

06-215-CD
George Johnston vs Troutville

George Johnston vs Troutville Borough
2006-215-CD

Notice of Proposed Termination of Court Case

March 2, 2012

RE: 2006-00215-CD

George T. Johnston

Vs.

Troutville Borough Council

FILED

3 11 02 2012

William A. Sharpe
Prothonotary/Clerk of Courts

6K

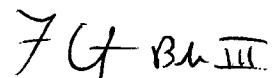
To All Parties and Counsel:

Please be advised that the Court intends to terminate the above captioned case without notice, because the Court records show no activity in the case for a period of at least two years.

You may stop the Court terminating the case by filing a Statement of Intention to Proceed. The Statement of Intention to Proceed must be filed with the **Prothonotary of Clearfield County, PO Box 549, Clearfield, Pennsylvania 16830**. The Statement of Intention to Proceed must be filed on or before **May 2, 2012**.

If you fail to file the required statement of intention to proceed within the required time period, the case will be terminated.

By the Court,



F. Cortez Bell, III, Esq.
Court Administrator

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

GEORGE T. JOHNSTON
Plaintiff
vs.
TROUTVILLE BOROUGH COUNCIL
Defendant

* NO. 2006-215-CD
* * * * * FILED 1CC to DuBois
* * * * * 0/9/27/JCK +
* * * * * MAR 25 2013 Kulakowski

ORDER

William A. Shaw *KIC*
Prothonotary/Clerk of Courts

NOW, this 15th day of March, 2013, upon the Court's review of the record, with the Court noting from the docket there has been no activity in the case since June 2007, and that a Notice of Proposed Termination of Court Case had been mailed to the parties March 2, 2012 with no response having been received, pursuant to the provisions of Rule of Judicial Administration 1901 the case is hereby DISMISSED for inactivity. The Prothonotary shall code the case in Full Court as Z-1901A.

BY THE COURT,

FREDERIC J. AMMERMAN
President Judge

FILED

MAR 25 2013

William A. Shaw
Prothonotary/Clerk of Courts

Plaintiff
Atty Jeffrey S. DuBois

Defendant
Atty: George D. Kulakowski

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

GEORGE T. JOHNSTON,

Plaintiff

No. 06-215-CD

Vs.

TROUTVILLE BOROUGH COUNCIL,

Defendant

Type of Pleading:

COMPLAINT

Filed on Behalf of:
PLAINTIFF

Counsel of Record for This Party:

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

FILED Atty pd. 85.00
01/21/06
FEB 10 2006 300
William A. Shaw
Prothonotary/Clerk of Courts
Atty DuBois

06-01-2006 Document
Reinstated/Reissued to Sheriff/Attorney
for service.

[Signature]
Deputy Prothonotary GK

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

GEORGE T. JOHNSTON, : No. _____
Plaintiff :
: Vs. :
: :
TROUTVILLE BOROUGH COUNCIL, :
Defendant :
:

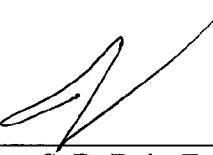
NOTICE

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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

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



Jeffrey S. DuBois, Esquire
Attorney for Plaintiff

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

GEORGE T. JOHNSTON, : No. _____
Plaintiff :
Vs. :
TROUTVILLE BOROUGH COUNCIL, :
Defendant :
:

COMPLAINT

AND NOW, comes the Plaintiff, GEORGE T. JOHNSTON, by and through his attorney, Jeffrey S. DuBois, Esquire, who files this Complaint and in support thereof avers the following:

1. Plaintiff, George T. Johnston, is an adult individual residing at 119 Beaver Street, Troutville, Pennsylvania, 15866.
2. Defendant, Troutville Borough Council, is a borough organized under the laws of the Commonwealth of Pennsylvania with a business address of Troutville Borough Office, Troutville, Pennsylvania, 15866.
3. Jurisdiction is proper before this Honorable Court as it involves land which is located in Jefferson County, Pennsylvania.
4. Plaintiff is the owner of a house and tract of land located in the Borough of Troutville, Jefferson County, Pennsylvania, and more particularly described in Exhibit "A". A copy of said exhibit is attached hereto and made a part hereof.

5. Adjacent to Plaintiff's property is a road which traverses past the Plaintiff's property.

6. It is believed and therefore averred that the Borough has a fifty (50') foot right-of-way with respect to this road.

7. In its present condition, the road is approximately ten (10') feet in width.

8. Plaintiff has lived in the aforementioned house and property for a period of over thirty-five (35) years, and the road has been in the same condition, and has been the same width, during this entire period in excess of thirty-five (35) years.

9. The edge of the paved road is approximately fifteen (15') feet from Plaintiff's house.

10. In light of the fact of the close proximity from the end of the actual used road to Plaintiff's house, the Borough would not be able to use or extend the traveled portion of the road.

11. Moreover, the existing width of the road allows, and has for the past thirty-five (35) years, access for automobiles to travel up and down said road.

12. The Borough, if it does contain such a right-of-way, has abandoned the use of the same, and because of the topography of the land and the width compared to Plaintiff's house, the Borough would not be able to use said right-of-way even if it desired.

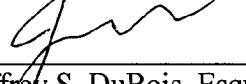
13. Over the past thirty-five (35) years, Plaintiff has maintained, at his own expense, the area between said road and Plaintiff's house.

14. Additionally, a culvert and pipe had to be placed between the road and Plaintiff's house, thus making any extension problematic or even impossible.

15. Therefore, Plaintiff requests that the Borough relinquish the right-of-way and deed the same to the landowners adjoining each side of the road.

WHEREFORE, Plaintiff respectfully requests this Honorable Court that the property next to the road be deemed abandoned by the Borough and granted to the Plaintiff.

Respectfully requested,

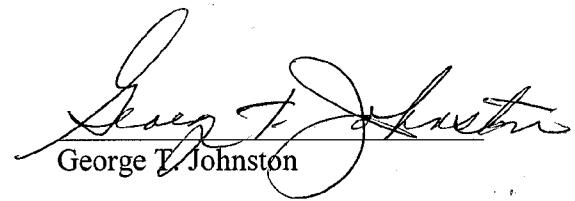


Jeffrey S. DuBois, Esquire
Attorney for Plaintiff

VERIFICATION

I, GEORGE T. JOHNSTON, verify that the statements in the foregoing Complaint are true and correct to the best of my knowledge, information and belief.

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



George T. Johnston

This Deed,

MADE the 28th day of December
in the year nineteen hundred and eighty-three (1983).

BETWEEN EDNA MAE JOHNSTON, formerly EDNA MAE HUFFMAN, and GEORGE T. JOHNSTON, her husband, of the Borough of Troutville, Clearfield County, Pennsylvania, Grantors, parties of the first part;

A
N
D

GEORGE T. JOHNSTON and EDNA M. JOHNSTON, husband and wife, of the Borough of Troutville, Clearfield County, Pennsylvania, as tenants by the entireties, Grantees, parties of the second part.

WITNESSETH, That in consideration of One (\$1.00)

Dollars,

in hand paid, the receipt whereof is hereby acknowledged, the said grantor s do hereby grant and convey to the said grantee s,

ALL that certain piece or parcel of land situate, lying and being in the Borough of Troutville, Clearfield County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at post on Main Street at the intersection of a certain 50 foot street known on the George Knarr Plot as Beaver Street; thence along said Main Street, a distance of 62 $\frac{1}{2}$ feet to a post; thence along lot usually known as the "Erastus Luther Lot", a distance of 150 feet to an alley; thence along said alley, a distance of 62 $\frac{1}{2}$ feet to post in line of Beaver Street aforesaid; thence along said Beaver Street a distance of 150 feet to a post and the place of beginning.

BEING the same premises which were conveyed to Lloyd F. Huffman and Edna Mae Huffman, husband and wife, by deed of Blair R. Marshall, et ux., dated October 26, 1956, and recorded at Clearfield, Pennsylvania, in Deed Book No. 454, page 332. The said Lloyd F. Huffman having died, title to said premises remained unto Edna Mae Huffman.

NOTICE

To comply with the Act of July 17, 1957 (52 P.S. Supp. Section 1551-1554) notice is hereby given as follows:

THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL, AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND.

Transfer is from husband and wife to husband and wife - no tax.

EXHIBIT A

AND the said grantors will GENERALLY WARRANT AND FOREVER DEFEND the property hereby conveyed.

IN WITNESS WHEREOF, said grantors have hereunto set their hands and seals, the

day and year first above-written.

Sealed and delivered in the presence of

}
 Edna Mae Johnston (SEAL)
 Edna Mae Johnston
 Edna Mae Huffman (SEAL)
 George T. Johnston (SEAL)
 George T. Johnston
 (SEAL)
 (SEAL)
 (SEAL)

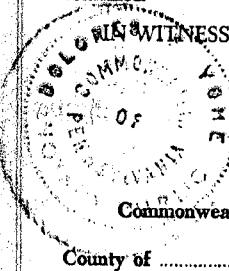
CERTIFICATE OF RESIDENCE

I hereby certify, that the precise residence of the grantee herein is as follows:
 Troutville, Pa. 15866

Anthony S. Guido
 Attorney or Agent for Grantee

Commonwealth of Pennsylvania
 County of Clearfield } SS:

On this, the 30th day of December 1983, before me a Notary Public the undersigned officer, personally appeared EDNA MAE JOHNSTON, formerly EDNA MAE HUFFMAN, and GEORGE T. JOHNSTON, her husband, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.



IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal.
 Dolores P. Goke
 Notary Public
 My Commission Expires March 7, 1987

Commonwealth of Pennsylvania
 County of } SS:

On this, the 19 day of , before me the undersigned officer, personally appeared known to me (or satisfactorily proven) to be the person instrument, and acknowledged that whose name subscribed to the within executed the same for the purpose therein contained.

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

My Commission Expires

State of

County of

On this, the day of 19 , before me
 the undersigned officer, personally appeared
 known to me (or satisfactorily proven) to be the person whose name subscribed to the within
 instrument, and acknowledged that executed the same for the purpose therein
 contained.

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

My Commission Expires

State of

County of

On this, the day of 19 , before me
 the undersigned officer, personally appeared
 known to me (or satisfactorily proven) to be the person whose name subscribed to the within
 instrument, and acknowledged that executed the same for the purpose therein
 contained.

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

My Commission Expires

Deed

WARRANTY DEED — Published and Sold by
 The Plankinton Co., Williamsport, Pa.

EDNA MAE JOHNSTON, et vir.

-to-

GEORGE T. JOHNSTON, et ux.

Dated	.....	.....	.....	.....	.....	.....	.....
For	.....	.....	.....	.....	.....	.....	.....
Consideration	.....	.....	.....	.....	.....	.....	.....
Recorded	.....	.....	.....	.....	.....	.....	.....
Entered for Record in the Recorder's	.....	.....	.....	.....	.....	.....	.....
Office of	.....	.....	.....	.....	.....	.....	.....
County, the	.....	.....	.....	.....	.....	.....	.....
day of	.....	.....	.....	.....	.....	.....	.....
Tax, \$	.....	.....	.....	.....	.....	.....	.....
19	.....	.....	.....	.....	.....	.....	.....
Fees, \$	.....	.....	.....	.....	.....	.....	.....
Recorder	.....	.....	.....	.....	.....	.....	.....

ANTHONY S. GUIDO
 ATTORNEY AT LAW
 DAMUS BUILDING
 DUBOIS, PA. 15801

CLEARFIELD COUNTY
 ENTERED OF RECORD, 5-84
 TIME 12:00 PM
 BY Michael R. Lytle
 FEES 13.50
 Michael R. Lytle, Recorder

Commonwealth of Pennsylvania
 County of Clefield SS:

RECORDED in the Office for Recording of Deeds, etc., in and for said County, in Deed
 Book No. 925 , Page 378 , 2 Records

WITNESS my Hand and Official Seal this 3 day of Jan , 19 84

Michael R. Lytle
 Recorder of Deeds

My Commission Expires
 First Monday in January, 1988

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

GEORGE T. JOHNSTON, : No. 06-215-CD
Plaintiff :
Vs. : Type of Pleading:
TROUTVILLE BOROUGH COUNCIL, :
Defendant : **PRAECIPE TO REINSTATE
THE COMPLAINT**
: Filed on Behalf of:
: PLAINTIFF
: Counsel of Record for This Party:
: Jeffrey S. DuBois, Esquire
: Supreme Court No. 62074
: 190 West Park Avenue, Suite #5
: DuBois, PA 15801
: (814) 375-5598

FILED *Atty Pd. 7.00*
012:14 (GD)
JUN 01 2006 *3 Reinstate
Compl. to Atty*
William A. Shaw
Prothonotary/Clerk of Courts *(GK)*

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

GEORGE T. JOHNSTON, : No. 06-215-CD
Plaintiff :
Vs. :
TROUTVILLE BOROUGH COUNCIL, :
Defendant :
:

PRAECIPE TO REINSTATE THE COMPLAINT

TO THE PROTHONOTARY:

Please reinstate this Complaint in the above captioned term and number.

Respectfully requested,



Jeffrey S. DuBois, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101611
NO: 06-215-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: GEORGE T. JOHNSTON
vs.
DEFENDANT: TROUTVILLE BOROUGH COUNCIL

SHERIFF RETURN

NOW, June 23, 2006 AT 1:19 PM SERVED THE WITHIN COMPLAINT ON TROUTVILLE BOROUGH COUNCIL DEFENDANT AT c/o Beth Yohe, Sec.-232 MAIN ST., TROUTVILLE, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO BETH YOHE, SECRETARY A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING / HUNTER

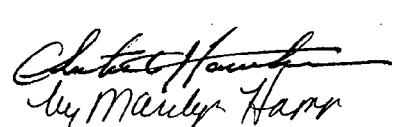
FILED
06/23/2006
JUL 12 2006


William A. Shaw
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	DUBOIS	2217	10.00
SHERIFF HAWKINS	DUBOIS	2217	36.19

Sworn to Before Me This
____ Day of _____ 2006

So Answers,


Chester A. Hawkins
Sheriff

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

GEORGE T. JOHNSTON, : No. 06 - 215 C.D.
Plaintiff :
Vs. : Type of Pleading:
TROUTVILLE BOROUGH COUNCIL, : **PRELIMINARY OBJECTIONS**
Defendant : Filed on Behalf of:
: DEFENDANT
: Counsel of Record for this party:
: **GEORGE D. KULAKOWSKI, ESQUIRE**
: Supreme Court No.: 35439
: 41 East Main Street
: Sykesville, PA 15865
: (814) 894-5030

FILED *cc*
JUL 13 2006 *Am*
6K

William A. Shaw
Prothonotary/Clerk of Courts

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

GEORGE T. JOHNSTON, : No. _____
Plaintiff :
Vs. :
TROUTVILLE BOROUGH COUNCIL, :
Defendant :
:

PRELIMINARY OBJECTIONS

AND NOW, comes the Defendant, TROUTVILLE BOROUGH COUNCIL, by
and through their undersigned Counsel, George D. Kulakowski, Esquire, and files the following
Preliminary Objections:

GENERAL ALLEGATIONS AS TO ALL COUNTS

1. The Plaintiff, George T. Johnston, has filed a Complaint involving land.
2. In Paragraphs 5 through 15 of his Complaint, the Plaintiff makes general allegations as to the existence of a "road" and the existence of a "right-of-way".
3. In Paragraph 12 the Plaintiff alleges an abandonment of this "right-of-way" by the Defendant.
4. In Paragraph 13 of his Complaint the Plaintiff alleges a use of "the area between said road and Plaintiff's house".
5. In Paragraph 15 the Plaintiff alleges "Therefore, Plaintiff requests that the Borough relinquish the right-of-way and deed the same to the landowners adjoining each side of the road."

6. The vague and imprecise allegations of the Plaintiff in his Complaint would appear to sound in either Ejectment or Quiet Title, but the Defendant is unable to ascertain the nature of the Plaintiff's complaint.

7. The Plaintiff's request for relief from this Honorable Court are similarly vague and imprecise in that they speak to relinquishment of a right-of-way or deeming the roadway to be abandoned.

8. In Paragraph 15 the Plaintiff requests that the right-of-way be deeded to the land owners adjoining each side of the road without naming who these land owners might be, thus leaving the Defendant unaware of whom the necessary parties might be and whether or not they are joining in this Complaint.

COUNT I
MOTION TO STRIKE

9. Paragraphs 1 through 8 are hereby incorporated by reference as though they were set forth in full.

10. Based upon the vague and imprecise pleadings of the Plaintiff, and failure to state a precise cause of action, and due to Plaintiff's failure to precisely state the form of relief requested, Plaintiff's complaint should be stricken with prejudice.

WHEREFORE, the Defendant demands that this Honorable Court strike the Complaint of the Plaintiff, with prejudice.

COUNT II
MOTION FOR MORE SPECIFIC PLEADING

11. Paragraphs 1 through 11 are hereby incorporated by reference as though they were set forth in full.

12. Based upon the vague and imprecise pleadings of the Plaintiff, and failure to state a precise cause of action, and due to Plaintiff's failure to precisely state the form of relief requested, Plaintiff should be compelled to file a more specific Complaint in compliance with all applicable law and the Rules of Civil Procedure.

WHEREFORE, the Defendant demands that this Honorable Court issue an order directing to the Plaintiff to file a more specific Complaint.

Respectfully submitted by,



George D. Kulakowski, Esquire
Attorney for Defendant

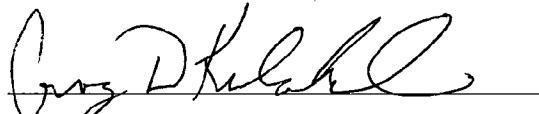
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

GEORGE T. JOHNSTON, : No. 06-215 C.D.
Plaintiff :
: Vs.
: :
TROUTVILLE BOROUGH COUNCIL, :
Defendant :
:

AFFIDAVIT OF SERVICE

I, George D. Kulakowski, do hereby attest that service of Defendant's Preliminary Objections was made by regular mail on July 14, 2006 to Plaintiffs Attorney at the following address:

Jeffrey S. DuBois, Attorney for Plaintiff;
190 West Park Ave, Suite #5
DuBois, PA 15801


George D. Kulakowski
Attorney for Defendant

FILED

JUL 19 2006

2006-12451
William A. Shaw, 
Prothonotary/Clerk of Courts

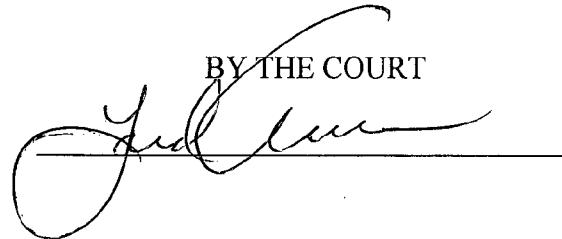
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

GEORGE T. JOHNSTON, : No. 06 - 215 C.D.
Plaintiff :
Vs. :
TROUTVILLE BOROUGH COUNCIL, :
Defendant :
.

ORDER

AND NOW, this 7 day of August, 2006, it is hereby ORDERED
that argument on Defendant's Preliminary Objections is scheduled for the 8th day of
September, 2006, at 10:00 o'clock A m. before Judge Ammerman at the
Clearfield County Courthouse.

BY THE COURT



FILED

AUG 07 2006

014366/1

William A. Shaw

Prothonotary/Clerk of Courts

I WENT TO APP

DATE: 6-7-06

You are responsible for serving all appropriate parties.

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

Special Instructions:

(A)

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

GEORGE T. JOHNSTON,

Plaintiff

: No. 06-215-CD

Vs.

TROUTVILLE BOROUGH COUNCIL,
Defendant

: Type of Pleading:

MOTION FOR CONTINUANCE

: Filed on Behalf of:
PLAINTIFF

: Counsel of Record for This Party:

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

FILED
M 11/20/2006 2CC
AUG 25 2006 Atty DuBois
(60)
William A. Shaw
Prothonotary/Clerk of Courts

04

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

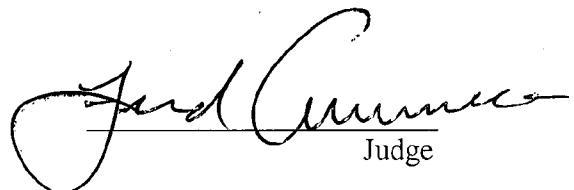
GEORGE T. JOHNSTON, : No. 06-215-CD
Plaintiff :
: :
Vs. : :
: :
TROUTVILLE BOROUGH COUNCIL, :
Defendant : :
: :

ORDER

AND NOW, this 28th day of August, 2006, in consideration of Plaintiff's Motion for Continuance,

IT IS HEREBY ORDERED AND DECREED that the Preliminary Objections scheduled for September 8, 2006, be continued until the 22nd day of September, 2006, at 11:00 o'clock A.M. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:



Judge

FILED *2ce*
0140061 AUG 28 2006 Atty DuBois
Clerk

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/28/06

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

FILED

AUG 28 2006

William A. Shaw
Prothonotary/Clerk of Courts

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

GEORGE T. JOHNSTON,	:	No. 06-215-CD
Plaintiff	:	
	:	
Vs.	:	
	:	
	:	
TROUTVILLE BOROUGH COUNCIL,	:	
Defendant	:	

MOTION FOR CONTINUANCE

AND NOW, comes the Plaintiff, GEORGE T. JOHNSTON, by and through his attorney, Jeffrey S. DuBois, Esquire, who files this Motion for Continuance, and in support thereof avers the following:

1. Argument on Preliminary Objections have been scheduled for September 8, 2006.
2. The undersigned has already had planned a vacation that same date, and he will be out of town.
3. It is in Plaintiff's best interest to have representation for this Hearing.
4. The undersigned has contacted counsel for Defendant, Attorney George D. Kulakowski, and he is agreeable to said continuance.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to continue Preliminary Objections to another date and time.

Respectfully submitted,



Jeffrey S. DuBois, Esquire

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

GEORGE T. JOHNSTON,	:	No. 06-215-CD
Plaintiff	:	
	:	
Vs.	:	
	:	
TROUTVILLE BOROUGH COUNCIL,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I do hereby certify that on the 25th day of August, 2006, I served a true and correct copy of the within Motion for Continuance by first class mail, postage prepaid, on the following:

George D. Kulakowski, Esquire
41 East Main Street
Sykesville, PA 15865



Jeffrey S. DuBois

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

GEORGE T. JOHNSTON

:

VS.

: NO. 06-215-CD

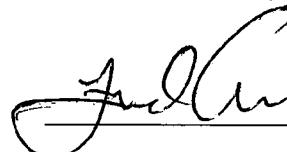
TROUTVILLE BOROUGH COUNCIL

:

O R D E R

AND NOW, this 22nd day of September, 2006, following discussions on the Preliminary Objections filed on behalf of the Defendant, it is the ORDER of this Court that the said Preliminary Objections be and are hereby granted to the extent that the Plaintiff shall file an Amended Complaint within no more than thirty (30) days from this date. The Amended Complaint shall provide more specific location as to the property being claimed; shall provide further information as to the specific legal theory(s) upon which the Plaintiff is proceeding to claim ownership of the portion of the right of way; and shall also provide more specific specificity as to what the Plaintiff is requesting in the form of relief.

BY THE COURT,



President Judge

FILED *sec Alys*
01/03/2007 Dubois
SEP 26 2006 Kulakowski:

William A. Shaw
Prothonotary/Clerk of Courts
60

FILED

SEP 26 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9/26/06

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

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

GEORGE T. JOHNSTON,

Plaintiff

No. 06-215-CD

Vs.

TROUTVILLE BOROUGH COUNCIL,

Defendant

Type of Pleading:

AMENDED COMPLAINT

Filed on Behalf of:

PLAINTIFF

Counsel of Record for This Party:

Jeffrey S. DuBois, Esquire

Supreme Court No. 62074

190 West Park Avenue, Suite #5

DuBois, PA 15801

(814) 375-5598

FILED

OCT 23 2006

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William A. Shaw
Prothonotary/Clerk of Courts

2 (ENT TO ATT)

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

GEORGE T. JOHNSTON, : No. 06-215-CD
Plaintiff :
: Vs. :
: :
TROUTVILLE BOROUGH COUNCIL, :
Defendant :
:

NOTICE

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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

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



Jeffrey S. DuBois, Esquire
Attorney for Plaintiff

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

GEORGE T. JOHNSTON,	:	No. 06-215-CD
Plaintiff	:	
	:	
Vs.	:	
	:	
TROUTVILLE BOROUGH COUNCIL,	:	
Defendant	:	

AMENDED COMPLAINT

AND NOW, comes the Plaintiff, GEORGE T. JOHNSTON, by and through his attorney, Jeffrey S. DuBois, Esquire, who files this Amended Complaint and in support thereof avers the following:

1. Plaintiff, George T. Johnston, is an adult individual residing at 119 Beaver Street, Troutville, Pennsylvania, 15866.
2. Defendant, Troutville Borough Council, is a borough organized under the laws of the Commonwealth of Pennsylvania with a business address of Troutville Borough Office, Troutville, Pennsylvania, 15866.
3. Jurisdiction is proper before this Honorable Court as it involves land which is located in Clearfield County, Pennsylvania.
4. Plaintiff is the owner of a house and tract of land located in the Borough of Troutville, Clearfield County, Pennsylvania, and more particularly described in Exhibit "A". A copy of said exhibit is attached hereto and made a part hereof.

5. Adjacent to Plaintiff's property is a street, Beaver Street, which traverses past Plaintiff's property.

6. Said Street, Beaver Street, runs North and South, and runs along the right side of Plaintiff's house.

7. Representatives from Defendant have relayed at various points in time to Plaintiff that the Borough has a Fifty (50') foot right-of-way with respect said street referenced in Paragraph 5 herein.

8. In its present condition, the street is approximately ten (10') feet to twelve (12') feet in width.

9. Plaintiff has lived in the aforementioned house and property for a period of over thirty-five (35) years, and the street has been in the same condition, and has been the same width, during this entire period in excess of thirty-five (35) years.

10. After a search, Plaintiff cannot locate any plot plans, ordinances, or any other documents filed by the Defendant in this Honorable Court setting forth any right-of-way with respect to the aforementioned street.

11. As a consequence, Plaintiff would believe that the Defendants right-of-way with respect to said street would be limited to the existing traveled path.

12. The edge of the paved street is approximately fifteen (15') feet from Plaintiff's house.

13. In light of the fact of the close proximity from the end of the actual used street to Plaintiff's house, the Borough would not be able to use or extend the traveled portion of the street.

14. Moreover, the existing width of the street allows, and has for the past thirty-five (35) years, access for automobiles to travel up and down said street.

15. The Borough, if it does contain such a right-of-way, has abandoned the use of the same, and because of the topography of the land and the width compared to Plaintiff's house, the Borough would not be able to use said right-of-way even if it desired.

16. Over the past thirty-five (35) years, Plaintiff has maintained, at his own expense, the area between said street and Plaintiff's house.

17. Additionally, a culvert and pipe had to be placed between the street and Plaintiff's house, at Plaintiff's expense, thus making any extension problematic or even impossible.

18. The Defendant knew the Plaintiff made these improvements to the property, and thus would be estopped from asserting any ownership interest at this time.

19. Therefore, Plaintiff requests this Honorable Court if he does not already own said property up to the traveled street, he that he be awarded said property. ,

WHEREFORE, Plaintiff respectfully requests this Honorable Court to award the following:

(a.) In the event Defendant has Fifty (50') foot right-of way to Beaver Street, that said right-of-way be reduced to Twenty Five (25') feet, with said right-of-way comprising the existing traveled path with an additional Five (5') feet on each side of said roadway;

(b.) With the exception of the Five (5') foot right-of-way next to the traveled portion of the street, that Plaintiff be declared the owner of

the property from the edge of the street to the house, and corrective
Deed should be issued transferring said property into Plaintiffs name;
(c.) Such other relief of this Court deems just and equitable

Respectfully requested,



Jeffrey S. DuBois, Esquire
Attorney for Plaintiff

VERIFICATION

I, JEFFREY S. DUBOIS, Esquire, verify that the statements in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. The undersigned is in possession of this information based on conversations with and representation of Plaintiff. Plaintiff is currently unavailable and a signed verification by Plaintiff will be submitted as soon as Plaintiff is in contact with the undersigned.

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



Jeffrey S. DuBois, Esquire

or

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

GEORGE T. JOHNSTON, : No. 06 - 215 - C.D.

Plaintiff : :

Vs. : :

TROUTVILLE BOROUGH COUNCIL, : :

Defendant : :

PRELIMINARY OBJECITONS

AND NOW, comes the Defendant, TROUTVILLE BOROUGH COUNCIL, by and through their undersigned Attorney, George D. Kulakowski, and files the following Preliminary Objections:

GENERAL ALLEGATIONS AS TO ALL COUNTS

1. On June 1st, 2006, the Plaintiff filed his Original Complaint in this matter.
2. The Defendant filed Preliminary Objections to this Original Complaint and on September 22nd, 2006, this Honorable Court issued an Order with regard to the Preliminary Objections. The copy of said Order is attached hereto and made apart hereof and marked Defendants Exhibit (1) One.
3. The Order stated that the Plaintiffs Amended Complaint was to provide a more specific location as to the property being claimed, further information as to any specific legal theory relied upon by the Plaintiff, and to plead with more specificity as to what type of relief the Plaintiff was requesting.
4. The Plaintiff has filed an Amended Complaint.

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(GK)

William A. Shaw
Prothonotary/Clerk of Courts

5. As to location of the property in question the Plaintiff merely alleges that this property runs along the "right side of Plaintiffs house." The Defendant is unclear as to exactly the extent or location of the real-estate to which the Plaintiff is claiming title.
6. In reviewing the remainder of the Plaintiffs Complaint, the Defendant is unable to ascertain if the Plaintiff is basing his action upon adverse possession, ejectment, or abandonment.

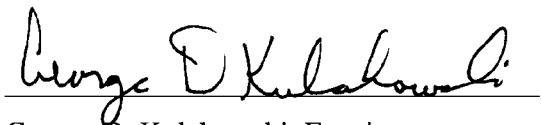
COUNT I

MOTION TO STRIKE

7. Paragraphs 1 through 6 are hereby appropriated by reference as though they were set forth in full.
8. Based upon the vague and imprecise pleadings of the Plaintiff as to Location of the real-estate in question, the failure to state a precise cause of action, and the failure to precisely state the type of relief requested, the Plaintiffs Complaint should be stricken with prejudice.

WHEREFORE, the Defendants demand that this Honorable Court strike the Complaint of the Plaintiff and enter a judgment in favor of the Defendants, with prejudice.

Respectfully submitted by,



George D. Kulakowski, Esquire
Attorney for Defendant

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

GEORGE T. JOHNSTON :

VS. : NO. 06-215-CD

TROUTVILLE BOROUGH COUNCIL :

O R D E R

AND NOW, this 22nd day of September, 2006, following discussions on the Preliminary Objections filed on behalf of the Defendant, it is the ORDER of this Court that the said Preliminary Objections be and are hereby granted to the extent that the Plaintiff shall file an Amended Complaint within no more than thirty (30) days from this date. The Amended Complaint shall provide more specific location as to the property being claimed; shall provide further information as to the specific legal theory(s) upon which the Plaintiff is proceeding to claim ownership of the portion of the right of way; and shall also provide more specific specificity as to what the Plaintiff is requesting in the form of relief.

BY THE COURT,

/s/ Fredric J. Ammerman

President Judge

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

SEP 26 2006

Attest.

William L. Ammerman
Prothonotary/
Clerk of Courts

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

GEORGE T. JOHNSTON, : No. 06 - 215 C.D.
Plaintiff :
Vs. :
TROUTVILLE BOROUGH COUNCIL, :
Defendant :
:

ORDER

AND NOW, this 12 day of Jan, 2007, it is hereby ORDERED
that argument on Defendant's Preliminary Objections is scheduled for the 30th day of
January, 2007, at 10:00 o'clock A m. before Judge Ammerman at the
Clearfield County Courthouse.

BY THE COURT

J.

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013-5864 Atty Kulakowski
JAN 12 2007
(GR)

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/20/07

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

FILED
JAN 12 2007

William A. Shaw
Prothonotary/Clerk of Courts

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

GEORGE T. JOHNSTON, : No. 06-215-CD
Plaintiff :
Vs. : Type of Pleading:
TROUTVILLE BOROUGH COUNCIL, :
Defendant : **PLAINTIFF'S RESPONSE TO**
: **DEFENDANT'S PRELIMINARY**
: **OBJECTIONS**
: Filed on Behalf of:
: PLAINTIFF
: Counsel of Record for This Party:
: Jeffrey S. DuBois, Esquire
: Supreme Court No. 62074
: 190 West Park Avenue, Suite #5
: DuBois, PA 15801
: (814) 375-5598

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William A. Shaw
Prothonotary/Clerk of Courts

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

GEORGE T. JOHNSTON, : No. 06-215-CD
Plaintiff :
: Vs. :
: :
: :
TROUTVILLE BOROUGH COUNCIL, :
Defendant :
:

ORDER

AND NOW, this _____ day of _____, 2007, in consideration of
Plaintiff's Response to Defendant's Preliminary Objections,

IT IS HEREBY ORDERED AND DECREED that the Preliminary Objections are
hereby dismissed and Plaintiff is awarded attorney fees in the amount of \$_____.

BY THE COURT:

Judge

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

GEORGE T. JOHNSTON, : No. 06-215-CD

Plaintiff :

:

Vs. :

:

:

TROUTVILLE BOROUGH COUNCIL, :
Defendant :

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William A. Shaw
Prothonotary/Clerk of Courts

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

AND NOW, comes the Plaintiff, GEORGE T. JOHNSTON, by and through his attorney, Jeffrey S. DuBois, Esquire, who files this Response to Defendant's Preliminary Objections, and in support thereof avers the following:

GENERAL ALLEGATIONS AS TO ALL COUNTS

1. In Defendant's Preliminary Objections, Defendant alleges it is unclear as to the exact extent of the location in which Plaintiff is referring to or allegedly claiming title.
2. Plaintiff is unaware of how more clear he can be as he sets forth the street, specifically Beaver Street, in which he is referring. Further, Plaintiff sets forth in his Amended Complaint that said Beaver Street runs in a North and South direction and runs adjacent to Plaintiff's property. Finally, said Complaint sets forth that the Street runs along the right hand side of Plaintiff's house.
3. Therefore, the location to which Plaintiff is referring is clear, that being Beaver street which abuts up against Plaintiff's property.

4. Secondly, Defendant asserts Plaintiff had failed to precisely state the type of relief requested.

5. Again, Defendant is incorrect as Plaintiff has in numerous paragraphs in the body of the Complaint, as well as in the Prayer for relief, set forth his requested relief.

6. Additionally, because the exact nature of the road and its ownership is not known at this time, Plaintiff also phrased his requested relief in the alternative.

7. It is clear from Plaintiff's Complaint that Plaintiff either wishes to be considered the owner of the land from his house to the road and/or that Defendant cannot exercise ownership over the road which would affect his house and property.

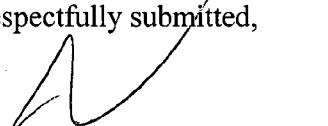
8. These Prayers for relief are clearly set forth in Plaintiff's Amended Complaint, and Defendant's Preliminary Objections should be dismissed.

9. Moreover, Defendant's Preliminary Objections, which is the second one filed, are completely without merit, and are dilatory in nature.

10. Plaintiff request attorney's fees for having to again respond to Preliminary Objections when the Amended Complaint is completely in compliance with this Honorable Court's Order of September 22, 2006.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to dismiss Defendant's Preliminary Objections in its entirety and award Plaintiff attorney fees.

Respectfully submitted,



Jeffrey S. DuBois, Esquire

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

GEORGE T. JOHNSTON,	:	No. 06-215-CD
Plaintiff	:	
	:	
Vs.	:	
	:	
	:	
TROUTVILLE BOROUGH COUNCIL,	:	
Defendant	:	

CERTIFICATE OF SERVICE

I do hereby certify that on the 10 day of January, 2007, I served a true and correct copy of the within Plaintiff's Response to Defendant's Preliminary Objections by first class mail, postage prepaid, on the following:

George D. Kulakowski, Esquire
41 East Main Street
Sykesville, PA 15865



Jeffrey S. DuBois

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

GEORGE T. JOHNSTON, * CIVIL ACTION - LAW
Plaintiff *
vs. *
TROUTVILLE BOROUGH COUNCIL, *
Defendant * NO. 06-215-CD

ORDER OF COURT

NOW, this 30th day of January, 2007, following argument on the Preliminary Objections to the amended complaint, IT IS THE ORDER OF THIS COURT that the Preliminary Objections be and are hereby granted to the extent that the Plaintiff shall file a second amended complaint which shall set forth specifically what cause of action(s) the Plaintiff is pursuing in regard to the property issue. The Plaintiff shall also make reasonable efforts to attempt to locate some type of map or plot plan of the area in order that it can be attached and show the approximate location of the area being claimed. The second amended complaint shall be filed in no more than 20 days from this date.

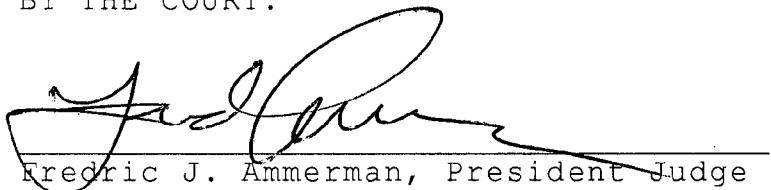
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JAN 30 2007

William A. Shaw
Prothonotary/Clerk of Courts

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(60)

BY THE COURT:


Fredric J. Ammerman, President Judge

FILED

JAN 30 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/30/07

 You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney Other

Special Instructions:

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

GEORGE T. JOHNSTON, : No. 06-215-CD
Plaintiff :
Vs. : Type of Pleading:
TROUTVILLE BOROUGH and the :
TROUTVILLE BOROUGH COUNCIL, :
Defendants : **SECOND AMENDED
COMPLAINT**
: Filed on Behalf of:
: PLAINTIFF
: Counsel of Record for This Party:
: Jeffrey S. DuBois, Esquire
: Supreme Court No. 62074
: 190 West Park Avenue, Suite #5
: DuBois, PA 15801
: (814) 375-5598

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9:140cm DuBois
FEB 20 2007


William A. Shaw
Prothonotary/Clerk of Courts

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

GEORGE T. JOHNSTON,	:	No. 06-215-CD
Plaintiff	:	
	:	
Vs.	:	
	:	
TROUTVILLE BOROUGH and the	:	
TROUTVILLE BOROUGH COUNCIL,	:	
Defendants	:	

NOTICE

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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

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

Jeffrey S. DuBois, Esquire
Attorney for Plaintiff

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

GEORGE T. JOHNSTON,	:	No. 06-215-CD
Plaintiff	:	
	:	
Vs.	:	
	:	
TROUTVILLE BOROUGH and the	:	
TROUTVILLE BOROUGH COUNCIL,	:	
Defendants	:	

AMENDED COMPLAINT

AND NOW, comes the Plaintiff, GEORGE T. JOHNSTON, by and through his attorney, Jeffrey S. DuBois, Esquire, who files this Amended Complaint and in support thereof avers the following:

1. Plaintiff, George T. Johnston, is an adult individual residing at 119 Beaver Street, Troutville, Pennsylvania, 15866.
2. Defendant, Troutville Borough, is a borough organized under the laws of the Commonwealth of Pennsylvania with a business address of Troutville Borough Office, Troutville, Pennsylvania, 15866.
3. Defendant, Troutville Borough Council, is a council for the borough organized under the laws of the Commonwealth of Pennsylvania with a business address of Troutville Borough Office, Troutville, Pennsylvania, 15866.
4. Jurisdiction is proper before this Honorable Court as it involves land which is located in Clearfield County, Pennsylvania.

5. Plaintiff is the owner of a house and tract of land located in the Borough of Troutville, Clearfield County, Pennsylvania, and more particularly described in Exhibit "A". A copy of said exhibit is attached hereto and made a part hereof.

6. Adjacent to Plaintiff's property is a street, Beaver Street, which traverses past Plaintiff's property.

7. Said Street, Beaver Street, runs North and South, and runs along the right side of Plaintiff's house, and continues along his property and beyond.

8. Representatives from Defendant Council have relayed at various points in time to Plaintiff that the Borough has a Fifty (50') foot right-of-way with respect said street referenced in Paragraph six (6) herein.

9. In its present condition, the street is approximately ten (10') feet to twelve (12') feet in width.

10. Plaintiff has lived in the aforementioned house and property for a period of over thirty-five (35) years, and the street has been in the same condition, and has been the same width, during this entire period in excess of thirty-five (35) years.

11. After a search, Plaintiff cannot locate any plot plans, ordinances, or any other documents filed by the Defendants in this Honorable Court setting forth any right-of-way with respect to the aforementioned street.

12. As a consequence, Plaintiff would believe that the Defendants right-of-way with respect to said street would be limited to the existing traveled path.

13. The edge of the paved street is approximately fifteen (15') feet from Plaintiff's house.

14. In light of the fact of the close proximity from the end of the actual used street to Plaintiff's house, the Borough would not be able to use or extend the traveled portion of the street.

15. Moreover, the existing width of the street allows, and has for the past thirty-five (35) years, access for automobiles to travel up and down said street.

16. The area which is the subject of this dispute is all of Plaintiff's property which he owns and/or maintains and which abuts to Beaver Street.

COUNT I – DECLATORY RELIEF

17. Plaintiff hereby incorporates paragraphs one (1) through sixteen (16) herein as if set forth herein at length.

18. With respect to the portion of Beaver Street which runs along Plaintiff's property, Plaintiff asserts Defendants have no ownership interest or rights in any property beyond the actual Street, and Plaintiff is the owner of said property.

19. Therefore, Plaintiff requests Declaratory Relief by Court Order, declaring him the owner of the property, as set forth in this deed, and extending up to Beaver Street.

WHEREFORE, Plaintiff respectfully requests this Honorable Court declare him the owner of the property, as set forth in his deed, and extending up to the edge of Beaver Street.

COUNT II – ABANDONMENT/ESTOPPEL

20. Plaintiff hereby incorporates paragraphs one (1) through sixteen (16), and Count I herein as if set forth herein at length.

21. The Borough, if it does contain such a right-of-way, has abandoned the use of the same, and because of the topography of the land and the width compared to Plaintiff's house, the Borough would not be able to use said right-of-way even if it desired.

22. Over the past thirty-five (35) years, Plaintiff has maintained, at his own expense, the area between said street and Plaintiff's house, and the property behind his house.

23. Additionally, a culvert and pipe had to be placed between the street and Plaintiff's house, at Plaintiff's expense, thus making any extension problematic or even impossible.

24. The Defendants knew the Plaintiff made these improvements to the property, and thus would be estopped from asserting any ownership interest at this time.

25. Therefore, Plaintiff requests this Honorable Court if he does not already own said property up to the traveled street, he that he be awarded said property.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to award the following:

(a.) That Plaintiff be declared the owner of the property to the edge of the street, and a corrective Deed should be issued transferring said property into Plaintiff's name;

(b.) In the event Defendant has Fifty (50') foot right-of way to Beaver Street, that said right-of-way be reduced to Twenty Five (25') feet,

with said right-of-way comprising the existing traveled path with an additional Five (5') feet on each side of said roadway;

(c.) Such other relief of this Court deems just and equitable

Respectfully requested,

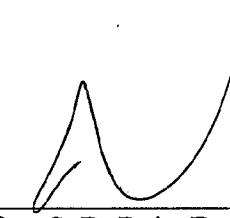


Jeffrey S. DuBois, Esquire
Attorney for Plaintiff

VERIFICATION

I, JEFFREY S. DUBOIS, Esquire, verify that the statements in the foregoing Second Amended Complaint are true and correct to the best of my knowledge, information and belief. The undersigned is in possession of this information based on conversations with and representation of Defendant. Defendant is currently unavailable and a signed verification by Defendant will be submitted as soon as Defendant is in contact with the undersigned.

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



Jeffrey S. DuBois, Esquire

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

GEORGE T. JOHNSTON, : No. 06-215-CD
Plaintiff :
: Vs. :
: :
TROUTVILLE BOROUGH and the :
TROUTVILLE BOROUGH COUNCIL, :
Defendants :
:

CERTIFICATE OF SERVICE

I do hereby certify that on the 20th day of February, 2007, I served a true and correct copy of the within Amended Complaint by first class mail, postage prepaid, on the following:

George D. Kulakowski, Esquire
41 East Main Street
Sykesville, PA 15865



Jeffrey S. DuBois

Chis Deed,

MADE the 28th day of December
in the year nineteen hundred and eighty-three (1983).

BETWEEN EDNA MAE JOHNSTON, formerly EDNA MAE HUFFMAN, and GEORGE T. JOHNSTON, her husband, of the Borough of Troutville, Clearfield County, Pennsylvania, Grantors, parties of the first part;

A
N
D

GEORGE T. JOHNSTON and EDNA M. JOHNSTON, husband and wife, of the Borough of Troutville, Clearfield County, Pennsylvania, as tenants by the entireties, Grantees, parties of the second part.

WITNESSETH, That in consideration of One (\$1.00)

Dollars,

in hand paid, the receipt whereof is hereby acknowledged, the said grantor s do hereby grant and convey to the said grantee s.

ALL that certain piece or parcel of land situate, lying and being in the Borough of Troutville, Clearfield County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at post on Main Street at the intersection of a certain 50 foot street known on the George Knarr Plot as Beaver Street; thence along said Main Street, a distance of 62 $\frac{1}{2}$ feet to a post; thence along lot usually known as the "Erastus Luther Lot", a distance of 150 feet to an alley; thence along said alley, a distance of 62 $\frac{1}{2}$ feet to post in line of Beaver Street aforesaid; thence along said Beaver Street a distance of 150 feet to a post and the place of beginning.

BEING the same premises which were conveyed to Lloyd F. Huffman and Edna Mae Huffman, husband and wife, by deed of Blair R. Marshall, et ux., dated October 26, 1956, and recorded at Clearfield, Pennsylvania, in Deed Book No. 454, page 332. The said Lloyd F. Huffman having died, title to said premises remained unto Edna Mae Huffman.

NOTICE

To comply with the Act of July 17, 1957 (52 P.S. Supp. Section 1551-1554) notice is hereby given as follows:

THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL, AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND.

Transfer is from husband and wife to husband and wife - no tax.

EXHIBIT A

AND the said grantors will GENERALLY WARRANT AND FOREVER DEFEND the property hereby conveyed.

IN WITNESS WHEREOF, said grantors have hereunto set their hands and seals, the day and year first above-written.

Sealed and delivered in the presence of

Edna Mae Johnston (SEAL)
Edna Mae Johnston (SEAL)
Edna Mae Huffman (SEAL)
George T. Johnston (SEAL)
George T. Johnston (SEAL)
George T. Johnston (SEAL)
George T. Johnston (SEAL)

CERTIFICATE OF RESIDENCE

I hereby certify, that the precise residence of the grantee herein is as follows:
Troutville, Pa. 15866

Anthony S. Guido
Attorney or Agent for Grantee

Commonwealth of Pennsylvania
County of Clearfield } SS:

On this the 30th day of December 1983, before me a Notary Public the undersigned officer, personally appeared EDNA MAE JOHNSTON, formerly EDNA MAE HUFFMAN, and GEORGE T. JOHNSTON, her husband, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal.
Dolores P. Goke
Notary Public
My Commission Expires March 7, 1987

Commonwealth of Pennsylvania
County of } SS:

On this, the 19 day of January, 1984, before me the undersigned officer, personally appeared known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

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

My Commission Expires

State of

County of

ss:

On this, the day of 19 , before me
the undersigned officer, personally appeared

known to me (or satisfactorily proven) to be the person whose name subscribed to the within
instrument, and acknowledged that executed the same for the purpose therein
contained.

IN WITNESS WHEREOF, I have hereunto set my hand and

seal.

My Commission Expires

State of

County of

ss:

On this, the day of 19 , before me
the undersigned officer, personally appeared

known to me (or satisfactorily proven) to be the person whose name subscribed to the within
instrument, and acknowledged that executed the same for the purpose therein
contained.

IN WITNESS WHEREOF, I have hereunto set my hand and

seal.

My Commission Expires

Deed

WARRANTY DEED — Published and Sold by
The Pankhurst Co., Williamsport, Pa.

EDNA MAE JOHNSTON, et vir.

-to-

GEORGE T. JOHNSTON, et ux.

Dated	For	Consideration	Recorded	Entered for Record in the Recorder's
.....	.....	.....	.....	Office of
.....	.....	.....	.....	County, the day of
.....	.....	.....	.....	Tax, \$
.....	.....	.....	.....	19
.....	.....	.....	.....	Hens, \$
.....	.....	.....	.....	Recorder

ANTHONY S. GUIDO
ATTORNEY AT LAW
DAMUS BUILDING
DUBOIS, PA. 15801

CLEARFIELD COUNTY
ENTERED OF RECORD, 5-84
TIME 12:05 PM
BY *Michael R. Lyle*
FEES *13.50*
Michael R. Lyle, Recorder

Commonwealth of Pennsylvania

County of *Clearfield* } ss:

RECORDED in the Office for Recording of Deeds, etc., in and for said County, in Deed

Book No. 925

, Page 378

2 Records

WITNESS my Hand and Official Seal this 5 day of Jan, 1984

Michael R. Lyle
Recorder of Deeds

My Commission Expires
First Monday in January, 1988

no Tax

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

GEORGE T. JOHNSTON, : No. 06 - 215 C.D.
Plaintiff :
vs. : Type of Pleading:
TROUTVILLE BOROUGH and the :
TROUTVILLE BOROUGH COUNCIL, :
Defendants : **ANSWER AND NEW MATTER**
: Filed on Behalf of:
: DEFENDANTS
: Counsel of Record for This Party:
: **GEORGE D. KULAKOWSKI, ESQUIRE**
: Supreme Court No.: 35439
: 41 East Main Street
: Sykesville, PA 15865
: (814) 894-5030

FILED *cc Atty*
m/11/10 am *Kulakowski*
APR 18 2007
wm

William A. Shaw
Prothonotary, Clerk of Courts

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

GEORGE T. JOHNSTON,	:	No. 06 - 215 - C.D.
Plaintiff	:	
	:	
vs.	:	
	:	
TROUTVILLE BOROUGH and the	:	
TROUTVILLE BOROUGH COUNCIL,	:	
Defendants	:	

ANSWER AND NEW MATTER

AND NOW, come the Defendants, TROUTVILLE BOROUGH and the TROUTVILLE BOROUGH COUNCIL, Defendants by and through their undersigned Attorney, George D. Kulakowski, who files the following Answer and New Matter:

GENERAL ALLEGATIONS AS TO ALL COUNTS

1-4. Admitted.

5. It is admitted that there is a Deed attached to the Plaintiff's Amended Complaint, however, the Defendants have no knowledge as to any of the other facts contained in this paragraph and they are therefore deemed to be denied and strict proof thereof is demanded at trial.

6. It is admitted that a street named Beaver Street exists within the Borough of Troutville and it is admitted that this street in some fashion traverses part of the property described in Plaintiff's Exhibit "A". However, the Defendant has no knowledge as to the

ownership of said property as explained in Paragraph number five (5), and it is therefore deemed to be denied and strict proof thereof is demanded at trial.

7. It is admitted that Beaver Street does run in a somewhat North and South direction, at least partially, however, the Defendant can make no response as to what the "right side of Plaintiff's house" means, and it is therefore deemed to be denied and strict proof thereof is demanded at trial.

8. The Defendants have no knowledge of the other facts contained in this paragraph and they are therefore deemed to be denied and strict proof thereof is demanded at trial.

9. The allegations made in this paragraph are vague and imprecise and the Defendant's are unable to formulate a specific response to the language contained therein, and this language is therefore deemed to be denied and strict proof thereof is demanded at trial.

10. The Defendant's have no information as to the information in this paragraph as to where the Plaintiff has lived, nor is the Defendant clear as to what the Plaintiff means by the street being in the same condition, nor can the Defendant express any statement regarding the width of the street and that the Plaintiff has not alleged exactly to what part of the street he is referring, and therefore all facts contained in this paragraph are deemed to be denied and strict proof thereof is demanded at trial.

11. The Defendants have no knowledge of any plot plans, ordinances or other documents the Plaintiff is referencing, and therefore the facts contained in this paragraph are deemed to be denied and strict proof thereof is demanded at trial.

12. The facts alleged in this paragraph appear to be a conclusion of law to which no response is required, however any facts contained in this paragraph are deemed to be denied and strict proof thereof is demanded at trial.

13. In that the Plaintiff does not delineate exactly which edge of the paved street is approximately fifteen (15') feet from Plaintiff's house, the Defendant can promulgate no response in this paragraph and it is therefore deemed to be denied and strict proof thereof is demanded at trial.

14. The facts contained in this paragraph are denied as to the end of the actual used street, in that the Plaintiff is not clear as to the exact location of the measurements to which he seems to be referring, and the remainder of this paragraph regarding any potential Borough use is a conclusion of law to which no response is required, however all the facts contained herein are therefore deemed to be denied and strict proof thereof is demanded at trial.

15. It is admitted that automobiles are able to travel up and down the referenced street.

16. It is denied that the area which is the subject of this dispute is "All of Plaintiff's Property which he owns and maintains" and strict proof thereof is demanded at trial, and it is herein averred that what appears to be the disputed property described and Plaintiff's Amended Complaint is subject to all relevant Borough easements and or right-of-ways.

COUNT 1 – DECLATORY RELIEF

17. No response required.

18. It is denied that with respect to the portion of Beaver Street which runs along Plaintiff's property that the Defendant's had no ownership interest or rights in said property

beyond the actual street, and it is herein that the Defendant's are possessors of a right-of-way of record which delineates all of their right, title of interest.

19. This paragraph is a Conclusion of Law to which no response is required, however, should any response be deemed to be required all facts in this paragraph are therefore deemed to be denied and strict proof thereof is demanded at trial.

WHEREFORE, the Defendants respectfully request that this Honorable Court dismiss the Plaintiffs Complaint with prejudice and enter an Order in favor of the Defendants.

COUNT II – ABANDONMENT/ESTOPPEL

20. No response required.

21. It is denied that the Defendant has abandoned any right of right-of-way or easement for any reason and it is further denied that any extended use of said right-of-way would be barred by topography of the land and the width compared to Plaintiff's house.

22. The Defendants have no knowledge of the facts alleged herein and therefore deemed to be denied and strict proof thereof is demanded at trial.

23. The Defendants have no knowledge regarding the existence of a culvert or a pipe on the subject premises and the existence of same are therefore denied and it is further denied that any extended use of the right-of-way in question would be rendered problematic or impossible by the alleged existence of said culvert or pipe.

24. The Defendant has or had no knowledge of any alleged improvements made by the Plaintiffs to the subject premises and theses facts are therefore deemed to be denied and strict proof thereof is demanded at trial.

25. This paragraph contains a conclusion of law to which a response is not required, but if it is determined that if any facts exist in this paragraph they are deemed to be denied and strict proof thereof is demanded at trial.

WHEREFORE, the Defendants respectfully request that this Honorable Court dismiss the Complaint of the Plaintiff with prejudice.

NEW MATTER

26. The parcel of land which forms the subject basis of this lawsuit, Beaver Street, was designated as a street as early as 1892, and has been used solely and exclusively by the Borough of Troutville as a street for a period of time well before the Plaintiff acquired deed ownership of his parcel of land.

27. Pursuant to the description of Plaintiff's Deed, Exhibit A in Plaintiff's Complaint, Plaintiff's deed title rights terminate at a Fifty (50') foot street known on the George Knarr plot as Beaver Street, and accordingly the Plaintiff has no Deed title right or interest in any of the property which constitutes Beaver Street.

28. The facts alleged in Plaintiff's complaint fail to allege all of the necessary elements in order to sustain a claim of adverse possession.

29. Plaintiff's claim of abandonment based upon the fact that not all of the Fifty (50') foot right-of way has been paved must fail in that with regard to any cart way or path way not all areas necessary for the maintenance of a street are paved, in that the maintaining municipality must provide for appropriate berms, lines of sight, and other necessary safety requirements or expansions for increased vehicular traffic.

30. In that Plaintiff's own Complaint fails to establish Deed title to Beaver Street,

fails to establish all necessary elements of adverse possession, and fails to establish abandonment by the municipality, the Plaintiff's claim must fail.

WHEREFORE, the Defendant's respectfully request that this Honorable Court enter a judgment in their favor and against the Plaintiff with prejudice.

Respectfully submitted by,



George D. Kulakowski, Esquire
Attorney for Defendants

VERIFICATION

I, Burnell L. Muth, verify that the statements made in this Answer and New Matter, are true and correct to the best of my information, knowledge and belief. I understand that false statements herein are made subject to the penalties of **18 Pa. C.S. Section 4904**, relating to Unsworn Falsification to Authorities.

Date: 4-10-07

Burnell L. Muth
Burnell L. Muth

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

FILED

GEORGE T. JOHNSTON,

Plaintiff

No. 06-215-CD

JUN 19 2007

o/3:05()

William A. Shaw

Prothonotary/Clerk of Courts

4 CENTS TO ATT

Vs.

TROUTVILLE BOROUGH and the
TROUTVILLE BOROUGH COUNCIL,
Defendants

Type of Pleading:

REPLY TO NEW MATTER

Filed on Behalf of:

PLAINTIFF

Counsel of Record for This Party:

Jeffrey S. DuBois, Esquire

Supreme Court No. 62074

190 West Park Avenue, Suite #5

DuBois, PA 15801

(814) 375-5598

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

GEORGE T. JOHNSTON,	:	No. 06-215-CD
Plaintiff	:	
	:	
Vs.	:	
	:	
TROUTVILLE BOROUGH and the	:	
TROUTVILLE BOROUGH COUNCIL,	:	
Defendants	:	

REPLY TO NEW MATTER

AND NOW, comes the Plaintiff, GEORGE T. JOHNSTON, by and through his attorney, Jeffrey S. DuBois, Esquire, who files this Reply to New Matter and in support thereof avers the following:

26. Plaintiff does not have any information to respond to the averments of Defendants paragraph 26 to form a belief as to their truth or falsity, and therefore the same is denied and strict proof is demanded at Trial. In addition, Defendant provided no documentation in their Answer and New Matter as to how, or by what document, Beaver Street was designated as a Street. By way of further answer, it is admitted that said Beaver Street has always been used as a Street, but only the actual traveled part which is approximately twelve (12) feet in width.

27. Denied. Said language in Plaintiff's deed is merely language that was contained in prior deeds and does not necessarily grant to anyone a fifty (50) foot street, and Defendant cannot show where said street has been dedicated to the Borough of

Troutville. By way of further answer, because of Plaintiff's use of the area in question, and Defendants' lack of use, Plaintiff does have an interest in the property.

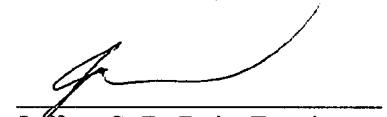
28. The averments set forth in Defendants paragraph 28 are conclusions of law to which no responsive pleading is required. To the extent an answer is required, the same is denied as Plaintiff's Complaint does set forth all the necessary elements to sustain a claim of adverse possession.

29. Denied. Plaintiff's claim of abandonment is not simply that the cart way or pathway is not completely paved, but that Defendant has never maintained, in any manner, any area outside the actual paved part or traveled part of said road. By way of further answer, said road has been in the same condition and width for a period in excess of forty (40) years, and during said forty (40) years, the Defendant has not maintained any area outside of the traveled area, and by contrast, Plaintiff has maintained said area.

30. The averments set forth in Defendant's paragraph 30 are conclusions of law to which no responsive pleading is required. To the extent an answer is required, Plaintiff's Complaint sufficiently sets forth numerous causes of actions against Defendant.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to award Judgment in favor of Plaintiff and against Defendant as set forth in Plaintiff's Complaint.

Respectfully requested,

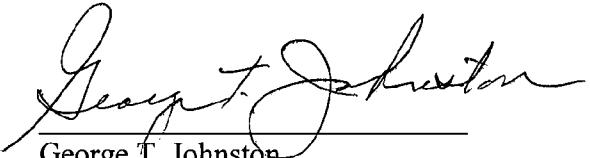


Jeffrey S. DuBois, Esquire
Attorney for Plaintiff

VERIFICATION

I, GEORGE T. JOHNSTON, verify that the statements in the foregoing Pleading are true and correct to the best of my knowledge, information and belief.

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



George T. Johnston

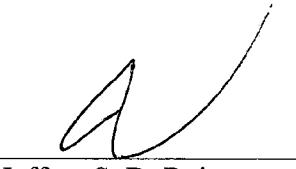
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

GEORGE T. JOHNSTON, : No. 06-215-CD
Plaintiff :
: :
Vs. :
: :
TROUTVILLE BOROUGH and the :
TROUTVILLE BOROUGH COUNCIL, :
Defendants :
:

CERTIFICATE OF SERVICE

I do hereby certify that on the 29th day of May, 2007, I served a true and correct copy of the within Reply to New Matter by first class mail, postage prepaid, on the following:

George D. Kulakowski, Esquire
41 East Main Street
Sykesville, PA 15865



Jeffrey S. DuBois