

05-1679-CD

Danie I Smith vs RGB Clearfield

Danie Smith vs RGB Clearfield Develop. et al
2005-1679-CD

IN THE COURT OF COMMON PLEAS
OF THE FORTY-SIXTH JUDICIAL DISTRICT

DANIE I. SMITH, : CIVIL ACTION - LAW
Plaintiff :
VS. : NO. 05-1679 CD
RGB CLEARFIELD :
DEVELOPMENT, INC., : Type of Pleading: PRAECIPE FOR WRIT
Defendant : OF SUMMONS
: Filed on Behalf of Plaintiff
: Counsel of Record for this Party:
: MALIZIA & MALIZIA, P.C.
: Paul J. Malizia, Esquire
: 25 E. Fourth St., P.O. Box 111
: Emporium, PA 15834
: (814) 486-1181

FILED 10/2/2005
m/2/05 to Atty
OCT 28 2005 Atty pd \$5.00
LS
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF THE FORTY-SIXTH JUDICIAL DISTRICT

DANIE I. SMITH, : CIVIL ACTION - LAW
Plaintiff :
VS. :
: NO. _____
RGB CLEARFIELD :
DEVELOPMENT, INC., : Type of Pleading: PRAECIPE FOR WRIT
Defendant : OF SUMMONS

PRAECIPE FOR WRIT OF SUMMONS

TO THE PROTHONOTARY:

Please issue Writ of Summons against the above named Defendant.

Respectfully submitted,

MALIZIA & MALIZIA, P.C.

By:


Paul J. Malizia, Esquire

Date:

10/27/05



COPY

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

SUMMONS

Danie I. Smith

Vs.

NO.: 2005-01679-CD

RGB Clearfield Development, Inc.

TO: RGB CLEARFIELD DEVELOPMENT, INC.

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

Date: 10/28/2005

William A. Shaw
Prothonotary

Issuing Attorney:

Paul J. Malizia
25 E. Fourth St.
PO Box 111
Emporium, PA 15834
(814) 486-1181

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

DANIE I. SMITH,

CIVIL DIVISION

Plaintiff,

No. 2005-01679-CD

v.

ISSUE NO.:

RGB CLEARFIELD DEVELOPMENT, INC.

PRAECIPE FOR RULE TO FILE
COMPLAINT

Defendant.

Filed on Behalf of Defendant:
RGB Clearfield Development, Inc.

Counsel of Record for this Party:

TERRY L. BASHLINE
PA I.D. No. 30179

BASHLINE & HUTTON
Suite 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434.0201

Firm I.D. No.: 150

JURY TRIAL DEMANDED

FILED NO
m11/55/05 CC
NOV 21 2005 GK

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

DANIE I. SMITH,

CIVIL DIVISION

Plaintiff,

No. 2005-01679-CD

v.

RGB CLEARFIELD DEVELOPMENT, INC.

Defendant.

PRAECIPE FOR RULE TO FILE COMPLAINT

TO the Prothonotary

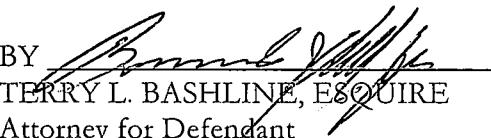
Pursuant to the provisions of Rule No. 1037(a) of the Pennsylvania Rules of Civil Procedure, enter Rule on the Plaintiff, Danie L Smith, to file her Complaint, sec. leg., or Judgment of Non Pros may be entered.

Date:

11/18/05

BASHLINE & HUTTON

BY

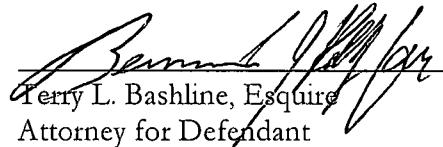

TERRY L. BASHLINE, ESQUIRE
Attorney for Defendant

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing PRAECIPE FOR RULE
TO FILE COMPLAINT was served via U.S. First Class Mail, postage pre-paid, on this 18th day
of November, 2005, upon the following counsel of record:

Paul Malizia Esquire
PO Box 111
Emporium, PA 15834

(Attorney for Plaintiff)


Terry L. Bashline, Esquire
Attorney for Defendant

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

 COPY

Danie I. Smith

Vs. Case No. 2005-01679-CD
RGB Clearfield Development, Inc.

RULE TO FILE COMPLAINT

TO: Danie I. Smith

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

William A. Shaw, Prothonotary

Dated: November 21, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

DANIE I. SMITH,

CIVIL DIVISION

Plaintiff,

No. 2005-01679-CD

v.

RGB CLEARFIELD DEVELOPMENT, INC.

PRAECIPE FOR APPEARANCE

Filed on Behalf of Defendant, RGB
Clearfield Development, Inc.

Counsel of Record for this Party:

TERRY L. BASHLINE
PA I.D. No. 30179

BASHLINE & HUTTON
Suite 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434-0201

JURY TRIAL DEMANDED

FILED NO
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NOV 21 2005 60
2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

DANIE I. SMITH,

CIVIL DIVISION

Plaintiff,

No. 2005-01679-CD

v.

RGB CLEARFIELD DEVELOPMENT, INC.

PRAECIPE FOR APPEARANCE

To the Prothonotary:

You are hereby directed to enter my appearance on behalf of RGB Clearfield Development, Inc., the Defendant in the afore-captioned case.

JURY TRIAL DEMANDED.

BASHLINE & HUTTON



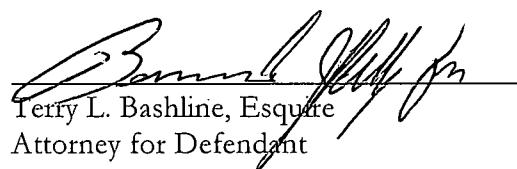
TERRY L. BASHLINE, ESQUIRE
Attorney for Defendant, RGB Clearfield
Development, Inc.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing PRAECIPE FOR APPEARANCE was served via U.S. First Class Mail, postage pre-paid, on this 18th day of November, 2005, upon the following counsel of record:

Paul Malizia Esquire
PO Box 111
Emporium, PA 15834

(Attorney for Plaintiff)


Terry L. Bashline, Esquire
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

DANIE I. SMITH,

CIVIL DIVISION

Plaintiff,

No. 2005-01679-CD

v.

ISSUE NO.:

RGB CLEARFIELD DEVELOPMENT, INC.

Defendant

**NOTICE OF SERVICE
FIRST INTERROGATORIES AND
REQUEST FOR PRODUCTION OF
DOCUMENTS**

Filed on Behalf of Defendant:
RGBCLEARFIELD DEVELOPMENT,
INC.

Counsel of Record for this Party:

GERALD J. HUTTON
PA I.D. No. 23098

BASHLINE & HUTTON
Suite 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434.0201

Firm I.D. No.: 150

JURY TRIAL DEMANDED

FILED

DEC 05 2005

11:10/05 

William A. Shaw
Prothonotary
W.A.S. 

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

DANIE I. SMITH,

CIVIL DIVISION

Plaintiff,

No. 2005-01679-CD

v.

RGB CLEARFIELD DEVELOPMENT, INC.

Defendant

**NOTICE OF SERVICE OF FIRST INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS**

I hereby certify that Defendant's **FIRST INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS** has been served upon Plaintiff's counsel, Paul
Malizia, Esq., on this 1st day of December, 2005

BASHLINE & HUTTON



GERALD J. HUTTON, ESQUIRE

Attorney for Defendant

RGB CLEARFIELD DEVELOPMENT, INC.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

DANIE I. SMITH, : CIVIL DIVISION
Plaintiff :
VS. : NO. 2005-01679-CD
RGB Clearfield Development, Inc., : Type of Pleading: COMPLAINT
Defendant : JURY TRIAL DEMANDED
: Filed on Behalf of Plaintiff
: Counsel of Record for this Party:
: MALIZIA & MALIZIA, P.C.
: Paul J. Malizia, Esquire
: 25 East Fourth St., P.O. Box 111
: Emporium, PA 15834
: (814) 486-1181
: Pa. I.D. No. 35950
: Counsel of Record for Defendant:
: Terry L. Bashline, Esquire
: Suite 3500 One Oliver Plaza
: 210 Sixth Ave.
: Pittsburgh, PA 15222
: (412) 434-0201

FILED NO CC
m/10/25/05
DEC 23 2005 (60)

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

DANIE I. SMITH, : CIVIL DIVISION
Plaintiff : NO. 2005-01679-CD
VS. : Type of Pleading: COMPLAINT
RGB Clearfield Development, Inc., : Filed on Behalf of Plaintiff
Defendant : JURY TRIAL DEMANDED

NOTICE

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

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

William A. Shaw, Prothonotary
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641, Ext. 1330

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

DANIE I. SMITH, : **CIVIL DIVISION**
Plaintiff :
: **NO. 2005-01679-CD**
VS. :
: **Type of Pleading: COMPLAINT**
RGB Clearfield Development, Inc., :
Defendant : **Filed on Behalf of Plaintiff**
: **JURY TRIAL DEMANDED**

COMPLAINT

AND NOW, comes Plaintiff, Danie I. Smith, by and through his attorney, Paul J. Malizia, and files this his Complaint against the above-named Defendant, as follows:

1. Plaintiff is Danie I. Smith, an adult individual who resides at 4264 Route 87 Highway, Montoursville, PA 17754.
2. Defendant is RGB Clearfield Development, Inc., who is authorized to perform business in the Commonwealth of Pennsylvania, with offices being located at 506 South Wilson Street, Aberdeen, SD 57401.
3. At all times material hereto, Defendant was and is the owner of the Super 8 Motel at R.R. #2, Box 242-C, Clearfield, Clearfield County, PA 16830.
4. On or about December 10, 2003, the Defendant had allowed the sidewalk outside the rear exit/entrance of said motel to accumulate with freezing rain and snow.
5. On said date, at approximately 6:45 a.m., Plaintiff, an overnight guest in the motel, was exiting the rear of said motel, when he took one step onto the slippery sidewalk and immediately fell to the ground, suffering injuries as hereinafter set forth.
6. The negligence of the Defendant consisted, *inter alia*, of the following, to wit:

- A. Failing to maintain the rear entrance to the motel by placing anti-skid material or salt on the sidewalk;
- B. Failing to warn the Plaintiff, a patron on the premises, the said sidewalk was slippery;
- C. Failing to protect the sidewalk with an enclosure or roof so as to prevent the accumulation of ice.

7. As a result of the negligence of the Defendant, Plaintiff sustained the following injuries, to wit:

- A. Grade I to II AC separation of this right shoulder.

8. As a result of the negligence of the Defendant, Plaintiff has suffered, is suffering and will continue to suffer physical pain, embarrassment, humiliation, disfigurement, and enjoyment of life.

9. As a result of the negligence of the Defendant, Plaintiff has incurred medical bills for treatment and physical therapy in the amount of \$3,040.09 and may continue to incur additional medical expenses for the treatment of his injuries.

10. As a result of his injuries, Plaintiff has suffered a total loss of earnings from December 10, 2003 through March 8, 2004 at \$330.20 per week, or \$4,245.43, and may continue to incur additional work loss in the future.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount in excess of the arbitral jurisdictional limits of this County.

Respectfully submitted,

MALIZIA & MALIZIA, P.C.

By:


Paul J. Malizia, Esquire

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

DANIE I. SMITH, : CIVIL DIVISION
Plaintiff :
VS. : NO. 2005-01679-CD
RGB Clearfield Development, Inc., : Type of Pleading: COMPLAINT
Defendant : Filed on Behalf of Plaintiff

VERIFICATION

I, Danie I. Smith verify that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements made are subject to the penalties of the Unsworn Falsification Act.

Danie I. Smith, Jr.
Danie I. Smith

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

DANIE I. SMITH, : CIVIL DIVISION
Plaintiff :
VS. : NO. 2005-01679-CD
RGB Clearfield Development, Inc., : Type of Pleading: COMPLAINT
Defendant : Filed on Behalf of Plaintiff
: JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Complaint was forwarded in the
U.S. Mail, first class, postage prepaid on this the 21st day of December, 2005, addressed to the
following:

Terry L. Bashline, Esquire
Suite 3500 One Oliver Plaza
210 Sixth Ave.
Pittsburgh, PA 15222

MALIZIA & MALIZIA, P.C.

By:


Paul J. Malizia, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

DANIE I. SMITH,

CIVIL DIVISION

Plaintiff,

No. 2005-01679-CD

v.

ISSUE NO.:

RGB CLEARFIELD DEVELOPMENT, INC.

Defendant

**NOTICE TO TAKE ORAL
DEPOSITION OF PLAINTIFF**

Filed on Behalf of Defendant:
RGB CLEARFIELD DEVELOPMENT,
INC.

Counsel of Record for this Party:

GERALD J. HUTTON
PA I.D. No. 23098

BASHLINE & HUTTON
Suite 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434.0201

Firm I.D. No.: 150

JURY TRIAL DEMANDED

FILED
NO CC
3/12/06
JAN 09 2006
WM

William A. Shaw
Prothonotary/Clerk of Courts

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

DANIE I. SMITH,

CIVIL DIVISION

Plaintiff,

No. 2005-01679-CD

v.

RGB CLEARFIELD DEVELOPMENT, INC.

Defendant

NOTICE TO TAKE ORAL DEPOSITION

TO: DANIE I. SMITH, PLAINTIFF
c/o Paul J. Malizia, Esquire
25 East Fourth Street
Post Office Box 111
Emporium, PA 15834

Please take Notice that on **FEBRUARY 24, 2006**, beginning at **11:00AM**, in the offices of PAUL MALIZIA located at 25 EAST FOURTH STREET, EMPORIUM, PA 15834, the defendant will take the deposition of Plaintiff, **DANIE I. SMITH**, upon oral examination pursuant to the Rules of Civil Procedure before an official Court Stenographer or by some other person authorized by law to administer oaths. The scope of the within deposition will include all matters which are relevant to the issues in this case. You are invited to attend and cross-examine if you wish to do so.

BASHLINE & HUTTON



BY: _____

GERALD J. HUTTON, ESQUIRE

Attorney for Defendant,

RGB CLEARFIELD DEVELOPMENT, INC

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing NOTICE TO TAKE ORAL DEPOSITION OF PLAINTIFF was served via U.S. First Class Mail, postage pre-paid, on this 6th day of January, 2006, upon the following counsel of record:

Paul J. Malizia, Esquire
MALIZIA & MALIZIA, P.C.
25 East Fourth Street
Post Office Box 111
Emporium, PA 15834

(Attorney for Plaintiff)

BASHLINE AND HUTTON

BY:



GERALD J. HUTTON, ESQUIRE
Attorney for Defendant,
RGB CLEARFIELD DEVELOPMENT, INC.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

DANIE I. SMITH,

CIVIL DIVISION

Plaintiff,

No. 2005-01679-CD

v.

ISSUE NO.:

RGB CLEARFIELD DEVELOPMENT, INC.

Defendant

ANSWER AND NEW MATTER

Filed on Behalf of Defendant:
RGB CLEARFIELD DEVELOPMENT,
INC.

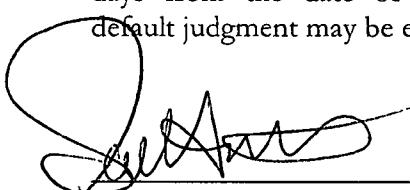
Counsel of Record for this Party:

GERALD J. HUTTON
PA I.D. No. 23098

BASHLINE & HUTTON
Suite 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 434.0201

Firm I.D. No.: 150

JURY TRIAL DEMANDED


GERALD J. HUTTON, ESQUIRE
Attorney for Defendant

FILED
M 11:35 AM NOCC
JAN 26 2006
LM
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

DANIE I. SMITH,

CIVIL DIVISION

Plaintiff,

No. 2005-01679-CD

v.

ISSUE NO.:

RGB CLEARFIELD DEVELOPMENT, INC.

Defendant

ANSWER AND NEW MATTER

AND NOW, comes the Defendant, RGB CLEARFIELD DEVELOPMENT, INC., by its attorneys, BASHINE & HUTTON and GERALD J. HUTTON, ESQUIRE, and states it has a full, just, complete and legal defense to the allegations contained in Plaintiff's Complaint and in support thereof avers as follows:

1. The averments of paragraphs 2 and 3 of Plaintiffs' Complaint are admitted although, by making this response, Defendant makes no admission as to any allegations of negligence or liability as averred in Plaintiff's Complaint, as liability is denied and strict proof thereof is demanded at trial.

2. The allegations of negligence and liability set forth in Plaintiff's Complaint including those allegations contained in paragraph 6 of the Complaint, are expressly denied and strict proof thereof is demanded at trial. Defendant denies that there existed a dangerous or defective condition of its premises and defendant denies that any such alleged condition of its premises where the legal and proximate cause of any injuries or damages claimed by plaintiff herein. To the contrary, defendant has acted in a reasonable and proper manner, and in accordance with the standards applicable to defendant motel keeper.

3. Defendant is advised by counsel and therefore believes and avers that it may deny in general the averments contained in Plaintiffs' Complaint and accordingly, the averments contained in Paragraphs 1, and 4 through 10 inclusive, of the Complaint, which have not been answered in the preceding paragraphs of this Answer, are denied in general in accordance with amended Rule 1029 of the Pennsylvania Rules of Civil Procedure and strict proof thereof is demanded at trial.

4. Defendant is advised by counsel and therefore believes and avers that it need not set forth any further or more specific response to the allegations contained in Plaintiffs' Complaint as all averments, other than those that have been expressly admitted or denied, are deemed denied and placed at issue by virtue of this Answer in the nature of a general denial and in accordance with amended Rule 1029 of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendant, RGB CLEARFIELD DEVELOPMENT, INC, demands that judgment be entered in its favor with costs on its behalf sustained.

NEW MATTER

By way of further and more complete answer to the allegations contained in Plaintiff's Complaint, Defendant sets forth the following new matter:

5. Plaintiff's Complaint fails to state a claim upon which relief might be granted by the Court.

6. No act or conduct of the Defendant or any agent, servant or employee caused any alleged injury, damage or loss to Plaintiff.

7. Defendant while continuing to deny the existence of a dangerous or defective condition on its premises, states that in the event that plaintiff is found entitled to recover at trial,

then in that event defendant asserts in general, Plaintiff's assumption of the risk and/or voluntary assumption of the risk in accordance with Rule 1030 of the Pennsylvania Rules of Civil Procedure.

8. Defendant, while continuing to deny negligence on its part, states that in the event it is established at trial that Plaintiff suffers from the alleged injuries, then said injuries may be the result of pre-existing condition or illness, or the result of an unrelated injury, accident or condition, for which this Defendant is not liable or responsible to Plaintiffs.

9. Defendant while continuing to deny the existence of a dangerous or defective condition on its premises, states that in the event that plaintiff is found entitled to recover at trial, then in that event said condition was open and obvious to the wife-Plaintiff who had a duty to ensure her own safety and welfare.

10. Defendant while continuing to deny the existence of a dangerous or defective condition on its premises, states that in the event that plaintiff is found entitled to recover at trial, then in that event defendant believes and therefore avers Plaintiff had an alternative, safe path which she choose not to take.

11. Defendant while continuing to deny the existence of a dangerous or defective condition on its premises, states that in the event that plaintiff is found entitled to recover at trial, then in that event, Plaintiffs' alleged injuries and/or damages were caused by third persons or parties, other than this Defendant, whose acts were independent and superseding, and for which this defendant is not liable or responsible to plaintiff.

11. Plaintiffs' claims may be barred due to Plaintiffs' failure to mitigate damages.

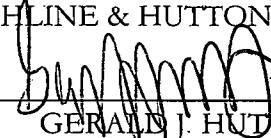
12. Plaintiffs' claims are barred by virtue of Plaintiffs' failure to establish that this Defendant breached any duty owing to plaintiff, and by virtue of Plaintiffs' failure to establish that

Defendant had notice of an alleged dangerous condition, that was an accumulation of snow and/or ice on the roof of the subject premises.

WHEREFORE, Defendant, RGB CLEARFIELD DEVELOPMENT, INC, demands that judgment be entered in its favor with costs on its behalf sustained.

JURY TRIAL DEMANDED.

BASHLINE & HUTTON

By: 

GERALD J. HUTTON, ESQUIRE
Counsel for Defendant

Smith v. RGB Clearfield, Inc.
005-01679-CD

VERIFICATION

I, Tammy Sipe, state that I am the authorized representative of RGB CLEARFIELD DEVELOPMENT, INC, a Defendant herein. I aver that the statements of fact contained in the attached ANSWER and NEW MATTER are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 Pa.C.S.A. Section 4904 relating to unsworn falsification to authorities.

Dated:

1/13/05

Tammy Sipe - GM

RECEIVED Pittsburgh Legal

LOGGED IN LEGAL FILES DATA INPUT BOCOMP/ACES
 SEND TO CLAIMS-SENT TICKLER FOR

JAN 18 2006

MEDICAL PLEADING CORRESPONDENCE
 INVESTIGATION DISCOVERY OTHER
 MAIL LOGGED IN

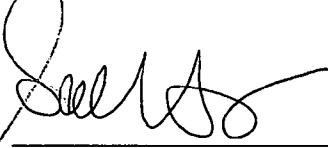
CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing ANSWER AND NEW MATTER was served via U.S. First Class Mail, postage pre-paid, on this 24th day of January, 2006, upon the following counsel of record:

Paul J. Malizia, Esquire
MALIZIA & MALIZIA, P.C.
25 East Fourth Street
Post Office Box 111
Emporium, PA 15834

(Attorney for Plaintiff)

BASHLINE AND HUTTON

BY: 

GERALD J. HUTTON, ESQUIRE
Attorney for Defendant
RGB CLEARFIELD DEVELOPEMENT, Inc

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

DANIE I. SMITH, : CIVIL DIVISION
Plaintiff :
VS. : NO. 2005-01679-CD
RGB Clearfield Development, Inc., : Type of Pleading: Plaintiff's Reply
Defendant : To Defendant's New Matter
: JURY TRIAL DEMANDED
: Filed on Behalf of Plaintiff
: Counsel of Record for this Party:
: MALIZIA & MALIZIA, P.C.
: Paul J. Malizia, Esquire
: 25 East Fourth St., P.O. Box 111
: Emporium, PA 15834
: (814) 486-1181
: Pa. I.D. No. 35950
: Counsel of Record for Defendant:
: Gerald J. Hutton, Esquire
: Suite 3500 One Oliver Plaza
: 210 Sixth Ave.
: Pittsburgh, PA 15222
: (412) 434-0201

FILED NO
M 10:22 AM
FEB 10 2006
WM

William A. Shaw
Prothonotary/Clerk of Courts

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

DANIE I. SMITH, : **CIVIL DIVISION**
Plaintiff :

VS. : **NO. 2005-01679-CD**

RGB Clearfield Development, Inc., : **Type of Pleading: Plaintiff's Reply**
Defendant : **To Defendant's New Matter**

: **Filed on Behalf of Plaintiff**
: **JURY TRIAL DEMANDED**

PLAINTIFF'S REPLY TO DEFENDANT'S NEW MATTER

AND NOW, comes Danie I. Smith, by and through his attorney, Paul J. Malizia, files this his Reply to Defendant's New Matter, as follows:

5. It is expressly denied that no act or conduct of the Defendant or any agent/servant or employee caused the alleged injury, damage or loss to the Plaintiff, for the reasons set forth in Paragraph 6 of Plaintiff's Complaint, incorporated herein by reference as though fully set forth.

7. Said allegation is a conclusion of law to which no response is required.

8. It is denied that the Plaintiff has suffered any pre-existing condition or illness to his right shoulder previous to December 10, 2003, and on the contrary, never experienced any condition or illness to said shoulder.

9. It is denied that the condition which caused Plaintiff to fall was open and obvious, and on the contrary, said condition was latent. Further, at all times, Plaintiff was careful in insuring his own safety and welfare while exiting Defendant's premises.

10. It is denied that Plaintiff had an alternate, safe path which he chose not to take, for the reason that the Plaintiff was unaware of any alternate, safe courses.

11. It is denied that Plaintiff's injuries were caused by third persons or third parties,

for the reason that it was Defendant who allowed ice to accumulate on the sidewalk immediately adjacent to the rear exit of its premises.

11. [sic]. Said allegation is a conclusion of law to which no response is required.

12. Said allegation is a conclusion of law to which no response is required however, if a response is required, then it is averred that Defendant owed Plaintiff a duty to make the premises safe as a business invitee and further, that Defendant had notice of a dangerous condition on the sidewalk by virtue of the fact that agents, servants and/or employees of Defendant placed salt or other anti-skid material on the front sidewalk of Defendant's premises, but otherwise failed or neglected to apply the same to the rear exit.

WHEREFORE, Plaintiff requests that Defendant's New Matter be dismissed.

Respectfully submitted,

MALIZIA & MALIZIA, P.C.

By:


Paul J. Malizia, Esquire

Dated:

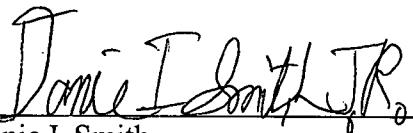
February 8, 2006

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

DANIE I. SMITH, : CIVIL DIVISION
Plaintiff :
VS. : NO. 2005-01679-CD
RGB Clearfield Development, Inc., :
Defendant : Filed on Behalf of Plaintiff
: JURY TRIAL DEMANDED

VERIFICATION

I, Danie I. Smith verify that the facts set forth in the foregoing Reply to Defendant's New Matter is true and correct to the best of my knowledge, information and belief. I understand that false statements made are subject to the penalties of the Unsworn Falsification Act.



Danie I. Smith

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

DANIE I. SMITH, : CIVIL DIVISION
Plaintiff :
VS. : NO. 2005-01679-CD
RGB Clearfield Development, Inc., :
Defendant : Filed on Behalf of Plaintiff
: JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Plaintiff's Reply to New Matter were forwarded in the U.S. Mail, first class, postage prepaid on this the 8th day of February, 2006, addressed to the following:

Gerald J. Hutton, Esquire
Suite 3500 One Oliver Plaza
210 Sixth Ave.
Pittsburgh, PA 15222

MALIZIA & MALIZIA, P.C.

By:

Paul J. Malizia, Esquire

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

DANIE I. SMITH, : CIVIL DIVISION
Plaintiff :
VS. : NO. 2005-01679-CD
RGB Clearfield Development, Inc., : Type of Pleading: Praecipe to
Defendant : Discontinue
: :
: JURY TRIAL DEMANDED
: :
: Filed on Behalf of Plaintiff
: :
: Counsel of Record for this Party:
: MALIZIA & MALIZIA, P.C.
: Paul J. Malizia, Esquire
: 25 East Fourth St., P.O. Box 111
: Emporium, PA 15834
: (814) 486-1181
: Pa. I.D. No. 35950
: :
: Counsel of Record for Defendant:
: Gerald J. Hutton, Esquire
: Suite 3500 One Oliver Plaza
: 210 Sixth Ave.
: Pittsburgh, PA 15222
: (412) 434-0201

FILED 10041007
MAY 11 2007 disc issued
JUN 01 2007 to AAG
WM
Malizia

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

DANIE I. SMITH, : CIVIL DIVISION
Plaintiff :
VS. : NO. 2005-01679-CD
RGB Clearfield Development, Inc., :
Defendant : Filed on Behalf of Plaintiff
: JURY TRIAL DEMANDED

PRAECIPE TO SETTLE, SATISFY AND DISCONTINUE

TO THE PROTHONOTARY:

Please mark the above captioned matter settled, satisfied and discontinued.

Respectfully submitted,

MALIZIA & MALIZIA, P.C.

By:


Paul J. Malizia, Esquire

Dated: May 14, 2007

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY

DANIE I. SMITH, : CIVIL DIVISION
Plaintiff :
VS. : NO. 2005-01679-CD
RGB Clearfield Development, Inc., :
Defendant : Filed on Behalf of Plaintiff
: JURY TRIAL DEMANDED

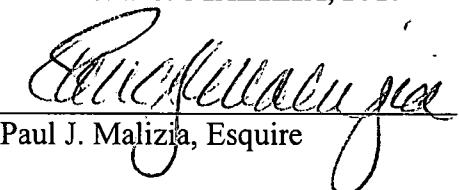
CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Plaintiff's Praeclipe to Discontinue was forwarded via U.S. Mail, first class, postage prepaid in the United States Post Office in Emporium, Pennsylvania on this the 11th day of May, 2007, addressed to the following:

Gerald J. Hutton, Esquire
Bashline & Hutton
Suite 3500 One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222

MALIZIA & MALIZIA, P.C.

BY:


Paul J. Malizia, Esquire

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Danie I. Smith

Vs. **No. 2005-01679-CD**
RGB Clearfield Development, Inc.

CERTIFICATE OF DISCONTINUATION

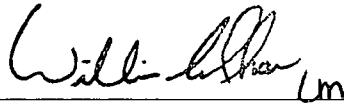
Commonwealth of PA
County of Clearfield

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 June 1, 2007, marked:

Settled, satisfied and discontinued

Record costs in the sum of \$85.00 have been paid in full by Paul J. Malizia Esq..

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 1st day of June A.D. 2007.



William A. Shaw, Prothonotary