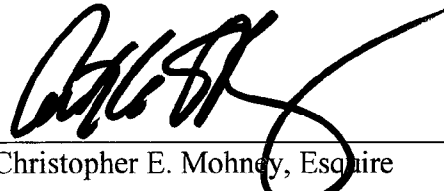
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA,
CIVIL DIVISION

LAUREN E. KIM,	:	NO. 2005-1538 C.D.
	:	
PLAINTIFF	:	TYPE OF CASE: CIVIL
	:	
VS.	:	
	:	
DR. JEFFREY W. RICE and	:	
RICE CONSTRUCTION COMPANY,	:	
	:	
DEFENDANTS	:	

CERTIFICATE OF SERVICE

I, Christopher E. Mohnney, Esquire, do hereby certify that on this 21st day of December, 2005, I caused to be served by First Class United States Mail, postage prepaid, Petition to Strike Judgment and for Sanctions on the following:

Lauren E. Kim
1405 Treasure Lake
DuBois, PA 15801



Christopher E. Mohnney, Esquire

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

LAUREN E. KIM,

Plaintiff

Vs.

DR. JEFFREY W. RICE and RICE
CONSTRUCTION COMPANY,

Defendants

No. 2005-1538-CD

Type of Pleading:

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S PETITION TO
STRIKE JUDGMENT AND FOR
SANCTIONS**

Filed on Behalf of:
PLAINTIFF

Counsel of Record for This Party:

Jeffrey S. DuBois, Esquire
Supreme Court No. 62074
190 West Park Avenue, Suite #5
DuBois, PA 15801
(814) 375-5598

FILED

JAN 09 2008

0/11:56

William A. Shaw

Prothonotary/Clerk of Courts

3 cent to Att

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

LAUREN E. KIM,	:	No. 2005-1538-CD
Plaintiff	:	
	:	
Vs.	:	
	:	
DR. JEFFREY W. RICE and RICE	:	
CONSTRUCTION COMPANY,	:	
Defendants	:	

**PLAINTIFF'S RESPONSE TO DEFENDANT'S PETITION
TO STRIKE JUDGMENT AND FOR SANCTIONS**

AND NOW, comes the Plaintiff, LAUREN E. KIM, by and through her attorney, Jeffrey S. DuBois, Esquire, who files this Response to Defendant's Petition to Strike Judgment and for Sanctions, and in support thereof avers the following:

1. Admitted.
2. Admitted.
3. Admitted. By way of further answer, said filing of the Complaint by Plaintiff was as a result of an Appeal filed by Defendant's after a Judgment was entered in favor of Plaintiff from a Hearing before District Justice Patrick Ford.
4. Admitted. By way of further answer, at said time Plaintiff was proceeding Pro Se.
5. Denied. In light of the fact both Defendant and his counsel were aware of these facts and circumstances surrounding the case from Plaintiff, in as much as there was a prior Hearing before District Justice, as well as the fact that it was Defendant who appealed said action requiring Plaintiff to file a Complaint, Defendant's argument is one

of form over substance, and Defendant should have had an obligation to answer said Complaint.

6. Denied. Respondent did send a copy to counsel.

7. See answer to paragraph 6 herein.

8. See answer to paragraph 6 herein.

9. It is admitted at said time Plaintiff was without counsel, though she has now retained the same.

10. See answer to paragraph nine (9) herein.

11. Plaintiff cannot answer the averments contained in Defendant's paragraph number 11 as only Defendants and Defendants counsel would be within the knowledge of said averments, and therefore the same is denied.

12. While it is admitted that Plaintiff did file for Praecipe for the Entry of Default Judgment, it is denied that it was in response to Respondent's letter, as Plaintiff did not receive Respondent's letter until after Plaintiff filed for the Entry of Default Judgment.

13. Defendant cannot answer the averments contained in Defendant's paragraph 13 as they contain factual allegations only within the purview of Defendant and Defendant's counsel, therefore, the same is denied. Further, and on the contrary, it is Plaintiff who has had to incur attorney's fees, time and expense in this matter, and not only in responding to this Petition, but also in having to file and prepare said Complaint based on the Appeal filed by Defendant. By way of further answer, and as set forth herein, Defendant's argument is one of form over substance and is merely designed to prolong and protract this litigation, and as a consequence attorney's fees for Plaintiff should be paid by Defendant.

WHEREFORE, Plaintiff, LAUREN E. KIM, respectfully requests this Honorable Court to dismiss Defendant's Petition in its entirety, to award Judgment in favor of Plaintiff, as well as attorney's fees in the amount of Five Hundred and 00/100 (\$500.00) Dollars to Jeffrey S. DuBois, Esquire, and any other relief this Court deems just and equitable.

Respectfully submitted,



Jeffrey S. DuBois, Esquire

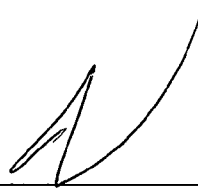
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

LAUREN E. KIM,	:	No. 2005-1538-CD
Plaintiff	:	
	:	
Vs.	:	
	:	
DR. JEFFREY W. RICE and RICE	:	
CONSTRUCTION COMPANY,	:	
Defendants	:	

CERTIFICATE OF SERVICE

I do hereby certify that on the 9th day of January, 2006, I served a true and correct copy of the within Response to Defendant's Petition to Strike Judgment and for Sanctions by first class mail, postage prepaid, on the following:

Christopher E. Mohny, Esquire
90 Beaver Drive, Suite 111B
DuBois, PA 15801



Jeffrey S. DuBois

CA

LAUREN E. KIM

No. 05-1538-CD

ORDER

BY THE COURT,

FILED

JAN 13 2006

5 / 12:00 / w
William A. Shaw
Prothonotary/Clerk of Courts

2 CENT TO ATTY DuBois

ATTY MOWNF

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

LAUREN E. KIM,

Plaintiff,

vs.

DR. JEFFREY W. RICE and RICE
CONSTRUCTION COMPANY,

Defendants.

: NO. 2005-1538-C.D.
:
: Type of Case: CIVIL
:
: Type of Pleading: PRAECIPE TO
: STRIKE JUDGMENT
:
: Filed on Behalf of: DEFENDANTS
:
: Counsel of Record:
: CHRISTOPHER E. MOHNEY, ESQUIRE
:
: Supreme Court No.: 63494
:
: 90 BEAVER DRIVE
: SUITE 111B
: DUBOIS, PA 15801
: (814) 375-1044

FILED *NCC*
112:530
JAN 20 2006 *CR*

William A. Shaw
Prothonotary/Clerk of Courts

Christopher E. Mohnney, Esquire

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

LAUREN E. KIM,

Plaintiff,

vs.

DR. JEFFREY W. RICE and RICE
CONSTRUCTION COMPANY,

Defendants.

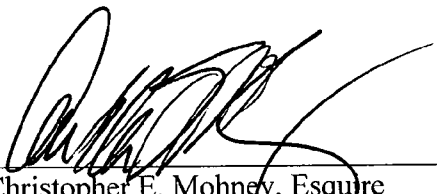
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: NO. 2005-1538-C.D.
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CERTIFICATE OF SERVICE

I, Christopher E. Mohny, Esquire, do hereby certify that on this 19th day of January, 2006, I caused to be served by First Class United States Mail, postage prepaid, Praeceptum to Strike Judgment on the following:

Jeffrey S. DuBois, Esquire
Attorney for Plaintiff
190 W. Park Avenue
Suite 5
DuBois, PA 15801

By:



Christopher E. Mohny, Esquire
Attorney for Defendant

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

LAUREN E. KIM

-VS-

DR. JEFFREY W. RICE and
RICE CONSTRUCTION COMPANY

No. 05-1538-CD

O R D E R

NOW, this 11th day of January, 2006, following argument on the Defendants' Petition to Strike Judgment and for Sanctions, it is the ORDER of this Court that said Petition be and is hereby granted to the extent that the default judgment previously entered is hereby stricken. The request for sanctions is denied.

BY THE COURT,

/s/ Fredric J. Ammerman

President Judge

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

JAN 13 2006

Attest.

William A. Shaw
Prothonotary/
Clerk of Courts

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

LAUREN E. KIM,

Plaintiff

Vs.

DR. JEFFREY W. RICE and RICE
CONSTRUCTION COMPANY,

Defendants

No. 2005-1538-CD

Type of Pleading:

AMENDED COMPLAINT

Filed on Behalf of:
PLAINTIFF

Counsel of Record for This Party:

Jeffrey S. DuBois, Esquire
Supreme Court No. 62074
190 West Park Avenue, Suite #5
DuBois, PA 15801
(814) 375-5598

FILED

0/11.21 cm

FEB 06 2006

3CC AM DuBois

UM

William A. Shaw
Prothonotary

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

LAUREN E. KIM,	:	No. 2005-1538-CD
Plaintiff	:	
	:	
Vs.	:	
	:	
DR. JEFFREY W. RICE and RICE	:	
CONSTRUCTION COMPANY,	:	
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, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Clearfield County Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641

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

LAUREN E. KIM,	:	No. 2005-1538-CD
Plaintiff	:	
	:	
Vs.	:	
	:	
DR. JEFFREY W. RICE and RICE	:	
CONSTRUCTION COMPANY,	:	
Defendants	:	

AMENDED COMPLAINT

AND NOW, comes the Plaintiff, LAUREN E. KIM, by and through her attorney, Jeffrey S. DuBois, Esquire, who files this Amended Complaint, and in support thereof avers the following:

1. Plaintiff, Lauren E. Kim, is an adult individual with an address of 1405 Treasure Lake, DuBois, Clearfield County, Pennsylvania, 15801.
2. Defendant, Dr. Jeffrey W. Rice, is an adult individual with a business address of 90 Beaver Drive, DuBois, Clearfield County, Pennsylvania, 15801.
3. Defendant, Rice Construction Company, is believed to be a Pennsylvania business with an address of 90 Beaver Drive, DuBois, Clearfield County, Pennsylvania, 15801.
4. Subject matter jurisdiction is proper before this Honorable Court as this case involves a house and real property which is located within Sandy Township, Clearfield County, Pennsylvania.
5. Defendants are in the business, among other things, of the construction of residential homes.

6. On or about 2001, Defendants constructed a two-story home in Treasure Lake, specifically in Section 14C, Lots 742 and 743 within the Treasure Lake Subdivision.

7. On or about July 3, 2003, Plaintiff purchased the above referenced residence.

8. On or about September of 2003, after a rain storm, Plaintiff noticed approximately one (1") inch of water which had accumulated in her basement, causing damage to her carpeting and personal property contained in the basement.

9. Shortly after this, Plaintiff contacted Defendant Rice concerning the problem, and Defendant Rice came to Plaintiff's property to inspect the water damage.

10. At that time, Defendant Rice could not locate the problem or the source of the water.

11. Thereafter, every time it rained heavily, Plaintiff's basement would again become flooded.

12. After consultation between Plaintiff and Defendant Rice, another contracting company was employed to determine the source of the problem and fix the same.

13. Upon digging of the area around the home, it was discovered that a huge boulder was sitting on two (2) of the French drains, and said boulder had crushed these drains.

14. The boulder was removed by the contracting company and the drains were replaced.

15. However, after some time, Plaintiff's house continued to be repeatedly flooded.

16. Again, Defendant Rice came to Plaintiff's residence, but could not discover the source of the problem.

17. Again, the same contracting company came to investigate, whereby it was determined that the french drains located in the back yard of Plaintiff's home was improperly sloped, and the drains were sloped towards the house rather than towards the lake.

18. As a consequence, the force of gravity was pushing the water towards the drains of the foundation walls, as opposed to away from the perimeter of the house, and when a buildup of water would occur, this would overflow into Plaintiff's basement.

19. Upon Defendant Rice seeing the same, he acknowledged that this was the case and the cause of the water problem and damages, and Defendant Rice agreed to pay for all repairs in this matter.

20. On reliance of Defendant's promise to Plaintiff, Plaintiff employed the contracting company to make all necessary repairs to fix the slope problem with the back part of her lot.

21. Said repairs were made for a total amount of Six Thousand Six Hundred Ninety Seven and 69/100 (\$6,697.69) Dollars.

22. Upon receipt of the bills by Plaintiff, Plaintiff forwarded said bills to Defendant Rice.

23. Despite Defendant Rice's earlier assurances to pay the same, Defendant Rice refused to pay said bills.

24. Despite repeated requests by Plaintiff to Defendant Rice for payment of the above referenced amount, Defendant Rice has failed to pay the same.

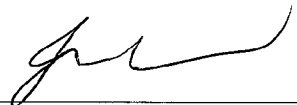
25. In building the home, Defendant's negligently and improperly sloped and installed the drains of the house, sloping them towards the house as opposed to away from the house.

26. As a direct and proximate result of Defendants negligent installation of the French drains, Plaintiff has repeatedly incurred water into her basement causing severe damage to not only carpeting, but also personal property.

27. In addition to the above, as a direct and proximate result of Defendants negligence, Plaintiff has incurred damages of personal property in the amount of Four Thousand and 00/100 (\$4,000.00) Dollars.

WHEREFORE, Plaintiff, respectfully requests this Honorable Court to enter judgment in her favor and against Defendants in the amount of Ten Thousand Six Hundred Ninety Seven and 00/100 (\$10,697.00) Dollars, together with interest, costs, and any other relief this Court would deem just and equitable.

Respectfully submitted,

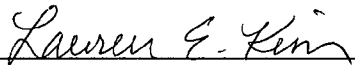


Jeffrey S. DuBois, Esquire

VERIFICATION

I, LAUREN E. KIM, verify that the statements in the foregoing Amended Complaint are true and correct to the best of my knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.



Lauren E. Kim


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

LAUREN E. KIM,	:	No. 2005-1538-CD
Plaintiff	:	
	:	
Vs.	:	
	:	
DR. JEFFREY W. RICE and RICE	:	
CONSTRUCTION COMPANY,	:	
Defendants	:	

CERTIFICATE OF SERVICE

I do hereby certify that on the 6th day of February, 2006, I served a true and correct copy of the within Amended Complaint by first class mail, postage prepaid, on the following:

Christopher E. Mohny, Esquire
90 Beaver Drive, Suite 111B
DuBois, PA 15801



Jeffrey S. DuBois

CA

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

LAUREN E. KIM,	:	No. 2005-1538-CD
	:	
Plaintiff	:	Type of Pleading:
	:	
Vs.	:	STIPULATION & CONSENT
	:	ORDER
	:	
DR. JEFFREY W. RICE and RICE	:	Filed on Behalf of:
CONSTRUCTION COMPANY,	:	PLAINTIFF
Defendants	:	
	:	Counsel of Record for This Party:
	:	
	:	Jeffrey S. DuBois, Esquire
	:	Supreme Court No. 62074
	:	190 West Park Avenue, Suite #5
	:	DuBois, PA 15801
	:	(814) 375-5598


FILED ^{2cc}
019:41/61
JUL 03 2006
Atty DuBois
CR
William A. Shaw
Prothonotary/Clerk of Courts

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

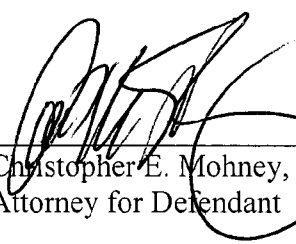
LAUREN E. KIM,	:	No. 2005-1538-CD
Plaintiff	:	
	:	
Vs.	:	
	:	
DR. JEFFREY W. RICE and RICE	:	
CONSTRUCTION COMPANY,	:	
Defendants	:	

STIPULATION

AND NOW, this 20th day of June, 2006, the parties hereby agree to stipulate that the correct party Defendant in the above captioned term and number should be as follows: J.W. Rice Construction, Inc. All other named Defendants will be deleted from the caption and the new caption of this matter will read: Lauren E. Kim, Plaintiff, Vs. J.W. Rice Construction, Inc., Defendant.



Jeffrey S. DuBois, Esquire
Attorney for Plaintiff



Christopher E. Mohney, Esquire
Attorney for Defendant

CONSENT ORDER

AND NOW, this 30 day of June, 2006, upon consideration of the following Stipulation:

IT IS HEREBY ORDERED AND DECREED:

1. The Defendant in the above captioned term and number shall be and is J.W. Rice Construction, Inc.
2. The caption shall be amended to read: Lauren E. Kim, Plaintiff, Vs. J.W. Rice Construction, Inc., Defendant.

BY THE COURT:


Judge

William A. Shaw
Prothonotary/Clerk of Courts

JUL 03 2006

FILED

DATE: 7/3/06

☒ You are responsible for serving all appropriate parties.

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

☐ 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

LAUREN E. KIM,

Plaintiff,

vs.

J.W. RICE CONSTRUCTION, INC.,

Defendant.

: NO. 2005-1538-C.D.
:
: Type of Case: CIVIL
:
: Type of Pleading:
: PRELIMINARY OBJECTIONS
:
: Filed on Behalf of: DEFENDANT
:
: Counsel of Record:
: CHRISTOPHER E. MOHNEY, ESQUIRE
:
: Supreme Court No.: 63494
:
: 25 EAST PARK AVENUE
: SUITE 6
: DUBOIS, PA 15801
: (814) 375-1044

FILED ^{icc}
m 1:01 PM
JUL 26 2006 *Att. Mohney*
WAS
William A. Shaw
Prothonotary/Clerk of Courts

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

LAUREN E. KIM,

Plaintiff,

vs.

J.W. RICE CONSTRUCTION, INC.,

Defendant.

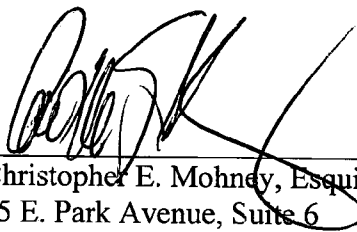
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: NO. 2005-1538-C.D.
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NOTICE TO PLEAD

TO: LAUREN E. KIM,
c/o Jeffrey S. DuBois, Esquire
190 W. Park Avenue, Suite 5
DuBois, PA 15801

You are hereby notified to file a written response to the enclosed Preliminary Objections
within twenty (20) days from service hereof or a judgment may be entered against you.

By:



Christopher E. Mohnhey, Esquire
25 E. Park Avenue, Suite 6
DuBois, PA 15801
(814) 375-1044

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

LAUREN E. KIM,

Plaintiff,

vs.

J.W. RICE CONSTRUCTION, INC.,

Defendant.

:
:
:
:
: NO. 2005-1538-C.D.
:
:
:
:
:

PRELIMINARY OBJECTIONS

Defendant DR. JEFFREY W. RICE and RICE CONSTRUCTION COMPANY, by Consent Order dated June 30, 2006 now J.W. RICE CONSTRUCTION, INC., by its undersigned counsel, preliminarily object to Plaintiff's Amended Complaint as follows:

INTRODUCTION

1. Plaintiff's Complaint is based upon her claim that Defendant is liable to her for the alleged negligent construction of Plaintiff's home, located in the Treasure Lake Subdivision, Sandy Township, Pennsylvania.

2. By Deed dated January 4, 2002, Jeffrey W. Rice and Brenda L. Rice conveyed the property subject of this lawsuit to John P. Garner and Helen U. Garner; by Deed dated June 26, 2003, John P. Garner and Helen U. Garner conveyed the property subject of this lawsuit to John J. Ahn and Lauren E. Kim, husband and wife, as tenants by the entireties.

3. Defendant believes, and therefore avers, that the Garners' made material changes to the structure and/or landscape of the home that at least contributed, if not entirely caused, certain of the water problems experienced by Plaintiff in her complaint.

COUNT I - PRELIMINARY OBJECTION PURSUANT
TO PA. R.C.P. 1028(a)(4)(Demurrer)

4. Paragraph 1 through 3 are incorporated herein by reference and as if set forth at length.

5. The Defendant had no privity of contract with Plaintiff and/or had no duty owing Plaintiff.

6. Plaintiff's Complaint that sounds in either breach of contract or negligence is legally insufficient and should be dismissed.

WHEREFORE, Defendant respectfully requests that this Court sustain Defendant's Preliminary Objection by way of demurrer and dismiss Plaintiff's Complaint.

COUNT II – PRELIMINARY OBJECTION PURSUANT
TO PA. R.C.P. 1028(a)(5)(Lack of Capacity to Sue)

7. Paragraphs 1 through 6 are incorporated herein by reference and as if set forth at length.

8. The Plaintiff in this action lacks the capacity to sue Defendant because Plaintiff never entered into a contract with Defendant, nor does Defendant have any duty to Plaintiff concerning the construction of the home, which home was completed in advance of the Garners' sale of the home to Plaintiff.

WHEREFORE, Defendant respectfully requests that this Court dismiss Plaintiff's Complaint.

**COUNT III – PRELIMINARY OBJECTION PURSUANT
TO PA. R.C.P. 1028(a)(5)(Non-Joinder of Necessary Parties)**

9. Paragraphs 1 through 8 are incorporated herein by reference and as if set forth at length.

10. Plaintiff has not joined her husband, John J. Ahn, a tenant by the entirety owner of the property, as a Co-Plaintiff, in violation of Pa. R.C.P. 2227(a), requiring “persons having only a joint interest in the subject matter of an action must be joined on the same side as Plaintiffs or Defendants”.

11. No reason appears in the Complaint for the omission of John J. Ahn as a party to this action.

12. John J. Ahn is accordingly a necessary and indispensable party to this action and his absence requires that the Complaint be dismissed.

13. Plaintiff has not joined John P. Garner and Helen U. Garner, husband and wife, as party Defendants.

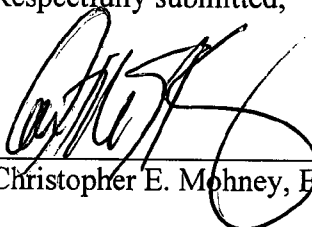
14. No reason appears in the Amended Complaint for the omission of John P. Garner and Helen U. Garner as parties to this action.

15. John P. Garner and Helen U. Garner are necessary and indispensable parties to this action, insofar as they sold the property to Plaintiffs and it is believed, and therefore averred, that the Garners made at least exterior alterations to the property after their purchase from Jeffrey W. Rice and Brenda L. Rice, but before their sale to Plaintiffs, and their absence requires that the Complaint be dismissed.

WHEREFORE, Defendant respectfully requests that his Preliminary Objections be sustained and that Plaintiff's Complaint be dismissed.

Respectfully submitted,

By:



Christopher E. Mohnney, Esquire

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

LAUREN E. KIM,

Plaintiff,

vs.

J.W. RICE CONSTRUCTION, INC.,

Defendant.

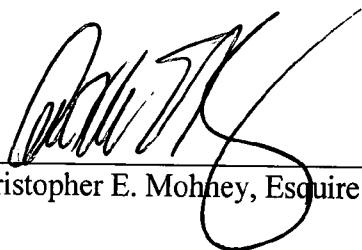
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: NO. 2005-1538-C.D.
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CERTIFICATE OF SERVICE

I, Christopher E. Mohnhey, Esquire, do hereby certify that on this 25th day of July, 2006, I caused to be served by First Class United States Mail, postage prepaid, Preliminary Objections on the following:

Jeffrey S. DuBois, Esquire
Attorney for Plaintiff
190 W. Park Avenue, Suite 5
DuBois, PA 15801

By:


Christopher E. Mohnhey, Esquire

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

LAUREN E. KIM,

Plaintiff

Vs.

DR. JEFFREY W. RICE and RICE
CONSTRUCTION COMPANY,

Defendants

No. 2005-1538-CD

Type of Pleading:

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S PRELIMINARY
OBJECTIONS**

Filed on Behalf of:
PLAINTIFF

Counsel of Record for This Party:

Jeffrey S. DuBois, Esquire
Supreme Court No. 62074
190 West Park Avenue, Suite #5
DuBois, PA 15801
(814) 375-5598

FILED

3cc Atty DuBois

0/9: 356m

AUG - 3 2008 (5)

William A. Shaw
Prothonotary

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

LAUREN E. KIM,	:	No. 2005-1538-CD
Plaintiff	:	
	:	
Vs.	:	
	:	
DR. JEFFREY W. RICE and RICE	:	
CONSTRUCTION COMPANY,	:	
Defendants	:	

**PLAINTIFF'S RESPONSE TO DEFENDANT'S
PRELIMINARY OBJECTIONS**

AND NOW, comes the Plaintiff, LAUREN E. KIM, by and through her attorney, Jeffrey S. DuBois, Esquire, who files this Response to Defendant's Preliminary Objections, and in support thereof avers the following:

1. Plaintiff's Complaint speaks for itself.
2. Admitted.
3. Denied. It is denied that the Garners' made any material changes which caused or contributed to the water problems experienced by Plaintiff, but on the contrary was based on the faulty design by Defendant in its construction.

**COUNT I – PRELIMINARY OBJECTIONS
PURSUANT TO PA. R.C.P. 1028(a)(4) (Demurrer)**

4. No responsive pleading is required.
5. It is not yet determined if Defendant had privity of contract with Plaintiff, but Defendant did have a duty owed to Plaintiff, as Defendant would always be responsible

for faulty and/or negligent design. By way of further answer, Defendant has already admitted to faulty and/or negligent design by acknowledging to Plaintiff said improper design, and by further agreeing to and doing some remedial work to the property on behalf of Plaintiff for some damage to property caused by flooding to Plaintiff's home because of said faulty workmanship by Defendant.

6. Denied. See answer to paragraph 5 herein. By way of further answer, Plaintiff's claim is legally sufficient and Plaintiff will be successful on the merits.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to dismiss Defendants Preliminary Objections in its entirety and award Judgment in favor of Plaintiff as set forth in her Complaint.

**COUNT II – PRELIMINARY OBJECTIONS
PURSUANT TO PA. R.C.P. 1028(a)(5)**

7. No responsive pleading is required.

8. Denied. See answer to paragraph 5 herein. By way of further answer, Defendant is always responsible for said faulty and/or negligent construction in said home and property.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to dismiss Defendants Preliminary Objections in its entirety and award Judgment in favor of Plaintiff as set forth in her Complaint.

COUNT III – PRELIMINARY OBJECTIONS
PURSUANT TO PA. R.C.P. 1028(a)(5)

9. No responsive pleading is required.

10. Plaintiff does not believe it is necessary to join her Husband, but if the same is required, Plaintiff can join him. Nevertheless, this would not prevent the case from proceeding accordingly.

11. See answer to paragraph 10 herein.

12. See answer to paragraph 10 herein.

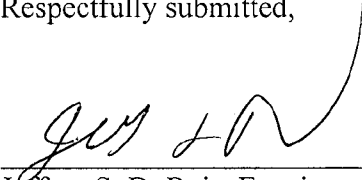
13. Plaintiff has not joined John P. Garner and Helen U. Garner, because the same are not necessary nor indispensable parties to this case at hand.

14. See answer to paragraph 13 herein. By way of further answer, if Defendant wishes to add said persons to the case, Defendant can make a motion to the Court for the same, but said parties are not necessary and indispensable parties, nor is it a proper ground for Preliminary Objections.

15. Denied. It is denied the Garner's are necessary and indispensable parties as nothing has been set forth, nor any evidence shown, which would make said parties necessary and indispensable parties, and on the contrary, only Defendant is liable for the faulty and/or negligent design in the property.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to dismiss Defendants Preliminary Objections in its entirety and award Judgment in favor of Plaintiff as set forth in her Complaint.

Respectfully submitted,



Jeffrey S. DuBois, Esquire
Attorney for Plaintiff

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

LAUREN E. KIM,

Plaintiff

No. 2005-1538-CD

Vs.


DR. JEFFREY W. RICE and RICE
CONSTRUCTION COMPANY,

Defendants

CERTIFICATE OF SERVICE

I do hereby certify that on the 3rd day of August, 2006, I served a true and correct copy of the within Response to Defendant's Petition to Strike Judgment and for Sanctions by first class mail, postage prepaid, on the following:

Christopher E. Mohny, Esquire
90 Beaver Drive, Suite 111B
DuBois, PA 15801



Jeffrey S. DuBois

William A. Shaw
Prothonotary/Clerk of Courts

FILED

SEP 29 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9/29/06

☒ You are responsible for serving all appropriate parties.

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

___ 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

LAUREN E. KIM,

Plaintiff,

vs.

DR. JEFFREY W. RICE and
RICE CONSTRUCTION COMPANY,

Defendants.

NO. 2005-1538 C.D.

Type of Case: CIVIL

Type of Pleading:
CERTIFICATE OF SERVICE

Filed on Behalf of:
DEFENDANTS

Counsel of Record:
CHRISTOPHER E. MOHNEY, ESQ

SUPREME COURT NO. 63494

25 EAST PARK AVENUE
SUITE 6
DUBOIS, PA 15801
(814) 375-1044

FILED
OCT 06 2006

William A. Shaw
Prothonotary/Clerk of Courts

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

LAUREN E. KIM,

Plaintiff,

vs.

DR. JEFFREY W. RICE and
RICE CONSTRUCTION COMPANY,

Defendants.

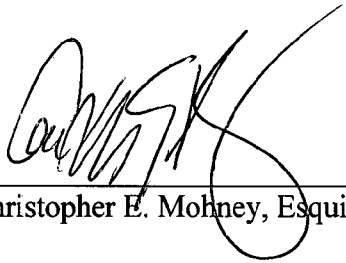
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CERTIFICATE OF SERVICE

I, Christopher E. Mohney, Esquire, do hereby certify that on this 5th day of October, 2006, I caused to be served by First Class United States Mail, postage prepaid, Scheduling Order on Preliminary Objections on the following:

Jeffrey S. DuBois, Esquire
190 W. Park Avenue
Suite 5
DuBois, PA 15801

By:



Christopher E. Mohney, Esquire

FILED

OCT 06 2006

William A. Shaw
Prothonotary/Clerk of Courts

0-1-1 10000

NA

■ ■ ■ ■ ■

No. 05-1538-CD

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Figure 1

1000

BY THE COURT
Judith J. Gurnee

President Judge

FILED
OCT 28 2006
10:06 AM
CLERK OF COURTS
DAUBOIS
MOHNEY
WILLIAM A. SHAW
PROTHONOTARY/CLERK OF COURTS
60

FILED

NOV 28 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/28/06

☐ You are responsible for serving all appropriate parties.
☒ The Prothonotary's office has provided service to the following parties:
Plaintiff(s) ☒ Plaintiff(s) Attorney ☐ Other
Defendant(s) ☒ Defendant(s) Attorney
☐ Special Instructions:

6A

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

JOHN L. AHN and LAUREN E. KIM, *
Husband and Wife,
Plaintiffs *

vs. *

DR. JEFFREY W. RICE and *
RICE CONSTRUCTION COMPANY, *
Defendant *

NO. 05-1538-CD

ORDER

NOW, this 18th day of December, 2006, it is the ORDER of this Court that the Defendant's Preliminary objections to the Plaintiffs' Amended Complaint be and are hereby DISMISSED.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED

01/10/45 am
DEC 22 2006

William A. Shaw
Prothonotary/Clerk of Courts

ICC AH45:
DuBois
Mohney
ICC Piff John Ahn
1405 Treasure Lake
DuBois PA 15804

DATE: 12-22-2006

____ You are responsible for serving all appropriate parties.

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

X John J. Ann
____ Plaintiff(s) X Plaintiff(s) Attorney ____ Other

____ Defendant(s) X Defendant(s) Attorney

____ Special Instructions:

FILED

DEC 22 2006

William A. Shaw
Prothonotary/Clerk of Courts

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

LAUREN E. KIM and JOHN J. AHN
Plaintiffs

Vs.

J.W. RICE CONSTRUCTION, INC.
Defendants

No. 2005-1538-CD

Type of Pleading:

PRE-TRIAL STATEMENT

Filed on Behalf of:
PLAINTIFFS

Counsel of Record For This Party:

Jeffrey S. DuBois, Esquire
Supreme Court No. 62074
210 McCracken Run Road
DuBois, PA 15801
(814) 375-5598

RECEIVED

4 RSW

JAN 21 2008

Court Administrator's
Office

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

LAUREN E. KIM and JOHN J. AHN	:	No. 2005-1538-CD
Plaintiffs	:	
	:	
Vs.	:	
	:	
J.W. RICE CONSTRUCTION, INC.	:	
Defendants	:	

PRE TRIAL STATEMENT

I. BRIEF STATEMENT OF THE CASE

Plaintiffs are the owners of a house and property located in Treasure Lake, Sandy Township, Pennsylvania. Defendant, and their representatives or agents, are the construction company who constructed said home.

On or about July of 2003, the parties purchased said home. On or about September, 2003, Plaintiffs discovered flooding in their basement resulting in one (1") inch of water and causing damage to the rug and personal property.

Thereafter, Plaintiff Lauren Kim contacted Dr. Jeff Rice, officer of Defendant Corporation, concerning this flooding. Dr. Rice came and visited the property and spoke with Plaintiff Kim to ascertain the problem. Sometime thereafter, it was discovered a large boulder on the property had crushed two french drains.

In response, personnel on behalf of Defendant removed the boulder and replaced the drains. However, sometime later, again Plaintiffs experienced severe flooding in the basement. Plaintiff Kim then contacted Dr. Rice who came to view the property. As

before, initially the source of the problem could not be located, but it was discovered the drains on the property were improperly sloped as they sloped towards the house instead of away from the house and towards the lake. As a consequence, the force of gravity was pushing the water towards the drains of the foundation walls, as opposed to away from the perimeter of the house, and when a buildup of water would occur, this would overflow into Plaintiffs' basement.

Upon discovering this, Dr. Rice, on behalf of Defendant, informed Plaintiff Kim that Defendant would take responsibility for this and pay for all repairs necessary to fix this problem.

On reliance of this promise by Dr. Rice, Plaintiff Kim contacted a company to fix the above referenced problems. The total cost for these repairs was Six Thousand Six Hundred Ninety Seven and 00/100 (\$6,697.00) Dollars.

Thereafter Plaintiff Kim submitted the bills to Dr. Rice but Dr. Rice refused to pay these bills. Despite repeated requests by Plaintiff Kim to Defendant, Defendant refused to pay the same.

II. CITATION TO APPLICABLE CASE OR STATUTES

Plaintiffs are pursuing under the general law of Breach of Contract and Breach of Warranty.

III. LIST OF WITNESSES

- a. Lauren E. Kim – Plaintiff
- b. John J. Ahn – Plaintiff

c. Jeffrey Rice – Representative of Defendant

d. Fred Boyce – Roto Rooter

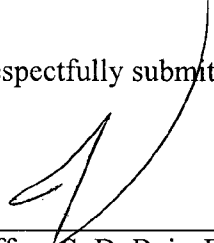
Plaintiffs reserve the right to add additional witnesses with proper notice to the Court and opposing counsel.

IV. STATEMENT OF DAMAGES AND COPIES OF BILLS

Plaintiffs incurred damages in the amount of Six Thousand Six Hundred Ninety Seven and 00/100 (\$6,697.00) Dollars. Enclosed are exhibits in which Plaintiffs intend to use at Trial, which consist of invoices and receipts for repairing items referenced above and pictures of the subject property.

- a. Two (2) invoice from Roto Rooter;
- b. Invoice from Wilkinson Lawn Care;
- c. Invoice from Bloom Electric; and,
- d. Pictures of the subject property.

Respectfully submitted,



Jeffrey S. DuBois, Esquire
Attorney for Plaintiffs

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

LAUREN E. KIM and JOHN J. AHN	:	No. 2005-1538-CD
Plaintiffs	:	
	:	
Vs.	:	
	:	
J.W. RICE CONSTRUCTION, INC.	:	
Defendants	:	

CERTIFICATE OF SERVICE


I do hereby certify that on the 13 day of January, 2008, I served a true and correct copy of the within Pre Trial Statement by first class mail, postage prepaid, on the following:

Christopher E. Mohny, Esquire
25 East Park Avenue, Suite 6
DuBois, PA 15801

Chris A. Pentz, Esquire
207 East Market Street
Clearfield, PA 16830

Ronald L. Collins, Esquire
218 S. Second Street
Clearfield, PA 16830

Kimberly M. Kubista, Esquire
P.O. Box 1
Clearfield, PA 16830



Jeffrey S. DuBois



MAIL TO: 212 TREASURE LAKE • DuBOIS, PA 15801

BROOKVILLE
849-4313

PUNXSUTAWNEY
938-6339

DuBOIS
375-5657

CLEARFIELD-
PHILIPSBURG
765-8856

Lauren Kim
1405 Treasure Lake
DuBois, Pa

No. 09811

JOB LOCATION	(STREET)	CITY
Same - Treasure Lake Road. Sect. 14c/742		
LINE CLEANED French Drains	LOCATION Back Yard	
APPROX. LENGTH OF LINE —	NUMBER OF FEET CLEANED 150' 2150'	
DIAMETER OF LINE 4" 24"	BLADES USED #72 Abbezie	
SIZE OF CABLE 1/4" Jetter	CLEAN OUT LOCATION E.O.P.S. By Lake	
CAUSE OF STOPPAGE Silt & Lines Were Not Installed with Proper Slope & Elevation		
CUSTOMER SIGNATURE Pa Lauren	TELEPHONE NUMBER 375-4565	
OTHER SERVICES PERFORMED Return when Weather is fit to install New Drain System from House to Lake	AMOUNT \$ 165.00	
DATE August 2004, Fred & Lenny	TOTAL 165.00	

TERMS: PAYABLE UPON COMPLETION OF JOB.
FINANCE CHARGE OF 1.5% PER MONTH, OR AN ANNUAL RATE
OF 18% IS APPLIED TO PAST DUE BALANCE OVER 30 DAYS.
ORIGINAL - CUSTOMER COPY MANILLA - OFFICE COPY



MAIL TO: 212 TREASURE LAKE • DuBOIS, PA 15801

BROOKVILLE
849-4313

PUNXSUTAWNEY
938-6339

DuBOIS
375-5657

CLEARFIELD-
PHILIPSBURG
765-8856

Lauren Kim
1405 Treasure Lake

DuBois, Pa 15801

No. 09812

JOB LOCATION		(STREET)	CITY
Same - Treasure Lake Road, Sect. 14C/242			
LINE REPLACED REPLACED: Furnace Room Drain, Spring Drain 2(2) House French Drains		LOCATION Back of House To Lake.	
APPROX. LENGTH OF LINE 4 Drains At 140' Long Per Drain		NUMBER OF FEET REPLACED REPLACED: 140' Each Drain w/SDR 35 Pipe	
DIAMETER OF LINE 4" Furnace Room Drain, 6" Spring Drain, 6" French Drain & 4" French Drain		BLADES USED —	
SIZE OF CABLE —		CLEAN OUT LOCATION Existing 4" TCO on Each French Drain At Back Patio	
CAUSE OF STOPPAGE Elevations of Existing French Drain Pipes To Lake Were Higher In Places Than Elevations of French Drains Around House Ditch Was Not Properly Excavated Also Lines Were Grouted In Places.			
CUSTOMER SIGNATURE P. Lauren		TELEPHONE NUMBER 375-4565 See Oct. 2003 Invoice.	
OTHER SERVICES PERFORMED Excavated & Install New Drains To Lake. Drain Was Replaced Around Biggest Rocks. Smaller Rocks Were Jackhammered & Tree Cut out As Necessary. 28 River Gravel Was Installed Under Down Pipe To Maintain Grade, Drainage & To Protect Pipe. 6" Drain Was Installed To Spring By Patio & Furnace Room Drain Was Excavated DATE 9-23-04 To Lake.		AMOUNT \$ 5,815.00 TOTAL \$ 5,815.00	

TERMS: PAYABLE UPON COMPLETION OF JOB.
FINANCE CHARGE OF 1.5% PER MONTH, OR AN ANNUAL RATE
OF 18% IS APPLIED TO PAST DUE BALANCE OVER 30 DAYS.
ORIGINAL - CUSTOMER COPY
MANILLA - OFFICE COPY

371-8768 or 583-7836

DATE 5-11-05

Wilkinson Lawn Care

P.O. Box 171

Rockton PA. 15856

Land Skaping

< Fixing Lawn Area >

Louren Kim

1405 Treasure Lake

DuBois PA. 15801

Cell 771-1530

②	50 ^{LB}	10-20-20 @	2.75	5.50
②	50 ^{LB}	Bag Pel. Lime @	2.75	5.50
①	20 ^{LB}	Bag of seed @	1.76 ^{LB}	35.20
②		Bails of straw @	2.50	5.-
④	Per Ton	Top Soil @	25.-	100.-

6% Tax — 160.27

Labor, Pickup, Delivery, Dispose etc. 450.-

Total — 610.27

Pricing good for 30 days
of prep date

Thank You

Louren H. Wilkinson

BLOOM

Electric • Heating • Plumbing & Air Conditioning

8164 Clearfield - Curwensville Hwy • Clearfield, PA 16830
Phone (814) 765-3140 • Fax (814) 765-9231

036053

JOB INVOICE

PHONE 375-4565	DATE OF ORDER 09/13/04
ORDER TAKEN BY KRL	CUSTOMER ORDER NUMBER LAUREN

DAY WORK

CONTRACT

EXTRA

TO: Lauren Kim
1405 Treasure Lake
DuBois, PA 15801

JOB NAME / NUMBER	
JOB LOCATION	
JOB PHONE	STARTING DATE 09/13/04

QUANTITY	MATERIAL	UNIT PRICE	AMOUNT
1.00	PVCC50 LB 1/2" pvc lb	4.78	4.78
2.00	PVCC125 CPL 1 1/4" pvc coupling	1.89	3.78
2.00	PVCC125 COND 1 1/4" pvc conduit	2.99	5.98
9.00	TAN WIRENUT Tan wirenut	.21	1.89
TOTAL MATERIALS ►			16.43

OTHER CHARGES	AMOUNT	LABOR	HOURS	RATE	AMOUNT
TOTAL OTHER ►		TOTAL LABOR ►			90.00

DESCRIPTION OF WORK

Service repair of broken conduit damaged by excavator.

TERMS: NET 30 DAYS 2% INTEREST
MINIMUM SERVICE CHARGE OF .75%
REMIT PAYMENT TO: P.O. BOX 93, GRAMPIAN, PA 16838
DATE COMPLETED 09/13/04
WORK ORDERED BY

AUTHORIZED SIGNATURE

TOTAL MATERIALS	16.43
TOTAL OTHER	
TOTAL LABOR	90.00
TAX	.99

TOTAL ► 107.42

I hereby acknowledge the satisfactory completion of the above described work.

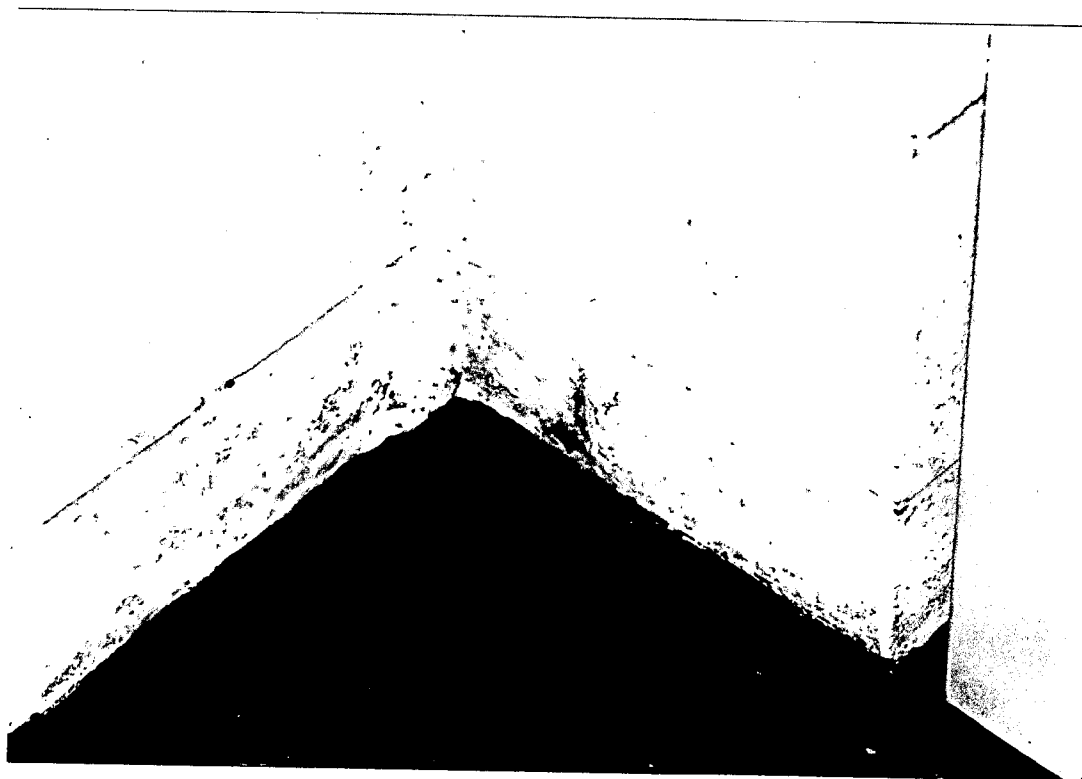


Back-
yard
from
side
view



Basement
Entrance
to
Storage
Room

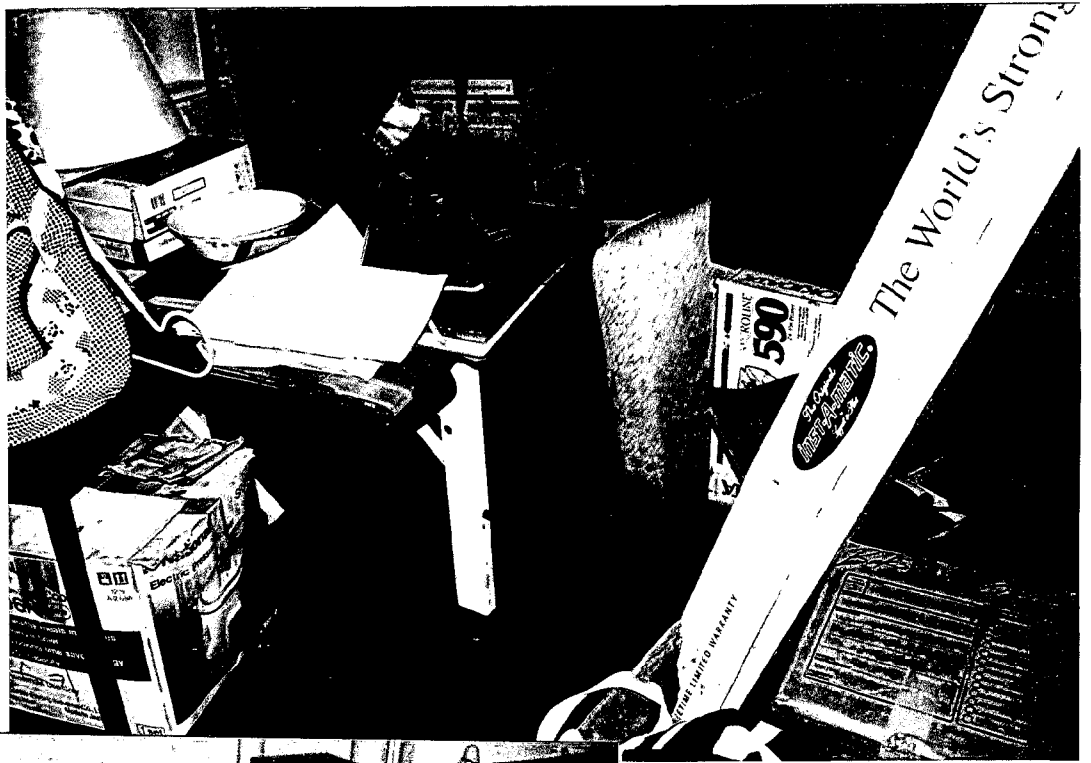
①



1st leak
9/03
Began in
Storage room
in basement



BALTIMORE, MD.
ANNAPOLIS, MD.
COLUMBIA, MD.
CATHERINE, MD.
WASHINGTON, D.C.
ALEXANDRIA, VA.
800-664-6355
www.maryland.gov



②



16/12/03

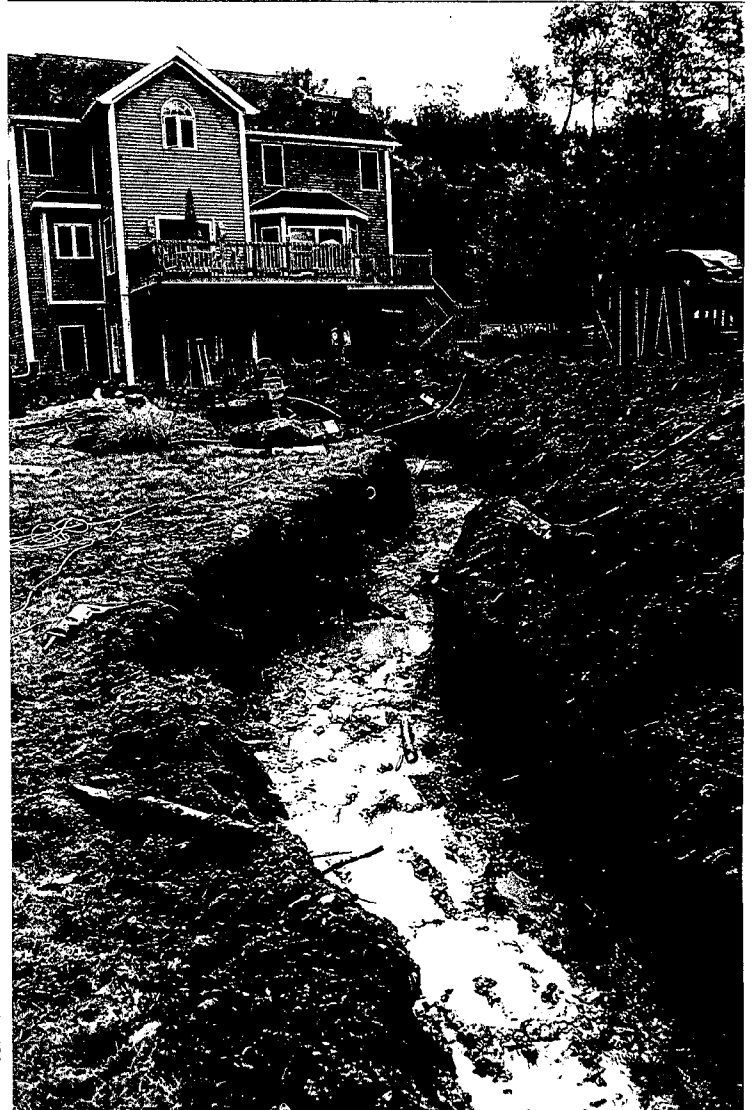
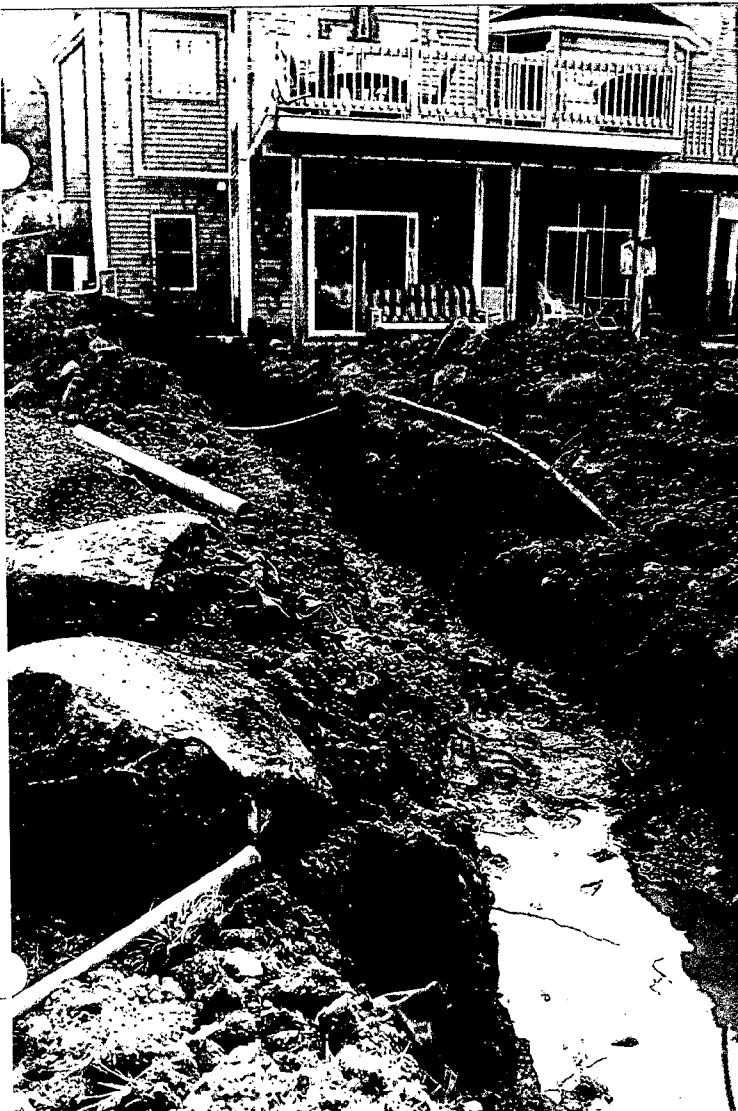


10/22/05



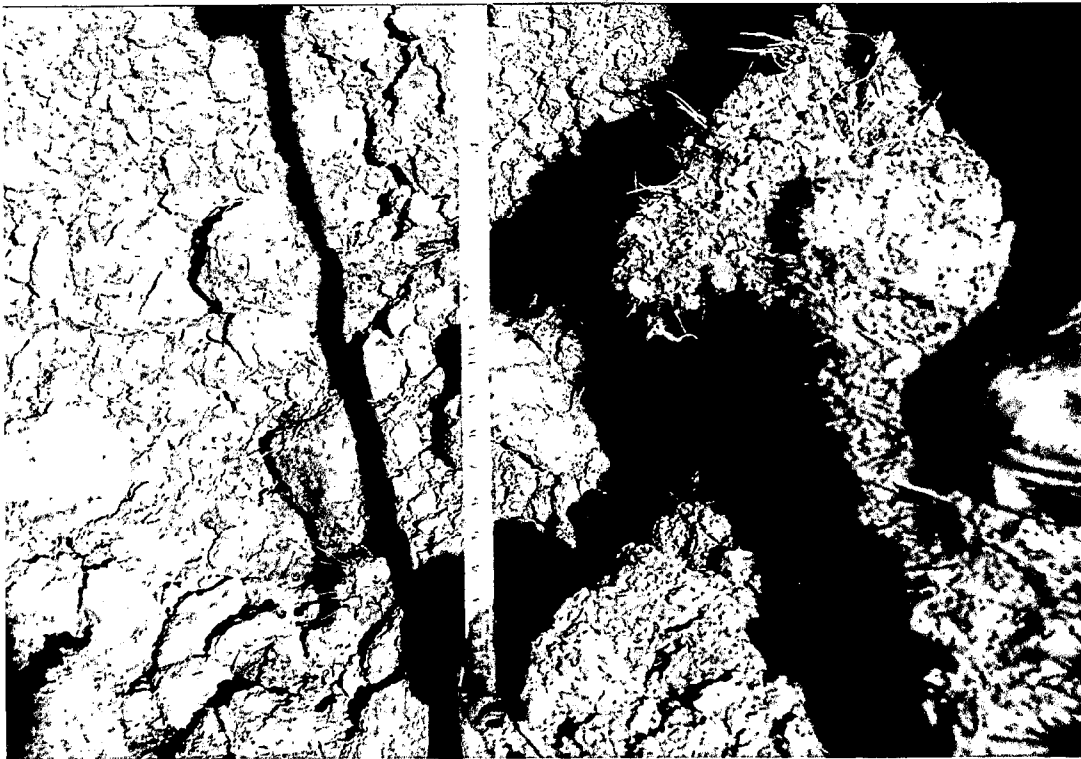
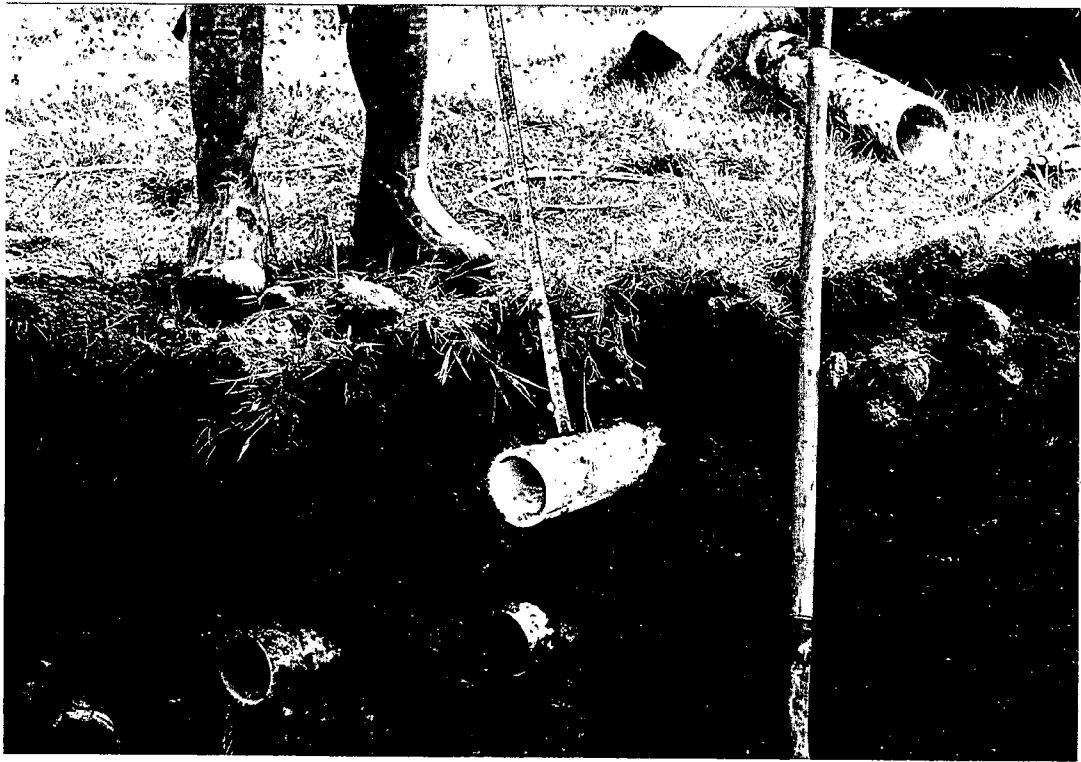


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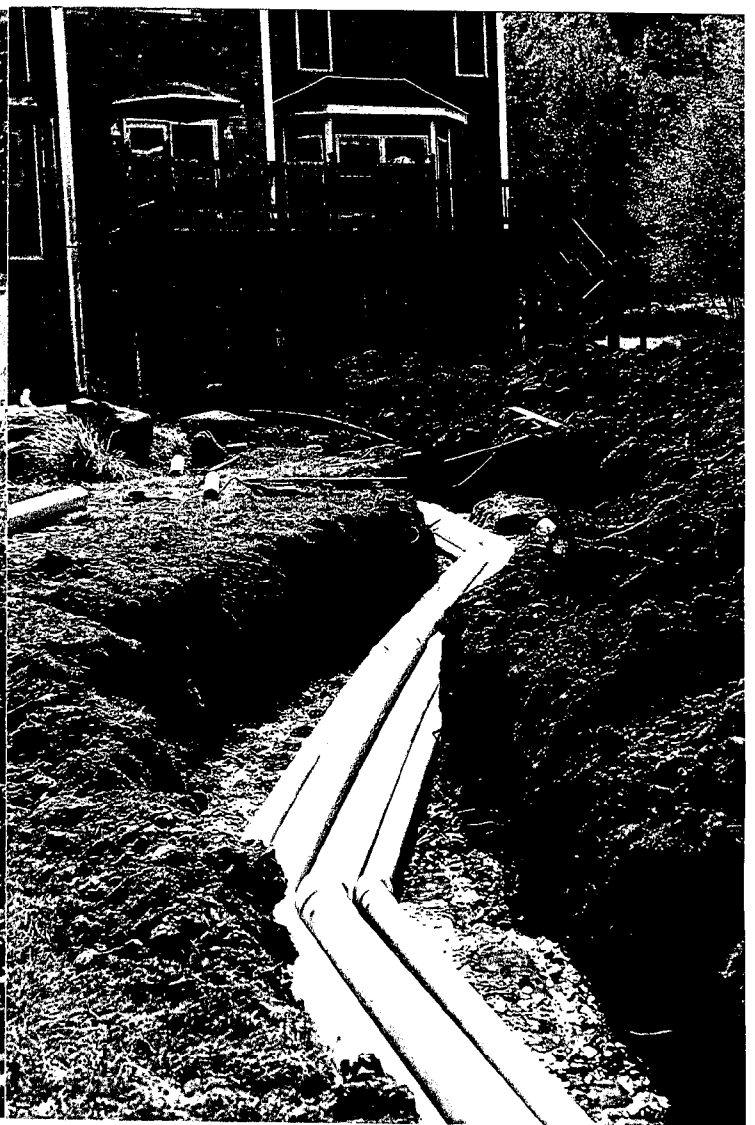
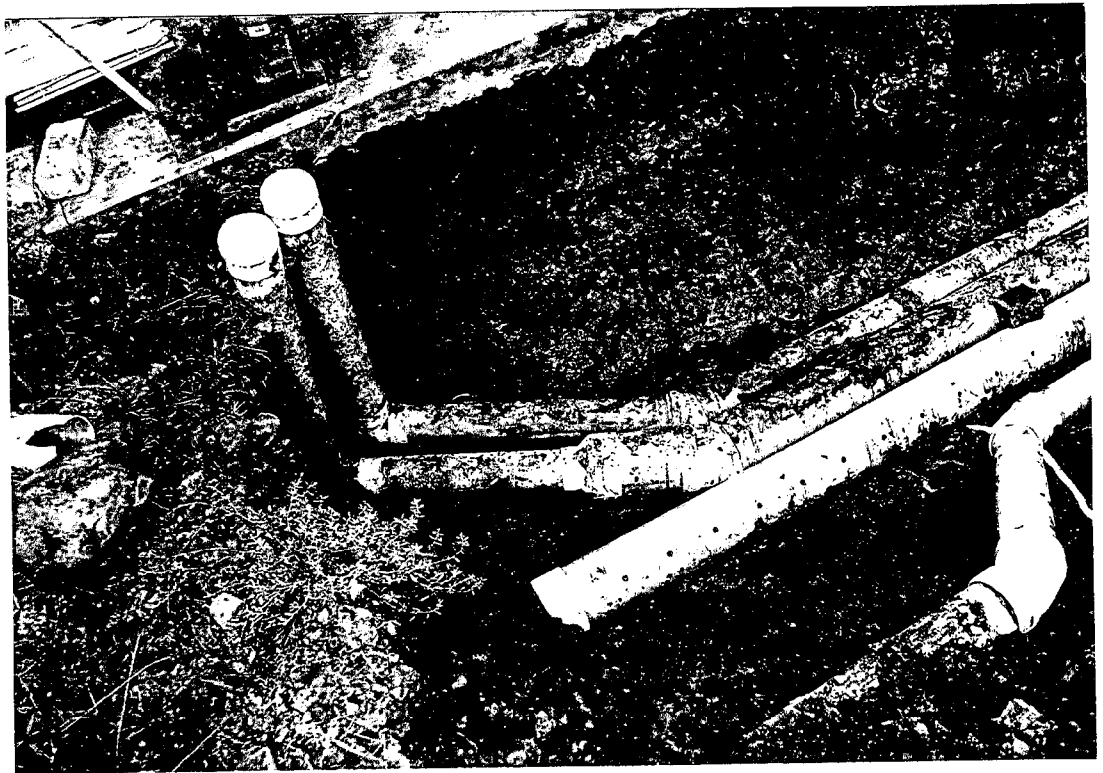




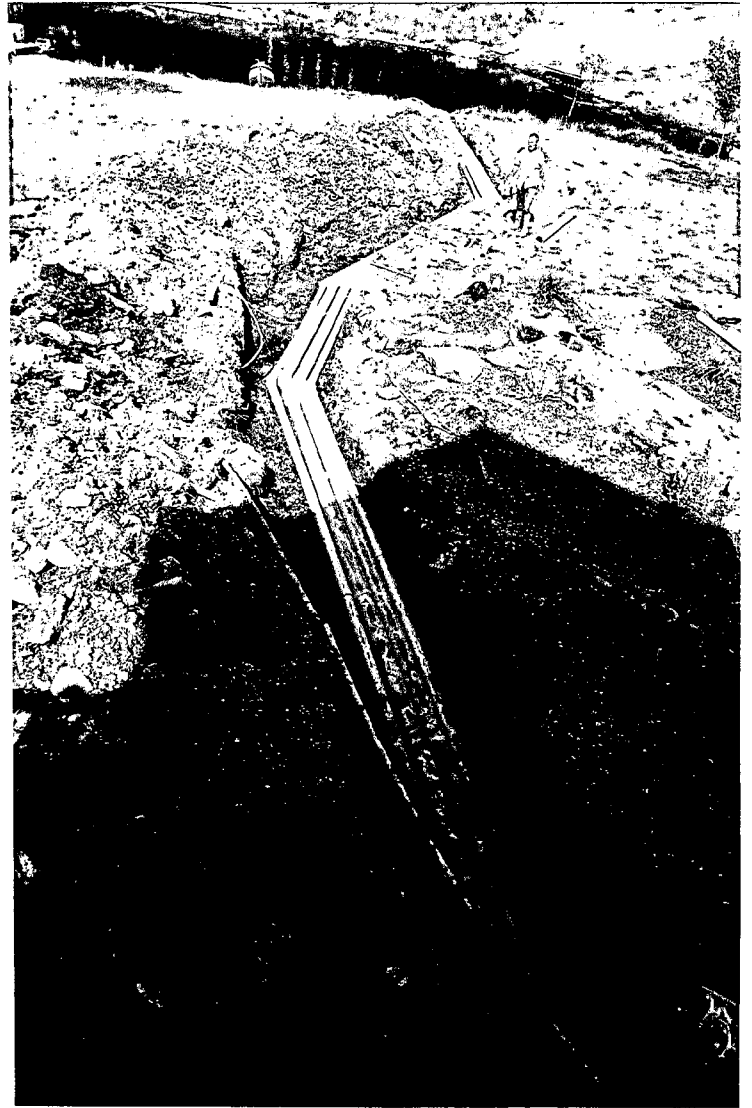


Rock
after
jack-
hammering





Repairs new drains



Exits
At Lake