

05-1922-CD
Debbie Stallone vs James Thomas

Debbie Stallone vs James Thomas
2005-1922-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - EQUITY

DEBBIE J. STALLONE,
Plaintiff

vs.

JAMES E. THOMAS,
Defendant

: No. 05 - 1922 C.D.
:
: Type of Case: EQUITY
:
: Type of Pleading: COMPLAINT
:
: Filed on Behalf of: DEBBIE J. STALLONE,
: Plaintiff
:
: Counsel of Record for this Party:
:
: TONI M. CHERRY, ESQ.
: Supreme Court No.: 30205
:
: GLEASON, CHERRY AND CHERRY, L.L.P.
: Attorneys at Law
: One North Franklin Street
: P.O. Box 505
: DuBois, PA 15801-0505
:
: (814) 371-5800

FILED

DEC 09 2005 *ew*
03:35/MS
William A. Shaw
Prothonotary
3 CENT TO ATTY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - EQUITY

DEBBIE J. STALLONE,	:
Plaintiff	:
vs.	:
	:
	:
JAMES E. THOMAS,	:
Defendant	:

: No. 05 - _____ C.D.

NOTICE

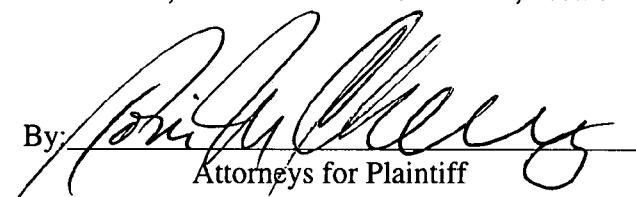
You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within Twenty (20) days after this Complaint and Notice are served by entering a written appearance personally or by attorney and filing in writing with the Court your defenses 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 claims or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator
Office of the Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765-2641 (Ext. 88-89)

GLEASON, CHERRY AND CHERRY, L.L.P.

By:



Lori J. Gleason
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - EQUITY

DEBBIE J. STALLONE,	:
Plaintiff	:
vs.	:
	:
	:
JAMES E. THOMAS,	:
Defendant	:

: No. 05 - _____ C.D.

C O M P L A I N T

AND NOW, comes the Plaintiff, DEBBIE J. STALLONE, by and through her attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and brings this action against Defendant on causes of action whereof the following are statements:

1. Plaintiff, DEBBIE J. STALLONE, is an adult individual who resides at 316 Forsyth Road, DuBois, Clearfield County, Pennsylvania 15801.
2. Defendant, JAMES E. THOMAS, is an adult individual, residing at 1295 DuBois Rockton Road, Rockton, Clearfield County, Pennsylvania 15856.
3. In September of 1986, Plaintiff was a widow who had just received \$50,000.00 worth of life insurance as a result of the death of her husband and was receiving monthly Social Security benefits for herself and her two children in the approximate amount of \$1,000.00 per month in addition to her income from odd jobs.
4. That in September of 1986, Defendant was working as a delivery man and earning the then minimum wage.

5. Plaintiff subsequently purchased a home in her name alone located at 500 Brisbin Street in Houtzdale, Clearfield County, Pennsylvania 16651 with the proceeds from her late husband's life insurance policy and Plaintiff and Defendant began cohabiting.

6. That in 1988, Plaintiff also purchased a Harley Davidson Sportster Motorcycle with the proceeds from her husband's life insurance and the proceeds from her Social Security benefits which motorcycle was titled in her name alone.

7. That on or about April 20, 1990, Plaintiff traded in the Sportster and received \$5,000.00 toward the purchase of a 1990 Harley Davidson Softail Motorcycle for which she paid the purchase price of \$16,000.00.

8. That in July of 1995, the parties did enter into an oral partnership agreement to pool their separate funds for the purpose of investing the same and acquiring property and assets for their mutual benefit and profit and agreeing that upon the sale of any such assets, the profits or losses would be equally divided between them.

9. That in July of 1995, in furtherance of their oral partnership agreement, Plaintiff and Defendant entered into an agreement for the purchase of a home together at R. R. #1, Box 635-A, Houtzdale, Pennsylvania, and did enter into a written agreement to purchase the same from James Cowfer, Sr.

10. Plaintiff and Defendant further agreed that Plaintiff should sell her home at 500 Brisbin Street, Houtzdale, Pennsylvania, and should advance the money for the purchase of the premises at R. R. #1, Box 635-A, Houtzdale, Pennsylvania, that was to be titled in the name of both parties as joint tenants with right of survivorship.

11. The parties agreed that they would enter into a mortgage to finance the balance of the purchase price for the new home and that the monthly mortgage payments would be paid from the pooled funds of the parties and on or about March 14, 1996, the parties did execute a loan application together.

12. That in furtherance of the terms of the partnership agreement, Plaintiff paid the closing costs and purchased furniture for the parties' new home in Houtzdale.

13. That in accordance with the terms of the partnership agreement, Defendant did name Plaintiff as beneficiary of the life insurance policy offered to him by his employer and did name her as beneficiary of his retirement benefits and did promise that Plaintiff would remain as his primary beneficiary with her two children as Defendant's secondary beneficiaries should Plaintiff not survive him.

14. That also in furtherance of their partnership agreement, Plaintiff and Defendant did pool their monies for the purposes of purchasing stocks through an investment account with Parker Hunter that Plaintiff believes was in the name of Defendant alone although she regularly gave Defendant money for the purchase of said stocks and he did regularly assure her that their investment together was growing.

15. That in furtherance of their partnership agreement, Plaintiff did transfer her ownership of the motorcycle into both names.

16. That in the Summer of 2003, Plaintiff and Defendant did sell the house they owned in joint names in Houtzdale, Pennsylvania, for the gross sales price of \$120,000.00. Of that amount, Plaintiff did receive the sum of \$35,000.00 and Defendant did receive the sum of \$15,000.00 and the balance of the purchase price paid off the mortgage against the premises.

17. That on or about July 10, 2003, Plaintiff and Defendant, in the furtherance of their partnership, did enter into an Agreement of Sale with one Willa C. Reasinger for the purchase of her real estate situate at 1295 DuBois-Rockton Road, Rockton, Union Township, Pennsylvania, for the purchase price of \$100,000.00 and Plaintiff did invest all of the profits she had received from the sale of the home in Houtzdale so that the premises in Union Township could be purchased and the parties could acquire this new investment.

18. That throughout the Summer of 2003, Defendant did request that Plaintiff title the motorcycle in his name alone so as to protect their partnership asset from Plaintiff's creditors and Plaintiff did acquiesce in this request and did cause the motorcycle to be titled in the name of Defendant alone.

19. On September 12, 2003, Plaintiff and Defendant did purchase for \$100,000.00 the premises that was the subject of the Agreement of Sale that they entered into on July 10, 2003.

20. Plaintiff and Defendant, in the furtherance of their partnership agreement, did pay the purchase price of \$100,000.00 in the following manner:

(a) \$35,000.00 in cash that Plaintiff contributed from the profit she had received on the sale of the prior house as the cash purchase money;

(b) The balance of the purchase price, or \$65,000.00, was paid by both Plaintiff and Defendant through a mortgage that was secured in the name of Defendant alone.

21. That the deed for said premises was made by Willa C. Reasinger, widow, to Defendant, James E. Thomas, single, dated September 3, 2003, and recorded in the Offices of the Register and Recorder of Deeds of Clearfield County, Pennsylvania, on September 12, 2003, as Instrument No. 200316498.

22. Defendant took title to the property in trust for himself and Plaintiff because Plaintiff had declared bankruptcy and Defendant told Plaintiff that he did not want her to be a party to the loan although she contributed toward the making of the mortgage payments in furtherance of the partnership established by the parties.

23. That Plaintiff took and kept continuous possession of the property that was acquired by the parties in furtherance of their partnership until she was forced to vacate the premises in Union Township in January of 2005 because of the physically abusive behavior of the Defendant and her fear for her personal safety.

24. That under the partnership agreement, Defendant is indebted to Plaintiff for one-half of the value of all property acquired by the parties during the term of their partnership.

25. That Defendant is entitled to a declaration that Defendant holds all property, both real and personal, as trustee for the Plaintiff to the extent of her partnership interest.

26. Plaintiff has repeatedly requested an accounting from Defendant but Defendant refuses to account to Plaintiff.

27. That Plaintiff has also made demand upon Defendant to execute and deliver to Plaintiff a deed for her one-half interest in the property and to execute the documents necessary to put Plaintiff's name on the titles to all vehicles owned jointly by the parties but Defendant has wholly failed and/or refused to comply with Plaintiff's demand.

WHEREFORE, Plaintiff requests that:

(a) the Defendant be declared to hold the real property as trustee for Plaintiff as to her one-half partnership interest therein;

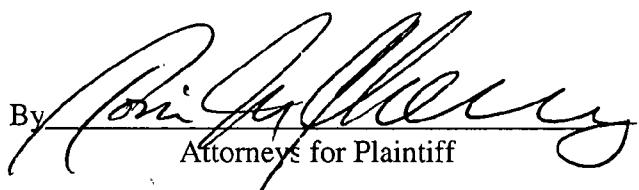
- (b) the Defendant be restrained and enjoined from conveying, mortgaging, or in any way disposing of or encumbering the real property;
- (c) the Defendant be declared to hold the vehicles and all other personality acquired by the parties during the term of their partnership as trustee for Plaintiff as to her one-half interest therein;
- (d) the Defendant be restrained and enjoined from conveying, encumbering, or in any way disposing of any personality;
- (e) the Defendant be declared to hold the investment account with Parker Hunter as trustee for Plaintiff as to her one-half interest therein;
- (f) the Defendant be ordered and directed to execute and deliver to Plaintiff a deed to the real property for her one-half interest therein in fee simple, subject merely to such valid encumbrances as may currently exist;
- (g) the Defendant be restrained and enjoined from conveying, mortgaging, or in any way disposing of the interest of the Plaintiff in his retirement plan and life insurance benefits to the degree that Plaintiff is entitled to a partnership interest therein;
- (h) the Defendant be ordered to account to the Plaintiff for the money received by him on the sale of any partnership asset;
- (i) the Defendant be ordered to pay to the Plaintiff the amount which the account may show to be due Plaintiff; and
- (j) the Court grant such other and further relief as may be deemed just and

proper.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By


Attorneys for Plaintiff

COMMONWEALTH OF PENNSYLVANIA :

: SS.

COUNTY OF CLEARFIELD :

Personally appeared before me, a Notary Public in and for the County and State aforesaid, DEBBIE J. STALLONE, who, being duly sworn according to law, deposes and says that the facts contained in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.



Debbie J. Stallone

Debbie J. Stallone

Sworn to and subscribed before me this 6th day of December, 2005.



Paula M. Cherry

Commonwealth of Pennsylvania

NOTARIAL SEAL

PAULA M. CHERRY, Notary Public

City of Dubois, County of Clearfield

My Commission Expires September 16, 2009

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

DEBBIE J. STALLONE,
Plaintiff

vs

* No. 05-1922 -CD

JAMES E. THOMAS,
Defendant

* Type of Case: Civil

* Type of Pleading: Answer to
* Complaint

* Filed on Behalf of: Defendant

* Counsel of Record for this Party:
* CHRIS A. PENTZ, Esquire

* Supreme Court I.D. # 39232
* 207 East Market Street
* P. O. Box 552
* Clearfield PA 16830
* 814 765-4000

Date: 1-18-06

FILED 1CC
03/18/06 by Atty Pentz
JAN 18 2006
WPS

William A. Shaw
Prothonotary/Clerk of Courts

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

*

DEBBIE J. STALLONE,
Plaintiff

*

vs

No. 05-1922-C.D.

*

JAMES E. THOMAS,
Defendant

*

ANSWER TO COMPLAINT

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is denied. After reasonable investigation the Defendant is without sufficient knowledge or information to form a belief as to the averment.
4. Paragraph 4 is admitted in part and denied in part. It is admitted that the Defendant was working as a delivery man. It is denied that he was earning minimum wage in that Defendant's earnings were \$6.25 per hour
5. Paragraph 5 is admitted.
6. Paragraph 6 is denied. The Harley Davidson motorcycle was purchased by the Defendant and titled in his name alone.
7. Paragraph 7 is denied. The motorcycle was purchased by the Defendant and the purchase price was \$10,000.00 and titled in both parties' names.
8. Paragraph 8 is denied. The parties never at any time entered into any oral or written partnership agreements.
9. Paragraph 9 is admitted in part and denied in part. It is denied that the parties entered into an oral partnership agreement.

It is admitted that the parties did agree to purchase a home together located at R.R. # 1, Box 635, Houtzdale, Pennsylvania from James Cowfer, Sr.

10. Paragraph 10 is admitted

11. Paragraph 11 is admitted in part and denied in part. The Defendant made all monthly mortgage payments. The remainder of the allegations of Paragraph 11 are admitted.

12. Paragraph 12 is denied to the extent there was any partnership agreement and that Plaintiff solely paid for the closing costs. It is admitted that Plaintiff purchased the furniture for the parties' new home in Houtzdale.

13. Paragraph 13 is denied. The parties never at any time entered into an oral or written partnership agreement. There was never any agreement that the Defendant would maintain the Plaintiff and the Plaintiff's children as beneficiaries of his life insurance policy offered through his employment.

14. Paragraph 14 is denied. The Plaintiff and Defendant never entered into an oral or written partnership agreement. The Plaintiff never contributed any money towards the purchase of any stocks nor did Defendant assure Plaintiff that their investment was growing together.

15. Paragraph 15 is admitted in part and denied in part. It is denied that the parties entered into any partnership agreement. Ownership of the motorcycle was transferred to both names by the Defendant in 1990 and was subsequently transferred to just Defendant's name in 2002.

16. Paragraph 16 is admitted.

17. Paragraph 17 is admitted in part and denied in part.

Paragraph 17 is denied to the extent that there was any partnership agreement between Plaintiff and Defendant or that Plaintiff contributed any amount greater than \$13,000.00 with the remainder of the averments admitted.

18. Paragraph 18 is denied. The answer set forth in Paragraph 15 above is incorporated herein by reference as though set forth in full.

19. Paragraph 19 is admitted.

20. Paragraph 20 is denied to the extent that Plaintiff and Defendant acted in furtherance of a partnership agreement.

- (a) Paragraph 20 (a) is denied in that Plaintiff contributed \$13,000.00.
- (b) Paragraph 20 (b) is denied in that the Defendant was the only individual who contributed to the payment of the mortgage.

21. Paragraph 21 is admitted.

22. Paragraph 22 is denied. The Defendant never held title to any property in trust for the Plaintiff. All payments made on the mortgage were made by the Defendant. No actions were made in furtherance of the partnership since the parties had not established a partnership.

23. Paragraph 23 is denied. The parties never at any time entered into an oral and/or written partnership. The Defendant denies physically abusive behavior. Defendant admits Plaintiff vacated property January of 2005.

24. Paragraph 24 is denied. There was no partnership agreement and no agreement as to indebtedness between the parties.

25. Paragraph 25 is a conclusion of law. To the extent that an answer is required, Paragraph 25 is denied because there

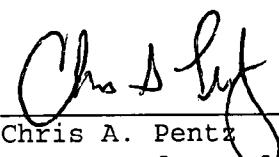
is no partnership agreement between the parties.

26. Paragraph 26 is admitted.

27. Paragraph 27 is admitted.

WHEREFORE, the Defendant respectfully requests Your Honorable Court to deny the relief sought by Plaintiff in her Complaint.

Respectfully submitted this 18 day of January, 2006



Chris A. Pentz
Attorney for Defendant,
James E. Thomas

VERIFICATION

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

1-11-06

Date

James E. Thomas
James E. Thomas

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

DEBBIE J. STALLONE,
Plaintiff

vs

5
No. 2006- 1922 -CD

JAMES E. THOMAS,
Defendant

* Type of Case: Civil

* Type of Pleading: Certificate
* of Service

* Filed on Behalf of: Defendant

* Counsel of Record for this Party:
* CHRIS A. PENTZ, Esquire

* Supreme Court I.D. # 39232
* 207 East Market Street
* P. O. Box 552
* Clearfield PA 16830
* 814 765-4000

Date: 1-25-06

FILED NO CC
01/10/56 QD
JAN 25 2006
JM

William A. Shaw
Prothonotary/Clerk of Courts

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

DEBBIE J. STALLONE,
Plaintiff

*

*

*

vs

* No. 2005 - 1922 - C.D.

*

*

KAMES E. THOMAS,
Defendant

*

*

*

CERTIFICATE OF SERVICE

I do hereby certify that on the 25th day of January, 2006, a copy of Defendant, James E. Thomas' Answer to Complaint was served by first class mail, postage prepaid upon:

Attorney Tomi Cherry
Attorney for Plaintiff
One North Franklin Street
P. O. Box 505
DuBois PA 15801-0505

Chris A. Pentz
Chris A. Pentz
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101072
NO: 05-1922-CD
SERVICE # 1 OF 1
COMPLAINT IN EQUITY

PLAINTIFF: DEBBIE J. STALLONE

vs.

DEFENDANT: JAMES E. THOMAS

SHERIFF RETURN

NOW, December 14, 2005 AT 3:50 PM SERVED THE WITHIN COMPLAINT IN EQUITY ON JAMES E. THOMAS DEFENDANT AT 1295 DUBOIS ROCKTON ROAD, ROCKTON, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO JAMES E. THOMAS, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN EQUITY AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

FILED

01/07/06
MAR 07 2006

William A. Shaw
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	GLEASON	10641	10.00
SHERIFF HAWKINS	GLEASON	10641	30.98

Sworn to Before Me This

____ Day of _____ 2006

So Answers,

*Chester A. Hawkins
by Marilyn Hays*
Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - EQUITY

DEBBIE J. STALLONE,
Plaintiff

vs.

JAMES E. THOMAS,
Defendant

: No. 05 - 1922 C.D.
:
: Type of Case: EQUITY
:
: Type of Pleading: CERTIFICATE OF
: READINESS AND PRAECIPE TO LIST
: CASE FOR NON-JURY TRIAL
:
: Filed on Behalf of: DEBBIE J. STALLONE,
: Plaintiff
:
: Counsel of Record for this Party:
:
: TONI M. CHERRY, ESQ.
: Supreme Court No.: 30205
:
: GLEASON, CHERRY AND CHERRY, L.L.P.
: Attorneys at Law
: One North Franklin Street
: P.O. Box 505
: DuBois, PA 15801-0505
:
: (814) 371-5800

FILED

O 11:39a.m. 6/6
SEP 03 2008

William A. Shaw
Prothonotary/Clerk of Courts

610

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL TRIAL LISTING

CERTIFICATE OF READINESS

TO THE PROTHONOTARY

(To be executed by Trial
Counsel Only)

9/03/08

DATE PRESENTED

CASE NUMBER	TYPE TRIAL REQUESTED	ESTIMATED TRIAL TIME
No. 05 - 1922 C.D.	(<input type="checkbox"/>) Jury (X) Non-jury (<input type="checkbox"/>) Arbitration	1-1/2 DAYS
Date Complaint filed: 12/09/05		

PLAINTIFF(S)

DEBBIE J. STALLONE

()

DEFENDANT(S)

JAMES E. THOMAS

() Check Block
if a Minor
is a Party
() to the Case

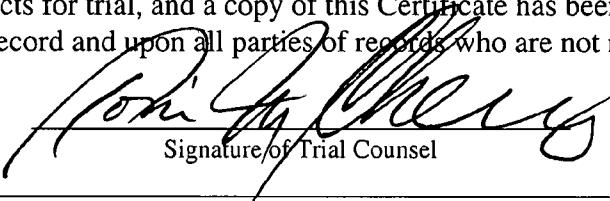
JURY DEMAND FILED BY:

DATE JURY DEMAND FILED:

AMOUNT AT ISSUE	CONSOLIDATION	DATE CONSOLIDATION ORDERED
over \$25,000.00	(<input type="checkbox"/>) Yes (<input type="checkbox"/>) No	

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST:

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


Signature of Trial Counsel

COUNSEL WHO WILL ACTUALLY TRY THE CASE

FOR THE PLAINTIFF TONI M. CHERRY, ESQ.	TELEPHONE NUMBER (814) 371-5800
---	------------------------------------

FOR THE DEFENDANT CHRIS A. PENTZ, ESQ.	TELEPHONE NUMBER (814) 765-4000
---	------------------------------------

FOR ADDITIONAL DEFENDANT	TELEPHONE NUMBER
--------------------------	------------------

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - EQUITY

DEBBIE J. STALLONE, :
Plaintiff :
vs. : Nc. 05 - 1922 C.D.
JAMES E. THOMAS, :
Defendant :
:

PRAECIPE FOR CASE TO BE LISTED FOR
NON-JURY TRIAL

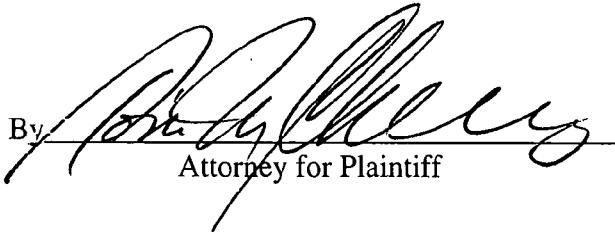
TO WILLIAM A. SHAW, PROTHONOTARY

Sir:

Kindly place the above-captioned case on the non-jury trial list. Certificate of Readiness has been filed.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By 
Attorney for Plaintiff

Dated: September 3, 2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - EQUITY

DEBBIE J. STALLONE,	:
Plaintiff	:
vs.	:
	:
	:
JAMES E. THOMAS,	:
Defendant	:

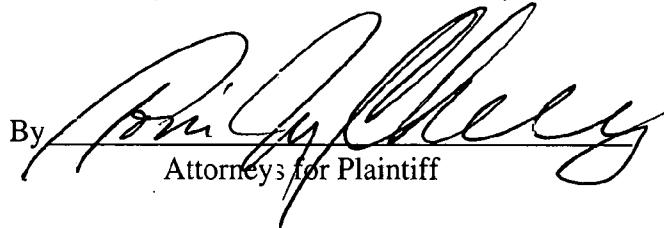
vs. : No. 05 - 1922 C.D.

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of September, 2008, a true and correct copy of the Certificate of Readiness and Fraecipe For Case to be Listed for Non-Jury Trial was served upon counsel for Defendant, CHRIS A. PENTZ, ESQ., by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

CHRIS A. PENTZ, ESQ.
Attorney at Law
P. O. Box 552
Clearfield, PA 16830

GLEASON, CHERRY AND CHERRY, L.L.P.

By 
Attorneys for Plaintiff

Dated: September 3, 2008

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

DEBBIE J. STALLONE,
Plaintiff

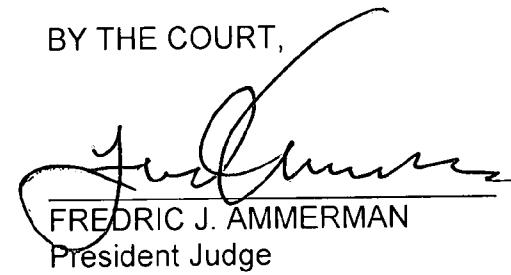
vs.
JAMES E. THOMAS,
Defendant

*
*
* NO. 05-1922-CD
*
*

ORDER

AND NOW, this 16th day of September, 2008, it is the ORDER of the
Court that a Pre-Trial Conference in the above matter shall be held on the 7th day of
November, 2008 in Chambers at 11:00 o'clock a.m.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED

09/16/2008
SEP 16 2008

cc: T. Cherry
Penz
610

William A. Shaw
Prothonotary/Clerk of Courts

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

DEBBIE J. STALLONE,
Plaintiff
vs.
JAMES E. THOMAS,
Defendant

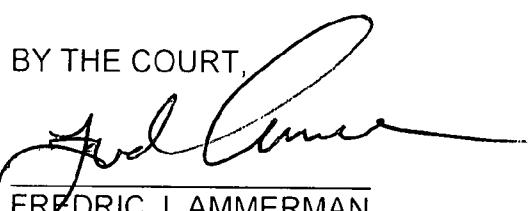
* NO. 05-1922-CD
*
*
*
*

O R D E R

AND NOW, this 7th day of November, 2008, following pre-trial conference among counsel and the Court, it is the ORDER of this Court as follows:

1. The parties shall have no more than 120 days from this date in which to complete discovery. Plaintiff is attempting to obtain additional information concerning the Defendant's retirement, a joint account alleged to be at County National Bank, as well as tracing ownership of certain vehicles. The Defendant has agreed to execute an appropriate release document to allow Plaintiff's counsel to obtain information regarding these areas;
2. Both parties shall have no more than 120 days from this date in which to supplement or amend their pre-trial statements;
3. Additional pre-trial conference is hereby scheduled for the 17th day of March, 2009, at 9:00 a.m. in Chambers.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED
OCT 4 2008
NOV 07 2008

ICC Atlys:
T. Cherry
Penz

William A. Shaw
Prothonotary/Clerk of Courts

(610)

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

DEBBIE J. STALLONE, *
Plaintiff *
*
VS * No. 2005-1922-CD
*
JAMES E. THOMAS, *
Defendant *
*

PETITION TO AMEND ANSWER

1. The Petitioner is James E. Thomas, the Defendant in the above captioned matter.
2. The Respondent is Debbie J. Stallone, the Plaintiff in the above captioned matter.
3. This litigation concerns an allegation, among other issues, of an oral partnership between Plaintiff and Defendant.
4. This litigation is presently in the Discovery stage, with Petitioner/Defendant having provided authorizations for release of information on or about March 11, 2009.
5. The Petitioner, through his counsel, desires to file an Amended Answer to include New Matter raising the issue of the Statute of Frauds.
6. Counsel for the Plaintiff has advised that she does not oppose this petition.

WHEREFORE, the Petitioner/Defendant respectfully requests Your Honorable Court to enter and Order permitting the Defendant to file an Amended Answer with New Matter.

Respectfully submitted this 13th day of April, 2009.



Chris A. Pentz
Attorney for Petitioner

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

DEBBIE J. STALLONE,
Plaintiff

VS

JAMES E. THOMAS,
Defendant

*
*
*
*
*
*

No. 2005-1922-CD

ORDER

FILED

APR 14 2009

5 0/2/70 W/C 61
William A. Shaw
Prothonotary/Clerk of Courts

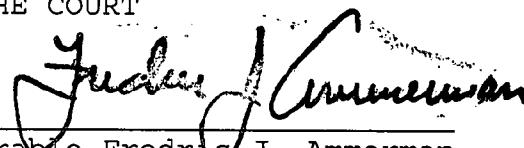
215N + 70 Attn

AND NOW, this 14th day of April, 2009,

upon consideration of the Petition to Amend, it is hereby
ORDERED AND DIRECTED, that the petition is granted and that
the Defendant be permitted to file an Amended Answer with
New Matter within no more than twenty (20) days from the
date of this Order.

This Order is being entered without hearing upon the
averment that the petition is not opposed by Counsel for
Plaintiff and the statements of Plaintiff's counsel at the
Pretrial Conference of March 17, 2009.

BY THE COURT


Honorable Fredric J. Ammerman

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

DEBBIE J. STALLONE,
Plaintiff,

v.

JAMES E. THOMAS,
Defendant.

*
*
*
*
* No. 05-1922-CD

* Type of Case: Equity

*
*
* Type of Pleading:

* Certificate of Service

* Filed on Behalf of: Defendant

*
*
*
*
*
* Counsel of Record
for this Party:

*
* CHRIS A. PENTZ, ESQUIRE
* Supreme Court ID No.: 39232
* 207 East Market Street
* PO Box 552
* Clearfield, PA 16830
* 814-765-4000

Date: 4/15/09

5
FILED *NO CC*
04/15/09
APR 15 2009
William A. Shaw
Prothonotary/Clerk of Courts

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

DEBBIE J. STALLONE,
Plaintiff,

*
*
*

v.

* No. 05-1922-CD
*

JAMES E. THOMAS,
Defendant.

*

CERTIFICATE OF SERVICE

I, Chris A. Pentz, Esquire, do hereby certify that a certified copy of Defendant's Petition to Amend Answer filed in the above-captioned action was served on the following person and in the following manner on the 15th day of April, 2009.

FIRST-CLASS MAIL, POSTAGE PREPAID

Toni M. Cherry, Esquire
Gleason, Cherry and Cherry, LLP
PO Box 505
DuBois, PA 15801



Chris A. Pentz
Attorney for Defendant

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

DEBBIE J. STALLONE,
Plaintiff,

v.

JAMES E. THOMAS,
Defendant.

*
*
*
* No. 05-1922-CD

* Type of Case: Equity
*
*
* Type of Pleading:
*
* Amended Answer to Complaint
and New Matter
*
*
* Filed on Behalf of: Defendant
*
*
*
*
*
* Counsel of Record
for this Party:
*
* CHRIS A. PENTZ, ESQUIRE
* Supreme Court ID No.: 39232
* 207 East Market Street
* PO Box 552
* Clearfield, PA 16830
* 814-765-4000

Date: 4/22/09

FILED
04/22/09
APR 22 2009
S 2009 ATTY PENTZ
William A. Shaw
Prothonotary/Clerk of Courts

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

DEBBIE J. STALLONE,
Plaintiff,
v.
JAMES E. THOMAS,
Defendant.

*
*
*
* No. 05-1922-CD
*
*

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 days after this Complaint is 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 the relief claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
814-765-2641

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

DEBBIE J. STALLONE, *
Plaintiff, *
*
v. * No. 05-1922-CD
*
JAMES E. THOMAS, *
Defendant. *

AMENDED ANSWER TO COMPLAINT AND NEW MATTER

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is denied. After reasonable investigation the Defendant is without sufficient knowledge or information to form a belief as to the averment.
4. Paragraph 4 is admitted in part and denied in part. It is admitted that the Defendant was working as a delivery man. It is denied that he was earning minimum wage in that Defendant's earnings were \$6.25 per hour.
5. Paragraph 5 is admitted.
6. Paragraph 6 is denied. The Harley Davidson motorcycle was purchased by the Defendant and titled in his name alone.
7. Paragraph 7 is denied. The motorcycle was purchased by the Defendant and the purchase price was \$10,000.00 and titled in both parties' names.

8. Paragraph 8 is denied. The parties never at any time entered into any oral or written partnership agreement.

9. Paragraph 9 is admitted in part and denied in part. It is denied that the parties entered into an oral partnership agreement. It is admitted that the parties did agree to purchase a home together located at RR1 Box 635 Houtzdale, Pennsylvania, from James Cowfer, Sr.

10. Paragraph 10 is admitted.

11. Paragraph 11 is admitted in part and denied in part. The Defendant made all monthly mortgage payments. The remainder of the allegations of Paragraph 11 is admitted.

12. Paragraph 12 is denied to the extent there was any partnership agreement and that Plaintiff solely paid for the closing costs. It is admitted that Plaintiff purchased furniture for the parties' new home in Houtzdale.

13. Paragraph 13 is denied. The parties never at any time entered into an oral or written partnership agreement. There was never any agreement that the Defendant would maintain the Plaintiff and the Plaintiff's children as beneficiaries of his life insurance policy offered through his employment.

14. Paragraph 14 is denied. The Plaintiff and Defendant never entered into an oral or written partnership agreement. The Plaintiff never contributed any money toward the

purchase of any stocks nor did Defendant assure Plaintiff that their investment was growing together.

15. Paragraph 15 is admitted in part and denied in part. It is denied that the parties entered into any partnership agreement. Ownership of the motorcycle was transferred to both names by the Defendant in 1990 and was subsequently transferred to just Defendant's name in 2002.

16. Paragraph 16 is admitted.

17. Paragraph 17 is admitted in part and denied in part. It is denied to the extent that there was any partnership agreement between Plaintiff and Defendant or that Plaintiff contributed any amount greater than \$13,000.00 with the remainder of the averments admitted.

18. Paragraph 18 is denied. The answer set forth in Paragraph 15 above is incorporated herein by reference as though set forth in full.

19. Paragraph 19 is admitted.

20. Paragraph 20 is denied to the extent that Plaintiff and Defendant acted in furtherance of a partnership agreement.

(a) Paragraph 20(a) is denied in that Plaintiff contributed \$13,000.00.

(b) Paragraph 20(b) is denied in that the Defendant was the only individual who contributed to the payment of the mortgage.

21. Paragraph 21 is admitted.

22. Paragraph 22 is denied. The Defendant never held title to any property in trust for the Plaintiff. All payments made on the mortgage were made by the Defendant. No actions were made in furtherance of the partnership since the parties had not established a partnership.

23. Paragraph 23 is denied. The parties never at any time entered into an oral and/or written partnership. The Defendant denies physically abusive behavior. Defendant admits Plaintiff vacated property January of 2005.

24. Paragraph 24 is denied. There was no partnership agreement and no agreement as to indebtedness between the parties.

25. Paragraph 25 is a conclusion of law. To the extent that an answer is required, Paragraph 25 is denied because there is no partnership agreement between the parties.

26. Paragraph 26 is admitted.

27. Paragraph 27 is admitted.

WHEREFORE, Defendant requests your Honorable Court to deny the relief sought by Plaintiff in her Complaint.

NEW MATTER

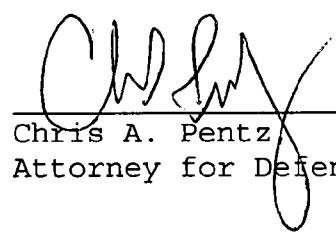
28. Paragraphs 1 through 27 above are incorporated herein by reference.

29. Defendant asserts the defenses of statute of frauds and/or statute of limitations and/or laches in that the Plaintiff is claiming an oral agreements, some of which involve real property.

WHEREFORE, the Defendant demands judgment against the Plaintiff and in his favor.

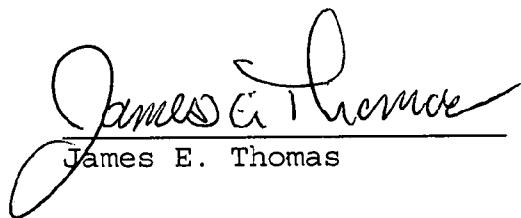
Respectfully submitted,

Date: 4/22/09


Chris A. Pentz
Attorney for Defendant

VERIFICATION

I, **JAMES E. THOMAS**, verify that the statements made in this Amended Answer and New Matter are true and correct. I understand that false statements herein are made subject to the penalties of Pa.C.S. § 4904 relating to unsworn falsification to authorities.



James E. Thomas
James E. Thomas

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

DEBBIE J. STALLONE,
Plaintiff,

v.

JAMES E. THOMAS,
Defendant.

*

*

*

*

No. 05-1922-CD

*

*

*

* Type of Case: Equity

*

*

Type of Pleading:

*

* Certificate of Service

*

*

*

* Filed on Behalf of: Defendant

*

*

*

*

* Counsel of Record
for this Party:

*

* CHRIS A. PENTZ, ESQUIRE
* Supreme Court ID No.: 39232
* 207 East Market Street
* PO Box 552
* Clearfield, PA 16830
* 814-765-4000

Date: _____

S
FILED
04/27/2009
APR 27 2009
103:54 PM
NCC

William A. Shaw
Prothonotary/Clerk of Courts

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

DEBBIE J. STALLONE, *
Plaintiff, *
*
v. * No. 05-1922-CD
*
JAMES E. THOMAS, *
Defendant. *

CERTIFICATE OF SERVICE

I, Chris A. Pentz, Esquire, do hereby certify that a certified copy of Defendant's Amended Answer and New Matter filed in the above-captioned action was served on the following person and in the following manner on the 22th day of April, 2009.

FIRST-CLASS MAIL, POSTAGE PREPAID

Toni M. Cherry, Esquire
Gleason, Cherry and Cherry, LLP
PO Box 505
DuBois, PA 15801



Chris A. Pentz
Attorney for Defendant

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

DEBBIE J. STALLONE,
Plaintiff
vs.
JAMES E. THOMAS,
Defendant

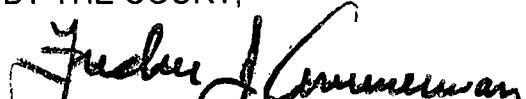
* NO. 05-1922-CD

ORDER

NOW, this 22nd day of January, 2010, it is the ORDER of this Court that a status conference in the above captioned case be and is hereby scheduled for the 4th day of February, 2010 at 1:30 p.m. in Chambers.

Thirty minutes has been reserved for this proceeding.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED
01/22/2010 10:50 AM
JAN 22 2010 T. Cherry
William A. Shaw
Prothonotary/Clerk of Courts
Penz
(60)

CMA

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

DEBBIE J. STALLONE,
Plaintiff,

v.

JAMES E. THOMAS,
Defendant.

*
*
*
* No. 05-1922-CD

*
*
*

* Type of Case: Equity

*
*
*

* Type of Pleading:

*
*
*

* Motion for Continuance

*
*
*

* Filed on Behalf of: Defendant

*
*
*
*
*

* Counsel of Record
for this Party:

*
*
*
*
*

* CHRIS A. PENTZ, ESQUIRE
* Supreme Court ID No.: 39232
* 207 East Market Street
* PO Box 552
* Clearfield, PA 16830
* 814-765-4000

Date: 11/26/10

FILED 3CC
0135101 Atty Pentz
JAN 26 2010
S (60)
William A. Shaw
Prothonotary/Clerk of Courts

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

DEBBIE J. STALLONE,
Plaintiff,

v.

JAMES E. THOMAS,
Defendant.

*

*

*

* No. 05-1922-CD

*

*

MOTION FOR CONTINUANCE

1. A status conference was scheduled by Judge Ammerman for February 4, 2010, at 1:30pm.

2. The reason for this requested continuance is as follows: Counsel for Defendant will be surgery on said date and time.

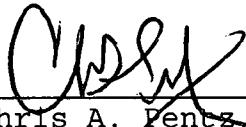
5. All parties or their attorneys have been made aware of the presentation of this Motion and have responded as follows:

 Counsel for Plaintiff consents to this
continuance

 Counsel for Plaintiff opposes this continuance

X Counsel for Plaintiff not previously advised
Respectfully submitted,

Date: 1/26/10



Chris A. Penter
Attorney for Defendant

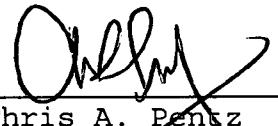
VERIFICATION

I, Chris A. Pentz, have read the foregoing Motion for Continuance. The statements therein are correct to the best of my personal knowledge or information and belief.

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

I am authorized to make this verification on behalf of the Defendant because of my position as counsel of record.

Date: 11/26/10


Chris A. Pentz
207 East Market Street
PO Box 552
Clearfield, PA 16830
814-765-4000
ID#: 39232

10

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

DEBBIE J. STALLONE,
Plaintiff,

v.

JAMES E. THOMAS,
Defendant.

*
*
*
* No. 05-1922-CD
*
*

SCHEDULING ORDER

AND NOW, this 28 day of January, 2010,
upon consideration of Defendant's Motion for Continuance, the
status conference scheduled for February 4, 2010, is hereby
rescheduled for the 15th day of March, 2010, at
2:45 PM, in Chambers of the Clearfield County Courthouse,
Clearfield, Pennsylvania.

By the Court,



Judge

FILED
019.1922
JAN 29 2010

William A. Shaw
Prothonotary/Clerk of Courts

300 Atty Pentz

(60)

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

DEBBIE J. STALLONE,
Plaintiff,

v.

JAMES E. THOMAS,
Defendant.

*
*
*
* No. 05-1922-CD
*

* Type of Case: Equity

* Type of Pleading:

* Certificate of Service

* Filed on Behalf of: Defendant

* Counsel of Record
for this Party:

* CHRIS A. PENTZ, ESQUIRE
* Supreme Court ID No.: 39232
* 207 East Market Street
* PO Box 552
* Clearfield, PA 16830
* 814-765-4000

Date: 2/3/10

FILED
03/27/10 NO
FEB 03 2010
cc

William A. Shaw
Prothonotary/Clerk of Courts

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

DEBBIE J. STALLONE,
Plaintiff,

*

*

*

v.

* No. 05-1922-CD

*

*

JAMES E. THOMAS,
Defendant.

*

*

CERTIFICATE OF SERVICE

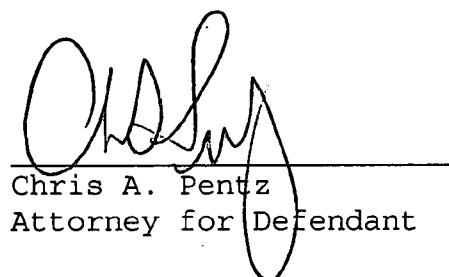
I, Chris A. Pentz, Esquire, do hereby certify that a certified copy of Motion for Continuance and Scheduling Order filed in the above-captioned action was served on the following person and in the following manner on the 3rd day of February, 2010.

FIRST-CLASS MAIL, POSTAGE PREPAID

Toni M. Cherry, Esquire
Gleason, Cherry and Cherry, LLP
PO Box 505
DuBois, PA 15801

AND BY FAX TO

814-371-0936


Chris A. Pentz
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - EQUITY

DEBBIE J. STALLONE, : No. 05 - 1922 C.D.
Plaintiff :
vs. : Type of Case: EQUITY
JAMES E. THOMAS, : Type of Pleading: REPLY TO NEW MATTER
Defendant : Filed on Behalf of: DEBBIE J. STALLONE,
: Plaintiff :
: Counsel of Record for this Party:
: TONI M. CHERRY, ESQ.
: Supreme Court No.: 30205
: GLEASON, CHERRY AND CHERRY, L.L.P.
: Attorneys at Law
: One North Franklin Street
: P.O. Box 505
: DuBois, PA 15801-0505
: (814) 371-5800

FILED *acc A/H*
m/9:50am T. Cherry
FEB 23 2010
S
William A. Shaw *WS*
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - EQUITY

DEBBIE J. STALLONE,	:
Plaintiff	:
vs.	:
	:
	:
JAMES E. THOMAS,	:
Defendant	:

vs. : No. 05 - 1922 C.D.

REPLY TO NEW MATTER

AND NOW, comes the Plaintiff, DEBBIE J. STALLONE, by and through her attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and replies to the New Matter asserted by Defendant as follows:

28. Insofar as Defendant has incorporated into his New Matter by reference the answers set forth in Paragraphs 1 through 27 inclusive set forth in his Amended Answer to Plaintiff's Complaint, Plaintiff does hereby reply to the same *ad seriatim*:

Since Paragraphs 1 and 2 of Plaintiff's Complaint are admitted by Defendant, no response is required.

3. Since Defendant has denied Paragraph 3 based on having insufficient knowledge or information to form a belief, Plaintiff does reallege and reassert the averments contained in Paragraph 3 of her Complaint in answer to this paragraph.

4. DENIED as after reasonable investigation, Plaintiff is without sufficient knowledge to attest to the truth or falsity of Defendant's earnings being \$6.25 per hour rather than minimum wage. It is Plaintiff's recollection that in September of 1986, Defendant was

earning the then minimum wage and strict proof of earnings above that are specifically required at trial.

5. Insofar as Defendant admits Paragraph 5 of Plaintiff's Complaint, no further response is required.

6. DENIED as stated. Plaintiff purchased a Harley Davidson Sportster Motorcycle in 1988 with the proceeds from her husband's life insurance as well as the proceeds from her Social Security benefits and titled that motorcycle in her name alone.

7. DENIED. On or about April 20, 1990, Plaintiff traded in the Sportster Motorcycle and received \$5,000.00 toward the purchase of a 1990 Harley Davidson Softail Motorcycle for which she paid the purchase price of \$16,000.00.

8. DENIED. By way of further answer, Plaintiff incorporates herein by reference the averments set forth in Paragraph 8 of her Complaint as if the same were set forth at length herein.

9. Insofar as the averments set forth in Paragraph 9 of Plaintiff's Complaint have been admitted in part and denied in part by Defendant, Plaintiff does reassert and reallege the averments set forth in Paragraph 9 of her Complaint in their entirety in response.

10. Insofar as Paragraph 10 has been admitted, no further response is required.

11. DENIED as stated. The monthly mortgage payments made on the property that Defendant admits the parties agreed to purchase together were made from the parties' pooled funds. Plaintiff reasserts and realleges the averments set forth in Paragraph 11 of her Complaint in answer thereto.

12. DENIED. Plaintiff reasserts the averments set forth in Paragraph 12 of her initial Complaint that in furtherance of the terms of the Partnership Agreement, she paid the closing costs for the home that Defendant admits the parties agreed to purchase together at R. R. #1, Box 635, Houtzdale, Pennsylvania.

13. DENIED. Plaintiff reasserts and realleges the averments contained in Paragraph 13 of her Complaint as if the same were set forth at length herein.

14. DENIED. In further answer thereto, Plaintiff does reassert and reallege the averments set forth in Paragraph 14 of her Complaint.

15. DENIED as stated. In furtherance of their Partnership Agreement, it was Plaintiff who transferred ownership of the motorcycle into both names in 1990 and thereafter the motorcycle was transferred into the name of just the Defendant because of Plaintiff's financial circumstances.

16. Insofar as Defendant has admitted the averments set forth in Paragraph 16 of Plaintiff's Complaint, no response is required.

17. Insofar as Defendant has both admitted in part and denied in part the averments set forth in Paragraph 17, Plaintiff does reassert and reallege all averments set forth in Paragraph 17 of her Complaint as if the same were set forth at length herein.

18. DENIED. By way of further answer, Defendant incorporates herein by reference the averments contained in Paragraph 18 of her Complaint as if the same were set forth at length herein.

19. Insofar as Paragraph 19 is admitted by Defendant, no response is required.

20. DENIED as stated. Plaintiff incorporates herein by reference the allegations set forth in Paragraph 20 of her Complaint in their entirety.

21. Insofar as Paragraph 21 has been admitted by Defendant, no further response is required.

22. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, Plaintiff believes and therefore avers that Defendant took title to the property in trust for himself and Plaintiff because Plaintiff had declared bankruptcy and Defendant told Plaintiff that he did not want her to be a party to the loan although she contributed toward the making of the mortgage payments in furtherance of the partnership established by the parties.

23. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is averred that Plaintiff took and kept continuous possession of the property that was acquired by the parties in furtherance of their partnership until Plaintiff was forced to vacate the premises in Union Township in January of 2005 because of the physically abusive behavior of the Defendant and her fear for her personal safety. Up until January of 2005, Plaintiff was in possession and control of all of the property acquired by the parties.

24. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, Plaintiff believes and therefore avers that Defendant is indebted to Plaintiff for one-half of the value of all property acquired by the parties during the term of their partnership.

25. DENIED. Plaintiff believes and therefore avers that Plaintiff is entitled to a declaration that Defendant holds all property, both real and personal, as trustee for the Plaintiff to the extent of her partnership interests.

26. Insofar as Defendant admits that Plaintiff has repeatedly requested an accounting from Defendant but Defendant refuses to account to Plaintiff, no response is required.

27. Insofar as Defendant admits that Plaintiff has made demand upon Defendant to execute and deliver to her a deed for her one-half interest in the property and further admits that Plaintiff has demanded that Defendant execute the documents necessary to put Plaintiff's name on the titles to all vehicles owned jointly by the parties and that Defendant has wholly failed and/or refused to comply with such demand, no further response is required.

29. Insofar as Defendant has asserted "the defenses of statute of frauds and/or statute of limitations and/or laches" in one paragraph, Defendant does reply to each as follows:

(a) It is DENIED that Plaintiff's claim is barred by the defense of the statute of frauds even though there is real property involved because the statute of frauds does not apply to constructive trusts nor to trusts *ex maleficio*. See *Hamberg v. Barsky*, 355 Pa. 462, 50 A.2d 345 (1947).

(b) The claims raised by Plaintiff in the above-captioned case are not barred by the statute of limitations. 42 Pa. C.S.A. §5526 establishes a five-year limitation period for actions to enforce any equity of redemption or any implied or resulting trust as to real property. In the case of *Wosche v. Kraning*, 353 Pa. 481, 46 A.2d 220 (1946), the Supreme Court declared that where a plaintiff seeking to establish a resulting trust as to realty was at all times

in possession of realty, the five-year limitation period prescribed by statute did not run against him nor was he barred by laches, though the Defendant, with whom Plaintiff was cohabiting meretriciously, also lived on the realty. In the case at hand, Defendant continued to reside on the property after Plaintiff vacated the same in January of 2005 and thus the five year statute of limitations has been tolled and Plaintiff is not prevented from asserting her claim for a constructive trust which she raised less than 11 months after she vacated the premises.

(c) For the same reasons as are set forth above, Plaintiff denies that her claim is prevented by the doctrine of laches.

WHEREFORE, Plaintiff respectfully requests that Defendant's New Matter be dismissed and that:

(a) the Defendant be declared to hold the real property as trustee for Plaintiff as to her one-half partnership interest therein;

(b) the Defendant be restrained and enjoined from conveying, mortgaging, or in any way disposing of or encumbering the real property;

(c) the Defendant be declared to hold the vehicles and all other personality acquired by the parties during the term of their partnership as trustee for Plaintiff as to her one-half interest therein;

(d) the Defendant be restrained and enjoined from conveying, encumbering, or in any way disposing of any personality;

(e) the Defendant be declared to hold the investment account with Parker Hunter as trustee for Plaintiff as to her one-half interest therein;

(f) the Defendant be ordered and directed to execute and deliver to Plaintiff a deed to the real property for her one-half interest therein in fee simple, subject merely to such valid encumbrances as may currently exist;

(g) the Defendant be restrained and enjoined from conveying, mortgaging, or in any way disposing of the interest of the Plaintiff in his retirement plan and life insurance benefits to the degree that Plaintiff is entitled to a partnership interest therein;

(h) the Defendant be ordered to account to the Plaintiff for the money received by him on the sale of any partnership asset;

(i) the Defendant be ordered to pay to the Plaintiff the amount which the account may show to be due Plaintiff; and

(j) the Court grant such other and further relief as may be deemed just and proper.

Respectfully submitted,

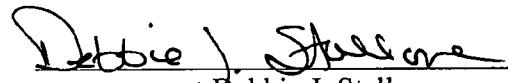
GLEASON, CHERRY AND CHERRY, L.L.P.

By

Attorneys for Plaintiff

VERIFICATION

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



Debbie J. Stallone

Dated: 12/31, 2009

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - EQUITY

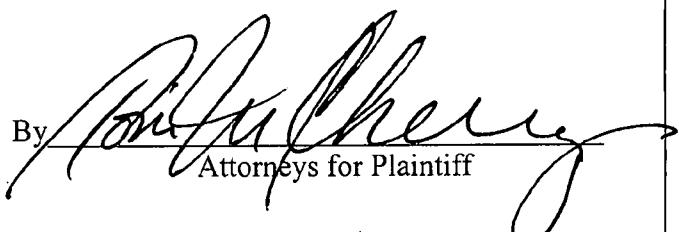
DEBBIE J. STALLONE,	:
Plaintiff	:
vs.	:
	: No. 05 - 1922 C.D.
JAMES E. THOMAS,	:
Defendant	:

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February, 2010, a true and correct copy of Plaintiff's Reply to New Matter was served upon CHRIS A. PENTZ, ESQ., counsel for Defendant, by mailing the same to him by United States First Class Mail, postage prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

CHRIS A. PENTZ, ESQ.
Attorney at Law
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

GLEASON, CHERRY AND CHERRY, L.L.P.

By 
Attorneys for Plaintiff

Dated: February 22, 2010

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

DEBBIE J. STALLONE,
Plaintiff
vs.
JAMES E. THOMAS,
Defendant

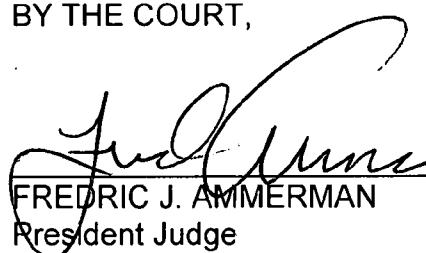
* NO. 05-1922-CD
*
*
*
*
*

ORDER

NOW, this 1st day of March, 2010, following status conference with counsel for the Plaintiff and the Defendant as set forth above, it is the ORDER of this Court that a Non-Jury Trial be and is hereby scheduled for July 23, 2010 commencing at 9:00 a.m. at the Clearfield County Courthouse, Clearfield, Pennsylvania.

One day has been reserved for this proceeding.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

S FILED 1CC
018:58 AM
MAR 03 2010 Alys
J. Chay
Pentz
William A. Shaw
Prothonotary/Clerk of Courts

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

DEBBIE J. STALLONE,
Plaintiff,

v.

JAMES E. THOMAS,
Defendant.

*
*
*
*
* No. 05-1922-CD
*

* Type of Case: Equity

*

*

* Type of Pleading:

*

* Certificate of Service

*

*

*

* Filed on Behalf of: Defendant

*

*

*

*

*

* Counsel of Record
for this Party:

*

* CHRIS A. PENTZ, ESQUIRE
* Supreme Court ID No.: 39232
* 207 East Market Street
* PO Box 552
* Clearfield, PA 16830
* 814-765-4000

Date: 4/19/10

FILED No CC.
04/10/35pm
APR 20 2010
S/ William A. Shaw
Prothonotary/Clerk of Courts

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

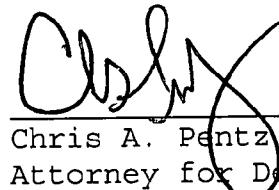
DEBBIE J. STALLONE, *
Plaintiff, *
*
v. * No. 05-1922-CD
*
JAMES E. THOMAS, *
Defendant. *

CERTIFICATE OF SERVICE

I, Chris A. Pentz, Esquire, do hereby certify that a true and correct copy of Defendant's First Set of Interrogatories Directed to Plaintiff and Defendant's First Request for Production of Documents Directed to Plaintiff filed in the above-captioned action was served on the following person and in the following manner on the 19th day of April, 2010.

FIRST-CLASS MAIL, POSTAGE PREPAID

Toni M. Cherry, Esquire
Gleason, Cherry and Cherry, LLP
PO Box 505
DuBois, PA 15801



Chris A. Pentz
Attorney for Defendant

FILED

5 MAY 26 2010
5/11/10
William A. Shaw
Prothonotary/Clerk of Courts
No 4C 68

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - EQUITY

DEBBIE J. STALLONE, :
Plaintiff :
vs. : No. 05 - 1922 C.D.
JAMES E. THOMAS, :
Defendant :
:

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of May, 2010, Plaintiff's Answers to Defendant's First Set of Interrogatories and Plaintiff's Responses to Defendant's First Request for Production of Documents were served upon CHRIS A. PENTZ, ESQ., Attorney for Defendant, by delivering the same to him by personal service upon him at the address below:

CHRIS A. PENTZ, ESQ.
Attorney at Law
207 East Market Street
P. O. Box 552
Clearfield, PA 16830

GLEASON, CHERRY AND CHERRY, L.L.P.

By

John P. Gleason
Attorneys for Plaintiff

Dated: May 26, 2010

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - EQUITY

DEBBIE J. STALLONE,
Plaintiff

vs.

JAMES E. THOMAS,
Defendant

: No. 05 - 1922 C.D.

: Type of Case: EQUITY

: Type of Pleading: MOTION FOR
CONTINUANCE OF NON-JURY TRIAL

: Filed on Behalf of: DEBBIE J. STALLONE,
Plaintiff

: Counsel of Record for this Party:

: TONI M. CHERRY, ESQ.
Supreme Court No.: 30205

: GLEASON, CHERRY AND CHERRY, L.L.P.
Attorneys at Law
P. O. Box 505
One North Franklin Street
DuBois, PA 15801-0505

: (814) 371-5800

FILED

JUL 21 2010

0/32156
William A. Shaw
Prothonotary/Clerk of Courts

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

DEBBIE J. STALLONE, :
Plaintiff :
vs. : No. 05 - 1922 C.D.
JAMES E. THOMAS, :
Defendant :
:

MOTION FOR CONTINUANCE OF NON-JURY TRIAL

TO THE HONORABLE FREDRIC J. AMMERMAN, PRESIDENT JUDGE OF SAID
COURT:

AND NOW, comes the Plaintiff, DEBBIE J. STALLONE, by and through her
attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., and moves Your Honorable Court
for a continuance of the hearing scheduled for July 23, 2010, commencing at 9:00 a.m. and, in
support of which, avers the following:

1. The undersigned is counsel of record for Plaintiff in the above-captioned case.
2. That the undersigned filed the above-captioned case on behalf of the Plaintiff
alleging the existence of a partnership agreement between Plaintiff and Defendant seeking the
declaration of a constructive trust or a purchase money resulting trust on assets of the
Defendant on the basis that Plaintiff invested all of the profits that she received from the sale of
the parties' jointly owned home in Houtzdale in the amount of \$35,000.00 in the purchase of
premises in Union Township that was titled in the Defendant's name alone as well as for the
recovery of proceeds of the Plaintiff used to purchase a motorcycle titled in Defendant's name
alone and such additional relief as is more fully set forth in the pleadings filed in this case.

3. That Plaintiff fully set forth as an exhibit to be presented in this case copies of cancelled checks, money orders and check receipts as well as copies of bank statements to show the monetary contributions she made toward the purchase of assets that were put in the name of the Defendant alone.

4. That Plaintiff had not previously recalled and, as a result had not previously advised her counsel that Plaintiff and Defendant had a joint account in PNC Bank in which the cashier's check in the amount of \$35,000.00 made payable to Plaintiff from the sale of the property in Houtzdale had been deposited.

5. That all documentation concerning this account is essential to the trial of this case because Defendant now denies that he received any moneys from Plaintiff.

6. That Plaintiff has paid all moneys required by PNC Bank for copies of all of the bank statements and the documentation showing the deposit and withdrawal of the \$35,000.00 check as well as the deposit and withdrawal of the proceeds used to purchase the motorcycle but, to date, has not received copies of those bank statements.

7. That the undersigned counsel for Plaintiff has advised Defendant's counsel that the account information has not been received and as a result, Defendant's counsel has agreed to the granting of a continuance of the non-jury trial scheduled for Friday, July 23, 2010.

8. That without the information from PNC Bank, Plaintiff's case will be irreparably harmed because she will not be able to prove that she supplied all of the money used for the purchase of the property in Union Township over and above the \$65,000.00 mortgage that was secured.

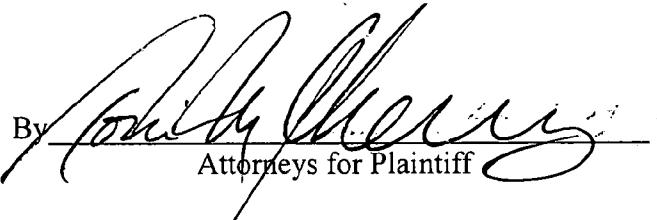
WHEREFORE, the undersigned respectfully requests Your Honorable Court to grant a

continuance of the hearing scheduled for Friday, July 23, 2010.

Respectfully submitted,

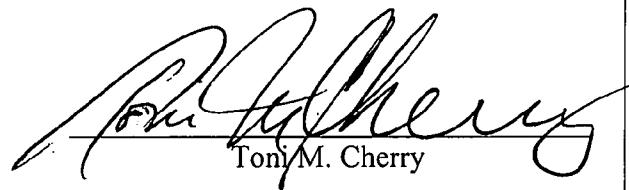
GLEASON, CHERRY AND CHERRY, L.L.P.

By


John B. Cherry
Attorneys for Plaintiff

VERIFICATION

I, TONI M. CHERRY, ESQ., counsel for Plaintiff, do hereby aver that I am authorized to make this Verification on behalf of the Plaintiff. I verify that the information provided in the foregoing Motion for Continuance of Non-Jury Trial is true and correct. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.



A handwritten signature in black ink, appearing to read "Toni M. Cherry".

DATED: July 21, 2010

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

DEBBIE J. STALLONE, :
Plaintiff :
:
vs. : No. 05 - 1922 C.D.
:
JAMES E. THOMAS, :
Defendant :
:

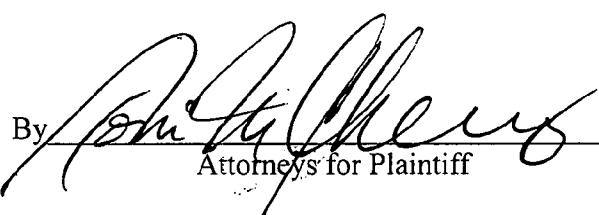
CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July, 2010, a true and correct copy of Plaintiff's Motion for Continuance was served upon CHRIS A. PENTZ, Attorney for Defendant, by hand delivery, at the following address:

CHRIS A. PENTZ, ESQ.
Attorney at Law
207 East Market Street
Clearfield, PA 16830

GLEASON, CHERRY AND CHERRY, L.L.P.

By


Attorneys for Plaintiff

Dated: July 21, 2010

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

DEBBIE J. STALLONE,
Plaintiff

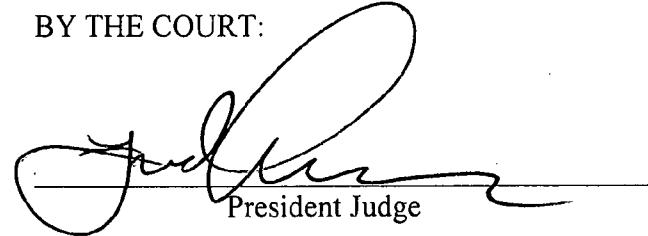
vs. : No. 05 - 1922 C.D.

JAMES E. THOMAS,
Defendant

O R D E R

AND NOW, this 22 day of July, 2010, in consideration of the averments set forth in the attached Motion for Continuance and upon consent of counsel for Defendant, the non-jury trial scheduled for Friday, July 23, 2010, is hereby continued to the 15th day of October, 2010 at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse.

BY THE COURT:



President Judge

FILED 300
010-43764 Atty
JUL 26 2010
S T. Cherry
William A. Sharrow
Prothonotary/Clerk of Courts

CA

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

DEBBIE J. STALLONE
Plaintiff
vs.
JAMES E. THOMAS
Defendant

*
*
* NO. 05-1922-CD
*
*

ORDER

NOW, this 27th day of September, 2010, it is the ORDER of this Court that the Non-Jury Trial scheduled for October 15, 2010 be and is hereby **rescheduled** to the **13th day of December, 2010** commencing at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED
07/31/2011
SEP 27 2011
S

William A. Shaw
Prothonotary/Clerk of Courts

1CC Atlys:
Pentz
T. Cherry

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

5
FILED
DEC 13 2010

010-23501
William A. Shaw
Prothonotary/Clerk of Courts
SCC Atty Bentz

DEBBIE J. STALLONE

}

VS

} NO. 2005-1922-CD

JAMES E. THOMAS

}

O R D E R

NOW, this 13th day of December, 2010, this being the date set for hearing in the above-captioned case and the parties having reached a full and complete agreement resolving all matters raised in the pleadings to be heard by the Court and desiring that their agreement be reduced to writing and entered as an Order of this Court, it is hereby ORDERED and DECREED as follows:

1. James E. Thomas (hereinafter referred to as Defendant) shall pay the sum of Seventeen Thousand Dollars (\$17,000.00) to Debbie J. Stallone (hereinafter referred to as Plaintiff) by check made payable to Gleason, Cherry and Cherry, LLP, as attorneys for Plaintiff and delivered to the offices of Gleason, Cherry and Cherry, LLP, at One North Franklin Street, DuBois, PA no later than 2:00 p.m. this date.

2. Defendant shall pay the further sum of Four Thousand Dollars (\$4,000.00) by check made payable to Gleason, Cherry and Cherry, LLP and delivered to the

offices of Gleason, Cherry and Cherry, LLP, no later than Ninety (90) Days from the date of this Order.

3. The above sums shall be considered reimbursement to Plaintiff for moneys she has given to the Defendant and the receipt of the above sums by Plaintiff shall not be taxable to her on her income tax return filed in the year or years in which the above sums are paid to her nor shall Defendant be able to deduct the same on his income tax return or returns filed in the years in which the above sums are paid by him.

4. Defendant shall further reimburse Plaintiff for the record costs advanced by Plaintiff in this case by check made payable to Gleason, Cherry and Cherry, LLP, and paid no later than December 24, 2010.

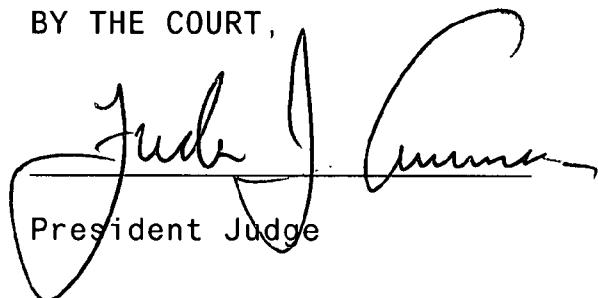
5. In consideration for receipt of the above sums, Plaintiff hereby waives all further claims against Defendant and hereby releases Defendant from any and all claims, further obligations, causes of action or demands Plaintiff may have against Defendant arising out of the period of time that they resided together and Plaintiff will make no further claim upon any property titled in the name of the Defendant.

6. Defendant hereby waives all claims and defenses raised in his new matter and releases Plaintiff from any further liability for contribution to the

acquisition of any property titled in the name of Defendant.

7. Upon the payment by Defendant of all of the above-mentioned sums, this case shall be marked settled, discontinued and ended with prejudice.

BY THE COURT,

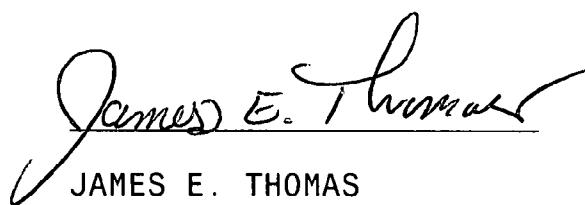

President Judge

We, the undersigned, do hereby consent to the entry of the foregoing Order.



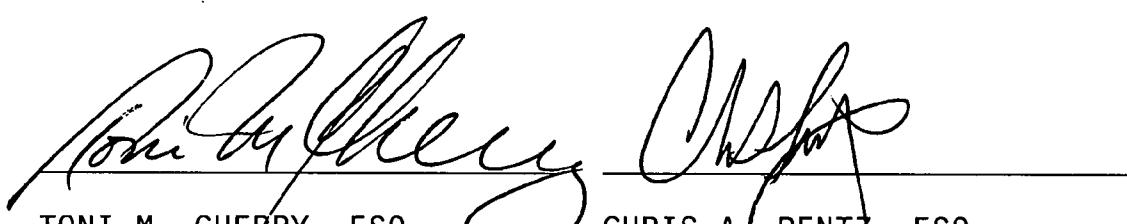
DEBBIE J. STALLONE

Plaintiff

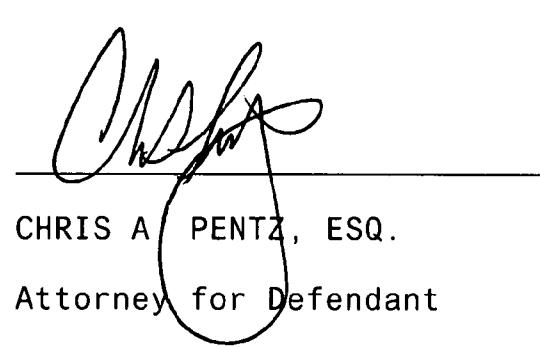


JAMES E. THOMAS

Defendant


TONI M. CHERRY, ESQ.

Attorney for Plaintiff


CHRIS A. PENTZ, ESQ.

Attorney for Defendant

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

DEBORAH J. STALLONE,
Plaintiff

vs.

JAMES E. THOMAS,
Defendant

* NO. 2005-1922-CD

1cc to Cherry

FILED

3/9/13 KK

+
Penz

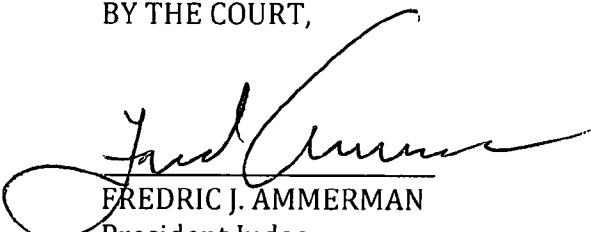
5 MAR 15 2013

William A. Shaw KK
Prothonotary/Clerk of Courts

ORDER

NOW, this 15th day of March, 2013, upon the Court's review of the record, with the Court noting that on December 13, 2010 a Consent Order was filed, which the parties had signed indicating a full and complete agreement resolving all matters raised in the pleadings. Therefore, the Court considers this case to be settled, dismissed and discontinued. The Prothonotary shall code the case in Full Court as Z-SETTLA.

BY THE COURT,


FREDRIC J. AMMERMAN

President Judge