

06-374-CD
Donald E. Swan et al vs Brian Sekula

Donald Swan et al vs Brian Sekula
2006-374-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

DONALD E. SWAN, BARRY L. SWAN,
PAUL MUTH, WILLIAM JAMES MUTH,
JAMES L. MURDOCK and LOUIS
MURDOCK,

Plaintiffs

vs.

BRIAN SEKULA,

Defendant

No. *06-374-CD*

Type of Pleading: Complaint

Filed on behalf of: Donald E. Swan,
Barry L. Swan, Paul Muth, William
James Muth, James L. Murdock and
Louis Murdock, Plaintiffs

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, Esquire
Attorney at Law
Supreme Court No. 42519

LEA ANN HELTZEL, Esquire
Attorney at Law
Supreme Court No. 83998

900 Beaver Drive
DuBois, Pennsylvania 15801

(814) 375-0300

April 28, 2006 Document
Reinstated/Reissued to Sheriff/Attorney
for service.

[Signature]
Deputy Prothonotary

FILED *PO 885.00 Atty*
0/12:11/06 **MAR 10 2006** *ICC Atty Helzel*
ICC Sharp
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

DONALD E. SWAN, BARRY L. SWAN,	:	
PAUL MUTH, WILLIAM JAMES MUTH,	:	
JAMES L. MURDOCK and LOUIS	:	
MURDOCK,	:	
	:	
Plaintiffs	:	
	:	No.
vs.	:	
	:	
BRIAN SEKULA,	:	
	:	
Defendant	:	

NOTICE

TO DEFENDANTS:

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

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

Office of the Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641 Ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

DONALD E. SWAN, BARRY L. SWAN, :
PAUL MUTH, WILLIAM JAMES MUTH, :
JAMES L. MURDOCK and LOUIS :
MURDOCK, :
Plaintiffs :
vs. : No.
BRIAN SEKULA, :
Defendant :

COMPLAINT

AND NOW, comes Plaintiffs, by and through their attorneys, Hopkins Heltzel LLP, and sets forth the following two (2) count Complaint and avers as follows:

COUNT I

Easement by Prescription

1. Plaintiffs are Donald E. Swan, Barry L. Swan, Paul Muth, William James Muth, James L. Murdock and Louis Murdock, who maintain a principal business address at 506 Filbert Street, Curwensville, Pennsylvania 16833.
2. The Defendant is Brian Sekula, an adult individual, who resides at 949 Sunset Lake Road, Rockton, Pennsylvania 15856.
3. Plaintiffs are the owners of a certain tract of land situate in Bell Township, Clearfield County, conveyed to them by Donald E. Swan and Virginia Swan, Paul Muth, Louis Murdock and Margie Murdock and recorded in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania as Instrument No. 200004518.

4. The Plaintiffs predecessors in title, some of whom include their parents, acquired title to the property by Deed dated October 30, 1953 and recorded in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania in Deed Book Volume 433, at page 517.

5. Since acquiring the property in 1953, predecessors in title to the Plaintiffs constructed a roadway from Township Route 3009 across lands of William Haggey (now Michael Weber and John Weber) pursuant to a written Right of Way.

6. Since 1953, Plaintiffs and their predecessors in title have traveled across Haggey/Weber (now Weber property) pursuant to their right of way and have also traveled across lands of Defendant Brian Sekula to Plaintiffs' property consisting of a land locked hunting camp.

7. Attached hereto as Exhibit "A" is a tax map showing the road way utilized by Plaintiffs to access their property. Attached as Exhibit "B" are two photographs of the roadway as it crosses Defendant Sekula's property.

8. Plaintiffs' use of the right of way as been adverse, open, notorius, continuous and uninterrupted for over twenty one (21) years.

9. Plaintiffs and their predecessors in title, use of the roadway across Defendant Brian Sekula's property for a period of time in excess of twenty one (21) years entitled Plaintiffs to an easement by prescription.

10. Said roadway is fifteen (15') feet wide and hundred thirty two (132') feet long.

WHEREFORE, Plaintiffs respectfully request this Honorable Court enter an Order to be recorded in the Office of the Recorder of Deeds of Clearfield County

confirming Plaintiffs, their successors and assigns, licensees and invitees are granted access across a fifteen (15') foot by one hundred thirty two (132') foot roadway through lands of the Defendant Brian Sekula to Plaintiffs' property.

COUNT II

Easement by Adverse Possession

11. Plaintiffs incorporate the allegations set forth in Count I of their Complaint as if set forth at length herein.

12. Plaintiffs' use of Defendant's land has been actual, visible, notorious, exclusive and distinct, hostile and continuous for over twenty one (21) years.

WHEREFORE, Plaintiffs respectfully request this Honorable Court enter an Order to be recorded in the Office of the Recorder of Deeds of Clearfield County confirming Plaintiffs, their successors and assigns, licensees and invitees are granted access across a fifteen (15') foot by one hundred thirty two (132') foot roadway through lands of the Defendant Brian Sekula to Plaintiffs' property.

COUNT III

Private Road Law

13. Plaintiffs incorporate the allegations set forth in Count I and Count II of their Complaint as if set forth at length herein.

14. Plaintiffs pursuant to 36 P.S. §2731-2891 and related acts of the Commonwealth of Pennsylvania are entitled to have a private road opened across lands

of the Defendant Brian Sekula following the same courses and distances as an existing roadway currently used by Plaintiffs.

15. Plaintiffs are the owners of a certain tract of land situate in Bell Township, Clearfield County, conveyed to them by Donald E. Swan and Virginia Swan, Paul Muth, Louis Murdock and Margie Murdock and recorded in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania as Instrument No. 200004518.

16. There is no reasonable road or access from the Plaintiffs' said described land to a public road or place of necessary public resort or to any private way leading to a public road.

17. Defendant Brian Sekula is the owner of an adjacent tract of land to that land of Plaintiffs over which a private road extending across a valid right of way to a public road is feasible.

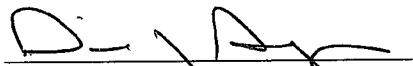
18. Without such a road, the Plaintiffs are unable to use their property without undue burden and hardship.

19. Plaintiffs request that a private road be laid out approximately fifteen (15') wide and one hundred thirty two (132') feet long and opened in such manner as your Honorable Court may deem appropriate over the lands of Brian Sekula in accordance with the Acts of 1836, June 13, P.L. 551, Section 11; 1901, April 4, P.L. 65, No. 32, Section 1; and 1927, April 28, P.L. 485, Section 1, 36 P.S. §2731-2891.

WHEREFORE, Plaintiffs respectfully request this Honorable Court enter an Order to be recorded in the Office of the Recorder of Deeds of Clearfield County confirming Plaintiffs, their successors and assigns, licensees and invitees are granted

access over a fifteen (15') foot by one hundred thirty two (132') foot roadway across
lands of the Defendant Brian Sekula to Plaintiffs' property.


Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. J. Hopkins", written over a horizontal line.

David J. Hopkins, Esquire
Attorney for Petitioners

VERIFICATION

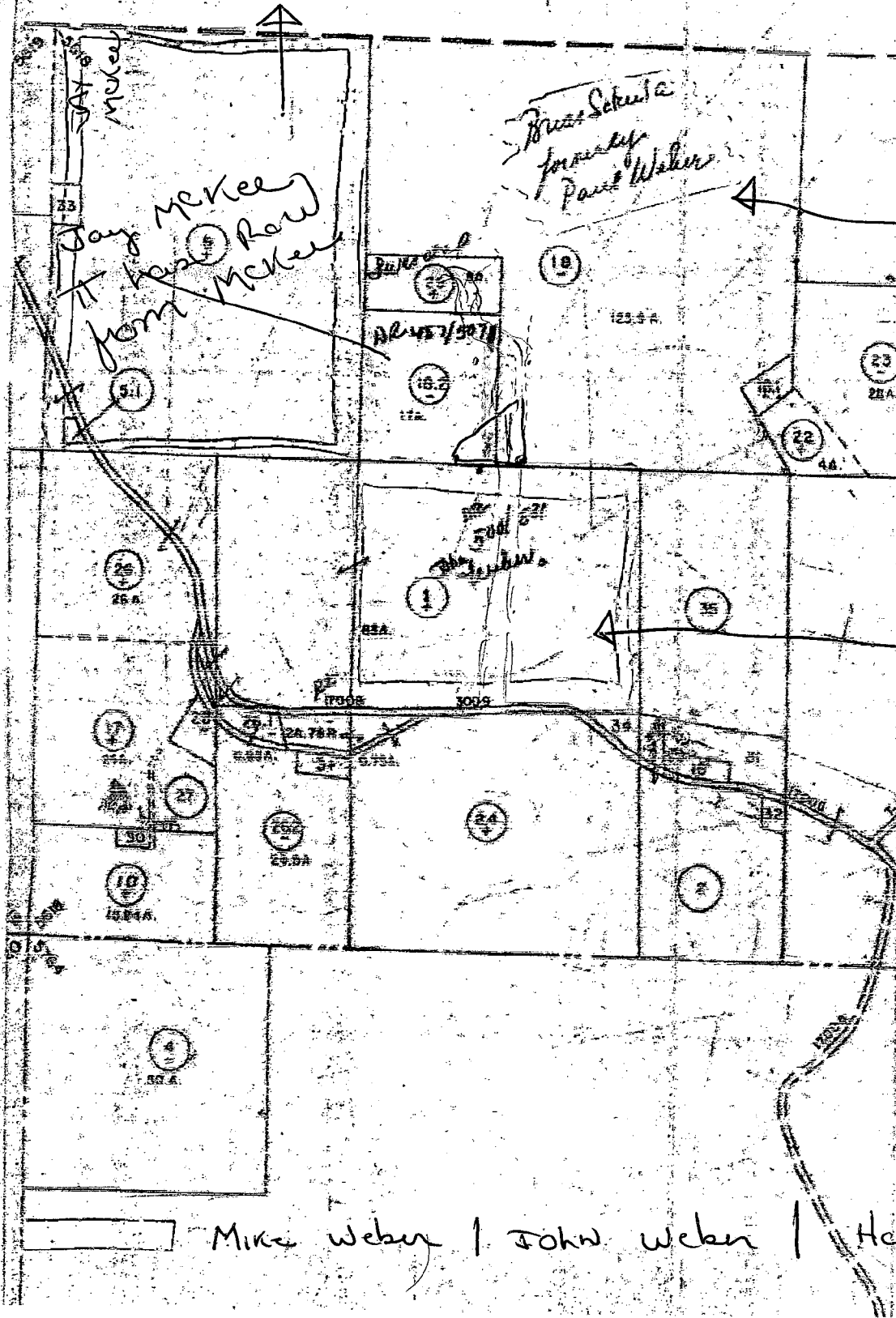
I, William Muth, verify that I am a Plaintiff in the above captioned matter. I have spoken with the other Plaintiffs in this matter and I am authorized to make this Verification. I verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.



William Muth

B7

from Paul Weber;



Webster Sekula



EXHIBIT "B"

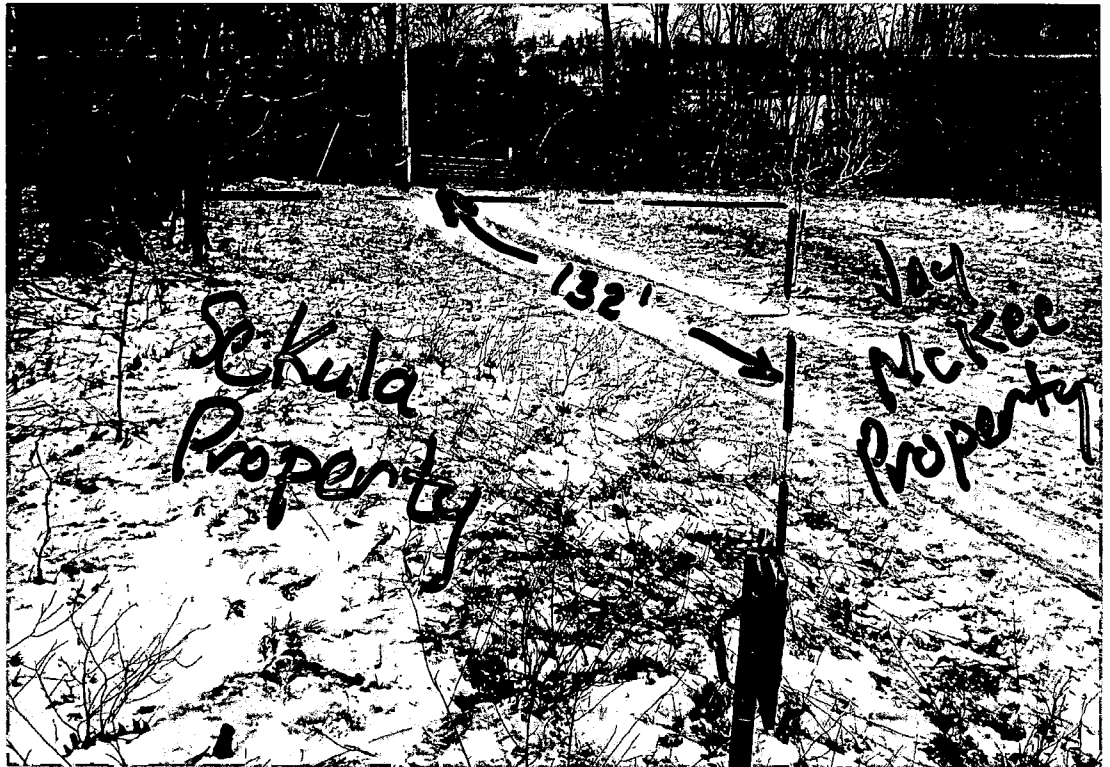


EXHIBIT "B"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

DONALD E. SWAN, BARRY L. SWAN,
PAUL MUTH, WILLIAM JAMES MUTH,
JAMES L. MURDOCK and LOUIS
MURDOCK,

Plaintiffs

vs.

BRIAN SEKULA,

Defendant

No. 06-374 C.D.

Type of Pleading: Praecipe to Reinstate
Complaint

Filed on behalf of: Donald E. Swan,
Barry L. Swan, Paul Muth, William
James Muth, James L. Murdock and
Louis Murdock, Plaintiffs

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, Esquire
Attorney at Law
Supreme Court No. 42519

LEA ANN HELTZEL, Esquire
Attorney at Law
Supreme Court No. 83998

100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801

(814) 375-0300

FILED

APR 28 2006

019:20/W

William A. Shaw
Prothonotary/Clerk of Courts

2 SENT TO ATT

1 REINSTATED COMPLAINT TO
ATTN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

DONALD E. SWAN, BARRY L. SWAN, :
PAUL MUTH, WILLIAM JAMES MUTH, :
JAMES L. MURDOCK and LOUIS :
MURDOCK, :

Plaintiffs :

vs. :

BRIAN SEKULA, :

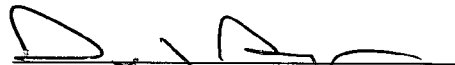
Defendant :

No. 06-374 C.D.

PRAECIPE TO REINSTATE COMPLAINT

Kindly reinstate the Complaint filed to the above captioned term and number.

Respectfully submitted,



David J. Hopkins, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101493
NO: 06-374-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: DONALD E. SWAN, BARRY L. SWAN, PAUL MUTH al
vs.
DEFENDANT: BRIAN SEKULA

SHERIFF RETURN

NOW, April 28, 2006, SHERIFF OF CLARION COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON BRIAN SEKULA.

NOW, May 05, 2006 AT 9:09 AM SERVED THE WITHIN COMPLAINT ON BRIAN SEKULA, DEFENDANT. THE RETURN OF CLARION COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

FILED
01:52 PM
MAY 31 2006 LM

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101493
NO: 06-374-CD
SERVICES 1
COMPLAINT

PLAINTIFF: DONALD E. SWAN, BARRY L. SWAN, PAUL MUTH al
vs.
DEFENDANT: BRIAN SEKULA

SHERIFF RETURN



RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	HOPKINS	16454	10.00
SHERIFF HAWKINS	HOPKINS	16454	21.00
CLARION CO.	HOPKINS	16455	43.50

Sworn to Before Me This

_____ Day of _____ 2006

So Answers,

Chester A. Hawkins
Sheriff

~~101328~~
101493

AFFIDAVIT OF SERVICE

IN THE COURT OF COMMON PLEAS
OF CLARION COUNTY

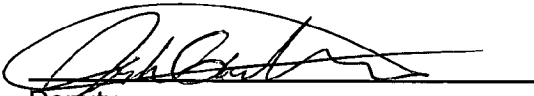
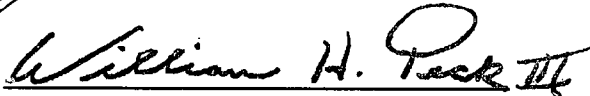
DONALD E SWAN, BARRY L SWAN, PAUL MUTH ET AL
VERSUS
BRIAN SEKULA

NUM: CD 374-06

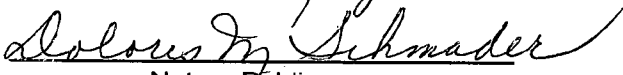
COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLARION

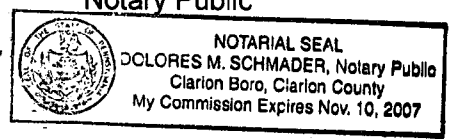
Before me, the undersigned, personally appeared
DEPUTY JOSH GUNTRUM
who being duly sworn according to law, deposes and says that on
the 5TH of MAY , 2006 at 9:09AM
served the within COMPLAINT
on the within named BRIAN SEKULA at HIS place of
EMPLOYMENT, EADS GROUP, 15392 RT 322, CLARION PA 16214
Clarion County, Pennsylvania, by making known the contents to
BRIAN SEKULA, PERSONALLY
by handing to and leaving with BRIAN SEKULA
certified copy of the within COMPLAINT
received from the CLEARFIELD COUNTY

So Answers


Deputy

Sheriff of Clarion County

Sworn to and subscribed before me this

11th day of May A.D. 20 06

Notary Public



In The Court of Common Pleas of Clearfield County, Pennsylvania

Service # 1 of 1 Services

Sheriff Docket # **101338**

DONALD E. SWAN, BARRY L. SWAN, PAUL MUTH, WILLIAM JAMES MUTH,
JAMES L. MURDOCK AND LOUIS MURDOCK

Case # 06-374-CD

vs.

BRIAN SEKULA

TYPE OF SERVICE COMPLAINT

SHERIFF RETURNS

NOW April 12, 2006 AFTER DILIGENT SEARCH IN MY BAILIWICK I RETURNED THE WITHIN COMPLAINT "NOT FOUND" AS TO BRIAN SEKULA, DEFENDANT. SEVERAL ATTEMPTS, NOT HOME.

SERVED BY: /

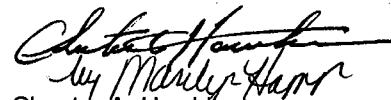
Return Costs

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	HOPKINS	16302	10.00
SHERIFF HAWKINS	HOPKINS	16301	75.00
SHERIFF HAWKINS	"	16474	48.81

Sworn to Before me This

_____ Day of _____ 2006

So Answers,


Chester A. Hawkins
Sheriff

FILED
21:18 PM
APR 27 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

DONALD E. SWAN, BARRY L. SWAN,
PAUL MUTH, WILLIAM JAMES MUTH,
JAMES L. MURDOCK and LOUIS
MURDOCK,

Plaintiffs

vs.

BRIAN SEKULA,

Defendant

No. *de-374-CD*

Type of Pleading: Complaint

Filed on behalf of: Donald E. Swan,
Barry L. Swan, Paul Muth, William
James Muth, James L. Murdock and
Louis Murdock, Plaintiffs

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, Esquire
Attorney at Law
Supreme Court No. 42519

LEA ANN HELTZEL, Esquire
Attorney at Law
Supreme Court No. 83998

900 Beaver Drive
DuBois, Pennsylvania 15801

(814) 375-0300

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

MAR 10 2006

Attest.

William L. Helzel
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

DONALD E. SWAN, BARRY L. SWAN,	:	
PAUL MUTH, WILLIAM JAMES MUTH,	:	
JAMES L. MURDOCK and LOUIS	:	
MURDOCK,	:	
Plaintiffs	:	
	:	No.
vs.	:	
	:	
BRIAN SEKULA,	:	
Defendant	:	

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PAUL MUTH, WILLIAM JAMES MUTH,	:	
JAMES L. MURDOCK and LOUIS	:	
MURDOCK,	:	
Plaintiffs	:	
	:	No.
vs.	:	
	:	
BRIAN SEKULA,	:	
Defendant	:	

COMPLAINT

AND NOW, comes Plaintiffs, by and through their attorneys, Hopkins Heltzel LLP, and sets forth the following two (2) count Complaint and avers as follows:

COUNT I

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1. Plaintiffs are Donald E. Swan, Barry L. Swan, Paul Muth, William James Muth, James L. Murdock and Louis Murdock, who maintain a principal business address at 506 Filbert Street, Curwensville, Pennsylvania 16833.

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5. Since acquiring the property in 1953, predecessors in title to the Plaintiffs constructed a roadway from Township Route 3009 across lands of William Haggey (now Michael Weber and John Weber) pursuant to a written Right of Way.

6. Since 1953, Plaintiffs and their predecessors in title have traveled across Haggey/Weber (now Weber property) pursuant to their right of way and have also traveled across lands of Defendant Brian Sekula to Plaintiffs' property consisting of a land locked hunting camp.

7. Attached hereto as Exhibit "A" is a tax map showing the road way utilized by Plaintiffs to access their property. Attached as Exhibit "B" are two photographs of the roadway as it crosses Defendant Sekula's property.

8. Plaintiffs' use of the right of way as been adverse, open, notorius, continuous and uninterrupted for over twenty one (21) years.

9. Plaintiffs and their predecessors in title, use of the roadway across Defendant Brian Sekula's property for a period of time in excess of twenty one (21) years entitled Plaintiffs to an easement by prescription.

10. Said roadway is fifteen (15') feet wide and hundred thirty two (132') feet long.

WHEREFORE, Plaintiffs respectfully request this Honorable Court enter an Order to be recorded in the Office of the Recorder of Deeds of Clearfield County

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11. Plaintiffs incorporate the allegations set forth in Count I of their Complaint as if set forth at length herein.

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COUNT III

Private Road Law

13. Plaintiffs incorporate the allegations set forth in Count I and Count II of their Complaint as if set forth at length herein.

14. Plaintiffs pursuant to 36 P.S. §2731-2891 and related acts of the Commonwealth of Pennsylvania are entitled to have a private road opened across lands

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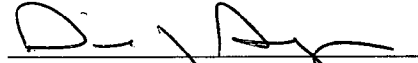
18. Without such a road, the Plaintiffs are unable to use their property without undue burden and hardship.

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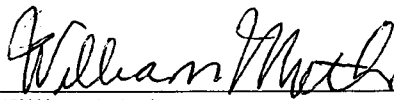
Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. J. Hopkins", written over a horizontal line.

David J. Hopkins, Esquire
Attorney for Petitioners

VERIFICATION

I, William Muth, verify that I am a Plaintiff in the above captioned matter. I have spoken with the other Plaintiffs in this matter and I am authorized to make this Verification. I verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.



William Muth

from Paul Weber;

B7

T O W N

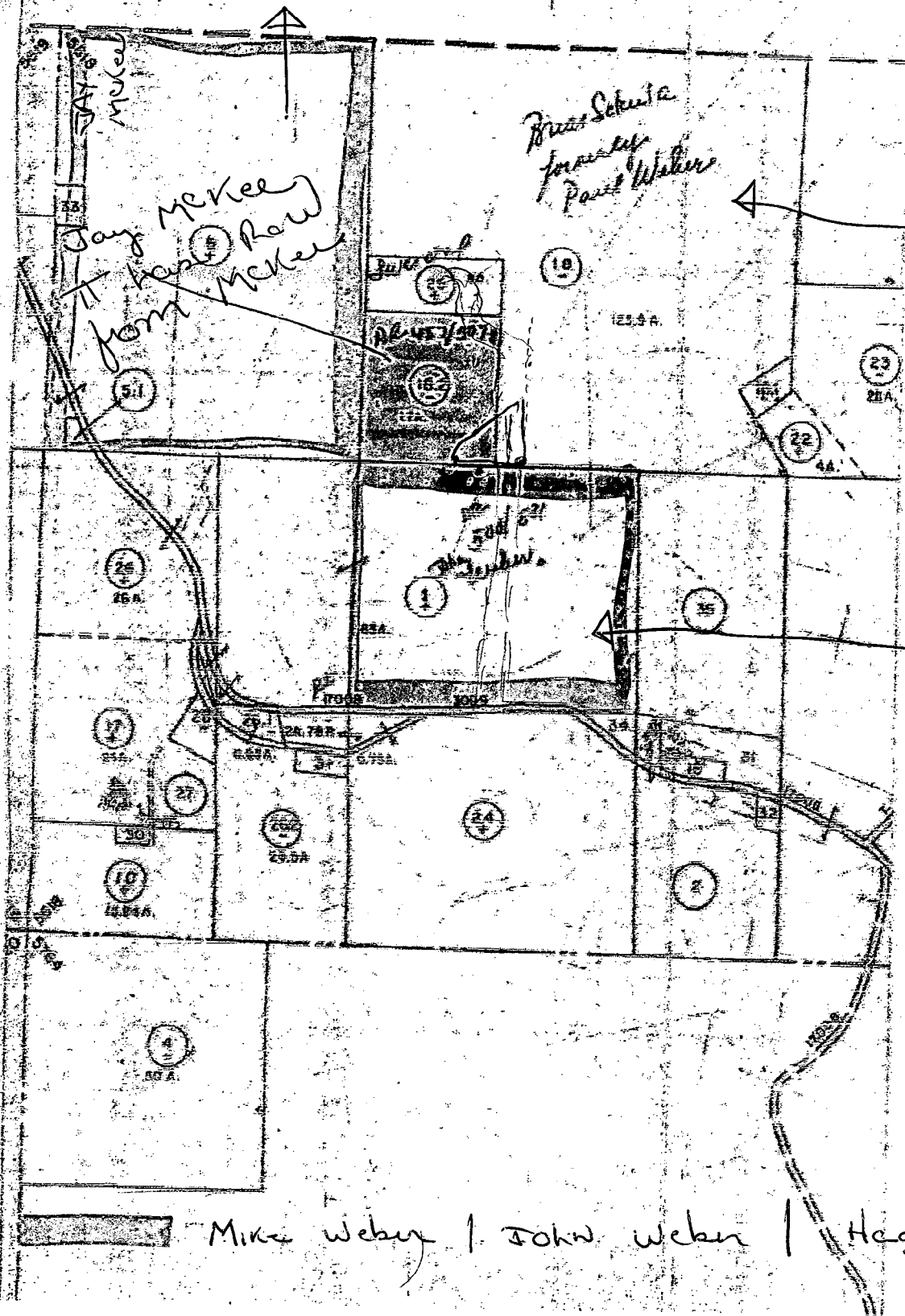




EXHIBIT "B"

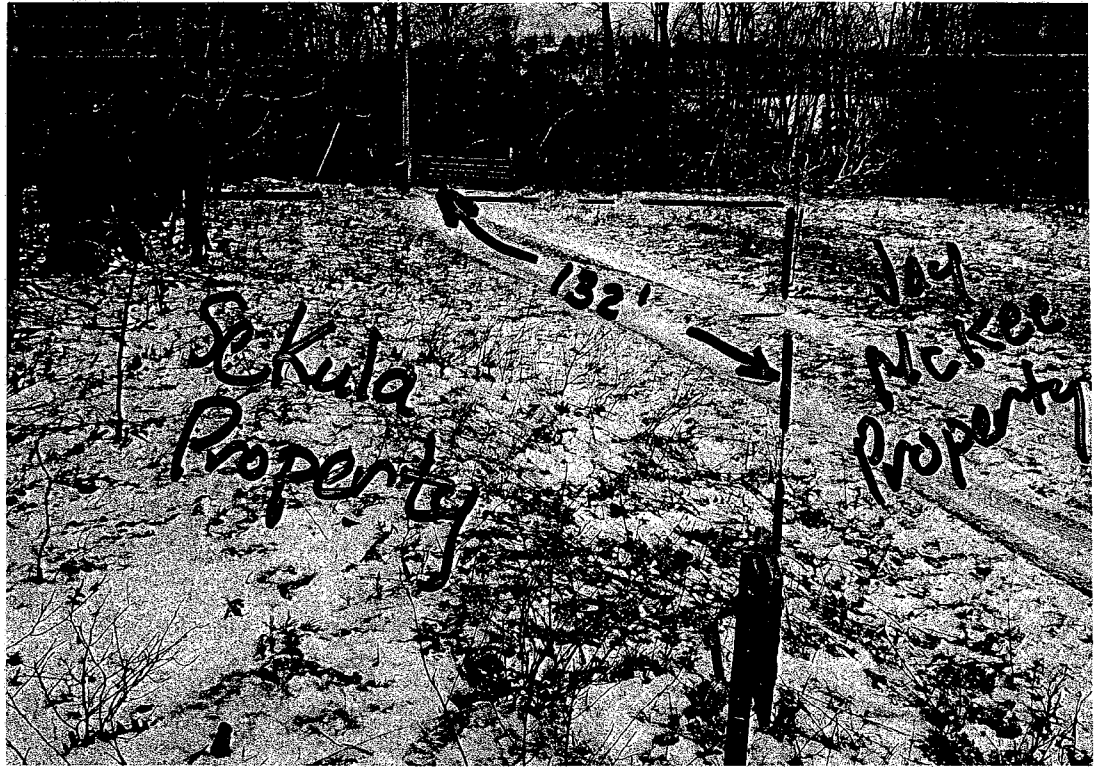


EXHIBIT "B"

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

DONALD E. SWAN, BARRY L. SWAN,
PAUL MUTH, WILLIAM JAMES MUTH,
JAMES L. MURDOCK and LOUIS
MURDOCK,

Plaintiffs

vs.

BRIAN SEKULA,

Defendant

No. 2006-374 C.D.

Type of Pleading: Praeipe to Discontinue

Filed on behalf of: Plaintiffs

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, ESQUIRE

Attorney at Law

Supreme Court No. 42519

LEA ANN HELTZEL, ESQUIRE

Attorney at Law

Supreme Court No. 83998

100 Meadow Lane, Suite 5

DuBois, Pennsylvania 15801

(814) 375-0300

FILED No CC.
012:14 4m 1Cert of disc
JUL 22 2009 issued to Atty
Hopkins
William A. Shaw
Prothonotary/Clerk of Courts

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

DONALD E. SWAN, BARRY L. SWAN, :
PAUL MUTH, WILLIAM JAMES MUTH, :
JAMES L. MURDOCK and LOUIS :
MURDOCK, :

Plaintiffs :

vs. :

No. 2006-374 C.D.

BRIAN SEKULA, :

Defendant :

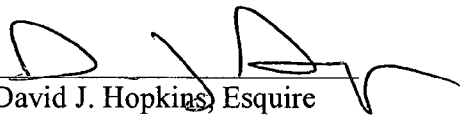
PRAECIPE TO DISCONTINUE

TO THE PROTHONOTARY:

Kindly mark the above captioned civil action settled and discontinued.

HOPKINS HELTZEL LLP

BY:


David J. Hopkins, Esquire

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

DONALD E. SWAN, BARRY L. SWAN, :
PAUL MUTH, WILLIAM JAMES MUTH, :
JAMES L. MURDOCK and LOUIS :
MURDOCK, :

Plaintiffs :

vs. :

No. 2006-374 C.D. :

BRIAN SEKULA, :

Defendant :

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing Praecipe to Discontinue, filed on behalf of Plaintiffs, was forwarded on the 22nd day of July, 2009, by United States Mail, first class, postage prepaid, to all counsel of record, addressed as follows:

Terry Pope, Esquire
Pope and Drayer
Ten Grant Street
Clarion, PA 16214



David J. Hopkins, Esquire
Attorney for Plaintiffs
Supreme Court No. 42519

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

CIVIL DIVISION

**Donald E. Swan
Barry L. Swan
Paul Muth
William James Muth
James L. Murdock
Louis Murdock**

COPY

**Vs.
Brian Sekula**

No. 2006-00374-CD

CERTIFICATE OF DISCONTINUATION


Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on July 22, 2009, marked:

Settled and Discontinued

Record costs in the sum of \$92.00 have been paid in full by Hopkins Heltzel LLP.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 22nd day of July A.D. 2009.



William A. Shaw, Prothonotary