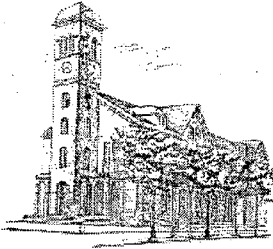


06-1498-CD  
Cherry Timber et al vs Audra Mitchell et al

Cherry Timber et al vs Audra Mitchell et al  
2006-1498-CD



## Clearfield County Office of the Prothonotary and Clerk of Courts

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

**Jacki Kendrick**  
Deputy Prothonotary/Clerk of Courts

**Bonnie Hudson**  
Administrative Assistant

**David S. Ammerman**  
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ [www.clearfieldco.org](http://www.clearfieldco.org)

February 9, 2010

**FILED**

04:00 PM  
FEB 09 2010

William A. Shaw  
Prothonotary/Clerk of Courts

Superior Court of Pennsylvania  
Office of the Prothonotary  
600 Grant Building  
Pittsburgh, PA 15219

RE: Cherry Timber Associates, Inc. and  
Chagrin Land Limited Partnership

vs

Audra Mitchell, John D. Duttry, Thelma Bush, and  
Beverly R. Williams a/k/a Beverly Copelli  
No. 06-1498-CD  
Superior Court No. 2159 WDA 2009

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office. Transcripts will be forwarded upon their filing in my office.

Sincerely,

William A. Shaw  
Prothonotary

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA  
RULE OF APPELLATE PROCEDURE 1931(c)

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To the Prothonotary of the Appellate Court to which the within matter has been appealed:

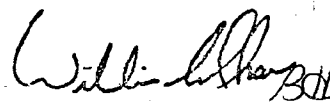
THE UNDERSIGNED, Clerk (or Prothonotary) of the Court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

2006-1498-CD  
Cherry Timber Associates, Inc. and  
Chagrin Land Limited Partnership  
Vs.  
Audra Mitchell, John D. Duttry, Thelma Bush,  
and Beverly R. Williams a/k/a Beverly Copelli

In compliance with Pa. R.A.P. 1931 (c).

The documents comprising the record have been numbered from No. 1 to 74, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is February 9, 2010.

  
\_\_\_\_\_  
William A. Shaw  
Prothonotary/Clerk of Courts

(seal)

Date: 2/9/2010

## Clearfield County Court of Common Pleas

User: BHUDSON

Time: 03:57 PM

ROA Report

Page 1 of 7

Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

## Civil Other-COUNT

Date		Judge
3/14/2006	New Case Filed.	No Judge
	Filing: Complaint for Declaratory Judgment Paid by: Pemrick, Keith M. (attorney for Cherry Timber Associates, Inc.) Receipt number: 1915563 Dated: 09/14/2006 Amount: \$85.00 (Check) 3CC shff.	No Judge
10/24/2006	Answer to Complaint For Declaratory Judgment, New Matter And Counterclaim For Declaratory Judgment, filed by s/ David J. Hopkins, Esquire. 1CC to Atty.	No Judge
10/25/2006	Praeipce For Entry of Appearance, filed by Atty. Sughrue, 4 Cert. to Atty. copy to C/A Enter my appearance on behalf of John D. Duttry, s/John Sughrue.	No Judge
11/3/2006	Answer of John D. Duttry to Original Complaint, filed by s/ John Sughrue, Esquire. 4CC to Atty	No Judge
	Certificate of Service, filed. That on November 3, 2006, a true and correct copy of Answer of John D. Duttry to Original Complaint to be served on Ms. Audra Mitchell, filed by s/ John Sughrue Esq. 2CC Atty Sughrue.	No Judge
11/16/2006	Filing: Praeipce to Re-issue Complaint Paid by: Pemrick, Keith M. (attorney for Cherry Timber Associates, Inc.) Receipt number: 1916481 Dated: 11/16/2006 Amount: \$7.00 (Check) 1 reinstated Complaint to shff.	No Judge
12/4/2006	Reply to New Matter and Answer to Counterclaim, filed by s/ Keith M. Pemrick Esq. NO CC. (In Re: Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli)	No Judge
	Reply to New Matter and Answer to Counterclaim, filed by s/ Keith M. Pimrick Esq. NO CC. (In Re: John D. Duttry)	No Judge
12/13/2006	Sheriff Return, October 5, 2006 at 1:42 om Served the within Complaint for Declaratory Judgment on John D. Duttry. October 5, 2006 at 1:35 pm Served the within Complaint for Declaratory Judgment on Thelma Bush. September 19, 2006, Sheriff of Jefferson County was deputized. September 22, 2006 at 1:00 pm Served the within Complaint for Declaratory Judgment on Beverly R. Williams a/k/a Beverly Copelli. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Dale \$83.30 Jefferson Co costs pd by Dale \$34.76	No Judge
2/14/2007	Praeipce For Entry of Appearance, filed. Kindly enter my apperance on behalf of Defendant, Audra Mitchell, in the above-captioned case, filed by s/ Christopher E. Mohny Esq. NO CC., copy to C/A.	No Judge
	Sheriff Return, November 17, 2006, Sheriff of Elk County was deputized. November 27, 2006 at 2:30 pm Served the Complaint for Declratory Judgment on Audra Mitchell. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Woodard \$31.00 Elk Co. costs pd by Woodard \$30.79	No Judge
7/25/2007	Answer, filed by s/ Christopher E. Mohny, Esquire. 5CC Atty. Mohny	No Judge
3/31/2007	Notice of Service, filed. That an original and one (1) copy of Plaintiffs' interrogatories and Request for Production of Documents to John D. Duttry were served on counsel for John D. Duttry, and copies were served on all other counsel of record on August 28, 2007, filed by s/ Keith M. Pemrick Esq. 1CC Atty.	No Judge



## Civil Other-COUNT

Date		Judge
3/31/2007	Notice of Service, filed. That an original and one (1) copy of Plaintiffs' Interrogatories and Requests for Production of Documents Directed to Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli, were served on counsel for Thelma Bush and Beverly R. Williams, and copies were served on all other counsel of record on August 28, 2007, filed by s/ Keith M. Pemrick Esq. 1CC Atty.	No Judge
3/25/2007	Petition to Withdraw as Counsel, filed by s/ David J. Hopkins, Esquire. No CC	No Judge
3/27/2007	Rule, NOW, this 27th day of Sept., 2007, upon consideration of the Petition to Withdraw as Counsel filed on behalf of Defendants, Thelma Bush and Beverly R. Williams, Rule Returnable on the 6th day of Nov., 2007, at 9:00 a.m. in Courtroom 3. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Hopkins	Fredric Joseph Ammerman
10/19/2007	Certificate of Service, filed. That on October 19, 2007, a true and correct copy of Answers to Interrogatories and Answers to Request for Production to be served by first class mail to Keith Pemrick Esq., David Hopkins Esq., Christopher E. Mohny Esq. filed by s/ John Sughrue Esq. 4CC Atty.	Fredric Joseph Ammerman
11/6/2007	Order, this 6th day of Nov., 2007, it is Ordered that David J. Hopkins, Esquire, be permitted to withdraw as counsel for Beverly R. Williams and Thelma Bush, Defendants. By The Court, /s/ John K. Reilly, Jr., Senior Judge. 1CC Attys: Pemrick, Mohny, Sughrue, Hopkins; 1CC Thelma Bush, 450 Salada Road, DuBois, PA 15801; 1CC Beverly Williams, 1220 Second Ave., Brockway, PA 15824	John K. Reilly Jr.
1/2/2008	Notice of Deposition of John D. Duttry, filed by s/ Keith M. Pemrick Esq. No CC.	Fredric Joseph Ammerman
	Notice of Deposition of Audra Mitchell, filed by s/ Keith M. Pemrick Esq. No CC.	Fredric Joseph Ammerman
1/16/2008	Certificate of Service, filed. That on April 16, 2008, Defendant's Notice of Taking of Deposition of and Subpoena to Steven Jilk, by fax and first class mail to Mr. Steven Jilk-c/o Keith M Pemrick Esq. and Christopher E. Mohny Esq. and by first class mail to Ms. Thelma D. Bush and Ms. Beverly Copelli, filed by s/ John Sughrue Esq. 4CC Atty Sughrue.	Fredric Joseph Ammerman
3/15/2008	Petition For Order to Discontinue Action as to Defendant Audra Mitchell, filed by s/ Christopher E. Mohny, Esquire. 4CC Atty. Mohny	Fredric Joseph Ammerman
3/16/2008	Order, this 16th day of May, 2008, upon consideration of the foregoing Petition, a Rule is issued upon the parties in interest/respondents. A hearing on the Petition shall be held on the 17th day of July, 2008 in Courtroom 1 at 10:00 a.m. Notice of the entry of this Order shall be provided to all parties by the Petitioner. By The Court, /s/ Fredric J. Ammerman, pres. Judge. 3CC to Atty.	Fredric Joseph Ammerman
3/12/2008	Response to Petition for Order to Discontinue Action as to Defendant Audra Mitchell, filed by s/ Keith M. Pemrick, Esquire. No CC	Fredric Joseph Ammerman
7/17/2008	Answer of Defendant, John D. Duttry. Filed by s/ John Sughrue, Esquire. 6CC to Atty	Fredric Joseph Ammerman

## Civil Other-COUNT

Date		Judge
7/18/2008	Order, this 17th day of July, 2008, following argument on the Petition filed on behalf of Audra Mitchell for Order to Discontinue, it is Ordered that counsel for the Defendant, Audra Mitchell, the Plaintiffs, and John Duttry, supply the Court with proposed Order within no more than 15 days from this date. The Court has no objection to the Order being received by fax. By The Court /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Pemrick, Mohny, Sughrue, Hopkins	Fredric Joseph Ammerman
3/20/2008	Certificate of Readiness for Non-Jury Trial, filed by s/ Keith M. Pemrick, Esquire. no CC	Fredric Joseph Ammerman
	Order, this 20th day of august, 2008, after argument on Defendant Audra Mitchell's Petition for Order to Discontinue Action as to Defendant Audra Mitchell, and upon stipulation made on the record before the Court of Defendant Audra Mitchell as follows: The relief requested in the Petition for Order to Discontinue is granted. Audra Mitchell shall execute a Release individually and as sole beneficiary and Executrix of the Estate of Paul L. Mitchell releasing any claim she or the Estate has to the funds being held in escrow which are the subject of this litigation. Upon execution of the Release by Audra Mitchell, the Plaintiffs shall mark this action discontinued as to Audra Mitchell, only. (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Pemrick, Mohny, Sughrue, Hopkins	Fredric Joseph Ammerman
3/21/2008	Order, this 21st day of August, 2008, it is Ordered that Pre-trial conference shall be held on the 2nd day of Oct., 2008 in Chambers at 2:30 p.m. By The Court, /s/ Fredric J. ammerman, Pres. Judge. 1CC Attys: Pemrick, Mohny, Sughrue, Hopkins	Fredric Joseph Ammerman
3/28/2008	Motion to Strike Case From Trial List, filed by s/John Sughrue, esquire. 3CC Atty. Sughrue	Fredric Joseph Ammerman
3/29/2008	Order, this 29th day of August, 2008, upon consideration of Defendant, John D. Duttry's Motion to Strike Case from Trial List, a Rule is issued upon Plaintiffs and Co-Defendants. Rule Returnable on the 22nd day of Sept., 2008, for filing written response. Hearing on the Merits of said Motion shall be held on the 2nd day of Oct., 2008 at 2:30 p.m. in Courtroom 1. By The Court, /s/ Fredric J. ammerman, Pres. Judge. 3CC Atty. Sughrue	Fredric Joseph Ammerman
3/17/2008	Plaintiffs' Response to Motion to Strike Case from Trial List, filed by s/ Keith Pemrick, Esquire. No CC	Fredric Joseph Ammerman
3/24/2008	Release of All Claims, signed by Audra Mitchell. 1CC to Atty.	Fredric Joseph Ammerman
	Praecipe for Partial Discontinuance, please mark the above captioned action settled and discontinued as to Audra Mitchell ONLY. Filed by s/ Keith M. Pemrick, Esquire. 1CC to Atty.	Fredric Joseph Ammerman
3/25/2008	Motion to Reschedule Argument and Pre-Trial Conference, filed by Atty. Sughrue 6 Cert. to Atty.	Fredric Joseph Ammerman
3/26/2008	Motion for Protective Order, filed by s/Keith M. Pemrick No CC	Fredric Joseph Ammerman
	Order, this 26th day of Sept., 2008, upon consideration of Defendant, John D. Duttry's Motion to Reschedule Argument to Outstanding Motions and Pre-Trial Conference, a Rule is issued upon Plaintiffs and Co-Defendants. Argument on the Merits of said Motion shall be held on the 15th day of Oct., 2008 at 10:00 a.m. in Courtroom 2. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Sughrue	Fredric Joseph Ammerman

## Civil Other-COUNT

Date		Judge
3/29/2008	Amended Certificate of Service, filed. That on September 29, 2008 Co-defendant, John D. Duttry's Pre-trial Statement to be served by first class mail to Court Administrator, Christopher E. Mohny Esq., Ms Beverly Copelli, Keith M. Pemrick Esq., Ms. Thelma D. Bush, filed by s/ John Sughrue Esq. 1CC Atty Sughrue.	Fredric Joseph Ammerman
	Scheduling Order, this 29th day of Sept., 2008, it is Ordered that Pre-Trial Conf. scheduled for Oct. 2, 2008 is rescheduled for Oct. 15, 2008 at 10:00 a.m. in Courtroom 2. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins	Fredric Joseph Ammerman
	Order, this 29th day of Sept., 2008, it is Ordered that argument on the Plaintiffs' Motion for Protective Order shall be held on Oct. 15, 2008, in Courtroom 2 at 10:00 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. judge. 3CC Atty. Pemrick	Fredric Joseph Ammerman
10/15/2008	Affidavit in Support of Defendant John D. Duttry's Motion to Strike Case from Trial List, filed by s/ John Sughrue Esq. 3CC Atty Sughrue.	Fredric Joseph Ammerman
10/27/2008	Order, this 27th day of Oct., 2008, following argument relative the hearing on Motion for to Strike Case from Trial List, Pre-Trial Conference and Motion and for Protective Order, it is Ordered: Non-Jury trial is scheduled for two days, being April 21 and 22, 2009 in Courtroom 1 to commence at 9:00 a.m. on each day. (see original). By the Court, /s/ Paul E. Cherry, Judge. 1CC Attys; Pemrick, Hopkins, Sughrue	Fredric Joseph Ammerman
1/19/2009	Certificate of Service, filed. That on January 16, 2009, a true and correct copy of Defendant's Request for Admissions and Interrogatories to be served by first class mail to Keith M. Pemrick Esq., filed by s/ John Sughrue Esq. 3CC Atty Sughrue.	Fredric Joseph Ammerman
	Certificate of Service, filed. That on January 16, 2009, a true and correct copy of Defendant's Request for Production of Documents to be served by first class mail to Keith M. Pemrick Esq., filed by s/ John Sughrue Esq. 3CC Atty Sughrue.	Fredric Joseph Ammerman
1/25/2009	Plaintiff's Supplemental Pre-Trial Statement, filed by s/ Keith M. Pemrick Esq. 1CC Atty Pemrick.	Fredric Joseph Ammerman
	Notice of Service, filed. Served Plaintiffs' Response to Request for Admissions and Interrogatories and Response to Requests for Production of Documents via first class mail on February 23, 2008 to John Sughrue Esq., filed by s/ Keith M. Pemrick Esq. 1CC Atty Pemrick.	Fredric Joseph Ammerman
1/27/2009	Motion For Summary Judgment, filed by s/ John Sughrue, Esquire. 6cC Atty. Sughrue	Fredric Joseph Ammerman
1/2/2009	Order, this 2nd day of March, 2009, upon consideration of Defendant, John D. Duttry's Motion For Summary Judgment, a Rule is issued upon Plaintiffs. Argument on the merits of said motion shall be held on the 31st day of March, 2009 at 9:00 A.M. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Sughrue	Fredric Joseph Ammerman
1/9/2009	Filing: Subpoena Paid by: Pemrick, Keith M. (attorney for Cherry Timber Associates, Inc.) Receipt number: 1928425 Dated: 3/9/2009 Amount: \$3.00 (Check) For: Cherry Timber Associates, Inc. (plaintiff)	Fredric Joseph Ammerman

## Civil Other-COUNT

Date		Judge
3/16/2009	Notice of Trial Deposition, filed. To John D. Duttry-c/o John Sughrue Esq., Thelma D. Bush and Beverly Williams, you are hereby respectfully notified that Cherry Timber Associates Inc., and Chagrin Land Limited Partnership, will take the deposition of Lional Alexander, Alexander and Associates Inc. oral examination on March 31, 2009 at 12:30 pm., filed by s/ Keith M. Penrick Esq. 1CC ASsty Pemrick.	Fredric Joseph Ammerman
3/30/2009	Factual Affidavit of John Sughrue, Attorney, in Support of Motion for Summary Judgment, filed by s/John Sughrue, Esq. One CC Attorney Sughrue	Fredric Joseph Ammerman
	Plaintiffs' Response to John D. Duttry's Motion for Summary Judgment, filed by s/Keith M. Pemrick, Esq. No CC	Fredric Joseph Ammerman
	Plaintiff's Exhibits in Response to Motion for Summary Judgment, filed. No CC	Fredric Joseph Ammerman
3/31/2009	Proof of Service of Subpoenas, filed. Subpoenas directing attendance at Trial on April 21, 2009, were served on Audra Mitchell (now Audra Geiser) and Scott V. Jones Esq., pursuant to Pennsylvania Rule of Civil Procedure by certified mail, restricted delivery, filed by s/ Keith M. Pemrick Esq. 1CC Atty Pemrick.	Fredric Joseph Ammerman
4/1/2009	Order, AND NOW, this 31st day of March 2009, following argument on the Defendant's Motion for Summary Judgment, it is the ORDER of this Court that either counsel may have until and including Friday, April 3, 2009, in which to submit letter brief. The same may be submitted by fax, if counsel so desires. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins.	Fredric Joseph Ammerman
4/20/2009	Motion In Limine, filed by s/ John Sughrue, Esquire. 5CC Atty. Sughrue	Fredric Joseph Ammerman
	Order, filed Cert. copies to Atty. Sughrue for Service NOW, this 20th day of April, 2009, ORDER that Defendant John D. Duttry's Motion for Summary Judgment, be and is hereby DENIED.	Fredric Joseph Ammerman
4/21/2009	Certificate of Service, filed. That on April 21, 2009 I caused Order dated April 21, 2009 Denying the Motion for Summary Judgment to be served on Keith M. Pemrick Esq. by facsimile and by personal service upon Keith M. Pemrick Esq. Christopher E. Mohny Esq., Ms. Thelma D. Bush and Ms. Beverly Copelli, filed by s/ John Sughrue Esq. 1CC Atty Sughrue.	Fredric Joseph Ammerman
4/23/2009	Stipulation, signed by Keith M. Pemrick, Esquire, and John Sughrue, Esquire. No CC	Fredric Joseph Ammerman
4/24/2009	Order, this 22nd day of April, 2009, it is Ordered that counsel for the Plaintiff provide the Court with appropriate letter brief within no more than 30 days from this date. Counsel for Defendant shall provide the Court with appropriate letter brief within no more than 45 days from this date. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins	Fredric Joseph Ammerman
7/29/2009	Order, this 28th day of July, 2009, following non-jury trial, it is the FINDINGS and Ordered: Plaintiff's request for Declaratory Judgment is GRANTED. The Defendants' Counterclaims including any Counterclaim for Declaratory Relief and/or Adverse Possession are hereby DISMISSED. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins	Fredric Joseph Ammerman
3/10/2009	Praeipice for Appearance, filed. Kindly enter my appearance on behalf of Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli, defendant, filed by s/ John Sughrue Esq. 4CC Atty Sughrue.	Fredric Joseph Ammerman

## Civil Other-COUNT

Date		Judge
3/10/2009	Exceptions of Defendants, John Duttry, Thelma Bush and Beverly Williams to Order dated July 28, 2009, Docketed July 29, 2009. filed by s/ 5CC Atty. Sughrue	Fredric Joseph Ammerman
3/12/2009	Scheduling Order, this 12th day of August, 2009, Argument on Exceptions of Defendants, John D. Duttry, Thelma Bush and Beverly Williams to Order dated July 28, 2009, shall be held on the 8th day of Oct., 2009 at 2:00 p.m. in courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Sughrue	Fredric Joseph Ammerman
10/8/2009	Order, this 8th day of Oct., 2009, the hearing on the Defendants' Exceptions to Order of July 28, 2009 scheduled this date is rescheduled to Nov. 2, 2009 at 10:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Hopkins, Sughrue, Pemrick	Fredric Joseph Ammerman
11/19/2009	Order, NOW, this 17th day of November, 2009, following hearing on the Exceptions of Defendants John Duttry, Thelma Bush, and Beverly Williams to Order dated July 28, 2009, Order that said Exceptions be and are hereby dismissed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attorneys Pemrick, Sughrue, and Hopkins	Fredric Joseph Ammerman
12/15/2009	Filing: Praecipe for Entry of Judgment Pursuant to Pa.R.C.P. No. 227.4(2) on the Court's Decision (Non-Jury Verdict) Paid by: Sughrue, John (attorney for Duttry, John D.) Receipt number: 1932589 Dated: 12/15/2009 Amount: \$20.00 (Check) For: Duttry, John D. (defendant) filed by s/John Sughrue, Esq. Judgment in favor of the Plaintiffs and against the Defendants, John D. Duttry, Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli on the Court's Decision (non-jury verdict) entered by Order dated July 28, 2009, and docketed on July 29, 2009. One CC and Notice of Judgment to Cherry Timber Associates, Inc., Chagrin Land Limited Partnership, John D. Duttry, Thelma Bush, Beverly R. Williams, and Audra Mitchell Seven CC Attorney Sughrue	Fredric Joseph Ammerman
12/16/2009	Motion to Amend Title of Pleading, filed by Atty. Sughrue 5 cert. copies. Filing: Notice of Appeal to High Court Paid by: Sughrue, John (attorney for Duttry, John D.) Receipt number: 1932616 Dated: 12/16/2009 Amount: \$50.00 (Check) For: Duttry, John D. (defendant) 1 Cert. to Superior Court with \$73.50 Check. 2 Cert. to Atty.	Fredric Joseph Ammerman Fredric Joseph Ammerman
12/23/2009	Order, this 22nd day of Dec., 2009, it is Ordered that John D. Duttry file a concise statement of the matters complained of on appeal no later than 21 days herefrom. by The Court, /s/ Fredric J. Ammerman, Pres. Judge 1CC Attys: Pemrick; Sughrue Motion to Enter Consent Order, filed by s/ John Sughrue, Esquire. 2CC Atty. Sughrue	Fredric Joseph Ammerman Fredric Joseph Ammerman
	Order to Amend Pleading, NOW, this 22nd day of Dec., 2009, it is Ordered that Defendants are granted Leave to Amend the Pleading filed on August 10, 2009 titled "Exceptions of Defendants, John D. Duttry, Thelma Bush and Beverly R. Williams to Order Dated July 28, 2009, Docketed July 29, 2009" to "Defendants' Post-Trial Motion" and said Pleading is amended to be titled, "Defendants' Post-Trial Motion". By The Court, /s/ Fredric J. Ammerman, Pres. JUDGE. 1CC Atty. Sughrue	Fredric Joseph Ammerman
12/28/2009	Appeal Docket Sheet from Superior Court with docket number 2159-WDA 2009	Fredric Joseph Ammerman

Date: 2/9/2010

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 03:57 PM

ROA Report

Page 7 of 7

Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

Civil Other-COUNT

Date		Judge
1/12/2010	Defendant/Appellant's Concise Statement of Matters Complained of on Appeal, filed by s/ John Sughrue, esquire. 7CC to Atty.	Fredric Joseph Ammerman
2/5/2010	Opinion, filed Cert. to Atty's Pemrick, Mohney, Sughrue, Miksell and Law Library	Fredric Joseph Ammerman
2/9/2010	February 9, 2010, Mailed appeal to Superior Court. February 9, 2010, Letters, Re: Notification of mailing appeal mailed to Keith M. Pemrick, Esq. and John Sughrue, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	Fredric Joseph Ammerman

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

FEB 09 2010

Attest.



*William H. Shaw*  
Prothonotary/  
Clerk of Courts

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

**No. 06-1498-CD**

**Cherry Timber Associates, Inc. and  
Chagrin Land Limited Partnership**

**Vs.**

**Audra Mitchell, John D. Duttry, Thelma Bush,  
and Beverly R. Williams a/k/a Beverly Copelli**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
01	09/14/06	Complaint for Declaratory Judgment	14
02	10/24/06	Answer to Complaint for Declaratory Judgment, New Matter, and Counterclaim for Declaratory Judgment	08
03	10/25/06	Praeipe for Entry of Appearance	03
04	11/03/06	Answer of John D. Duttry to Original Complaint	16
05	11/03/06	Certificate of Service, Re: Answer of John D. Duttry to Original Complaint	02
06	11/16/06	Praeipe to Re-issue Complaint	03
07	12/04/06	Reply to New Matter and Answer to Counterclaim, Re: Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli	11
08	12/04/06	Reply to New Matter and Answer to Counterclaim, Re: John D. Duttry	12
09	12/13/06	Sheriff Return	05
10	02/14/07	Praeipe for Entry of Appearance	03
11	02/14/07	Sheriff Return	04
12	07/25/07	Answer	06
13	08/31/07	Notice of Service	01
14	08/31/07	Notice of Service	01
15	09/25/07	Petition to Withdraw as Counsel	05
16	09/27/07	Rule, Re: Petition to Withdraw as Counsel	01
17	10/19/07	Certificate of Service	02
18	11/16/07	Order, Re: David J. Hopkins, Esq. be permitted to withdraw as counsel	01
19	04/02/08	Notice of Deposition of John D. Duttry	02
20	04/02/08	Notice of Deposition of Audra Mitchell	02
21	04/16/08	Certificate of Service	02
22	05/15/08	Petition for Order to Discontinue Action as to Defendant Audra Mitchell and Order filed May 16, 2008, issuing rule and scheduling a hearing	07
23	06/12/08	Response to Petition for Order to Discontinue Action as to Defendant Audra Mitchell	05
24	07/17/08	Answer of Defendant John D. Duttry	06
25	07/18/08	Order, Re: counsel to propose order regarding discontinuance as to Audra Mitchell	01
26	08/20/08	Certificate of Readiness for Non-Jury Trial	03
27	08/20/08	Order, Re: Petition for Order to Discontinue Action as to Audra Mitchell	02
28	08/21/08	Order, Re: Pre-trial conference scheduled	01
29	08/28/08	Motion to Strike Case from Trial List	04
30	08/29/08	Order, Re: Rule issued and hearing scheduled re: Motion to Strike Case from Trial List	01
31	09/17/08	Plaintiffs' Response to Motion to Strike Case from Trial List	11
32	09/24/08	Release of All Claims	04
33	09/24/08	Praeipe for Partial Discontinuance, Re: Audra Mitchell Only	03
34	09/25/08	Motion to Reschedule Argument and Pre-Trial Conference	06
35	09/26/08	Motion for Protective Order	10
36	09/26/08	Order, Re: hearing scheduled re: Motion to Reschedule Argument to Outstanding Motions and Pre-Trial Conference	01
37	09/29/08	Amended Certificate of Service	02
38	09/29/08	Scheduling Order, re: rescheduling of Pre-Trial Conference	01
39	09/29/08	Order, Re: argument on Plaintiffs' Motion for Protective Order scheduled	01
40	10/15/08	Affidavit in Support of Defendant John D. Duttry's Motion to Strike Case from Trial List	05

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

**No. 06-1498-CD**

**Cherry Timber Associates, Inc. and  
Chagrin Land Limited Partnership**

**Vs.**

**Audra Mitchell, John D. Duttry, Thelma Bush,  
and Beverly R. Williams a/k/a Beverly Copelli**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
41	10/27/08	Order, Re: Non-Jury Trial is scheduled	02
42	01/19/09	Certificate of Service	02
43	01/19/09	Certificate of Service	02
44	02/25/09	Plaintiffs' Supplemental Pre-Trial Statement	08
45	02/25/09	Notice of Service	01
46	02/27/09	Motion for Summary Judgment	30
47	03/02/09	Order, Re: Rule issued and hearing scheduled re: Motion for Summary Judgment	01
48	03/16/09	Notice of Trial Deposition	01
49	03/30/09	Factual Affidavit of John Sughrue, Attorney, in Support of Motion for Summary Judgment	11
50	03/30/09	Plaintiffs' Response to John D. Duttry's Motion for Summary Judgment	14
51	03/30/09	Plaintiffs' Exhibits in Response to Motion for Summary Judgment	121
52	03/31/09	Proof of Service of Subpoenas	03
53	04/01/09	Order, Re: letter brief to be submitted	01
54	04/20/09	Motion in Limine	07
55	04/20/09	Order, Re: Motion for Summary Judgment Denied	01
56	04/21/09	Certificate of Service	02
57	04/23/09	Stipulation	06
58	04/24/09	Order, Re: Letter brief to be submitted	01
59	07/29/09	Order, Re: following non-jury trial, Plaintiffs' request for declaratory judgment is Granted; Defendants' counterclaims including any counterclaim for declaratory relief and/or adverse possession are Dismissed	02
60	08/10/09	Praecipe for Appearance	03
61	08/10/09	(title of pleading amended)-Defendants' Post-Trial Motion/ Exceptions of Defendants, John Duttry, Thelma Bush, and Beverly Williams	17
62	08/12/09	Scheduling Order, Re: argument on Exceptions scheduled	01
63	10/08/09	Order, Re: hearing on Defendants' Exceptions rescheduled	01
64	11/19/09	Order, Re: Exceptions are dismissed	01
65	12/15/09	Praecipe for Entry of Judgment Pursuant to Pa.R.C.P. No. 227.4(2) on the Court's Decision (Non-Jury Verdict)	04
66	12/16/09	Motion to Amend Title of Pleading	07
67	12/16/09	Notice of Appeal to High Court	10
68	12/23/09	Order, Re: John D. Duttry to file concise statement	01
69	12/23/09	Motion to Enter Consent Order	04
70	12/23/09	Order to Amend Pleading, Re: Defendants granted leave to amend the pleading filed August 10, 2009, titled "Exceptions of Defendants, John D. Duttry, Thelma Bush and Beverly R. Williams to Order Dated dated July 28, 2009, docketed July 29, 2009," to "Defendants' Post-Trial Motion"	01
71	12/28/09	Appeal Docket Sheet from Superior Court, 2159 WDA 2009	03
72	01/12/10	Defendant's/Appellant's Concise Statement of Matters Complained of on Appeal	07
73	02/05/10	Opinion	12
74	02/09/10	Letters, Re: Notification of mailing appeal mailed to Keith M. Pemrick, Esq. and John Sughrue, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c)	10



**FILED**

**FEB 09 2010**

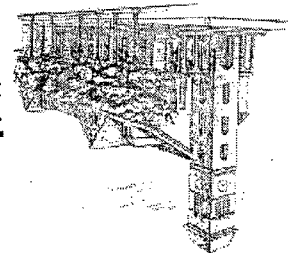
**William A. Shaw**  
Prothonotary/Clerk of Courts

COPY

Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw** Prothonotary/Clerk of Courts  
**Jacki Kendrick** Deputy Prothonotary/Clerk of Courts  
**Bonnie Hudson** Administrative Assistant  
**David S. Ammerman** Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org



February 24, 2010

Superior Court of Pennsylvania  
Office of the Prothonotary  
Attn: Lori

600 Grant Building  
Pittsburgh, PA 15219

RE: Cherry Timber Associates, Inc. and

Chagrin Land Limited Partnership

vs

Audra Mitchell, John D. Dutty, Thelma Bush, and  
Beverly R. Williams a/k/a Beverly Copelli

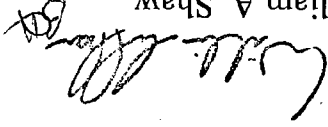
No. 06-1498-CD

Superior Court No. 2159 WDA 2009

Dear Prothonotary:

Enclosed you will find the transcripts filed to the above referenced  
record previously forwarded to your office. Please attach to the original  
record.

Sincerely,

  
William A. Shaw  
Prothonotary

CC: Keith Pernick, Esq.  
John Sughrue, Esq.



**FILED**

**FEB 24 2010**

William A. Shaw  
Prothonotary/Clerk of Courts

## Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 2159 WDA 2009

Page 1 of 3

December 23, 2009

Secure



## CAPTION

Cherry Timber Associates, Inc., and Chagrin Land Limited Partnership

v.

Audra Mitchell, John D. Duttry, Thelma Bush, and Beverly R. Williams a/k/a Beverly Copelli

Appeal of: John D. Duttry

**FILED**  
 mizook  
 DEC 28 2009

## CASE INFORMATION

 William A. Shaw  
 Prothonotary/Clerk of Courts

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: December 16, 2009 Awaiting Original Record

Journal Number:

Case Category: Civil Case Type(s): Declaratory Judgment

## CONSOLIDATED CASES

## RELATED CASES

## SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Due Date: January 6, 2010

Next Event Type: Original Record Received

Next Event Due Date: February 16, 2010

## COUNSEL INFORMATION

**Appellant** Duttry, John D.

Pro Se: No Appoint Counsel Status: Represented

IFP Status: No

Attorney: Sughrue, John

Bar No: 001037

Law Firm: Law Office of John Sughrue

Address: 225 E Market St  
Clearfield, PA 16830

Phone No: (814) 765-1704

Fax No: (814) 765-6959

Receive Mail: Yes

Receive EMail: No EMail Address: jsughrue@sughruelaw.com

**Appellee** Copelli, Beverly

Pro Se: Yes Appoint Counsel Status: Not Represented

IFP Status:

Pro Se: Copelli, Beverly

Address: 1220 Second Avenue  
Brockway, PA 15824

Phone No:

Fax No:

Receive Mail: Yes

Receive EMail: No EMail Address:

 Record. 2 parts  
 Trans. - 2

Exh. - 1 bundle

#71

2159 WDA 2009

**Appeal Docket Sheet**

Superior Court of Pennsylvania

**Docket Number: 2159 WDA 2009****Page 2 of 3****December 23, 2009****Secure****COUNSEL INFORMATION****Appellee Cherry Timber Associates, Inc.**

Pro Se: No Appoint Counsel Status: Represented

IFP Status:

Attorney: Pemrick, Keith Michael  
 Bar No: 030322  
 Law Firm: Dale Woodard Law Firm  
 Address: 1030 LIBERTY ST  
 FRANKLIN, PA 16323-1298  
 Phone No: (814) 432-2181 x:16 Fax No: (814) 437-3212  
 Receive Mail: Yes  
 Receive EMAIL: No EMail Address: pemricklaw@csonline.net

**Appellee Chagrin Land Limited Partnership**

Pro Se: No Appoint Counsel Status: Represented

IFP Status:

Attorney: Pemrick, Keith Michael  
 Bar No: 030322  
 Law Firm: Dale Woodard Law Firm  
 Address: 1030 LIBERTY ST  
 FRANKLIN, PA 16323-1298  
 Phone No: (814) 432-2181 x:16 Fax No: (814) 437-3212  
 Receive Mail: Yes  
 Receive EMAIL: No EMail Address: pemricklaw@csonline.net

**Appellee Bush, Thelma**

Pro Se: Yes Appoint Counsel Status: Not Represented

IFP Status:

Pro Se: Bush, Thelma  
 Address: 450 Salada Road  
 DuBois, PA 15801  
 Phone No: Fax No:  
 Receive Mail: Yes  
 Receive EMAIL: No EMail Address:

**FEE INFORMATION**

Date	Name	Receipt Number	Fee Amt	Paid Amt
12/16/2009	Notice of Appeal	2009-SPR-W-001257	73.50	73.50

**AGENCY/TRIAL COURT INFORMATION**

Court Below: Clearfield County Court of Common Pleas  
 County: Clearfield Division: Clearfield County Civil Division  
 Order Appealed From: December 15, 2009 Judicial District: 46  
 Documents Received: December 21, 2009 Notice of Appeal Filed: December 16, 2009  
 Order Type: Judgment Entered  
 OTN(s):  
 Lower Ct Docket No(s): No. 06-1498-CD  
 Lower Ct Judge(s): Ammerman, Fredric J.  
 President Judge

10:02 A.M.

**Appeal Docket Sheet**

**Docket Number: 2159 WDA 2009**

**Page 3 of 3**

**December 23, 2009**

**Superior Court of Pennsylvania**

**Secure**



**ORIGINAL RECORD CONTENT**

Original Record Item	Filed Date	Content Description
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**Date of Remand of Record:**

**BRIEFING SCHEDULE**

None

None

**DOCKET ENTRY**

Filed Date	Docket Entry	Participant Type	Filed By
December 16, 2009	Notice of Appeal Docketed	Appellant	Duttry, John D.

**December 23, 2009**    **Docketing Statement Exited (Civil)**

Western District Filing Office

FILED  
DEC 22 2009  
William A. Shaw  
Prothonary/Clerk of Courts

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA  
RULE OF APPELLATE PROCEDURE 1931(c)

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To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the Court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

2006-1498-CD  
Cherry Timber Associates, Inc. and  
Chagrin Land Limited Partnership  
Vs.  
Audra Mitchell, John D. Duttry, Thelma Bush,  
and Beverly R. Williams a/k/a Beverly Copelli

In compliance with Pa. R.A.P. 1931 (c).

The documents comprising the record have been numbered from **No. 1** to 74, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is February 9, 2010.



William A. Shaw  
Prothonotary/Clerk of Courts

(seal)



Date: 2/9/2010

Time: 03:57 PM

Page 1 of 7

## Clear Lake County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

## Civil Other-COUNT

Date		Judge
9/14/2006	New Case Filed.	No Judge
	Filing: Complaint for Declaratory Judgment Paid by: Pemrick, Keith M. (attorney for Cherry Timber Associates, Inc.) Receipt number: 1915563 Dated: 09/14/2006 Amount: \$85.00 (Check) 3CC shff.	No Judge
10/24/2006	Answer to Complaint For Declaratory Judgment, New Matter And Counterclaim For Declaratory Judgment, filed by s/ David J. Hopkins, Esquire. 1CC to Atty.	No Judge
10/25/2006	Praecipe For Entry of Appearance, filed by Atty. Sughrue, 4 Cert. to Atty. copy to C/A Enter my appearance on behalf of John D. Duttry, s/John Sughrue.	No Judge
11/3/2006	Answer of John D. Duttry to Original Complaint, filed by s/ John Sughrue, Esquire. 4CC to Atty	No Judge
	Certificate of Service, filed. That on November 3, 2006, a true and correct copy of Answer of John D. Duttry to Original Complaint to be served on Ms. Audra Mitchell, filed by s/ John Sughrue Esq. 2CC Atty Sughrue.	No Judge
11/16/2006	Filing: Praecipe to Re-issue Complaint Paid by: Pemrick, Keith M. (attorney for Cherry Timber Associates, Inc.) Receipt number: 1916481 Dated: 11/16/2006 Amount: \$7.00 (Check) 1 reinstated Complaint to shff.	No Judge
12/4/2006	Reply to New Matter and Answer to Counterclaim, filed by s/ Keith M. Pemrick Esq. NO CC. (In Re: Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli)	No Judge
	Reply to New Matter and Answer to Counterclaim, filed by s/ Keith M. Pemrick Esq. NO CC. (In Re: John D. Duttry)	No Judge
12/13/2006	Sheriff Return, October 5, 2006 at 1:42 om Served the within Complaint for Declaratory Judgment on John D. Duttry. October 5, 2006 at 1:35 pm Served the within Complaint for Declaratory Judgment on Thelma Bush. September 19, 2006, Sheriff of Jefferson County was deputized. September 22, 2006 at 1:00 pm Served the within Complaint for Declaratory Judgment on Beverly R. Williams a/k/a Beverly Copelli. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Dale \$83.30 Jefferson Co costs pd by Dale \$34.76	No Judge
2/14/2007	Praecipe For Entry of Appearance, filed. Kindly enter my apperance on behalf of Defendant, Audra Mitchell, in the above-captioned case, filed by s/ Christopher E. Mohny Esq. NO CC., copy to C/A.	No Judge
	Sheriff Return, November 17, 2006, Sheriff of Elk County was deputized. November 27, 2006 at 2:30 pm Served the Complaint for Declratory Judgment on Audra Mitchell. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Woodard \$31.00 Elk Co. costs pd by Woodard \$30.79	No Judge
7/25/2007	Answer, filed by s/ Christopher E. Mohny, Esquire. 5CC Atty. Mohny	No Judge
8/31/2007	Notice of Service, filed. That an original and one (1) copy of Plaintiffs' interrogatories and Request for Production of Documents to John D. Duttry were served on counsel for John D. Duttry, and copies were served on all other counsel of record on August 28, 2007, filed by s/ Keith M. Pemrick Esq. 1CC Atty.	No Judge

## Civil Other-COUNT

Date		Judge
8/31/2007	Notice of Service, filed. That an original and one (1) copy of Plaintiffs' Interrogatories and Requests for Production of Documents Directed to Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli, were served on counsel for Thelma Bush and Beverly R. Williams, and copies were served on all other counsel of record on August 28, 2007, filed by s/ Keith M. Pemrick Esq. 1CC Atty.	No Judge
9/25/2007	Petition to Withdraw as Counsel, filed by s/ David J. Hopkins, Esquire. No CC	No Judge
9/27/2007	Rule, NOW, this 27th day of Sept., 2007, upon consideration of the Petition to Withdraw as Counsel filed on behalf of Defendants, Thelma Bush and Beverly R. Williams, Rule Returnable on the 6th day of Nov., 2007, at 9:00 a.m. in Courtroom 3. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Hopkins	Fredric Joseph Ammerman
10/19/2007	Certificate of Service, filed. That on October 19, 2007, a true and correct copy of Answers to Interrogatories and Answers to Request for Production to be served by first class mail to Keith Pemrick Esq., David Hopkins Esq., Christopher E. Mohny Esq. filed by s/ John Sughrue Esq. 4CC Atty.	Fredric Joseph Ammerman
11/6/2007	Order, this 6th day of Nov., 2007, it is Ordered that David J. Hopkins, Esquire, be permitted to withdraw as counsel for Beverly R. Williams and Thelma Bush, Defendants. By The Court, /s/ John K. Reilly, Jr., Senior Judge. 1CC Attys: Pemrick, Mohny, Sughrue, Hopkins; 1CC Thelma Bush, 450 Salada Road, DuBois, PA 15801; 1CC Beverly Williams, 1220 Second Ave., Brockway, PA 15824	John K. Reilly Jr.
4/2/2008	Notice of Deposition of John D. Duttry, filed by s/ Keith M. Pemrick Esq. No CC.	Fredric Joseph Ammerman
	Notice of Deposition of Audra Mitchell, filed by s/ Keith M. Pemrick Esq. No CC.	Fredric Joseph Ammerman
4/16/2008	Certificate of Service, filed. That on April 16, 2008, Defendant's Notice of Taking of Deposition of and Subpoena to Steven Jilk, by fax and first class mail to Mr. Steven Jilk-c/o Keith M Pemrick Esq. and Christopher E. Mohny Esq. and by first class mail to Ms. Thelma D. Bush and Ms. Beverly Copelli, filed by s/ John Sughrue Esq. 4CC Atty Sughrue.	Fredric Joseph Ammerman
5/15/2008	Petition For Order to Discontinue Action as to Defendant Audra Mitchell, filed by s/ Christopher E. Mohny, Esquire. 4CC Atty. Mohny	Fredric Joseph Ammerman
5/16/2008	Order, this 16th day of May, 2008, upon consideration of the foregoing Petition, a Rule is issued upon the parties in interest/respondents. A hearing on the Petition shall be held on the 17th day of July, 2008 in Courtroom 1 at 10:00 a.m. Notice of the entry of this Order shall be provided to all parties by the Petitioner. By The Court, /s/ Fredric J. Ammerman, pres. Judge. 3CC to Atty.	Fredric Joseph Ammerman
6/12/2008	Response to Petition for Order to Discontinue Action as to Defendant Audra Mitchell, filed by s/ Keith M. Pemrick, Esquire. No CC	Fredric Joseph Ammerman
7/17/2008	Answer of Defendant, John D. Duttry. Filed by s/ John Sughrue, Esquire. 6CC to Atty	Fredric Joseph Ammerman

## Civil Other-COUNT

Date		Judge
7/18/2008	Order, this 17th day of July, 2008, following argument on the Petition filed on behalf of Audra Mitchell for Order to Discontinue, it is Ordered that counsel for the Defendant, Audra Mitchell, the Plaintiffs, and John Duttry, supply the Court with proposed Order within no more than 15 days from this date. The Court has no objection to the Order being received by fax. By The Court /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Pemrick, Mohny, Sughrue, Hopkins	Fredric Joseph Ammerman
8/20/2008	Certificate of Readiness for Non-Jury Trial, filed by s/ Keith M. Pemrick, Esquire. no CC	Fredric Joseph Ammerman
	Order, this 20th day of august, 2008, after argument on Defendant Audra Mitchell's Petition for Order to Discontinue Action as to Defendant Audra Mitchell, and upon stipulation made on the record before the Court of Defendant Audra Mitchell as follows: The relief requested in the Petition for Order to Discontinue is granted. Audra Mitchell shall execute a Release individually and as sole beneficiary and Executrix of the Estate of Paul L. Mitchell releasing any claim she or the Estate has to the funds being held in escrow which are the subject of this litigation. Upon execution of the Release by Audra Mitchell, the Plaintiffs shall mark this action discontinued as to Audra Mitchell, only. (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Pemrick, Mohny, Sughrue, Hopkins	Fredric Joseph Ammerman
8/21/2008	Order, this 21st day of August, 2008, it is Ordered that Pre-trial conference shall be held on the 2nd day of Oct., 2008 in Chambers at 2:30 p.m. By The Court, /s/ Fredric J. ammerman, Pres. Judge. 1CC Attys: Pemrick, Mohny, Sughrue, Hopkins	Fredric Joseph Ammerman
8/28/2008	Motion to Strike Case From Trial List, filed by s/John Sughrue, esquire. 3CC Atty. Sughrue	Fredric Joseph Ammerman
8/29/2008	Order, this 29th day of August, 2008, upon consideration of Defendant, John D. Duttry's Motion to Strike Case from Trial List, a Rule is issued upon Plaintiffs and Co-Defendants. Rule Returnable on the 22nd day of Sept., 2008, for filing written response. Hearing on the Merits of said Motion shall be held on the 2nd day of Oct., 2008 at 2:30 p.m. in Courtroom 1. By The Court, /s/ Fredric J. ammerman, Pres. Judge. 3CC Atty. Sughrue	Fredric Joseph Ammerman
9/17/2008	Plaintiffs' Response to Motion to Strike Case from Trial List, filed by s/ Keith Pemrick, Esquire. No CC	Fredric Joseph Ammerman
9/24/2008	Release of All Claims, signed by Audra Mitchell. 1CC to Atty.	Fredric Joseph Ammerman
	Praeipce for Partial Discontinuance, please mark the above captioned action settled and discontinued as to Audra Mitchell ONLY. Filed by s/ Keith M. Pemrick, Esquire. 1CC to Atty.	Fredric Joseph Ammerman
9/25/2008	Motion to Reschedule Argument and Pre-Trial Conference, filed by Atty. Sughrue 6 Cert. to Atty.	Fredric Joseph Ammerman
9/26/2008	Motion for Protective Order, filed by s/Keith M. Pemrick No CC	Fredric Joseph Ammerman
	Order, this 26th day of Sept., 2008, upon consideration of Defendant, John D. Duttry's Motion to Reschedule Argument to Outstanding Motions and Pre-Trial Conference, a Rule is issued upon Plaintiffs and Co-Defendants. Argument on the Merits of said Motion shall be held on the 15th day of Oct., 2008 at 10:00 a.m. in Courtroom 2. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Sughrue	Fredric Joseph Ammerman

Civil Other-COUNT

Date		Judge
9/29/2008	Amended Certificate of Service, filed. That on September 29, 2008 Co-defendant, John D. Duttry's Pre-trial Statement to be served by first class mail to Court Administrator, Christopher E. Mohny Esq., Ms Beverly Copelli, Keith M. Pemrick Esq., Ms. Thelma D. Bush, filed by s/ John Sughrue Esq. 1CC Atty Sughrue.	Fredric Joseph Ammerman
	Scheduling Order, this 29th day of Sept., 2008, it is Ordered that Pre-Trial Conf. scheduled for Oct. 2, 2008 is rescheduled for Oct. 15, 2008 at 10:00 a.m. in Courtroom 2. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins	Fredric Joseph Ammerman
	Order, this 29th day of Sept., 2008, it is Ordered that argument on the Plaintiffs' Motion for Protective Order shall be held on Oct. 15, 2008, in Courtroom 2 at 10:00 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. judge. 3CC Atty. Pemrick	Fredric Joseph Ammerman
10/15/2008	Affidavit in Support of Defendant John D. Duttry's Motion to Strike Case from Trial List, filed by s/ John Sughrue Esq. 3CC Atty Sughrue.	Fredric Joseph Ammerman
10/27/2008	Order, this 27th day of Oct., 2008, following argument relative the hearing on Motion for to Strike Case from Trial List, Pre-Trial Conference and Motion and for Protective Order, it is Ordered: Non-Jury trial is scheduled for two days, being April 21 and 22, 2009 in Courtroom 1 to commence at 9:00 a.m. on each day. (see original). By the Court, /s/ Paul E. Cherry, Judge. 1CC Attys: Pemrick, Hopkins, Sughrue	Fredric Joseph Ammerman
1/19/2009	Certificate of Service, filed. That on January 16, 2009, a true and correct copy of Defendant's Request for Admissions and Interrogatories to be served by first class mail to Keith M. Pemrick Esq., filed by s/ John Sughrue Esq. 3CC Atty Sughrue.	Fredric Joseph Ammerman
	Certificate of Service, filed. That on January 16, 2009, a true and correct copy of Defendant's Request for Production of Documents to be served by first class mail to Keith M. Pemrick Esq., filed by s/ John Sughrue Esq. 3CC Atty Sughrue.	Fredric Joseph Ammerman
2/25/2009	Plaintiffs Supplemental Pre-Trial Statement, filed by s/ Keith M. Pemrick Esq. 1CC Atty Pemrick.	Fredric Joseph Ammerman
	Notice of Service, filed. Served Plaintiffs' Response to Request for Admissions and Interrogatories and Response to Requests for Production of Documents via first class mail on February 23, 2008 to John Sughrue Esq., filed by s/ Keith M. Pemrick Esq. 1CC Atty Pemrick.	Fredric Joseph Ammerman
2/27/2009	Motion For Summary Judgment, filed by s/ John Sughrue, Esquire. 6cC Atty. Sughrue	Fredric Joseph Ammerman
3/2/2009	Order, this 2nd day of March, 2009, upon consideration of Defendant, John D. Duttry's Motion For Summary Judgment, a Rule is issued upon Plaintiffs. Argument on the merits of said motion shall be held on the 31st day of March, 2009 at 9:00 A.M. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Sughrue	Fredric Joseph Ammerman
3/9/2009	Filing: Subpoena Paid by: Pemrick, Keith M. (attorney for Cherry Timber Associates, Inc.) Receipt number: 1928425 Dated: 3/9/2009 Amount: \$3.00 (Check) For: Cherry Timber Associates, Inc. (plaintiff)	Fredric Joseph Ammerman

## Civil Other-COUNT

Date		Judge
3/16/2009	Notice of Trial Deposition, filed. To John D. Duttry-c/o John Sughrue Esq., Thelma D. Bush and Beverly Williams, you are hereby respectfully notified that Cherry Timber Associates Inc., and Chagrin Land Limited Partnership, will take the deposition of Lional Alexander, Alexander and Associates Inc. oral examination on March 31, 2009 at 12:30 pm., filed by s/ Keith M. Penrick Esq. 1CC ASsty Pemrick.	Fredric Joseph Ammerman
3/30/2009	Factual Affidavit of John Sughrue, Attorney, in Support of Motion for Summary Judgment, filed by s/John Sughrue, Esq. One CC Attorney Sughrue	Fredric Joseph Ammerman
	Plaintiffs' Response to John D. Duttry's Motion for Summary Judgment, filed by s/Keith M. Pemrick, Esq. No CC	Fredric Joseph Ammerman
	Plaintiff's Exhibits in Response to Motion for Summary Judgment, filed. No CC	Fredric Joseph Ammerman
3/31/2009	Proof of Service of Subpoenas, filed. Subpoenas directing attendance at Trial on April 21, 2009, were served on Audra Mitchell (now Audra Geiser) and Scott V. Jones Esq., pursuant to Pennsylvania Rule of Civil Procedure by certified mail, restricted delivery, filed by s/ Keith M. Pemrick Esq. 1CC Atty Pemrick.	Fredric Joseph Ammerman
4/1/2009	Order, AND NOW, this 31st day of March 2009, following argument on the Defendant's Motion for Summary Judgment, it is the ORDER of this Court that either counsel may have until and including Friday, April 3, 2009, in which to submit letter brief. The same may be submitted by fax, if counsel so desires. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins.	Fredric Joseph Ammerman
4/20/2009	Motion In Limine, filed by s/ John Sughrue, Esquire. 5CC Atty. Sughrue	Fredric Joseph Ammerman
	Order, filed Cert. copies to Atty. Sughrue for Service NOW, this 20th day of April, 2009, ORDER that Defendant John D. Duttry's Motion for Summary Judgment, be and is hereby DENIED.	Fredric Joseph Ammerman
4/21/2009	Certificate of Service, filed. That on April 21, 2009 I caused Order dated April 21, 2009 Denying the Motion for Summary Judgment to be served on Keith M. Pemrick Esq. by facsimile and by personal service upon Keith M. Pemrick Esq. Christopher E. Mohny Esq., Ms. Thelma D. Bush and Ms. Beverly Copelli, filed by s/ John Sughrue Esq. 1CC Atty Sughrue.	Fredric Joseph Ammerman
4/23/2009	Stipulation, signed by Keith M. Pemrick, Esquire, and John Sughrue, Esquire. No CC	Fredric Joseph Ammerman
4/24/2009	Order, this 22nd day of April, 2009, it is Ordered that counsel for the Plaintiff provide the Court with appropriate letter brief within no more than 30 days from this date. Counsel for Defendant shall provide the Court with appropriate letter brief within no more than 45 days from this date. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins	Fredric Joseph Ammerman
7/29/2009	Order, this 28th day of July, 2009, following non-jury trial, it is the FINDINGS and Ordered: Plaintiff's request for Declaratory Judgment is GRANTED. The Defendants' Counterclaims including any Counterclaim for Declaratory Relief and/or Adverse Possession are hereby DISMISSED. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins	Fredric Joseph Ammerman
8/10/2009	Praeipce for Appearance, filed. Kindly enter my appearance on behalf of Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli, defendant, filed by s/ John Sughrue Esq. 4CC Atty Sughrue.	Fredric Joseph Ammerman

## Civil Other-COUNT

Date		Judge
8/10/2009	Exceptions of Defendants, John Duttry, Thelma Bush and Beverly Williams to Order dated July 28, 2009, Docketed July 29, 2009. filed by s/ 5CC Atty. Sughrue	Fredric Joseph Ammerman
8/12/2009	Scheduling Order, this 12th day of August, 2009, Argument on Exceptions of Defendants, John D. Duttry, Thelma Bush and Beverly Williams to Order dated July 28, 2009, shall be held on the 8th day of Oct., 2009 at 2:00 p.m. in courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Sughrue	Fredric Joseph Ammerman
10/8/2009	Order, this 8th day of Oct., 2009, the hearing on the Defendants' Exceptions to Order of July 28, 2009 scheduled this date is rescheduled to Nov. 2, 2009 at 10:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Hopkins, Sughrue, Pemrick	Fredric Joseph Ammerman
11/19/2009	Order, NOW, this 17th day of November, 2009, following hearing on the Exceptions of Defendants John Duttry, Thelma Bush, and Beverly Williams to Order dated July 28, 2009, Order that said Exceptions be and are hereby dismissed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attorneys Pemrick, Sughrue, and Hopkins	Fredric Joseph Ammerman
12/15/2009	Filing: Praecipe for Entry of Judgment Pursuant to Pa.R.C.P. No. 227.4(2) on the Court's Decision (Non-Jury Verdict) Paid by: Sughrue, John (attorney for Duttry, John D.) Receipt number: 1932589 Dated: 12/15/2009 Amount: \$20.00 (Check) For: Duttry, John D. (defendant) filed by s/John Sughrue, Esq. Judgment in favor of the Plaintiffs and against the Defendants, John D. Duttry, Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli on the Court's Decision (non-jury verdict) entered by Order dated July 28, 2009, and docketed on July 29, 2009. One CC and Notice of Judgment to Cherry Timber Associates, Inc., Chagrin Land Limited Partnership, John D. Duttry, Thelma Bush, Beverly R. Williams, and Audra Mitchell Seven CC Attorney Sughrue	Fredric Joseph Ammerman
12/16/2009	Motion to Amend Title of Pleading, filed by Atty. Sughrue 5 cert. copies. Filing: Notice of Appeal to High Court Paid by: Sughrue, John (attorney for Duttry, John D.) Receipt number: 1932616 Dated: 12/16/2009 Amount: \$50.00 (Check) For: Duttry, John D. (defendant) 1 Cert. to Superior Court with \$73.50 Check. 2 Cert. to Atty.	Fredric Joseph Ammerman Fredric Joseph Ammerman
12/23/2009	Order, this 22nd day of Dec., 2009, it is Ordered that John D. Duttry file a concise statement of the matters complained of on appeal no later than 21 days herefrom. by The Court, /s/ Fredric J. Ammerman, Pres. Judge 1CC Attys: Pemrick, Sughrue Motion to Enter Consent Order, filed by s/ John Sughrue, Esquire. 2CC Atty. Sughrue	Fredric Joseph Ammerman Fredric Joseph Ammerman
	Order to Amend Pleading, NOW, this 22nd day of Dec., 2009, it is Ordered that Defendants are granted Leave to Amend the Pleading filed on August 10, 2009 titled "Exceptions of Defendants, John D. Duttry, Thelma Bush and Beverly R. Williams to Order Dated July 28, 2009, Docketed July 29, 2009" to "Defendants' Post-Trial Motion" and said Pleading is amended to be titled, "Defendants' Post-Trial Motion". By The Court, /s/ Fredric J. Ammerman, Pres. JUDGE. 1CC Atty. Sughrue	Fredric Joseph Ammerman
12/28/2009	Appeal Docket Sheet from Superior Court with docket number 2159-WDA 2009	Fredric Joseph Ammerman

Date: 2/9/2010

Time: 03:57 PM

Page 7 of 7

Clearfield County Court of Common Pleas

ROA Report

Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

User: BHUDSON

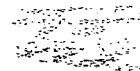
Civil Other-COUNT

Date		Judge
1/12/2010	Defendant/Appellant's Concise Statement of Matters Complained of on Appeal, filed by s/ John Sughrue, esquire. 7CC to Atty.	Fredric Joseph Ammerman
2/5/2010	Opinion, filed Cert. to Atty's Pemrick, Mohny, Sughrue, Miksell and Law Library	Fredric Joseph Ammerman
2/9/2010	February 9, 2010, Mailed appeal to Superior Court. February 9, 2010, Letters, Re: Notification of mailing appeal mailed to Keith M. Pemrick, Esq. and John Sughrue, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c).	Fredric Joseph Ammerman

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

FEB 09 2010

Attest.



*William L. Baker*  
Prothonotary/  
Clerk of Courts

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

**No. 06-1498-CD**

**Cherry Timber Associates, Inc. and  
Chagrin Land Limited Partnership**

**Vs.**

**Audra Mitchell, John D. Duttry, Thelma Bush,  
and Beverly R. Williams a/k/a Beverly Copelli**

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04	11/03/06	Answer of John D. Duttry to Original Complaint	16
05	11/03/06	Certificate of Service, Re: Answer of John D. Duttry to Original Complaint	02
06	11/16/06	Praecipe to Re-issue Complaint	03
07	12/04/06	Reply to New Matter and Answer to Counterclaim, Re: Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli	11
08	12/04/06	Reply to New Matter and Answer to Counterclaim, Re: John D. Duttry	12
09	12/13/06	Sheriff Return	05
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12	07/25/07	Answer	06
13	08/31/07	Notice of Service	01
14	08/31/07	Notice of Service	01
15	09/25/07	Petition to Withdraw as Counsel	05
16	09/27/07	Rule, Re: Petition to Withdraw as Counsel	01
17	10/19/07	Certificate of Service	02
18	11/16/07	Order, Re: David J. Hopkins, Esq. be permitted to withdraw as counsel	01
19	04/02/08	Notice of Deposition of John D. Duttry	02
20	04/02/08	Notice of Deposition of Audra Mitchell	02
21	04/16/08	Certificate of Service	02
22	05/15/08	Petition for Order to Discontinue Action as to Defendant Audra Mitchell and Order filed May 16, 2008, issuing rule and scheduling a hearing	07
23	06/12/08	Response to Petition for Order to Discontinue Action as to Defendant Audra Mitchell	05
24	07/17/08	Answer of Defendant John D. Duttry	06
25	07/18/08	Order, Re: counsel to propose order regarding discontinuance as to Audra Mitchell	01
26	08/20/08	Certificate of Readiness for Non-Jury Trial	03
27	08/20/08	Order, Re: Petition for Order to Discontinue Action as to Audra Mitchell	02
28	08/21/08	Order, Re: Pre-trial conference scheduled	01
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30	08/29/08	Order, Re: Rule issued and hearing scheduled re: Motion to Strike Case from Trial List	01
31	09/17/08	Plaintiffs' Response to Motion to Strike Case from Trial List	11
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35	09/26/08	Motion for Protective Order	10
36	09/26/08	Order, Re: hearing scheduled re: Motion to Reschedule Argument to Outstanding Motions and Pre-Trial Conference	01
37	09/29/08	Amended Certificate of Service	02
38	09/29/08	Scheduling Order, re: rescheduling of Pre-Trial Conference	01
39	09/29/08	Order, Re: argument on Plaintiffs' Motion for Protective Order scheduled	01
40	10/15/08	Affidavit in Support of Defendant John D. Duttry's Motion to Strike Case from Trial List	05



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

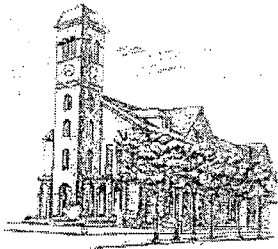
**No. 06-1498-CD**

**Cherry Timber Associates, Inc. and  
Chagrin Land Limited Partnership**

**Vs.**

**Audra Mitchell, John D. Duttry, Thelma Bush,  
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53	04/01/09	Order, Re: letter brief to be submitted	01
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55	04/20/09	Order, Re: Motion for Summary Judgment Denied	01
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57	04/23/09	Stipulation	06
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59	07/29/09	Order, Re: following non-jury trial, Plaintiffs' request for declaratory judgment is Granted; Defendants' counterclaims including any counterclaim for declaratory relief and/or adverse possession are Dismissed	02
60	08/10/09	Praeipe for Appearance	03
61	08/10/09	(title of pleading amended)-Defendants' Post-Trial Motion/ Exceptions of Defendants, John Duttry, Thelma Bush, and Beverly Williams	17
62	08/12/09	Scheduling Order, Re: argument on Exceptions scheduled	01
63	10/08/09	Order, Re: hearing on Defendants' Exceptions rescheduled	01
64	11/19/09	Order, Re: Exceptions are dismissed	01
65	12/15/09	Praeipe for Entry of Judgment Pursuant to Pa.R.C.P. No. 227.4(2) on the Court's Decision (Non-Jury Verdict)	04
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72	01/12/10	Defendant's/Appellant's Concise Statement of Matters Complained of on Appeal	07
73	02/05/10	Opinion	12
74	02/09/10	Letters, Re: Notification of mailing appeal mailed to Keith M. Pemrick, Esq. and John Sughrue, Esq. with certified copies of docket sheet and Document listing required by Pa.R.A.P. 1931(c)	10



## Clearfield County Office of the Prothonotary and Clerk of Courts

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

**Jacki Kendrick**  
Deputy Prothonotary/Clerk of Courts

**Bonnie Hudson**  
Administrative Assistant

**David S. Ammerman**  
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ [www.clearfieldco.org](http://www.clearfieldco.org)

Fredric J. Ammerman, President Judge  
Court of Common Pleas  
230 E. Market Street  
Clearfield, PA 16830

Keith M. Pemrick, Esq.  
1030 Liberty Street  
Franklin, PA 16323

John Sughrue, Esq.  
225 East Market Street  
Clearfield, PA 16830

Cherry Timber Associates, Inc. and  
Chagrin Land Limited Partnership

Vs.

Audra Mitchell, John D. Duttry, Thelma Bush,  
and Beverly R. Williams a/k/a Beverly Copelli

Court No. 06-1498-CD; Superior Court No. 2159 WDA 2009

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on February 9, 2010. The transcripts will be forwarded upon their filing in my office, per Superior Court's instructions.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**  
0/3/28/10  
FEB 09 2010

 William A. Shaw  
Prothonotary/Clerk of Courts

#74

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

**No. 06-1498-CD**

**Cherry Timber Associates, Inc. and  
Chagrin Land Limited Partnership**

**Vs.**

**Audra Mitchell, John D. Duttry, Thelma Bush,  
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**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

**No. 06-1498-CD**

**Cherry Timber Associates, Inc. and  
Chagrin Land Limited Partnership**

**Vs.**

**Audra Mitchell, John D. Duttry, Thelma Bush,  
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Date: 2/9/2010

Time: 03:13 PM

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Clearing County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

Civil Other-COUNT

Date		Judge
9/14/2006	New Case Filed.	No Judge
	Filing: Complaint for Declaratory Judgment Paid by: Pemrick, Keith M. (attorney for Cherry Timber Associates, Inc.) Receipt number: 1915563 Dated: 09/14/2006 Amount: \$85.00 (Check) 3CC shff.	No Judge
10/24/2006	Answer to Complaint For Declaratory Judgment, New Matter And Counterclaim For Declaratory Judgment, filed by s/ David J. Hopkins, Esquire. 1CC to Atty.	No Judge
10/25/2006	Praeipe For Entry of Appearance, filed by Atty. Sughrue, 4 Cert. to Atty. copy to C/A Enter my appearance on behalf of John D. Duttry, s/John Sughrue.	No Judge
11/3/2006	Answer of John D. Duttry to Original Complaint, filed by s/ John Sughrue, Esquire. 4CC to Atty	No Judge
	Certificate of Service, filed. That on November 3, 2006, a true and correct copy of Answer of John D. Duttry to Original Complaint to be served on Ms. Audra Mitchell, filed by s/ John Sughrue Esq. 2CC Atty Sughrue.	No Judge
11/16/2006	Filing: Praeipe to Re-issue Complaint Paid by: Pemrick, Keith M. (attorney for Cherry Timber Associates, Inc.) Receipt number: 1916481 Dated: 11/16/2006 Amount: \$7.00 (Check) 1 reinstated Complaint to shff.	No Judge
12/4/2006	Reply to New Matter and Answer to Counterclaim, filed by s/ Keith M. Pemrick Esq. No CC. (In Re: Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli)	No Judge
	Reply to New Matter and Answer to Counterclaim, filed by s/ Keith M. Pimrick Esq. NO CC. (In Re: John D. Duttry)	No Judge
12/13/2006	Sheriff Return, October 5, 2006 at 1:42 om Served the within Complaint for Declaratory Judgment on John D. Duttry. October 5, 2006 at 1:35 pm Served the within Complaint for Declaratory Judgment on Thelma Bush. September 19, 2006, Sheriff of Jefferson County was deputized. September 22, 2006 at 1:00 pm Served the within Complaint for Declaratory Judgment on Beverly R. Williams a/k/a Beverly Copelli. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Dale \$83.30 Jefferson Co costs pd by Dale \$34.76	No Judge
2/14/2007	Praeipe For Entry of Appearance, filed. Kindly enter my apperance on behalf of Defendant, Audra Mitchell, in the above-captioned case, filed by s/ Christopher E. Mohny Esq. NO CC., copy to C/A.	No Judge
	Sheriff Return, November 17, 2006, Sheriff of Elk County was deputized. November 27, 2006 at 2:30 pm Served the Complaint for Declratory Judgment on Audra Mitchell. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Woodard \$31.00 Elk Co. costs pd by Woodard \$30.79	No Judge
7/25/2007	Answer, filed by s/ Christopher E. Mohny, Esquire. 5CC Atty. Mohny	No Judge
3/31/2007	Notice of Service, filed. That an original and one (1) copy of Plaintiffs' interrogatories and Request for Production of Documents to John D. Duttry were served on counsel for John D. Duttry, and copies were served on all other counsel of record on August 28, 2007, filed by s/ Keith M. Pemrick Esq. 1CC Atty.	No Judge

## Civil Other-COUNT

Date		Judge
3/31/2007	Notice of Service, filed. That an original and one (1) copy of Plaintiffs' Interrogatories and Requests for Production of Documents Directed to Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli, were served on counsel for Thelma Bush and Beverly R. Williams, and copies were served on all other counsel of record on August 28, 2007, filed by s/ Keith M. Pemrick Esq. 1CC Atty.	No Judge
3/25/2007	Petition to Withdraw as Counsel, filed by s/ David J. Hopkins, Esquire. No CC	No Judge
3/27/2007	Rule, NOW, this 27th day of Sept., 2007, upon consideration of the Petition to Withdraw as Counsel filed on behalf of Defendants, Thelma Bush and Beverly R. Williams, Rule Returnable on the 6th day of Nov., 2007, at 9:00 a.m. in Courtroom 3. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Hopkins	Fredric Joseph Ammerman
10/19/2007	Certificate of Service, filed. That on October 19, 2007, a true and correct copy of Answers to Interrogatories and Answers to Request for Production to be served by first class mail to Keith Pemrick Esq., David Hopkins Esq., Christopher E. Mohny Esq. filed by s/ John Sughrue Esq. 4CC Atty.	Fredric Joseph Ammerman
11/6/2007	Order, this 6th day of Nov., 2007, it is Ordered that David J. Hopkins, Esquire, be permitted to withdraw as counsel for Beverly R. Williams and Thelma Bush, Defendants. By The Court, /s/ John K. Reilly, Jr., Senior Judge. 1CC Attys: Pemrick, Mohny, Sughrue, Hopkins; 1CC Thelma Bush, 450 Salada Road, DuBois, PA 15801; 1CC Beverly Williams, 1220 Second Ave., Brockway, PA 15824	John K. Reilly Jr.
4/2/2008	Notice of Deposition of John D. Duttry, filed by s/ Keith M. Pemrick Esq. No CC.	Fredric Joseph Ammerman
	Notice of Deposition of Audra Mitchell, filed by s/ Keith M. Pemrick Esq. No CC.	Fredric Joseph Ammerman
4/16/2008	Certificate of Service, filed. That on April 16, 2008, Defendant's Notice of Taking of Deposition of and Subpoena to Steven Jilk, by fax and first class mail to Mr. Steven Jilk-c/o Keith M Pemrick Esq. and Christopher E. Mohny Esq. and by first class mail to Ms. Thelma D. Bush and Ms. Beverly Copelli, filed by s/ John Sughrue Esq. 4CC Atty Sughrue.	Fredric Joseph Ammerman
5/15/2008	Petition For Order to Discontinue Action as to Defendant Audra Mitchell, filed by s/ Christopher E. Mohny, Esquire. 4CC Atty. Mohny	Fredric Joseph Ammerman
5/16/2008	Order, this 16th day of May, 2008, upon consideration of the foregoing Petition, a Rule is issued upon the parties in interest/respondents. A hearing on the Petition shall be held on the 17th day of July, 2008 in Courtroom 1 at 10:00 a.m. Notice of the entry of this Order shall be provided to all parties by the Petitioner. By The Court, /s/ Fredric J. Ammerman, pres. Judge. 3CC to Atty.	Fredric Joseph Ammerman
3/12/2008	Response to Petition for Order to Discontinue Action as to Defendant Audra Mitchell, filed by s/ Keith M. Pemrick, Esquire. No CC	Fredric Joseph Ammerman
7/17/2008	Answer of Defendant, John D. Duttry. Filed by s/ John Sughrue, Esquire. 6CC to Atty	Fredric Joseph Ammerman

Date: 2/9/2010

Time: 03:13 PM

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Clearing County Court of Common Pleas

ROA Report

Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

User: BHUDSON

Civil Other-COUNT

Date		Judge
7/18/2008	Order, this 17th day of July, 2008, following argument on the Petition filed on behalf of Audra Mitchell for Order to Discontinue, it is Ordered that counsel for the Defendant, Audra Mitchell, the Plaintiffs, and John Duttry, supply the Court with proposed Order within no more than 15 days from this date. The Court has no objection to the Order being received by fax. By The Court /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Pemrick, Mohney, Sughrue, Hopkins	Fredric Joseph Ammerman
3/20/2008	Certificate of Readiness for Non-Jury Trial, filed by s/ Keith M. Pemrick, Esquire. no CC	Fredric Joseph Ammerman
	Order, this 20th day of august, 2008, after argument on Defendant Audra Mitchell's Petition for Order to Discontinue Action as to Defendant Audra Mitchell, and upon stipulation made on the record before the Court of Defendant Audra Mitchell as follows: The relief requested in the Petition for Order to Discontinue is granted. Audra Mitchell shall execute a Release individually and as sole beneficiary and Executrix of the Estate of Paul L. Mitchell releasing any claim she or the Estate has to the funds being held in escrow which are the subject of this litigation. Upon execution of the Release by Audra Mitchell, the Plaintiffs shall mark this action discontinued as to Audra Mitchell, only. (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Pemrick, Mohney, Sughrue, Hopkins	Fredric Joseph Ammerman
3/21/2008	Order, this 21st day of August, 2008, it is Ordered that Pre-trial conference shall be held on the 2nd day of Oct., 2008 in Chambers at 2:30 p.m. By The Court, /s/ Fredric J. ammerman, Pres. Judge. 1CC Attys: Pemrick, Mohney, Sughrue, Hopkins	Fredric Joseph Ammerman
3/28/2008	Motion to Strike Case From Trial List, filed by s/John Sughrue, esquire. 3CC Atty. Sughrue	Fredric Joseph Ammerman
3/29/2008	Order, this 29th day of August, 2008, upon consideration of Defendant, John D. Duttry's Motion to Strike Case from Trial List, a Rule is issued upon Plaintiffs and Co-Defendants. Rule Returnable on the 22nd day of Sept., 2008, for filing written response. Hearing on the Merits of said Motion shall be held on the 2nd day of Oct., 2008 at 2:30 p.m. in Courtroom 1. By The Court, /s/ Fredric J. ammerman, Pres. Judge. 3CC Atty. Sughrue	Fredric Joseph Ammerman
3/17/2008	Plaintiffs' Response to Motion to Strike Case from Trial List, filed by s/ Keith Pemrick, Esquire. No CC	Fredric Joseph Ammerman
3/24/2008	Release of All Claims, signed by Audra Mitchell. 1CC to Atty.	Fredric Joseph Ammerman
	Praecipe for Partial Discontinuance, please mark the above captioned action settled and discontinued as to Audra Mitchell ONLY. Filed by s/ Keith M. Pemrick, Esquire. 1CC to Atty.	Fredric Joseph Ammerman
3/25/2008	Motion to Reschedule Argument and Pre-Trial Conference, filed by Atty. Sughrue 6 Cert. to Atty.	Fredric Joseph Ammerman
3/26/2008	Motion for Protective Order, filed by s/Keith M. Pemrick No CC	Fredric Joseph Ammerman
	Order, this 26th day of Sept., 2008, upon consideration of Defendant, John D. Duttry's Motion to Reschedule Argument to Outstanding Motions and Pre-Trial Conference, a Rule is issued upon Plaintiffs and Co-Defendants. Argument on the Merits of said Motion shall be held on the 15th day of Oct., 2008 at 10:00 a.m. in Courtroom 2. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Sughrue	Fredric Joseph Ammerman

Date: 2/9/2010

Time: 03:13 PM

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Clerk of Court County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

Civil Other-COUNT

Date		Judge
3/29/2008	Amended Certificate of Service, filed. That on September 29, 2008 Co-defendant, John D. Duttry's Pre-trial Statement to be served by first class mail to Court Administrator, Christopher E. Mohny Esq., Ms Beverly Copelli, Keith M. Pemrick Esq., Ms. Thelma D. Bush, filed by s/ John Sughrue Esq. 1CC Atty Sughrue.	Fredric Joseph Ammerman
	Scheduling Order, this 29th day of Sept., 2008, it is Ordered that Pre-Trial Conf. scheduled for Oct. 2, 2008 is rescheduled for Oct. 15, 2008 at 10:00 a.m. in Courtroom 2. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins	Fredric Joseph Ammerman
	Order, this 29th day of Sept., 2008, it is Ordered that argument on the Plaintiffs' Motion for Protective Order shall be held on Oct. 15, 2008, in Courtroom 2 at 10:00 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. judge. 3CC Atty. Pemrick	Fredric Joseph Ammerman
10/15/2008	Affidavit in Support of Defendant John D. Duttry's Motion to Strike Case from Trial List, filed by s/ John Sughrue Esq. 3CC Atty Sughrue.	Fredric Joseph Ammerman
10/27/2008	Order, this 27th day of Oct., 2008, following argument relative the hearing on Motion for to Strike Case from Trial List, Pre-Trial Conference and Motion and for Protective Order, it is Ordered: Non-Jury trial is scheduled for two days, being April 21 and 22, 2009 in Courtroom 1 to commence at 9:00 a.m. on each day. (see original). By the Court, /s/ Paul E. Cherry, Judge. 1CC Attys; Pemrick, Hopkins, Sughrue	Fredric Joseph Ammerman
1/19/2009	Certificate of Service, filed. That on January 16, 2009, a true and correct copy of Defendant's Request for Admissions and Interrogatories to be served by first class mail to Keith M. Pemrick Esq., filed by s/ John Sughrue Esq. 3CC Atty Sughrue.	Fredric Joseph Ammerman
	Certificate of Service, filed. That on January 16, 2009, a true and correct copy of Defendant's Request for Production of Documents to be served by first class mail to Keith M. Pemrick Esq., filed by s/ John Sughrue Esq. 3CC Atty Sughrue.	Fredric Joseph Ammerman
2/25/2009	Plaintiff's Supplemental Pre-Trial Statement, filed by s/ Keith M. Pemrick Esq. 1CC Atty Pemrick.	Fredric Joseph Ammerman
	Notice of Service, filed. Served Plaintiffs' Response to Request for Admissions and Interrogatories and Response to Requests for Production of Documents via first class mail on February 23, 2008 to John Sughrue Esq., filed by s/ Keith M. Pemrick Esq. 1CC Atty Pemrick.	Fredric Joseph Ammerman
2/27/2009	Motion For Summary Judgment, filed by s/ John Sughrue, Esquire. 6cC Atty. Sughrue	Fredric Joseph Ammerman
3/2/2009	Order, this 2nd day of March, 2009, upon consideration of Defendant, John D. Duttry's Motion For Summary Judgment, a Rule is issued upon Plaintiffs. Argument on the merits of said motion shall be held on the 31st day of March, 2009 at 9:00 A.M. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Sughrue	Fredric Joseph Ammerman
3/9/2009	Filing: Subpoena Paid by: Pemrick, Keith M. (attorney for Cherry Timber Associates, Inc.) Receipt number: 1928425 Dated: 3/9/2009 Amount: \$3.00 (Check) For: Cherry Timber Associates, Inc. (plaintiff)	Fredric Joseph Ammerman



Date: 2/9/2010

Time: 03:13 PM

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Clerk of Court County Court of Common Pleas

ROA Report

Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

User: BHUDSON

Civil Other-COUNT

Date		Judge
3/16/2009	Notice of Trial Deposition, filed. To John D. Duttry-c/o John Sughrue Esq., Thelma D. Bush and Beverly Williams, you are hereby respectfully notified that Cherry Timber Associates Inc., and Chagrin Land Limited Partnership, will take the deposition of Lionel Alexander, Alexander and Associates Inc. oral examination on March 31, 2009 at 12:30 pm., filed by s/ Keith M. Pemrick Esq. 1CC ASsty Pemrick.	Fredric Joseph Ammerman
3/30/2009	Factual Affidavit of John Sughrue, Attorney, in Support of Motion for Summary Judgment, filed by s/John Sughrue, Esq. One CC Attorney Sughrue	Fredric Joseph Ammerman
	Plaintiffs' Response to John D. Duttry's Motion for Summary Judgment, filed by s/Keith M. Pemrick, Esq. No CC	Fredric Joseph Ammerman
	Plaintiff's Exhibits in Response to Motion for Summary Judgment, filed. No CC	Fredric Joseph Ammerman
3/31/2009	Proof of Service of Subpoenas, filed. Subpoenas directing attendance at Trial on April 21, 2009, were served on Audra Mitchell (now Audra Geiser) and Scott V. Jones Esq., pursuant to Pennsylvania Rule of Civil Procedure by certified mail, restricted delivery, filed by s/ Keith M. Pemrick Esq. 1CC Atty Pemrick.	Fredric Joseph Ammerman
4/1/2009	Order, AND NOW, this 31st day of March 2009, following argument on the Defendant's Motion for Summary Judgment, it is the ORDER of this Court that either counsel may have until and including Friday, April 3, 2009, in which to submit letter brief. The same may be submitted by fax, if counsel so desires. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins.	Fredric Joseph Ammerman
4/20/2009	Motion In Limine, filed by s/ John Sughrue, Esquire. 5CC Atty. Sughrue	Fredric Joseph Ammerman
	Order, filed Cert. copies to Atty. Sughrue for Service NOW, this 20th day of April, 2009, ORDER that Defendant John D. Duttry's Motion for Summary Judgment, be and is hereby DENIED.	Fredric Joseph Ammerman
4/21/2009	Certificate of Service, filed. That on April 21, 2009 I caused Order dated April 21, 2009 Denying the Motion for Summary Judgment to be served on Keith M. Pemrick Esq. by facsimile and by personal service upon Keith M. Pemrick Esq. Christopher E. Mohny Esq., Ms. Thelma D. Bush and Ms. Beverly Copelli, filed by s/ John Sughrue Esq. 1CC Atty Sughrue.	Fredric Joseph Ammerman
4/23/2009	Stipulation, signed by Keith M. Pemrick, Esquire, and John Sughrue, Esquire. No CC	Fredric Joseph Ammerman
4/24/2009	Order, this 22nd day of April, 2009, it is Ordered that counsel for the Plaintiff provide the Court with appropriate letter brief within no more than 30 days from this date. Counsel for Defendant shall provide the Court with appropriate letter brief within no more than 45 days from this date. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins	Fredric Joseph Ammerman
7/29/2009	Order, this 28th day of July, 2009, following non-jury trial, it is the FINDINGS and Ordered: Plaintiff's request for Declaratory Judgment is GRANTED. The Defendants' Counterclaims including any Counterclaim for Declaratory Relief and/or Adverse Possession are hereby DISMISSED. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins	Fredric Joseph Ammerman
3/10/2009	Praeipice for Appearance, filed. Kindly enter my appearance on behalf of Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli, defendant, filed by s/ John Sughrue Esq. 4CC Atty Sughrue.	Fredric Joseph Ammerman

Date: 2/9/2010

Time: 03:13 PM

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Clerk of Court County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

Civil Other-COUNT

Date	Judge
3/10/2009	Fredric Joseph Ammerman
Exceptions of Defendants, John Duttry, Thelma Bush and Beverly Williams to Order dated July 28, 2009, Docketed July 29, 2009. filed by s/ 5CC Atty. Sughrue	
3/12/2009	Fredric Joseph Ammerman
Scheduling Order, this 12th day of August, 2009, Argument on Exceptions of Defendants, John D. Duttry, Thelma Bush and Beverly Williams to Order dated July 28, 2009, shall be held on the 8th day of Oct., 2009 at 2:00 p.m. in courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Sughrue	
10/8/2009	Fredric Joseph Ammerman
Order, this 8th day of Oct., 2009, the hearing on the Defendants' Exceptions to Order of July 28, 2009 scheduled this date is rescheduled to Nov. 2, 2009 at 10:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Hopkins, Sughrue, Pemrick	
11/19/2009	Fredric Joseph Ammerman
Order, NOW, this 17th day of November, 2009, following hearing on the Exceptions of Defendants John Duttry, Thelma Bush, and Beverly Williams to Order dated July 28, 2009, Order that said Exceptions be and are hereby dismissed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attorneys Pemrick, Sughrue, and Hopkins	
12/15/2009	Fredric Joseph Ammerman
Filing: Praecipe for Entry of Judgment Pursuant to Pa.R.C.P. No. 227.4(2) on the Court's Decision (Non-Jury Verdict) Paid by: Sughrue, John (attorney for Duttry, John D.) Receipt number: 1932589 Dated: 12/15/2009 Amount: \$20.00 (Check) For: Duttry, John D. (defendant) filed by s/John Sughrue, Esq. Judgment in favor of the Plaintiffs and against the Defendants, John D. Duttry, Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli on the Court's Decision (non-jury verdict) entered by Order dated July 28, 2009, and docketed on July 29, 2009. One CC and Notice of Judgment to Cherry Timber Associates, Inc., Chagrin Land Limited Partnership, John D. Duttry, Thelma Bush, Beverly R. Williams, and Audra Mitchell Seven CC Attorney Sughrue	
12/16/2009	Fredric Joseph Ammerman
Motion to Amend Title of Pleading, filed by Atty. Sughrue 5 cert. copies.	
Filing: Notice of Appeal to High Court Paid by: Sughrue, John (attorney for Duttry, John D.) Receipt number: 1932616 Dated: 12/16/2009 Amount: \$50.00 (Check) For: Duttry, John D. (defendant) 1 Cert. to Superior Court with \$73.50 Check. 2 Cert. to Atty.	
12/23/2009	Fredric Joseph Ammerman
Order, this 22nd day of Dec., 2009, it is Ordered that John D. Duttry file a concise statement of the matters complained of on appeal no later than 21 days herefrom. by The Court, /s/ Fredric J. Ammerman, Pres. Judge 1CC Attys: Pemrick, Sughrue	
Motion to Enter Consent Order, filed by s/ John Sughrue, Esquire. 2CC Atty. Sughrue	
Order to Amend Pleading, NOW, this 22nd day of Dec., 2009, it is Ordered that Defendants are granted Leave to Amend the Pleading filed on August 10, 2009 titled "Exceptions of Defendants, John D. Duttry, Thelma Bush and Beverly R. Williams to Order Dated July 28, 2009, Docketed July 29, 2009" to "Defendants' Post-Trial Motion" and said Pleading is amended to be titled, "Defendants' Post-Trial Motion". By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Sughrue	
12/28/2009	Fredric Joseph Ammerman
Appeal Docket Sheet from Superior Court with docket number 2159-WDA 2009	

Date: 2/9/2010

Time: 03:13 PM

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Clerk of Court County Court of Common Pleas

ROA Report

Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

User: BHUDSON


Civil Other-COUNT

Date		Judge
1/12/2010	Defendant/Appellant's Concise Statement of Matters Complained of on Appeal, filed by s/ John Sughrue, esquire. 7CC to Atty.	Fredric Joseph Ammerman
2/5/2010	Opinion, filed Cert. to Atty's Pemrick, Mohnney, Sughrue, Miksell and Law Library	Fredric Joseph Ammerman

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

FEB 09 2010

Attest.

  
Prothonotary/  
Clerk of Courts

**FILED**

**FEB 09 2010**

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

LA

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

CHERRY TIMBER ASSOCIATES, INC., :  
and CHAGRIN LAND LIMITED :  
PARTNERSHIP, :  
Plaintiffs :

vs. :

NO. 06-1498-CD

AUDRA MITCHELL, JOHN D. DUTTRY, :  
THELMA BUSH and BEVERLY R. :  
WILLIAMS a/k/a BEVERLY COPELLI :  
Defendants :

**FILED**

5 FEB 05 2010  
6 / 3:15 / W  
William A. Shaw  
Prothonotary/Clerk of Courts

SENT TO ATTORNEY

PERMANENT  
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MICKEL

**OPINION**

On September 14, 2006, Cherry Timber Associates, Inc. and Chagrin Land Limited Partnership, (hereinafter "Plaintiffs"), filed a Complaint for Declaratory Judgment against Audra Mitchell, John D. Duttry, Thelma Bush, and Beverly R. Williams (a/k/a Beverly Copelli), (hereinafter "Defendants").<sup>1</sup> Said declaratory judgment pertains to funds placed in escrow, as a result of timber harvesting contract, where the parties dispute the ownership of property in Huston Township, Clearfield County, from which the timber was harvested. The remaining Defendants are all one-third (1/3) owners as tenants-in-common of a parcel of land in Huston Township, and on October 18, 1994, entered into a Timber Harvest Agreement, (hereinafter "Agreement") with Mitchell Lumber Company, (hereinafter "Mitchell Lumber"). Between October 18, 1994 and October 18, 1995, Mitchell Lumber harvested timber pursuant to the Agreement. Plaintiffs alleged that in the course of harvesting, Mitchell Lumber did cut and remove merchantable timber from Cherry Timber property.

When Plaintiffs advised Mitchell Lumber that they believed it had wrongfully removed timber from the Cherry Timber property, it agreed to deposit forty-five thousand (\$45,000.00)

<sup>1</sup> By Order dated August 20, 2008, this action was discontinued as to Defendant Audra Mitchell, upon her Petition for Order to Discontinue Action as to Defendant Audra Mitchell, which was granted by this Court.

#13

Dollars into an escrow account pending a resolution of the dispute as to the ownership of the harvested timber. The funds were sent to Scott V. Jones, Esquire ("escrow agent") and were deposited as "Scott V. Jones, Escrow Agent for Mitchell Lumber Co. and Chagrin Land Limited Partnership," (hereinafter "escrow" or "escrow funds"). The parties agreed via correspondence that said funds in escrow would remain in escrow until an agreement was reached, and if that did not occur, upon decision of a court of competent jurisdiction. The parties were unable to reach an agreement regarding the disposition of the escrow funds, and the present matter was instituted.

On April 21-22, 2009 a non-jury trial was held, and on July 28, 2009 this Court issued an Order in favor of the Plaintiffs. Defendant, John D. Duttry, filed a Notice of Appeal on December 16, 2009. By Order of this Court dated December 22, 2009, Defendant Duttry was ordered to file a Concise Statement of the Matters Complained of on Appeal in accordance with P.A.R.A.P. 1925(b). Defendant Duttry timely filed said concise statement, setting forth various issues raised on appeal.

Defendant Duttry first contends that this Court erred in awarding the escrow funds to Chagrin Land Limited Partnership, (hereinafter "Chagrin"), and by failing to find that Chagrin had no color of title to the land and timber, and therefore to the proceeds. By clarification, the Court, in its Order dated July 28, 2009, found that Plaintiff Cherry Timber Associates, (hereinafter "Cherry Timber"), had met its burden of proof to establish ownership of the property where the timber was harvested. At no time did Plaintiff Chagrin claim ownership to the property in question, but merely was an affiliate of Plaintiff Cherry Timber through common ownership. Chagrin's involvement in this matter, beyond the common ownership with Cherry Timber, dealt with the escrow account originally being deposited as "Scott V.

Jones, Escrow Agent for Mitchell Lumber Co. and Chagrin Land Limited Partnership.”

Further, the escrow funds had been in various interest bearing accounts and instruments since 1995, and in 2005 said funds were re-invested in a two-year Certificate of Deposit at First Commonwealth Bank. The aforesaid Certificate of Deposit identifies Mitchell Lumber and Chagrin Land Limited Partnership as the owners. The Court finds that Chagrin was merely listed as the owner on the escrow funds, acting as a quasi-agent of Cherry Timber, and as such was correctly determined to that both Chagrin and Cherry Timber were entitled to the funds in escrow.

Defendant Duttry broadly asserts that this Court erred in awarding the money in the escrow account to Cherry Timber. Defendant Duttry similarly asserts that the Court erred in failing to conclude that Defendants were the owners of the disputed sixty (60) acre tract in Huston Township, Clearfield County.<sup>2</sup> Specifically, Defendant Duttry avers that the Court erred in failing to conclude that Plaintiffs’ predecessors in title, Green Glen Corporation, (hereinafter “Green Glen”), had recognized and acquiesced in the location of the sixty (60) acre tract in the northern end of the old Bucksbee Farm.<sup>3</sup> This Court finds that Defendant Duttry (and Defendants as a whole) did not present sufficient evidence to establish the elements of the doctrine of recognition and acquiescence as a means of rebutting Plaintiffs’ evidence regarding the boundary line between the subject properties. Conversely, this Court finds that Plaintiff Cherry Timber presented sufficient evidence to clearly establish chain of

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<sup>2</sup> During trial the same tract was referred to as sixty (60) acres and fifty-eight (58) acres, and the Court will reference said tract as being sixty (60) acres herein.

<sup>3</sup> The old Bucksbee Farm property included a total acreage of roughly 180 acres. Having been split into two separate parcels of 123 acres and sixty (60) acres by subsequent owner Green Glen, the parties dispute rests on the location of the parcels within the overall 180 acres. Plaintiff Cherry Timber asserts that its sixty (60) acre tract is in the southwestern portion, with Defendants’ property being in the northeastern portion. Defendants’ claim the opposite, arguing their 123 acre tract is in the southern portion, and Plaintiff’s tract is in the northeastern portion.

title and ownership of the sixty (60) acre tract in question, with its location at the southern end of the old Bucksbee Farm.

“The establishment of a boundary line by acquiescence of a statutory period of time of twenty-one years has long been recognized in Pennsylvania. *Zeglin v. Gahagen*, 571 Pa. 321, 325-26, 812 A.2d 558, 561 (2002). Two elements are required to be shown in order to establish a boundary line by acquiescence: (1) each party must have claimed and occupied the land on his side of the line as his own, and (2) such occupation must have continued for the statutory period of twenty-one years. *Id.* at 326, 561 (citations omitted); *see also*, *Moore v. Moore*, 921 A.2d 1, 5 (Pa. Super. Ct. 2007). Further, the doctrine of acquiescence is commonly associated with the erection and maintenance of a fence as a visible demarcation of the boundary line. *See Zeglin*, 571 Pa. 321, 812 A.2d 558; *Dimura v. Williams*, 446 Pa. 316, 286 A.2d 370 (1972); *Reiter v. McJunkin*, 173 Pa. 82, 33 A. 1011 (1896); *Schimp v. Allaman*, 659 A.2d 1032 (Pa. Super. Ct. 1995).

In *Niles v. Fall Creek*, the Court explained the evidence necessary to establish a consentable line by recognition and acquiescence:

[O]ur courts have long recognized, however, that a boundary line may be proved by a long-standing fence without proof of a dispute and its settlement by a compromise. In *Dimura v. Williams*, [446 Pa. 316, 286 A.2d 370 (1972)], the court noted:

It cannot be disputed that occupation up to a fence on each side by a party or two parties for more than twenty-one years, each party claiming the land on his side as his own, gives to each an incontestable right up to the fence, and equally whether the fence is precisely on the right line or not. *Id.* 446 Pa. at 319, 286 A.2d at 371.

In such a situation the parties need not have specifically consented to the location of the line. *Dimura v. Williams*, *supra* [446 Pa.] at 319, 286 A.2d at 371. It must nevertheless appear that for the requisite twenty-one years



a line was recognized and acquiesced in as a boundary by adjoining landowners. See *Miles v. Pennsylvania Coal Co.*, 245 Pa. 94, 91 A. 211 (1914); *Reiter v. McJunkin*, 173 Pa. 82, 33 A. 1012 (1896).

545 A.2d 926, 930 (Pa. Super. Ct. 1988)(quoting *Inn Le'Daerda, Inc. v. Davis*, 360 A.2d 209, 215-16 (Pa. Super. Ct. 1976)).

In the present matter, Defendant Duttry did not set forth sufficient evidence to show that there was occupation up to a fence and/or other boundary by his predecessors in interest. Moreover, Lionel Alexander testified that there was no fence line or indication of a prior fence line separating the properties; therefore Defendants cannot argue they occupied the land up to any particular point or border. Defendant Duttry and Defendant Thelma Bush acknowledged that there were no structures on the property, and neither they nor their father (previous owner) had ever posted said property. Mere occasional timbering and/or hunting are not sufficient to establish a consentable line by recognition and acquiescence. Mr. Christopher Guth (employee of Plaintiffs' parent company- Industrial Timber and Lumber Company) testified that on a prior occasion, there had been a question about timber harvesting in this area, but after employing an abstractor, Fran McDermott, it was determined that the harvesting was occurring on the 123 acres northeast of the sixty (60) acre tract. The Court deems the testimony of Mr. Guth to be credible. Also, this Court finds that Defendants' assertion that no one had previously challenged their ownership of the property from which the timber was cut was insufficient to establish ownership through the doctrine of recognition and acquiescence. Defendant Duttry has not shown that he

and/or his fellow tenants-in-common or predecessors in title actually occupied the land in dispute for the requisite twenty-one (21) years.

Plaintiff Cherry Timber met its burden of proving that it owned the property where the timber was harvested. Plaintiffs' presented the 1927 Deed from John E. Dubois to Bucksbee, which contained a metes and bounds description of the property based on a May 29, 1922 survey by J.E. Fry. (Plaintiffs' Exhibit 1). Lional Alexander, a land surveyor, was engaged to perform a retracement survey of the property to establish its actual location. Mr. Alexander testified that J.E. Fry was known to be a surveyor who performed surveying work for John E. Dubois in the early 1900s, and that he was able to locate original field notes made by Mr. Fry when he surveyed the Cherry Timber property in 1922. (Plaintiffs' Exhibit 6). Mr. Alexander testified that he also located extensive evidence of boundary lines for the sixty (60) acre parcel in the southern portion of the old Bucksbee Farm during his investigation of the field, including but not limited to: tree lines, fence lines and a corner tree. Additionally, Mr. Alexander testified while doing research at the courthouse he located a deed for an adjoining property (Plaintiffs' Exhibit 5), which contained several calls that matched calls in the description in the 1927 deed from Dubois to Bucksbee. As a result, Mr. Alexander testified that it was his opinion "with certainty" that the sixty (60) acre parcel was parcel No. 119-E4-16 as shown on Plaintiff's Exhibit 9, which locates the parcel in the southwestern portion. Having noted his extensive training and experience, the Court deems the testimony of Mr. Alexander to be credible.

The Plaintiff's also presented the testimony of Zoe Withey and Michael D. Snyder, Esquire, in support of Cherry Timber's claim of ownership to the sixty (60) acre parcel from which the timber was harvested. Ms. Withey, an independent title abstractor, testified that

during the course of constructing the chain of title for the Cherry Timber property, she checked all appropriate indices for adverse conveyances and found none. Regarding the 123 acre parcel, Ms. Withey also testified that the deed dated February 21, 1955, from Harry and Annie Bender to Harold E. Duttry and Mary Duttry (Deed Book 440, page 573), was the first to actually contain a description of the property, and said description placed the 123 acre parcel on the northern end of the land of the Green Glen.

Attorney Snyder reviewed the information contained in the Withey abstract, and concluded that the inclusion of Parcel No. 21 in the deed of Green Glen to Cherry Timber, was legally sufficient to convey title to the sixty (60) acre parcel to Cherry Timber. In addition, Attorney Snyder testified that the "...chain of title to this sixty (60) acre parcel clearly identifies that sixty (60) acre piece right there," indicating the southwestern part of the Bucksbee tract. *See* Trial Transcript, Day II of II, p. 32, lines 4-5. The Court finds the testimony of Ms. Withey and Attorney Snyder to be credible. Also, the Court finds further support from the tax assessment map for Huston Township (Plaintiffs' Exhibit 9) that located the sixty (60) acre parcel southwest of the 123 acre Duttry parcel.

In contrast to the abundant evidence presented by Cherry Timber in support of its claim to ownership of the sixty (60) acre tract in the southern portion, the Defendants only presented a small amount of evidence in support of their claim of ownership. Defendants did not present any evidence or expert testimony to rebut the Plaintiffs' evidence regarding Cherry Timber's ownership of the sixty (60) acre parcel. The testimony of Mary Anne Jackson merely showed that there had been mistakes in assessments records, which in itself was not sufficient to rebut the evidence set forth by Plaintiffs. As testified by Attorney Snyder, "...[assessment records] can be indicative. But deeds convey title to property, not assessment records." *See* Trial

Transcript, Day II of II, p. 25, lines 12-13. Attorney Snyder further averred that if there's a conflict between an assessment record and a deed filed of record, "[t]he deed would control." See Trial Transcript, Day II of II, p. 25, lines 14-16. Defendants John Duttry and Thelma Bush's self-serving testimony merely showed they believed they owned the southwestern tract, but offered no viable evidence to support that claim beyond using the land for hunting and occasional timbering. The Court finds this insufficient to rebut the plethora of evidence presented by Plaintiffs.

The next ground for appeal set forth by Defendant Duttry argues that the Court erred in failing to find that the Plaintiffs either individually and/or jointly were required to bring their claim for unlawful removal of timber from real estate within two (2) years of the date of such conversion pursuant to 42. PA.C.S.A. §8311(a) and 42. PA.C.S.A. §§5524(3), (4), (5), and (7). Similarly, Defendant Duttry avers that the Court also erred in failing to grant Defendants' Motion for Summary Judgment on the basis that Plaintiffs' claim was barred by the statute of limitations. Plaintiffs' claim was filed as a Declaratory Judgment Action seeking resolution of a dispute as to the ownership of the timber wrongfully harvested by Mitchell Lumber, and the funds deposited into escrow.<sup>4</sup> The Declaratory Judgment Act provides that, "Courts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." 42 PA.C.S.A §7532. The central issues of this action are: (1) the ownership of property from which Mitchell Lumber harvested timber pursuant to a Timber Harvest Agreement and (2) the ownership of escrow funds which are directly tied to the ownership of the property and timber.

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<sup>4</sup> The Court finds Defendants' attempt to characterize Plaintiffs' action as one of unlawful conversion of timber, which carries a two (2) year statute of limitations, is improper. Plaintiffs dispute is against Defendants as to the ownership of the escrow funds, which is necessarily tied with the ownership of the timber, and is not against Mitchell Lumber for removing said timber.

Declaratory judgments are subject to the four-year "catch all" statute of limitations. *Wagner v. Apollo Gas Co.*, 582 A.2d 364 (Pa. Super. Ct. 1990)(citing 42 Pa.C.S.A. §5525(8)). The statute of limitations may be waived by the persons for whose benefit it exists, and the right to recover may be based on a waiver of the statute. *Com., Dept. of Public Welfare v. UEC, Inc.*, 483 Pa. 503, 397 A.2d 779 (1979); *Smith v. Pennsylvania Railroad Co.*, 304 Pa. 294, 156 A. 89 (1931); *Borough of Greensburg v. Public Service Commission of Pennsylvania*, 268 Pa. 177, 110 A. 750 (1920). It can be waived by explicit consent or by conduct. *Checchio By and Through Checchio v. Frankford Hospital- Torresdale Div.*, 717 A.2d 1058 (Pa. Super. Ct. 1998); *Cobbs v. Allied Chemical Corp.*, 661 A.2d 1375 (Pa. Super. Ct. 1995).

In this action, the Court finds that Defendants waived the four-year statute of limitations by their conduct. The Court finds that in the correspondences between the parties' attorneys and the escrow agent, the parties agreed that the proceeds should remain in escrow until this matter was resolved. Specifically, by Letter dated, April 5, 1995, counsel for Defendant Duttry stated:

[T]hus, I renew my suggestion to both you and Scott [escrow agent]. The money should be placed in an escrow account in the name of a representative of each landowner and Mr. Mitchell if he desires. The owner as determined by a court of competent jurisdiction would ultimately receive the funds. Resolution of the matter would require a court determination absent an earlier agreement and in any event, would require a survey of the entire tract, a survey of the individual tracts, and location of the disputed timber tract within it.

Plaintiff's Exhibit No. 26.<sup>5</sup> In response to the above quoted letter, counsel for Plaintiffs replied via Letter dated, April 10, 1995, stating:

[P]lease be assured that the money presently held in escrow by Scott Jones will remain in escrow until after we have met and attempted to resolve this

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<sup>5</sup> Appeared prior as Defendants' Exhibit 11 to Defendants' Motion for Summary Judgment, and was considered in the Court's decision to deny said motion.

matter. In the event we agree that we cannot amicably resolve this dispute I would expect that we would enter into an agreement for the disposition of the escrow pending a decision of the court.

Defendants' Exhibit H.<sup>6</sup>

Also, Stephen Jilk testified that a meeting between the parties in this matter took place in July of 1996, and regarding the funds in escrow, Mr. Jilk stated "...they were to remain in escrow until the parties could agree or until it went to trial." *See* Trial Transcript, Day I of II, p. 81, lines 10-11. Scott V. Jones, Esquire, mirrored this same understanding, stating that the funds were to remain in escrow and "I was to continue as escrow agent until the matter was resolved either by agreement or litigation." *See* Trial Transcript, Day I of II, p. 126, lines 13-14. Additionally, Barry Garbarino, Esquire, formally counsel for Plaintiffs' at the July 2006 meeting, testified it was his understanding at the conclusion of said meeting that, "Scott [Jones, Esq.] would continue to keep, retain, the escrow account until either John [Sughrue, Esq.] and I agreed and resolved the matter or one of us litigated the issue and we had a final result from the Court." *See* Trial Transcript, Day I of II, p. 137, lines 15-18.

In accordance with the agreement between the parties, having not been able to come to a mutual agreement on the underlying dispute, the funds remained in escrow until this Court determined that Plaintiffs were entitled to the funds after non-jury trial on April 21-22, 2009. Therefore, the Court properly denied Defendant Duttry's Motion for Summary Judgment and the case went to trial for a determination as to the ownership of the property and funds in escrow, as agreed by the parties.

Defendant Duttry's last contention is that the Court erred in discontinuing the actions against Co-Defendant Audra Mitchell, and dismissing her from this case. Specifically,

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<sup>6</sup> Appeared prior as Defendants' Exhibit 12 to Defendants' Motion for Summary Judgment, and was considered in the Court's decision to deny said motion.

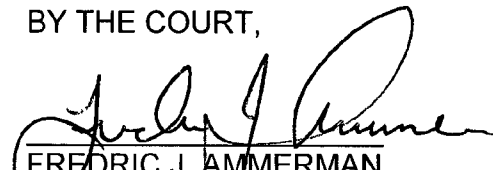
Defendant Duttry avers that the Court erred in dismissing Mrs. Mitchell because she was a necessary and indispensable party to this litigation. Mrs. Mitchell, as the widow and sole heir of Paul Mitchell, was the successor in interest to any claim Mitchell Lumber might have had to the escrow funds. Mitchell Lumber originally paid the money into escrow because there was a dispute as to the ownership of a portion of the trees harvested under the Agreement. Mitchell Lumber understood that it owed the proceeds to the owner of the property from which the timber was removed, and it voluntarily paid the money into escrow pending the resolution of who was entitled to the funds. Defendants' attempts to argue that Plaintiffs threatened or coerced Paul Mitchell into having the funds placed into escrow are unfounded. After being asked, "Did he [Mr. Jilk] make any kind of threats or try to intimidate or coerce you in any way?" Mrs. Mitchell definitely testified, "No." *See* Trial Transcript, Day I of II, p. 109, lines 20-22.

During pendency of this case Mrs. Mitchell filed a Petition wherein she asked the Court to discontinue the action as to her, pursuant to P.A.R.C.P. 229(b). In said Petition, Mrs. Mitchell stated that she "...stakes no claim to the money deposited into escrow by Mitchell Lumber Company, generally releases any claim to the money that she is deemed to have under law..." Therefore Mrs. Mitchell released any claim to the escrow funds, which were the subject of this case, and thus the dispute was only between remaining parties. While Plaintiffs' did not oppose said Petition, Defendant Duttry did not affirmatively consent to the relief requested, however he failed set forth any persuasive argument as to why the relief requested should not be granted. Defendant Duttry merely made broad assertions that Mrs. Mitchell was a necessary and indispensable party, but provides no support for such an allegation. The Court finds that it was still able to accord complete relief to the remaining parties in this action without Mrs.

Mitchell's presence as a party, and granting the discontinuance did not impair or impede Mrs. Mitchell's ability to protect her interest, nor did it leave Defendant Duttry at risk of incurring double, multiple, or inconsistent obligations. Defendant Duttry made no counterclaims (cross-claims) against Mrs. Mitchell, and the Court finds that it was correct in discontinuing the action as to Mrs. Mitchell.

DATE: February 5<sup>th</sup> 2010

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge



**FILED**  
FEB 05 1999  
Prothonotary/Clerk in Court  
William A. Shea

FILED

JAN 12 2010

01/30/10  
William A. Shaw  
Prothonotary/Clerk of Courts

2 Cmt to App

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

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

**Type of Case:** Civil Action

**Type of Pleading:** Defendant/Appellant's Concise  
Statement of Matters Complained of on Appeal  
Pursuant to Pa.R.C.P. 1925(b)

**Filed on Behalf of:** Co-Defendant, John D. Duttry

**Counsel of Record for this Party:**

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Supreme Court No. 01037  
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**Other Counsel of Record:**

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Christopher E. Mohny  
25 East Park Avenue, Ste. 6  
DuBois, PA 15801  
Phone: 814-375-1044  
Fax: 814-375-1088

#72

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**DEFENDANT/APPELLANT'S CONCISE STATEMENT OF MATTERS**  
**COMPLAINED OF ON APPEAL PURSUANT TO Pa.R.C.P. 1925(b)**

AND NOW, comes Defendant, John D. Duttry, Appellant in the Superior Court of Pennsylvania, and in accordance with Pa.R.C.P. 1925(b) files a Concise Statement of the matters complained of on Appeal as follows:

**PREFACE**

The Trial Court's Decision dated July 28, 2009 was so general in its findings of fact and application of law that the Defendant/Appellant could not readily discern the basis for the Judge's Decision, including his findings of the facts, conclusions of law and application of law to the facts. As a result, the Post-Trial Motion was more extensive and general than it would otherwise be. The Court's Order dated November 17, 2009 dismissing the Post-Trial Motion likewise did not set forth any substantive of basis for the dismissal. As a result, the following statement, if too general, is a result of the lack of a prior detailed opinion filed by the Court.

### **STATEMENT OF ISSUES TO BE RAISED ON APPEAL**

1. The Trial Court erred in awarding the money in the escrow account to Chagrin Land Limited Partnership, an Ohio Limited Partnership and by failing to find that Chagrin had no color of title to the land and timber and therefore to the proceeds.

2. The Trial Court erred in awarding the money in the escrow account to Cherry Timber Associates, Inc., an Ohio Corporation.

3. The Trial Court erred in failing to conclude that Appellant, John D. Duttry, and Co-Defendants, Thelma Bush and Beverly Copelli, were the owners of the disputed 60 acre real estate tract in Huston Township, Clearfield County, Pennsylvania, located on the southern end of the old Bucksbee Farm under the Doctrine of Recognition and Acquiescence, Corbin v. Cowan A2<sup>nd</sup> 614 (PA Super 1998) and cases cited therein.

Subissue A: The Trial Court erred in failing to conclude that Plaintiffs' predecessors in title, Green Glen Corporation, had recognized and acquiesced in the location of its 60 acre tract in the northern end of the old Bucksbee Farm as confirmed by the specific conveyance of 60 acres in the northern part by Item 13 in Cherry Timber's deed from Green Glen Corporation, **Defense Exhibit A** and as set forth on Green Glen's map, **Plaintiff Exhibit 11**, both of which acknowledged and located Green Glen's 60 acres on the Bucksbee Farm's northern end. Further, by failing to find the facts set forth in the Post-Trial Motion relevant to ownership, title and the Doctrine of Recognition and Acquiescence, all of which are incorporated herein by reference.

Subissue B: In failing to conclude that Cherry Timber had the chain of title for 60 acres from Green Glen that it is specifically located in the northern part of the Bucksbee Farm and that the specific transfer of that 60 acres is located in that situation supersedes the catchall paragraph contained in Green Glen's deed; that Cherry Timber was not an original party to the claim or dispute and therefore, not a party to the escrowed funds. In failing to conclude that there is no legal basis for transferring to Cherry Timber, funds that are escrowed for the benefit of Chagrin and Mitchell. Further, by failing to find the facts set forth in the Post-Trial Motion relevant to said issue, all of which are incorporated herein by reference.

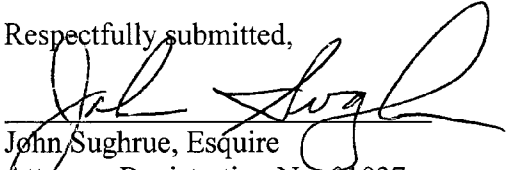
4. The Court erred in failing to find that the Plaintiffs either individually and/or jointly were required to bring their claim for unlawful removal of timber from real estate within two years of the date of such conversion pursuant to 42 Pa.C.S.A. §8311(a) and 42 Pa.C.S.A. §5524(3), (4), (5) and (7), including the following subissues:

Subissue A: The court erred in failing to conclude that these funds arose out of the dispute for the unlawful removal of timber from real property; that the funds were placed by Mitchell with Attorney Jones as a result of that allegation; that Mitchell deposited Duttry funds without Duttry's consent or acquiescence; that the Plaintiffs did not individually or jointly bring an action in trespass for wrongful conversion within two years of January 1995 and specific facts relevant thereto as set forth in more detail in the Post-Trial Motion, all of which are incorporated herein by reference.

5. The Trial Court erred by failing to grant Defendants' Motion for Summary Judgment on the basis that Plaintiffs' claim was barred by the aforesaid Statute of Limitations.

6. That the Trial Court erred in discontinuing the actions against Co-Defendant, Audra Mitchell, and dismissing her from the case, including its failure to find the facts relevant thereto as more fully set forth in the Post-Trial Motion, all of which are incorporated herein by reference and in its application of the Rules of Civil Procedure and law generally relevant to that issue.

Respectfully submitted,



John Sughrue, Esquire  
Attorney Registration No. 01037  
225 East Market Street  
Clearfield, PA 16830  
Attorney for Defendant, John D. Duttry

**CERTIFICATE OF SERVICE**

I hereby certify that I am this 12<sup>th</sup> day of January, 2010, serving the foregoing document,  
**DEFENDANT/APPELLANT'S CONCISE STATEMENT OF MATTERS COMPLAINED  
OF ON APPEAL PURSUANT TO Pa.R.C.P. 1925(b)**, upon the persons and in the manner  
indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

**By Personal Service by delivery to the following named individuals  
at their principal offices located at the following addresses:**

Honorable Fredric J. Ammerman, Phone: 814-765-2641 ext. 1315  
Fax: 814-765-7649  
Clearfield County Courthouse  
1 North Second Street, 2<sup>nd</sup> Floor  
Clearfield, PA 16830

Mr. Daniel Nelson, Court Administrator, Phone: 814-765-2641, ext. 1303  
Fax: 814-765-7649  
Clearfield County Courthouse  
1 North Second Street, 2<sup>nd</sup> Floor  
Clearfield, PA 16830

**By United States Mail, First Class, Postage Prepaid, by depositing the same  
with the US Postal Service at Clearfield, Pennsylvania, Main Post Office,  
South Second Street, Addressed as Follows:**

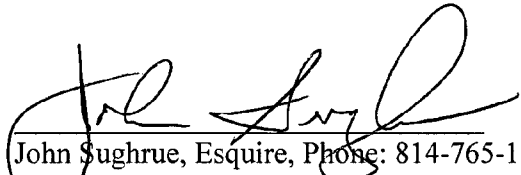
Keith M. Pemrick, Esquire, Phone: 814-432-2181  
Fax: 814-437-3212  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298  
Attorney for Cherry Timber Associates, Inc., Plaintiff  
Attorney for Chagrin Land Limited Partnership, Plaintiff

Christopher E. Mohny, Esquire, Phone: 814-375-1044  
Fax: 814-375-1088  
25 East Park Avenue, Suite 6  
DuBois, PA 15801  
Attorney for Audra Mitchell, Defendant

Ms. Thelma D. Bush, Pro Se, Phone: 814-371-1230  
450 Salada Road  
DuBois, PA 15801

Ms. Beverly Copelli, Pro Se, Phone: 814-265-1339  
1220 Second Avenue  
Brockway, PA 15824

Date: January 12, 2010



John Sughrue, Esquire, Phone: 814-765-1704  
Fax: 814-765-6959  
Email: [jsughrue@sughruelaw.com](mailto:jsughrue@sughruelaw.com)  
Attorney Registration No. 01037  
225 East Market Street  
Clearfield, PA 16830  
Attorney for Defendant, John D. Duttry



William A. Shaw  
Prothonotary/Clerk of Courts

JAN 12 2010

FILED

## Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 2159 WDA 2009

Page 1 of 3

Secure



December 23, 2009

## CAPTION

Cherry Timber Associates, Inc., and Chagrin Land Limited Partnership

v.

Audra Mitchell, John D. Duttry, Thelma Bush, and Beverly R. Williams a/k/a Beverly Copelli

Appeal of: John D. Duttry

**FILED**  
 mlz:ok  
 DEC 28 2009

## CASE INFORMATION

William A. Shaw  
 Prothonotary/Clerk of Courts

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: December 16, 2009 Awaiting Original Record

Journal Number:

Case Category: Civil Case Type(s): Declaratory Judgment

**COPY**

## CONSOLIDATED CASES

## RELATED CASES

## SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Due Date: January 6, 2010

Next Event Type: Original Record Received

Next Event Due Date: February 16, 2010

## COUNSEL INFORMATION

**Appellant Duttry, John D.**

Pro Se: No Appoint Counsel Status: Represented

IFP Status: No

Attorney: Sughrue, John

Bar No: 001037

Law Firm: Law Office of John Sughrue

Address: 225 E Market St  
Clearfield, PA 16830

Phone No: (814) 765-1704

Fax No: (814) 765-6959

Receive Mail: Yes

Receive EMail: No EMail Address: jsughrue@sughruelaw.com

**Appellee Copelli, Beverly**

Pro Se: Yes Appoint Counsel Status: Not Represented

IFP Status:

Pro Se: Copelli, Beverly

Address: 1220 Second Avenue  
Brockway, PA 15824

Phone No:

Fax No:

Receive Mail: Yes

Receive EMail: No EMail Address:

#71

**Appeal Docket Sheet**

Superior Court of Pennsylvania

**Docket Number: 2159 WDA 2009****Page 2 of 3****December 23, 2009****Secure****COUNSEL INFORMATION****Appellee Cherry Timber Associates, Inc.**

Pro Se: No Appoint Counsel Status: Represented

## IFP Status:

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 Bar No: 030322  
 Law Firm: Dale Woodard Law Firm  
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 Receive Mail: Yes  
 Receive EMail: No EMail Address: pemricklaw@csonline.net

**Appellee Chagrin Land Limited Partnership**

Pro Se: No Appoint Counsel Status: Represented

## IFP Status:

Attorney: Pemrick, Keith Michael  
 Bar No: 030322  
 Law Firm: Dale Woodard Law Firm  
 Address: 1030 LIBERTY ST  
 FRANKLIN, PA 16323-1298  
 Phone No: (814) 432-2181 x:16 Fax No: (814) 437-3212  
 Receive Mail: Yes  
 Receive EMail: No EMail Address: pemricklaw@csonline.net

**Appellee Bush, Thelma**

Pro Se: Yes Appoint Counsel Status: Not Represented

## IFP Status:

Pro Se: Bush, Thelma  
 Address: 450 Salada Road  
 DuBois, PA 15801  
 Phone No: Fax No:  
 Receive Mail: Yes  
 Receive EMail: No EMail Address:

**FEE INFORMATION**

Date	Name	Receipt Number	Fee Amt	Paid Amt
12/16/2009	Notice of Appeal	2009-SPR-W-001257	73.50	73.50

**AGENCY/TRIAL COURT INFORMATION**

Court Below: Clearfield County Court of Common Pleas  
 County: Clearfield Division: Clearfield County Civil Division  
 Order Appealed From: December 15, 2009 Judicial District: 46  
 Documents Received: December 21, 2009 Notice of Appeal Filed: December 16, 2009  
 Order Type: Judgment Entered  
 OTN(s):  
 Lower Ct Docket No(s): No. 06-1498-CD  
 Lower Ct Judge(s): Ammerman, Fredric J.  
 President Judge

10:02 A.M.

Superior Court of Pennsylvania

**Appeal Docket Sheet**

**Docket Number: 2159 WDA 2009**

**Page 3 of 3**

**December 23, 2009**

**Secure**



**ORIGINAL RECORD CONTENT**

Original Record Item	Filed Date	Content Description
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**Date of Remand of Record:**

**BRIEFING SCHEDULE**

None

None

**DOCKET ENTRY**

Filed Date	Docket Entry	Participant Type	Filed By
December 16, 2009	Notice of Appeal Docketed	Appellant	Duttry, John D.
December 23, 2009	Docketing Statement Exited (Civil)		Western District Filing Office

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

FILED  
01/14/00/6N  
DEC 23 2009

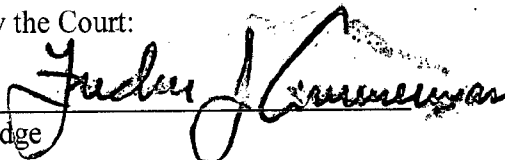
William A. Shaw  
Prothonotary/Clerk of Courts  
ICC Atty Sughrue  
(50)

**ORDER TO AMEND PLEADING**

AND NOW, to wit: this 22<sup>nd</sup> day of December, 2009, it appearing to the Court that Defendants filed a Motion to amend the title of a Post-Decision Pleading from "EXCEPTIONS OF DEFENDANTS, JOHN D. DUTTRY, THELMA BUSH AND BEVERLY R. WILLIAMS TO ORDER DATED JULY 28, 2009, DOCKETED JULY 29, 2009" to "DEFENDANTS' POST-TRIAL MOTION"; and, **Further** it appearing to the Court on Motion of Defendants that the Attorney for Plaintiffs has consented to the Prayer of said Motion pursuant to his communication dated December 17, 2009;

**NOW THEREFORE**, it is ORDERED that the Defendants shall be and are hereby granted Leave to Amend the Pleading filed on August 10, 2009 titled "EXCEPTIONS OF DEFENDANTS, JOHN D. DUTTRY, THELMA BUSH AND BEVERLY R. WILLIAMS TO ORDER DATED JULY 28, 2009, DOCKETED JULY 29, 2009" to "DEFENDANTS' POST-TRIAL MOTION" and said Pleading shall be and is hereby amended to be titled, "DEFENDANTS' POST-TRIAL MOTION".

By the Court:

  
Judge

(#70)

FILED

DEC 23 2009

William A. Shaw  
Prothonotary/Clerk of Courts

DATE 12/23/09

☒ 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—LAW

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

**Type of Case:** Civil Action

**Type of Pleading:** Motion to Enter Consent Order

**Filed on Behalf of:** John D. Duttry, Defendant

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
225 East Market Street  
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Fax: (814) 765-6959

**Other Counsel of Record:**

Keith Pemrick, Esquire  
Attorney for Plaintiffs  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

FILED  
DEC 23 2009

William A. Shaw  
Notary/Clerk of Courts

#69

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

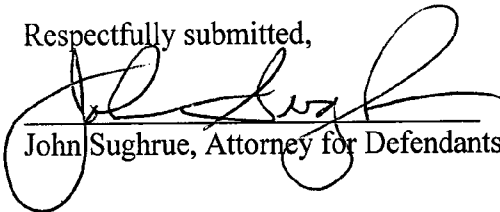
**MOTION TO ENTER CONSENT ORDER**

To the Honorable Fredric J. Ammerman, President Judge of Said Court,

**AND NOW**, comes Defendants by their Attorney, John Sughrue, and represents to the Court that on December 16, 2009, Defendants filed a Motion to Amend their Post-Trial, Post-Decision Pleading from "EXCEPTIONS OF DEFENDANTS, JOHN D. DUTTRY, THELMA BUSH AND BEVERLY R. WILLIAMS TO ORDER DATED JULY 28, 2009, DOCKETED JULY 29, 2009" to "DEFENDANTS' POST-TRIAL MOTION" and requested a Rule to Show Cause to be issued thereon; **FURTHER**, Defense Counsel represents that Defendants, by letter dated December 16, 2009, requested the consent of Plaintiffs' Counsel, Keith M. Pemrick, and that Plaintiffs' Counsel by communication dated December 17, 2009, copy attached, consented to the requested amendment.

**WHEREFORE**, on consent of the parties, Defendants suggest to the Court that entry of the attached Consent Order is appropriate to conclude the matter.

Respectfully submitted,

  
John Sughrue, Attorney for Defendants



**JOHN SUGHRUE**  
**Attorney at Law**

Phone: (814) 765-1704  
Fax: (814) 765-6959

225 East Market Street  
Clearfield, PA 16830

Email  
jsughrue@sughruelaw.com

December 16, 2009

**VIA FACSIMILE 437-3212 AND FIRST CLASS MAIL**

Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

**RE: Cherry Timber, et al. v. Duttry, et al.**

Dear Keith,

I guess I am going to give you the opportunity to secure additional quality business. I have been directed by my clients to file an appeal in the above matter. I entered Judgment as the rules require yesterday. You should receive your copy of the Praecipe in the mail today or tomorrow. I expect to file the appeal today.

As you pointed out, my post-trial pleading should have been indicated as a "Post-Trial Motion" and not as "Exceptions". I guess I was showing my age. In any event, as a matter of housekeeping, I am filing a Motion to amend the title of my post-trial pleading. A copy of that Motion is enclosed.

Please advise me of your position on the Motion. For your convenience, I have placed at the bottom of this letter, a place where you may, if you desire, indicate your position and return it to me by fax. If you have any questions, comments or concerns, please advise. Thank you for your consideration of this matter.

Very truly yours,

John Sughrue

JS/aw

To John Sughrue,

The Plaintiffs' position with respect to your Motion to amend the title of your post-trial pleading is:

           We oppose

           We have no position

  X   We consent

Date: 12/17/09

Keith M. Pemrick  
Keith M. Pemrick, Esquire  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

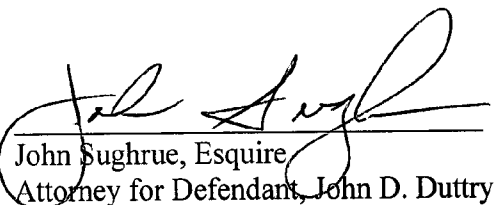
AND NOW, I do hereby certify that on December 22, 2009, I caused a true and correct copy of the within **MOTION TO ENTER CONSENT ORDER** to be served on all parties and in the manner indicated below:

**By United States Mail, First Class, Postage Prepaid**  
**Addressed as Follows:**

Cherry Timber Associates, Inc.  
c/o Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

Chagrin Land Limited Partnership  
c/o Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

Date: December 22, 2009

  
John Sughrue, Esquire  
Attorney for Defendant, John D. Duttry

FILED

DEC 23 2009

William A. Shaw  
Prothonotary/Clerk of Courts

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

CHERRY TIMBER ASSOCIATES, INC.  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,  
Plaintiffs

vs.

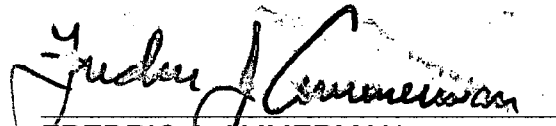
AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R. WILLIAMS,  
Defendants

NO. 06-1498-CD

ORDER

NOW, this 22<sup>nd</sup> day of December, 2009, this Court having been notified of Appeal to the Superior Court of Pennsylvania in the above-captioned matter; it is the ORDER of this Court that John D. Duttry, Appellant, file a concise statement of the matters complained of on said Appeal no later than twenty-one (21) days herefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

FILED  
01400/BN  
DEC 23 2009

William A. Shaw  
Prothonotary/Clerk of Courts

1CC  
Atty's:  
Perrick  
Seeghze

(610)

#608

FILED

DEC 23 2009

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 12/23/09

☒ 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**

DEC 16 2009

013:59/1m  
William A. Shaw  
Prothonotary/Clerk of Courts

1 SENT TO SUPERIOR COURT  
w/ 73.50 CR.

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

2 SENT TO ATT

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

**Type of Case:** Civil Action

**Type of Pleading:** Notice of Appeal and  
Order for Transcript

**Filed on Behalf of:** John D. Duttry, Defendant

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
225 East Market Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**Other Counsel of Record:**

Keith Pemrick, Esquire  
Attorney for Plaintiffs  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

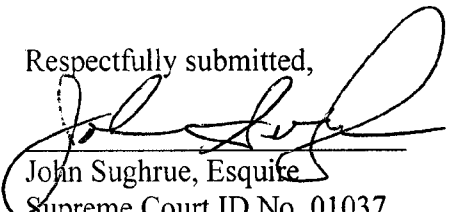
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No. 06-1498-CD

**NOTICE OF APPEAL**

Notice is hereby given that Defendant, John D. Duttry, above named, hereby appeals to the Superior Court of Pennsylvania from the Order dated November 17, 2009 by the Honorable Fredric J. Ammerman and docketed November 19, 2009 denying Defendants' Motion for Post-Trial Relief (mistakenly titled as Exceptions) and making final the Court's Decision entered by Order dated July 28, 2009 and docketed July 29, 2009 after a non-jury trial, a result of which, Judgment was entered in favor of the Plaintiffs and against the Defendants on December 15, 2009, all of which is evidenced by the attached certified copy of the docket entries. Concurrent herewith, the transcript of proceedings has been ordered pursuant to Pa.R.A.P. No. 1922, per the attached Order for Transcript.

Respectfully submitted,

  
John Sughrue, Esquire  
Supreme Court ID No. 01037  
225 East Market Street  
Clearfield, PA 16830  
Telephone: (814)765-1704  
Facsimile: (814) 765-6959

Date: 12/16/2009

Time: 01:57 PM

Page 1 of 6

## Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

## Civil Other-COUNT

Date		Judge
9/14/2006	New Case Filed.	No Judge
	Filing: Complaint for Declaratory Judgment Paid by: Pemrick, Keith M. (attorney for Cherry Timber Associates, Inc.) Receipt number: 1915563 Dated: 09/14/2006 Amount: \$85.00 (Check) 3CC shff.	No Judge
10/24/2006	Answer to Complaint For Declaratory Judgment, New Matter And Counterclaim For Declaratory Judgment, filed by s/ David J. Hopkins, Esquire. 1CC to Atty.	No Judge
10/25/2006	Praecipe For Entry of Appearance, filed by Atty. Sughrue, 4 Cert. to Atty. copy to C/A Enter my appearance on behalf of John D. Duttry, s/John Sughrue.	No Judge
11/3/2006	Answer of John D. Duttry to Original Complaint, filed by s/ John Sughrue, Esquire. 4CC to Atty	No Judge
	Certificate of Service, filed. That on November 3, 2006, a true and correct copy of Answer of John D. Duttry to Original Complaint to be served on Ms. Audra Mitchell, filed by s/ John Sughrue Esq. 2CC Atty Sughrue.	No Judge
11/16/2006	Filing: Praecipe to Re-issued Complaint Paid by: Pemrick, Keith M. (attorney for Cherry Timber Associates, Inc.) Receipt number: 1916481 Dated: 11/16/2006 Amount: \$7.00 (Check) 1 reinstated Complaint to shff.	No Judge
12/4/2006	Reply to New Matter and Answer to Counterclaim, filed by s/ Keith M. Pemrick Esq. No CC. (In Re: Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli)	No Judge
	Reply to New Matter and Answer to Counterclaim, filed by s/ Keith M. Pimrick Esq. NO CC. (In Re: John D. Duttry)	No Judge
12/13/2006	Sheriff Return, October 5, 2006 at 1:42 om Served the within Complaint for Declaratory Judgment on John D. Duttry. October 5, 2006 at 1:35 pm Served the within Complaint for Declaratory Judgment on Thelma Bush. September 19, 2006, Sheriff of Jefferson County was deputized. September 22, 2006 at 1:00 pm Served the within Complaint for Declaratory Judgment on Beverly R. Williams a/k/a Beverly Copelli. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Dale \$83.30 Jefferson Co costs pd by Dale \$34.76	No Judge
2/14/2007	Praecipe For Entry of Appearance, filed. Kindly enter my apperance on behalf of Defendant, Audra Mitchell, in the above-captioned case, filed by s/ Christopher E. Mohny Esq. NO CC., copy to C/A.	No Judge
	Sheriff Return, November 17, 2006, Sheriff of Elk County was deputized. November 27, 2006 at 2:30 pm Served the Complaint for Declratory Judgment on Audra Mitchell. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Woodard \$31.00 Elk Co. costs pd by Woodard \$30.79	No Judge
7/25/2007	Answer, filed by s/ Christopher E. Mohny, Esquire. 5CC Atty. Mohny	No Judge
8/31/2007	Notice of Service, filed. That an original and one (1) copy of Plaintiffs' interrogatories and Request for Production of Documents to John D. Duttry were served on counsel for John D. Duttry, and copies were served on all other counsel of record on August 28, 2007, filed by s/ Keith M. Pemrick Esq. 1CC Atty.	No Judge



4  
Date: 12/16/2009

Time: 01:57 PM

Page 2 of 6

Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

Civil Other-COUNT

Date		Judge
8/31/2007	Notice of Service, filed. That an original and one (1) copy of Plaintiffs' Interrogatories and Requests for Production of Documents Directed to Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli, were served on counsel for Thelma Bush and Beverly R. Williams, and copies were served on all other counsel of record on August 28, 2007, filed by s/ Keith M. Pemrick Esq. 1CC Atty.	No Judge
9/25/2007	Petition to Withdraw as Counsel, filed by s/ David J. Hopkins, Esquire. No CC	No Judge
9/27/2007	Rule, NOW, this 27th day of Sept., 2007, upon consideration of the Petition to Withdraw as Counsel filed on behalf of Defendants, Thelma Bush and Beverly R. Williams, Rule Returnable on the 6th day of Nov., 2007, at 9:00 a.m. in Courtroom 3. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Hopkins	Fredric Joseph Ammerman
10/19/2007	Certificate of Service, filed. That on October 19, 2007, a true and correct copy of Answers to Interrogatories and Answers to Request for Production to be served by first class mail to Keith Pemrick Esq., David Hopkins Esq., Christopher E. Mohny Esq. filed by s/ John Sughrue Esq. 4CC Atty.	Fredric Joseph Ammerman
11/6/2007	Order, this 6th day of Nov., 2007, it is Ordered that David J. Hopkins, Esquire, be permitted to withdraw as counsel for Beverly R. Williams and Thelma Bush, Defendants. By The Court, /s/ John K. Reilly, Jr., Senior Judge. 1CC Attys: Pemrick, Mohny, Sughrue, Hopkins; 1CC Thelma Bush, 450 Salada Road, DuBois, PA 15801; 1CC Beverly Williams, 1220 Second Ave., Brockway, PA 15824	John K. Reilly Jr.
4/2/2008	Notice of Deposition of John D. Duttry, filed by s/ Keith M. Pemrick Esq. No CC.	Fredric Joseph Ammerman
	Notice of Deposition of Audra Mitchell, filed by s/ Keith M. Pemrick Esq. No CC.	Fredric Joseph Ammerman
4/16/2008	Certificate of Service, filed. That on April 16, 2008, Defendant's Notice of Taking of Deposition of and Subpoena to Steven Jilk, by fax and first class mail to Mr. Steven Jilk-c/o Keith M Pemrick Esq. and Christopher E. Mohny Esq. and by first class mail to Ms. Thelma D. Bush and Ms. Beverly Copelli, filed by s/ John Sughrue Esq. 4CC Atty Sughrue.	Fredric Joseph Ammerman
5/15/2008	Petition For Order to Discontinue Action as to Defendant Audra Mitchell, filed by s/ Christopher E. Mohny, Esquire. 4CC Atty. Mohny	Fredric Joseph Ammerman
5/16/2008	Order, this 16th day of May, 2008, upon consideration of the foregoing Petition, a Rule is issued upon the parties in interest/respondents. A hearing on the Petition shall be held on the 17th day of July, 2008 in Courtroom 1 at 10:00 a.m. notice of the entry of this Order shall be provided to all parties by the Petitioner. By The Court, /s/ Fredric J. Ammerman, pres. Judge. 3CC to Atty.	Fredric Joseph Ammerman
6/12/2008	Response to Petition for Order to Discontinue Action as to Defendant Audra Mitchell, filed by s/ Keith M. Pemrick, Esquire. No CC	Fredric Joseph Ammerman
7/17/2008	Answer of Defendant, John D. Duttry. Filed by s/ John Sughrue, Esquire. 6CC to Atty	Fredric Joseph Ammerman

Date: 12/16/2009

Time: 01:57 PM

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Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

Civil Other-COUNT

Date		Judge
7/18/2008	Order, this 17th day of July, 2008, following argument on the Petition filed on behalf of Audra Mitchell for Order to Discontinue, it is Ordered that counsel for the Defendant, Audra Mitchell, the Plaintiffs, and John Duttry, supply the Court with proposed Order within no more than 15 days from this date. The Court has no objection to the Order being received by fax. By The Court /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Pemrick, Mohny, Sughrue, Hopkins	Fredric Joseph Ammerman
8/20/2008	Certificate of Readiness for non-jury Trial, filed by s/ Keith M. Pemrick, Esquire. no CC	Fredric Joseph Ammerman
	Order, this 20th day of august, 2008, after argument on Defendant Audra Mitchell's Petition for Order to Discontinue Action as to Defendant Audra Mitchell, and upon stipulation made on the record before the Court of Defendant Audra Mitchell as follows: The relief requested in the Petition for Order to Discontinue is granted. Audra Mitchell shall execute a Release individually and as sole beneficiary and Executrix of the Estate of Paul L. Mitchell releasing any claim she or the Estate has to the funds being held in escrow which are the subject of this litigation. Upon execution of the Release by Audra Mitchell, the Plaintiffs shall mark this action discontinued as to Audra Mitchell, only. (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Pemrick, Mohny, Sughrue, Hopkins	Fredric Joseph Ammerman
8/21/2008	Order, this 21st day of August, 2008, it is Ordered that Pre-trial conference shall be held on the 2nd day of Oct., 2008 in Chambers at 2:30 p.m. By The Court, /s/ Fredric J. ammerman, Pres. Judge. 1CC Attys: Pemrick, Mohny, Sughrue, Hopkins	Fredric Joseph Ammerman
8/28/2008	Motion to Strike Case From Trial List, filed by s/John Sughrue, esquire. 3CC Atty. Sughrue	Fredric Joseph Ammerman
8/29/2008	Order, this 29th day of August, 2008, upon consideration of Defendant, John D. Duttry's Motion to Strike Case from Trial List, a Rule is issued upon Plaintiffs and Co-Defendants. Rule Returnable on the 22nd day of Sept., 2008, for filing written response. Hearing on the Merits of said Motion shall be held on the 2nd day of Oct., 2008 at 2:30 p.m. in Courtroom 1. By The Court, /s/ Fredric J. ammerman, Pres. Judge. 3CC Atty. Sughrue	Fredric Joseph Ammerman
9/17/2008	Plaintiffs' Response to Motion to Strike Case from Trial List, filed by s/ Keith Pemrick, Esquire. No CC	Fredric Joseph Ammerman
9/24/2008	Release of All Claims, signed by Audra Mitchell. 1CC to Atty.	Fredric Joseph Ammerman
	Praeipe for Partial Discontinuance, please mark the above captioned action settled and discontinued as to Audra Mitchell ONLY. Filed by s/ Keith M. Pemrick, Esquire. 1CC to Atty.	Fredric Joseph Ammerman
9/25/2008	Motion to Reschedule Argument and Pre-Trial Conference, filed by Atty. Sughrue 6 Cert. to Atty.	Fredric Joseph Ammerman
9/26/2008	Motion for Protective Order, filed by s/Keith M. Pemrick No CC	Fredric Joseph Ammerman
	Order, this 26th day of Sept., 2008, upon consideration of Defendant, John D. Duttry's Motion to Reschedule Argument to Outstanding Motions and Pre-Trial Conference, a Rule is issued upon Plaintiffs and Co-Defendants. Argument on the Merits of said Motion shall be held on the 15th day of Oct., 2008 at 10:00 a.m. in Courtroom 2. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Sughrue	Fredric Joseph Ammerman

Date: 12/16/2009

Time: 01:57 PM

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Clearfield County Court of Common Pleas

ROA Report

User: BHUDSON

Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

Civil Other-COUNT

Date		Judge
9/29/2008	Amended Certificate of Service, filed. That on September 29, 2008 Co-defendant, John D. Duttry's Pre-trial Statement to be served by first class mail to Court Administrator, Christopher E. Mohny Esq., Ms Beverly Copelli, Keith M. Pemrick Esq., Ms. Thelma D. Bush, filed by s/ John Sughrue Esq. 1CC Atty Sughrue.	Fredric Joseph Ammerman
	Scheduling Order, this 29th day of Sept., 2008, it is Ordered that Pre-Trial Conf. scheduled for Oct. 2, 2008 is rescheduled for Oct. 15, 2008 at 10:00 a.m. in Courtroom 2. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins	Fredric Joseph Ammerman
	Order, this 29th day of Sept., 2008, it is Ordered that argument on the Plaintiffs' Motion for Protective Order shall be held on Oct. 15, 2008, in Courtroom 2 at 10:00 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. judge. 3CC Atty. Pemrick	Fredric Joseph Ammerman
10/15/2008	Affidavit in Support of Defendant John D. Duttry's Motion to Strike Case from Trial List, filed by s/ John Sughrue Esq. 3CC Atty Sughrue.	Fredric Joseph Ammerman
10/27/2008	Order, this 27th day of Oct., 2008, following argument relative the hearing on Motion for to Strike Case from Trial List, Pre-Trial Conference and Motion and for Protective Order, it is Ordered: Non-Jury trial is scheduled for two days, being April 21 and 22, 2009 in Courtroom 1 to commence at 9:00 a.m. on each day. (see original). By the Court, /s/ Paul E. Cherry, Judge. 1CC Attys; Pemrick, Hopkins, Sughrue	Fredric Joseph Ammerman
1/19/2009	Certificate of Service, filed. That on January 16, 2009, a true and correct copy of Defendant's Request for Admissions and Interrogatories to be served by first class mail to Keith M. Pemrick Esq., filed by s/ John Sughrue Esq. 3CC Atty Sughrue.	Fredric Joseph Ammerman
	Certificate of Service, filed. That on January 16, 2009, a true and correct copy of Defendant's Request for Production of Documents to be served by first class mail to Keith M. Pemrick Esq., filed by s/ John Sughrue Esq. 3CC Atty Sughrue.	Fredric Joseph Ammerman
2/25/2009	Plaintiffs Supplemental Pre-Trial Statement, filed by s/ Keith M. Pemrick Esq. 1CC Atty Pemrick.	Fredric Joseph Ammerman
	Notice of Service, filed. Served Plaintiffs' Response to Request for Admissions and Interrogatories and Response to Requests for Production of Documents via first class mail on February 23, 2008 to John Sughrue Esq., filed by s/ Keith M. Pemrick Esq. 1CC Atty Pemrick.	Fredric Joseph Ammerman
2/27/2009	Motion For summary Judgment, filed by s/ John Sughrue, Esquire. 6cC Atty. Sughrue	Fredric Joseph Ammerman
3/2/2009	Order, this 2nd day of March, 2009, upon consideration of Defendant, John D. Duttry's motion For summary judgment, a Rule is issued upon Plaintiffs. Argument on the merits of said motion shall be held on the 31st day of March, 2009 at 9:00 A.M. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Sughrue	Fredric Joseph Ammerman
3/9/2009	Filing: Subpoena Paid by: Pemrick, Keith M. (attorney for Cherry Timber Associates, Inc.) Receipt number: 1928425 Dated: 3/9/2009 Amount: \$3.00 (Check) For: Cherry Timber Associates, Inc. (plaintiff)	Fredric Joseph Ammerman

## Civil Other-COUNT

Date		Judge
3/16/2009	Notice of Trial Deposition, filed. To John D. Duttry-c/o John Sughrue Esq., Thelma D. Bush and Beverly Williams, you are hereby respectfully notified that Cherry Timber Associates Inc., and Chagrin Land Limited Partnership, will take the deposition of Lional Alexander, Alexander and Associates Inc. oral examination on March 31, 2009 at 12:30 pm., filed by s/ Keith M. Penrick Esq. 1CC ASsty Pemrick.	Fredric Joseph Ammerman
3/30/2009	Factual Affidavit of John Sughrue, Attorney, in Support of Motion for Summary Judgment, filed by s/John Sughrue, Esq. One CC Attorney Sughrue	Fredric Joseph Ammerman
	Plaintiffs' Response to John D. Duttry's Motion for Summary Judgment, filed by s/Keith M. Pemrick, Esq. No CC	Fredric Joseph Ammerman
	Plaintiffs Exhibits in Response to Motion for Summary Judgment, filed. No CC	Fredric Joseph Ammerman
3/31/2009	Proof of Service of Subpoenas, filed. Subpoenas directing attendance at Trial on April 21, 2009, were served on Audra Mitchell (now Audra Geiser) and Scott V. Jones Esq., pursuant to Pennsylvania Rule of Civil Procedure by certified mail, restricted delivery, filed by s/ Keith M. Pemrick Esq. 1CC Atty Pemrick.	Fredric Joseph Ammerman
4/1/2009	Order, AND NOW, this 31st day of March 2009, following argument on the Defendant's Motion for Summary Judgment, it is the ORDER of this Court that either counsel may have until and including Friday, April 3, 2009, in which to submit letter brief. The same may be submitted by fax, if counsel so desires. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins.	Fredric Joseph Ammerman
4/20/2009	Motion In Limine, filed by s/ John Sughrue, Esquire. 5CC Atty. Sughrue	Fredric Joseph Ammerman
	Order, filed Cert. copies to Atty. Sughrue for Service NOW, this 20th day of April, 2009, ORDER that Defendant John D. Duttry's Motion for Summary Judgment, be and is hereby DENIED.	Fredric Joseph Ammerman
4/21/2009	Certificate of Service, filed. That on April 21, 2009 I caused Order dated April 21, 2009 Denying the Motion for Summary Judgment to be served on Keith M. Pemrick Esq. by facsimile and by personal service upon Keith M. Pemrick Esq. Christopher E. Mohny Esq., Ms. Thelma D. Bush and Ms. Beverly Copelli, filed by s/ John Sughrue Esq. 1CC Atty Sughrue.	Fredric Joseph Ammerman
4/23/2009	Stipulation, signed by Keith M. Pemrick, Esquire, and John Sughrue, Esquire. No CC	Fredric Joseph Ammerman
4/24/2009	Order, this 22nd day of April, 2009, it is Ordered that counsel for the Plaintiff provide the Court with appropriate letter brief within no more than 30 days from this date. Counsel for Defendant shall provide the Court with appropriate letter brief within no more than 45 days from this date. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins	Fredric Joseph Ammerman
7/29/2009	Order, this 28th day of July, 2009, following non-jury trial, it is the FINDINGS and Ordered: Plaintiff's request for Declaratory Judgment is GRANTED. The Defendants' Counterclaims including any Counterclaim for Declaratory Relief and/or Adverse Possession are hereby DISMISSED. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins	Fredric Joseph Ammerman
8/10/2009	Praecipe for Appearance, filed. Kindly enter my appearance on behalf of Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli, defendant, filed by s/ John Sughrue Esq. 4CC Atty Sughrue.	Fredric Joseph Ammerman

Date: 12/16/2009

Time: 01:57 PM

Page 6 of 6

Clerk of Court  
Clearfield County Court of Common Pleas

ROA Report

Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

User: BHUDSON

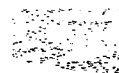
Civil Other-COUNT

Date	Judge
8/10/2009	Fredric Joseph Ammerman
Exceptions of Defendants, John Duttry, Thelma Bush and Beverly Williams to Order dated July 28, 2009, Docketed July 29, 2009. filed by s/ 5CC Atty. Sughrue	
8/12/2009	Fredric Joseph Ammerman
Scheduling Order, this 12th day of August, 2009, Argument on Exceptions of Defendants, John D. Duttry, Thelma Bush and Beverly Williams to Order dated July 28, 2009, shall be held on the 8th day of Oct., 2009 at 2:00 p.m. in courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Sughrue	
10/8/2009	Fredric Joseph Ammerman
Order, this 8th day of Oct., 2009, the hearing on the Defendants' Exceptions to Order of July 28, 2009 scheduled this date is rescheduled to Nov. 2, 2009 at 10:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Hopkins, Sughrue, Pemrick	
11/19/2009	Fredric Joseph Ammerman
Order, NOW, this 17th day of November, 2009, following hearing on the Exceptions of Defendants John Duttry, Thelma Bush, and Beverly Williams to Order dated July 28, 2009, Order that said Exceptions be and are hereby dismissed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attorneys Pemrick, Sughrue, and Hopkins	
12/15/2009	Fredric Joseph Ammerman
Filing: Praeipce for Entry of Judgment Pursuant to Pa.R.C.P. No. 227.4(2) on the Court's Decision (Non-Jury Verdict) Paid by: Sughrue, John (attorney for Duttry, John D.) Receipt number: 1932589 Dated: 12/15/2009 Amount: \$20.00 (Check) For: Duttry, John D. (defendant) filed by s/John Sughrue, Esq. Judgment in favor of the Plaintiffs and against the Defendants, John D. Duttry, Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli on the Court's Decision (non-jury verdict) entered by Order dated July 28, 2009, and docketed on July 29, 2009. One CC and Notice of Judgment to Cherry Timber Associates, Inc., Chagrin Land Limited Partnership, John D. Duttry, Thelma Bush, Beverly R. Williams, and Audra Mitchell Seven CC Attorney Sughrue	

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

DEC 16 2009

Attest.



William L. Brown  
Prothonotary/  
Clerk of Courts

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

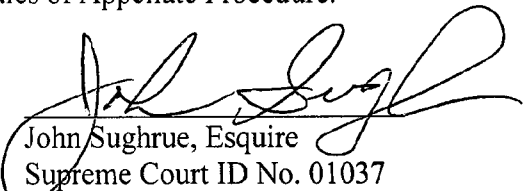
AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**ORDER FOR TRANSCRIPT**

A NOTICE OF APPEAL having been filed in this matter, the official Court Reporter  
is hereby ordered to produce, certify and file the transcripts of all proceedings in this matter in  
conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.



John Sughrue, Esquire  
Supreme Court ID No. 01037  
225 East Market Street  
Clearfield, PA 16830  
Telephone: (814)765-1704  
Facsimile: (814) 765-6959

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on December 16, 2009, I caused a true and correct copy  
of the within **NOTICE OF APPEAL AND ORDER FOR TRANSCRIPT** to be served on all  
parties and in the manner indicated below:

**By United States Mail, First Class, Postage Prepaid**  
**Addressed as Follows:**

Cherry Timber Associates, Inc.  
c/o Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

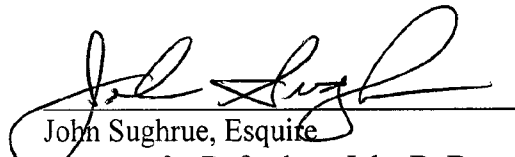
Thelma Bush  
450 Salada Road  
DuBois, PA 15801

Cathy Provost, Court Reporter  
Thomas Snyder, Court Reporter  
Clearfield County Courthouse  
1 North Second Street  
Clearfield, PA 16830

Chagrin Land Limited Partnership  
c/o Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

Beverly Copelli  
1220 Second Avenue  
Brockway, PA 15824

Date: December 16, 2009

  
John Sughrue, Esquire  
Attorney for Defendant, John D. Duttry

**FILED**

**DEC 16 2009**

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



FILED

DEC 16 2009

William A. Shaw  
Prothonotary/Clerk of Courts

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

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

**Type of Case:** Civil Action

**Type of Pleading:** Motion to Amend  
Title of Pleading

**Filed on Behalf of:** John D. Duttry, Thelma Bush,  
Beverly Williams a/k/a Beverly Copelli, Defendants

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
225 East Market Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**Other Counsel of Record:**

Keith Pemrick, Esquire  
Attorney for Plaintiffs  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

Christopher E. Mohny, Esquire  
Attorney for dismissed Defendant, Audra Mitchell  
25 East Park Avenue, Suite 6  
DuBois, PA 15801

#166

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**MOTION TO AMEND TITLE OF PLEADING**

To the Honorable Fredric J. Ammerman, President Judge of said Court,

**AND NOW**, comes Defendants, John D. Duttry, Thelma Bush and Beverly Copelli, by their Attorney, John Sughrue, and respectfully moves the Honorable Court to amend the title of a Pleading filed by Defendants after the Court's Decision rendered in the above matter and in support thereof represents the following:

1. Following a non-jury trial, this Court by Order dated July 28, 2009, docketed July 29, 2009 (copy attached for reference), entered a Decision in the above matter in favor of the Plaintiffs and against the Defendants.

2. On August 10, 2009, Defendants, John D. Duttry, Thelma Bush and Beverly Copelli, filed a written request for post-trial relief in accordance with Pa.R.C.P. No. 227.1 and the Pleading was mistakenly titled "EXCEPTIONS OF DEFENDANTS, JOHN D. DUTTRY, THELMA BUSH AND BEVERLY R. WILLIAMS TO ORDER DATED JULY 28, 2009, DOCKETED JULY 29, 2009, (hereafter, "Pleading")".

3. The Pleading should have been titled, "DEFENDANTS' POST-TRIAL MOTION".

4. The substance of the Pleading in context was the seeking of post-trial relief under Pa.R.C.P. 227.1; specifically, seeking a reversal of the Court's Decision. The Pleading was treated as such by this Court.

5. The request for post-trial relief (Exceptions) was argued on November 2, 2009 before the Court and this Court by Order dated November 17, 2009, docketed November 19, 2009 (copy attached for reference), dismissed Defendants' Exceptions.

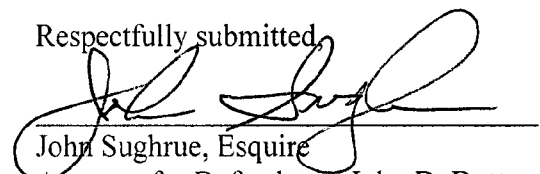
6. On December 15, 2009, Defendants entered Judgment in favor of the Plaintiffs on the Court's Decision.

7. Defendants seek to change the title of the Pleading to conform to the language of Rule 227.1 and to avoid confusion on the nature of the Pleading.

8. Defense Counsel served a copy of this Motion on Plaintiffs' Counsel on December 16, 2009 and has inquired as to whether or not, Plaintiffs' Counsel will agree to this amendment or opposes the same. As of the filing of this Motion, no response to that inquiry has been received.

**WHEREFORE**, Defendants respectfully request the Honorable Court to grant Defendants Leave to amend the title of the Pleading filed on August 10, 2009 from "EXCEPTIONS OF DEFENDANTS, JOHN D. DUTTRY, THELMA BUSH AND BEVERLY R. WILLIAMS TO ORDER DATED JULY 28, 2009, DOCKETED JULY 29, 2009" to "DEFENDANTS' POST-TRIAL MOTION"; and in the absence of a consent by Plaintiffs' Counsel asks the Court to issue a Rule to Show Cause why the Prayer of this Motion should not be granted and to set a date and time for a response and argument on the issue in accordance with the local rules of Court.

Respectfully submitted,

  
John Sughrue, Esquire  
Attorney for Defendants, John D. Duttry,  
Thelma Bush and Beverly Copelli

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

CHERRY TIMBER ASSOCIATES, INC.  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,  
Plaintiffs

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R. WILLIAMS,  
Defendants

NO. 06-1498-CD

ORDER

NOW, this 28<sup>th</sup> day of July, 2009, following non-jury trial, it is the FINDINGS and  
ORDER of this Court as follows:

1. Plaintiff Cherry Timber Associates, Inc. has met its burden of proof to establish ownership of the property where the timber in question was harvested by Mitchell Lumber Company;
2. Plaintiffs have established that the monies paid into escrow originally with Attorney Scott Jones by Mitchell Lumber Company represented the market value of the timber harvested from the 58 acres in question and the Plaintiff is entitled to receive the same;
3. The Defendants have not met their burden of proof to establish an ownership interest in, or right to receive, the funds currently being held in escrow;
4. Therefore, it is the ORDER of this Court that the Plaintiffs' request for Declaratory Judgment be and is hereby GRANTED. The Plaintiffs are entitled to the funds currently being held in escrow, including the principle originally deposited by Mitchell Lumber and all interest earned therefrom from the date of deposit to the date of distribution.

FILED

JUL 29 2009

William A. Shaw  
Prothonotary/Clerk of Courts

ICC Atty's:

Pennick  
Sighrue  
Hopkins

5. The Defendants' Counterclaims including any Counterclaim for Declaratory Relief and/or Adverse Possession are hereby DISMISSED, with prejudice.

BY THE COURT,

  
FREDRIC U. AMMERMAN  
President Judge

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

DEC 16 2009

Attest.

  
Prothonotary/  
Clerk of Courts

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

CHERRY TIMBER ASSOCIATES, INC.  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,  
Plaintiffs

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R. WILLIAMS,  
Defendants


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NO. 06-1498-CD

**ORDER**

NOW, this 17<sup>th</sup> day of November, 2009, following hearing on the Exceptions of Defendants, John Duttry, Thelma Bush and Beverly Williams to Order dated July 28, 2009, Docketed July 29, 2009, it is the ORDER of this Court that said Exceptions be and are hereby DISMISSED.

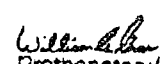
BY THE COURT,

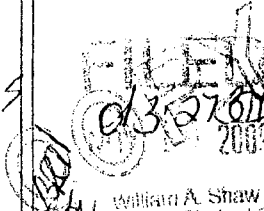
  
FREDRIC J. AMMERMAN  
President Judge

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

DEC 16 2009

Attest,

  
Prothonotary/  
Clerk of Courts

  
100 Atty's:  
Perrinck  
Sughrue  
Hopkins  
William A. Shaw  
Prothonotary/Clerk of Courts

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on December 16, 2009, I caused a true and correct copy of the within **MOTION TO AMEND TITLE OF PLEADING** to be served on all parties and in the manner indicated below:

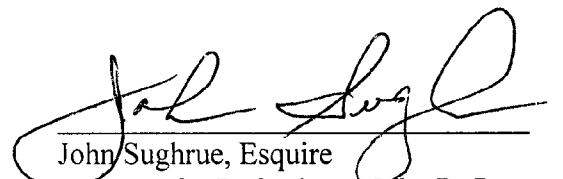
**By United States Mail, First Class, Postage Prepaid**  
**Addressed as Follows:**

Cherry Timber Associates, Inc.  
c/o Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

Chagrin Land Limited Partnership  
c/o Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

Audra Mitchell  
c/o Christopher E. Mohny, Esquire  
25 East Park Avenue, Suite 6  
DuBois, PA 15801

Date: December 16, 2009

  
John Sughrue, Esquire  
Attorney for Defendants, John D. Duttry,  
Thelma Bush and Beverly Copelli

**FILED**

**DEC 16 2009**

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



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

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

**Type of Case:** Civil Action

**Type of Pleading:** Praecipe for Entry of Judgment  
Pursuant to Pa.R.C.P. No. 227.4(2) on the  
Court's Decision (Non-Jury Verdict)

**Filed on Behalf of:** John D. Duttry, Thelma Bush,  
Beverly Williams a/k/a Beverly Copelli, Defendants

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
225 East Market Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**Other Counsel of Record:**

Keith Pemrick, Esquire  
Attorney for Plaintiffs  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298  
Christopher E. Mohny, Esquire  
Attorney for dismissed Defendant, Audra Mitchell  
25 East Park Avenue, Suite 6  
DuBois, PA 15801

FILED

DEC 15 2009

William A. Shaw  
Prothonotary/Clerk of Courts

1cc Notice  
to parties listed  
on Notice

#65

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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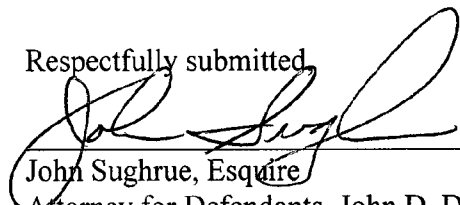
No. 06-1498-CD

**PRAECIPE FOR ENTRY OF JUDGMENT**  
**PURSUANT TO Pa.R.C.P. No. 227.4(2)**

TO: William A. Shaw, Prothonotary of Clearfield County, Pennsylvania,

The Court entered an Order dated November 17, 2009, docketed November 19, 2009, dismissing Defendants' Request for Post-Trial Relief. Accordingly, kindly enter Judgment in favor of the Plaintiffs, Cherry Timber Associates, Inc. and Chagrin Land Limited Partnership, and against the Defendants, John D. Duttry, Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli on the Court's Decision (non-jury verdict) entered by Order dated July 28, 2009 and docketed on July 29, 2009.

Respectfully submitted,

  
John Sughrue, Esquire  
Attorney for Defendants, John D. Duttry,  
Thelma Bush and Beverly Copelli

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on December 15, 2009, I caused a true and correct copy  
of the within **PRAECIPE FOR ENTRY OF JUDGMENT** to be served on all parties and in the  
manner indicated below:

**By United States Mail, First Class, Postage Prepaid**  
**Addressed as Follows:**

Cherry Timber Associates, Inc.  
c/o Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

John D. Duttry  
114 Athens Drive  
DuBois, PA 15801

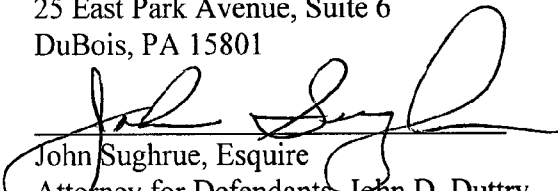
Beverly R. Williams  
a/k/a Beverly Copelli  
1220 Second Avenue  
Brockway, PA 15824

Chagrin Land Limited Partnership  
c/o Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

Thelma Bush  
450 Salada Road  
DuBois, PA 15801

Audra Mitchell  
c/o Christopher E. Mohny, Esquire  
25 East Park Avenue, Suite 6  
DuBois, PA 15801

Date: December 15, 2009

  
John Sughrue, Esquire  
Attorney for Defendants, John D. Duttry,  
Thelma Bush and Beverly Copelli

**FILED**

**DEC 15 2009**

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

COPY

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**NOTICE OF JUDGMENT**

To: Cherry Timber Associates, Inc.  
c/o Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

John D. Duttry  
114 Athens Drive  
DuBois, PA 15801

Beverly R. Williams  
a/k/a Beverly Copelli  
1220 Second Avenue  
Brockway, PA 15824

Chagrin Land Limited Partnership  
c/o Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

Thelma Bush  
450 Salada Road  
DuBois, PA 15801

Audra Mitchell  
c/o Christopher E. Mohnney  
25 East Park Avenue, Suite 6  
DuBois, PA 15801

You are notified that Judgment was entered on December 15, 2009 in the above matter in favor of the Plaintiffs, Cherry Timber Associates, Inc. and Chagrin Land Limited Partnership and against the Defendants, John D. Duttry, Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli on the Court's Decision (non-jury verdict) entered by Order dated July 28, 2009, docketed July 29, 2009, granting Declaratory Relief and denying Defendants' Counterclaims for Relief. A certified copy of the Praecipe for Entry of Judgment and Certificate of Service are attached hereto pursuant to Pa.R.C.P. No. 236.

William A. Shaw, Prothonotary of Clearfield County, PA

By: \_\_\_\_\_



UA

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

CHERRY TIMBER ASSOCIATES, INC.  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,  
Plaintiffs

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NO. 06-1498-CD

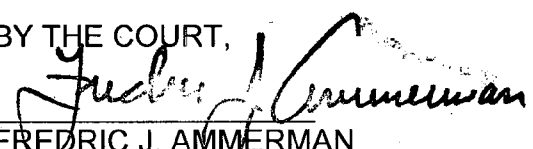
vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R. WILLIAMS,  
Defendants

ORDER

NOW, this 17<sup>th</sup> day of November, 2009, following hearing on the Exceptions of Defendants, John Duttry, Thelma Bush and Beverly Williams to Order dated July 28, 2009, Docketed July 29, 2009, it is the ORDER of this Court that said Exceptions be and are hereby DISMISSED.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

FILED  
9/3/2009  
NOV 19 2009  
William A. Shaw  
Prothonotary/Clerk of Courts  
ICC Attys:  
Pennick  
Sughrue  
Hopkins

#64

FILED

NOV 19 2009

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 11/19/09

☐ 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:

LA

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

CHERRY TIMBER ASSOCIATES, INC.  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,  
Plaintiffs

vs.

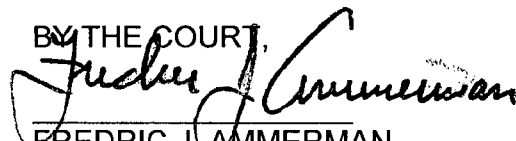
AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R. WILLIAMS,  
Defendants

NO. 06-1498-CD

ORDER

NOW, this 8<sup>th</sup> day of October, 2009, it is the ORDER of this Court that the hearing on the Defendants' Exceptions to Order of July 28, 2009 scheduled this date at 2:00 p.m. be and is hereby rescheduled to **November 2, 2009 at 10:00 a.m.** in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

FILED

013:51/34  
OCT 08 2009

William A. Shaw  
Prothonotary/Clerk of Courts

ICC Atty's:

Hopkins

Sughrue

Pennick

163



FILED

OCT 08 2009

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 10/8/09

☐ 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—LAW

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**SCHEDULING ORDER**

AND NOW, to wit this 12<sup>th</sup> day of August 2009, upon consideration of  
EXCEPTIONS OF DEFENDANTS, JOHN D. DUTTRY, THELMA BUSH AND BEVERLY  
WILLIAMS TO ORDER DATED JULY 28, 2009, DOCKETED JULY 29, 2009, filed in the  
above captioned matter, it is ORDERED that an ARGUMENT on the issues raised in said  
pleading shall be held on the 8<sup>th</sup> day of October 2009, at 2:00 o'clock P m  
in Courtroom No. 1.

By the Court

*Judith J. Cunningham*  
Judge

**FILED**  
02:03/01  
AUG 12 2009  
Atty Sughrue

William A. Shaw  
Prothonotary/Clerk of Courts

(610)

(610)

FILED

AUG 12 2009

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 8/12/09

X 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—LAW

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

**Type of Case:** Civil Action

**Type of Pleading:** Exceptions of Defendants, John  
Duttry, Thelma Bush and Beverly Williams to  
Order dated July 28, 2009, Docketed July 29, 2009

**Filed on Behalf of:** John D. Duttry, Thelma Bush,  
Beverly Williams a/k/a Beverly Copelli, Defendants

**Counsel of Record for this Party:**

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FILED

01/20/2009  
AUG 10 2009

William A. Shaw  
Prothonotary/Clerk of Courts

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**EXCEPTIONS OF DEFENDANTS, JOHN D. DUTTRY,  
THELMA BUSH AND BEVERLY R. WILLIAMS TO  
ORDER DATED JULY 28, 2009, DOCKETED JULY 29, 2009**

AND NOW, Defendants, John D. Duttry, Thelma Bush and Beverly R. Williams, by John Sughrue, Attorney, files the following Exceptions to the Court's Order dated July 28, 2009 as follows:

1. The Court's Order fails to comply with Pa.R.C.P. 1038(b), generally, and particularly because it fails to set forth, generally, the Court's factual findings, conclusions of law and application of law to the facts of this case. As a result, Defendants are deprived of fair notice of the basis of the Court's conclusions with respect to determination of facts, found or not found, and the law applied or not applied. Without such information, the Defendants ability to except is diminished.

2. The Court erred in concluding that Cherry Timber Associates, Inc. (CT) owned the property where the timber in question was harvested by Mitchell Lumber Company (Mitchell) under agreement with Defendants (Duttry). On the contrary, the Court should have concluded, based on

the documents and testimony at trial and after giving fair weight thereto, that Duttry owned the property where the timber was harvested by virtue of:

A. Deed to Harold Duttry dated February 21, 1955, Trial Exhibit K;

B. The Duttry Family's uninterrupted use and possession of the property for over 40 years immediately prior to CT's alleged acquisition of the property from Glen Green Corporation (Green Glen).

C. Green Glen's deed dated December 21, 1988 to Cherry Timber, Exhibit A, particularly parcel 13 which conveys to CT land located north of Duttry and acknowledges the location of Duttry land on the south/southwest of the land being sold;

D. By recognizing and acknowledging Duttry's established boundaries on the south, east and west, as established in the aforesaid deed and the admission of Plaintiffs that said boundaries' locations are undisputed;

E. By giving fair weight to Plaintiffs' map, Exhibit 11, acquired from CT's predecessor in title (Green Glen), indicating the location of Green Glen's land to the north/northeast of the land claimed by CT in the proceedings;

F. By finding and concluding that Duttry owned the property at issue by virtue of the Doctrine of Recognition and Acquiescence;

G. By giving fair weight to the un rebutted testimony of John Duttry and Thelma Bush establishing that the Duttry Family had entered, possessed, used and occupied the subject property for 40 years without objection prior to CT's alleged acquisition.

3. The Court erred in failing to locate Defendants' property at the southern/southwestern end of the disputed property as located by Duttry's deed and located by Green Glen's deed, parcel 13.

4. The Court erred in failing to conclude that Defendant owned the property in question by virtue of the agreement and consent/acquiescence of Green Glen Corporation and DuBois family (CT's predecessor) and the Duttry Family as evidenced by their conduct and existing documents, including county tax records, Green Glen map, Exhibit 11, and the quiet enjoyment of the premises for a period of over 40 years.

5. The Court erred in failing to conclude that the property identified on County tax maps as number 119-E4-16 clearly identifies the location and ownership of Duttry land and that the timber allegedly converted, in fact, came from said Duttry land.

6. That the Court erred in failing to conclude that the location of CT's land purchased from Green Glen is, in fact, located to the northeast of the disputed premises.

7. The Court erred in failing to find that it was not necessary for Duttry to provide the exact location of the northern/northeastern boundary of their land, the boundary in common with the south/southwestern boundary of CT's land. Maps introduced at Trial clearly indicate the location of the southern, eastern and northern boundaries of the Duttry 123 acre tract and that the 58 acres in dispute was clearly within the southern end of the Duttry Tract.

8. The Court erred in failing to find that Plaintiffs' Surveyor, Alexander, could not find any evidence on the ground of the northern/northeastern boundary of the tract he was surveying and did not look for or determine whether or not there was evidence on the ground of such a boundary further north as alleged by Duttry.

9. The Court erred in failing to find and conclude that neither Plaintiffs' Surveyor nor Duttry's witnesses could establish by monuments on the ground, the common boundary between the parties' tracts.

10. The Court erred in dismissing Plaintiffs' claim of ownership of the subject property for the reasons set forth above.

11. The Court erred in concluding that the "Plaintiff" is entitled to receive the same ("monies paid into escrow"). There is no evidence of record to establish that the Plaintiff, Chagrin Land Limited Partnership had an interest in the property from which the timber was harvested. On the contrary, the Court has concluded that CT owned the property. Assuming the Court Order intends to

rule that Plaintiff CT is entitled to receive the money, the Court errs in drawing that conclusion, generally, and for the following reasons:

A. The Declaratory action is to determine the party entitled to the distribution of funds held in an escrow account. The only parties to the escrow account are Chagrin Land Limited Partnership and Mitchell Lumber. CT is not a party to the agreement or to the account;

B. The evidence overwhelmingly establishes that Steven Jilk, the individual on the ground who made the claim, hired Attorney Jones and arranged for the escrow account, was employed by Industrial Timber and that his allegations of claim were never made in the name of CT. On the contrary, all his correspondence and claims referenced Endeavor Timber, Industrial Timber and/or Chagrin Land Limited Partnership;

C. Steven Jilk, in fact, set up the escrow account in the name of Chagrin and Mitchell. At no time during the course of Jilk's alleged claim did he suggest that the land was owned by Cherry Timber;

D. As a matter of law, the escrow funds may only be paid to a party to the escrow agreement.

12. The Court erred in dismissing Audra Mitchell, successor in interest to Mitchell Lumber Company, a party to the escrow agreement, as spouse and sole heir of Paul Mitchell t/a Mitchell Lumber Company. She was a necessary and indispensable party to the litigation as one of the parties to the escrow fund.

13. The Court errs in concluding that the Defendants have not met their burden of proof to establish an ownership interest in or right to receive the funds currently being held in escrow. On the contrary, the evidence establishes that the timber sold to fund the escrow account, was cut by Mitchell from Duttry's land under the Timber Agreement between Mitchell and Duttry; that Mitchell was acting as a contractor for Duttry under the Timber Harvest Agreement and was cutting the timber and selling it for the benefit of Duttry.

14. The evidence further establishes that Plaintiffs' claim initiated from an alleged claim of trespass on land and illegal cutting or conversion of timber. This allegation sets forth a tort claim. As such, the Plaintiffs/claimants were obligated under the law to initiate and prosecute their claim



within two years. The evidence indicates it did not do so. As a result, their claim for damages is barred by the applicable Statute of Limitations. As a result, the Court erred:

A. In determining that the Plaintiffs' claim was not a claim for tortious conversion of property;

B. In concluding that the Plaintiffs were not required to initiate a lawsuit for a tort claim within two years of their claim and in failing to conclude that their claim was barred by the applicable Statute of Limitations;

C. In concluding or inferring that the Defendants had waived and/or extended the applicable Statute of Limitations by taking action to escrow funds in lieu of the funds being paid to the Plaintiff/claimants;

D. In dismissing Defendants Motion for Summary Judgment on the Statute of Limitations issue.

15. The Court erred in dismissing Defendants' Counterclaim for possession of the escrow funds and, in any event, if the escrow funds were not awarded to Duttry, said funds should have been, under the evidence, rewarded back to Mitchell as the source of the funds and the only party to the escrow account having an interest in said funds.

16. The Court erred in failing to decide and adjudicate Defendants' defenses related to Statute of Limitations, Laches and as set forth in New Matter.

17. The Court erred in failing to find and conclude that Duttry was entitled, under the Timber Harvest Agreement, to receive the original \$45,000.00 deposited by Mitchell with Attorney Jones, and that Mitchell improperly delivered the funds to Jones without Duttry's consent.

18. The Court erred in failing to find Chagrin Land, Industrial Timber, Endeavor Timber or Cherry Timber, as claimants of illegal conversion of timber, had the burden of proof and the obligation to move forward with their claim in the Court and further, failing to find that their claim for said funds is now barred by the Doctrine of Laches and Estoppel because of the intervening death of key witnesses, Paul Mitchell and Mary Jo Duttry.

19. The Court erred in failing to find conclusions of law as requested by Defendants, specifically the following:

A. The location of property boundary lines and the property may be established regardless of deed descriptions, by consent of adjoining landowners;

B. There are two means of proving a binding, consentable boundary line: (1) by dispute and compromise; and (2) by recognition and acquiescence;

C. The recognition and acquiescence doctrine does not require that the parties specifically consented to the location of the line. Location may be established by observable facts;

D. The doctrine of consentable lines is a rule of repose for the purpose of quieting title and discouraging confusing and vexatious litigation;

E. The fact that the disputed premises are outside of the description of the Duttry deed or chain of title is not dispositive of the ownership issue in this case. Determination of the ownership of the disputed premises is a question of law and fact to be determined by the Court;

F. The question of what is the boundary line is a question of law. The question of where a boundary line is located is a question of fact;

G. Under Pennsylvania law, a person who cuts or removes the timber from another person without the consent of that person is liable in lieu of all other damages or civil remedies by law to that person in a civil action for certain damages designated in the law, 42 Pa.C.S.A. §8311(a);

H. Trespass upon another's land and the unlawful cutting of another's timber constitutes a cause of action for the unlawful conversion of timber, is a tort action, sounding in trespass and is required to be brought within two years of the date the cause of action accrues or two years from the date the cause of action is discovered, 42 Pa.C.S.A. §5524, (3)(4)(5)(7);

I. An escrow fund is a manifestation of a contract between parties. Funds held in escrow by a third party, under an agreement, express or implied, may only be distributed to a person or an entity who is a party to the agreement and in accordance with the agreement.

20. The Court erred in failing to find facts requested by Defendants, specifically the following:

#### **IV. PROPOSED FINDINGS OF FACT:**

This declaratory judgment action was filed with the Court for the purpose of determining

how funds, formerly held in escrow by Scott Jones, Esquire, should be distributed. The escrow account was originally funded by Paul Mitchell t/a Mitchell Lumber Company (hereafter "Mitchell") with \$45,000.00 (hereafter "Contract Funds") deposited with Attorney Jones. Attorney Jones established the escrow account at First Commonwealth Bank (formerly Deposit Bank) in the name of "Scott V. Jones, Escrow Agent for Mitchell Lumber Co. and Chagrin Land Limited Partnership" (hereafter "Chagrin")(Exhibit 25). That escrow account was funded by Mitchell Lumber Company as a result of Stephen Jilk's allegation that Mitchell had improperly cut and marketed timber under a Timber Harvest Agreement with John Duttry (hereafter "Duttry") from land not owned by Duttry.

The parties agree that Cherry Timber Associates Inc. (hereafter "Cherry Timber") is the owner of 60 acres, more or less, (hereafter "Cherry Timber Premises") purchased from Green Glen Corp. and that the Defendants are the owners of 123.2 acres, more or less, (hereafter "Duttry Premises") both tracts located in Huston Township, Clearfield County, Pennsylvania. The parties disagree on the location of each premise. **The parties do agree that the Cherry Timber Premises and the Duttry Premises are adjacent and located within a larger tract (hereafter "Bucksbee Tract") believed to consist of approximately 183 acres, more or less. The parties agree that this larger tract is located along the old railroad right-of-way and surrounded by adjacent landowners as generally indicated on the Clearfield County Tax Assessment Map, attached hereto, (Defendants' Exhibits C and D).**

Plaintiffs contend the 60 acres is owned by Cherry Timber and is located in the southern end of the Huston Township Bucksbee Tract, as located by Alexander's Retracement Survey of a 1927 deed (Exhibit 8). In support of their ownership claim, Plaintiffs have set forth a record chain of title beginning with a conveyance from John E. DuBois to Bucksbee in 1927 (Part of **Exhibit 27**), through tax sales and multiple conveyances to Green Glen Corporation. Cherry Timber's immediate title emanates from Cherry Timber's 1988 deed from Green Glen Corporation (**Exhibit A**).

Similarly, Duttry's title is based on an unrecorded deed from John E. DuBois to Bucksbee in about 1927 for 123.2 acres. Thereafter, the property went through several Treasurer and Commissioner's sales and ultimately vested in Harry Bender. Duttry's immediate claim of title emanates from Bender's deed of February 21, 1955 (**Exhibit K**) to Harold Duttry, Defendants' predecessors in title.

Defendants acknowledge that the 60 acres described in the 1927 deed is located in the southern end adjacent to lands, now or formerly of Walter Brown (later Dixon), Alsbaugh (now Beers). However, Duttry contends that the historical 1927 location of the 60 acres is not dispositive of the present issue of ownership. Instead, Defendants contend that the location of the two tracts is established by the long time recognition and acquiescence of the owners.

By recorded deed dated February 21, 1955 (**Exhibit K**), Harold E. Duttry, et ux. acquired from Bender, 123.2 acres located in Huston Township, Clearfield County, Pennsylvania. This deed (hereafter, "Duttry Deed") clearly located the 123 acres by description in the southern end of the Bucksbee Tract. Thereafter, Harold Duttry and his family entered, possessed, occupied and utilized the Duttry Premises without any problems, disagreements or interference from any neighbors. On March 24, 1988, Harold Duttry died. This Court by Decree of Distribution dated August 7, 1989 (Part of **Exhibit 28**) conveyed the Duttry Premises to Harold Duttry's only heirs, John D. Duttry, Thelma Bush and Beverly R. Williams now Beverly R. Copelli (hereafter "Defendants"). The 1989 Decree of Distribution utilized the same description that was in Duttry's original deed (**Exhibit K**, above). For over 40 years, from 1955 to 1995, the Duttrys enjoyed quiet possession and use with the acquiescence of their neighbors, including Green Glen Corporation.

In about 1988, Duttry's neighbor to the north, Green Glen Corporation, quitclaimed its interest in 60 acres in Huston Township to Cherry Timber by deed dated December 21, 1988 (**Exhibit A**) (hereafter, "Cherry Timber Premises").

Jilk testified at trial on behalf of Plaintiffs. He identified himself as Timber Resource Manager for Industrial Timber and Land Company located in Endeavor, Pennsylvania. He indicated that he would on occasion perform services for the Plaintiffs, Cherry Timber, a corporation and Chagrin, a limited partnership. Apparently, Mr. Jilk and his subordinate, Chris Guth, who also testified, were personally familiar with the Bucksbee Tract. He indicated that in 1989, he had concern that cutting was occurring on their 60 acre Bucksbee Tract, but, after investigating, determined that was not the case. Jilk testified that in purchasing the properties, they relied upon various records of the DuBois family and public records, including tax maps. He indicated he was significantly involved in the acquisition and aware that Clearfield County tax assessment records and tax maps located the Cherry Timber Premises in the northern part of the Bucksbee Tract, north/northeast of the Duttry Tract and was designated as Map Number 119-E3-33. Indeed, Plaintiff's Complaint acknowledges that tax records place their property in the northern end of the Bucksbee Tract but contend that is erroneous and that their property should, in fact, be located at the southern end where Tax Map Number 119-E4-16 locates the Duttry Tract. Thereafter, Jilk and his clients took no action with respect to this tract until 1995.

In January 1995, events occurred which gave rise to the creation of the escrow fund involved in this litigation. Defendants made a Timber Harvest Agreement with Mitchell Lumber to remove timber from the Duttry Premises. Defendants and Mitchell were removing timber from the top of a hill above McCracken Run in the area marked in green by witness, Guth, on a map (Plaintiffs' **Exhibit 8**). According to Plaintiffs' witnesses, Guth and Jilk, they determined that the timber was being cut off a tract located at the southern end of the Bucksbee Tract.

Jilk testified that in 1989, he had had Fran McDermott, a local abstractor, do an abstract for Cherry Timber's 60 acres. As a result of that abstract, the Abstractor and Jilk, apparently concluded that the County's tax records correctly identified Cherry Timber as owning the Cherry Timber

Premises identified as Tax Map Number 119-E3-33 but, mistakenly located it at the north end of the Bucksbee Tract.

Jilk and Guth stated their belief that their 60 acre tract should, in fact, be located at the southern end of the Bucksbee Tract next to property of Brown, Allsbaugh and Burns, the same land located within the Harold Duttry deed description.

Because Jilk located the Cherry Timber Tract at the southern end instead of the northern end of the Bucksbee Tract, he contacted Mitchell Lumber and made a claim for improper trespass and cutting of timber. Mitchell, cutting under timber contract with Duttry (**Exhibit 22**), had no desire to get in the middle of two disagreeing landowners. Mitchell did not want to give the money to Jilk, Jilk's client or Duttry and agreed to place \$45,000.00 in escrow. Thereafter, Mitchell did not cut on Jilk's claimed land but on Duttry's other land. Mitchell placed funds in various payments totaling \$45,000.00 with Attorney Jones to hold because of the dispute.

Thereafter, Jones put the money in an escrow account titled "Scott Jones, Escrow Agent for Mitchell Lumber Co. and Chagrin Land Limited Partnership" (**Exhibit 25**). The fact that Jilk worked for Industrial Timber and identified himself at all times as Industrial Timber contributed to a lack of informative communications. At the time of the events, from the Defendants' standpoint, there was no title of record for land in the name of Industrial Timber or Chagrin that appeared in any way to conflict with Duttry's property. Jilk never identified the claimant as Cherry Timber to the Defendants, Mitchell or Scott Jones, for that matter. If he had indicated it was Cherry Timber's, then, it is reasonable to infer that Jones would have set the escrow account up in the name of Cherry Timber not Chagrin.

There are no documents submitted in this case by the Plaintiffs which suggest that Jilk was, at any time, working on behalf of Cherry Timber. In fact, the opposite is true. Jilk identified himself to Mitchell as Industrial Timber according to testimony. Jilk's first letter to Defendant Duttry

(**Exhibit 14**) was on Industrial Timber letterhead. Also, see Jilk's Industrial Memo (**Exhibit 17**). The abstract notes of Fran McDermott (Part of **Exhibits 27 and 28**), from 1989 were forwarded to Duttry according to Jilk's testimony but did not include the abstract documents identifying Cherry Timber. When this controversy arose, it was impossible for the Defendants to reasonably ascertain the nature or source of Jilk's claim. The public tax and deed records indicated that Cherry Timber owned 60 acres on the north/northeast of the Duttry Premises, in the northern part of the Bucksbee Tract. The Cherry Timber 1988 deed (**Exhibit A**), parcel number 13, clearly identified the 60 acre tract on the north/northeast of the Duttry Tract, the exact location the County set it. The recorded Green Glen to Chagrin deed (**Exhibit 10**) did not reveal any color of title for the disputed lands.

Guth worked for Industrial Timber. Both Jilk and Guth indicated they worked, on occasion, for Chagrin and Cherry Timber. Scott Jones' first letter to Sughrue confirming that he was holding the funds (**Exhibit 24**) identified his client as Industrial. Barry Garbarino's first letter to Duttry's Attorney, Sughrue dated March 23, 1995 (**Exhibit G**), identified his client as Chagrin. Garbarino and Jones set up the escrow fund in the name of Chagrin.

Plaintiffs admit that Chagrin does not have any claim in the fund. Plaintiffs admit that Cherry Timber and Chagrin are separate legal entities. They argue that because Chagrin and Cherry Timber have some common ownership (i.e. one or more individuals who have an ownership interest in Cherry Timber also have an ownership interest in Chagrin), the claim of Chagrin should be transferred to Cherry Timber. At the same time, Plaintiffs admit in their testimony that the ownership of Chagrin and Cherry Timber is not identical. The following facts are either admitted by Plaintiffs or are undisputed:

1. Cherry Timber Associates, Inc. is an Ohio Corporation (Plaintiffs' Admission No. 1);
2. Chagrin Land Limited Partnership is an Ohio Limited Partnership (Plaintiffs' Admission No. 2);

3. Industrial Timber and Lumber Company formerly known as Industrial Timber and Land Company in 1995 is a fictitious business name of ITL Corp. (Plaintiffs' Admission No. 11);
4. Mitchell Lumber Company was a sole proprietorship owned by Paul Mitchell. Paul Mitchell was cutting timber on the Bucksbee Tract in Huston Township as a result of and pursuant to a Timber Harvest Agreement between Mitchell and Duttry dated October 18, 1984 (**Exhibit 22**), (Plaintiffs' Admission No. 13);
5. After Jilk contacted Mitchell, Mitchell did not cut any more timber from the tract claimed by Plaintiffs;
6. About 1927 and immediately prior thereto, John E. DuBois owned a tract of land in Huston Township, Clearfield County, Pennsylvania, which subsequently became involved in the underlying dispute in this case. According to extensive documentation, including title abstracts conducted by Zoe Withey and submitted at trial, DuBois family records and maps, surveying maps of J.E. Fry, who surveyed for DuBois, research and testimony of Surveyor, Alexander, various testimony, it is undisputed that John E. DuBois, by deed dated November 8, 1927, conveyed to G.E. Bucksbee property in Huston Township, of 60.12 acres as surveyed by J.E. Fry in 1922;
7. This 1927 deed confirms that the 60 acre tract is adjacent to another G.E. Bucksbee Tract surveyed by John E. DuBois for Bucksbee;
8. According to Surveyor, Alexander, who in 1995, did a retracement of this 1927 survey (**Exhibit 8**), this 60 acre tract was located in the southern end of the Bucksbee Tract and is clearly identified as being surrounded by Walter Brown (later Dixon according to Alexander), Burns and Allsbaugh;
9. The Defendants agree that this 1927 deed identifies 60 acres which is located at the southern end of the disputed lands surrounded by lands, now or formerly, of Bucksbee, Allsbaugh, Walter Brown, A.P. Burns and Buffalo and Susquehanna Railroad;
10. At the same time, G.E. Bucksbee, Grantee, acquired other adjacent ground from John DuBois, according to that very same deed (see description third line);
11. The parties agree that subsequently Bucksbee was the owner of and assessed with 60.12 acres and 123.2 acres or a total of 183 plus acres Consequently, G.E. Bucksbee acquired from DuBois, 123.2 acres which was adjacent to the northeast boundary line of 60 acre tract;
12. It is also undisputed in this litigation that the said John E. DuBois, at some point, surveyed 123.2 acres for G.E. Bucksbee and conveyed it to him. This particular Bucksbee deed was not recorded. The County records reveal that from 1927 and thereafter, 60 acres and 123.2 acres, a total of 183.5 acres were identified on the tax records of Clearfield County as being owned by G.E. Bucksbee and assessed to Bucksbee;



13. The parties agree that Bucksbee continued to be the owner of the 183 acres and to be assessed with it on the Clearfield County tax records from 1927 to about 1945;
14. By deed dated October 8, 1945, the Clearfield County Commissioners sold to David DuBois, 60 acres assessed to Bucksbee. Thereafter, the David DuBois heirs conveyed said property by deed dated September 1, 1947 to Green Glen Corporation (Part of **Exhibit 27**);
15. The DuBois family interest remained in Green Glen Corporation thereafter from 1947 until 1988 when it sold its interest in 60 acres, Huston Township, to Cherry Timber (**Exhibit A**);
16. The deed from the County Commissioners, David DuBois, and deeds thereafter, including the deed into Green Glen Corporation did not provide any description by metes, bounds or by adjoining landowners. It was simply the sale of an assessment under Pennsylvania law;
17. Similarly, the 123.2 acres was assessed to G.E. Bucksbee from 1924 until 1936 when the assessment was sold by the Treasurer to the County for unpaid taxes. The property was redeemed by Mrs. G.E. Bucksbee on September 15, 1937 (apparently for the benefit of her husband, G.E. Bucksbee, since she would have had no independent right of redemption);
18. The property thereafter was assessed to Mrs. G.E. Bucksbee until April 7, 1942 when it was sold to the County and subsequently purchased by Harry Bender at a Commissioner's sale on March 27, 1945 (see **Exhibits 27 and 28**). There was no description in the deeds from the Treasurer to the Commissioner or the Commissioners to Bender. Irreverently, the 123.2 acre assessment was transferred from Bender to Wiseman and Dennis. The property was again sold for taxes in 1951 and was subsequently conveyed by the County Treasurer to Harry and Andy Bender by deed recorded in Deed Book 440, Page 571 (**Exhibit 28**). Again, per usual, no description by boundaries or metes and bounds was given in Bender's deed;
19. A description for the 123.2 acres was first given in the deed from Bender, et ux. to Harold E. Duttry (**Exhibit K**). This deed contained the following description: "On the north by land of the Green Glen Corporation; on the south by land of Walter Brown; on the east by right-of-way of the B&O Railroad; on the west by lands of Tiner (Tinker), Allsbaugh and Burns". This description, whether correct or erroneous, clearly places the 123.2 acres at the southern end of the disputed land next to Walter Brown land. This Walter Brown land now Dixon land has been clearly identified by maps and Surveyor, Alexander, as being located at the southern end of the disputed Bucksbee Tract;
20. Whether Harold Duttry intended to purchase the southern end of the Bucksbee Tract or the northern end of the Bucksbee Tract will never be known. However, it is clear that with that description, Harold Duttry reasonably believed and assumed that he had acquired title to 123.2 acres located at the southern end of the Bucksbee Tract;

21. Upon acquiring title and taking possession, Harold Duttry along with witness, Jack Duttry, walked the land and identified the various boundaries of the Bucksbee Tract with John E. DuBois, Jr., a representative of the DuBois family's Green Glen Corporation;
22. The outside perimeter boundaries of the Bucksbee Tract are readily identifiable by the boundaries of the adjoining tracts of land on both the County tax map and the Alexander retracement survey (**Exhibits 4, 7, 8, 9, C and D**);
23. The only issue between the parties is the location of their common boundary line and their respective tracts;
24. It is reasonable to infer from the evidence that Harold Duttry and Green Glen, acquiesced and consented to the location and boundaries set forth in the County public records. Over 30 years of peaceful co-existence, without issues, prior to Cherry Timber's acquisition, supports the inference that the parties were in agreement;
25. If Harold Duttry was mistaken on the location of his property, Green Glen was similarly mistaken, making it a mutual mistake and it is reasonable to infer that the parties acquiesced and consented to the mistake by their conduct. Neither Green Glen nor Duttry complained. Green Glen, by their deed, parcel 13, located their 60 acres to the north/northeast of Duttry which would be the northern end of the Bucksbee Tract. Green Glen's color coded map (**Exhibit 11**) indicated a question about ownership to the 60 acres but located the property in blue at the northern end of the Bucksbee Tract;
26. Only Cherry Timber, after acquiring the property in 1988, has complained about the public records and the location of the respective parcels;
27. Upon Harold Duttry acquiring his deed, the Clearfield County Tax Assessment Office properly located the land set forth in Harold Duttry's deed at the southern end of the Bucksbee Tract properly designated it as 123.2 acres, properly identified owners and gave it Tax Assessment Map Number 119-E4-16;
28. From the time 1955 until 1988, the parcel of land to the north of the Duttry Tract, Tax Assessment Number 119-E4-33 was marked by the County Tax Assessment Office and Records as unknown (**Exhibit E**);

For the next 40 years, Harold Duttry and his heirs possessed, periodically entered, occupied and utilized the 123.2 acres at the southern end of the Bucksbee Tract. They removed timber, hunted on it and paid taxes on it. When Harold Duttry died, the property was again identified at the southern end of the Bucksbee Tract and inherited by his children. They continued ownership of that tract until 2005 when they sold it to Theodore Beers (**Exhibit 28**). According to witness, John Duttry, his father, Harold Duttry, and his family never had any adverse claims or problems with respect to

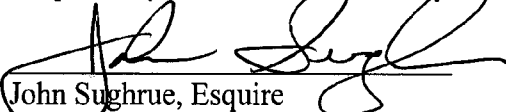
location made by any adjacent landowner which would include Green Glen Corporation and the DuBois family interest.

In 1988, Green Glen recorded its deed to Cherry Timber (**Exhibit A**). Parcel 13, clearly identifies Tax Assessment Map Number 119-E3-33 as being claimed by Green Glen Corporation and conveyed to Cherry Timber in parcel 13. Parcel 13 also clearly identifies the Green Glen property being sold as being located to the northeast of the Duttry Tract. This necessarily locates it in the northern end of the Bucksbee Tract. This Green Glenn deed confirms Green Glen's understanding and acknowledgment that their 60 acres was located to the northeast tract of Duttry. That is what Cherry Timber bargained for and knowingly purchased. The specifics of parcel 13 in Cherry Timber's deed supersede the general catch-all language upon which Plaintiffs rely.

At trial, Plaintiffs' introduced a large color coded map (**Exhibit 11**) which is not of public record and was apparently prepared by the Green Glen interest as a means of identifying the location of their land and/or by color code the strength of title as understood by Green Glen. On that map by color code, Green Glen acknowledged **uncertainty concerning the strength of their title to a 60 acre parcel marked in blue. This 60 acre parcel however, was clearly located on the DuBois/Green Glen map on the northern or northeastern side of Duttry's land.** This is an additional acknowledgment by Green Glen of their consent and acquiescence of the location of their 60 acres and the Duttry's 123 acres.

Plaintiffs' map (**Exhibit 11**) does not contain any documentation which indicates any concern or disagreement with the location of the 60 acres marked in blue. It only indicated questions concerning title and ownership.

Respectfully submitted this 10<sup>th</sup> day of August, 2009.



John Sughrue, Esquire

Attorney for Defendants, John Duttry, Thelma Bush and Beverly Williams

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on August 10, 2009, I caused a true and correct copy of  
EXCEPTIONS OF DEFENDANTS, JOHN D. DUTTRY, THELMA BUSH AND BEVERLY R.  
WILLIAMS TO ORDER DATED JULY 28, 2009, DOCKETED JULY 29, 2009 to be served on  
the following and in the manner indicated below:

**By Personal Service Upon:**

Court Administrator  
Clearfield County Courthouse  
1 North Second Street  
Clearfield, PA 16830

**By United States Mail, First Class, Postage Prepaid**  
**Addressed as Follows:**

Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

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

Date: August 10, 2009

  
John Sughrue, Esquire  
Attorney for Co-Defendant, John D. Duttry

**FILED**

**AUG 10 2009**

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

4 FILED 4CC Atty  
09:43 am  
AUG 10 2009  
Sughrue

William A. Shaw  
Prothonotary/Clerk of Courts

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

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

**Type of Case:** Civil Action

**Type of Pleading:** Praecipe for Appearance

**Filed on Behalf of:** Thelma Bush, Beverly  
Williams a/k/a Beverly Copelli, Defendants

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
225 East Market Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**Other Counsel of Record:**

Keith Pemrick, Esquire  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

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

#60

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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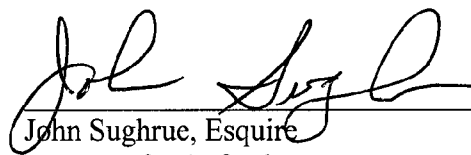
No. 06-1498-CD

**PRAECIPE FOR APPEARANCE**

TO WILLIAM A. SHAW, PROTHONOTARY.

Kindly enter my appearance on behalf of THELMA BUSH and BEVERLY R. WILLIAMS  
a/k/a BEVERLY COPELLI, Defendants in the above-captioned matter. Direct all pleadings and  
matters concerning the foregoing to the undersigned.

Date: August 10, 2009



John Sughrue, Esquire  
Attorney for Defendant  
Attorney I. D. #01037  
225 East Market Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on August 10, 2009, I caused a true and correct copy of  
PRAECIPE FOR APPEARANCE to be served on the following and in the manner indicated below:

**By Personal Service Upon:**

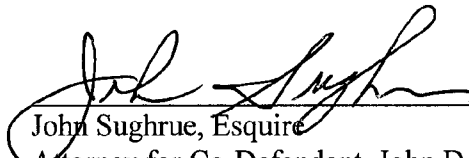
Court Administrator  
Clearfield County Courthouse  
1 North Second Street  
Clearfield, PA 16830

**By United States Mail, First Class, Postage Prepaid**  
**Addressed as Follows:**

Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

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

Date: August 10, 2009

  
John Sughrue, Esquire  
Attorney for Co-Defendant, John D. Duttry



**FILED**

**AUG 10 2009**

William A. Shaw  
Prothonotary/Clerk of Courts

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

CHERRY TIMBER ASSOCIATES, INC.  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,  
Plaintiffs

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R. WILLIAMS,  
Defendants

NO. 06-1498-CD

**ORDER**

NOW, this 28<sup>th</sup> day of July, 2009, following non-jury trial, it is the FINDINGS and  
ORDER of this Court as follows:

1. Plaintiff Cherry Timber Associates, Inc. has met its burden of proof to establish ownership of the property where the timber in question was harvested by Mitchell Lumber Company;
2. Plaintiffs have established that the monies paid into escrow originally with Attorney Scott Jones by Mitchell Lumber Company represented the market value of the timber harvested from the 58 acres in question and the Plaintiff is entitled to receive the same;
3. The Defendants have not met their burden of proof to establish an ownership interest in, or right to receive, the funds currently being held in escrow;
4. Therefore, it is the ORDER of this Court that the Plaintiffs' request for Declaratory Judgment be and is hereby GRANTED. The Plaintiffs are entitled to the funds currently being held in escrow, including the principle originally deposited by Mitchell Lumber and all interest earned therefrom from the date of deposit to the date of distribution.

**FILED**  
07/13/09  
JUL 29 2009

William A. Shaw  
Prothonotary/Clerk of Courts

ICC Atty's:

Pennick  
Sughrue  
Hopkins

#59

5. The Defendants' Counterclaims including any Counterclaim for Declaratory Relief and/or Adverse Possession are hereby DISMISSED, with prejudice.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

FILED

JUL 29 2009

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 7/29/09

       You are responsible for serving all appropriate parties.

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

       Plaintiff(s)   X   Plaintiff(s) Attorney        Other

       Defendant(s)   X   Defendant(s) Attorney

       Special Instructions:

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

CHERRY TIMBER ASSOCIATES,  
INC., and CHAGRIN LAND  
LIMITED PARTNERSHIP

VS.

NO. 06-1498-CD

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH and  
BEVERLY R. WILLIAMS, a/k/a  
BEVERLY COPELLI

ORDER

NOW this 22nd day of April, 2009, following the conclusion of nonjury trial, it is the ORDER of this Court that counsel for the Plaintiff provide the Court with appropriate letter brief within no more than thirty (30) days from this date.

Counsel for the Defense shall provide the Court with appropriate letter brief within no more than forty-five (45) days from this date.

BY THE COURT,

*Judith J. Cummings*

President Judge

FILED

APR 24 2009

William A. Shaw  
Prothonotary/Clerk of Courts

cc: Amy  
Pernick  
Sughrue  
Hopkins

(60)

58

FILED

APR 24 2009

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 4/24/09

☐ 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:



- (f) September 8, 1942, Deed from Edna Marsden, Treasurer to Clearfield County Commissioners, recorded in Deed Book 380, Page 583.
- (g) July 7, 1945, Deed from Clearfield County Commissioners to Harry Bender, recorded in Deed Book 380, Page 584.
- (h) January 22, 1947, Assignment from Harry Bender, et ux. to Ralph Weisman, et al., recorded in Deed Book 380, Page 585.
- (i) December 10, 1951, Deed from Albert Dennis by County Treasurer to Harry Bender, et ux., recorded in Deed Book 440, Page 571.
- (j) December 21, 1955, Deed from Harry Bender, et ux. to Harold E. Duttry, recorded in Deed Book 440, Page 573.
- (k) August 7, 1989, Decree of Distribution from the Estate of Harold E. Duttry, filed in the records of the Orphan's Court of Clearfield County at No.149 of 1988.
- (l) August 7, 1989, Deed from the Harold E. Duttry Estate to Thelma Bush, et al., recorded in Deed Book 1300, Page 20.
- (m) August 10, 2004, Deed from Thelma Bush, et al. to Thelma Bush, et al., recorded in the Office of the Recorder of Deeds of Clearfield County as Instrument No. 200414968.
- (n) March 17, 2005, Deed from Thelma Bush, et al. to Theodore Beer, recorded in the Office of the Recorder of Deeds of Clearfield County as Instrument No. 200503754.
- (o) April 27, 2006, Deed from Theodore Beer, et ux. to Theodore Beer and Nicole J. Beer, recorded in the Office of the Recorder of Deeds of Clearfield County as Instrument No. 200606908.
- (p) December 21, 1988, Deed from Green Glen Corporation to Chagrin Land Limited Partnership, recorded in Deed Book 1260, Page 280.



- (q) November 10, 2003, Deed from Chagrin Land Limited Partnership to NRI DuBois LLC, recorded in the Office of the Recorder of Deeds of Clearfield County as Instrument No. 200320631.
- (r) September 1, 1959, Deed from John E. DuBois, Jr., et ux. to Green Glen Corporation, recorded in Deed Book 478, Page 551.
- (s) February 18, 1997, Deed from Adelia K. Parrish, widow, to Barry A. DeSalve, Sr., et al., recorded in Deed Book 1821, Page 431.
- (t) October 26, 1987, Deed from James G. Kriner, et ux. to Raymond L. Parrish, recorded in Deed Book 1189, Page 563.
- (u) January 31, 1975, Deed from Louis M. Goodman, et ux. to James G. Kriner, et ux., recorded in Deed Book 695, Page 391.
- (v) March 10, 1953, Deed from Elizabeth Greathouse and Harold Greathouse to Louis M. Goodman, et ux., recorded in Deed Book 427, Page 340.
- (w) Deed from Charles E. Hoyt, et ux. to Elizabeth Greathouse and Harold Greathouse, recorded July 6, 1949, in Deed Book 399, Page 270.
- (x) November 23, 1923, Deed from John E. DuBois, et ux. to C.E. Hoyt, recorded in Deed Book 278, Page 237.
- (y) August 16, 1923, Deed from John E. DuBois, et ux. to C.E. Hoyt, recorded in Deed Book 278, Page 236.
- (z) June 7, 1917, Deed from John E. DuBois, et ux. to C.E. Hoyt, recorded in Deed Book 218, Page 239.
- (aa) December 6, 1890, Deed from Hiram M. Hoyt, et ux. to Charles E. Hoyt, recorded in Deed Book 64, Page 188.
- (bb) December 5, 1975, Deed from Benjamin F. Painter, et al. to Larry M. Painter, et ux., recorded in Deed Book 712, Page 237.
- (cc) July 12, 1971, Deed from William R. Tinker to Benjamin F. Tinker, et al., recorded in Deed Book 577, Page 386.

- (dd) December 12, 1947, Deed from Herbert B. Hawk, et ux. to William R. Tinker, et ux., recorded in Deed Book 389, Page 118.
- (ee) April 14, 1947, Deed from Lawrence S. Teller, et ux. to Herbert B. Hawk, et ux., recorded in Deed Book 382, Page 322.
- (ff) Deed from Charles A. Stuart, et ux. to Lawrence Sharp Heller, et al., recorded October 20, 1943 in Deed Book 354, Page 171.
- (gg) February 4, 2003, Deed from Marylou Beer to Theodore J. Beer, et al., recorded in the Office of the Recorder of Deeds of Clearfield County as Instrument No. 200302011.
- (hh) October 19, 2001, Deed from Fred W. Beer, et ux. and James F. Beer, et ux. to Mary Lou Beer, recorded in the Office of the Recorder of Deeds of Clearfield County as Instrument No. 200117508.
- (ii) Subdivision map recorded in the Office of the Recorder of Deeds of Clearfield County as Instrument No. 200115237.
- (jj) May 8, 1998, Deed from Sadie E. Beer Estate to James F. Beer, et al, recorded in Deed Book 1936, Page 508.
- (kk) October 31, 1941, Deed from Duncan F. Alsbaugh, et ux. to Sadie E. Beer, recorded in Deed Book 339, Page 380.
- (ll) October 23, 2008, Deed from Clyde E. Dixon to Roxie Smith, recorded in the Office of the Recorder of Deeds of Clearfield County as Instrument No. 200817159.
- (mm) July 14, 1989, Deed from Wilber E. Dixon to Paul I. Dixon, et al., recorded in Deed Book 1292, Page 121.
- (nn) February 1, 1952, Deed from Kenneth C. McGarry, et ux. to Wilber E. Dixon, et ux., recorded in Deed Book 421, Page 192.
- (oo) October 17, 1946, Deed from Lamar H. Davenport, et ux. to Kenneth C. McGarry, et ux., recorded in Deed Book 379, Page 441.

- (pp) July 6, 1942, Deed from Lamar H. Davenport, et ux. to Lamar H. Davenport and Mary Davenport, recorded in Deed Book 348, Page 438.
  - (qq) January 24, 1997, Deed from Paul I. Dixon to Clyde E. Dixon, et al., recorded in Deed Book 1817, Page 399.
  - (rr) July 14, 1989, Deed from Wilbur E. Dixon, et al. to Paul I. Dixon, et al., recorded in Deed Book 1292, Page 125.
  - (ss) April 28, 1970 Deed from Wilbur E. Dixon, et ux. to Wilber E. Dixon, et al., recorded in Deed Book 560, Page 276.
  - (tt) April 9, 1965, Deed from Russell S. Dodd, et ux. to Wilber E. Dixon, et ux., recorded in Deed Book 514, Page 108.
  - (uu) March 10, 1955, Deed from Walter Brown, et ux. to Russell S. Dodd, et ux., recorded in Deed Book 441, Page 147.
  - (vv) September 21, 1925, Deed from John E. DuBois, et ux. to Walter Brown, recorded in Deed Book 299, Page 87.
2. Photocopies of all assessment records for Parcel No. 119-E3-33 including, but not limited to, all residential property record cards or assessment records maintained on micro fiche.
  3. Photocopies of all assessment records for Parcel No. 119-E4-16 including, but not limited to, all residential property record cards or assessment records maintained on micro fiche.
  4. Current assessment map for Huston Township, Clearfield County.
  5. Aerial photograph of Huston Township, Clearfield County, with tax parcel boundaries and assessment numbers superimposed.
  6. White map with water indicated in blue and showing current tax parcel numbers and current owners as reflected in Clearfield County tax assessment records. The map has a scale of 1 inch = 600 feet.

7. Plaintiffs' Exhibits 1 through 9 and Defendants' Exhibits A-C marked during the trial deposition of Lionel Alexander on March 31, 2009.

DALE WOODARD LAW FIRM

By Keith M. Pemrick  
Keith M. Pemrick

John Sughrue  
John Sughrue

Date: April 24, 2009

Date: April 21, 2009

**FILED**

**APR 23 2009**

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

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

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

**FILED** ICC Atty  
0/10:12m Sughrue  
APR 21 2009

William A. Shaw  
Prothonotary/Clerk of Courts

**Type of Case:** Civil Action

**Type of Pleading:** Certificate of Service

**Filed on Behalf of:** Co-Defendant, John D. Duttry

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
225 East Market Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**Other Counsel of Record:**

Keith Pemrick, Esquire  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

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

Thelma D. Bush, Pro Se  
450 Salada Road  
DuBois, PA 15801

Ms. Beverly Copelli, Pro Se  
1220 Second Avenue  
Brockway, PA 15824

*(Handwritten signature)*

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on April 21, 2009, I caused ORDER DATED APRIL 21, 2009 DENYING THE MOTION FOR SUMMARY JUDGMENT to be served on the following and in the manner indicated below:

**By Facsimile 4/20/09 on:**

Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298  
Fax: 814-437-3212

**By Personal Service Upon:**

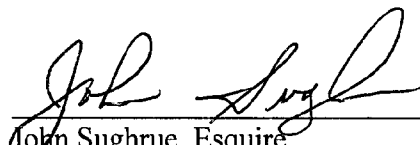
Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

Ms. Thelma D. Bush, Pro Se  
450 Salada Road  
DuBois, PA 15801

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

Ms. Beverly Copelli, Pro Se  
1220 Second Avenue  
Brockway, PA 15824

Date: April 21, 2009

  
\_\_\_\_\_  
John Sughrue, Esquire  
Attorney for Co-Defendant, John D. Duttry

**FILED**

**APR 21 2009**

William A. Shaw  
Prothonotary/Clerk of Courts



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

CHERRY TIMBER ASSOCIATES, INC., :  
and CHAGRIN LAND LIMITED :  
PARTNERSHIP, :  
Plaintiffs, :

vs. :

NO.06-1498-CD

AUDRA MITCHELL, JOHN D. DUTTRY, :  
THELMA BUSH and BEVERLY R. :  
WILLIAMS a/k/a BEVERLY COPELLI :  
Defendants :

FILED

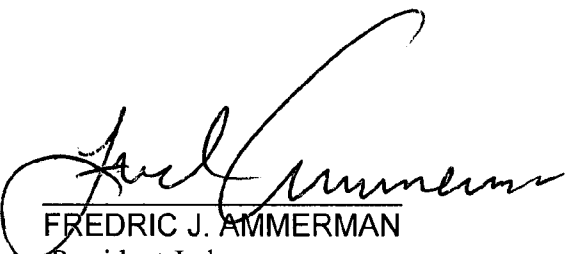
APR 20 2009

0/3:50/w  
William A. Shaw  
Prothonotary/Clerk of Courts  
6 cent to Harry Sugan  
FOR SEN.

ORDER

AND NOW, this 20<sup>th</sup> day of April 2009, it is the ORDER of this Court that Defendant  
John D. Duttry's Motion for Summary Judgment, be and is hereby DENIED.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

**FILED**

**APR 20 2009**

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

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

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

**Type of Case:** Civil Action

**Type of Pleading:** Motion in Limine

**Filed on Behalf of:** Co-Defendant, John D. Duttry

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
225 East Market Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**Other Counsel of Record:**

Keith Pemrick, Esquire  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

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

Thelma D. Bush, Pro Se  
450 Salada Road  
DuBois, PA 15801

Ms. Beverly Copelli, Pro Se  
1220 Second Avenue  
Brockway, PA 15824

FILED SCC

04/21/2009  
APR 20 2009

Atty Sughrue

William A. Shaw  
Prothonotary/Clerk of Courts

#54

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**MOTION IN LIMINE**

To the Honorable Fredric J. Ammerman, President Judge of Said Court.

**AND NOW**, comes Defendant, John D. Duttry, by his Attorney, John Sughrue, and moves for an Order barring certain expert opinion testimony at Trial of this action and in support thereof represents the following:

1. Plaintiffs' counsel has provided a written report dated February 23, 2009 from Michael D. Snyder, Esquire. A **copy** of said report is attached;
2. The report relates to examination of various title documents relating to the title of the property in dispute in this case;
3. At the end of said report, Mr. Snyder provides an expert opinion as to the ownership of the property which is in dispute;
4. Defendant moves the Court to bar any opinion testimony by Mr. Snyder for the following reasons:
  - A. The issue of title to property is the ultimate question before this Court and the Court is qualified as Trier of Fact by virtue of education and experience to understand the issue of title and to form an opinion without the aid of experts;

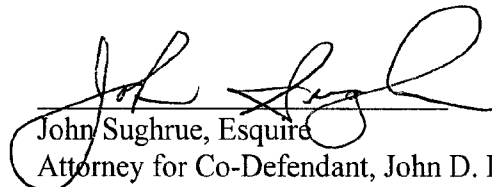
B. The issue of title is one of the ultimate conclusions before the Court;

C. Under the Pennsylvania Rules of Evidence, Rule 702 provides, "if scientific, technical or other specialized knowledge beyond that possessed by a lay person, will assist the Trier of Fact to understand the evidence or to determine a fact issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise".

5. There are cases that allow an expert to offer an opinion as to the ultimate issue, such as whether a defendant's driving complied with an applicable standard of care so long as the expert is not judging credibility, Christiansen v. Silfies, 667 A2<sup>nd</sup> 396 (PA Super 1995). There are cases finding that an expert witnesses' opinion as to the ultimate issue of a physician's conduct was highly extraordinary and was ruled to improperly impinge upon a jury's exclusive fact finding province, Corbett v. Weisband, 551 A2<sup>nd</sup> 1059 (PA Super 1988). In any event, the decision to admit or deny expert testimony is within the sound discretion of the Court, Chicchi v. Southeastern Penn, 727 A 2<sup>nd</sup> 604 (PA Cmwlt. 1999).

**WHEREFORE**, Defendant respectfully moves the Honorable Court to enter an Order barring proposed witness, Michael Snyder, from giving an expert opinion as set forth in his report.

Respectfully submitted:

  
John Sughrue, Esquire  
Attorney for Co-Defendant, John D. Duttry

**COPY****Gent, Gent and Snyder**

Attorneys at Law

314 West Park Street, Franklin, Pa. 16323-1390

(814) 437-3754

HENRY W. GENT, III  
MICHAEL D. SNYDERFAX (814) 437-6800  
E-MAIL [gentlaw@mail.usachoice.net](mailto:gentlaw@mail.usachoice.net)OF COUNSEL  
HARRY W. GENT, JR.

February 23, 2009

Keith Pemrick, Esq. and  
Joseph H. Keebler, Jr., Esq.  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323Re: Industrial Timber & Land Co.  
60 Acre, More or Less, Parcel,  
Huston Township, Clearfield County, Pennsylvania

Dear Messrs. Pemrick &amp; Keebler:

You have asked for my opinion regarding the surface ownership of a 60 acre, more or less, parcel in Huston Township, Clearfield County, Pennsylvania, which has at various times been erroneously shown on Clearfield County maps as Parcel No. 119-E3-33, but in fact is Parcel No. 119-E4-16. I have reviewed certain documents from the Office of Recorder of Deeds of Clearfield County and the Tax Assessment Office of Clearfield County, all as provided to me by your office. Based upon my review of these documents I would set forth as follows:

1. The first deed of record examined for this parcel was from John E. DuBois et ux., to G. E. Bucksbee dated November 8, 1927 and recorded in the Office of the Recorder of Deeds of Clearfield County in Deed Book 298 at page 136 and describes by metes and bounds a 60.12 acre parcel as surveyed May 29, 1922 by J. E. Fry. A survey of the parcel in question prepared by Alexander & Associates, Inc. dated July 5, 1995 titled "Retracement Survey, Industrial Timber & Land Co." depicts a 58 acre parcel which obviously conforms in boundaries and location with Parcel No. 119-E4-16 as shown on Clearfield County Tax Assessment Maps.

2. The next deed of record examined for the subject parcel was from the County Commissioners of Clearfield County to David DuBois originally dated May 25, 1942, but re-executed under date of October 8, 1945 (as the first deed was recited to have been lost) and recorded as aforesaid on October 17, 1945 in Deed Book 370 at page 458. The deed recites that it was for the property of G. E. Bucksbee containing 60 acres.

3. The next deed of record examined for the subject parcel was from David DuBois et ux., to John E. DuBois, Jr., Louis G. DuBois, Sarah B. DuBois, David DuBois and Caroline DuBois Pfaelzer dated June 18, 1947 and recorded as aforesaid on July 23, 1947 in Deed Book 384 at page 524. The first parcel described therein is described as "Premises containing 60 acres, more or less, formerly sold as the property of G. E. Bucksbee at Clearfield County Treasurer's tax sale to the County Commissioners of Clearfield County, Pennsylvania, and conveyed by said County Commissioners to David DuBois by deed dated October 8, 1945, recorded at Clearfield, Pa., in Deed Book 370, page 458."

4. The next deed of record examined for the subject parcel was from John E. DuBois, Jr. and Rene Hadley DuBois, his wife, Louis G. DuBois, unmarried, Caroline DuBois Pfaelzer, unmarried, David DuBois and Shirley C. DuBois, his wife, and Sarah B. DuBois, unmarried to the Green Glen Corporation dated September 1, 1947 and recorded as aforesaid on November 2, 1948 in Deed Book 393 at page 411. Note that this deed purports to convey in excess of 46 parcels. Parcel No. "45 First Thereof:" describes "THE FIRST THEREOF: Premises containing 60 acres, more or less, formerly sold as the Property of G. E. Bucksbee at Clearfield County Treasurer's tax sale to the County Commissioners of Clearfield County, Pennsylvania, and conveyed by said County Commissioners to David DuBois by deed dated October 8, 1945, recorded at Clearfield, Pa., in Deed Book 370, page 458."

**It should be noted that this deed into Green Glen Corporation recites and conveys several parcels situate in Huston Township; however, there is no conveyance of the 123 acre parcel situate immediately to the north and east of the subject parcel which is shown Clearfield County Tax Assessment Maps as Parcel No. 119-E3-33.**

5. The next deed of record examined for the subject parcel was from Green Glen Corporation to Cherry Timber Associates dated December 21, 1988 and recorded as aforesaid on December 21, 1988 in Volume 1260 at page 338. This deed describes twenty one (21) parcels located in Clearfield County and contains at Parcel No. 21 a conveyance of "All right, title and interest to the Grantor in and to all real property owned by the Grantor in Clearfield County, Pennsylvania, including all rents, profits, issues, remainders and reversioners."

**This deed appears to be the recorded source of confusion regarding the ownership of the 60 acre parcel.**

Parcel No. 13 in said deed contains the following description:

"All that certain parcel of real estate located in Huston Township, Clearfield County, Pennsylvania,

BOUNDED on the North by lands of Tinker & Hoyt;

BOUNDED on the Southeast by Bennetts Branch Run;

BOUNDED on the Southwest by lands of Harold Duttry;

BOUNDED on the West by lands of Sadie Beer;

Being identified as Clearfield County Tax Map Parcel No. 119-E3-33."

This description describes the 123.2 acre Parcel owned by Duttry, except for the erroneous third call which should have read "BOUNDED on the southwest by lands of Green Glen Corporation". On all Clearfield County Tax Assessment Maps, which you have provided, Parcel No. 119-E4-16 is clearly depicting the original 60 acre parcel that comes down through the chain of title in deeds 1 through 4 as set forth above. Further, you have provided me with

several maps and surveys which describe a 60 acre parcel bounded similarly to Tax Parcel No. 119-E4-16. You have also provided me with an undated, untitled survey which depicts the 123.2 acre parcel which obviously conforms in boundaries and location with Parcel No. 119-E3-33 as shown on Clearfield County Tax Assessment Maps.


It should be noted that early Clearfield County Tax Assessment records from 1926 through 1960 reflect a 60 acre parcel owned successively by G. E. Bucksbee, John DuBois or J. E. DuBois, David DuBois and Green Glen Corporation. These are the successive owners of the 60 acre parcel as set forth in the deeds described in paragraphs 1 through 4 above. Apparently tax assessment parcel numbers were first assigned in Clearfield County around 1960 and there may have been an error made at that time which caused the current confusion. **For purposes of determining ownership, deeds and deed descriptions should prevail over tax assessment numbers.**

After a review of the documents, surveys and maps which you have provided me, and subject to the erroneous description and mapping referred to above, it is my opinion that the 60 acre parcel was conveyed to Cherry Timber Associates pursuant to the quit claim language quoted above contained in Parcel No. 21 of the Quit Claim Deed recorded at Volume 1260 at page 338 and is Parcel No. 119-E4-16 as shown on Clearfield County Tax Assessment Maps.

Please feel free to contact our office should you have any questions in this regard.

Very truly yours,

Gent, Gent, & Snyder

  
Michael D. Snyder, Esq.

MDS/bai



**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on April 20, 2009, I caused MOTION IN LIMINE to be served on the following and in the manner indicated below:

**By Personal Service Upon:**

Court Administrator  
Clearfield County Courthouse  
1 North Second Street  
Clearfield, PA 16830

**By Facsimile Upon:**

Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298  
Fax: 814-437-3212

**By Personal Service 4/21/09 Upon:**

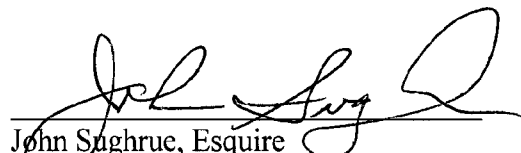
Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

Ms. Thelma D. Bush, Pro Se  
450 Salada Road  
DuBois, PA 15801

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

Ms. Beverly Copelli, Pro Se  
1220 Second Avenue  
Brockway, PA 15824

Date: April 20, 2009

  
John Sughrue, Esquire  
Attorney for Co-Defendant, John D. Duttry

**FILED**

**APR 20 2009**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

CHERRY TIMBER ASSOCIATES,  
INC. and CHAGRIN LAND  
LIMITED PARTNERSHIP

-VS-

No. 06-1498-CD

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH, and  
BEVERLY R. WILLIAMS, a/k/a  
BEVERLY COPELLI

O R D E R

AND NOW, this 31st day of March, 2009, following argument on the Defendant's Motion for Summary Judgment, it is the ORDER of this Court that either counsel may have until and including Friday, April 3, 2009, in which to submit letter brief. The same may be submitted by fax, if counsel so desires.

BY THE COURT,



President Judge

2159 WDA 2009  
FEB 25 2010

<sup>9</sup> FILED 100A44y:  
0104381 Pennick  
APR 01 2009 Sughrue  
William A. Shaw HopKins  
Prothonotary/Clerk of Courts

FILED

APR 01 2009

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 4/1/09

☐ 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:

CHERRY TIMBER ASSOCIATES, INC., )  
and CHAGRIN LAND LIMITED )  
PARTNERSHIP, )

Plaintiffs, )

v. )

AUDRA MITCHELL, JOHN D. DUTTRY )  
THELMA BUSH and BEVERLY R. )  
WILLIAMS a/k/a BEVERLY COPELLI, )

Defendants. )

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

Civil Action

No. 06-1498-CD

**FILED** ice  
MAR 31 2009  
8:53 AM  
William A. Shaw  
Prothonotary/Clerk of Courts  
Atty. Penrick

PROOF OF SERVICE OF SUBPOENAS

COMMONWEALTH OF PENNSYLVANIA )

) SS:

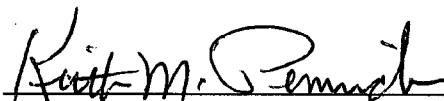
COUNTY OF VENANGO )

The undersigned, being first duly sworn according to law, deposes and says that:

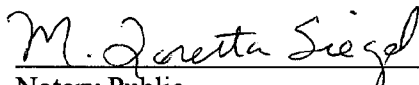
1. Your deponent is counsel for Plaintiffs in the above case.

2. Subpoenas Directing Attendance at Trial on April 21, 2009, were served on Audra Mitchell (now Audra Geiser) and Scott V. Jones, Esquire, pursuant to Pennsylvania Rules of Civil Procedure by certified mail, return receipt requested, restricted delivery, addressed to said witnesses at their last known addresses.

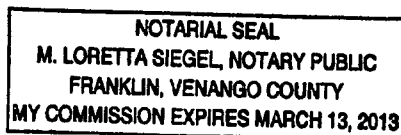
3. Attached hereto and marked as Exhibits 1 and 2 are receipts for certified mail delivery and domestic return receipt signed by Audra Geiser and Scott V. Jones, respectively.

  
Keith M. Pemrick, Esquire

Sworn and subscribed to before me  
this 30<sup>th</sup> day of March, 2009.

  
Notary Public.

Venango County, Pennsylvania  
My Commission Expires:



152

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		<p>A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>AUDRA MITCHELL</i> C. Date of Delivery <i>MAR 17 2003</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>1. Article Addressed to: Audra Mitchell Absolute Powder Coating 202 Grotzinger Road St. Mary's, PA 15857</p>		<p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. </p>	
<p>2. Article Number (Transfer from service label) <i>KMP</i> 7008 1140 0001 1986 0255</p>		<p>4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/> Yes</p>	

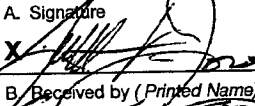
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

7008 1140 0001 1986 0255

U.S. Postal Service	
<b>CERTIFIED MAIL RECEIPT</b>	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information, visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL USE</b>	
Postage	\$ 2.36
Certified Fee	2.70
Return Receipt Fee (Endorsement Required)	2.20
Restricted Delivery Fee (Endorsement Required)	4.30
<b>Total Postage &amp; Fees</b>	<b>\$11.56</b>
<p>Sent To <i>Audra Mitchell</i></p> <p>Street, Apt. No., or PO Box No. <i>Absolute Powder Coating</i></p> <p>City, State, ZIP+4 <i>202 Grotzinger Road</i></p> <p><i>St. Mary's, PA 15857</i></p>	
<p>PS Form 3800, August 2005 See Reverse for Instructions</p>	

USPS 16323

EXHIBIT 1

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		<p>A. Signature  </p> <p>B. Received by (Printed Name)  <b>SCOTT V. JONES</b></p> <p>C. Date of Delivery  <b>03/24/09</b></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No          If YES, enter delivery address below:</p>	
<p>1. Article Addressed to:  <b>Scott V. Jones, Esquire</b>  <b>899 Treasure Lake</b>  <b>DuBois, PA 15801</b></p>		<p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/> Yes</p>	
<p>2. Article Number          (Transfer from service label)  <b>7008 1140 0001 1986 0262</b></p>		<p><b>MAR 24 2009</b>  <b>USPS - 33870</b></p>	
<p>PS Form 3811, February 2004</p>		<p>Domestic Return Receipt</p>	

2920 9861 0000 0417 0002

7008 1140 0001 1986 0262

U.S. Postal Service	
<b>CERTIFIED MAIL RECEIPT</b>	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL USE</b>	
Postage	\$ 1.85
Certified Fee	2.70
Return Receipt Fee (Endorsement Required)	2.20
Restricted Delivery Fee (Endorsement Required)	4.30
Total Postage & Fees	\$11.05
<p>Sent To <b>Scott V. Jones, Esquire</b></p> <p>Street, Apt. No., or PO Box No. <b>899 Treasure Lake</b></p> <p>City, State, ZIP+4 <b>DuBois, PA 15801</b></p>	

PS Form 3800, August 2005

EXHIBIT 2

FILED

MAR 31 2009

William A. Shaw  
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

Civil Action

FILED  
m/11:366  
MAR 30 2009

William A. Shaw  
Prothonotary/Clerk of Courts

**PLAINTIFFS' EXHIBITS IN RESPONSE TO**  
**MOTION FOR SUMMARY JUDGMENT**

1. Audra Mitchell deposition transcript (Tr.) pp. 1 - 11.
2. Plaintiffs' Responses to Duttry's Request for Admissions and Interrogatories.
3. Audra Mitchell Tr. p. 13-14.
4. John Duttry Tr. pp. 32-34.
5. Christopher Guth Affidavit.
6. Audra Mitchell Tr. p. 16-17.
7. Correspondence
  - a. Stephen Jilk January 30, 1995, letter to Jack D. Duttry, with enclosures.
  - b. Audra Mitchell March 7, 1995, letter to Attorney John Sughrue.
  - c. John Sughrue March 8, 1995, letter to Scott V. Jones, Esquire.
  - d. Scott V. Jones March 17, 1995, letter to John Sughrue.
  - e. G. Barrett Garbarino, Esquire March 23, 1995, letter to John Sughrue.

#5

- f. John Sughrue April 5, 1995, letter to G. Barrett Garbarino.
  - g. G. Barrett Garbarino April 10, 1995, letter to John Sughrue.
  - h. John Sughrue June 24, 1996, letter to Scott V. Jones.
  - i. John Sughrue June 29, 1995, letter to G. Barrett Garbarino
  - j. Scott V. Jones July 3, 1996, letter to John Sughrue.
  - k. Scott V. Jones July 3, 1996, letter to McDermott Abstract.
  - l. Scott V. Jones October 3, 1997, letter to G. Barrett Garbarino and John Sughrue, with enclosure.
  - m. Scott V. Jones October 21, 1997, letter to G. Barrett Garbarino and John Sughrue, with enclosure.
- 8. Stephen Jilk Tr. pp. 45-52.
- 9. G. Barrett Garbarino Affidavit.
- 10. Michael D. Snyder, Esquire, February 23, 2009, report.
- 11. Surveys/Maps.
  - a. Alexander and Associates, Inc., July 5, 1995, Retracement Survey of the Cherry Timber property.
  - b. J.E. Fry Survey of the Cherry Timber property.
  - c. Map of 123.2 acre (Duttry) parcel from John DuBois file.
  - d. Clearfield County tax assessment maps showing the Cherry Timber and Duttry properties.
- 12. Audra Mitchell Tr. P. 30.

**Exhibit No. 1**

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CHERRY TIMBER ASSOCIATES, INC., : CIVIL DIVISION  
and CHAGRIN LAND LIMITED : No. 06-1498-CD  
PARTNERSHIP, :  
Plaintiffs, :

Vs. :

AUDRA MITCHELL, JOHN D. DUTTRY, :  
THELMA BUSH and BEVERLY R. :  
WILLIAMS a/k/a BEVERLY COPELLI, :  
Defendants. :

ORAL DEPOSITION: AUDRA MITCHELL

The oral deposition of AUDRA MITCHELL was taken in the above-captioned case on Thursday, April 17th, 2008 scheduled to commence at 11:00 a.m. and concluding at 11:58 a.m. in the Board Room of the Clarion Hotel, 1896 Rich Highway, DuBois, Pennsylvania 15801 pursuant to the Pennsylvania Rules of Civil Procedure.

A P P E A R A N C E S:

Representing Plaintiffs: KEITH M. PEMRICK, ESQ.  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323

Representing A. Mitchell: CHRISTOPHER E. MOHNEY, ESQ.  
Suite 6  
25 East Park Avenue  
DuBois, PA 15801

## APPEARANCES Con't.

Representing Mr. Duttry: JOHN SUGHRUE, ESQ.  
Sughrue & Kesner  
23 North Second Street  
Clearfield, PA 16830

Representing T.Bush and: (None present.)  
B.Copelli

Court Reporter: NORTHWEST PENNA  
COURT REPORTERS  
Barbara J. Busch  
141 N. Shenango Street  
Mercer, PA 16137

**EXAMINATION INDEX****AUDRA MITCHELL**

BY MR. PEMRICK . . . . .	4
BY MR. SUGHRUE . . . . .	21
BY MR. MOHNEY . . . . .	37
FURTHER BY MR. PEMRICK . . . . .	38
FURTHER BY MR. SUGHRUE . . . . .	40

**EXHIBIT INDEX****MITCHELL**

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1 Timber Harvest Agreement	9
2 Mitchell letter to Sughrue 3-7-95	18
3 Schedule of Payments to Escrow Account	37

**OBJECTION INDEX**

BY MR. MOHNEY . . . . .	35
-------------------------	----

1 (Deposition commenced at  
2 (11:05 a.m. with counsel  
3 (present as noted.

4

- - -

5

AUDRA MITCHELL,

6

being first duly sworn,

7

testified as follows:

8

9

EXAMINATION

10 BY MR. PEMRICK:

11 Q. Would you state your name and give us your  
12 address, please?

13 A. Audra L. Mitchell, 108 Catalina Road, St. Marys,  
14 PA.

15 Q. Mrs. Mitchell, you were present during  
16 Mr. Duttry's deposition?

17 A. Yes.

18 Q. And did you hear the ground rules that I  
19 explained to him at the beginning?

20 A. Yes.

21 Q. And those same ground rules will apply to you.

22 A. Yes.

23 Q. Have you taken any medication or have any health  
24 condition which would prevent you from  
25 understanding and responding to my questions this

1 morning?

2 A. No.

3 Q. Before your deposition started we were talking  
4 about whether you had any records relating to  
5 Mitchell Lumber Company, and if you would just  
6 for the record, state whether you have any, and  
7 if not, what happened to them.

8 A. I do not have any records. They were destroyed  
9 either in a fire or in a flood.

10 Q. Approximately when did the fire and the flood  
11 occur?

12 A. The fire was -- or I'm sorry, the flood was  
13 January 2nd, 2003. The fire would have been  
14 February of 2003.

15 Q. And your husband passed away on January 2nd,  
16 2003?

17 A. Yes.

18 Q. Prior to his death he owned and operated Mitchell  
19 Lumber Company; is that correct?

20 A. Yes.

21 Q. Did you work in the business?

22 A. Yes.

23 Q. What were your duties?

24 A. Basically office, secretarial work.

25 Q. When did your husband start the business?



1 A. He had it before I even met him. I don't know  
2 exactly. I believe after he got out of the army.

3 Q. And what dates did you work in the business?

4 A. Probably, I believe it was July, August of 1989  
5 is when I would have started.

6 Q. And you worked there until the business closed?

7 A. Yes.

8 Q. As part of your office duties did you prepare  
9 timber agreements?

10 A. Yes.

11 Q. Were you involved in negotiating the agreements?

12 A. No.

13 Q. Were you involved in the operational end of the  
14 business at all?

15

16 MR. MOHNEY: Could you clarify  
17 that?

18

19 Q. As far as going into the field to look at timber,  
20 negotiating contracts?

21 A. No. I never went out and looked at timber.

22 Q. Mr. Duttry described a person who went to look at  
23 the timber on his property with your husband.

24 Said he was about in his 20's, I think, six foot  
25 tall, brown hair, and stocky build. Any idea who

1       that was?

2   A.   It could have been three or four people that come  
3       to mind.

4   Q.   What other employees worked in the business at  
5       that time?

6   A.   I really don't remember for sure. There was  
7       quite a few. We had a full saw mill and we had  
8       subcontract workers that worked for us with their  
9       own skidders. I mean there was quite a few.

10   Q.   Who were the three or four people that might fit  
11       the description Mr. Duttry gave?

12   A.   Junior Stark.

13   Q.   Was he subcontractor or did he work for you?

14   A.   At that time I'm not sure which. He was an  
15       employee, but he did end up buying his own  
16       skidder and was a subcontract, but I don't know  
17       the exact dates when --

18   Q.   Do you know where he lives or has his business  
19       now?

20   A.   Grant Road, Ridgeway.

21   Q.   Okay. Who else might fit that description?

22   A.   Perhaps Russell Krise.

23   Q.   How do you spell his last name?

24   A.   K-R-I-S-E.

25   Q.   What did he do in the business?

1 A. He was a subcontractor that worked in the woods.

2 Q. Do you know where he lives or has his business?

3 A. Krise Road in Kersey, PA.

4 Q. Anyone else that you can think of?

5 A. Not stocky. Darren, who's skinny, so --

6 Q. Who was Darren?

7 A. Darren Wolfe.

8 Q. What did he do in the business?

9 A. He was an employee or a subcontractor that worked  
10 in the woods.

11

12 MR. SUGHRUE: Excuse me. I didn't  
13 hear that last name.

14 THE WITNESS: Wolfe.

15 MR. SUGHRUE: Wolfe?

16

17 Q. Do you know where he lives or has a business?

18 A. Daguscahonda.

19 Q. You're going to help us with that.

20 A. In Ridgeway. I don't know.

21

22 MR. MOHNEY: Dagus is D-A-G-U-S. I  
23 know that.

24

25 Q. Okay.

1 A. C-A-U --

2 Q. C-A-U?

3 A. Uh, huh. N-D-A, I believe.

4 Q. Okay. That's the name of a road?

5 A. It's the name of a small town in between Ridgeway  
6 and St. Mary's.

7 Q. Okay.

8

9 MR. SUGHRUE: What town are you  
10 referring to, Dagus Mines?

11 THE WITNESS: Daguscahonda.

12 MR. SUGHRUE: Daguscahonda? Okay.

13 MR. PEMRICK: I'm going to mark a  
14 copy of the Timber Harvest Agreement as  
15 Exhibit 1 so we'll have a copy for your  
16 transcript.

17

18 (Deposition Exhibit 1 marked for identification.)

19

20 Q. Mrs. Mitchell, I'll show you what's been marked  
21 as Deposition Exhibit 1, a Timber Harvest  
22 Agreement. Are you familiar with that  
23 agreement?

24 A. Yes.

25 Q. Who prepared it?

1 A. Me.

2 Q. Is all of the handwritten information on the  
3 agreement yours --

4 A. Yes.

5 Q. -- other than the signatures obviously of the  
6 landowner and the witness?

7 A. Yes.

8 Q. Who supplied the information for the agreement?

9 A. Paul.

10 Q. And is that your signature as the operator?

11 A. Yes.

12 Q. Do you recall why you signed the agreement rather  
13 than your husband?

14 A. Probably when I was just in the process of  
15 filling it out, I just signed it.

16 Q. Did you have any discussion with Mr. Duttry about  
17 the agreement?

18 A. No.

19 Q. Do you know whether your husband went out to the  
20 Duttry property to look at the timber?

21 A. Yes.

22 Q. How many times did he do that, if you recall?

23 A. I don't know. Quite a few. I mean, he would go  
24 down -- he went down to look at the property with  
25 Mr. Duttry, I believe, you know, before it was

- 1       done, the agreement was signed. And then he  
2       would go down and check on the guys that worked,  
3       while they were working on occasion.
- 4   Q.   Did your husband tell you anything about the,  
5       when he went to the property with Mr. Duttry  
6       before the agreement was signed?
- 7   A.   No.
- 8   Q.   At any time did your husband tell you anything  
9       about how property lines for the property were  
10      identified?
- 11   A.   No.
- 12   Q.   How about even after the question arose as to  
13      whether the timber was on the Duttry property,  
14      did you talk to him about property lines at that  
15      point?
- 16   A.   No.
- 17   Q.   At any point did you ever have any discussions  
18      with Mr. Duttry or his wife, Mary Jo Duttry?
- 19   A.   Not that I'm aware of. Not that I remember.
- 20   Q.   You gave me the names of three individuals who  
21      worked in the woods with or for your husband. Do  
22      you know who worked on this particular project?
- 23   A.   No, I do not.
- 24   Q.   Are there any other persons you can think of who  
25      worked in the woods on a crew?

**Exhibit No. 2**

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**PLAINTIFFS' RESPONSES TO  
REQUEST FOR ADMISSIONS AND INTERROGATORIES**

TO: Keith M. Pemrick, Esquire  
Cherry Timber Associates, Inc.  
Chagrin Land Limited Partnership

You are requested to admit the truth of each of the statements of fact hereinafter stated and if you deny the fact to set forth thereafter the relevant contrary fact or facts as you understand them and will seek to prove at trial of this action. You are instructed that:

1. These requests are made under Pa.R.C.P. No. 4001 et seq. and each of the matters of which an admission is requested shall be deemed admitted unless your sworn statement in compliance with such rules is timely made.

2. If you do not admit each of such statements, you must specifically deny each one not admitted or set forth in detail the reasons why you cannot truthfully either admit or deny each such matter.

3. Your answer, signed and properly verified, must be delivered to the undersigned attorney of record for the Plaintiff/Defendant within thirty (30) days after delivery hereof.

4. If you fail or refuse to admit the truth of any such statement of fact and the Plaintiff/Defendant thereafter proves the truth thereof, you may be required to pay the reasonable expenses incurred in making such proof, including attorney's fees, witness expenses, etc.

5. If, in response to any of the following statements of facts, it is your position that the statement is true in part or as to some items, but not true in full or as to all items, then answer separately as to each part or item.



6. If you have been sued in more than one capacity or if your answers would be different if answered in any different capacity such as partner, agent, corporate officer, or director, or the like, then you are requested to answer separately in each such capacity. Failure to do so constitutes an admission in any such capacity.

7. You are directed to file an answer to this request in compliance with Pa.R.C.P. No. 4014(b) within thirty (30) days after service of this request upon you or within such shorter period as may be specified by the Court.

**YOU ARE HEREBY REQUESTED**, to admit for purposes of this action only pursuant to Pa.R.C.P. No. 4014 the following:

Do you admit that the following facts are true and correct? If not, specify your reasons and the contrary relevant facts known to you.

1. Plaintiff, Cherry Timber Associates, Inc. (hereafter, "Cherry Timber"), is an Ohio corporation with its principal place of business at 23925 Commerce Park Road, Beechwood, OH, 44122?

Answer: **Admitted.**

2. The Plaintiff, Chagrin Land Limited Partnership (hereafter, "Chagrin"), is an Ohio limited partnership with its principal place of business at 23925 Commerce Park Road, Beechwood, OH, 44122?

Answer: **Admitted.**

3. Mitchell Lumber Company (hereafter, "Mitchell Lumber") was, at relevant times, a sole proprietorship owned by Paul Mitchell who is now deceased and was engaged in the business of purchasing standing timber, cutting, marketing and transporting timber?

Answer: **Admitted.**

4. Paul Mitchell was aided on a daily basis in the operation of his business by his wife, Audra Mitchell, one of the Defendants herein?

Answer: See attached sheet.

5. Paul Mitchell died on January 2, 2003 and his estate was administered in Elk County, Pennsylvania?

Answer: Admitted.

6. Paul Mitchell's sole heir was his surviving spouse, Audra Mitchell, an adult individual who presently resides at 108 Catalina Road, St. Marys, PA, 15857?

Answer: Admitted.

7. Movant/Defendant, John D. Duttry (hereafter, "Duttry"), is an adult individual who was, at all times relevant, a one-third owner of 123.2 acres, more or less, in Huston Township, Clearfield County, PA (hereafter, "Duttry Premises"), and the remaining two-thirds ownership in said tract was at, all times relevant, owned by Duttry's sisters, Thelma Bush (hereafter, "Bush") and Beverly Copelli (hereafter, "Copelli"), Co-Defendants herein?

Answer: See attached sheet.

8. Duttry, Copelli and Bush inherited their ownership of the Duttry Premises from their father, Harold Duttry, upon his death?

Answer: See attached sheet.

9. Plaintiff, Cherry Timber, alleges ownership of 58 acres, more or less, located in Huston Township, Clearfield County, PA (hereafter, "Cherry Timber Premises")?

Answer: Admitted.

4. It is admitted that Audra Mitchell worked in the office of Mitchell Lumber Company. After reasonable inquiry by Plaintiffs, the information known or readily obtainable by the Plaintiffs is insufficient to admit or deny that she was there "on a daily basis" or to what extent she "aided" Paul Mitchell in the operation of the business.
7. It is admitted that during the period August 7, 1989, through August 10, 2004, John D. Duttry was the owner, as tenant in common with Thelma Bush and Beverly Copelli, of a 123.2 acre tract in Huston Township, Clearfield County, which was and is erroneously identified on the Clearfield County, Pennsylvania tax assessment records as Parcel No. 119-E4-16 but in fact should be assessed as Parcel No. 119-E3-33.
8. It is admitted that Duttry, Copelli and Bush became owners of the Duttry premises by virtue of a Decree of Distribution in the Estate of Harold E. Duttry dated August 7, 1989, entered of recorded in Clearfield County on August, 29, 1989.

10. At all times relevant, Chagrin did not own any real property located in Huston Township, Clearfield County, PA, that is relevant to this action?

Answer: See attached sheet.

11. At all times relevant, Industrial Timber and Land Company (hereafter, "Industrial") was a corporation, with a business office located in Pennsylvania?

Answer: Admitted, except the precise name was ITL Corp d/b/a Industrial Timber and Land Company (changed to Industrial Timber and Lumber Company in August 2002).

12. At all times relevant, Industrial did not own any real property located in Huston Township, Clearfield County, PA, that is relevant to this action?

Answer: Admitted.

13. On or about October 18, 1994, Duttry entered into a Timber Harvest Agreement (hereafter, "Timber Agreement") with Mitchell Lumber, a true and correct copy of which is attached hereto as Exhibit 1?

Answer: Admitted.

14. That between October 18, 1994 and October 18, 1995, Mitchell harvested timber from premises in Huston Township, Clearfield County, PA, sold the timber and paid the ownership royalty due thereunder to Duttry in accordance with the Timber Agreement, except for certain timber royalties that are the subject of this dispute?

Answer: See attached sheet.

15. Timber was last caused to be harvested and/or harvested by Mitchell Lumber and/or John D. Duttry no later than October 18, 1995?

Answer: See attached sheet.

10. Chagrin Land Limited Partnership owned property (Parcel No. 119-F4-2) which was located south of the Duttry and Hoyt properties.
14. It is admitted that between October 18, 1994, and October 18, 1995, Mitchell harvested timber from premises in Huston Township, Clearfield County. After reasonable inquiry by plaintiffs, the information known or readily obtainable by the plaintiffs is insufficient to admit or deny that Mitchell "sold" the timber or that he "paid the ownership royalty due thereunder to Duttry in accordance with the Timber Agreement, except for certain timber royalties that are the subject of this dispute".
15. After reasonable inquiry by Plaintiffs the information known or readily obtainable by the Plaintiffs is insufficient to admit or deny the truth of this allegation. The records which would document the last date timber was harvested are in the possession of Mitchell Lumber and/or John D. Duttry.

16. On or about January 1995, Steven Jilk (hereafter, "Jilk") contacted Paul Mitchell and communicated to him and Defendant, Audra Mitchell, an allegation that Mitchell was harvesting timber under the Timber Agreement from an adjacent landowner and that he, Jilk, was representing the adjacent landowner?

Answer: See attached sheet.

17. Jilk advised Paul and Audra Mitchell that they were cutting timber that was not located on the Duttry Premises and that they would be responsible for the improper cutting and the damages sustained?

Answer: See attached Sheet.

18. At all times relevant hereto, Steven Jilk was employed by Industrial as a timber resource manager?

Answer: Admitted.

19. In support of his allegations, Jilk, on or about July 5, 1995, caused a survey of a 58 acre tract of land to be surveyed for Industrial by Alexander and Associates, Inc. A copy of said survey (hereafter, "Industrial Survey") is attached hereto as **Exhibit 2**?

Answer: See attached sheet

20. The Industrial Survey places the Duttry Premises to the northeast of the surveyed property?

Answer: Admitted.

21. After the aforesaid Jilk contact, Mitchell Lumber continued harvesting timber under Duttry's Timber Agreement?

Answer: See attached sheet.

16. It is admitted that such a conversation occurred on or about January 27, 1995. After reasonable inquiry by Plaintiffs, the information known or readily obtainable by the Plaintiffs is insufficient to admit or deny that Audra Mitchell was present or part of the conversation, but it is admitted upon information and belief, that Stephen Jilk had at least one conversation with Audra Mitchell.
17. It is admitted that a conversation as described took place between Stephen Jilk and Paul Mitchell. After reasonable inquiry by Plaintiffs, the information known or readily obtainable by the Plaintiffs is insufficient to admit or deny that Audra Mitchell was present or part of the conversation, but it is admitted upon information and belief, that Stephen Jilk had at least one conversation with Audra Mitchell.
19. It is admitted that Exhibit 2 was prepared at the request of Stephen Jilk.
21. After reasonable inquiry by Plaintiffs, the information known or readily obtainable by the Plaintiffs is insufficient to admit or deny this allegation.

22. After the Jilk contact as aforesaid, Mitchell Lumber, refused to pay to Duttry, the royalty due under the Timber Agreement because of Jilk's allegations of wrongful cutting, despite demands by Mary Jo Duttry, Duttry's wife, and Attorney John Sughrue, that the royalties be paid?

Answer: See attached sheet.

23. After the Jilk contact as aforesaid, Mitchell Lumber, paid the remaining royalties due Duttry under the Timber Agreement, over Duttry's objection, to Scott V. Jones, Esquire?

Answer: See attached sheet.

24. Mitchell Lumber paid to Scott V. Jones, Esquire, a total sum of \$45,000.00, which represented the balance of royalties due from Mitchell Lumber under the Timber Agreement?

Answer: See attached sheet.

25. Prior to receiving the said \$45,000 from Mitchell Lumber Company, Scott V. Jones, had consulted with Steven Jilk on the dispute between Mitchell Lumber Company and Plaintiffs?

Answer: See attached sheet.

26. Prior to receiving the said \$45,000 and subsequent to receiving said sum, Scott V. Jones represented Plaintiffs in legal affairs:

Answer: See attached sheet.

27. Mitchell Lumber deposited said sum with Scott V. Jones, because of Jilk's allegation that he had unlawfully trespassed on non-Duttry land and cut timber on non-Duttry land?

Answer: Admitted.

28. As a result of the foregoing, Scott V. Jones established an interest bearing escrow fund in the name of Mitchell Lumber Company and Chagrin Land Limited Partnership (hereafter, "Escrow Funds")?

Answer: See attached sheet.



22. After reasonable inquiry by Plaintiffs, the information known or readily obtainable by Plaintiffs is insufficient to enable it to admit or deny this request as stated. It is admitted that after the Jilk contact with Mitchell Lumber in January, 1995, Mitchell Lumber made payments totaling \$45,000 to attorney Scott V. Jones to be held in escrow.
23. After reasonable inquiry by Plaintiffs, the information known or readily obtainable by Plaintiffs is insufficient to enable it to admit or deny this request as stated. It is admitted that after the Jilk contact with Mitchell Lumber in January, 1995, Mitchell Lumber made payments totaling \$45,000 to attorney Scott V. Jones to be held in escrow.
24. It is admitted that after the Jilk contact with Mitchell Lumber in January, 1995, Mitchell Lumber made payments totaling \$45,000 to attorney Scott V. Jones to be held in escrow. It is denied that the sum "represented the balance of royalties due from Mitchell under the Timber Agreement". To the contrary, the sum represented the amount agreed to by Stephen Jilk and Paul Mitchell as the value of the timber harvested by Mitchell from the Cherry Timber property.
25. Denied. Other than a request that Attorney Jones serve as an escrow agent, there was no "consultation" between Attorney Jones and Stephen Jilk with respect to the dispute between Mitchell Lumber Company and Plaintiffs.
26. It is admitted that Attorney Jones represented Plaintiffs in unrelated legal matters both before and after serving as the escrow agent for the \$45,000.
28. Admitted, except it is believed that the account was initially titled as "Mitchell Lumber Company and Chagrin Land Limited Partnership, Scott V. Jones, escrow agent".

29. In 1996, John Sughrue, Attorney, met with Attorney Jones, Jilk and Jilk's Attorney, Barry Garbarino, in DuBois at Scott Jone's law office?

Answer: It is admitted that such a meeting took place on or about July 16, 1996.

30. At said meeting, the various parties attempted to amicably resolve the dispute?

Answer: See attached sheet.

31. At said meeting, the matter was not amicably resolved?

Answer: Admitted, subject to response to No. 30 above.

32. At said meeting, no resolution of the dispute between the parties was made and no agreement was made with respect to the disputed funds, except that Jones would hold them?

Answer: See attached sheet.

33. That subsequent to said meeting, Paul Mitchell died?

Answer: Admitted.

34. That subsequent to said meeting, Mary Jo Duttry died?

Answer: Admitted.

35. If cutting occurred on Plaintiff's Premises, the last cutting occurred no later than October 1995?

Answer: Admitted.

36. Steven Jilk was never employed by Cherry Timber Associates, Inc. or Chagrin Land Limited Partnership?

Answer: See attached sheet.

37. Plaintiffs' Complaint does not identify the chain of title giving rise to their alleged ownership?

Answer: See attached sheet.

30. Denied as stated. At the meeting, Attorney Garbarino informed Attorney Sughrue that a title examination had been performed and in his opinion Mitchell Lumber had harvested timber from property owned by his clients. Attorney Sughrue said that he believed his clients owned the property where the timber was harvested and he demanded that the money being held in escrow be delivered to him. There was little discussion about settlement at the meeting because Attorney Sughrue stated that he intended to obtain an independent title examination for his clients to establish what he contended was their right to the funds.
32. Denied. At the conclusion of the meeting it was agreed that the funds were to remain in escrow with Attorney Jones until there was a determination, either through litigation or agreement, as to the ownership of the funds.
36. It is admitted that Stephen Jilk never received a paycheck from Cherry Timber Associates, Inc. or Chagrin Land Limited Partnership. Answering further, Jilk's employment duties included performing services for Cherry Timber Associates, Inc. and Chagrin Land Limited Partnership, companies affiliated with ITL Corp d/b/a Industrial Timber and Land Company by common ownership, and he was a Vice President of Tall Oaks Associates, Inc., the general partner in Chagrin Land Limited Partnership.
37. It is admitted that Plaintiffs' Complaint does not specifically set forth the chain of title giving rise to Cherry Timber's ownership of the 58 acre parcel in Huston Township, Clearfield County, from which timber was harvested by Mitchell Lumber Company.

38. Plaintiffs admit that, at all times relevant hereto, Cherry Timber's Premises were identified on the Clearfield County Tax Map Numbers as Number 119-E3-33?

Answer: See attached sheet.

39. The Plaintiffs admit that, at all times relevant hereto, the Tax Map of Clearfield County identified the Duttry Premises as Tax Map Number 119-E4-16?

Answer: See attached sheet.

40. The relevant tax map clearly indicates that parcel number 33 (Cherry Timber Premises) are located to the northeast of the Duttry Premises, parcel number 16?

Answer: See attached sheet.

41. Cherry Timber acquired such title as it may have in real property subject to this dispute from Green Glenn Corporation by deed (hereafter, "Cherry Timber Deed") dated December 21, 1988, which is recorded in Clearfield County in DBV 1260, page 338. A true and correct copy of said deed is attached hereto as **Exhibit 3**?

Answer: Admitted.

42. By description set forth as parcel number 13 in the Cherry Timber Deed, Green Glenn clearly conveyed to Cherry Timber Tax Map Parcel Number 119-E3-33 and further described the parcel by its boundary properties?

Answer: See attached sheet.

43. By the description set forth in parcel number 13, as aforesaid, Green Glenn Corporation clearly acknowledged its claim, right and title to a parcel of land situate to the northeast of lands of Harold Duttry (now the Duttry Premises)?

Answer: Denied for the reasons set forth in No. 42 above.

38. It is admitted that at all times relevant hereto, Clearfield County tax assessment records and maps have erroneously identified Cherry Timber as the owner of Parcel No. 119-E3-33. Answering further, the parcel depicted on Clearfield County tax assessment maps as Parcel No. 119-E4-16 is clearly the 58 acre parcel owned by Cherry Timber.
39. It is admitted that at all times relevant hereto, Clearfield County tax assessment records have erroneously identified Duttry as the owner of Parcel No. 119-E4-16. Answering further, the parcel depicted on Clearfield County tax assessment maps as Parcel No. 119-E3-33 is clearly the 123.2 acre parcel formerly owned by Duttry et al.
40. Denied as stated. The property shown on Clearfield County tax assessment maps as Parcel No. 33 (i.e. 119-E3-33) is clearly the 123.2 acre parcel formerly owned by Duttry et al., and the property shown on Clearfield County tax assessment maps as Parcel No. 16 (i.e. 119-E4-16) is clearly the 58 acre parcel owned by Cherry Timber property. The Duttry property is located to the northeast of the Cherry Timber property.
42. Denied as stated. At the time of the conveyance from Green Glen Corporation to Cherry Timber Associates, Inc., the seller and buyer believed that Green Glen owned a parcel of land in the approximate location of the Duttry and Cherry Timber properties. However, no title search was performed at the time, nor was the land being conveyed surveyed, and the description of Parcel No. 13 in the Cherry Timber Deed was an attempt to convey what Green Glen believed it owned in that area. The description of parcel No. 13 in the Cherry Timber deed is an erroneous description of tax map parcel No. 119-E3-33 (the third call should have read "BOUNDED ON THE SOUTHWEST BY LANDS OF GREEN GLEN CORPORATION"), but since Green Glen did not own that parcel it could not have conveyed it to Cherry Timber Associates, Inc.

44. The Cherry Timber deed from Green Glenn also contains a general catch all provision designated as parcel number 21, which reads as follows: "all right, title and interest to the Grantor in and to all real property owned by the Grantor in Clearfield County, Pennsylvania, including all rents, profits, issues, remainders and reverters"?

Answer: See attached sheet.

45. Plaintiffs admit "paragraph 22 of the Complaint" that it did not have good and marketable record title to the Disputed Premises by acknowledging that it was filing a quiet title action with respect to the Cherry Timber property?

Answer: See attached sheet.

46. Plaintiff, Cherry Timber, did, in fact, file an action to quiet title for property located in Huston Township in the Court of Common Pleas of Clearfield County, Pennsylvania, on September 14, 2006 at Number 2006-01495-CD, as more fully appears of record?

Answer: Admitted.

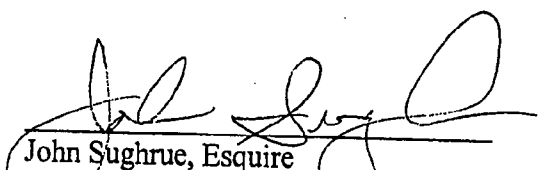
47. As of the filing of this Motion, Cherry Timber has not prosecuted said quiet title action to a conclusion. A non-jury trial is presently scheduled for April 29, 2009?

Answer: Admitted.

48. The timber, which was cut and gave rise to the disputed funds, was cut in the area of McCracken Run, a stream which runs generally north and south through the southern end of the disputed premises, next to land now or formerly of Paul Dixon?

Answer: See attached sheet.

Date: January 16, 2009

  
John Sughrue, Esquire  
Attorney for Co-Defendant, John D. Duttry

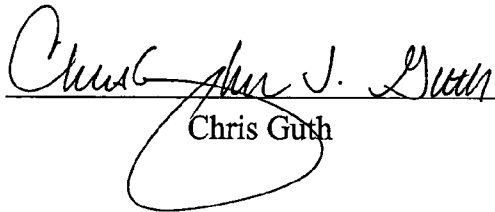
44. It is admitted that the Cherry Timber deed contains a quit claim conveyance of "all right, title and interest to the Grantor in and to all real property owned by the Grantor in Clearfield County, Pennsylvania, including all rent, profits, issues, remainders and reverters".
45. Denied as stated. It is admitted that defects in the record title of the 58 acre parcel exist such that it is not insurable by a reputable Title Insurance Company, and that Cherry Timber filed a Quiet Title action to resolve those title issues. It is denied that by filing the Quiet Title action Cherry Timber admits that it is not in fact the owner of the property.
48. Denied as stated. It is admitted that the timber which was harvested from the Cherry Timber property was cut between McCracken Run and the northeast property line of Cherry Timber's property. It is denied that McCracken Run "runs generally north and south to the southern end of the disputed premises, next to land now or formerly of Paul Dixon". To the contrary, McCracken Run approximately bisects Cherry Timber's property.

DALE WOODARD LAW FIRM

By: Keith M. Pemrick  
Keith M. Pemrick, Esquire  
Attorneys for Plaintiffs

**VERIFICATION**

The undersigned states that the facts averred in the foregoing Plaintiffs' Responses to Request for Admissions and Interrogatories are true and correct to the best of his knowledge, information and belief. The undersigned further states that he understands that false statements therein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

  
Chris Guth

Dated: February 17, 2009



**Exhibit No. 3**

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CHERRY TIMBER ASSOCIATES, INC., : CIVIL DIVISION  
and CHAGRIN LAND LIMITED : No. 06-1498-CD  
PARTNERSHIP, :  
Plaintiffs, :

Vs. :

AUDRA MITCHELL, JOHN D. DUTTRY, :  
THELMA BUSH and BEVERLY R. :  
WILLIAMS a/k/a BEVERLY COPELLI, :  
Defendants. :

ORAL DEPOSITION: AUDRA MITCHELL

The oral deposition of AUDRA MITCHELL was taken in the above-captioned case on Thursday, April 17th, 2008 scheduled to commence at 11:00 a.m. and concluding at 11:58 a.m. in the Board Room of the Clarion Hotel, 1896 Rich Highway, DuBois, Pennsylvania 15801 pursuant to the Pennsylvania Rules of Civil Procedure.

A P P E A R A N C E S:

Representing Plaintiffs: KEITH M. PEMRICK, ESQ.  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323

Representing A. Mitchell: CHRISTOPHER E. MOHNEY, ESQ.  
Suite 6  
25 East Park Avenue  
DuBois, PA 15801

1 A. Yes.

2 Q. Do you recall if there were -- any questions were  
3 raised about the accuracy of the tax map that he  
4 got?

5 A. No.

6 Q. No, you don't recall or no questions were raised?

7 A. No questions were raised.

8 Q. Were you the person who made the payments to  
9 Mr. Duttry for the timber that was taken?

10 A. Yes.

11 Q. Do you recall how many payments were made?

12 A. No.

13 Q. Do you recall approximately how much was paid?

14 A. No.

15 Q. Did you have a standard practice of making  
16 payments at certain points as the work was  
17 progressing?

18 A. Yes. The logs would come in the mill all week  
19 long and somebody in the yard would scale them  
20 and give me the tally sheets. And I believe at  
21 the end of every week or every other week the  
22 tally sheets were all added and a payment was  
23 sent to the landowner along with copies of the  
24 tally sheets.

25 Q. Leaving aside the \$45,000 payment, do you recall

1       any discrepancies or issues with respect to  
2       payments made to Mr. Duttry?

3   A.   No.

4   Q.   How did you first become aware that there was a  
5       dispute over the ownership of the property where  
6       the timber was harvested pursuant to this  
7       agreement?

8   A.   Steve Jilk came to the saw mill.

9   Q.   Did you know Mr. Jilk from previous dealings?

10  A.   No.

11  Q.   Did he come into the office?

12  A.   Yes.

13  Q.   And was your husband there at the time?

14  A.   I don't remember for sure.

15  Q.   Did you talk to Mr. Jilk when he came that first  
16       time?

17  A.   Yes.

18  Q.   And what did he say?

19  A.   I don't remember exactly. I believe he had  
20       wanted to speak with Paul about what was going  
21       on.

22  Q.   Did he give you any detail about what was going  
23       on?

24  A.   Basically he said that there was a discrepancy in  
25       the property line and that he believed that we

**Exhibit No. 4**

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CHERRY TIMBER ASSOCIATES, INC., : CIVIL DIVISION  
and CHAGRIN LAND LIMITED : No. 06-1498-CD  
PARTNERSHIP, :  
Plaintiffs, :

Vs. :

AUDRA MITCHELL, JOHN D. DUTTRY, :  
THELMA BUSH and BEVERLY R. :  
WILLIAMS a/k/a BEVERLY COPELLI, :  
Defendants. :

ORAL DEPOSITION: JOHN D. DUTTRY

The oral deposition of JOHN D. DUTTRY was taken in the above-captioned case on Thursday, April 17th, 2008 scheduled to commence at 10:00 a.m. and concluding at 11:00 a.m. in the Board Room of the Clarion Hotel, 1896 Rich Highway, DuBois, Pennsylvania 15801 pursuant to the Pennsylvania Rules of Civil Procedure.

A P P E A R A N C E S:

Representing Plaintiffs: KEITH M. PEMRICK, ESQ.  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323

Representing A. Mitchell: CHRISTOPHER E. MOHNEY, ESQ.  
Suite 6  
25 East Park Avenue  
DuBois, PA 15801

- 1 A. No.
- 2 Q. Did he mark the trees?
- 3 A. No.
- 4 Q. Were you -- did you go visit the property during  
5 the timbering operations?
- 6 A. Yes.
- 7 Q. Did Mr. Mitchell, himself, was he working as one  
8 of the cutters or skidders?
- 9 A. No.
- 10 Q. What size crew did he have?
- 11 A. I don't recall. I believe there was three.
- 12 Q. Did anything ever come up during the course of  
13 the timbering, any issues regarding boundaries or  
14 adjoining landowners?
- 15 A. No.
- 16 Q. How many payments did you receive from  
17 Mr. Mitchell for the timber?
- 18 A. I don't really recall. I would imagine three.
- 19 Q. How long did the harvesting take?
- 20 A. I'd say six weeks.
- 21 Q. Once he moved in, did he stay there and finish  
22 the job and then move out?
- 23 A. Yes.
- 24 Q. Do you recall the amounts of any of the payments  
25 that were made?

- 1 A. No, I don't.
- 2 Q. Would you have any records to indicate --
- 3 A. No. My wife kept the records and --
- 4 Q. And your wife is now passed away; is that
- 5 correct?
- 6 A. Right.
- 7 Q. Did you have any contact with Audra Mitchell?
- 8 A. Never.
- 9 Q. The payments were made by check; is that correct?
- 10 A. That's correct.
- 11 Q. Was one of the three payments that you're
- 12 referring to the \$45,000 payment that was put in
- 13 escrow?
- 14 A. I believe so, yeah.
- 15 Q. Do you recall how large the other payments were
- 16 in comparison to that payment?
- 17 A. No, I don't.
- 18 Q. When was the first time you had any contact or
- 19 discussions with anyone from Cherry Timber
- 20 Associates or Chagrin Land Partnership?
- 21 A. I never had any discussions with them.
- 22 Q. How did you become aware that someone was
- 23 claiming that some or part of the timber was
- 24 taken from their property as opposed to your
- 25 property?



1 A. Paul Mitchell called my wife, Mary Jo, and told  
2 her that Cherry Timber was claiming that all of  
3 the timber that was cut was cut on their land.  
4 Q. Were you present during this conversation?  
5 A. No, I wasn't.  
6 Q. Did you ever have any discussions directly with  
7 Mr. Mitchell on that subject?  
8 A. No, I didn't.  
9 Q. All right. After Mr. Mitchell called your wife,  
10 did you take any action in response to that call?  
11 A. I didn't. My wife called our attorney.  
12 Q. And once your wife called your attorney -- and  
13 that would be Mr. Sughrue; is that correct?  
14 A. Yes, sir.  
15 Q. Did all of the contact with Cherry Timber  
16 Associates or Chagrin occur between your attorney  
17 and those representatives?  
18 A. Yes, sir.  
19 Q. And you never at any time spoke with anyone at  
20 Cherry Timber about the issue?  
21 A. Never.  
22 Q. After that phone call did you go back to the  
23 property with Mr. Sughrue or anyone else to look  
24 at where the timber had been taken?  
25 A. My wife and I did.

**Exhibit No. 5**

CHERRY TIMBER ASSOCIATES, INC., ) IN THE COURT OF COMMON PLEAS OF  
and CHAGRIN LAND LIMITED ) CLEARFIELD COUNTY, PENNSYLVANIA  
PARTNERSHIP, )

Plaintiffs, )  
 ) Civil Action

v. )  
)

AUDRA MITCHELL, JOHN D. DUTTRY )  
THELMA BUSH and BEVERLY R. )  
WILLIAMS a/k/a BEVERLY COPELLI, ) No. 06-1498-CD

Defendants. )

# AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF FOREST ) SS:

The undersigned, Christopher Guth, being first duly sworn, deposes and states as follows:

1. I am presently employed as the timber manager and director of procurement for ITL Corp., d/b/a Industrial Timber and Lumber Company (formerly ITL Corp. d/b/a Industrial Timber & Land Company).

2. In January, 1995, I was employed by ITL as land manager. As part of my duties at that time I also performed services for Cherry Timber Associates, Inc., and Chagrin Land Limited Partnership, companies affiliated with ITL through common ownership.

3. On January 26, 1995, I had occasion to be on an approximate 58 acre parcel owned by Cherry Timber in Houston Township, Clearfield County (the "Cherry Timber property").

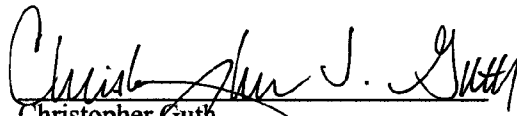
4. While I was on the Cherry Timber property I discovered a logging crew cutting timber in an area of the Cherry Timber property located between McCracken Run and the north/northeast property line.

5. I was generally aware of the location of the property lines for the Cherry Timber property because I had performed boundary work on the property in the late 1980s or early 1990s

and found evidence of boundary lines at that time.

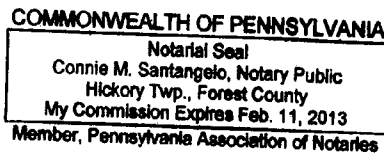
6. The evidence of boundary lines on the Cherry Timber property included distinct fence lines on several boundaries, obvious tree lines on several boundaries, the B&S Railroad right-of-way/tracks along the southeastern boundary, and open fields to the west of the property on the adjacent landowner's land.

7. After learning from the timber crew that they were working for Paul Mitchell and Mitchell Lumber Company, I informed my immediate supervisor, Stephen Jilk, of the activity which had occurred on the Cherry Timber property.

  
Christopher Guth

Sworn and subscribed to before me  
this 11<sup>th</sup> day of March, 2009

  
Notary Public



**Exhibit No. 6**

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CHERRY TIMBER ASSOCIATES, INC., : CIVIL DIVISION  
and CHAGRIN LAND LIMITED : No. 06-1498-CD  
PARTNERSHIP, :  
Plaintiffs, :  
:

Vs. :  
:

AUDRA MITCHELL, JOHN D. DUTTRY, :  
THELMA BUSH and BEVERLY R. :  
WILLIAMS a/k/a BEVERLY COPELLI, :  
Defendants. :

ORAL DEPOSITION: AUDRA MITCHELL

The oral deposition of AUDRA MITCHELL was  
taken in the above-captioned case on Thursday,  
April 17th, 2008 scheduled to commence at 11:00  
a.m. and concluding at 11:58 a.m. in the Board Room  
of the Clarion Hotel, 1896 Rich Highway, DuBois,  
Pennsylvania 15801 pursuant to the Pennsylvania Rules  
of Civil Procedure.

A P P E A R A N C E S:

Representing Plaintiffs: KEITH M. PEMRICK, ESQ.  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323

Representing A. Mitchell: CHRISTOPHER E. MOHNEY, ESQ.  
Suite 6  
25 East Park Avenue  
DuBois, PA 15801

1 A. I believe that there was a lawyer that contacted  
2 us -- I don't remember who he was -- about  
3 sending the money into an escrow account.

4 Q. Did you personally talk to the lawyer?

5 A. I don't remember.

6 Q. Did you personally witness Steve Jilk or this  
7 attorney or anyone else intimidating or  
8 threatening your husband on this issue?

9 A. Steve Jilk was the only one that I know that  
10 really talked to Paul. And I don't exactly  
11 remember if he told Paul that he was going to be  
12 sued for three times stumpage. I don't remember.

13 Q. Aside from telling Paul that he might be sued  
14 over the issue, were there any other types of  
15 threats or intimidation?

16 A. No.

17 Q. Do you know if your husband went to the property  
18 with any representative from Chagrin or Endeavor  
19 Lumber to look at the property?

20 A. I believe he did.

21 Q. Do you know who he would have gone with?

22 A. I believe he might have went to the property with  
23 Steve Jilk, but I can't guarantee that for sure.

24 Q. After this question arose, did your husband say  
25 anything to you about the property lines or where

1 they'd been cutting?

2 A. I had asked him, you know, were you sure the  
3 property lines. And he assured me that  
4 Mr. Duttry walked with him and showed him the  
5 property lines.

6 Q. Do you know if he went back to the property with  
7 Mr. Duttry after this issue arose?

8 A. I don't know if he did or did not.

9 Q. Were you present when he made the phone call to  
10 Mrs. Duttry to tell her about the situation?

11 A. Not that I'm aware of.

12 Q. Did you ever talk to Mrs. Duttry about it?

13 A. No, I did not.

14 Q. Had your husband ever been sued for removing  
15 timber improperly?

16 A. No.

17 Q. After this issue arose and Mr. Jilk -- well, tell  
18 me what Mr. Jilk said with respect to the payment  
19 that was going to be made.

20 A. I believe he just suggested that we pay it into  
21 an escrow account until the property lines are  
22 determined and they know who the trees belong to.

23 Q. Did you ever have a conversation with Mr. Sughrue  
24 about the payment being made into an escrow  
25 account?



**Exhibit No. 7**

**EXHIBIT 7 (a)**



HARDWOOD LUMBER

## INDUSTRIAL TIMBER & LAND COMPANY

23925 COMMERCE PARK • BEACHWOOD, OHIO 44122 • PHONE 216/831-3140 • TELEX 509848 ITC • FAX 216/831-4734  
Endeavor Lumber Division

P. O. Box 67

Endeavor, PA 16322

Phone: 814-463-7701

Fax: 814-463-7311

January 30, 1995

Mr. Jack D. Duttry  
P. O. Box 736  
DuBois, PA 15801

Dear Mr. Duttry:

Enclosed are the abstractor's summaries for the two parcels in Huston Township (123.2 acres and 60.12 acres). Also enclosed is a sketch map from the DuBois files outlining the 123.2 acres and a Hoyt tract to the northeast.

I do not have copies of the documents mentioned in the summaries. They are on file in the attorney's office in DuBois, and can be obtained if necessary.

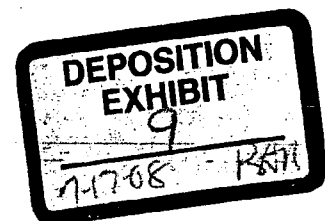
Sincerely,

ENDEAVOR LUMBER DIVISION  
INDUSTRIAL TIMBER & LAND COMPANY

Stephen A. Jilk  
Resource Manager

SAJ:ld

Enclosures



NOTES ON 60 ACRES IN HUSTON TOWNSHIP  
ASSESSED WITH MAP #119-F3-40 IN ERROR

By a deed dated November 8, 1927, and recorded in Deed Book 298 page 136, John E. DuBois and wife conveyed a tract of land of 60.12 acres in Huston Township to G.E. Bucksbee.

G.E. Bucksbee became assessed with these 60 acres in 1927, and continued to be so assessed until 1936 when the assessment was sold to the County, and was sold by Commissioners at their sale of January 23, 1942 to David DuBois. The Treasurer's Deed to the Commissioners is not of record, however, the Commissioners Deed to David DuBois is recorded in Deed Book 370 page 458.

By a deed dated June 18, 1947, and recorded in Deed Book 384 page 524, David DuBois and wife conveyed the subject 60 acres to John E. Dubois et.al.

By a deed dated September 1, 1947, and recorded in Deed Book 393 page 411, John E. DuBois, et.al. conveyed the subject 60 acres to Green Glen Corporation.

On following the assessment of the 60 acres and utilizing the map provided by the client, we find the true assessment number for these 60 acres should be 119-E4-16.

NOTES ON 123.2 ACRES IN HUSTON TOWNSHIP  
LOCATED IN THE LOCALE OF ASSESSMENT #119-E3-33

The subject 123.2 acres located in Huston Township was assessed to G.E. Bucksbee in 1924, transferred from John E. DuBois. There is no deed on record to effect this transfer. However, by a map supplied by the client, these 123.2 acrs is shown as "J.E. & W.G. Dubois to Mrs. G.E. Bucksbee Nov. 8, 1927 Wt. 3576 Huston Twp. 123.2 A."

As stated above, there is no deed on record from John DuBois and wife to G.E. Bucksbee or Bertha Bucksbee, the wife of G.E. Bucksbee for these 123.2 acres. However, by checking the deed recorded in Deed Book 298 page 136, from John Dubois and wife to G.E. Bucksbee which lies to the South of the subject acreage, and is contiguous to it, one of the calls in the description states "...thence by lands of the grantor, surveyed for G.E. Buxksbee...". Also, by checking the deed to the property to the North of the subject 123. 2 acres and is also contiguous to it, the deed being recorded in Deed Book 278 page 236, from John DuBois and wife to E.C. Hoyt, one of the calls states "... thence by lands of the gr tor (surveyed for G.E. Bucksbee)...".

Returning to the assessment records, G.E. Bucksbee continued to be assessed with the subject 123.2 acres until January 10, 1936, when the assessment was sold to the County and was redeemed by Mrs. G.E. Bucksbee on September 15, 1937.

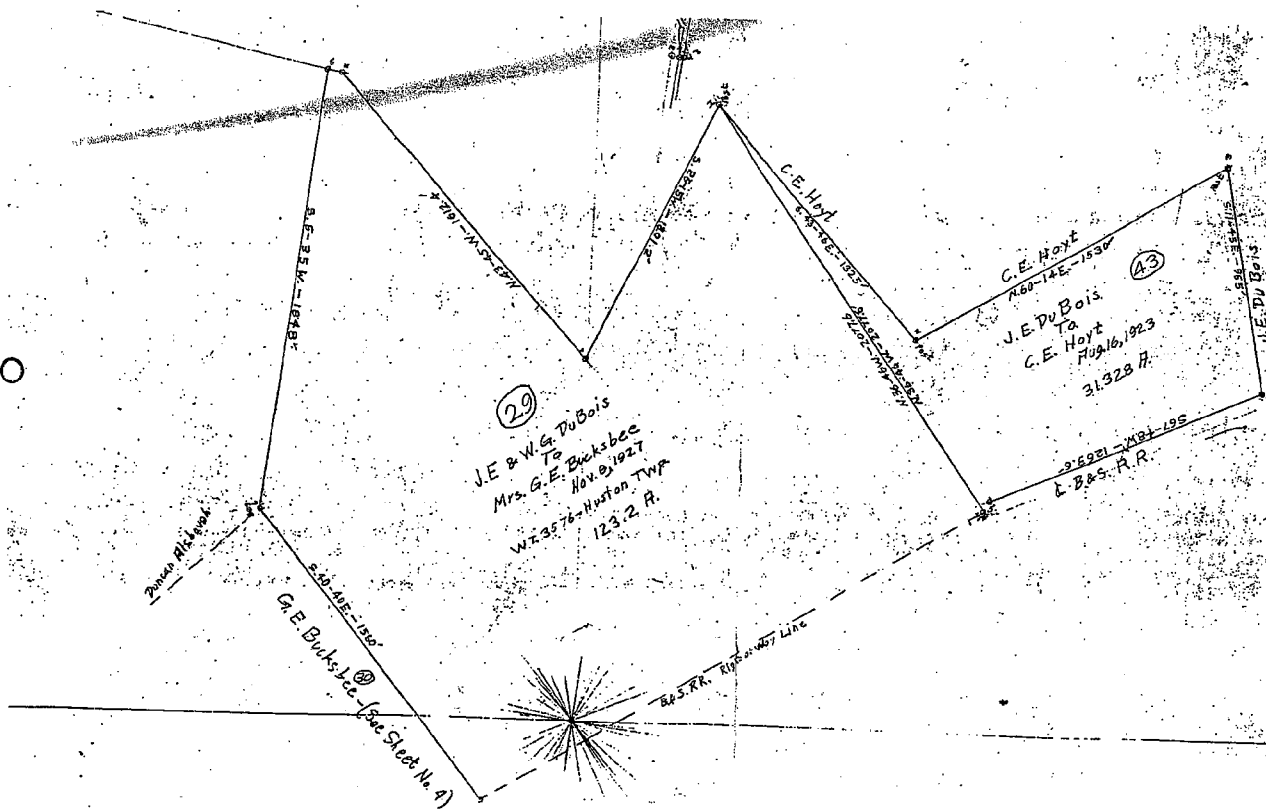
Mrs. G.E. Bucksbee became assessed with the subject 123.2 acres and continued to be so assessed until April 7, 1942, when the assessment was sold to the County, and was sold to Harry Bender at the Commissioners Sale of March 27, 1945. The Deeds to cover these sales are recorded in Deed Book 380 page 583 and 584.

By an Assignment dated January 22, 1947, and recorded in Deed Book 380 page 585, Jarry Bender and wife assigned their interest in the subject 123.2 acres to Ralph Weisman and Ablert Dennis.

This property became assessed to Albert Dennis in 1948 and continued to be so assessed until December 10, 1951, when by a County Trasurer's Deed these 123.2 acres were conveyed to Harry and Annie Bender, by a deed recorded in Deed Book 440 page 571. There were no boundaries given in the Treasurer's Deed to the Benders.

By a deed dated February 21, 1955, and recorded in Deed Book 440 page 573, Harry and Annie Bender conveyed the subject 123.2 acres to Harold E. Duttry. The Description used in ths deed was "On the North by land of the Green Glen Corporation; on the South by land of Walter Brown; on the East by right-of-way of the B & O Railroad; on the West by lands of Tiner, Alsbaugh, and Burns", which appears to describe the parcel with assessment number 119-E4-16.

By a Decree of Distribution in the Estate of Harold E. Duttry as recorded in Volume 1300 page 20, the subject 123.2 acres was awarded to Thelma Bush, Beverly Williams and John D. Dubbry. However, these three people are being assessed with Map #119-E4-16, and it is felt the correct Map Number for these 123.2 acres should be 119-E3-33.



**EXHIBIT 7 (b)**

MITCHELL LUMBER COMPANY  
P.O. BOX 28  
BROCKPORT, PA 15823  
TELEPHONE (814) 265-1146

March 7, 1995

Atty. John Sughrue  
23 North Second Street  
Clearfield, PA 16830

RE: JOHN DUTTRY

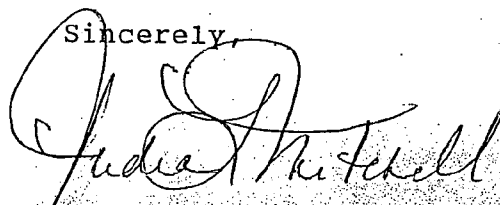
Dear Mr. Sughrue:

This letter is to confirm our telephone conversation  
my husband and I has with you on March 6, 1995.

As per an agreement that my husband made with  
Stephen A. Jilk, Manager for Industrial Timber & Land  
Company and John Duttry I have forward \$45,000 to  
Atty. Scott Jones to put into an escrow account for  
the Industrial Timber & Land Company and John Duttry.  
The money was to be left in the escrow account until  
the line dispute was surveyed and the differances  
were resolved.

If I can be of any further assitance, please let  
me know.

Sincerely,

  
Audra L. Mitchell

DEPOSITION  
EXHIBIT

Mitchell No. 2



**EXHIBIT 7 (c)**

LAW OFFICES  
SUGHRUE & KESNER  
23 NORTH SECOND STREET  
CLEARFIELD, PA. 16830

JOHN SUGHRUE  
KIM C. KESNER

March 8, 1995

(814) 765-1704  
FAX (814) 765-2957

Facsimile (375-1082) and first class mail

Scott V. Jones, Esquire  
BLAKLEY & JONES  
Box 6  
DuBois, PA 15801

RE: Thelma Bush et al, Paul Mitchell Lumber,  
and Endeavor Timber, property located  
in Huston Township

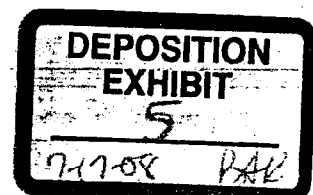
Dear Scott:

Please be advised that this office has been retained by Thelma Bush, John D. Duttry, and Beverly Copelli, owners of a tract of land situate in Huston Township. My clients entered into an Agreement with Paul Mitchell to have their land timbered. As I understand it, in the course of the operation, Mr. Mitchell was contacted by representatives of Endeavor Timber who claimed ownership of timber involved in the operation. Obviously, there is a dispute that needs to be resolved.

Under his agreement with us, Mr. Mitchell is obligated to pay my clients for the timber being removed. He advises me that at the request of Endeavor Timber, he has transmitted proceeds of timber sales (I have been given the figure of \$45,000) to you to hold in escrow as an escrow agent for Endeavor Timber and my clients pending resolution of the dispute. Would you kindly confirm that you have received money, the amount, and that you are acting as an escrow agent on behalf of all claimants?

Assuming my information is correct, I would propose that we enter into a formal escrow agreement and invest the moneys in your name and my name in an interest-bearing account pending resolution of the dispute. I would appreciate receiving by return mail confirmation of the account and your position with respect to my suggestions.

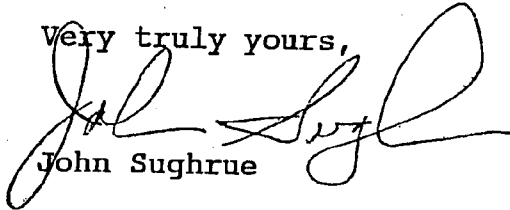
I spoke briefly with Mr. Mitchell and advised him that I would keep him informed as matters develop. As I write this letter, I have talked with your office and I understand you are on vacation until the 16th. I am advising your office that my clients claim ownership of the moneys that you receive and we would expect that you will not disburse the moneys until the dispute has been resolved.



Scott V. Jones, Esquire  
Page 2  
March 8, 1995

My clients have authorized me to investigate the situation and I would appreciate the opportunity to discuss the matter with you in detail upon your return. Thank you for your immediate attention to these matters.

Very truly yours,



John Sughrue

JS/mbb

cc: Mrs. Thelma Bush  
Mr. John D. Duttry  
Mrs. Beverly Copelli  
Mitchell Lumber

**EXHIBIT 7 (d)**

**BLAKLEY & JONES**

ATTORNEYS-AT-LAW  
90 BEAVER DRIVE, BOX 6  
DUBOIS, PA 15801-2424

SCOTT V. JONES  
BENJAMIN S. BLAKLEY, III  
CHRISTOPHER E. MOHNEY

TELEPHONE (814) 371-2730  
FAX (814) 375-1082

March 17, 1995

John Sughrue, Esquire  
Sughrue & Kesner  
23 North Second Street  
Clearfield, PA 16830

RE: Thelma Bush, et al., Paul Mitchell Lumber,  
and Endeavor Timber, property located in  
Huston Township

Dear John:

In reply to your correspondence of March 8, 1995 regarding the above captioned, be advised that I do presently have on deposit in my client's escrow fund account \$45,000.00 from various checks received. I have resisted the temptation to invest it in Derivatives in the hope of doubling the money overnight.

I am inquiring of Industrial Timber and Land Company as to their position on a formal escrow agreement and related matters as proposed in paragraph three of your correspondence.

Sincerely yours,

BLAKLEY & JONES

  
Scott V. Jones

SVJ:lle

**EXHIBIT 7 (e)**

LAW OFFICES  
ALEXANDER, GARBARINO, KIFER,  
SPEER & NEELY

415 Wood Street  
P. O. Box 766  
Clarion, Pennsylvania 16214  
814 226-6030  
Fax 814 226-5018

LARRY L. KIFER  
DAVID M. SPEER  
JAMES B. ALEXANDER  
CASSANDRA M. NEELY

OF COUNSEL  
G. BARRETT GARBARINO

March 23, 1995

John Sughrue, Esquire  
Sughrue & Kesner  
23 North Second Street  
Clearfield, PA 16830

IN RE: Paul Mitchell Lumber Company/Chagrin Land  
Limited Partnership

Dear John:

In response to your letter of March 8, 1995, addressed to Scott V. Jones, Esquire, please be advised that my client, Chagrin Land Limited Partnership, is of the opinion that certain timber has been wrongfully removed from its property in Huston Township, Clearfield County, Pennsylvania. The timber was removed by Paul Mitchell Lumber Company which apparently is also removing timber from adjacent land belonging to your clients pursuant to a certain Timber Harvest Agreement dated October 18, 1994.

When confronted by Chagrin, Paul Mitchell agreed to put money in an escrow account which is presently being held by Scott V. Jones for the purpose of indemnifying Chagrin for damages it sustains by reason of the wrongful appropriation of the timber. Chagrin is presently having its property surveyed so that it can then make an accurate count of the number of trees that were removed. After the survey and the count are completed Chagrin will inform Mitchell Lumber Company of the damages it sustained.

You have informed me that your clients are of the opinion that they may own part or all of the tract claimed by Chagrin and for that reason you did not want to have the escrow account disbursed without your approval.

At this point our dispute is only with Mitchell Lumber Company and unless either your clients participated with Mitchell Lumber Company in the wrongful removal of timber or your clients are able to show that they own the timber or land involved, I cannot see why I would need your approval to disburse an escrow

John Sughrue, Esquire  
Page 2  
March 23, 1995

account upon settlement of the dispute between Mitchell Lumber Company and Chagrin Land Limited Partnership. I have agreed, however, that I would give you a reasonable period of time to complete your title work before any disbursement is made. I am therefore by copy of this letter to Scott V. Jones instructing him to continue to retain the escrow account and not to make any disbursements from it until I notify him.

John, if I have not heard from you by April 10, 1995, the provisions of this letter concerning retention of the escrow will no longer be applicable.

If you have any questions please call.

Very truly yours,



G. Barrett Garbarino

GBG:jlm

c: Scott V. Jones, Esquire  
Mr. Stephen A. Jilk



**EXHIBIT 7 (f)**

LAW OFFICES  
SUGHRUE & KESNER  
23 NORTH SECOND STREET  
CLEARFIELD, PA. 16830

JOHN SUGHRUE  
KIM C. KESNER

April 5, 1995

(814) 765-1704  
FAX (814) 765-2957

Fax (226-5018) and First Class Mail

G. Barrett Garbarino, Esquire  
ALEXANDER, GARBARINO, KIFER,  
SPEER & NEELY  
P. O. Box 766  
Clarion, PA 16214

RE: Mitchell Lumber and Bush/Duttry/Copelli; and Cherry  
Timber Associates, Inc./Chagrin Land Ltd. Partnership

Dear Barry:

It appears to me that we have a serious disagreement concerning the factual situation and basis upon which Paul Mitchell paid funds to Scott Jones to be held in escrow.

You indicate that Mr. Mitchell agreed to put the money in escrow with Scott for the purpose of indemnifying Chagrin Land Limited Partnership for damages arising out of the wrongful appropriation of timber. Mr. Mitchell has advised me that he was confronted with two landowners claiming the same timber and that the funds were delivered to Mr. Jones to be held in escrow for the benefit of the two landowners. A copy of Mr. Mitchell's written communication to me dated March 7, 1995 is enclosed for your reference. It also appears that Scott accepted the money and escrowed it without written documentation as to the conditions of release. It appears that Scott has placed himself in the middle and is personally at risk if he makes an improper distribution.

Your clients have not in any way established their ownership of the timbered land. They simply made a bald assertion in the field and raised with Mr. Mitchell the issue of a dispute. It's clear Mr. Mitchell was on the property cutting under agreement with my clients and that the proceeds of sale were due under the Agreement to my clients. Mr. Mitchell was confronted with two potential claimants to the land and, therefore, the proceeds of timber. He simply protected both landowners by agreeing to place it in escrow. Your clients indicated to Mr. Mitchell that you did not have a survey for the property and did not know the location of your line.

In your letter of March 23, 1995, you suggest that I should complete title work. Nowhere in your letter do you suggest the title basis of your clients' claim of ownership of the cut timber. It appears to me that there are essentially surveying and location problems that need to be resolved and not simply a question of title work. To my knowledge, the disputed timber

G. Barrett Garbarino, Esquire  
Page 2  
April 5, 1995

area has never been mapped on the ground or placed on a survey that may be related to your chain of title.

I have reviewed various documents with respect to the lands in question and the following seems to be apparent to me and is, I'm sure, known to you and your clients. Your clients are assessed with 43.2 acres. Your land is located north, adjacent to the Hoyt tracts. The subject timber was cut from property that is substantially south of the Hoyt line and most probably off of your property. Certain notes were given to Mr. Mitchell by your clients suggesting that you may claim 60 acres. I find no basis for any claim in excess of 60 acres. There are approximately 125 to 180 acres of ground in the disputed area. My clients are assessed with 123.2 acres and have a chain of title in support of that acreage. Any claim that your clients may have was secured by quitclaim deeds from Green Glen Corporation and you may in fact have no claim to any property in the area. Your assessment was only mapped in 1988 and is probably mapped inaccurately.

I am confident that Mr. Mitchell was not wrongfully removing your timber from your property. Your clients' statement to Mr. Mitchell that they owned the timbered land was an incorrect statement. They induced Mr. Mitchell to pay the money to Scott by accusing him of theft and threatening him with triple damages. Whether these incorrect statements were made in good faith or in bad faith will depend to some degree upon the manner in which your clients choose to resolve this instant dispute.

Thus, I renew my suggestion to both you and Scott. The money should be placed in an escrow account in the name of a representative of each landowner and Mr. Mitchell if he desires. The owner as determined by a court of competent jurisdiction would ultimately receive the funds. Resolution of the matter would require a court determination absent an earlier agreement and in any event, would require a survey of the entire tract, a survey of the individual tracts, and location of the disputed timber tract within it.

If you continue to be unable to agree to my suggestion, I would take this occasion to formally advise Scott that it is our position that Mr. Mitchell was cutting the Bush/Duttry/Copelli lands under agreement with and for the account of my clients; that the funds delivered to Scott were acknowledged by Mr. Mitchell to be the proceeds of the sale of the timber payable to my clients; and were deposited with Scott to be held in escrow for the benefit of my clients and your clients. Scott has placed

G. Barrett Garbarino, Esquire  
Page 3  
April 5, 1995

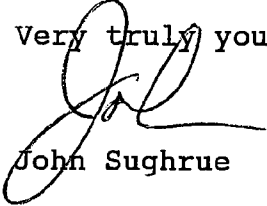
himself in a fiduciary position with respect to both Mr. Mitchell and my clients. Demand for payment of the money to my clients is hereby made or in the alternative, it is demanded that he return the money to Mr. Mitchell.

I would also note to Scott that the various rules of law relating to the receipt of entrusted funds by a lawyer suggest that the conditions of the deposit be memorialized and that he owes a fiduciary duty to all claimants of the fund.

By copy of this letter, I am advising Scott of developments. I would ask both you and Scott to advise me of your respective positions immediately.

Thank you for your consideration of these matters.

Very truly yours,



John Sughrue

JS/mbb

Enclosure

cc: Scott V. Jones, Esquire  
Mitchell Lumber  
Mr. John D. Duttry  
Mrs. Thelma Bush  
Mrs. Beverly Copelli

**EXHIBIT 7 (g)**

LAW OFFICES  
ALEXANDER, GARBARINO, KIFER,  
SPEER & NEELY

415 Wood Street

P. O. Box 766

Clarion, Pennsylvania 16214

814 226-6030

Fax 814 226-5018

LARRY L. KIFER  
DAVID M. SPEER  
JAMES B. ALEXANDER  
CASSANDRA M. NEELY

OF COUNSEL  
G. BARRETT GARBARINO

April 10, 1995

John Sughrue, Esquire  
Sughrue & Kesner  
23 North Second Street  
Clearfield, PA 16830

IN RE: Cherry Timber Associates, Inc., v. Mitchell Lumber  
Company

Dear John:

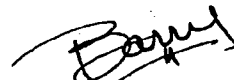
In response to your letter of April 5, 1995, concerning the above captioned matter, please be advised that Cherry Timber Associates, Inc., is in the process of completing a survey of the tract in question. We have been advised that the survey should be completed within the next one to two weeks although it would not surprise me if it takes longer than that. Upon completion of the survey Scott Jones will review his title report in light of any new facts revealed by the survey. After the survey and title review are completed I will contact you in hopes that we can meet and resolve our differences amicably.

I assume that in the interim you will also review your title and have a survey made of the tract.

Please be assured that the money presently held in escrow by Scott Jones will remain in escrow until after we have met and attempted to resolve this matter. In the event we agree that we cannot amicably resolve this dispute I would expect that we would enter into an agreement for the disposition of the escrow pending a decision of the court.

If you have any questions please call.

Very truly yours,



G. Barrett Garbarino

GBG:jlm

c: Scott V. Jones, Esquire  
Mr. Stephen A. Jilk

**EXHIBIT 7 (h)**

**EXHIBIT 7 (i)**



LAW OFFICES  
SUGHRUE & KESNER  
23 NORTH SECOND STREET  
CLEARFIELD, PA. 16830

JOHN SUGHRUE  
KIM C. KESNER

June 24, 1996

(814) 765-1704  
FAX (814) 765-2957

Scott V. Jones, Esquire  
Blakley & Jones  
Box 6  
90 Beaver Drive  
DuBois, PA 15801

RE: Thelma Bush et al, Paul Mitchell Lumber, and  
Endeavor Timber; Timber Dispute in Huston Township

Dear Scott:

Barry Garbarino and I talked by phone today and believe that we can meet on the above matter on Tuesday, July 16, 1996, at your office at 2:00 p.m. Can you be available at that time? I am also available on the afternoon of July 17 and 18, 1996 at the same time.

Would you kindly confirm to Barry your availability? We will meet in DuBois at your office. The purpose is to review the matter and determine whether or not there can be a negotiated amicable resolution. I hope that all parties will make an attempt to meet. My clients desire to resolve this matter one way or the other.

Thank you for your attention to this matter.

Very truly yours,

  
John Sughrue

JS/mbb

cc: G. Barrett Garbarino, Esquire ✓  
Mr. John D. Duttry  
Mrs. Thelma Bush  
Mrs. Beverly Copelli

LAW OFFICES  
SUGHRUE & KESNER  
23 NORTH SECOND STREET  
CLEARFIELD, PA. 16830

JOHN SUGHRUE  
KIM C. KESNER

June 29, 1995

(814) 765-1704  
FAX (814) 765-2957

G. Barrett Garbarino, Esquire  
ALEXANDER, GARBARINO, KIFER,  
SPEER & NEELY  
P. O. Box 766  
Clarion, PA 16214

RE: Timber Project in Huston Township

Dear Barry:

This will confirm my phone conversation with you on June 28, 1995. I have caused certain surveying work to be performed with respect to the disputed tract. I have also conducted certain title work and have located the timber that was cut.

I suggest that we arrange a meeting, perhaps at DuBois, to review the data and determine whether or not there are any facts upon which we can agree and to explore amicable resolution.

You indicated that you would be available Monday, July 17, and Tuesday, July 18. Thursday, July 20, in the a.m. would be open to me. I'm likewise available generally from July 25 through 28, 1995. By copy of this letter, I'll ask Scott Jones to call you and see if any those dates are mutually convenient.

Thank you for giving this matter your attention.

Very truly yours,



John Sughrue

JS/mbb

cc: Scott V. Jones, Esquire  
Mr. John D. Duttry  
Mrs. Thelma Bush  
Mrs. Beverly Copelli  
Mitchell Lumber; P. O. Box 28; Brockport, PA 15823

**EXHIBIT 7 (j)**

**BLAKLEY & JONES**

ATTORNEYS-AT-LAW  
90 BEAVER DRIVE, BOX 6  
DUBOIS, PA 15801-2424

SCOTT V. JONES  
BENJAMIN S. BLAKLEY, III  
CHRISTOPHER E. MOHNEY

TELEPHONE (814) 371-2730  
FAX (814) 375-1082

July 3, 1996

John Sughrue, Esquire  
Sughrue & Kesner  
23 North Second Street  
Clearfield, PA 16830

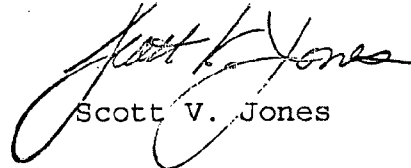
RE: Duttry - Mitchell Lumber - Cherry Tree  
Associates Timber Cutting Dispute

Dear John:

This will confirm that we will meet in my offices on July 16, 1996 commencing at 2:00 P.M. to see if we can resolve the above captioned matter.

Sincerely yours,

BLAKLEY & JONES



Scott V. Jones

SVJ:lle

cc: Steve Jilk  
GG Barrett Garbarino, Esquire

**EXHIBIT 7 (k)**

**BLAKLEY & JONES**

ATTORNEYS-AT-LAW  
90 BEAVER DRIVE, BOX 6  
DUBOIS, PA 15801-2424

SCOTT V. JONES  
BENJAMIN S. BLAKLEY, III  
CHRISTOPHER E. MOHNEY

TELEPHONE (814) 371-2730  
FAX (814) 375-1082

July 3, 1996

McDermott Abstract  
P. O. Box 7  
Clearfield, PA 16830

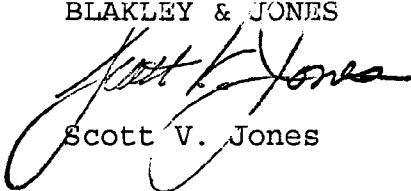
Dear Fran:

This will confirm that we will meet in my office on July 16, 1996 at 1:00 P.M. to review the abstract of titles on the two parcels in Huston Township wherein the Duttrys are contesting the timber cut by Mitchell Lumber to which they claim title whereas your abstract indicates that the property is owned by Cherry Timber Associates, Inc..

To refresh your recollection, enclosed find copies of your title notes on the two parcels.

Sincerely yours,

BLAKLEY & JONES

  
Scott V. Jones

SVJ:lle  
Enclosures

~~cc:~~ G. Barrett Garbarino, Esquire

**EXHIBIT 7 (1)**

16471 el

**BLAKLEY, JONES & MOHNEY**

*Attorneys and Counselors at Law*

*90 Beaver Drive, Box 6*

*Du Bois, Pennsylvania 15801*

*Telephone (814) 371-2730*

*Fax (814) 375-1082*

October 3, 1997

*Scott V. Jones*

*Benjamin S. Blakley, III*

*Christopher E. Mohney*

G. Barrett Garbarino, Esquire  
Alexander, Garbarino, Kifer & Speer  
415 Wood Street  
Clarion, PA 16214

John Sughrue, Esquire  
Sughrue & Kesner  
23 North Second Street  
Clearfield, PA 16830

RE: Mitchell Lumber Company Escrow Account

Gentlemen:

Enclosed find copy of September 24, 1997 correspondence I received from Deposit Bank indicating a concern because there has been no activity on the above captioned account since June 5, 1995. We are a few years from the fund escheating to the Commonwealth of Pennsylvania, but time flies when you are having fun.

The current account now only carries an interest rate of 1.25% whereas the suggested new American Dream Savings Account would carry an interest rate of 3%. Accordingly, please advise me if you want to live the American dream and have me change this to the higher interest bearing account or, even better, to a federally insured Certificate of Deposit.

Sincerely yours,

BLAKLEY, JONES & MOHNEY

*Scott V. Jones*

SVJ:lle

Enclosure

cc: Stephen A. Jilk







DuBois Mall Office Corner Shaffer Road & Beaver Drive P.O. Box 607A (814) 371-5002

September 24, 1997

Scott V Jones Escrow Agent for  
Mitchell Lumber Co and  
Chagrin Land Limited Partnership  
30 Beaver Dr Box 6  
DuBois PA 15801

Dear Scott:

ACCOUNT:12-25134451

Please be advised that the above account has been listed on our records as dormant. There has been no activity on this account since June 5, 1995. In order to reactivate the account, please make either a deposit or withdrawal in any amount. In doing this it will create activity on the account and will remove the dormant status.

You may wish to transfer your balance into a new American Dream Savings that requires no minimum balance, pays a higher rate of interest, and rewards you for all your relationships with Deposit Bank.

If you have any questions, please feel free to contact me at the bank. My telephone number is (814) 371-5002.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Barbara Ross'.

Barbara Ross  
Customer Service Representative

BR/dlrc

**EXHIBIT 7 (m)**

**BLAKLEY, JONES & MOHNEY**

*Attorneys and Counselors at Law  
90 Beaver Drive, Box 6  
Du Bois, Pennsylvania 15801*

*Telephone (814) 371-2730  
Fax (814) 375-1082*

October 21, 1997

*Scott V. Jones  
Benjamin S. Blakley, III  
Christopher E. Mohney*

G. Barrett Garbarino, Esquire  
Alexander, Garbarino, Kifer & Speer  
415 Wood Street  
Clarion, PA 16214

John Sughrue, Esquire  
Sughrue & Kesner  
23 North Second Street  
Clearfield, PA 16830

RE: Mitchell Lumber Company Escrow Account

Gentlemen:

Pursuant to instructions received from both of you to reinvest the escrow account in a Certificate of Deposit, enclosed find copy of Certificate of Deposit issued by Deposit Bank in the amount of \$47, 184.34 for two years at an annual percentage yield of 5.28%. This Certificate of Deposit may be cashed in without penalty or loss of interest by giving Deposit Bank thirty days notice of intent to liquidate the same.

Sincerely yours,

BLAKLEY, JONES & MOHNEY

  
Scott V. Jones

SVJ:lle  
Enclosure





DUBOIS MALL OFFICE

814 371-5002

## Certificate of Deposit

NON TRANSFERABLE -- NON NEGOTIABLE  
AUTOMATICALLY RENEWABLE

The sum of \$47,184.43

24 MONTH DAY NOTICE CD

REPRESENTATIVE <b>BJR</b>	BRANCH <b>012</b>	CD TYPE <b>250</b>	CERTIFICATE NUMBER <b>3006808</b>	AMOUNT <b>\$47,184.43</b>
MATURITY PERIOD <b>24 MONTH</b>		ISSUE DATE <b>October 17, 1997</b>		MATURITY DATE <b>October 17, 1999</b>
INTEREST RATE PAYABLE: <b>5.210%</b>			ANNUAL PERCENTAGE YIELD: <b>5.28 %</b>	
ISSUED TO: <b>SCOTT V JONES ESCROW AGENT FOR MITCHELL LUMBER CO AND CHAGRIN LAND LIMITED PARTNERSH</b>			CUSTOMER NUMBER: <b>000053025</b>  ADDRESS <b>90 BEAVER DR BOX 6 DUBOIS PA 15801</b>  TELEPHONE:	
INTEREST WILL BE PAID AT MATURITY AND ADDED TO THE PRINCIPAL BALANCE				
<p><b>EARLY WITHDRAWAL PENALTY</b> DURING THE FIRST MATURITY PERIOD, FUNDS MAY BE WITHDRAWN FROM THE ACCOUNT WITHOUT PENALTY WITH A THIRTY (30) CALENDAR DAY WRITTEN NOTICE.</p> <p>AN EARLY WITHDRAWAL PENALTY EQUAL TO SIX (6) MONTHS SIMPLE INTEREST WILL BE ASSESSED IF FUNDS ARE WITHDRAWN BEFORE ANY MATURITY DATE AFTER THE FIRST MATURITY PERIOD (OR DURING THE FIRST MATURITY PERIOD IF A THIRTY (30) CALENDAR DAY WRITTEN NOTICE IS NOT PROVIDED). ALL PENALTIES ARE ASSESSED AT THE RATE BEING PAID ON THE ACCOUNT AT THE TIME OF WITHDRAWAL. EARLY WITHDRAWAL MAY RESULT IN A REDUCTION IN THE PRINCIPAL AMOUNT ORIGINALLY DEPOSITED. NO PENALTY WILL BE ASSESSED ON WITHDRAWALS RESULTING FROM THE DEATH OR MENTAL INCAPACITY OF A DEPOSITOR.</p> <p><b>RENEWABILITY</b> THE ACCOUNT IS AUTOMATICALLY RENEWABLE. UNLESS WE RECEIVE WRITTEN INSTRUCTIONS TO THE CONTRARY WITHIN TEN (10) CALENDAR DAYS AFTER THE MATURITY DATE, THE ACCOUNT WILL BE RENEWED FOR AN ADDITIONAL 24 MONTH TERM. THE INTEREST RATE AND ANNUAL PERCENTAGE YIELD FOR THE NEXT MATURITY PERIOD WILL BE WHAT THE BANK IS OFFERING ON REGULAR 24 MONTH CERTIFICATES AS OF THE MATURITY DATE. RENEWAL WILL BE EFFECTIVE AND INTEREST WILL BE EARNED AS OF THE MATURITY DATE. FUNDS MAY BE WITHDRAWN WITHIN THE TEN (10) CALENDAR DAYS AFTER ANY MATURITY DATE BY SURRENDERING THE CERTIFICATE AND COMPLETING A WRITTEN REQUEST. NO INTEREST WILL BE PAID AFTER THE MATURITY DATE ON FUNDS WITHDRAWN DURING THE TEN (10) DAY PERIOD.</p>				
CDC_30NP.05a 22FEB97				
<b>TAX REPORTING INFORMATION</b>				
TAX INFORMATION FOR THIS ACCOUNT WILL BE REPORTED USING THE FOLLOWING TAXPAYER NAME AND TAXPAYER IDENTIFICATION NUMBER: TAXPAYER NAME: <b>SCOTT V JONES ESCROW AGENT FOR</b> TAXPAYER IDENTIFICATION NUMBER: <b>34-1609186</b>				
<b>DEPOSITOR ACKNOWLEDGEMENTS</b>				
BY SIGNING THE BANK'S COPY OF THE CERTIFICATE AT THE TIME THE ACCOUNT WAS OPENED, EACH SIGNER: (1) ACKNOWLEDGED THAT THE DEPOSIT ACCOUNT AGREEMENT FOR CERTIFICATES OF DEPOSIT, AND THE DISCLOSURE OF ACCOUNT TERMS WERE RECEIVED BEFORE THE ACCOUNT WAS OPENED, AND (2) AGREED THAT THE TERMS AND CONDITIONS CONTAINED THEREIN WILL GOVERN THE OPERATION OF THE ACCOUNT, AND (3) AUTHORIZED THE BANK TO RECOGNIZE THE SIGNATURES OF ANY 1 OF THE DEPOSITORS TO TRANSACT BUSINESS ON THE ACCOUNT.				
<b>BANK SIGNATURE</b>				
BANK SIGNATURE <i>Richard J. Ross</i>		<SEAL>		DATE <b>10-17-97</b>

CUSTOMER COPY

**Exhibit No. 8**

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CHERRY TIMBER ASSOCIATES, INC., : CIVIL DIVISION  
and CHAGRIN LAND LIMITED : No. 06-1498-CD  
PARTNERSHIP, :  
Plaintiffs, :

Vs. :

AUDRA MITCHELL, JOHN D. DUTTRY, :  
THELMA BUSH and BEVERLY R. :  
WILLIAMS a/k/a BEVERLY COPELLI, :  
Defendants. :

ORAL DEPOSITION: STEPHEN JILK

The oral deposition of STEPHEN JILK was  
taken in the above-captioned case on Thursday,  
April 17th, 2008 scheduled to commence at 2:00  
p.m. and concluding at 3:17 p.m. in the Board Room  
of the Clarion Hotel, 1896 Rich Highway, DuBois,  
Pennsylvania 15801 pursuant to the Pennsylvania Rules  
of Civil Procedure.

A P P E A R A N C E S:

Representing Plaintiffs: KEITH M. PEMRICK, ESQ.  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323

Representing A. Mitchell: CHRISTOPHER E. MOHNEY, ESQ.  
Suite 6  
25 East Park Avenue  
DuBois, PA 15801

1 A. No.

2 Q. You're totally retired?

3 A. Totally retired.

4

5 (Off the record.)

6

7 Q. I looked on the records of Clearfield County and  
8 I couldn't find any record of Industrial Timber  
9 and Land Company having an interest in this  
10 land. Are you aware of any document that gives  
11 them an interest in this land, deed, timber  
12 lease, anything like that?

13 A. I think it's deeded in the name of Cherry Timber  
14 Associates, Inc.

15 Q. Did Cherry Timber at any time lease this land to  
16 Industrial Land and Timber Company?

17 A. It might be something like that.

18

19 MR. PEMRICK: Only if you know.

20

21 A. I don't know.

22 Q. I'll show you a document that was marked  
23 Deposition Exhibit No. 3 in Audra Mitchell's  
24 deposition. And it was identified by her as a  
25 record of moneys that Mitchell Lumber paid to

1 Scott Jones. And I'll give you an opportunity to  
2 look at it. Have you seen that before?

3 A. Yes.

4 Q. Is any of the writing on that Exhibit yours?

5 A. Yes.

6 Q. What?

7 A. "Received from the Mitchell's, schedule of  
8 payments to escrow account."

9 Q. So you did those two top lines?

10 A. Yes.

11 Q. And where did you write that and what did you do  
12 with this document after you created the first  
13 two lines?

14 A. It's in your file.

15 Q. Okay. Well, just tell me about it. Is that  
16 something you gave to Audra Mitchell or --

17 A. She gave it to me apparently because this is her  
18 writing, I believe.

19 Q. Right. She said that was. So you created the  
20 document and gave it to her and she put the  
21 numbers in, or you took it to her and she gave  
22 you the numbers upon your request?

23 A. She must have given me the whole thing other than  
24 the top two lines because that's all -- that's  
25 not my writing. It must be her writing.



1 Q. No. I say she said it was. So you think you got  
2 this information from her?

3 A. Yes.

4 Q. And that -- okay. And at that time, perhaps you  
5 recall, you confirmed that Scott Jones did in  
6 fact receive \$45,000 from Mitchell?

7 A. Yes.

8 Q. And you concede, I believe, that that money was  
9 delivered by Mitchell Lumber Company?

10 A. Yes.

11

12 MR. SUGHRUE: Am I, Mr. Pemrick, am  
13 I going to be able to keep the file you gave  
14 me?

15 MR. PEMRICK: Yes.

16 MR. SUGHRUE: Okay. I'll note for  
17 the record that Mr. Jilk was kind enough to  
18 bring copies of various documents and notes  
19 that I asked be produced that relate to this  
20 project and I won't bore everybody by  
21 identifying them. I'll assume that if they  
22 become relevant, you'll recognize them at  
23 that time. I don't have any further  
24 questions. Thank you very much.

25 MR. PEMRICK: You want to look at

1 that?

2 MR. MOHNEY: I was just kind of  
3 paging through it.

4  
5 EXAMINATION

6 BY MR. MOHNEY:

7 Q. I just have a few questions, Mr. Jilk. I  
8 represent Audra Mitchell in this case. I just  
9 want to make sure I understand the last part of  
10 this that you were shown, this Exhibit No. 3 from  
11 Miss Mitchell's deposition. My understanding,  
12 boiling it down from her perspective, at some  
13 point there was an agreement between your company  
14 and Mitchell Lumber that they would pay \$45,000  
15 into escrow, correct?

16 A. Yes.

17 Q. And Scott Jones is the attorney that was to hold  
18 the escrow money, correct?

19 A. Yes.

20 Q. And if I gleaned -- if I understand your  
21 testimony correctly when you saw this Exhibit, at  
22 some point in time Ms. Mitchell handed you what  
23 would have been the numbers on the bottom -- on  
24 the lower part of the page, correct?

25 A. Yes.

1 Q. And it totals up to \$45,000?

2 A. Yes.

3 Q. And then you -- at some point after that you must  
4 have handwritten in the top two lines to identify  
5 the document for purposes such as today?

6 A. Yes.

7

8 MR. MOHNEY: Okay. That's all I  
9 have.

10 MR. SUGHRUE: I have one additional  
11 question. Let me see that Exhibit. I'm  
12 going to ask that this document that we just  
13 identified, the record of money received  
14 from the Mitchell's, Schedule of Payments to  
15 Escrow Account, which you previously  
16 identified as being your writing, followed  
17 by the four listed payments that Mrs -- five  
18 listed payments that Mitchell apparently  
19 made to the escrow account. I'm going to  
20 ask that be marked Jilk Exhibit No. 2.

21

22 (Off the record.)

23

24 (Jilk Exhibit No. 2 marked for identification.)

25

- - -

## FURTHER EXAMINATION

BY MR. SUGHRUE:

Q. I probably should have asked Mrs. Mitchell this, but maybe you know. As you look at your Exhibit No. 2 there's a figure written in there by Mrs. Mitchell that says, "Balance 14,289.42." Do you see that number?

A. Yes.

Q. Do you know what that number represents?

A. I would -- apparently it represents payments made to date, up to the date she wrote this. And then she made another payment on the 11th and another payment on the 17th. So these were payments, the balance of the payments made up till that date.

Q. Now you notice the last four payments are from February 11th, February 19th, February 24th, and March 3rd, right?

A. Yes.

Q. And in your earlier testimony you conceded that the timbering that occurred after you first met with Mr. Mitchell, the timbering that occurred after January 27th did not involve any of your company's trees; did you not?

A. Yes.

Q. So if that being the case, these last four

1 amounts and entries don't relate to your  
2 company's claimed timber; does it?

3  
4 MR. PEMRICK: Object to the form of  
5 the question.

6 MR. SUGHRUE: Go ahead and answer.

7 MR. PEMRICK: If you can answer. I  
8 mean there's two payments of \$10,000  
9 exactly. So I think it's evident that those  
10 two payments aren't based upon a specific  
11 tally from a specific part of the property.

12

13 A. I'm not sure what the question is.

14 Q. You don't know what period these are for then?  
15 I'm asking you, these apparently are for trees --  
16 I keep saying trees. I should say timber. These  
17 are apparently for timber that was cut subsequent  
18 to your meeting with Mr. Mitchell. It's money  
19 due February 11th, February 19th, February 24th,  
20 and March 3rd. Mrs. Mitchell testified that they  
21 paid weekly for logs brought in during the week.  
22 As a result of that isn't it accurate to say that  
23 this money represented logs that were not taken  
24 off of your property, your company's property?

25 A. The way you worded that I'd say no because they

1 needed time to make the payments. They didn't  
2 have \$45,000 sitting in their checking account.  
3 So they needed to saw lumber and process lumber  
4 and sell lumber and get payments in from  
5 customers. So they needed time to accumulate  
6 this \$45,000.

7 Q. So it would be your thought then that these dates  
8 don't necessarily relate to when the timber was  
9 cut?

10 A. No, not at all.

11

12 MR. SUGHRUE: Okay. Thank you very  
13 much. I don't have any further questions.

14

15 EXAMINATION

16 BY MR. PEMRICK:

17 Q. I just had one question maybe to try to clarify  
18 the record a little bit. Steve, I think you were  
19 asked by Mr. Sughrue, I know you were asked about  
20 the relationship between Cherry Timber and I.T.L.  
21 and so forth and whether you were employed by  
22 Cherry Timber. And I know the legal relationship  
23 of these various companies is a little  
24 complicated, but did you have in any way an  
25 association with Cherry Timber?

**Exhibit No. 9**

CHERRY TIMBER ASSOCIATES, INC., ) IN THE COURT OF COMMON PLEAS OF  
and CHAGRIN LAND LIMITED ) CLEARFIELD COUNTY, PENNSYLVANIA  
PARTNERSHIP, )

Plaintiffs, )  
 ) Civil Action

V. )

AUDRA MITCHELL, JOHN D. DUTTRY )  
THELMA BUSH and BEVERLY R. )  
WILLIAMS a/k/a BEVERLY COPELLI, ) No. 06-1498-CD

Defendants. )

# AFFIDAVIT

STATE OF COLORADO )  
COUNTY OF JEFFERSON ) SS:

The undersigned, G. Barrett Garbarino, being first duly sworn, deposes and states as follows:

1. I am an attorney presently admitted to practice law in the Commonwealth of Pennsylvania.
2. I have been continuously licensed to practice law in the Commonwealth of Pennsylvania since 1969.
3. During the years 1988 through 2006 I was Pennsylvania counsel for ITL Corp., d/b/a Industrial Timber and Lumber Company (formerly ITL Corp. d/b/a Industrial Timber and Land Company), and for Cherry Timber Associates, Inc., and Chagrin Land Limited Partnership, companies affiliated with ITL through common ownership.
4. In or about February, 1995, I was contacted by Stephen Jilk and advised that a logging crew from Mitchell Lumber Company had been discovered harvesting timber from a property owned by Cherry Timber Associates in Huston Township, Clearfield County.
5. Mr. Jilk told me that he had met with Paul Mitchell, the owner of Mitchell Lumber



Company, and that Mitchell had agreed to make payments into an escrow account pending verification of the volume and value of timber which had been harvested from Cherry Timber's property.

6. Mr. Jilk also told me that Attorney Scott D. Jones had been selected as the escrow agent, and that he and Paul Mitchell had agreed that Mitchell would deposit \$45,000.00 with Attorney Jones.

7. I also learned that Mitchell had been cutting timber pursuant to a Timber Harvest Agreement entered into with John D. Duttry, and that Mr. Duttry was represented by Attorney John Sughrue.

8. Between March 23, 1995, and June 29, 1995, Attorney Sughrue and I exchanged letters regarding the ownership of the property where the timber had been harvested. True and correct copies of the letters are attached as Exhibits A through D.

9. A meeting to discuss the escrow funds was held on July 16, 1996, at the office of Attorney Jones.

10. The meeting was attended by myself, Stephen Jilk, Attorney Jones, Attorney Sughrue and Fran McDermott, an individual who had performed title abstracting work on the properties in question.

11. At the meeting, we reviewed the abstract work performed by Fran McDermott, who had concluded that Cherry Timber Associates owned a sixty acre parcel where substantial timber had been harvested by Mitchell Lumber Company.

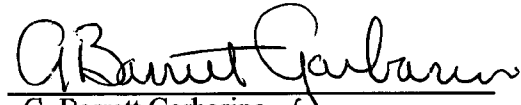
12. Attorney Sughrue took the position that his client owned the property, although he did not produce an abstract, other title work or a survey to support his position.

13. At the conclusion of the meeting it was agreed that Attorney Jones would continue to hold the funds in escrow until the parties reached an agreement as to the ownership of the funds, or until proper distribution of the funds was ordered by a court.


14. Attorney Sughrue never produced an abstract or other evidence to support his client's claim of ownership to the disputed funds, and the funds remained in escrow in a series of

Certificates of Deposit purchased by Attorney Jones.

15. It was my position that Cherry Timber's dispute was with Mitchell Lumber Company, not with John Duttry, and since an agreement had been reached with Mitchell Lumber Company regarding the value of the timber harvested from the Cherry Timber property, there was no immediate need to pursue ownership of the funds through litigation.

  
G. Barrett Garbarino

Sworn and subscribed to before me  
this 12 day of March, 2009

  
Notary Public  
My commission expires 1/2011

LAW OFFICES  
ALEXANDER, GARBARINO, KIFER,  
SPEER & NEELY

415 Wood Street  
P. O. Box 766  
Clarion, Pennsylvania 16214  
814 226-6030  
Fax 814 226-5018

LARRY L. KIFER  
DAVID M. SPEER  
JAMES B. ALEXANDER  
CASSANDRA M. NEELY

OF COUNSEL  
G. BARRETT GARBARINO

March 23, 1995

John Sughrue, Esquire  
Sughrue & Kesner  
23 North Second Street  
Clearfield, PA 16830

IN RE: Paul Mitchell Lumber Company/Chagrin Land  
Limited Partnership

Dear John:

In response to your letter of March 8, 1995, addressed to Scott V. Jones, Esquire, please be advised that my client, Chagrin Land Limited Partnership, is of the opinion that certain timber has been wrongfully removed from its property in Huston Township, Clearfield County, Pennsylvania. The timber was removed by Paul Mitchell Lumber Company which apparently is also removing timber from adjacent land belonging to your clients pursuant to a certain Timber Harvest Agreement dated October 18, 1994.

When confronted by Chagrin, Paul Mitchell agreed to put money in an escrow account which is presently being held by Scott V. Jones for the purpose of indemnifying Chagrin for damages it sustains by reason of the wrongful appropriation of the timber. Chagrin is presently having its property surveyed so that it can then make an accurate count of the number of trees that were removed. After the survey and the count are completed Chagrin will inform Mitchell Lumber Company of the damages it sustained.

You have informed me that your clients are of the opinion that they may own part or all of the tract claimed by Chagrin and for that reason you did not want to have the escrow account disbursed without your approval.

At this point our dispute is only with Mitchell Lumber Company and unless either your clients participated with Mitchell Lumber Company in the wrongful removal of timber or your clients are able to show that they own the timber or land involved, I cannot see why I would need your approval to disburse an escrow

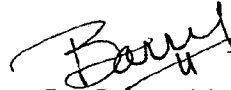
John Sughrue, Esquire  
Page 2  
March 23, 1995

account upon settlement of the dispute between Mitchell Lumber Company and Chagrin Land Limited Partnership. I have agreed, however, that I would give you a reasonable period of time to complete your title work before any disbursement is made. I am therefore by copy of this letter to Scott V. Jones instructing him to continue to retain the escrow account and not to make any disbursements from it until I notify him.

John, if I have not heard from you by April 10, 1995, the provisions of this letter concerning retention of the escrow will no longer be applicable.

If you have any questions please call.

Very truly yours,



G. Barrett Garbarino

GBG:jlm

c: Scott V. Jones, Esquire  
Mr. Stephen A. Jilk

LAW OFFICES  
**SUGHRUE & KESNER**  
23 NORTH SECOND STREET  
CLEARFIELD, PA. 16830

JOHN SUGHRUE  
KIM C. KESNER

April 5, 1995

(814) 765-1704  
FAX (814) 765-2957

Fax (226-5018) and First Class Mail

G. Barrett Garbarino, Esquire  
ALEXANDER, GARBARINO, KIFER,  
SPEER & NEELY  
P. O. Box 766  
Clarion, PA 16214

RE: Mitchell Lumber and Bush/Duttry/Copelli; and Cherry  
Timber Associates, Inc./Chagrin Land Ltd. Partnership

Dear Barry:

It appears to me that we have a serious disagreement concerning the factual situation and basis upon which Paul Mitchell paid funds to Scott Jones to be held in escrow.

You indicate that Mr. Mitchell agreed to put the money in escrow with Scott for the purpose of indemnifying Chagrin Land Limited Partnership for damages arising out of the wrongful appropriation of timber. Mr. Mitchell has advised me that he was confronted with two landowners claiming the same timber and that the funds were delivered to Mr. Jones to be held in escrow for the benefit of the two landowners. A copy of Mr. Mitchell's written communication to me dated March 7, 1995 is enclosed for your reference. It also appears that Scott accepted the money and escrowed it without written documentation as to the conditions of release. It appears that Scott has placed himself in the middle and is personally at risk if he makes an improper distribution.

Your clients have not in any way established their ownership of the timbered land. They simply made a bald assertion in the field and raised with Mr. Mitchell the issue of a dispute. It's clear Mr. Mitchell was on the property cutting under agreement with my clients and that the proceeds of sale were due under the Agreement to my clients. Mr. Mitchell was confronted with two potential claimants to the land and, therefore, the proceeds of timber. He simply protected both landowners by agreeing to place it in escrow. Your clients indicated to Mr. Mitchell that you did not have a survey for the property and did not know the location of your line.

In your letter of March 23, 1995, you suggest that I should complete title work. Nowhere in your letter do you suggest the title basis of your clients' claim of ownership of the cut timber. It appears to me that there are essentially surveying and location problems that need to be resolved and not simply a question of title work. To my knowledge, the disputed timber

G. Barrett Garbarino, Esquire  
Page 2  
April 5, 1995

area has never been mapped on the ground or placed on a survey that may be related to your chain of title.

I have reviewed various documents with respect to the lands in question and the following seems to be apparent to me and is, I'm sure, known to you and your clients. Your clients are assessed with 43.2 acres. Your land is located north, adjacent to the Hoyt tracts. The subject timber was cut from property that is substantially south of the Hoyt line and most probably off of your property. Certain notes were given to Mr. Mitchell by your clients suggesting that you may claim 60 acres. I find no basis for any claim in excess of 60 acres. There are approximately 125 to 180 acres of ground in the disputed area. My clients are assessed with 123.2 acres and have a chain of title in support of that acreage. Any claim that your clients may have was secured by quitclaim deeds from Green Glen Corporation and you may in fact have no claim to any property in the area. Your assessment was only mapped in 1988 and is probably mapped inaccurately.

I am confident that Mr. Mitchell was not wrongfully removing your timber from your property. Your clients' statement to Mr. Mitchell that they owned the timbered land was an incorrect statement. They induced Mr. Mitchell to pay the money to Scott by accusing him of theft and threatening him with triple damages. Whether these incorrect statements were made in good faith or in bad faith will depend to some degree upon the manner in which your clients choose to resolve this instant dispute.

Thus, I renew my suggestion to both you and Scott. The money should be placed in an escrow account in the name of a representative of each landowner and Mr. Mitchell if he desires. The owner as determined by a court of competent jurisdiction would ultimately receive the funds. Resolution of the matter would require a court determination absent an earlier agreement and in any event, would require a survey of the entire tract, a survey of the individual tracts, and location of the disputed timber tract within it.

If you continue to be unable to agree to my suggestion, I would take this occasion to formally advise Scott that it is our position that Mr. Mitchell was cutting the Bush/Duttry/Copelli lands under agreement with and for the account of my clients; that the funds delivered to Scott were acknowledged by Mr. Mitchell to be the proceeds of the sale of the timber payable to my clients; and were deposited with Scott to be held in escrow for the benefit of my clients and your clients. Scott has placed

G. Barrett Garbarino, Esquire  
Page 3  
April 5, 1995

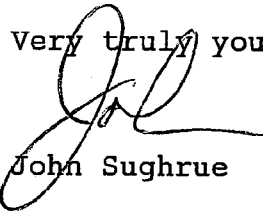
himself in a fiduciary position with respect to both Mr. Mitchell and my clients. Demand for payment of the money to my clients is hereby made or in the alternative, it is demanded that he return the money to Mr. Mitchell.

I would also note to Scott that the various rules of law relating to the receipt of entrusted funds by a lawyer suggest that the conditions of the deposit be memorialized and that he owes a fiduciary duty to all claimants of the fund.

By copy of this letter, I am advising Scott of developments. I would ask both you and Scott to advise me of your respective positions immediately.

Thank you for your consideration of these matters.

Very truly yours,



John Sughrue

JS/mbb

Enclosure

cc: Scott V. Jones, Esquire  
Mitchell Lumber  
Mr. John D. Duttry  
Mrs. Thelma Bush  
Mrs. Beverly Copelli

LAW OFFICES  
ALEXANDER, GARBARINO, KIFER,  
SPEER & NEELY

415 Wood Street  
P. O. Box 766  
Clarion, Pennsylvania 16214  
814 226-6030  
Fax 814 226-5018

LARRY L. KIFER  
DAVID M. SPEER  
JAMES B. ALEXANDER  
CASSANDRA M. NEELY

OF COUNSEL  
G. BARRETT GARBARINO

April 10, 1995

John Sughrue, Esquire  
Sughrue & Kesner  
23 North Second Street  
Clearfield, PA 16830

IN RE: Cherry Timber Associates, Inc., v. Mitchell Lumber  
Company

Dear John:

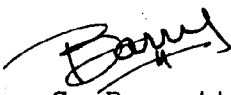
In response to your letter of April 5, 1995, concerning the above captioned matter, please be advised that Cherry Timber Associates, Inc., is in the process of completing a survey of the tract in question. We have been advised that the survey should be completed within the next one to two weeks although it would not surprise me if it takes longer than that. Upon completion of the survey Scott Jones will review his title report in light of any new facts revealed by the survey. After the survey and title review are completed I will contact you in hopes that we can meet and resolve our differences amicably.

I assume that in the interim you will also review your title and have a survey made of the tract.

Please be assured that the money presently held in escrow by Scott Jones will remain in escrow until after we have met and attempted to resolve this matter. In the event we agree that we cannot amicably resolve this dispute I would expect that we would enter into an agreement for the disposition of the escrow pending a decision of the court.

If you have any questions please call.

Very truly yours,

  
G. Barrett Garbarino

GBG:jlm

c: Scott V. Jones, Esquire  
Mr. Stephen A. Jilk



LAW OFFICES  
SUGHRUE & KESNER  
23 NORTH SECOND STREET  
CLEARFIELD, PA. 16830

JOHN SUGHRUE  
KIM C. KESNER

June 29, 1995

(814) 765-1704  
FAX (814) 765-2957

G. Barrett Garbarino, Esquire  
ALEXANDER, GARBARINO, KIFER,  
SPEER & NEELY  
P. O. Box 766  
Clarion, PA 16214

RE: Timber Project in Huston Township

Dear Barry:

This will confirm my phone conversation with you on June 28, 1995. I have caused certain surveying work to be performed with respect to the disputed tract. I have also conducted certain title work and have located the timber that was cut.

I suggest that we arrange a meeting, perhaps at DuBois, to review the data and determine whether or not there are any facts upon which we can agree and to explore amicable resolution.

You indicated that you would be available Monday, July 17, and Tuesday, July 18. Thursday, July 20, in the a.m. would be open to me. I'm likewise available generally from July 25 through 28, 1995. By copy of this letter, I'll ask Scott Jones to call you and see if any those dates are mutually convenient.

Thank you for giving this matter your attention.

Very truly yours,



John Sughrue

JS/mbb

cc: Scott V. Jones, Esquire  
Mr. John D. Duttry  
Mrs. Thelma Bush  
Mrs. Beverly Copelli  
Mitchell Lumber; P. O. Box 28; Brockport, PA 15823

**Exhibit No. 10**

# Gent, Gent and Snyder

Attorneys at Law

314 West Park Street, Franklin, Pa. 16323-1390

(814) 437-3754

HENRY W. GENT, III  
MICHAEL D. SNYDER

FAX (814) 437-6800  
E-MAIL gentlaw@mail.usachoice.net

OF COUNSEL  
HARRY W. GENT, JR.

February 23, 2009

Keith Pemrick, Esq. and  
Joseph H. Keebler, Jr., Esq.  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323

Re: Industrial Timber & Land Co.  
60 Acre, More or Less, Parcel,  
Huston Township, Clearfield County, Pennsylvania

Dear Messrs. Pemrick & Keebler:

You have asked for my opinion regarding the surface ownership of a 60 acre, more or less, parcel in Huston Township, Clearfield County, Pennsylvania, which has at various times been erroneously shown on Clearfield County maps as Parcel No. 119-E3-33, but in fact is Parcel No. 119-E4-16. I have reviewed certain documents from the Office of Recorder of Deeds of Clearfield County and the Tax Assessment Office of Clearfield County, all as provided to me by your office. Based upon my review of these documents I would set forth as follows:

1. The first deed of record examined for this parcel was from John E. DuBois et ux., to G. E. Bucksbee dated November 8, 1927 and recorded in the Office of the Recorder of Deeds of Clearfield County in Deed Book 298 at page 136 and describes by metes and bounds a 60.12 acre parcel as surveyed May 29, 1922 by J. E. Fry. A survey of the parcel in question prepared by Alexander & Associates, Inc. dated July 5, 1995 titled "Retracement Survey, Industrial Timber & Land Co." depicts a 58 acre parcel which obviously conforms in boundaries and location with Parcel No. 119-E4-16 as shown on Clearfield County Tax Assessment Maps.

2. The next deed of record examined for the subject parcel was from the County Commissioners of Clearfield County to David DuBois originally dated May 25, 1942, but re-executed under date of October 8, 1945 (as the first deed was recited to have been lost) and recorded as aforesaid on October 17, 1945 in Deed Book 370 at page 458. The deed recites that it was for the property of G. E. Bucksbee containing 60 acres.

3. The next deed of record examined for the subject parcel was from David DuBois et ux., to John E. DuBois, Jr., Louis G. DuBois, Sarah B. DuBois, David DuBois and Caroline DuBois Pfaelzer dated June 18, 1947 and recorded as aforesaid on July 23, 1947 in Deed Book 384 at page 524. The first parcel described therein is described as "Premises containing 60 acres, more or less, formerly sold as the property of G. E. Bucksbee at Clearfield County Treasurer's tax sale to the County Commissioners of Clearfield County, Pennsylvania, and conveyed by said County Commissioners to David DuBois by deed dated October 8, 1945, recorded at Clearfield, Pa., in Deed Book 370, page 458."

4. The next deed of record examined for the subject parcel was from John E. DuBois, Jr. and Rene Hadley DuBois, his wife, Louis G. DuBois, unmarried, Caroline DuBois Pfaelzer, unmarried, David DuBois and Shirley C. DuBois, his wife, and Sarah B. DuBois, unmarried to the Green Glen Corporation dated September 1, 1947 and recorded as aforesaid on November 2, 1948 in Deed Book 393 at page 411. Note that this deed purports to convey in excess of 46 parcels. Parcel No. "45 First Thereof:" describes "THE FIRST THEREOF: Premises containing 60 acres, more or less, formerly sold as the Property of G. E. Bucksbee at Clearfield County Treasurer's tax sale to the County Commissioners of Clearfield County, Pennsylvania, and conveyed by said County Commissioners to David DuBois by deed dated October 8, 1945, recorded at Clearfield, Pa., in Deed Book 370, page 458."

**It should be noted that this deed into Green Glen Corporation recites and conveys several parcels situate in Huston Township; however, there is no conveyance of the 123 acre parcel situate immediately to the north and east of the subject parcel which is shown Clearfield County Tax Assessment Maps as Parcel No. 119-E3-33.**

5. The next deed of record examined for the subject parcel was from Green Glen Corporation to Cherry Timber Associates dated December 21, 1988 and recorded as aforesaid on December 21, 1988 in Volume 1260 at page 338. This deed describes twenty one (21) parcels located in Clearfield County and contains at Parcel No. 21 a conveyance of "All right, title and interest to the Grantor in and to all real property owned by the Grantor in Clearfield County, Pennsylvania, including all rents, profits, issues, remainders and reverts."

**This deed appears to be the recorded source of confusion regarding the ownership of the 60 acre parcel.**

Parcel No. 13 in said deed contains the following description:

"All that certain parcel of real estate located in Huston Township, Clearfield County, Pennsylvania,

BOUNDED on the North by lands of Tinker & Hoyt;

BOUNDED on the Southeast by Bennetts Branch Run;

BOUNDED on the Southwest by lands of Harold Duttry;

BOUNDED on the West by lands of Sadie Beer;

Being identified as Clearfield County Tax Map Parcel No. 119-E3-33."

This description describes the 123.2 acre Parcel owned by Duttry, except for the erroneous third call which should have read "BOUNDED on the southwest by lands of Green Glen Corporation". On all Clearfield County Tax Assessment Maps, which you have provided, Parcel No. 119-E4-16 is clearly depicting the original 60 acre parcel that comes down through the chain of title in deeds 1 through 4 as set forth above. Further, you have provided me with

several maps and surveys which describe a 60 acre parcel bounded similarly to Tax Parcel No. 119-E4-16. You have also provided me with an undated, untitled survey which depicts the 123.2 acre parcel which obviously conforms in boundaries and location with Parcel No. 119-E3-33 as shown on Clearfield County Tax Assessment Maps.

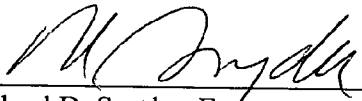
It should be noted that early Clearfield County Tax Assessment records from 1926 through 1960 reflect a 60 acre parcel owned successively by G. E. Bucksbee, John DuBois or J. E. DuBois, David DuBois and Green Glen Corporation. These are the successive owners of the 60 acre parcel as set forth in the deeds described in paragraphs 1 through 4 above. Apparently tax assessment parcel numbers were first assigned in Clearfield County around 1960 and there may have been an error made at that time which caused the current confusion. **For purposes of determining ownership, deeds and deed descriptions should prevail over tax assessment numbers.**

After a review of the documents, surveys and maps which you have provided me, and subject to the erroneous description and mapping referred to above, it is my opinion that the 60 acre parcel was conveyed to Cherry Timber Associates pursuant to the quit claim language quoted above contained in Parcel No. 21 of the Quit Claim Deed recorded at Volume 1260 at page 338 and is Parcel No. 119-E4-16 as shown on Clearfield County Tax Assessment Maps.

Please feel free to contact our office should you have any questions in this regard.

Very truly yours,

Gent, Gent, & Snyder

  
Michael D. Snyder, Esq.

MDS/bai

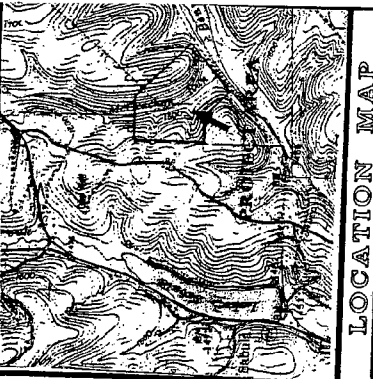
# **EXHIBIT 11**

**EXHIBIT 11(a)**

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# LOCATION MAP



Thelma Bush,  
Beverly R. Williams,  
John D. Duttry

## INDUSTRIAL TIMBER & LAND COMPANY

DB 339-380  
DB 376-352

Sadie Beer

BEARING BASE

Line

Existing Fence & Tree Line

(N 84°-40' E 98')

970.24'

McCracken Run

Approx. Line

540°-40' E 1560'

(S 40°-40' E 1560')

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DB 339-380  
DB 376-352

Sadie Beer

TWP.

S 84°-40' E

970.24'

Line

(N 84°-40' E 98')

Existing Fence & Tree Line

McCracken Run

Approx. Line

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DB 936-261  
DB 1292-225

Paul I. Dixon, et al.

T-408

N 04°-40' W

510.32' To Stone

Line

(N 04°-40' W 510.32')

Existing Fence & Tree Line

McCracken Run

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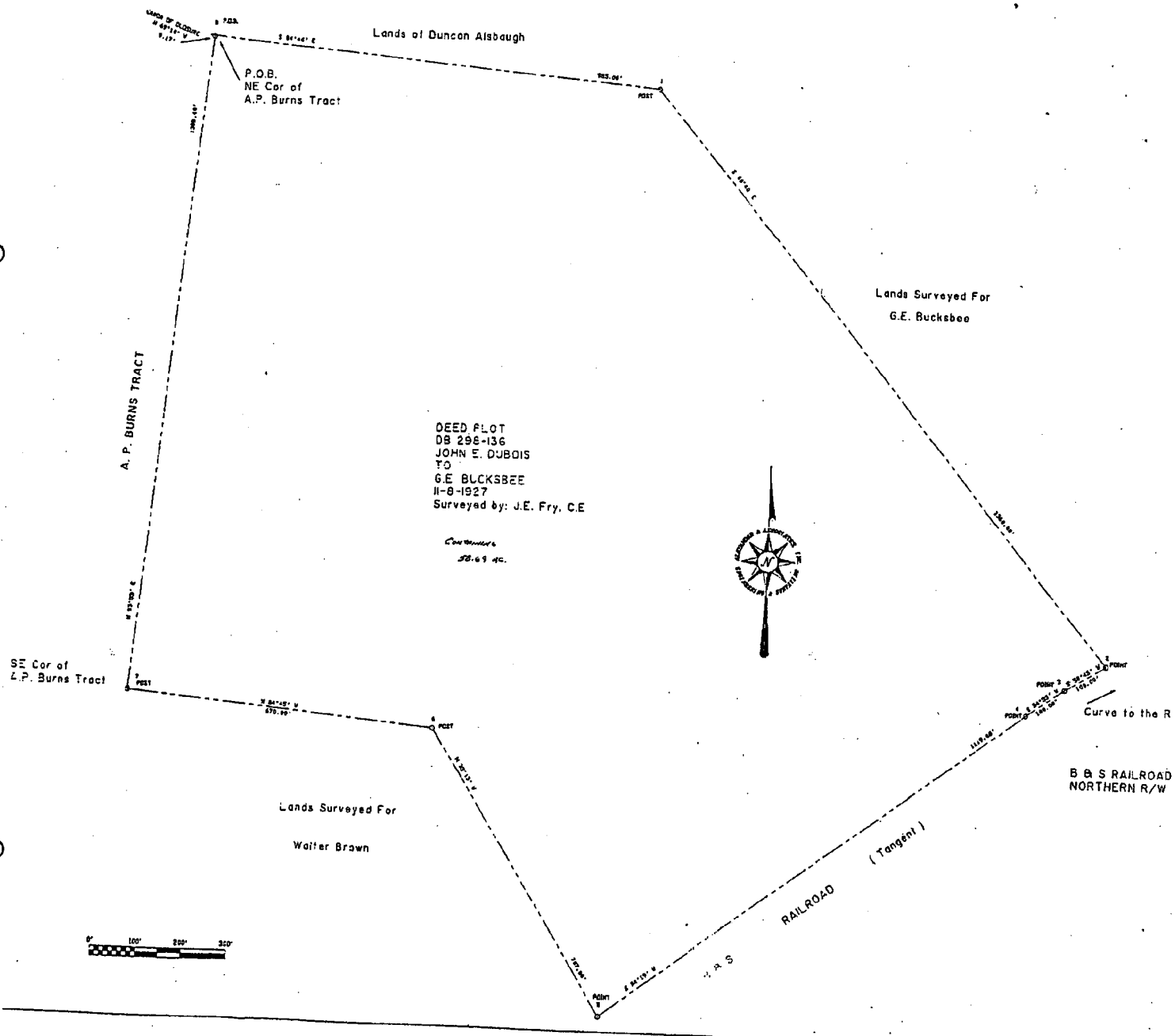
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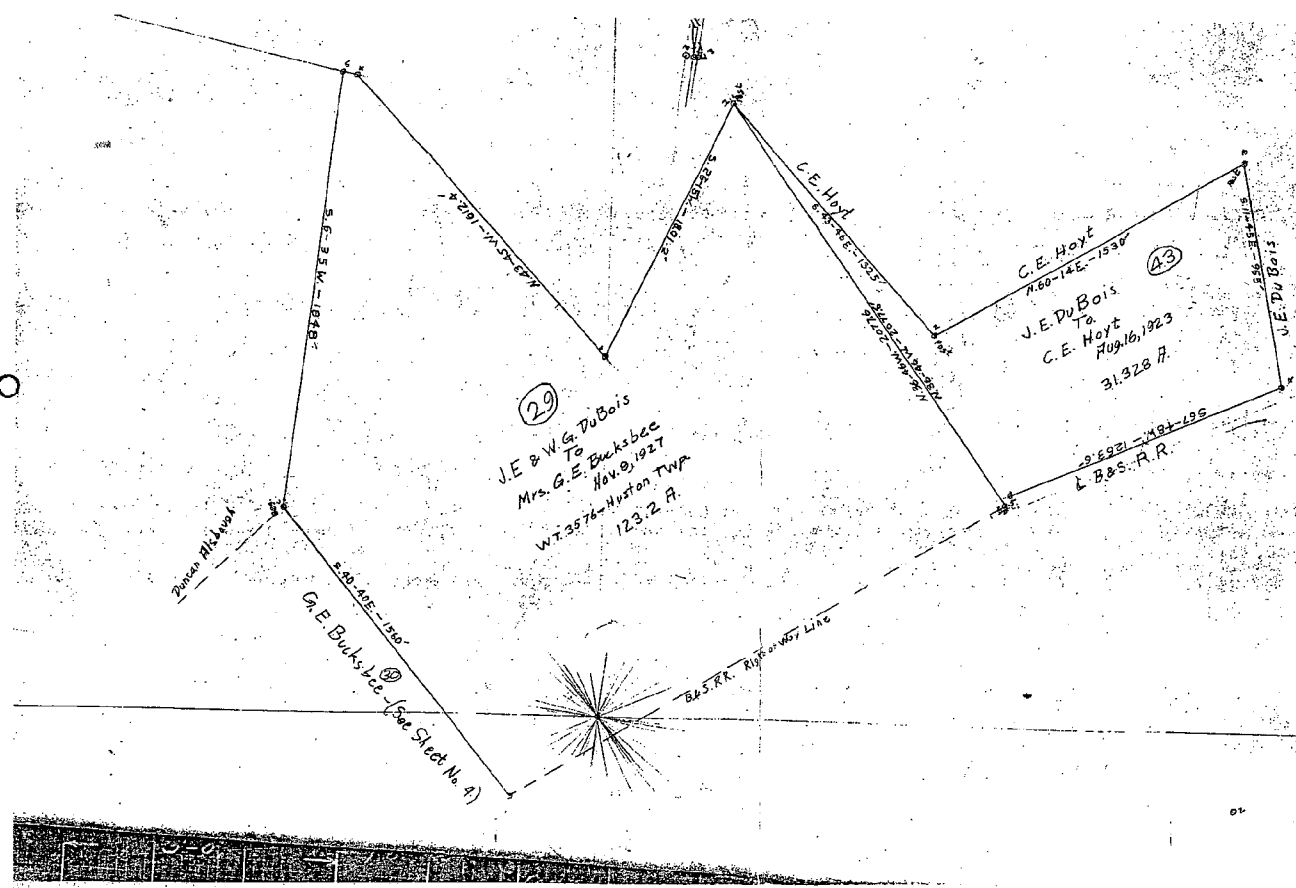
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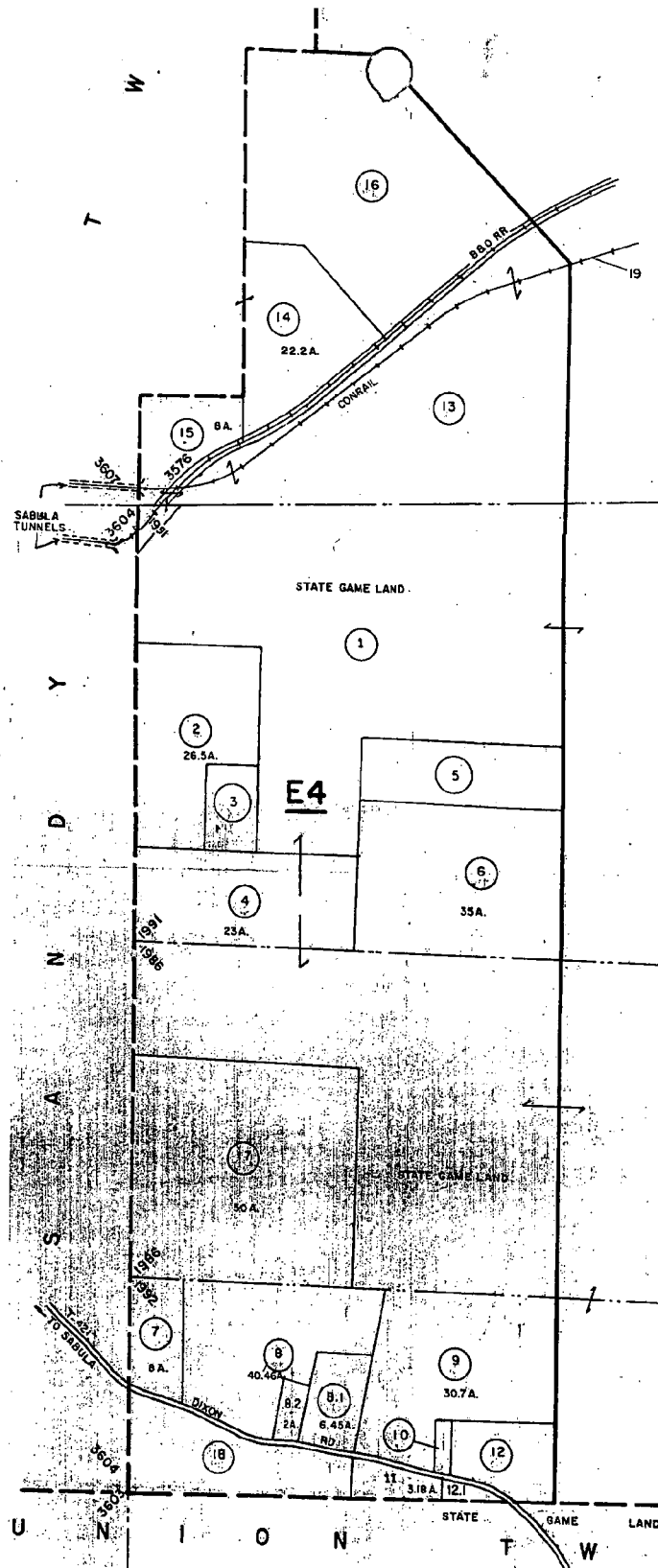
**EXHIBIT 11(b)**



**EXHIBIT 11(c)**



**EXHIBIT 11(d)**



This map has been prepared, as required by law, for the purpose of assessing property taxes. It has been compiled from sources in the office of the Recorder of Deeds, the Office of the Board of Assessment and Revision of Taxes, the Office of collaborating engineers, and, in some cases, from other sources.

The Clearfield County Board of Assessment and Revision of Taxes

5-14-98

REVISED

ASSESSMENT MAP  
HUSTON TOWNSHIP  
CLEARFIELD COUNTY  
PENNSYLVANIA

SCALE 1"=660'

AD-1958

MAPS NO

E3, E4



**EXHIBIT 12**



IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CHERRY TIMBER ASSOCIATES, INC., : CIVIL DIVISION  
and CHAGRIN LAND LIMITED : No. 06-1498-CD  
PARTNERSHIP, :  
Plaintiffs, :  
Vs. :  
AUDRA MITCHELL, JOHN D. DUTTRY, :  
THELMA BUSH and BEVERLY R. :  
WILLIAMS a/k/a BEVERLY COPELLI, :  
Defendants. :

ORAL DEPOSITION: AUDRA MITCHELL

The oral deposition of AUDRA MITCHELL was taken in the above-captioned case on Thursday, April 17th, 2008 scheduled to commence at 11:00 a.m. and concluding at 11:58 a.m. in the Board Room of the Clarion Hotel, 1896 Rich Highway, DuBois, Pennsylvania 15801 pursuant to the Pennsylvania Rules of Civil Procedure.

A P P E A R A N C E S:

Representing Plaintiffs: KEITH M. PEMRICK, ESQ.  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323

Representing A. Mitchell: CHRISTOPHER E. MOHNEY, ESQ.  
Suite 6  
25 East Park Avenue  
DuBois, PA 15801

1 Q. You don't recall Mary Jo Duttry ever calling your  
2 office and asking or demanding that the money be  
3 paid to the Duttrys?

4 A. Not to my knowledge. I'm sure she probably did  
5 though.

6 Q. Did you know Mary Jo Duttry?

7 A. No.

8 Q. You never had occasion to meet her?

9 A. No.

10 Q. Did your husband ever express any concern to you  
11 about the possibility of being arrested for  
12 stealing timber or taking the timber without  
13 consent?

14 A. Not arrested, just being sued, he had a concern.

15 Q. Did your husband discuss with you what to do  
16 about the quandary or the situation?

17 A. Yes.

18 Q. What did he seem to be looking for or what  
19 decision did you guys finally come to? Just kind  
20 of tell me in your own words.

21 A. To put the money in an escrow account so it was  
22 out of our hands and that the money was -- that  
23 way when they were done disputing over who the  
24 property belonged to, then the money could go to  
25 the rightful owner.

**FILED**

**MAR 30 2009**

William A. Shaw  
Prothonotary/Clerk of Courts



CHERRY TIMBER ASSOCIATES, INC., ) IN THE COURT OF COMMON PLEAS OF  
and CHAGRIN LAND LIMITED ) CLEARFIELD COUNTY, PENNSYLVANIA  
PARTNERSHIP, )

Plaintiffs, )

v. )

AUDRA MITCHELL, JOHN D. DUTTRY,) Civil Action  
THELMA BUSH and BEVERLY R. )  
WILLIAMS a/k/a BEVERLY COPELLI, )

Defendants. )

No. 06-1498-CD

Type of Pleading:

Plaintiffs' Response to John D. Duttry's

Motion for Summary Judgment

Filed on behalf of: Plaintiffs

Counsel of Record for this Party:

Keith M. Pemrick

Supreme Court I.D. No. 30322

Joseph H. Keebler

Supreme Court I.D. No. 76581

DALE WOODARD LAW FIRM

1030 Liberty Street

Franklin, Pennsylvania 16323-1298

Telephone: (814) 432-2181

Facsimile: (814) 437-3212

FILED

MAR 30 2009

William A. Shaw  
Prothonotary/Clerk of Courts

50

CHERRY TIMBER ASSOCIATES, INC.,	)	IN THE COURT OF COMMON PLEAS OF
and CHAGRIN LAND LIMITED	)	CLEARFIELD COUNTY, PENNSYLVANIA
PARTNERSHIP,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
AUDRA MITCHELL, JOHN D. DUTTRY	)	Civil Action
THELMA BUSH and BEVERLY R.	)	
WILLIAMS a/k/a BEVERLY COPELLI,	)	
	)	
Defendants.	)	No. 06-1498-CD

**PLAINTIFFS' RESPONSE TO JOHN D. DUTTRY'S**  
**MOTION FOR SUMMARY JUDGMENT**

NOW come the plaintiffs, through their undersigned counsel, and file this Response to the Motion for Summary Judgment filed by John D. Duttry:

**I. Facts of the Case:**

1. Admitted.
2. Admitted.
3. Admitted.
4. It is admitted that Audra Mitchell performed office and secretarial work for Mitchell Lumber Company. It is denied that she "aided [Paul Mitchell] on a daily basis in the operation of its business". See Exhibit 1 of Plaintiffs' Exhibits in Response to Motion for Summary Judgment.
5. Admitted.
6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Denied. See Paragraph 10 of Plaintiffs' Responses to Request for Admissions and Interrogatories attached as Exhibit 2 of Plaintiffs' Exhibits in Response to Motion for Summary Judgment.

11. Admitted.

12. Admitted.

13. Admitted.

14. It is admitted that between October 18, 1994, and October 18, 1995, Mitchell harvested timber from premises in Huston Township, Clearfield County, and that some payments were made to Duttry pursuant to the Timber Harvest Agreement. There is no evidence in the record which establishes how much was paid to Duttry, the dates the payments were made, or the locations from which timber was harvested to generate the payment. See Exhibits 3 and 4 of Plaintiffs' Exhibits in Response to Motion for Summary Judgment.

15. There is no evidence in the record to establish when timber was last harvested by Mitchell Lumber pursuant to the Timber Harvest Agreement. It is conceded that the harvesting would have been completed by the summer of 1996, at the latest.

16. Admitted. See also the Affidavit of Christopher Guth which is marked as Exhibit 5 and Plaintiffs' Exhibits and Response to Motion for Summary Judgment.

17. Admitted.

18. Admitted.

19. Admitted.

20. Admitted.

21. Admitted.

22. Denied as stated. After he was contacted by Steven Jilk, Paul Mitchell agreed to place \$45,000.00 in escrow as the estimated value of the timber harvested from the property which Jilk contended belonged to his employers. There is no evidence in the record that Mary Jo Duttry made a demand on Mitchell Lumber to pay the escrow funds to them. See Exhibits 4 and 6 of Plaintiffs' Exhibits in Response to Motion for Summary Judgment<sup>1</sup>.

23. Denied. The source of the payments made by Mitchell Lumber to Attorney Scott V. Jones was the general revenue of the company and it did not represent "the remaining royalties due Duttry under the Timber Agreement . . .". See Exhibit No. 8 of Plaintiffs' Exhibits in Response to Motion for Summary Judgment. Answering further, there is no evidence in the record to establish that Attorney Jones was "consulting with Jilk" at the time the funds were paid into escrow.

24. Denied. The sum deposited into escrow represented the amount agreed to by Steven Jilk and Paul Mitchell as the estimated value of the timber harvested by Mitchell from the property owned by Cherry Timber Associates, Inc. ("the Cherry Timber property").

25. It is admitted that the sum was deposited with Scott V. Jones after a discussion between Stephen Jilk and Paul Mitchell. There is nothing in the record to establish that Jilk alleged that Mitchell had "unlawfully" trespassed on non-Duttry land.

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<sup>1</sup>Duttry's Motion for Summary is replete with references to the conduct of, and statements made by, Attorney John Sughrue. Other than correspondence sent by or to Attorney Sughrue (See Exhibit 7 of Plaintiffs' Exhibits in Response to Motion for Summary Judgment) there is nothing in the record to support the various allegations regarding the conduct of Mr. Sughrue.

26. Admitted, except the account was initially entitled as "Mitchell Lumber Company and Chagrin Land Limited Partnership, Scott V. Jones, Escrow Agent."

27. Denied as stated. Attorney Sughrue proposed the following:

The money should be placed in an escrow account in the name of a representative of each land owner and Mr. Mitchell if he desires. The owner as determined by a Court of competent jurisdiction would ultimately receive the funds. Resolution of the matter would require a court determination absent an earlier agreement and in any event, would require a survey of the entire tract, a survey of the individual tracts, and location of the disputed timber tract within it.

See Page 2 of John Sughrue's April 5, 1995, letter to G. Barrett Garbarino. Attorney Garbarino responded to Attorney Sughrue's letter by suggesting that the subject properties be surveyed and that Attorney Sughrue review the title to the Duttry property so that the parties could meet to attempt to resolve the dispute regarding the ownership of the escrow funds. He further proposed that if the parties could not reach an agreement that they enter into an agreement for the disposition of the escrow funds pending "a decision of the Court". See G. Barrett Garbarino's April 10, 1995, letter to John Sughrue.

28. Denied as stated. The only evidence in the record regarding direct communications between John Sughrue and Mitchell Lumber is the March 7, 1995, letter from Audra L. Mitchell to John Sughrue.

29. Denied as stated. The only evidence in the record regarding direct communications between John Sughrue and Mitchell Lumber is the March 7, 1995, letter from Audra L. Mitchell to John Sughrue.

30. Admitted.

31. Admitted.

32. Admitted.



33. Denied. See the Affidavit of G. Barrett Garbarino attached as Exhibit 9 to Plaintiffs' Exhibits and Response to Motion for Summary Judgment.

34. Denied. See the Affidavit of G. Barrett Garbarino attached as Exhibit 9 to Plaintiffs' Exhibits and Response to Motion for Summary Judgment

35. Admitted.

36. Admitted.

37. Admitted.

38. Denied as stated. There is no evidence in the record to establish when timber was last harvested by Mitchell Lumber pursuant to the Timber Harvest Agreement. It is conceded that the harvesting would have been completed by the summer of 1996, at the latest.

39. It is admitted that Steven Jilk did not receive his paycheck from Cherry Timber Associates, Inc. or Chagrin Land Limited Partnership. Answering further, Jilk's employment duties with ITL Corp. included performing services for Cherry Timber Associates, Inc. and Chagrin Land Limited Partnership, companies affiliated with ITL by common ownership, and he was a Vice President of Tall Oaks Associates, Inc., the general partner in Chagrin Land Limited Partnership. See Paragraph 36 of Plaintiff's Responses to Duttry's Request for Admissions and Interrogatories.

40. Admitted. Answering further, Plaintiffs have filed of record an expert report from Attorney Michael D. Snyder which establishes their chain of title to the Cherry Timber property. See Plaintiffs' Supplemental Pretrial Statement and Exhibit 10 of Plaintiffs' Exhibits in Response to Motion for Summary Judgment.

41. It is admitted that at all times relevant hereto, Clearfield County tax assessment records and maps have erroneously identified Cherry Timber as the owner of Parcel No. 119-E3-33. Answering further, the parcel depicted on Clearfield County tax assessment maps as Parcel No. 119-E4-16 is clearly the 58 acre parcel owned by Cherry Timber. See Exhibit 11 of Plaintiffs' Exhibits in Response to Motion for Summary Judgment.

42. It is admitted that at all times relevant hereto, Clearfield County tax assessment records and maps have erroneously identified Duttry et al as the owner of Parcel No. 119-E4-16. Answering further the parcel depicted on Clearfield County tax assessment maps as Parcel No. 119-E3-33 is clearly the 123.2 acre parcel formerly owned by Duttry, et al. See Exhibit 11 of Plaintiffs' Exhibits in Response to Motion for Summary Judgment.

43. Denied as stated. The property shown on Clearfield County tax assessment maps as Parcel No. 33 (i.e. 119-E3-33) is clearly the 123.2 acre parcel formerly owned by Duttry, et al., and the property shown on Clearfield County tax assessment maps as Parcel No. 16 (i.e. 119-E4-16) is clearly the 58 acre parcel owned by Cherry Timber. The Duttry property is located to the Northeast of the Cherry Timber Property.

44. Admitted.

45. Denied as stated. At the time of the conveyance from Green Glen Corporation to Cherry Timber Associates, Inc., the Seller and Buyer believed that Green Glen owned a parcel of land in the approximate location of the Duttry and Cherry Timber properties. However, no title search was performed at the time, nor was the land being conveyed surveyed. The description of Parcel No. 13 in the Cherry Timber Deed is an

erroneous description of tax map Parcel No. 119-E3-33 (the third call should have read "BOUNDED ON THE SOUTHWEST BY LANDS OF GREEN GLEN CORPORATION"), but since Green Glen did not own that parcel it could not have conveyed it to Cherry Timber Associates, Inc.

46. Denied for the reasons set forth in Paragraph 45.

47. This Paragraph contains an unverified statement of "fact" and no response is required.

48. Denied. There is no admissible evidence in the record to support this allegation. Answering further, statements made by one deceased individual to another deceased individual are inadmissible hearsay.

49. Denied for the reasons set forth in Paragraph 48.

50. Admitted.

51. Denied as stated. It is admitted that defects in the record title of the 58 acre parcel exist such that it is not insurable by a reputable Title Insurance Company, and that Cherry Timber filed a Quiet Title action to resolve those title issues. It is denied that by filing the Quiet Title action Cherry Timber admits that it is not in fact the owner of the property.

52. Admitted.

53. Admitted.

54. Denied as stated. It is admitted that the timber which was harvested from the Cherry Timber property was cut between McCracken Run and the northeast property line of Cherry Timber's property. It is denied that McCracken Run "runs generally north and south to the southern end of the disputed premises next to land now or formerly of Paul Dixon". To the contrary, McCracken Run approximately bisects Cherry Timber's

property. See Alexander & Associates, Inc., Retracement Survey attached as part of Exhibit 11 of Plaintiffs' Exhibits in Response to Motion for Summary Judgment.

**II. Statute of Limitations:**

1. Admitted. Answering further, Cherry Timber's dispute was with Paul Mitchell and Mitchell Lumber Company and not with John D. Duttry and his co-owners.

2. Admitted. Answering further, Cherry Timber's dispute was with Paul Mitchell and Mitchell Lumber Company and not with John D. Duttry and his co-owners.

3. Admitted. Answering further, Cherry Timber's dispute was with Paul Mitchell and Mitchell Lumber Company and not with John D. Duttry and his co-owners.

4. Admitted. Answering further, Cherry Timber's dispute was with Paul Mitchell and Mitchell Lumber Company and not with John D. Duttry and his co-owners.

5. Admitted. Answering further, Cherry Timber's dispute was with Paul Mitchell and Mitchell Lumber Company and not with John D. Duttry and his co-owners.

6. Admitted. Answering further, Cherry Timber's dispute was with Paul Mitchell and Mitchell Lumber Company and not with John D. Duttry and his co-owners.

7. Admitted. Answering further, it is denied that Cherry Timber or Chagrin were required to bring an action within two (2) years as they had effectively resolved their dispute with Paul Mitchell and Mitchell Lumber Company, and representatives of Cherry Timber and Duttry agreed that the escrow funds would be held by Attorney Jones until ownership was established either by agreement of the parties or a court determination.

8. This paragraph states or alleges a conclusion of law to which no response is required. Answering further, this allegation will be addressed in Plaintiffs' Brief in Opposition to Motion for Summary Judgment.

9. This paragraph states or alleges a conclusion of law to which no response is required. Answering further, this allegation will be addressed in Plaintiffs' Brief in Opposition to Motion for Summary Judgment.

**III. Laches and Estoppel:**

1. Denied as stated. The within action is a Declaratory Judgment action which seeks to resolve a dispute over ownership of funds, and is not a claim for trespass or unlawful taking of timber.

2. The allegations of this paragraph state or allege a conclusion of law to which no response is required.

3. Admitted. Answering further, after the July 16, 1996, meeting, John D. Duttry did not produce any evidence to support his claim to ownership of the property claimed by the Plaintiffs, nor did he make any attempt to obtain a court determination of the ownership of the escrow funds, and he is equally responsible for any prejudice occasioned by the deaths of Paul Mitchell and Mary Jo Duttry.

4. Admitted. Answering further, after the July 16, 1996, meeting, John D. Duttry did not produce any evidence to support his claim to ownership of the property claimed by the Plaintiffs, nor did he make any attempt to obtain a court determination of the ownership of the escrow funds, and he is equally responsible for any prejudice occasioned by the deaths of Paul Mitchell and Mary Jo Duttry.

5. Admitted. Answering further, after the July 16, 1996, meeting, John D. Duttry did not produce any evidence to support his claim to ownership of the property claimed by the Plaintiffs, nor did he make any attempt to obtain a court determination of the ownership of the escrow funds, and he is equally responsible for any prejudice occasioned by the deaths of Paul Mitchell and Mary Jo Duttry.

6. Admitted. Answering further, after the July 16, 1996, meeting, John D. Duttry did not produce any evidence to support his claim to ownership of the property claimed by the Plaintiffs, nor did he make any attempt to obtain a court determination of the ownership of the escrow funds, and he is equally responsible for any prejudice occasioned by the deaths of Paul Mitchell and Mary Jo Duttry.

7. Admitted. Answering further, after the July 16, 1996, meeting, John D. Duttry did not produce any evidence to support his claim to ownership of the property claimed by the Plaintiffs, nor did he make any attempt to obtain a court determination of the ownership of the escrow funds, and he is equally responsible for any prejudice occasioned by the deaths of Paul Mitchell and Mary Jo Duttry.

**IV. Summary Judgment:**

1. Denied for the reasons hereinbefore set forth in this Response to John D. Duttry's Motion for Summary Judgment.

2. It is admitted that Plaintiffs' Complaint does not allege a chain of title to the fifty-eight acre parcel owned by Cherry Timber Associates, Inc. The remaining allegations of this paragraph are denied. See the expert report of Attorney Michael D. Snyder which is attached as Exhibit 10 of Plaintiffs' Exhibits in Response to Motion for Summary Judgment.

3. Admitted.

4. Denied for the reasons hereinbefore set forth in Paragraphs 41, 42, 43 and 45. See also the expert report of Michael D. Snyder.

5. The allegations of this paragraph state or allege conclusions of law to which no response is required. Answering further, Green Glen Corporation was powerless to convey a tract of land which it did not own.

6. The Plaintiffs' Complaint is a written document which speaks for itself.

7. Denied as stated. Answering further, a Motion for Summary Judgment supported by oral testimony is insufficient to establish that there are no genuine issues of material fact because the credibility and demeanor of the witness(es) who will testify at trial is always for the fact-finder to determine. See: Nanty-Glo v. American Surety Co., 309 Pa. 236, 163 A.2d 523 (1932); Penn Center House, Inc. v. Hoffman, 520 Pa. 171, 553 A.2d 900 (1989).

8. The allegations of this paragraph state or allege a conclusion of law to which no response is required. Answering further, a Motion for Summary Judgment supported by oral testimony is insufficient to establish that there are no genuine issues of material fact because the credibility and demeanor of the witness(es) who will testify at trial is always for the fact-finder to determine. See: Nanty-Glo v. American Surety Co., 309 Pa. 236, 163 A.2d 523 (1932); Penn Center House, Inc. v. Hoffman, 520 Pa. 171, 553 A.2d 900 (1989).

9. Denied. See the Expert Report of Michael D. Snyder included as Exhibit 10 of Plaintiffs' Exhibits in Response to Motion for Summary Judgment. Answering further, Cherry Timber has a 1927 deed in its chain of title which contains a metes and bounds description of its property, as well as maps and surveys which clearly depict the size and location of its property.

10. Admitted.

11. Denied. The "Industrial Survey" is based on a 1927 survey by J.E. Fry, the field notes compiled by Fry at or about the time he performed the 1927 survey, and additional field work performed by Lionel Alexander.

12. To the extent this paragraph requires a response, it is denied that the manner in which Stephen Jilk "represented himself" has any relevance to the ownership of the subject property.


13. Plaintiffs are unable to respond to an allegation as to what the Defendants could or could not locate in 1995.

14. The allegations of this paragraph state or allege conclusions of law to which no response is required.

WHEREFORE, the Plaintiffs move your Honorable Court to deny John D. Duttry's Motion for Summary Judgment.

Respectfully Submitted,

DALE WOODARD LAW FIRM

By 

Keith M. Pemrick, Esquire  
Attorneys for Cherry Timber Associates, Inc.  
and Chagrin Land Limited Partnership



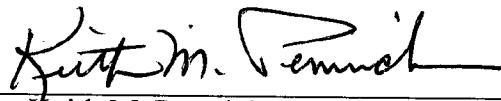
CERTIFICATE OF SERVICE

I, Keith M. Pemrick, Esquire, hereby certify that true and correct copies of the foregoing Plaintiffs' Response to John D. Duttry's Motion for Summary Judgment and Plaintiffs' Exhibits in Response to Motion for Summary Judgment have been served by U.S. first-class mail, postage prepaid, this 27<sup>th</sup> day of March, 2009, as follows:

John Sughrue, Esquire  
225 E. Market Street  
Clearfield, PA 16830

Beverly Copelli  
1220 Second Avenue  
Brockway, PA 15824

Thelma D. Bush  
450 Salada Road  
DuBois, PA 15801

  
\_\_\_\_\_  
Keith M. Pemrick

**FILED**

**MAR 30 2009**

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

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

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

**Type of Case:** Civil Action

**Type of Pleading:** Factual Affidavit of

John Sughrue, Attorney, in Support of Motion for  
Summary Judgment

**Filed on Behalf of:** Co-Defendant, John D. Duttry

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
225 East Market Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**Other Counsel of Record:**

Keith Pemrick, Esquire  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

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

Thelma D. Bush, Pro Se  
450 Salada Road  
DuBois, PA 15801

Ms. Beverly Copelli, Pro Se  
1220 Second Avenue  
Brockway, PA 15824

FILED  
MAR 30 2009

William A. Shaw  
Prothonotary/Clerk of Courts

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**FACTUAL AFFIDAVIT OF JOHN SUGHRUE, ATTORNEY,**  
**IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Commonwealth of Pennsylvania :  
: SS  
County of Clearfield :

The undersigned, John Sughrue (hereafter, "Sughrue"), being duly sworn according to law,  
deposes and says as follows:

1. For a number of years prior to 1995, Sughrue represented John D. Duttry, Defendant in the  
above matter (hereafter, "Duttry"), and his wife, Mary Jo Duttry (hereafter, "Mary Jo"), with respect  
to a variety of legal matters;

2. On or about January 1995, Mary Jo called Sughrue and advised him that Duttry was  
timbering certain Duttry land in Huston Township, Clearfield County, under an Agreement with  
Mitchell Lumber Company and Mary Jo indicated that Mitchell Lumber Company (hereafter,  
"Lumber Company") had been paying Duttry royalties due as the timber was cut;

3. In said conversation and two or three subsequent conversations, Mary Jo further advised  
Sughrue that the owner of the Lumber Company was Paul Mitchell (hereafter, "Mitchell") and that

he was aided in the operation of his business by his wife, Audra Mitchell (hereafter, "Audra"), one of the above named Defendants;

4. In said conversations, Mary Jo related that Mitchell was refusing to pay the timber royalties to Duttry because an individual named Steven Jilk had contacted Mitchell and advised Mitchell that Mitchell was cutting and removing timber from land that was not owned by Duttry;

5. As a result of the foregoing, Mary Jo asked Sughrue to intervene on behalf of Duttry and to convince Mitchell to deliver the money that was due to Duttry or to make sure the money was not paid to Jilk as a result of his allegations;

6. As a result of the foregoing, Sughrue contacted the Lumber Company and believes he spoke with Audra. At that time, Audra indicated that the Lumber Company had been contacted on various occasions by Steven Jilk and that he worked for Endeavor Timber Company and Industrial Timber Company or a name that was substantially similar to that. Audra Mitchell stated that Steven Jilk represented that his company was the owner of the land from which the timber was being cut without permission. Jilk was claiming the proceeds of the timber cutting and subsequently continued to monitor the timber cutting. Audra indicated she was concerned about legal liability and criminal liability and was uncertain as to what Mitchell should do with the timber proceeds;

7. Despite Sughrue's conversations with the Lumber Company, it refused to pay the remaining royalties for the cut timber to Duttry pursuant to the Timber Agreement;

8. After discussions in one or more phone conversations, Mitchell indicated that he knew Scott Jones, a DuBois Attorney, with whom Steven Jilk was also familiar. In the final conversation, Sughrue urged Mitchell if he was uncertain to give the money to Scott Jones to hold but, in any event, not to give it to Steven Jilk because he had not given any factual basis for his claim;

9. Audra confirmed to Sughrue that they were paying the royalties that were due on the timber to Scott Jones to hold. She made that confirmation by letter dated March 7, 1995, copy of which is attached hereto as **Exhibit 1**;

10. In the course of this matter, Sughrue attempted to reach Scott Jones by phone and to the best of Sughrue's recollection was unsuccessful. Sughrue wrote a letter to Scott Jones dated March 8, 1995, copy attached as **Exhibit 2**, putting Jones on notice that the money was due Duttry under the Timber Agreement, but that it was being paid to him because of the claims and allegations of Steven Jilk;

11. At no time during this period from about January 2005 to the end of the timber cutting in the summer of 2005, did Steven Jilk identify himself to Sughrue as an employee or representative of Cherry Timber. At all times, Steven Jilk basically alleged ownership by a party other than Duttry but did not give the factual basis for it;

12. The issue of whether or not, Duttry and Mitchell had cut timber from somebody else's land remained an open issue. In these proceedings, Steven Jilk was represented by Attorney Barry Garbarino (hereafter, "Garbarino");

13. On or about Tuesday, July 16, 1996, Sughrue traveled to DuBois to attend a meeting hosted by Barry Garbarino for the purpose of attempting to amicably resolve the dispute. To Sughrue's recollection, other parties attending that meeting at Scott Jones' office were Barry Garbarino, Steven Jilk, Scott Jones and Francis McDermitt, a Clearfield County Title Abstractor;

14. The meeting was conducted by Barry Garbarino. That meeting was the first occasion that Sughrue received any information concerning the allegations that the tax assessment map numbers incorrectly identified the location of Cherry Timber's land; and, that Cherry Timber did not own the land north of Duttry, but rather, owned the land on the south where the timber was cut;

15. Steven Jilk, at said meeting, had a survey prepared by Alexander & Associates, Inc. for Industrial Timber and Land Company indicating the survey of 60 acres and locating it in the southern end of the disputed tract. According to Alexander's survey, copy attached as **Exhibit 3**, Duttry's land was to the north. This survey contradicted the description of the 60 acres contained in Cherry Timber's deed;

16. At said meeting, Sughrue pointed out to Garbarino and his clients that Cherry Timber was noted on the tax map records of owning the land north of Duttry. Sughrue suggested that location was correct and was consistent with Green Glen's deed to Cherry Timber. At that time, Garbarino provided a written report prepared by Francis McDermitt indicating the results of his search of the county records. That report contended that the 60 acre tract was located at the southern end of the disputed premises and that the tax assessment map was simply wrong with respect to its designation of ownership. Sughrue pointed out that, in fact, the Duttrys took possession and control of the southern end and that Green Glen, Cherry Timber's predecessor in title had possession and control of the northern end;

17. At said meeting, Garbarino indicated clearly that the matter could only be resolved by Duttry agreeing entirely to Garbarino's demands. Garbarino demanded that all of the disputed money, about \$45,000 at that time plus \$15,000 or a total of \$60,000, be paid to his client in satisfaction of the trespass and unlawful cutting on his land. Garbarino referred to the Pennsylvania Statute providing for double and triple damages for improper timber cutting and indicated that if the matter was not settled for the entire amount that he would proceed to file an action for double and triple actions. Garbarino claimed the alleged trespass and unlawful cutting was intentional and threatened Duttry and Mitchell with double and/or triple damages;

18. At the meeting, Sughrue explained that the Duttrys and all of the neighbors had always placed the 123 acres owned by Duttry in the southern end of the tract. Sughrue pointed out that

Green Glen was always noted as owning the land to the north. Sughrue denied that there was any error and the parties were unable to amicably resolve the dispute at that meeting;

19. At the meeting's conclusion, Sughrue advised Garbarino that he was not entitled to the money; that the land was owned and possessed by Duttrys where the timber was cut; that Garbarino's client did not have good and marketable title to the land and therefore, were not entitled to the money. Sughrue told Garbarino if he thought he had a viable claim to make it;

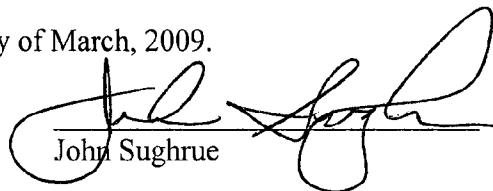
20. Sughrue left the meeting with Garbarino without any matter being resolved and without any rights or obligations being waived;

21. Following said meeting, Garbarino did not file any civil action to recover damages for the cutting. Garbarino did not file any action to quiet title on behalf of either Chagrin Land Company, the entity in which the escrow money was held, or on behalf of Cherry Timber, the alleged owner, to establish ownership of the land where the timber was cut. Scott Jones continued to hold the money in escrow in the name of Chagrin Land Limited and Mitchell Lumber Company;

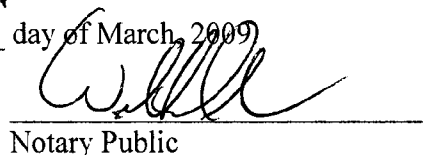
22. The statute of limitations for trespass and conversion passed without a lawsuit being filed;

23. Within a short time after said meeting, Mary Jo Duttry passed away and later Paul Mitchell died. Scott Jones continued to hold said funds in an escrow account through the present time.

Witness my hand and seal this 30<sup>th</sup> day of March, 2009.

  
John Sughrue

Sworn to and subscribed before me the 30<sup>th</sup> day of March, 2009

  
Notary Public

**WILLIAM A. SHAW**  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2010  
Clearfield Co., Clearfield, PA



MITCHELL LUMBER COMPANY  
P.O. BOX 28  
BROCKPORT, PA 15823  
TELEPHONE (814) 265-1146

March 7, 1995

Atty. John Sughrue  
23 North Second Street  
Clearfield, PA 16830

RE: JOHN DUTTRY

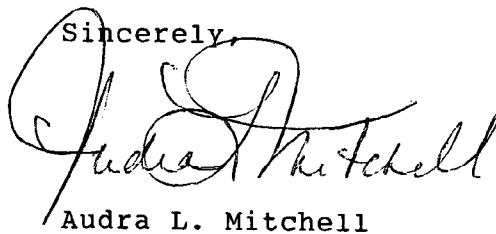
Dear Mr. Sughrue:

This letter is to confirm our telephone conversation  
my husband and I has with you on March 6, 1995.

As per an agreement that my husband made with  
Stephen A. Jilk, Manager for Industrial Timber & Land  
Company and John Duttry I have forward \$45,000 to  
Atty. Scott Jones to put into an escrow account for  
the Industrial Timber & Land Company and John Duttry.  
The money was to be left in the escrow account until  
the line dispute was surveyed and the differances  
were resolved.

If I can be of any further assitance, please let  
me know.

Sincerely,



Audra L. Mitchell

**Exhibit 1**

LAW OFFICES  
SUGHRUE & KESNER  
23 NORTH SECOND STREET  
CLEARFIELD, PA. 16830

JOHN SUGHRUE  
KIM C. KESNER

March 8, 1995

(814) 765-1704  
FAX (814) 765-2957

Facsimile (375-1082) and first class mail

Scott V. Jones, Esquire  
BLAKLEY & JONES  
Box 6  
DuBois, PA 15801

RE: Thelma Bush et al, Paul Mitchell Lumber,  
and Endeavor Timber, property located  
in Huston Township

Dear Scott:

Please be advised that this office has been retained by Thelma Bush, John D. Duttry, and Beverly Copelli, owners of a tract of land situate in Huston Township. My clients entered into an Agreement with Paul Mitchell to have their land timbered. As I understand it, in the course of the operation, Mr. Mitchell was contacted by representatives of Endeavor Timber who claimed ownership of timber involved in the operation. Obviously, there is a dispute that needs to be resolved.

Under his agreement with us, Mr. Mitchell is obligated to pay my clients for the timber being removed. He advises me that at the request of Endeavor Timber, he has transmitted proceeds of timber sales (I have been given the figure of \$45,000) to you to hold in escrow as an escrow agent for Endeavor Timber and my clients pending resolution of the dispute. Would you kindly confirm that you have received money, the amount, and that you are acting as an escrow agent on behalf of all claimants?

Assuming my information is correct, I would propose that we enter into a formal escrow agreement and invest the moneys in your name and my name in an interest-bearing account pending resolution of the dispute. I would appreciate receiving by return mail confirmation of the account and your position with respect to my suggestions.

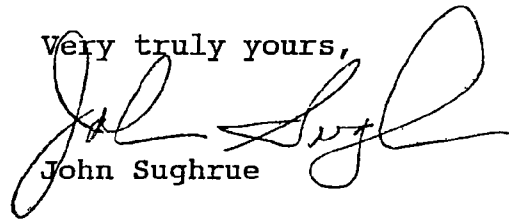
I spoke briefly with Mr. Mitchell and advised him that I would keep him informed as matters develop. As I write this letter, I have talked with your office and I understand you are on vacation until the 16th. I am advising your office that my clients claim ownership of the moneys that you receive and we would expect that you will not disburse the moneys until the dispute has been resolved.

Exhibit 2

Scott V. Jones, Esquire  
Page 2  
March 8, 1995

My clients have authorized me to investigate the situation and I would appreciate the opportunity to discuss the matter with you in detail upon your return. Thank you for your immediate attention to these matters.

Very truly yours,



John Sughrue

JS/mbb

cc: Mrs. Thelma Bush  
Mr. John D. Duttry  
Mrs. Beverly Copelli  
Mitchell Lumber

Copyright © 1995 ALEXANDER & ASSOCIATES  
All rights reserved. No part of this drawing may be reproduced by photocopying, recording or by any other means, or stored, processed or transmitted in or by any computer, or other systems without the prior written permission of the surveyor. Copies of this plan without an impression seal are not valid.



Thelma Bush,  
Beverly R. Williams,  
John D. Duttry

# LOCATION MAP

Exhibit 3

EXIST. C-1 CURVE DATA  
R=273.25'  
D=92.50'  
C=154.35'-35' E  
C=145.31'  
T=130.33'

Thelma Bush,  
Beverly R. Williams,  
John D. Duttry

## INDUSTRIAL TIMBER & LAND COMPANY

Paul I. Dixon, et al.

Paul I. Dixon, et al.

### NOTES

1. Information for this retracement survey was taken from deeds, assessment records, surveys of record, and personal notes.
2. Railroad location was based using the existing grade and the 1944 Page 85.
3. The "Original" field notes of J.E. Fry were used to retracement this survey. These notes are found in Field Book #4 pages 34-35-38 of "Land Surveys" for John E. Dubois.
4. The first course in Deed Book 288 page 136 (N 64°-40' E) is incorrect it SHOULD BE (S 64°-40' E), this can be verified by the "Original" Field Notes.
5. Existing Fence and Tree lines were found along the western and northern lines of the surveyed parcel.
6. None of the evidence was found along the eastern line.
7. None of the evidence was found along the eastern line.
8. Being parcel number 16 on the Chester County Assessment Map for Huston Township, Map number 109-E4.
9. All perimeter lines have been marked with "yellow" paint and "x" wooden stakes have been placed on the Property Lines.
10. 1" Iron Pipes with survey pins have been placed at all corners with the exception of corner #7, this is a 30" Maple Tree.

### LEGEND

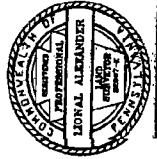
These standard symbols will be found in the drawing.

- POINT OF REFERENCE
- ⊕ UTILITY SERVICE ELEC-TELE-CABLE
- ⊙ IRON PIPE SET W/SURVEY PLUG
- EXISTING IRON PIN OR POST
- △ LARGE TREES
- △ FIELD TRAVERSE STA.
- SURVEYED PROPERTY CORNER NUMBER

0' 200' 400' 600'

I hereby certify to, and solely for the benefit of, INDUSTRIAL TIMBER & LAND COMPANY that this plan was prepared from a survey made upon the premises this 5TH day of JULY 1995, showing the location of all buildings, easements or servitudes apparent from an inspection of the surface of the premises. This plan is not to be interpreted in any manner, nor may it be relied upon by anyone other than the above named person or persons for whose benefit it has been prepared. Copies of this plan without impression seal are not valid.

Signature



**Alexander & Associates Inc.**  
112 Church Street P.O. Box 878  
Pella Creek, Pennsylvania 15840  
(614) 271-6778

SCALE 1" = 200' APPROVED BY: DRAWN BY: B.A.  
DATE: 7-05-1995 REVISION: FS NO. 486XDATA

**RETRACEMENT SURVEY**  
HUSTON TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA  
**INDUSTRIAL TIMBER & LAND COMPANY**

SHEET NO. 1 OF 1 JOB NO. JN123995

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on March 30, 2009, I caused FACTUAL AFFIDAVIT OF JOHN SUGHRUE, ATTORNEY, IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT to be served on the following and in the manner indicated below:

**By Facsimile and United States Mail, First Class, Postage Prepaid**  
**Addressed as Follows:**

Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298  
Fax: 814-437-3212

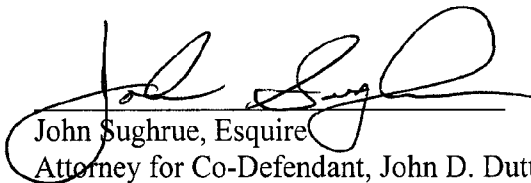
Christopher E. Mohny, Esquire  
25 East Park Avenue, Suite 6  
DuBois, PA 15801  
Fax: 814-375-1088

**By United States Mail, First Class, Postage Prepaid**  
**Addressed as Follows:**

Ms. Thelma D. Bush, Pro Se  
450 Salada Road  
DuBois, PA 15801

Ms. Beverly Copelli, Pro Se  
1220 Second Avenue  
Brockway, PA 15824

Date: March 30, 2009

  
John Sughrue, Esquire  
Attorney for Co-Defendant, John D. Duttry

**FILED**

**MAR 30 2009**

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

CHERRY TIMBER ASSOCIATES, INC., )  
and CHAGRIN LAND LIMITED )  
PARTNERSHIP )

Plaintiffs, )

v. )

AUDRA MITCHELL, JOHN D. DUTTRY )  
THELMA BUSH and BEVERLY R. )  
WILLIAMS a/k/a BEVERLY COPELLI, )

Defendants. )

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY,  
PENNSYLVANIA

Civil Action

No. 06-1498-CD

5 FILED 1cc Assy  
m/11:35 am Penrick  
MAR 16 2009

William A. Shaw  
Prothonotary/Clerk of Courts

NOTICE OF TRIAL DEPOSITION

To: John D. Duttry  
c/o John Sughrue, Esquire  
225 East Market Street  
Clearfield, PA 16830

Thelma D. Bush  
450 Salada Road  
DuBois, PA 15801

Beverly Williams  
12 22<sup>nd</sup> Avenue  
Broadway, PA 15824

YOU ARE hereby respectfully notified that Cherry Timber Associates, Inc., and Chagrin land Limited Partnership, will take the deposition of Lional Alexander, Alexander and Associates, Inc., 112 Church Street, Falls Creek, Pennsylvania 15840 upon oral examination, as authorized by Pa. R.C.P. No. 4007.1, on March 31, 2009, at 12:30 p.m., by a person authorized by law to administer an oath. The deposition will be taken at 225 East Market Street, Clearfield, PA 16830, and may be used for all purposes permitted under the Pennsylvania Rules of Civil Procedure including, but not limited to, use at trial in accordance with Pa. R.C.P. No. 4020(a)(3)(b).

DALE WOODARD LAW FIRM

By Keith M. Penrick  
Attorneys for Plaintiffs

Date: March 13, 2009  
cc: BAK Reporting, LLC

#48

**FILED**

**MAR 16 2009**

William A. Shaw  
Prothonotary/Clerk of Courts



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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**ORDER**

AND NOW, to wit: this 2<sup>nd</sup> day of March, 2009, upon consideration of DEFENDANT, JOHN D. DUTTRY'S, MOTION FOR SUMMARY JUDGMENT, a Rule is hereby issued upon Plaintiffs, to Show Cause, if any, why the Prayer of the said Motion should not be granted.

**RULE RETURNABLE** on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, for filing written response.

**ARGUMENT ON THE MERITS** of said Motion shall be held on the 31<sup>st</sup> day of March, 2009 at 9:00 o'clock A.m. in Courtroom No. 1, Clearfield County Courthouse, 1 N. 2<sup>nd</sup> Street, Clearfield, Pennsylvania.

BY THE COURT:

Judith J. Ammann  
Judge

FILED <sup>icc</sup>  
04:00 PM  
MAR 02 2009

William A. Shaw  
Prothonotary/Clerk of Courts

#47

FILED

MAR 02 2009

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 3/2/09

☒ 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—LAW

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

**Type of Case:** Civil Action

**Type of Pleading:** Defendant, John D. Duttry's,  
Motion for Summary Judgment

**Filed on Behalf of:** Co-Defendant, John D. Duttry

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
225 East Market Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**Other Counsel of Record:**

Keith Pemrick, Esquire  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

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

Thelma D. Bush, Pro Se  
450 Salada Road  
DuBois, PA 15801

Ms. Beverly Copelli, Pro Se  
1220 Second Avenue  
Brockway, PA 15824

FILED  
013:40AM  
FEB 27 2009

William A. Shaw  
Prothonotary/Clerk of Courts

#460

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**DEFENDANT, JOHN D. DUTTRY'S, MOTION FOR SUMMARY JUDGMENT**

To the Honorable Fredric J. Ammerman, President Judge of said Court.

**AND NOW**, comes John D. Duttry, individual Defendant, above named, by his Attorney, John Sughrue, and files the within Motion for Summary Judgment and in support thereof, represents the following:

**I. Facts of the Case:**

The following facts are admitted by Plaintiffs, un-rebutted and/or supported by competent evidence:

1. Plaintiff, Cherry Timber Associates, Inc. (hereafter, "Cherry Timber"), is an Ohio corporation with its principal place of business at 23925 Commerce Park Road, Beechwood, OH, 44122.

2. The Plaintiff, Chagrin Land Limited Partnership (hereafter, "Chagrin"), is an Ohio limited partnership with its principal place of business at 23925 Commerce Park Road, Beechwood, OH, 44122.

3. Mitchell Lumber Company (hereafter, "Mitchell Lumber") was, at relevant times, a sole proprietorship owned by Paul Mitchell who is now deceased and was engaged in the business of purchasing standing timber, cutting, marketing and transporting timber.

4. Paul Mitchell was aided on a daily basis in the operation of his business by his wife, Audra Mitchell, one of the Defendants herein.

5. Paul Mitchell died on January 2, 2003 and his estate was administered in Elk County, Pennsylvania.

6. Paul Mitchell's sole heir was his surviving spouse, Audra Mitchell, an adult individual who presently resides at 108 Catalina Road, St. Mary's, PA, 15857.

7. Movant/Defendant, John D. Duttry (hereafter, "Duttry"), is an adult individual who was, at all times relevant, a one-third owner of 123.2 acres, more or less, in Huston Township, Clearfield County, PA (hereafter, "Duttry Premises"), and the remaining two-thirds ownership in said tract was at, all times relevant, owned by Duttry's sisters, Thelma Bush (hereafter, "Bush") and Beverly Copelli (hereafter, "Copelli"), Co-Defendants herein.

8. Duttry, Copelli and Bush inherited their ownership of the Duttry Premises from their father, Harold Duttry, upon his death.

9. Plaintiff, Cherry Timber, alleges ownership of 58 acres, more or less, located in Huston Township, Clearfield County, PA (hereafter, "Cherry Timber Premises").

10. At all times relevant, Chagrin did not own any real property located in Huston Township, Clearfield County, PA, that is relevant to this action.

11. Industrial Timber and Land Company (hereafter, "Industrial") is a corporation, with a business office located in Pennsylvania.

12. At all times relevant, Industrial did not own any real property located in Huston Township, Clearfield County, PA, that is relevant to this action.

13. On or about October 18, 1994, Duttry entered into a Timber Harvest Agreement (hereafter, "Timber Agreement") with Mitchell Lumber, a true and correct copy of which is attached hereto as **Exhibit 1**.

14. That between October 18, 1994 and October 18, 1995, Mitchell harvested timber from premises in Huston Township, Clearfield County, PA, sold the timber and paid the ownership royalty due thereunder to Duttry in accordance with the Timber Agreement, except for certain timber royalties that are the subject of this dispute.

15. Timber was last caused to be harvested and/or harvested by Mitchell Lumber no later than October 18, 1995.

16. On or about January 1995, Steven Jilk (hereafter, "Jilk") contacted Paul Mitchell and communicated to him and Defendant, Audra Mitchell, an allegation that Mitchell was harvesting timber under the Timber Agreement from an adjacent landowner and that he, Jilk, was representing the adjacent landowner.

17. Jilk advised Paul and Audra Mitchell that they were cutting timber that was not located on the Duttry Premises and that they would be responsible for the improper cutting and the damages sustained.

18. At all times relevant hereto, Steven Jilk was employed by Industrial as a timber resource manager.

19. In support of his allegations, Jilk, on or about July 5, 1995, caused a survey of a 58 acre tract of land to be surveyed for Industrial by Alexander and Associates, Inc. A copy of said survey (hereafter, "Industrial Survey") is attached hereto as **Exhibit 2**.

20. The Industrial Survey places the Duttry Premises to the northeast of the surveyed property.

21. After the aforesaid Jilk contact, Mitchell Lumber continued harvesting timber under Duttry's Timber Agreement.

22. After the Jilk contact as aforesaid, Mitchell Lumber, refused to pay to Duttry, the royalty due under the Timber Agreement because of Jilk's allegations of wrongful cutting, despite demands by Mary Jo Duttry, Duttry's wife, and Attorney John Sughrue, that the royalties be paid.

23. After the Jilk contact as aforesaid, Mitchell Lumber, paid the remaining royalties due Duttry under the Timber Agreement, over Duttry's objection, to Scott V. Jones, Esquire, allegedly to hold in escrow, notwithstanding the fact that Scott V. Jones, Esquire, was, at the same time, consulting with Jilk.

24. Mitchell Lumber paid to Scott V. Jones, Esquire, a total sum of \$45,000.00, which represented the balance of royalties due under the Timber Agreement.

25. Mitchell Lumber deposited said sum with Scott V. Jones, because of Jilk's allegation that he had unlawfully trespassed on non-Duttry land and cut timber on non-Duttry land.

26. As a result of the foregoing, Scott V. Jones established an interest bearing escrow fund in the name of Mitchell Lumber Company and Chagrin Land Limited Partnership (hereafter, "Escrow Funds"), which has a present balance in excess of \$60,000.00.

27. At said time and place, Duttry's demand for the additional royalty dollars and objection to the payment of such sums to Jilk or to Scott Jones was communicated by Duttry's Attorney, John Sughrue, a member of the Clearfield County Bar, presently having his office at 225 East Market Street, Clearfield, PA, 16830.

28. John Sughrue communicated with Mitchell Lumber and Mitchell Lumber refused to pay the unpaid royalties to Duttry because of the Jilk allegations.

29. Mitchell Lumber Company advised Attorney John Sughrue that it was paying the unpaid royalties to Scott V. Jones because of Jilk's allegations of trespassing and wrongful cutting.

30. John Sughrue, in his capacity as Attorney, contacted Scott V. Jones, Attorney and secured a commitment from him that he would hold the royalties and not distribute them.

31. In 1996, John Sughrue, Attorney, met with Attorney Jones, Jilk and Jilk's Attorney, Barry Garbarino, in DuBois at Scott Jone's law office for the purpose of discussing with Jilk and his attorney, the nature of his claim, the basis for his claim and to amicably resolve the matter, if possible.

32. At said meeting, the matter was not amicably resolved.

33. At said meeting, Attorney Garbarino told Attorney John Sughrue that Mitchell Lumber Company had trespassed on his client's land; and that he would settle for no less than the entire amount of the disputed funds; that if the disputed funds were not paid to his client immediately, he would pursue a legal action for double and triple damages under Pennsylvania law and accused Duttry and Mitchell of knowingly and intentionally trespassing upon his client's land.

34. At said meeting, Attorney Sughrue advised Attorney Garbarino that his position was unreasonable and unsupported by the law; that no settlement was possible; and that if he had a claim or cause of action, he should prove it.

35. At said meeting, no resolution of the dispute between the parties was made and no agreement was made with respect to the disputed funds, except that Jones would hold them until he could distribute them either on the consent of the parties or by an appropriate Order of Court.



36. That subsequent to said meeting, Paul Mitchell died.

37. That subsequent to said meeting, Mary Jo Duttry died.

38. If cutting occurred on Plaintiff's Premises, the last cutting occurred no later than October 1995.

39. Steven Jilk was never employed by Cherry Timber Associates, Inc. or Chagrin Land Limited Partnership.

40. Plaintiffs' Complaint does not identify the chain of title giving rise to their alleged ownership.

41. Plaintiffs admit that, at all times relevant hereto, Cherry Timber's Premises were identified on the Clearfield County Tax Map Numbers as Number 119-E3-33. A true and correct copy (outlined in pink) of the tax map as it existed at all relevant times, superimposed over a photo of the topography is attached hereto as **Exhibit 3**.

42. The Plaintiffs admit that, at all times relevant hereto, the Tax Map of Clearfield County identified the Duttry Premises as Tax Map Number 119-E4-16 (outlined in yellow on **Exhibit 3**).

43. The relevant tax map clearly indicates that parcel number 33 (Cherry Timber Premises) are located to the northeast of the Duttry Premises, parcel number 16.

44. Cherry Timber acquired such title as it may have in real property subject to this dispute from Green Glenn Corporation by deed (hereafter, "Cherry Timber Deed") dated December 21, 1988, which is recorded in Clearfield County in DBV 1260, page 338. A true and correct copy of said deed is attached hereto as **Exhibit 4**.

45. By description set forth as parcel number 13 in the Cherry Timber Deed, Green Glenn clearly conveyed to Cherry Timber Tax Map Parcel Number 119-E3-33 and further described the parcel by its boundary properties.

46. By the description set forth in parcel number 13, as aforesaid, Green Glenn Corporation clearly acknowledged its claim, right and title to a parcel of land situate to the northeast of lands of Harold Duttry (now the Duttry Premises).

47. Defendant Duttry acknowledges and concedes that Green Glenn Corporation and its successors own a parcel of land to the northeast of the Duttry Premises which is consistent with the parcel number 13 description from the Green Glenn deed.

48. Green Glenn Corporation, by its duly authorized employee, John DuBois, in the past acknowledged to Harold Duttry, now deceased, and Defendant John Duttry that their lands were located in the proximity set forth on the tax map and by consent walked, established and agreed to a common boundary between the two parcels, being the southwest boundary of Green Glenn and the northeast boundary of the Duttry Premises.

49. That said consensual agreement between Green Glenn and Duttry was made more than 21 years prior to the filing of this legal action.

50. The Cherry Timber deed from Green Glenn also contains a general catch all provision designated as parcel number 21, which reads as follows: "all right, title and interest to the Grantor in and to all real property owned by the Grantor in Clearfield County, Pennsylvania, including all rents, profits, issues, remainders and reverts".

51. Plaintiffs admit "paragraph 22 of the Complaint" that it did not have good and marketable record title to the Disputed Premises by acknowledging that it was filing a quiet title action with respect to the Cherry Timber property.

52. Plaintiff, Cherry Timber, did, in fact, file an action to quiet title for property located in Huston Township in the Court of Common Pleas of Clearfield County, Pennsylvania, on September 14, 2006 at Number 2006-01495-CD, as more fully appears of record.

53. As of the filing of this Motion, Cherry Timber has not prosecuted said quiet title action to a conclusion. A non-jury trial is presently scheduled for April 29, 2009.

54. The timber, which was cut and gave rise to the disputed funds, was cut in the area of McCracken Run, a stream which runs generally north and south through the southern end of the disputed premises, next to land now or formerly of Paul Dixon.

**II. Statute of Limitations:**

AND NOW, Defendant Duttry moves the Honorable Court to enter Summary Judgment in his favor and against the Plaintiffs in accordance with his Answer and Counterclaim and in support thereof represents the following:

1. Whether Jilk was representing Industrial, Chagrin or Cherry Timber, his Complaint was clearly an allegation of trespass upon real property and the cutting of timber unlawfully.

2. That Jilk's claim constituted a cause of action in trespass for unlawful conversion of timber.

3. Under Pennsylvania Law, a person who cuts or removes the timber of another person without the consent of that person, is liable in lieu of all other damages or civil remedies provided by law, to that person in a civil action for certain damages designated in the law, 42 Pa.C.S.A. §8311(a). Timber is defined as standing trees, logs or parts of trees that are commonly merchandised as wood products, 42 Pa.C.S.A. §8311(c).

Damages for conversion of another's timber under Pennsylvania Law includes the following:

- A. Three times the market value of the timber cut or removed if the act is determined to have been deliberate;
- B. Two times the market value of the timber cut or removed if the act is determined to have been negligence;

C. The market value of the timber cut or removed if the defendant is determined to have had a reasonable basis for believing that the land on which the act was committed was his or that of the person and whose service or by whose direction the act was done, 42 Pa.C.S.A. §8311(a)(2).

4. The burden of proof on any legal cause of action arising out of the above referenced facts was the burden of Jilk and the entity or entities that he was representing.

5. A cause of action for the unlawful conversion of timber is a tort action, sounding in trespass, and is required to be brought within two years of the date the cause of action accrues or, two years from the date the cause of action is discovered. See 42 Pa.CSA §5524.

6. The two year limitation on the commencement of actions provides specifically as follows:

“The following actions and proceedings must be commenced within two years:...

- (3) an action for taking, detaining or injuring personal property, including actions for specific recovery thereof;
- (4) an action for waste or trespass of real property;
- (5) an action upon a statute for a civil penalty or forfeiture;
- (7) any other action or proceeding to recover damages for injury to personal property which is founded on negligent, intentional or otherwise tortuous conduct or any other action or proceeding sounding in trespass, including deceit or fraud, except...(as)...subject to another limitation specified in this subchapter, 42 Pa.C.S.A. §5524, (3)(4)(5)(7).”

7. Claimants, Cherry Timber and Chagrin, did not bring an action within the two years required under the aforesaid statute.

8. As a result of the foregoing, the within action by Plaintiffs to recover damages for the unlawful cutting of the timber is barred by the statute of limitations.

9. The applicability of the statute of limitations is not controlled by the issues relating to the ownership of land or the location of said land and Plaintiffs' claim may be determined by this Court to be barred independent of the underlying real estate issues.

WHEREFORE, Defendant, John D. Duttry, respectfully moves the Honorable Court to find that the Plaintiffs' cause of action is barred by the applicable statute of limitations and to dismiss it with prejudice and to enter Judgment in favor of Defendants, Duttry, Bush and Copelli, and against the Plaintiffs in accordance with Defendant's Answer and New Matter.

**III. Laches and Estoppel:**

1. Plaintiffs, by this action are prosecuting their allegations of trespass and unlawful cutting more than ten years after their original claim accrued.

2. The statute of limitations for the legal action is two years.

3. That since Plaintiffs' claim was made and the alleged cause of action arose, key witnesses, including Paul Mitchell and Mary Jo Duttry, have died.

4. That Defendant Duttry has been actually prejudiced by the Plaintiffs' delay in bringing this claim, generally and in particular, by the death of these two key witnesses.

5. That the Plaintiffs delayed an unreasonable period of time in filing this action and seeking to establish their claim, resulting in actual prejudice to Defendant and his ability to defend this case.

6. The Plaintiffs failed to diligently prosecute any legal action which they may have had.

7. Accordingly, Plaintiffs' claims are barred by the Equitable Doctrine of Laches and Estoppel.

WHEREFORE, Defendant, John D. Duttry, respectfully moves the Honorable Court to find that the Plaintiffs' cause of action is barred by Laches and Estoppel and to dismiss it with prejudice and to enter Judgment in favor of Defendants, Duttry, Bush and Copelli, and against the Plaintiffs in accordance with Defendant's Answer and New Matter.

#### **IV. Summary Judgment on the Merits:**

Defendant Duttry respectfully moves the Honorable Court to enter Summary Judgment on his behalf on the merits of this case and in support thereof represents the following:

1. The facts admitted to be true, un rebutted and supported by competent evidence, are sufficient to permit the Court to conclude and enter Summary Judgment in favor of the Defendants and against the Plaintiffs in accordance with the applicable rules of Civil Procedure and Pennsylvania law.

2. The Plaintiffs' Complaint does not allege a chain of title and the Plaintiffs have not set forth any basis for ownership of land in the disputed area of Huston Township, except for the Cherry Timber deed set forth above.

3. The Cherry Timber deed clearly did not grant any ownership interest to Industrial or Chagrin.

4. The Cherry Timber deed specifically describes the real property being conveyed to Cherry Timber which is adjacent to Duttry and clearly places it to the northeast of Duttry, totally consistent with the Clearfield County Tax Map.

5. This specific description and conveyance in the Cherry Timber deed as parcel number 13 is superior to and overrides the general catch all provision of parcel number 21, under applicable laws and rules of language construction.

6. The Plaintiffs are clearly not claiming to own two tracts in the disputed area, parcel 13 and a tract covered by parcel 21. Their Complaint clearly states they are claiming one parcel of land instead of another.

7. John Duttry testified in his deposition that as long as he can remember, certainly since he was a young man, at least 40 years ago, that his family always recognized and understood that the Duttry Premises were to the southwest of the Green Glenn property. Duttry further testified that Green Glenn always recognized and honored their ownership of the land to the southwest of the Green Glenn Corporation; and finally, that as a young man, he was in the company of his father, Harold Duttry and John DuBois, Chief Officer of Green Glenn; that they walked the land together and that Harold Duttry and John DuBois acknowledged the common boundary line between the properties.

8. If there was a mistake as to the identification of parcels of land acquired by Green Glenn and/or Harold Duttry, it was under all admitted facts, a mutual mistake; a mistake perpetuated by deeds of record and tax documents of record, which Harold Duttry and Green Glenn reconciled.

9. In contrast, Plaintiffs came into Huston Township by virtue of the Cherry Timber deed on or about December 21, 1988 and at such time and through the present are relying solely upon alleged mistakes of record to support their claim.

10. Notwithstanding the foregoing, Plaintiffs now seek to claim that parcel number 13 of their deed has no meaning and is a mistake and that the tax map designation is a mistake.

11. Plaintiffs were apparently relying upon the Industrial survey which is simply a survey of a historical description that predates acquisition of this property by Duttry and Cherry Timber;

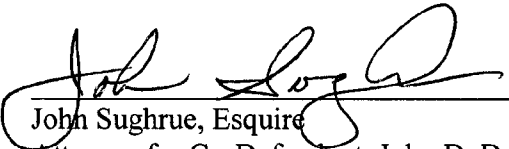
12. The Industrial survey also supports the inference that Steve Jilk, at all relevant times, was representing himself as a representative of Industrial Timber and Chagrin Land, all of which is further supported by the fact that Scott Jones, an individual working directly with him, placed the funds in an account under the title of "Chagrin" .

13. In 1995, Defendants could not locate and did not locate any basis for any claim by Industrial or Chagrin. As of this date, it is clear that Industrial and Chagrin did not have any claim or interest in the disputed property.

14. There is an inference that Cherry Timber's failure to proceed with this case earlier is based on the fact that Industrial and Chagrin could not establish any trespass or right to these royalties.

WHEREFORE, Defendant, John D. Duttry, respectfully moves the Honorable Court to find that the Plaintiffs' cause of action is without merit and to dismiss it with prejudice and to enter Judgment in favor of Defendants, Duttry, Bush and Copelli, and against the Plaintiffs in accordance with Defendant's Answer and New Matter.

Respectfully submitted,

  
\_\_\_\_\_  
John Sughrue, Esquire  
Attorney for Co-Defendant, John D. Duttry



TIMBER HARVEST AGREEMENT

This agreement, made this 18<sup>th</sup> day of OCTOBER,  
1994 by and between:

JOHN D. BUTTEY  
P.O. BOX 736  
Du Bois, PA 15801  
375-9407

Parties of the first part,  
LANDOWNERS

A N D

MITCHELL LUMBER COMPANY  
Box 64, German Settlement Road  
Ridgway, PA 15853  
(814) 772-2720 or (814) 265-1146

Parties of the second part,  
TIMBER OPERATORS.

In consideration of the following promises and covenants, the  
parties have agreed as follows:

1. Timber Operator will remove such timber from the property  
of the Landowner located at HUSTON Township,  
CLEARFIELD County, Pennsylvania, more fully described in  
CLEARFIELD County Plat Book at Page N/A Parcel N/A,  
comprising of \_\_\_\_\_ acres more or less, under the following  
terms and conditions:

2. The timber operator will remove all standing timber on  
the above described property down to a diameter of 10 inches,

3. Timber operator shall pay Landowner according to the  
following schedule: 300/M Oak, 500/M Red Oak, 600/M Cherry,  
350/M W. Oak, 200/M Maple, 75/M Pine - Hardwood,  
75/M Poplar - Bass, 50/M Blacking 1.50/ton pulp.

4. Timber Operator shall, as soon as conditions permit, secure necessary permits (State and Federal), for the harvesting of said timber.

5. Landowner guarantees that he is the owner of the above described property and that he has full title and authority to sell the above timber. Landowner also guarantees the said boundaries of said property.

6. Timber Operator agrees to repair and maintain all skid roads and trails on the above property, according to law.

7. All cutters and skidder operators will be required to carry their own liability and compensation insurance, including hospitalization, during the term of this agreement.

8. Timber Operator agrees to keep streams on the property free of all tree tops during this agreement.

9. This agreement will terminate on October, 1965 at 12:00 noon EST.

10. IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and the year first above stated.

John H. Harty  
LANDOWNER

W. H. J. Parnell  
WITNESS

Richard P. McFall  
OPERATOR

\_\_\_\_\_  
WITNESS

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All rights reserved. No part of this drawing may be reproduced by photocopying, recording or by any other means, or stored, processed or transmitted in or by any computer or other system without the prior written permission of the surveyor. Copies of this plan without an impression seal are not valid.



Thelma Bush,  
Beverly R. Williams,  
John D. Duttry

DB 1300-20

INDUSTRIAL TIMBER & LAND  
COMPANY

Thelma Bush,  
Beverly R. Williams,  
John D. Duttry

EXIST C-1 CURVE DATA  
R=237.26'  
D=272.25'  
C=242.31'  
T=30.33'

EASTERN  
WESTERN

100' R/W

155+00  
DIVISION  
2259+334

LEGEND

These standard symbols are  
to be found in the drawing.

○ POINT OF REFERENCE

△ UTILITY SERVICE ELEC-TELE-CABLE

⊙ IRON PIPE SET W/SURVEY PLUS

● EXISTING IRON PIN OR POST

⊙ LARGE TREES

△ FIELD TRAVERSE ETC.

① SURVEYED PROPERTY CORNER NUMBER

0' 200' 400' 600'

Alexander & Associates Inc.  
111 Church Street P.O. Box 378  
Falls Creek, Pennsylvania 16840  
(814) 271-2678

SCALE: 1" = 200'  
DATE: 7-05-1995  
APPROVED BY: [Signature]  
DRAWN BY: B.A.  
INCHES: 48X60 DATA

RETRACEMENT SURVEY  
HUSTON TOWNSHIP, CLEARFIELD COUNTY, PENNSYLVANIA  
INDUSTRIAL TIMBER & LAND COMPANY

SHEET NO. 1 OF 1 JOB NO. JN123995

I hereby certify to, and solely for the benefit of,  
INDUSTRIAL TIMBER & LAND COMPANY  
that this plan was prepared from a survey made upon the premises  
this locality on or after July 1, 1995, showing  
the location of all buildings, easements or servitudes apparent from  
an inspection of the surface of the premises. This plan is not to be  
reproduced in any manner, nor may it be relied upon by anyone other  
than the above named party, nor may it be used for any purpose other  
than that for which it was prepared. Copies of this plan without an  
impression seal are not valid.

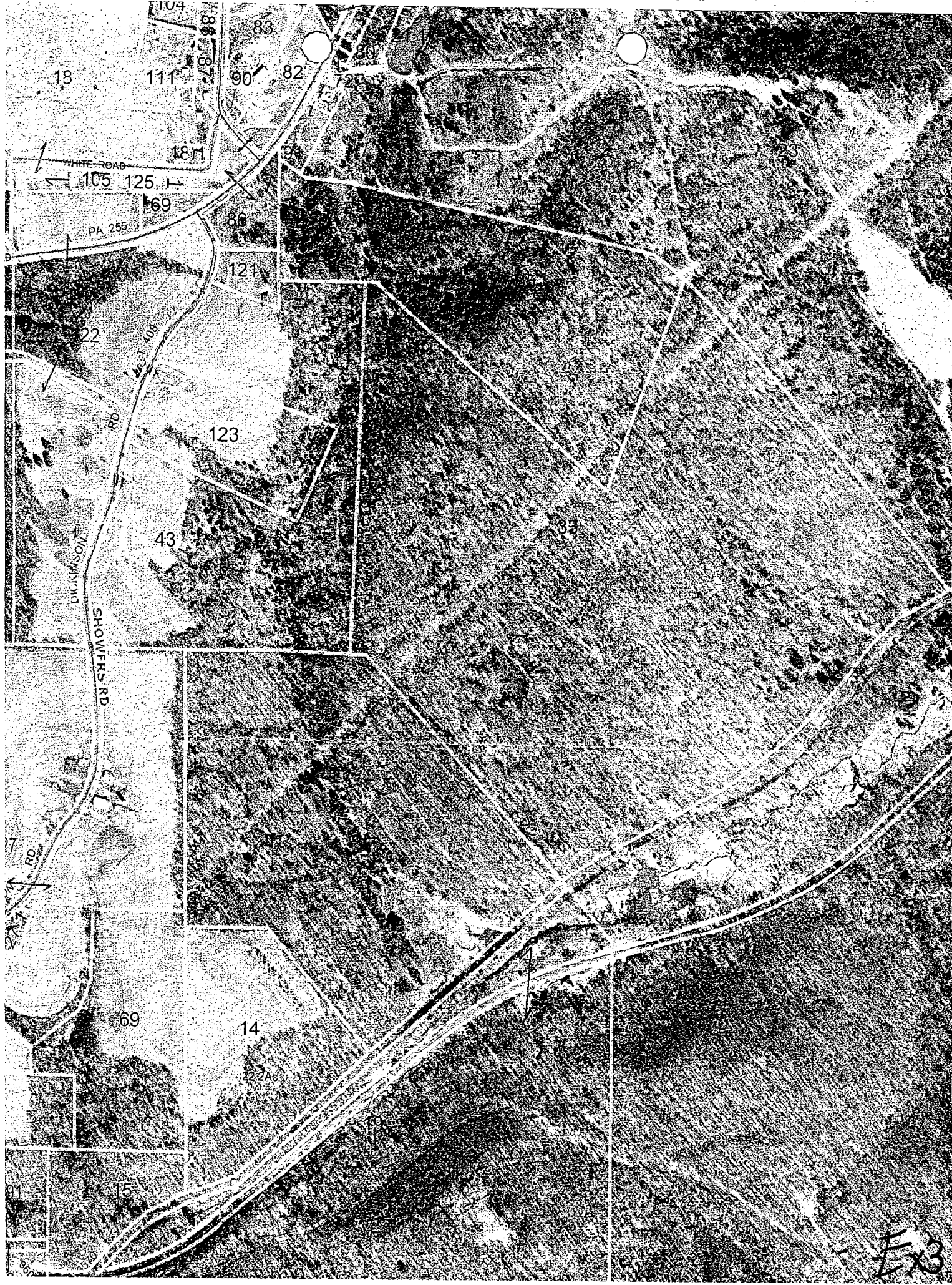
[Signature]  
Signature



Paul I. Dixon, et al.

NOTES:

1. Information for this retracement survey was taken from deeds, assessment records, surveys of record, and personal notes.
2. Railroad location was based using the existing grade and the map recorded in the Clearfield County Courthouse in Deed Book 144 Page 85.
3. The "Original" field notes of J.E. Fry were used to relocate this survey. These notes are found in Field Book #4 pages 34-35-38 at Fry's survey for John E. DuBois.
4. The "Original" field notes of J.E. Fry were used to relocate this survey. These notes are found in Field Book #4 pages 34-35-38 at Fry's survey for John E. DuBois.
5. The "Original" field notes of J.E. Fry were used to relocate this survey. These notes are found in Field Book #4 pages 34-35-38 at Fry's survey for John E. DuBois.
6. No physical evidence was found along the western and northern lines of the surveyed parcel.
7. None of the record monuments were recovered. The record monuments called for were points or post.
8. A survey monument, number 19-EX, was found with "Yellow" paint and 1/2" wooden stakes were placed on the property line.
9. All 1/2" iron pipes with survey plugs have been placed at all corners with the exception of corner #7, this is a 30" Maple Tree.



Penna. Quit-Claim Deed

# THIS INDENTURE

MADE the 21st day of December in the year nineteen hundred and eighty-eight (1988)

BETWEEN GREEN GLEN CORPORATION, a Pennsylvania business corporation of Sandy Township, DuBois, Clearfield County, Pennsylvania, Party of the First Part,

and

CHERRY TIMBER ASSOCIATES, INC., a business corporation with a mailing address at Russel Street, Endeavor, Pennsylvania 16322, Party of the Second Part,

WITNESSETH, That the said first party, for and in consideration of the sum of One ~~(\$1.00)~~ Dollar lawful money of the United States of America to it well and truly paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released and quit-claimed, and by these presents does remise, release and forever quit-claim, unto the said party of the second part, its successors and assigns,

ALL those certain parcels of real estate located in Clearfield County, Pennsylvania as follows:

PARCEL NO. 1: All that certain parcel of real estate located in Pike Township, Clearfield County, Pennsylvania,

BOUNDED on the North by lands of Anderson and Hartshorn Run;  
BOUNDED on the East by lands of Buskey & Mainey;  
BOUNDED on the South by lands of McBride, Bailey, Ballor, and Baughman, and  
BOUNDED on the East by other lands of the Grantor and being identified as Clearfield County Map Parcel No. 126-H8-15;

PARCEL NO. 2: All that certain parcel of real estate located in Union Township, Clearfield County, Pennsylvania,

BOUNDED on the North by Township Road T360;  
BOUNDED on the East by lands of Robinson;  
BOUNDED on the South by B&O Railroad;

ALL COUNTY  
ENTR 3:34 PM 12-21-88  
TIME  
BY 12121 U  
FEES 27.50  
Michael recorded

*See Affidavit of Value Filed  
with deed Recorded in Deed & Records Book 1260, page 280*

*Book 1260 Page 338*

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

JUL 17 2008

MY COMMISSION EXPIRES  
FIRST MONDAY IN JANUARY 2012

Attest: *Maureen E. Inlow*

Reg. of Wills Rec. of Deeds & Clk. of Orphans' Court

EXHIBIT 4

BOUNDED on the West by lands of Shubert;  
Further described as Clearfield County Tax Map Parcel No. 129-E7-41;

PARCEL NO. 3: All that certain parcel of real estate located in Bloom Township, Clearfield County, Pennsylvania,

BOUNDED on the North and East by the Baltimore & Ohio Railroad;

BOUNDED on the South by lands of James M. Edwards Estate;

BOUNDED on the East by lands of Walker and the Haupt heirs;  
Being identified as Clearfield County Tax Map Parcel No. 104-F8-11.

PARCEL NO. 4: All that certain parcel of real estate located in Union Township,

BOUNDED on the North by lands of Pentz, et al;

BOUNDED on the East by lands of Miller and Haupt;

BOUNDED on the South by lands of Thomas;

BOUNDED on the West by lands of Thomas;  
Being identified as Clearfield County Tax Map Parcel No. 129-E7-42.

PARCEL NO. 5: All that certain piece or parcel of real estate located in Union Township, Clearfield County, Pennsylvania,

BOUNDED on the North by State Game Lands No. 93;

BOUNDED on the East by lands of the City of DuBois;

BOUNDED on the South by lands of the City of DuBois;

BOUNDED on the West by State Game Lands No. 93;  
Being further identified as Clearfield County Tax Map Parcel No. 129-F5-18.

PARCEL NO. 6: All that certain parcel of real estate located in Huston Township, Clearfield County, Pennsylvania,

BOUNDED on the North by lands of McClintick;

BOUNDED on the East by Under Hill Mining Company and the Commonwealth of Pennsylvania;

BOUNDED on the South by lands of the Commonwealth of Pennsylvania and Green Glen Corporation;

Being identified as Clearfield County Tax Map Parcel No. 119-H1-51.

PARCEL NO. 7: All that certain parcel of real estate located in Huston Township, Clearfield County, Pennsylvania,

BOUNDED on the North by lands of the New Shawmut Mining

AFFIDAVIT NO. 16453



Company, the Commonwealth of Pennsylvania and lands of Scott;  
BOUNDED on the East by small parcels, and the Village of Tyler;  
BOUNDED on the South by lands of the Under Hill Coal Mining Company;  
BOUNDED on the West by lands of Luchuck;  
Being identified as Clearfield County Tax Map Parcel Nos. 119-H1-51, 119-H1-50 and 119-H1-49.

PARCEL NO. 8: All that certain parcel of real estate located in Huston Township, Clearfield County, Pennsylvania,

BOUNDED on the North by Mason;  
BOUNDED on the East by lands of Wayne Cherry;  
BOUNDED on the South by lands of Under Hill Coal Mining Company;  
BOUNDED on the West by the Village of Tyler-small tracts;  
Being identified as Clearfield County Tax Map Parcel No. 119-I-1-9.

PARCEL NO. 9: All that certain parcel of real estate located in Huston Township, Clearfield County, Pennsylvania,

BOUNDED on the North by the Elk County border;  
BOUNDED on the East by small tracts, Township Road 410 and lands of Donahue;  
BOUNDED on the South by Township Road 410 and PA Route 153;  
BOUNDED on the West by lands of Hutchison;  
Being identified as Clearfield County Tax Map Parcel No. 119-F1-2.

PARCEL NO. 10: All that certain parcel of real estate located in Huston Township, Clearfield County, Pennsylvania,

BOUNDED on the North by the Elk County borderline;  
BOUNDED on the East by Commonwealth of Pennsylvania, Department of Forest & Waters;  
BOUNDED on the South by lands of Bennett and PA Route 153;  
BOUNDED on the West by lands of Donahue and Bodner;  
Being identified as Clearfield County Tax Map Parcel No. 119-F1-5.

PARCEL NO. 11: All that certain parcel of real estate located in Huston Township, Clearfield County, Pennsylvania,

BOUNDED on the North by lands of Milligan;  
BOUNDED on the East by lands of Wilson and Department  
of Forest & Waters;  
BOUNDED on the South by lands of Spicher;  
BOUNDED on the West by lands of Lewis & Milligan;  
Being located on Clearfield County Tax Map Parcel No. 119-E2  
as a four (4) acre tract.

PARCEL NO. 12: All that certain parcel of real estate located in Sandy  
Township, Clearfield County, Pennsylvania,

BOUNDED on the North by Township Road 408;  
BOUNDED on the East by the Huston Township border;  
BOUNDED on the South by lands of Maloney;  
BOUNDED on the West by lands of Maloney;  
Identified per Clearfield County Tax Map Parcel No. 128-E3.

PARCEL NO. 13: All that certain parcel of real estate located in Huston  
Township, Clearfield County, Pennsylvania,

BOUNDED on the North by lands of Tinker & Hoyt;  
BOUNDED on the Southeast by Bennetts Branch Run;  
BOUNDED on the Southwest by lands of Harold Duttry;  
BOUNDED on the West by lands of Sadie Beer;  
Being identified as Clearfield County Tax Map Parcel  
No. 119-E3-33.

PARCEL NO. 14: All that certain piece or parcel of real estate located in  
Huston Township, Clearfield County, Pennsylvania,

BOUNDED on the Northwest by land of W. Dixon et al. and  
Harold Duttry;  
BOUNDED on the East by other lands of the Green Glen  
Corporation;  
BOUNDED on the South by the Huston Township boundary  
line and the Commonwealth of Pennsylvania Gamelands and  
being identified as Clearfield County Tax Map Parcel No. 119-E4-13.

PARCEL NO. 15: All that certain piece or parcel of real estate located in  
Huston Township, Clearfield County, Pennsylvania,

BOUNDED on the West by the Consolidated Rail Corporation;  
BOUNDED on the East by lands of Hopton;  
BOUNDED on the South by other lands of the Grantor;  
Being identified as Clearfield County Tax Map Parcel No. 119-G3-17.



PARCEL NO. 16: All that certain piece or parcel of real estate located in Huston Township, Clearfield County, Pennsylvania,

BOUNDED on the North by lands of Bundy and Glen Irvan Corporation;

BOUNDED on the East by lands of Munn;

BOUNDED on the South by other lands of the Grantor;

BOUNDED on the West by lands of the Glen Irvan Corporation;  
Being identified as Clearfield County Tax Map Parcel No. 119-G3-13.

PARCEL NO. 17: All that certain parcel of real estate located in Huston Township, Clearfield County, Pennsylvania,

BOUNDED on the North by the Consolidated Rail Corporation;

BOUNDED on the East by lands of Riccadona;

BOUNDED on the South by Osceola Fire Brick Company and other lands of the Grantor;

Being identified per Clearfield County Tax Map Parcel No. 119-G2.

PARCEL NO. 18: Any and all coal and other minerals, oil and gas together with ancillary and incidental rights possessed by Grantor in and to that certain parcel of real estate;

BOUNDED on the North by State Game lands No. 93;

BOUNDED on the East by State Game lands No. 93;

BOUNDED on the South by lands of McClinton and others;

BOUNDED on the West by other lands of the Grantor which parcel is currently assessed to Haddie F. Westphal and

being identified as Clearfield County Tax Map Parcel No. 119-E4-17.

PARCEL NO. 19: All rights to coal and other minerals, gas and oil and other hydrocarbons, and generally all subterranean mineral rights which may underlie any property situate in Clearfield County, Pennsylvania. It is the intention to convey to Grantee all of Grantor's rights unless specifically listed in Exceptions 1 through 8 set forth hereinafter.

PARCEL NO. 20: All that certain parcel of real estate located in Sandy Township, Clearfield County, Pennsylvania, bounded on the North by the Jefferson County line; bounded on the East by Robertson; bounded on the South by Robertson; bounded on the West by the Jefferson County line. Being identified per Clearfield County Tax Map Parcel No. 128-A-2-42.

PARCEL NO. 21: All right, title and interest to the Grantor in and to all real property owned by the Grantor in Clearfield County, Pennsylvania, including all rents, profits, issues, remainders and reverters.

EXCEPTING AND RESERVING unto the Green Glen Corporation, its successors or assigns, the following:

Exception No. 1. Any and all properties owned by the Grantor in the City of DuBois;

Exception No. 2. All property in Sandy Township which lies South of the Interstate 80 Right-of-Way, West of the interchange of Route 255 and Interstate 80, North of Route 255, and East of the DuBois City line, the DuBois Country Club, and Township Road 399 i.e., the Clear Run Road, specifically identified as Clearfield County Tax Map Parcel No. 128 C3-7, 128 C3-9, 128 C3-10, 128 C3-11, 128 C3-29, and 128 C3-30. This is shown on the attached map as map parcels No. 20VL63, 16VL59, 17VL60, 18VL61, 19VL62 and 15VL59. There is excluded from this description a certain 32.9 acre tract which is described as follows:

BEGINNING at a point, said point being the northeast corner of this parcel in common with the corner of the Ramada Inn property on the southern right-of-way line of U. S. Interstate Route 80; thence along the property of Ramada Inn and United Electric Cooperative, Inc. South  $15^{\circ} 45' 44''$  West 381.38 feet to a point; thence South  $26^{\circ} 19' 10''$  East 637.07 feet along the United Electric Cooperative, Inc. property to a point; thence South  $65^{\circ} 42' 56''$  West 705.22 feet to a point; thence North  $75^{\circ} 14' 16''$  West 635.04 feet to a point; thence North  $00^{\circ} 43' 01''$  East 1,457.93 feet to a point on the Southern right-of way of U. S. Interstate Route 80; thence along said right-of-way line South  $69^{\circ} 41' 38''$  East a distance of 1,123.18 feet to the place of beginning.

Exception No. 3. That land area and real estate located in Sandy Township lying between the Route 255 on the North and the Baltimore & Ohio Right-of-Way on the South, the Interstate 80 Right-of-Way on the West and the lands of Ringold Corporation, Christian, and other ownerships which lie to the East. This reserved parcel comprises a part of Clearfield County Tax Map Parcel No. 128-D4-84. This is shown on the attached map as map parcel 20TL27.

Exception No. 4. That tract of land in Sandy Township which is described as follows:

BEGINNING at the Intersection of the Interstate 80 Right-of-Way and the Intersection of PA Route 255;

THENCE along the Southerly line of the Interstate 80 Right-of-Way in an Easterly direction to a point at the Interstate 80 intersection with the B&O Railroad;  
 THENCE in a Southwesterly direction along the B&O Railroad, crossing Township Road 372 to a point at lands of Owens;  
 THENCE in a Southwesterly direction along lands of Owens and Gerald Tapper to the Southerly property line now or formerly of Tapper;  
 THENCE in a Southeasterly direction along the Tapper's Southerly property line to a point at land now or formerly of Tail Twisters, Inc.;  
 THENCE in a Southwesterly direction along lands now or formerly of Tail Twisters, Inc., Price and other properties, and continuing along the borderline of Green Glen Corporation and other properties to a point at its intersection with Legislative Route 17030;  
 THENCE in a Westerly direction along Legislative Route 17030 to a point at lands of Heller;  
 THENCE along lands of Heller and Beers in a Northerly direction to a point;  
 THENCE continuing along the Northerly boundary line of Beers in a Westerly direction to a point at or near lands now or formerly of Smolukas;  
 THENCE in a northerly direction along lands of Smolukas to a point at the intersection of the B&O Railroad Right-of-Way;  
 THENCE in a Westerly direction along the Railroad Right-of-Way to a point at Shaffer Road;  
 THENCE in a Northerly direction along Shaffer Road to the land of the DuBois Mall;  
 THENCE along lands of the DuBois Mall and other tracts in an Easterly direction to a point;  
 THENCE in a Northeasterly direction along the Western border of Green Glen lands to a point at the right-of-way of PA Route 255;  
 THENCE in an Easterly direction along Route 255 to a point at its intersection of Interstate 80, being the place of beginning. Said tract comprises 490 acres more or less and is defined as Clearfield County Tax Map Parcel 128-C3-15, 16, 23, and also Clearfield County Tax Map Parcel No. 128-C4-72. This tract also includes that irregular shaped parcel of land which lies South of Township Road 372, and North of lands now or formerly of Tapper and East of other lands excepted herein. Being part of Clearfield County Tax Map Parcel No. 128-C3-31.

This is shown on the attached map as Parcels 13VL56, NN-M, 12VL55, 11VL54, 14VL57 and 8VL51. This Exception No. 4 is not intended to include a certain 4.3 acre tract more particularly described as follows:

**BEGINNING** at a point at the intersection of the southern right-of-way line of Chessie System and the western right of way line of Plat Road, Sandy Township Route 372; thence by the western right-of-way line of Sandy Township Route 372 and at all times 16.5 feet from the centerline of said road 75.0 feet, more or less, to a point on the right-of-way line of other lands of the Green Glen Corporation; thence by a line that right angles to the right-of-way line of the Chessie System and along the eastern line of this parcel in a southeasterly direction 175.5 feet, more or less, to a point at the southeast corner of this parcel; thence by a line parallel and approximately 235.5 feet from the southern right-of-way line of the Chessie System right-of-way and along other land of the Green Glen Corporation, 840 feet, more or less, to a point at the southwest corner of this parcel; thence still by lands of the Green Glen Corporation by a line that right angles to the last described line in a northwesterly direction 235.5 feet, more or less, to a point on the southern right-of-way line of the Chessie System; thence by the southern right-of-way line of the Chessie System in a northeasterly direction 800 feet more or less to a point at the intersection of the southern right-of-way line of the Chessie System and the western right-of-way line of Plat Road, Sandy Township Route 372, and the place of beginning.

**Exception No. 5.** Clearfield County Tax Map Parcel No. 128-B3-30, being a 16 Acre parcel more or less presently used by the DuBois Riding Stable. This is shown on the attached map as 10VL53.

**Exception No. 6.** All that certain tract of land situate in Sandy Township, Clearfield County, Pennsylvania, bounded on the North by Penn Gas & Water Co.; on the East by Recreation Land Corp. and Treasure Lake; on the South by Bolam, Moorehouse, Shaffer and others; on the West by State Game Lands 77, Hetrick, McAninch and others. Containing 250 acres, more or less and identified as Clearfield County Tax Map Parcel Nos. 128-B2-16, 128-B2-9 and 128-B3-16. This is shown on the attached map as 18TL25, 33TL40, 19T.26 and 3R6.

**Exception No. 7.** All rights to coal and other minerals, gas and oil and

other hydrocarbons, and generally all subterranean mineral rights which may underlie any of the properties specifically excluded per this Quit-Claim Deed, and furthermore all of such rights to coal and other hard minerals, gas and oil and other hydrocarbons, and generally all subterranean mineral rights which underlie the Treasure Lake Sub-Division as now in existence which were conveyed to the developers of Treasure Lake by virtue of deeds from the Green Glen Corporation and John DuBois et ux, Specifically:

(1) Green Glen Corporation Deed dated February 7, 1968, recorded in Clearfield County Deed Book 535, page 387 describing 7,027.77 acres;

(2) A deed from John DuBois, Jr. et ux dated February 7, 1968, recorded in Clearfield County Deed Book 535, page 394 and describing 759 acres more or less.

Exception No. 8. A 4.26 Acre tract located in Huston Township which is being deeded to the Sabula Fire Company by simultaneous deed herewith, which deed is not yet recorded.

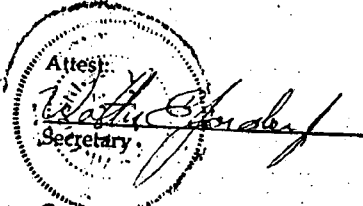
TO HAVE AND TO HOLD the said premises, with all and singular the appurtenances, unto the said party of the second part, its successors heirs and assigns, to and for the only proper use and behoof of the said party of the second part, its successors and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set its hands and and seals the day and year first above wirtten.

GREEN GLEN CORPORATION

President

(SEAL)



Commonwealth of Pennsylvania

County of Jefferson

SS:

On this 21st day of December, 1988 before me a Notary Public came the above named President of the Green Glen Corporation and acknowledged the foregoing Indenture to be the act and deed, and desired the same to be recorded as such.

Witness my hand and official seal, the day and year aforesaid,

My Commission Expires

CLEARFIELD COUNTY  
RECORDED IN RECORD

STATE OF PENNSYLVANIA:  
COUNTY OF CLEARFIELD: 88  
RECORDED in the Recorder's Office in and for said  
County in Deeds and Records Book No. 1340:1  
Page 38 etc.

WITNESS my hand and seal of office this  
21 day of Dec A.D. 1988

My Commission Expires  
First Monday in January, 1992

Notary Public  
Eleanor Lasky, Notary Public  
Reynoldsville Boro, Jefferson County  
My Commission Expires March 31, 1992  
Member, Pennsylvania Association of Notaries

Entered of Record

Michael R. Lyle, Recorder

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on February 27, 2009, I caused DEFENDANT, JOHN D. DUTTRY'S, MOTION FOR SUMMARY JUDGMENT to be served on the following and in the manner indicated below:

**By United States Mail, First Class, Postage Prepaid**  
**Addressed as Follows:**

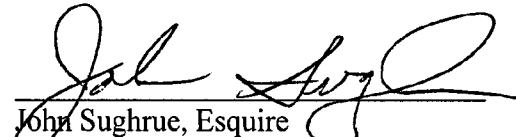
Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

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

Ms. Thelma D. Bush, Pro Se  
450 Salada Road  
DuBois, PA 15801

Ms. Beverly Copelli, Pro Se  
1220 Second Avenue  
Brockway, PA 15824

Date: February 27, 2009

  
John Sughrue, Esquire  
Attorney for Co-Defendant, John D. Duttry



**FILED**

**FEB 27 2009**

William A. Shaw  
Prothonotary/Clerk of Courts

CHERRY TIMBER ASSOCIATES, INC., ) IN THE COURT OF COMMON PLEAS OF  
and CHAGRIN LAND LIMITED ) CLEARFIELD COUNTY, PENNSYLVANIA  
PARTNERSHIP, )  
Plaintiffs, )  
v. ) Civil Action  
AUDRA MITCHELL, JOHN D. DUTTRY, ) No. 06-1498-CD  
THELMA BUSH and BEVERLY R. )  
WILLIAMS a/k/a BEVERLY COPELLI, )  
Defendants. )

*S*  
**FILED** *ICC ASky*  
*m/12:15pm* *Pemrick*  
FEB 25 2008

William A. Shaw  
Prothonotary/Clerk of Courts

**NOTICE OF SERVICE**

Take notice that Plaintiff, through their counsel, served Plaintiffs' Responses to Request for Admissions and Interrogatories and Responses to Requests for Production of Documents via United States first class mail, postage pre-paid, on February 23, 2008, as follows:

John Sughrue, Esquire  
225 East Market Street  
Clearfield, PA 16830

DALE WOODARD LAW FIRM

By *Keith M. Pemrick*  
Keith M. Pemrick  
PA Supreme Court I.D. No. 30322  
1030 Liberty Street  
Franklin, Pennsylvania 16323-1298  
Telephone: (814) 432-2181  
Facsimile: (814) 437-3212  
Attorneys for Plaintiff

*245*

**FILED**

**FEB 25 2009**

William A. Shaw  
Prothonotary/Clerk of Courts

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

v.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,

Defendants.

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

Civil Action

No. 06-1498-CD

Type of Pleading:

Plaintiffs' Supplemental Pre-Trial Statement

Filed on behalf of: Plaintiffs

Counsel of Record for this Party:

Keith M. Pemrick

Supreme Court I.D. No. 30322

Joseph H. Keebler

Supreme Court I.D. No. 76581

DALE WOODARD LAW FIRM

1030 Liberty Street

Franklin, Pennsylvania 16323-1298

Telephone: (814) 432-2181

Facsimile: (814) 437-3212

9  
**FILED**  
m/12.15cm  
FEB 25 2009

ICC Att.  
Pemrick

William A. Shaw  
Prothonotary/Clerk of Courts

(44)

CHERRY TIMBER ASSOCIATES, INC.,	)	IN THE COURT OF COMMON PLEAS OF
and CHAGRIN LAND LIMITED	)	CLEARFIELD COUNTY, PENNSYLVANIA
PARTNERSHIP,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
AUDRA MITCHELL, JOHN D. DUTTRY	)	Civil Action
THELMA BUSH and BEVERLY R.	)	
WILLIAMS a/k/a BEVERLY COPELLI,	)	
	)	
Defendants.	)	No. 06-1498-CD

**PLAINTIFFS' SUPPLEMENTAL PRE-TRIAL STATEMENT**

NOW COME the Plaintiffs, through their undersigned counsel, and supplement their Pre-Trial Statement with the addition of the following witness and exhibits:

**2. WITNESS**

Michael D. Snyder, Esquire  
Gent, Gent & Snyder  
314 West Park Street  
Franklin, PA 16323  
(Expert Report attached)

<u>Liability</u>	<u>Damages</u>
X	

3. **EXHIBITS**

41. March 17, 2005, Deed from Thelma Bush et al. to Theodore Beer, recorded March 18, 2005, as Clearfield County Instrument No. 200503754.
42. August 10, 2004, Deed from Thelma Bush et al. to Thelma Bush et al., recorded in the Office of the Recorder of Deeds of Clearfield County as Instrument No. 200404968.
43. August 7, 1989, Decree of Distribution from the Estate of Harold E. Duttry filed in the Records of the Orphan's Court of Clearfield County at No. 149 of 1988.
44. February 21, 1955, Deed from Harry Bender et ux. to Harold E. Duttry et ux., recorded in Deed Book 440, Page 573.
45. December 10, 1951, Deed from Ralph J. Smith, Treasurer to Harry Bender and Annie Bender, recorded in Deed Book 440, Page 571.
46. January 22, 1947, Assignment from Harry Bender et ux. to Ralph Weisman and Albert Dennis, recorded in Deed Book 380, Page 585.
47. September 8, 1942, Deed from Edna Marsden, Treasurer to Clearfield County Commissioners recorded in Deed Book 380, Page 583.
48. July 11, 1945, Deed from Clearfield County Commissioners to Harry Bender, recorded in Deed Book 380, page 584.
49. June 18, 1947, Deed from David DuBois and Shirley C. DuBois to John E. DuBois, Jr., et al., recorded in Deed Book 384, Page 524 (incorrectly identified in Plaintiffs' Pre-Trial Statement as a January 18, 1947, Deed).

# Gent, Gent and Snyder

Attorneys at Law

314 West Park Street, Franklin, Pa. 16323-1390

(814) 437-3754

HENRY W. GENT, III  
MICHAEL D. SNYDER

FAX (814) 437-6800  
E-MAIL [gentlaw@mail.usachoice.net](mailto:gentlaw@mail.usachoice.net)

OF COUNSEL  
HARRY W. GENT, JR.

February 23, 2009

Keith Pemrick, Esq. and  
Joseph H. Keebler, Jr., Esq.  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323

Re: Industrial Timber & Land Co.  
60 Acre, More or Less, Parcel,  
Huston Township, Clearfield County, Pennsylvania

Dear Messrs. Pemrick & Keebler:

You have asked for my opinion regarding the surface ownership of a 60 acre, more or less, parcel in Huston Township, Clearfield County, Pennsylvania, which has at various times been erroneously shown on Clearfield County maps as Parcel No. 119-E3-33, but in fact is Parcel No. 119-E4-16. I have reviewed certain documents from the Office of Recorder of Deeds of Clearfield County and the Tax Assessment Office of Clearfield County, all as provided to me by your office. Based upon my review of these documents I would set forth as follows:

1. The first deed of record examined for this parcel was from John E. DuBois et ux., to G. E. Bucksbee dated November 8, 1927 and recorded in the Office of the Recorder of Deeds of Clearfield County in Deed Book 298 at page 136 and describes by metes and bounds a 60.12 acre parcel as surveyed May 29, 1922 by J. E. Fry. A survey of the parcel in question prepared by Alexander & Associates, Inc. dated July 5, 1995 titled "Retracement Survey, Industrial Timber & Land Co." depicts a 58 acre parcel which obviously conforms in boundaries and location with Parcel No. 119-E4-16 as shown on Clearfield County Tax Assessment Maps.

2. The next deed of record examined for the subject parcel was from the County Commissioners of Clearfield County to David DuBois originally dated May 25, 1942, but re-executed under date of October 8, 1945 (as the first deed was recited to have been lost) and recorded as aforesaid on October 17, 1945 in Deed Book 370 at page 458. The deed recites that it was for the property of G. E. Bucksbee containing 60 acres.

3. The next deed of record examined for the subject parcel was from David DuBois et ux., to John E. DuBois, Jr., Louis G. DuBois, Sarah B. DuBois, David DuBois and Caroline DuBois Pfaelzer dated June 18, 1947 and recorded as aforesaid on July 23, 1947 in Deed Book 384 at page 524. The first parcel described therein is described as "Premises containing 60 acres, more or less, formerly sold as the property of G. E. Bucksbee at Clearfield County Treasurer's tax sale to the County Commissioners of Clearfield County, Pennsylvania, and conveyed by said County Commissioners to David DuBois by deed dated October 8, 1945, recorded at Clearfield, Pa., in Deed Book 370, page 458."

4. The next deed of record examined for the subject parcel was from John E. DuBois, Jr. and Rene Hadley DuBois, his wife, Louis G. DuBois, unmarried, Caroline DuBois Pfaelzer, unmarried, David DuBois and Shirley C. DuBois, his wife, and Sarah B. DuBois, unmarried to the Green Glen Corporation dated September 1, 1947 and recorded as aforesaid on November 2, 1948 in Deed Book 393 at page 411. Note that this deed purports to convey in excess of 46 parcels. Parcel No. "45 First Thereof:" describes "THE FIRST THEREOF: Premises containing 60 acres, more or less, formerly sold as the Property of G. E. Bucksbee at Clearfield County Treasurer's tax sale to the County Commissioners of Clearfield County, Pennsylvania, and conveyed by said County Commissioners to David DuBois by deed dated October 8, 1945, recorded at Clearfield, Pa., in Deed Book 370, page 458."

**It should be noted that this deed into Green Glen Corporation recites and conveys several parcels situate in Huston Township; however, there is no conveyance of the 123 acre parcel situate immediately to the north and east of the subject parcel which is shown Clearfield County Tax Assessment Maps as Parcel No. 119-E3-33.**

5. The next deed of record examined for the subject parcel was from Green Glen Corporation to Cherry Timber Associates dated December 21, 1988 and recorded as aforesaid on December 21, 1988 in Volume 1260 at page 338. This deed describes twenty one (21) parcels located in Clearfield County and contains at Parcel No. 21 a conveyance of "All right, title and interest to the Grantor in and to all real property owned by the Grantor in Clearfield County, Pennsylvania, including all rents, profits, issues, remainders and revertsers."

**This deed appears to be the recorded source of confusion regarding the ownership of the 60 acre parcel.**

Parcel No. 13 in said deed contains the following description:

"All that certain parcel of real estate located in Huston Township, Clearfield County, Pennsylvania,

BOUNDED on the North by lands of Tinker & Hoyt;

BOUNDED on the Southeast by Bennetts Branch Run;

BOUNDED on the Southwest by lands of Harold Duttry;

BOUNDED on the West by lands of Sadie Beer;

Being identified as Clearfield County Tax Map Parcel No. 119-E3-33."

This description describes the 123.2 acre Parcel owned by Duttry, except for the erroneous third call which should have read "BOUNDED on the southwest by lands of Green Glen Corporation". On all Clearfield County Tax Assessment Maps, which you have provided, Parcel No. 119-E4-16 is clearly depicting the original 60 acre parcel that comes down through the chain of title in deeds 1 through 4 as set forth above. Further, you have provided me with



several maps and surveys which describe a 60 acre parcel bounded similarly to Tax Parcel No. 119-E4-16. You have also provided me with an undated, untitled survey which depicts the 123.2 acre parcel which obviously conforms in boundaries and location with Parcel No. 119-E3-33 as shown on Clearfield County Tax Assessment Maps.

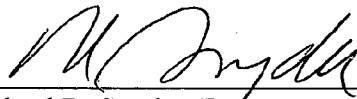
It should be noted that early Clearfield County Tax Assessment records from 1926 through 1960 reflect a 60 acre parcel owned successively by G. E. Bucksbee, John DuBois or J. E. DuBois, David DuBois and Green Glen Corporation. These are the successive owners of the 60 acre parcel as set forth in the deeds described in paragraphs 1 through 4 above. Apparently tax assessment parcel numbers were first assigned in Clearfield County around 1960 and there may have been an error made at that time which caused the current confusion. **For purposes of determining ownership, deeds and deed descriptions should prevail over tax assessment numbers.**

After a review of the documents, surveys and maps which you have provided me, and subject to the erroneous description and mapping referred to above, it is my opinion that the 60 acre parcel was conveyed to Cherry Timber Associates pursuant to the quit claim language quoted above contained in Parcel No. 21 of the Quit Claim Deed recorded at Volume 1260 at page 338 and is Parcel No. 119-E4-16 as shown on Clearfield County Tax Assessment Maps.

Please feel free to contact our office should you have any questions in this regard.

Very truly yours,

Gent, Gent, & Snyder

A handwritten signature in dark ink, appearing to read "M. D. Snyder", written over a horizontal line.

Michael D. Snyder, Esq.


MDS/bai

4. **EXPERT REPORTS**

- C. Attached hereto is a report from Michael D. Snyder, Esquire, regarding the title to the 58 acre (sometimes referred to as 60 acre) parcel owned by Cherry Timber Associates, Inc., in Huston Township, Clearfield County.

Respectfully Submitted,

DALE WOODARD LAW FIRM

By   
Attorneys for Cherry Timber Associates, Inc.  
and Chagrin Land Limited Partnership

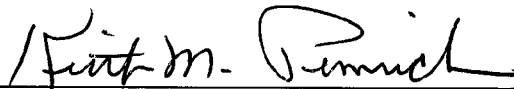
**CERTIFICATE OF SERVICE**

I, Keith M. Pemrick, Esquire, hereby certify that a true and correct copy of the foregoing Plaintiffs' Supplemental Pre-Trial Statement has been served by U.S. first-class mail, postage prepaid, this 23<sup>rd</sup> day of February, 2009, as follows:

John Sughrue, Esquire  
225 East Market Street  
Clearfield, PA 16830

Thelma D. Bush  
450 Salada Road  
DuBois, PA 15801

Beverly Williams  
1220 Second Avenue  
Brockway, PA 15824

  
Keith M. Pemrick

**FILED**

**FEB 25 2009**

William A. Shaw  
Prothonotary/Clerk of Courts

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

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

<sup>S</sup> FILED 3cc Att  
01/2:40Lm Sughrue  
JAN 19 2009  
(LM)

William A. Shaw  
Prothonotary/Clerk of Courts

**Type of Case:** Civil Action

**Type of Pleading:** Certificate of Service for Request  
for Production of Documents

**Filed on Behalf of:** Co-Defendant, John D. Duttry

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
225 East Market Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**Other Counsel of Record:**

Keith Pemrick, Esq.  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

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

Thelma D. Bush, Pro Se  
450 Salada Road  
DuBois, PA 15801

Ms. Beverly Copelli, Pro Se  
1220 Second Avenue  
Brockway, PA 15824

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

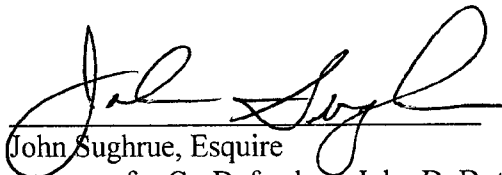
**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on January 16, 2009, I caused a true and correct copy of Defendant's Request for Production of Documents to be served on the following and in the manner indicated below:

**By United States Mail, First Class, Postage  
Prepaid, Addressed as Follows:**

Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

Date: January 16, 2009

  
John Sughrue, Esquire  
Attorney for Co-Defendant, John D. Duttry

**FILED**

**JAN 19 2009**

William A. Shaw  
Prothonotary/Clerk of Courts

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

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

<sup>S</sup> FILED 3 CC 144y  
012:40LM  
JAN 19 2009  
LM

William A. Shaw  
Prothonotary/Clerk of Courts

**Type of Case:** Civil Action

**Type of Pleading:** Certificate of Service for Request  
for Admissions and Interrogatories

**Filed on Behalf of:** Co-Defendant, John D. Duttry

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
225 East Market Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**Other Counsel of Record:**

Keith Pemrick, Esq.  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

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

Thelma D. Bush, Pro Se  
450 Salada Road  
DuBois, PA 15801

Ms. Beverly Copelli, Pro Se  
1220 Second Avenue  
Brockway, PA 15824

42



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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

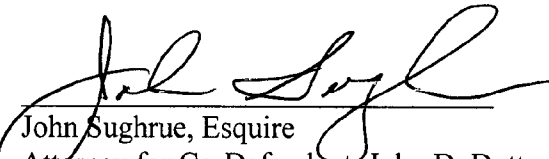
**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on January 16, 2009, I caused a true and correct copy of Defendant's Request for Admissions and Interrogatories to be served on the following and in the manner indicated below:

**By United States Mail, First Class, Postage  
Prepaid, Addressed as Follows:**

Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

Date: January 16, 2009

  
John Sughrue, Esquire  
Attorney for Co-Defendant, John D. Duttry

**FILED**

**JAN 19 2009**

William A. Shaw  
Prothonotary/Clerk of Courts

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

CHERRY TIMBER ASSOCIATES, INC and  
CHAGRIN LAND LIMITED PARTNERSHIP,  
Plaintiffs

vs.

AUDRA MITCHELL, JOHN D. DUTTRY, THELMA BUSH  
and BEVERLY R. WILLIAMS, a/k/a BEVERLY COPELLI  
Defendants

\* NO. 06-1498-CD  
\*  
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\*

ORDER

AND NOW, this 27<sup>th</sup> day of October, 2008, following argument relative the  
hearing on Motion for to Strike Case from Trial List, Pre-Trial Conference and Motion  
and for Protective Order, it is the ORDER of this Court as follows:

1. Non jury trial is hereby scheduled for two days, being April 21 and 22,  
2009 in Courtroom No. 1 of the Clearfield County Courthouse to  
commence at 9:00 a.m. on each of the said two days;
2. All discovery shall be completed by the parties within no more than 100  
days from this date;
3. The parties shall have no more than 125 days from this date in which to  
file any pre-trial motions, including but not limited to Motions for Summary  
Judgment. The party filing any motion shall provide the Court an  
appropriate brief at the time of filing. The Court will thereafter schedule  
argument on the same and the responding party shall submit brief to the  
Court no later than the day and time of the oral argument;
4. The Court hereby confirms that John Sughrue, attorney for John D. Duttry,  
has withdrawn his Notice of Deposition relative the deposition of Michael

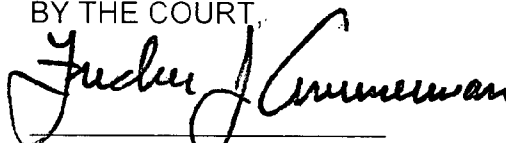
FILED  
OCT 27 2008  
OCT 30 2008

William A. Shaw  
Prothonotary/Clerk of Courts  
ICC Atty: Perriek  
Hopkins @10  
Sughrue

411

Drusinsky. As such, the Plaintiffs' Motion for Protective Order is hereby dismissed as moot.

BY THE COURT,

A handwritten signature in black ink, reading "Fredric J. Ammerman". The signature is written in a cursive style with a large, stylized "F" and "A".

FREDRIC J. AMMERMAN  
President Judge

**FILED**

**OCT 27 2008**

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

DATE: 10/27/08

     You are responsible for serving all appropriate parties.

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

     Plaintiff(s)   X   Plaintiff(s) Attorney      Other

     Defendant(s)   X   Defendant(s) Attorney

     Special Instructions:

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

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

*S*  
**FILED** 3:00 PM  
0/9:50 AM Sughrue  
OCT 15 2008  
*LM*

William A. Shaw  
Prothonotary/Clerk of Courts

\* **Type of Case:** Civil Action

\* **Type of Pleading:** Affidavit in Support of Defendant  
\* John D. Duttry's Motion to Strike  
\* Case from Trial List  
\*

\* **Filed on Behalf of:** Co-Defendant, John D. Duttry  
\*

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

\* John Sughrue, Esq.  
\* Supreme Court No. 01037  
\* 225 East Market Street  
\* Clearfield, PA 16830  
\* Phone: (814) 765-1704  
\* Fax: (814) 765-6959  
\*

\* **Other Counsel of Record:**

\* Keith Pemrick, Esq.  
\* Dale Woodward Law Firm  
\* 1030 Liberty Street  
\* Franklin, PA 16323-1298  
\*

\* Christopher E. Mohny  
\* 25 East Park Avenue, Ste. 6  
\* DuBois, PA 15801  
\*

\* Thelma D. Bush, Pro Se  
\* 450 Salada Road  
\* DuBois, PA 15801  
\*

\* Ms. Beverly Copelli, Pro Se  
\* 1220 Second Avenue  
\* Brockway, PA 15824

*#40*

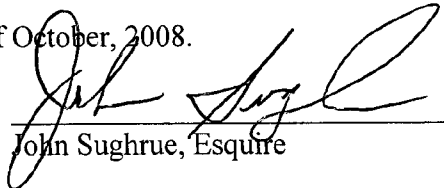
1. October 24, 2006, Duttry filed Answer, New Matter and Counterclaim.
2. November 27, 2006, Service of original process was completed with service of the Complaint on Audra Mitchell by the Sheriff of Elk County.
3. August 31, 2007, Plaintiffs' served Interrogatories and Request for documents on John D. Duttry.

4. October 19, 2007, Answers to Interrogatories and Productions were filed.
5. April 17, 2008, Deposition of John D. Duttry was taken by Plaintiff.
6. April 17, 2008, Deposition of Audra Mitchell was taken by Plaintiff.
7. April 17, 2008, Deposition of Steven Jilk was taken by Duttry's counsel.
8. May 15, 2008, Audra Mitchell filed Pre-Trial Motion to Discontinue Action.
9. July 17, 2008, Deposition of Plaintiff, Cherry Timber Associates, by designated individual, Chris Guth, was taken by Duttry.
10. July 17, 2008, Deposition of Plaintiff, Chagrin Land Limited Partnership, by designated individual, Chris Guth, was taken by Duttry.
11. July 17, 2008, Answer to Audra Mitchell's discontinuance request filed by Duttry.
12. July 17, 2008, Argument on Mitchell's Pre-Trial Motion to Discontinue.
13. July 17, 2008, Court orders the parties to prepare and file within 15 days, suggested Orders and Arguments with respect to Audra Mitchell's discontinuance request.
14. August 14, 2008, Deposition of Scott Jones was taken by Duttry.
15. August 20, 2008, Court enters Order granting discontinuance as to Audra Mitchell with certain conditions.
16. August 20, 2008, Certificate of Readiness for Non-Jury Trial filed by Plaintiff.
17. August 28, 2008, Motion to Strike from Trial List filed by Duttry.
18. September 19, 2008, Notice of Deposition, Plaintiff/Owner filed by Duttry.
19. September 24, 2008, Release of all claims signed by Audra Mitchell, filed of record together with Praecipe for Partial Discontinuance.
20. September 26, 2008, Motion for Protective Order filed by Plaintiff.
21. September 29, 2008, Pre-Trial Statements filed.

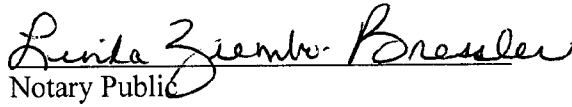


22. Chris Guth, Plaintiffs' designated officer indicated in his deposition that he did not know the source (deed or other document) of Plaintiffs' alleged title to the disputed timber.

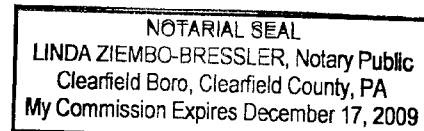
WITNESS my hand and seal this 15<sup>th</sup> day of October, 2008.

  
John Sughrue, Esquire

Sworn to and subscribed before me this 15<sup>th</sup> day of October, 2008.

  
Notary Public

My Commission Expires: 12-17-09



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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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\*

No. 06-1498-CD

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on October 15, 2008, I caused AFFIDAVIT IN  
SUPPORT OF DEFENDANT, JOHN D. DUTTRY'S, MOTION TO STRIKE CASE FROM  
TRIAL LIST to be served on the following and in the manner indicated below:

**By Personal Service Upon:**

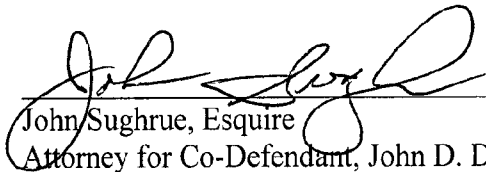
Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

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

Ms. Thelma D. Bush, Pro Se  
450 Salada Road  
DuBois, PA 15801

Ms. Beverly Copelli, Pro Se  
1220 Second Avenue  
Brockway, PA 15824

Date: October 15, 2008

  
John Sughrue, Esquire  
Attorney for Co-Defendant, John D. Duttry

**FILED**

**OCT 15 2008**

William A. Shaw  
Prothonotary/Clerk of Courts

CHERRY TIMBER ASSOCIATES, INC., )  
and CHAGRIN LAND LIMITED )  
PARTNERSHIP, )

Plaintiffs, )

v. )

AUDRA MITCHELL, JOHN D. DUTTRY )  
THELMA BUSH and BEVERLY R. )  
WILLIAMS a/k/a BEVERLY COPELLI, )

Defendants. )

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

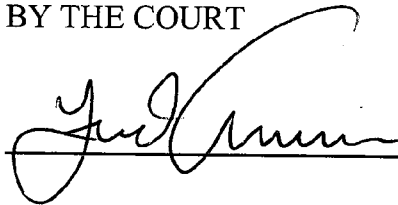
Civil Action

No. 06-1498-CD

ORDER

AND NOW, this 21 day of Sept, 2008, it is the ORDER of this Court  
that argument on the Plaintiffs' Motion for Protective Order in the above matter shall be held on  
October 15, 2008, in Courtroom No. 2, Clearfield County Courthouse.  
@ 10:00 A.M.

BY THE COURT

  
J.

\$ FILED 3CC  
01/11/00/30/ Atty Pennick  
SEP 29 2008 (610)  
William A. Shaw  
Prothonotary/Clerk of Courts

#39

FILED

SEP 29 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 9/29/08

☒ 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—LAW

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**SCHEDULING ORDER**

AND NOW, to wit: this 29<sup>th</sup> day of September, 2008, upon consideration of Defendant, John D. Duttry's, **Motion to Reschedule Argument for Outstanding Motions and to Reschedule Pre-Trial Conference**, it is **ORDERED** that Pre-Trial Conference scheduled in this matter for October 2, 2008 shall be and is hereby rescheduled for October 15, 2008 at 10:00 o'clock 2 .m. in Courtroom No. 2, Clearfield County Courthouse, 1 North 2<sup>nd</sup> Street, Clearfield, Pennsylvania.

BY THE COURT:

*Judith J. Ammann*  
Judge

9  
**FILED**  
mlb:40/BD  
SEP 29 2008

1cc Atty's: Pennick  
Sughrue  
Hopkins

William A. Shaw  
Prothonotary/Clerk of Courts

(62)

**ORIGINAL**

(38)

**FILED**

**SEP 29 2008**

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 8/28/08

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—LAW

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

FILED ICC Atty  
0/11:35am Sughrue  
SEP 29 2008  
William A. Shaw  
Prothonotary/Clerk of Courts

**Type of Case:** Civil Action

**Type of Pleading:** Amended Certificate of Service

**Filed on Behalf of:** Co-Defendant, John D. Duttry

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
225 East Market Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**Other Counsel of Record:**

Keith Pemrick, Esq.  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

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

Thelma D. Bush, Pro Se  
450 Salada Road  
DuBois, PA 15801

Ms. Beverly Copelli, Pro Se  
1220 Second Avenue  
Brockway, PA 15824

37



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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**AMENDED CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on September 29, 2008, I caused CO-DEFENDANT,  
JOHN D. DUTTRY'S, PRE-TRIAL STATEMENT to be served on the following and in the manner  
indicated below:

**By United States Mail, First Class, Postage Prepaid**  
**Addressed as Follows:**

Court Administrator  
Clearfield County Courthouse  
1 North Second Street  
Clearfield, PA 16830

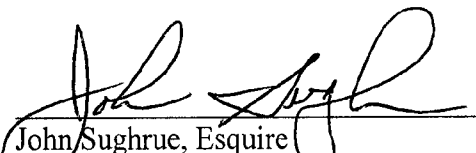
Christopher E. Mohney, Esquire  
25 East Park Avenue, Suite 6  
DuBois, PA 15801

Ms. Beverly Copelli  
1220 Second Avenue  
Brockway, PA 15824

Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

Ms. Thelma D. Bush  
450 Salada Road  
DuBois, PA 15801

Date: September 29, 2008

  
John Sughrue, Esquire  
Attorney for Co-Defendant, John D. Duttry

**FILED**

**SEP 29 2008**

William A. Shaw  
Prothonotary/Clerk of Courts

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**ORDER**

AND NOW, to wit: this 26 day of September, 2008, upon consideration of Defendant, John D. Duttry's **Motion to Reschedule Argument to Outstanding Motions and Pre-Trial Conference**, a Rule is hereby issued upon Plaintiffs and Co-Defendants, to show cause, if any, why the Prayer of the said Motion should not be granted.

**RULE RETURNABLE** on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, for filing written response.

ARGUMENT ON THE MERITS of said Motion shall be held on the 15th day of October, 2008 at 10:00 o'clock A.m. in Courtroom No. 2, Clearfield County Courthouse, 1 N. 2<sup>nd</sup> Street, Clearfield, Pennsylvania.

~~Plaintiffs' Counsel may participate in said Argument by phone.~~

BY THE COURT:

Judge

**FILED**

SEP 26 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE 9/26/08

☒ 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**

SEP 26 2008

William A. Shaw  
Prothonotary/Clerk of Courts

CHERRY TIMBER ASSOCIATES, INC., )  
and CHAGRIN LAND LIMITED )  
PARTNERSHIP, )

Plaintiffs, )

v. )

AUDRA MITCHELL, JOHN D. DUTTRY, )  
THELMA BUSH and BEVERLY R. )  
WILLIAMS a/k/a BEVERLY COPELLI, )

Defendants. )

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

Civil Action

No. 06-1498-CD

Type of Pleading:

Motion for Protective Order

Filed on behalf of: Plaintiffs

Counsel of Record for this Party:

Keith M. Pemrick

Supreme Court I.D. No. 30322

Joseph H. Keebler

Supreme Court I.D. No. 76581

DALE WOODARD LAW FIRM

1030 Liberty Street

Franklin, Pennsylvania 16323-1298

Telephone: (814) 432-2181

Facsimile: (814) 437-3212

FILED

SEP 26 2008

William A. Shaw  
Prothonotary/Clerk of Courts

35

CHERRY TIMBER ASSOCIATES, INC.,	)	IN THE COURT OF COMMON PLEAS OF
and CHAGRIN LAND LIMITED	)	CLEARFIELD COUNTY, PENNSYLVANIA
PARTNERSHIP,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
AUDRA MITCHELL, JOHN D. DUTTRY	)	Civil Action
THELMA BUSH and BEVERLY R.	)	
WILLIAMS a/k/a BEVERLY COPELLI,	)	
	)	
Defendants.	)	No. 06-1498-CD

**MOTION FOR PROTECTIVE ORDER**

NOW come the plaintiffs, through their undersigned counsel, and file this Motion for Protective Order and in support thereof state as follows:

1. This case arises out of a dispute regarding funds which have been held in escrow since 1995.
2. The funds were initially placed in escrow by Mitchell Lumber Company pursuant to an agreement between representatives of the Plaintiffs and Paul Mitchell as a result of the Plaintiffs' belief that Mitchell had improperly harvested timber on property owned by Cherry Timber Associates, Inc.
3. At the time he harvested the timber, Mitchell was cutting pursuant to a Timber Harvest Agreement entered into by Mitchell Lumber company and John D. Duttry on behalf of himself and Thelma Bush and Beverly R. Williams.

4. Counsel for Duttry has taken the following discovery depositions:
  - a. Stephen Jilk. Jilk was the timber resources manager for Industrial Timber and Land Company<sup>1</sup> and was responsible for managing the timber on the property in question. Jilk met with Paul Mitchell to discuss the cutting which had occurred, he cruised the Cherry Timber property to determine what had been cut, and he negotiated the establishment of the escrow account with Paul Mitchell.
  - b. Chris Guth. Guth was an employee of Industrial Timber and Land Company and he discovered that Mitchell Lumber was wrongfully cutting timber on Cherry Timber's property.
5. Counsel for Duttry has now noticed the deposition of Michael Drusinsky, the President of Cherry Timber Associates, Inc. True and correct copies of the Notice of Deposition and Subpoena served by Counsel for Duttry are attached hereto as Exhibits 1 and 2, respectively.
6. Michael Drusinsky maintains his office in Beechwood, Ohio, and he has no personal knowledge regarding the facts and circumstances relating to the taking of the timber, or the identity or whereabouts of witnesses or documents related to the incident.
7. The documents identified in the Subpoena are either of record in Clearfield County or have previously been produced at the time of the deposition of Stephen

---

<sup>1</sup> Cherry Timber Associates, Inc., Chagrin Land Limited Partnership and Industrial Timber and Land Company are affiliated companies with common ownership. Michael Drusinsky is the majority owner of each of the companies.

Jilk. A copy of the Subpoena served immediately prior to the discovery deposition of Stephen Jilk is attached hereto as Exhibit 3.

8. Requiring Michael Drusinsky to appear for a deposition in Clearfield, Pennsylvania, when he has no personal knowledge regarding the facts and circumstances surrounding the event, and when documents requested in the Subpoena have previously been produced, will subject Michael Drusinsky to unreasonable annoyance, burden and expense.

WHEREFORE, the Plaintiffs move your Honorable Court for the entry of a Protective Order prohibiting the deposition of Michael Drusinsky.

Respectfully Submitted,

DALE WOODARD LAW FIRM

By Keith M. Demich  
Attorneys for Cherry Timber Associates, Inc.  
and Chagrin Land Limited Partnership



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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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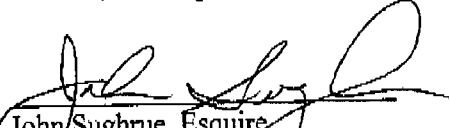
No. 06-1498-CD

**NOTICE OF TAKING OF DEPOSITION**

TO: Michael Drusinsky  
c/o Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

**TAKE NOTICE** that pursuant to the Pennsylvania Rules of Civil Procedure, the deposition upon oral examination will be taken of Michael Drusinsky, President of Cherry Timber Associates, Inc., before a notary public or other person duly authorized by law to administer oaths in the Law Offices of John Sughrue, 225 East Market Street, Clearfield, PA, 16830, on Tuesday, October 28, 2008 at 10:00 a.m., at which time you are invited to attend and participate.

The purpose and scope of said deposition will include inquiry into all facts and circumstances surrounding matters alleged in the above-captioned lawsuit, including the identity and whereabouts of witnesses and documents, for the purpose of discovery, and for use at trial.

  
John Sughrue, Esquire  
Attorney for Defendant, John D. Duttry

Date of Notice: September 19, 2008

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on September 19, 2008, I caused Defendant's Notice of Taking of Deposition of and Subpoena dated September 19, 2008 to Michael Drusinsky, President of Cherry Timber Associates, Inc., to be served on the following and in the manner indicated below:

**By Facsimile and United States Mail, First Class, Postage Prepaid**  
**Addressed as Follows:**

Mr. Michael Drusinsky  
c/o Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298  
Fax: 814-437-3212

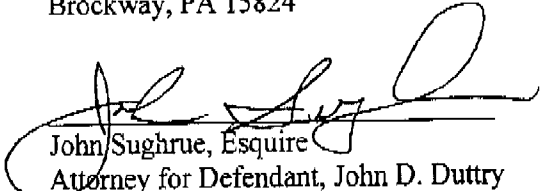
Christopher E. Mohny, Esquire  
25 East Park Avenue, Suite 6  
DuBois, PA 15801  
Fax: 814-375-1088

**By United States Mail, First Class, Postage Prepaid**  
**Addressed as Follows:**

Ms. Thelma D. Bush  
450 Salada Road  
DuBois, PA 15801

Ms. Beverly Copelli  
1220 Second Avenue  
Brockway, PA 15824

Date: September 19, 2008

  
John Sughrue, Esquire  
Attorney for Defendant, John D. Duttry

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELDCherry Timber Associates, Inc.  
Chagrin Land Limited Partnership  
Plaintiff(s)

Vs.

Audra Mitchell  
John D. Duttry  
Thelma Bush  
Beverly R. Williams  
Defendant(s)

No. 2006-01498-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO  
RULE 4009.22TO: Michael Drusinsky c/o Keith M. Penrick, Esquire  
(Name of Person or Entity)Within twenty (20) days after service of this subpoena, you are ordered by the Court to  
produce the following documents or things:Deeds, agreements, documents and other writings (1) upon which ownership  
alleged in Complaint para 1b. is based; (2) related to purchase or acquisition  
of real property in Huston Twp., Clfd. Cty., PA prior to Jn. 1995

(Address)

To: John Sughrue, Esquire at the address below

You may deliver or mail legible copies of the documents or produce things requested by  
this subpoena, together with the certificate of compliance, to the party making this request at the  
address listed above. You have the right to seek in advance the reasonable cost of preparing the  
copies or producing the things sought.If you fail to produce the documents or things required by this subpoena within twenty  
(20) days after its service, the party serving this subpoena may seek a court order compelling you  
to comply with it.

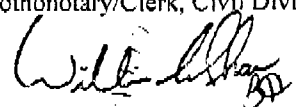
THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: John Sughrue, Esquire  
ADDRESS: 225 East Market Street  
Clearfield, PA 16830  
TELEPHONE: 814-765-1704  
SUPREME COURT ID # 01037  
ATTORNEY FOR: John D. Duttry

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division

Deputy

  
WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2010  
Clearfield Co., Clearfield, PADATE: Friday, September 19, 2008  
Seal of the Court

COMMONWEALTH OF PENNSYLVANIA  
CLEARFIELD COUNTYCherry Timber Associates, Inc.  
Chagrin Land Limited Partnership  
Plaintiff(s)

Vs.

No 2006-01498-CD

Audra Mitchell  
John D. Duttry  
Thelma Bush  
Beverly R. Williams  
Defendant(s)

## SUBPOENA TO ATTEND AND TESTIFY

TO: Steven Jilk c/o Keith M. Pemrick, Esquire, Dale Woodard Law Firm,  
1030 Liberty Street, Franklin, PA 16323-12981 You are ordered by the Court to come to the Board Room of the Clarion Hotel,  
1896 Rich Highway, DuBois, PA 15801

(Specify Courtroom or other place)

at Clearfield County, Pennsylvania, on Thurs. 4/17/08 at 12:00  
o'clock, P. M., to testify on behalf of John D. Duttry

in the above

case, and to remain until excused

2 And bring with you the following: all maps, surveys, field notes, written or  
memorialized records/writings of conversations with Mary Jo Duttry, John  
Duttry and Paul Mitchell and all other documents in your possession or control,  
relating to 58 acres, Huston Twp., lawsuit subject.If you fail to attend or to produce the documents or things required by this subpoena, you may be  
subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including  
but not limited to costs, attorney fees and imprisonment.

ISSUED BY A PARTY/COUNSEL IN COMPLIANCE WITH P.A.R.C.P. No. 234.2(a)

NAME: John Sughrue, Esquire  
ADDRESS: 23 North Second Street  
Clearfield, PA 16830  
TELEPHONE: 814-765-1704  
SUPREME COURT ID # 01037

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division

Deputy

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan., 2010  
Clearfield Co. Clearfield, PADATE: Tuesday, April 15, 2008  
Seal of the CourtOFFICIAL NOTE: This form of subpoena shall be used whenever a subpoena is issuable, including hearings in  
connection with depositions and before arbitrators, masters, commissioners, etc. in compliance with P.A.R.C.P. No.  
234.1. If a subpoena for production of documents, records or things is desired, complete Paragraph 2.

**CERTIFICATE OF SERVICE**

I, Keith M. Pemrick, Esquire, hereby certify that a true and correct copy of the foregoing Plaintiffs' Motion for Protective Order has been served this 24<sup>th</sup> day of September, 2008, as follows:


by U.S. first-class mail, postage prepaid and facsimile transmission on:

John Sughrue, Esquire  
Sughrue and Kesner  
23 North Second Street  
Clearfield, PA 16830  
Fax: (814) 765-6959

by U.S. first-class mail, postage prepaid on:

Thelma D. Bush  
450 Salada Road  
DuBois, PA 15801

Beverly Williams  
1220 Second Avenue  
Brockway, PA 15824

  
\_\_\_\_\_  
Keith M. Pemrick

**FILED**

**SEP 26 2008**

William A. Shaw  
Prothonotary/Clerk of Courts

CHERRY TIMBER ASSOCIATES, INC., )  
and CHAGRIN LAND LIMITED )  
PARTNERSHIP, )

Plaintiffs, )

v. )

AUDRA MITCHELL, JOHN D. DUTTRY )  
THELMA BUSH and BEVERLY R. )  
WILLIAMS a/k/a BEVERLY COPELLI, )

Defendants. )

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

Civil Action

No. 06-1498-CD

**ORDER**

AND NOW, October \_\_\_\_, 2008, upon consideration of the within Motion for Protective

Order, it is HEREBY ORDERED THAT:

1. The Motion is granted.
2. John D. Duttry is prohibited from taking the discovery deposition of Michael Drusinsky.

BY THE COURT

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J.

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

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

**FILED**

SEP 25 2008

0/12/08  
William A. Shaw  
Prothonotary/Clerk of Courts

5 CEN TO ATT

**Type of Case:** Civil Action

**Type of Pleading:** Motion to Reschedule  
Argument and Pre-Trial Conference

**Filed on Behalf of:** Defendant, John D. Duttry

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
225 East Market Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**Other Counsel of Record:**

Keith Pemrick, Esq.  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

Christopher E. Mohney  
25 East Park Avenue, Ste. 6  
DuBois, PA 15801

Thelma D. Bush, Pro Se  
450 Salada Road  
DuBois, PA 15801

Ms. Beverly Copelli, Pro Se  
1220 Second Avenue  
Brockway, PA 15824

#34



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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**MOTION TO RESCHEDULE ARGUMENT AND PRE-TRIAL CONFERENCE**

To the Honorable, Fredric J. Ammerman, President Judge of Said Court,

**AND NOW**, comes Defendant, JOHN D. DUTTRY, by his Attorney, John Sughrue, and asks the Court to reschedule Argument on Motions to Strike Case from Trial List and Motion for Protective Order filed by Plaintiffs which is presently scheduled for October 2, 2008 at 2:15 p.m. and in support thereof, represents the following:

1. Plaintiffs placed the above captioned matter on the Court's Trial List.
2. Defendant, John Duttry, filed a Motion to Strike the Case from the Trial List for various reasons, including principally that Defendants had not concluded Discovery. Defendant also filed Notice of Deposition on Michael Drusinsky, principal owner of Plaintiffs.
3. Plaintiffs have filed an Answer opposing striking the case from the list and have filed a Motion for a Protective Order on Mr. Drusinsky's Deposition.
4. Argument is scheduled on all Motions for Oct. 2, 2008 at 2:15 p.m.

5. Defense Counsel has a conflict on that date. In particular, he is scheduled to be out of town from October 2, 2008 through October 6, 2006 on a Chesapeake sailing trip vacation that was scheduled several months ago and prepaid with a substantial sum.

6. This Motion is filed at this time because Defense Counsel mistakenly believed that he did not have to travel to Lancaster, PA, until approximately 5:00 p.m. on the evening of October 2, 2008 to meet the travel agent. At a pre-trip meeting on September 22, 2008, Defense Counsel received more details, including the fact that the travel group was departing from Lancaster at 12:00 p.m. on October 2, 2008 by van to meet the ship in Maryland.

7. Defense counsel could arrange for other counsel to cover the Argument, but, because of the complexity of the case, particularly the fact situation, believes it would be most economical and efficient for all concerned if Defense Counsel personally argued the Motion.

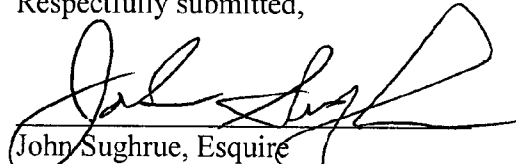
8. On September 24, 2008, Defense Counsel advised Plaintiff's Attorney, Keith Pemrick, Esquire, of the conflict and his request and that a Motion to Reschedule would be filed and requested his position on that matter.

9. Mr. Pemrick advises Defense Counsel, per attached letter of 9/24/08, that he does not oppose rescheduling of the Argument but notes that the Pre-Trial Conference is also scheduled for October 2, 2008. A fact that was inadvertently overlooked by Defense Counsel. By phone conversation of 9/25/08, Plaintiffs' Counsel indicated that he would not object to the separation of the Motion Arguments' date and the Pre-Trial Conference date and that he would be willing to participate by phone on the Motions but obviously would be present for the Pre-Trial Conference. Plaintiffs' Counsel noted that he was not available on September 29<sup>th</sup>; September 30<sup>th</sup> before 12:00 p.m.; October 1<sup>st</sup>, and October 8-14.

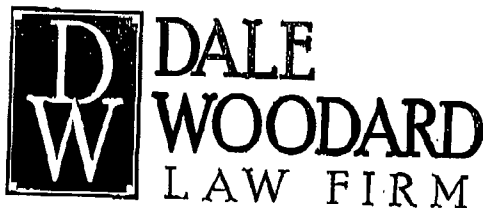
10. Defendant suggests to the Court that the single issue Motion is rather straightforward and could be argued by phone conference in the interest of expediency and in recognition the fact that Mr. Pemrick is based a substantial distance away in Franklin, Pennsylvania.

**WHEREFORE**, Defendant, John Duttry, by his Attorney, respectfully moves the Honorable Court to reschedule Argument on outstanding Motions and Pre-Trial Conference scheduled in the above captioned matter on October 2, 2008 to separate dates with the provision that Plaintiffs' Counsel would participate in the Motions' Argument by phone; and, **FURTHER**, prior to entering an Order on said request, to issue a Rule directed to the Plaintiff to Show Cause, if any, why the Prayer of this Motion should not be granted.

Respectfully submitted,

  
John Sughrue, Esquire  
Attorney for Defendant, John D. Duttry

James M. Greenfield  
Keith M. Pemrick  
Brian M. Spaid  
Joseph H. Keebler, Jr.



1030 Liberty Street  
Franklin, PA 16323-1298  
814/432-2181  
FAX 814/437-3212

Raymond S. Woodard  
(Of Counsel)  
Ralph L. Montgomery, Jr.  
(Of Counsel)  
Robert M. Dale  
(1905-1983)

email: pemricklaw@csonline.net  
website: www.dalewoodard.com

September 24, 2008

VIA: FACSIMILE TRANSMISSION

John Sughrue, Esquire  
Sughrue and Kesner  
23 North Second Street  
Clearfield, PA 16830

Re: Cherry Timber Associates, Inc., et al., v. John D. Duttry, et al.

Dear John:

I am not opposed to rescheduling argument on your Motion to Strike from October 2. However, I have been advised by the Court Administrator that the Court also intends to conduct the Pre-Trial Conference on October 2 so you may need to clarify what is going to happen with the Pre-Trial Conference if the argument on the Motion is moved. I am not available for a rescheduled argument on the following dates: September 29; September 30 (before 12:00 p.m.); October 1; October 8 - 14. If I can participate by phone I would prefer to do that.

Also, I am going to be filing a Motion for Protective Order with respect to your notice of the deposition of Michael Drusinsky. We spoke to the Court Administrator and the Judge is going to schedule argument on that Motion on October 2 at 2:15 p.m.

Sincerely yours,

DALE WOODARD LAW FIRM

By Keith M. Pemrick  
Keith M. Pemrick

KMP/bsb  
cc: Chris Guth

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on September 25, 2008, I caused MOTION TO  
RESCHEDULE ARGUMENT AND PRE-TRIAL CONFERENCE to be served on the following  
and in the manner indicated below:

**By United States Mail, First Class, Postage Prepaid**  
**Addressed as Follows:**

Court Administrator  
Clearfield County Courthouse  
1 North Second Street  
Clearfield, PA 16830

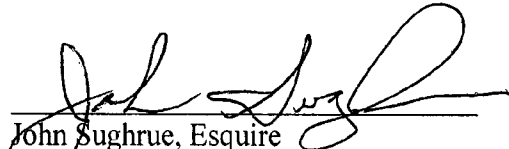
Christopher E. Mohny, Esquire  
25 East Park Avenue, Suite 6  
DuBois, PA 15801

Ms. Beverly Copelli  
1220 Second Avenue  
Brockway, PA 15824

Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

Ms. Thelma D. Bush  
450 Salada Road  
DuBois, PA 15801

Date: September 25, 2008

  
John Sughrue, Esquire  
Attorney for Defendant, John D. Duttry

**FILED**

**SEP 25 2008**

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



CHERRY TIMBER ASSOCIATES, INC., and CHAGRIN LAND LIMITED PARTNERSHIP,	)	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
AUDRA MITCHELL, JOHN D. DUTTRY THELMA BUSH and BEVERLY R. WILLIAMS a/k/a BEVERLY COPELLI,	)	Civil Action
	)	
Defendants.	)	No. 06-1498-CD

V.

Civil Action

No. 06-1498-CD

To: William A. Shaw, Sr., Prothonotary

Please mark the above captioned action settled and discontinued as to Audra Mitchell **only**. This Praecipe for Partial Discontinuance is not intended, and shall not be construed, as a discontinuance of any claims asserted by or against the Plaintiff or John D. Duttry, Thelma Bush or Beverly R. Williams, a.k.a Beverly Copelli.

DALE WOODARD LAW FIRM

By Scott M. Pernich  
Attorneys for Plaintiffs



**CERTIFICATE OF SERVICE**


I, Keith M. Pemrick, Esquire, hereby certify that a true and correct copy of the foregoing Praecipe for Partial Discontinuance has been served by U.S. first-class mail, postage prepaid, this 22<sup>nd</sup> day of September, 2008, as follows:

John Sughrue, Esquire  
Sughrue and Kesner  
23 North Second Street  
Clearfield, PA 16830

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

Thelma D. Bush  
450 Salada Road  
DuBois, PA 15801

Beverly Copelli  
1220 Second Avenue  
Brockway, PA 15824

  
\_\_\_\_\_  
Keith M. Pemrick

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,  
Plaintiffs,

v.

AUDRA MITCHELL, JOHN D. DUTTRY  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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

Civil Action

No. 06-1498-CD

5 FILED

SEP 24 2008

M 12:30/10 (60)

William A. Shaw

Prothonotary/Clerk of Courts

1 CERT TO

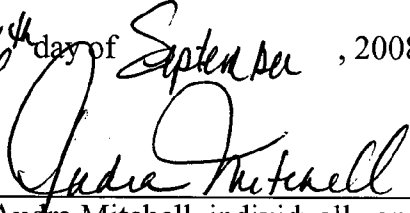
ATTY

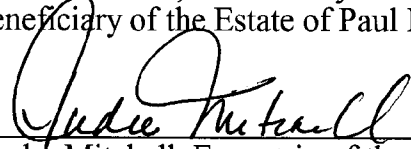
**RELEASE OF ALL CLAIMS**

FOR AND IN CONSIDERATION OF being released as a defendant in the above captioned action, the undersigned (hereinafter sometimes referred to as "Releasor") being of lawful age, individually and as sole beneficiary and Executrix of the Estate of Paul L. Mitchell, **RELEASES** Cherry Timber Associates, Inc., Chagrin Land Limited Partnership, John D. Duttry, Thelma Bush and Beverly R. William, a.k.a Beverly Copelli, and all other individuals or entities whether herein named or not, of and from any and all past, present and future actions, causes of action, claims, demands, or right to the ownership of the escrow funds currently being held in a Certificate of Deposit at First Commonwealth Bank (Account No. 2460-000-3006808) which are the subject of the above captioned Declaratory Judgment action. This **RELEASE** is being executed pursuant to an Order entered August 20, 2008, by the Honorable Fredric J. Ammerman in the above captioned action, a copy of which is attached hereto as Exhibit 1.

Releasor further states that she has read the foregoing **RELEASE** and knows the contents thereof, that she has had the opportunity to consult with an attorney of her choice concerning it, and that she signs the same as her own free act. Releasor further acknowledges that the original executed **RELEASE** will be filed of record in the above captioned action.

WITNESS my hand and seal this 16<sup>th</sup> day of September, 2008.

  
\_\_\_\_\_  
Audra Mitchell, individually and as sole  
beneficiary of the Estate of Paul L. Mitchell

  
\_\_\_\_\_  
Audra Mitchell, Executrix of the  
Estate of Paul L. Mitchell

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

CHERRY TIMBER ASSOCIATES, INC , and  
CHAGRIN LAND LIMITED PARTNERSHIP,  
Plaintiffs

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R. WILLIAMS,  
a/k/a BEVERLY COPELLI,  
Defendants

No 06-1498-CD

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\*  
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\*  
\*  
\*  
\*

ORDER

NOW, this 20<sup>th</sup> day of August, 2008 after argument on Defendant Audra Mitchell's Petition for Order to Discontinue Action as to Defendant Audra Mitchell, and upon stipulation made on the record before the Court of Defendant Audra Mitchell as follows:

- 1 That she, both individually and as the sole heir of the Estate of Paul Mitchell, releases any and all claim and/or right to the ownership of the escrow money that is the subject of this litigation; and
- 2 That she, to the extent she has standing to do so, agrees to cooperate by executing any reasonable document required to be signed to remove Mitchell Lumber Company as a joint tenant on the escrow account for which ownership is the subject of this litigation

In consideration of the Petition and Stipulation it is hereby ORDERED and DECREED as follows:

- 1 The relief requested in the Petition for Order to Discontinue is granted
- 2 Audra Mitchell shall execute a Release individually and as sole beneficiary and Executrix of the Estate of Paul L. Mitchell releasing any claim she or

the Estate has to the funds being held in escrow which are the subject of this litigation

3. Upon execution of the Release by Audra Mitchell, the Plaintiffs shall mark this action discontinued as to Audra Mitchell only
4. Audra Mitchell shall sign all documents and take all action necessary to remove the name of Mitchell Lumber Company from the account (Account No. 2460-000-3006808) at First Commonwealth Bank in which the escrow funds are being held
5. No disbursements shall be made from the funds being held at First Commonwealth Bank (Account No. 2460-000-3006808) except as directed by Order of Court.
6. That First Commonwealth Bank shall on a quarterly basis provide a statement of said account to Keith Pemrick, Esquire, of Franklin, Pennsylvania, and John Sughrue, Esquire of Clearfield, Pennsylvania
7. Scott Jones is relieved of all duties and responsibilities as escrow agent for the funds being held at First Commonwealth Bank.
8. This action shall continue as to all Defendants other than Audra Mitchell

BY THE COURT,

/S/ Fredric J Ammerman

FREDRIC J. AMMERMAN  
President Judge

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

AUG 20 2000

Attest.

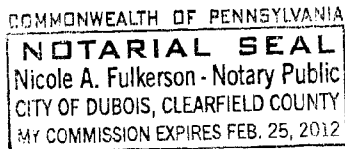
*[Signature]*  
Fred J. Ammerman  
Clerk

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF CLEARFIELD )

SS:

On this 16<sup>th</sup> day of September, 2008, before me personally appeared Audra Mitchell, known to me, or satisfactorily proven to be, the person described herein, and who executed the foregoing Release and who acknowledges that she voluntarily executed the same.

WITNESS my hand and official seal.



**FILED**  
**SEP 24 2008**  
Prothonotary/Clerk of Courts  
William A. Shaw



CHERRY TIMBER ASSOCIATES, INC.,	)	IN THE COURT OF COMMON PLEAS OF
and CHAGRIN LAND LIMITED	)	CLEARFIELD COUNTY, PENNSYLVANIA
PARTNERSHIP,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
AUDRA MITCHELL, JOHN D. DUTTRY	)	Civil Action
THELMA BUSH and BEVERLY R.	)	
WILLIAMS a/k/a BEVERLY COPELLI,	)	
	)	
Defendants.	)	No. 06-1498-CD

**PLAINTIFFS' RESPONSE TO MOTION TO  
STRIKE CASE FROM TRIAL LIST**

NOW come the plaintiffs, through their undersigned counsel, and file this Response to the Motion to Strike Case from Trial List filed by John D. Duttry:

1. Denied. To date discovery depositions have been taken of the following individuals:
  - a. Steven Jilk and Chris Guth, the employees and representatives of the plaintiffs who have personal knowledge regarding the circumstances leading up to, and following the establishment of, the escrow fund which is the subject of this litigation;
  - b. Audra Mitchell and John D. Duttry, the defendants who have personal knowledge regarding the circumstances leading up to, and following the



establishment of, the escrow fund which is the subject of this litigation;  
and

- c. Scott V. Jones, Esquire, the person chosen to establish and maintain the escrow fund pending resolution of the dispute over ownership of the funds.

As noted in the Motion to Strike, counsel for John D. Duttry advised the undersigned upon the completion of the discovery deposition of Scott Jones that there was no reason that this case could not be listed for trial. Prior to stating in the Motion to Strike that he “intends to take the Deposition of the controlling owner of the Plaintiffs and to identify witnesses and secure copies of documents in Plaintiffs’ possession”, counsel for Duttry has never indicated that additional discovery is needed in this case. Answering further, the purported discovery is unreasonable and unnecessary for the following reasons:

- a. The “controlling owner” of the plaintiffs has no personal knowledge of any of the events surrounding the establishment or maintenance of the escrow fund, and it would be unreasonable to require the owner of these companies to submit to questioning when the two representatives of the company who have personal knowledge about the events surrounding the escrow funds have already been deposed;
- b. The pleadings in this case closed on December 4, 2006, when the plaintiffs filed their Reply to New Matter and Answer to Counterclaim of Duttry. In the ensuing twenty-one (21) months, Duttry has not served written discovery on any party other than serving a Subpoena Duces Tecum, directed to Steven Jilk, by facsimile on plaintiffs’ counsel the day

before the Jilk deposition. A true and correct copy of that Subpoena is attached hereto as Exhibit 1. Notwithstanding the short notice, Steven Jilk produced all of the documents identified in the Subpoena. Counsel for Duttry did not ask Mr. Jilk any questions about the documents during his discovery deposition on April 17, nor did he ask Chris Guth, the designated representative of the Plaintiffs, any questions about the documents which had been produced on April 17 at the time of his discovery deposition on May 1, as evidenced by the pages from the deposition transcript of Chris Guth attached hereto as Exhibit 2.

Local Rule 212.2 does not require a party to anticipate whether an opposing party “intends to file Pre-Trial Motions”, and no such Motions have ever been identified, much less filed, in this case. The Plaintiffs have fully complied with subsection (a)(1) of L.R. 212.2, and the filing of a Court Order limiting discovery to a period ending more than thirty (30) days prior to the filing of the Praecipe was not required before this case could be listed for trial.

2. Admitted.

3. Denied for the reasons set forth in Paragraph 1 above.

4. Admitted.

5. Admitted. Answering further, the transcript of the deposition testimony of Scott Jones consists of thirty-one (31) pages of testimony, and counsel for Duttry has not stated in what way the receipt of the transcript on August 28 justifies striking this case from the Trial List.

6. Admitted. Answering further, the Order entered by the Court on August 20, 2008, relates to the dismissal of Audra Mitchell as a party in this lawsuit, and counsel for

Duttry has not stated how the entry of that Order would justify striking this case from the Trial List.

7. It is admitted that defense counsel told Plaintiffs' counsel following the conclusion of the Scott Jones deposition that there was no reason why the case could not be placed on the trial list.


8. Admitted.

9. Denied for the reasons hereinbefore set forth in this Response.

WHEREFORE, the Plaintiffs move your Honorable Court to deny the Motion to Strike Case from Trial List filed by John D. Duttry.

Respectfully Submitted,

DALE WOODARD LAW FIRM

By   
Attorneys for Cherry Timber Associates, Inc.  
and Chagrin Land Limited Partnership

COMMONWEALTH OF PENNSYLVANIA  
CLEARFIELD COUNTYCherry Timber Associates, Inc.  
Chagrin Land Limited Partnership  
Plaintiff(s)

Vs.

No 2006-01498-CD

Audra Mitchell  
John D. Duttry  
Thelma Bush  
Beverly R. Williams  
Defendant(s)

## SUBPOENA TO ATTEND AND TESTIFY

TO: Steven Jilk c/o Keith M. Pemrick, Esquire, Dale Woodard Law Firm,  
1030 Liberty Street, Franklin, PA 16323-12981 You are ordered by the Court to come to the Board Room of the Clarion Hotel,  
1896 Rich Highway, DuBois, PA 15801

(Specify Courtroom or other place)

at Clearfield County, Pennsylvania, on Thurs. 4/17/08 at 12:00  
o'clock, P. M., to testify on behalf of John D. Duttry

in the above

case, and to remain until excused

2 And bring with you the following: all maps, surveys, field notes, written or  
memorialized records/writings of conversations with Mary Jo Duttry, John  
Duttry and Paul Mitchell and all other documents in your possession or control,  
relating to 58 acres, Huston Twp., lawsuit subject.If you fail to attend or to produce the documents or things required by this subpoena, you may be  
subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including  
but not limited to costs, attorney fees and imprisonment.

ISSUED BY A PARTY/COUNSEL IN COMPLIANCE WITH PA.R.C.P. No. 234.2(a)

NAME: John Sughrue, Esquire  
ADDRESS: 23 North Second Street  
Clearfield, PA 16830  
TELEPHONE: 814-765-1704  
SUPREME COURT ID # 01037

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division

Deputy

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2010  
Clearfield Co. Clearfield, PADATE: Tuesday, April 15, 2008  
Seal of the CourtOFFICIAL NOTE: This form of subpoena shall be used whenever a subpoena is issuable, including hearings in  
connection with depositions and before arbitrators, masters, commissioners, etc. in compliance with PA.R.C.P. No.  
234.1. If a subpoena for production of documents, records or things is desired, complete Paragraph 2

COURT OF COMMON PLEAS  
CLEARFIELD COUNTY, PENNSYLVANIA

CHERRY TIMBER ASSOCIATES, INC., :  
AND CHAGRIN LAND LIMITED :  
PARTNERSHIP, :  
PLAINTIFFS :

VS :

NO. 06-1498

AUDRA MITCHELL, JOHN D. DUTTRY, :  
THELMA BUSH AND BEVERLY R. :  
WILLIAMS A/K/A BEVERLY COPELLI, :  
DEFENDANTS :

DEPOSITION OF: CHRISTOPHER GUTH

TAKEN BY: DEFENDANT DUTTRY

BEFORE: BETH A. KRUPA, RPR, CRR  
NOTARY PUBLIC

DATE: JULY 17, 2008, 9:13 A.M.

PLACE: LAW OFFICES OF JOHN SUGHRUE  
225 EAST MARKET STREET  
CLEARFIELD, PENNSYLVANIA

APPEARANCES:

DALE WOODARD LAW FIRM  
BY: KEITH M. PEMRICK, ESQUIRE

FOR - PLAINTIFFS

LAW OFFICES OF JOHN SUGHRUE  
BY: JOHN SUGHRUE, ESQUIRE

FOR - DEFENDANT

1 A I don't.

2 Q Do you personally know how much timber  
3 Mitchell removed from land that you claim Cherry  
4 Timber owned?

5 A No.

6 Q And are you aware of any other records  
7 other than the ones we've already talked about and  
8 identified as Mr. Jilk's cruise and any valuations he  
9 might have made? Are you aware of any other  
10 documents that identify the timber cut and it's value  
11 besides what we've already talked about?

12 A Yes.

13 Q What other documents would exist?

14 A Mrs. Mitchell provided us with some  
15 tallies from their -- from logs that were delivered  
16 from that site as well as some summaries of those  
17 tallies.

18 Q Do you have possession of those  
19 documents at this time?

20 A I have copies of them.

21 Q Where are the original documents that  
22 Mrs. Mitchell provided?

23 A I have no idea.

24 Q You say you do personally in your  
25 possession have copies of those documents?

1           A           Copies of those documents, yes.

2                   ATTORNEY PEMRICK: I'll just state for  
3 the record that all of those documents were provided  
4 to Mr. Sughrue on the day of Mr. Jilk's deposition.

5                   ATTORNEY SUGHRUE: I will acknowledge  
6 that -- I was just going to cover that same item,  
7 that I will note that on that date you did turn  
8 certain documents over to me which I think -- which I  
9 didn't realize at the time, but may have included  
10 some documents that the source was Mitchell Lumber  
11 rather than just Jilk; is that correct?

12                  ATTORNEY PEMRICK: Yes.

13                  ATTORNEY SUGHRUE: Because we didn't do  
14 a real thorough inventory or description of the  
15 documents at that time.

16 BY ATTORNEY SUGHRUE:

17           Q           Are you aware of anything else that  
18 might be around in the way of documentation  
19 identifying what timber was cut, where it was sold,  
20 what it was sold for, what it's value was?

21           A           Yes.

22           Q           What else would you be aware of?

23           A           Mr. Jilk and Mr. Mitchell sold veneer  
24 logs from the job and there's some documentation as  
25 far as the volume and value of the veneer logs.

1           Q           And I do acknowledge having received  
2 records of veneer logs down to an outfit in West  
3 Virginia perhaps.

4           A           Don't remember where they were located.

5           Q           Counsel and I can identify and inventory  
6 the documents we have, I appreciate that. Are you  
7 aware of any other documents with respect to what was  
8 cut?

9           A           No.

10          Q           Are you aware of any documents other  
11 than what we've already discussed that locate,  
12 physically locates on the ground the timber that was  
13 cut?

14          A           No.

15          Q           So if the cruise documents prepared by  
16 Mr. Jilk that you have relating to the cruise done by  
17 Mr. Jilk, if he doesn't have a map locating the  
18 timber cut there, then as far as you know, no such  
19 map exists?

20          A           As far as I know, no such map, a map  
21 does not exist.

22          Q           Okay. Now, when you confronted the  
23 timber crew, had they just begun to cut or had some  
24 significant cutting already occurred prior to your  
25 observation?



**CERTIFICATE OF SERVICE**

I, Keith M. Pemrick, Esquire, hereby certify that a true and correct copy of the foregoing Plaintiffs' Response to Motion to Strike Case from Trial List has been served by U.S. first-class mail, postage prepaid, this 15<sup>th</sup> day of September, 2008, as follows:

John Sughrue, Esquire  
Sughrue and Kesner  
23 North Second Street  
Clearfield, PA 16830

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

Thelma D. Bush  
450 Salada Road  
DuBois, PA 15801

Beverly Williams  
1220 Second Avenue  
Brockway, PA 15824

  
\_\_\_\_\_  
Keith M. Pemrick

**FILED**

**SEP 17 2008**

William A. Shaw  
Prothonotary/Clerk of Courts

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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\*

No. 06-1498-CD

**ORDER**

AND NOW, to wit: this 29 day of August, 2008, upon consideration of Defendant, John D. Duttry's **Motion to Strike Case from Trial List**, a Rule is hereby issued upon Plaintiffs and Co-Defendants, to show cause, if any, why the Prayer of the said Motion should not be granted.

RULE RETURNABLE on the 22<sup>nd</sup> day of September, 2008, for filing written response.

HEARING ON THE MERITS of said Motion shall be held on the 2<sup>nd</sup> day of October, 2008 at 2:30 o'clock P.m. in Courtroom No. 4, Clearfield County Courthouse, 1 N. 2<sup>nd</sup> Street, Clearfield, Pennsylvania.

BY THE COURT

  
Judge

FILED 30C  
013:53/61 Atty Sughrue  
AUG 24 2008  
William A. Shaw  
Prothonotary/Clerk of Courts

#30

FILED

AUG 29 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 8/29/08

☒ 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—LAW

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

**Type of Case:** Civil Action

**Type of Pleading:** Motion to Strike Case from  
Trial List

**Filed on Behalf of:** Defendant, John D. Duttry

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
23 North Second Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**Other Counsel of Record:**

Keith Pemrick, Esq.  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

Christopher E. Mohney  
25 East Park Avenue, Ste. 6  
DuBois, PA 15801

Thelma D. Bush, Pro Se  
450 Salada Road  
DuBois, PA 15801

Ms. Beverly Copelli, Pro Se  
1220 Second Avenue  
Brockway, PA 15824

FILED 3cc  
013:47611  
AUG 28 2008

William A. Shaw  
Prothonotary/Clerk of Courts

(GW)

#29

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**MOTION TO STRIKE CASE FROM TRIAL LIST**

**To the Honorable Judges of said Court,**

**AND NOW**, comes Defendant, John D. Duttry, by his Attorney, John Sughrue, and moves that the above captioned case be stricken from the Trial List and in support thereof, represents the following:

1. Rule 212.2 relating to the Trial List has not been complied with as follows:

A. Discovery has not been completed;

B. Defendant intends to file Pre-Trial Motions, including Motion for Summary Judgment;

C. A Court Order has not been entered limiting the Discovery to a period ending more than thirty (30) days prior to the filing of the Praecipe for Trial.

2. This action has not been listed for Trial previously.

3. Discovery is not complete in that Defendant has taken the Deposition of three individuals working for the Plaintiffs and intends to take the Deposition of the controlling owner of the Plaintiffs and to identify witnesses and secure copies of documents in Plaintiffs'

possession. Further, Defendant intends to file Pre-Trial Motions, including one for Partial Summary Judgment.

4. There has been diligent activity in this case by all parties, including Movant.

5. That Movant Defendant completed the Deposition of Scott Jones, Attorney, on or about August 14, 2008. The Transcript of that Deposition was received from the Court Reporter today, August 28, 2008.

6. This Court on August 20, 2008 entered an Order in this case on a Pre-Trial issue that had been argued and briefed.

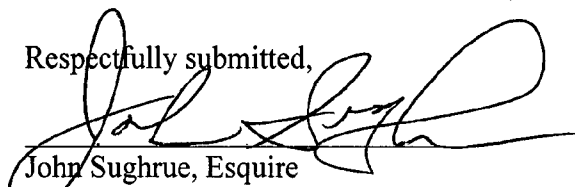
7. At the conclusion of said Deposition, Plaintiff Counsel asked Defense Counsel in passing if there was any reason why the case couldn't be placed on the Trial List and Defense Counsel, without much consideration, answered that he did not readily have any specific reason why it should not; however, upon further review and consideration Defense Counsel has determined that additional Discovery and Pre-Trial Motions are required.

8. Movant/Defense Counsel received a copy of the Praecipe on August 20, 2008, was absent from the office on August 25, 2008 and August 27, 2008 and mistakenly believed that he had ten days to object. Being one day late does not cause any actual prejudice to the Plaintiff.

9. Defense Counsel suggests that the Pre-Trial Conference scheduled by this Court on August 21, 2008 for October 2, 2008 be converted to a Status Conference.

WHEREFORE, the Movant respectfully moves the Honorable Court to Strike the above captioned case from the Trial List and to schedule a Status Conference for October 2, 2008.

Respectfully submitted,



John Sughrue, Esquire  
Attorney for Defendant

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on August 28, 2008, I caused MOTION TO STRIKE  
CASE FROM TRIAL LIST to be served on the following and in the manner indicated below:

**By United States Mail, First Class, Postage Prepaid**  
**Addressed as Follows:**

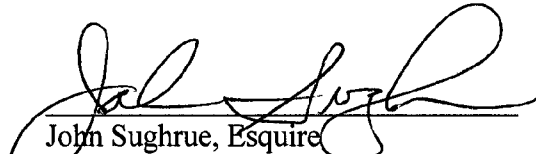
Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298  
Fax: 814-437-3212

Christopher E. Mohny, Esquire  
25 East Park Avenue, Suite 6  
DuBois, PA 15801  
Fax: 814-375-1088

Ms. Thelma D. Bush  
450 Salada Road  
DuBois, PA 15801

Ms. Beverly Copelli  
1220 Second Avenue  
Brockway, PA 15824

Date: August 28, 2008

  
John Sughrue, Esquire  
Attorney for Defendant, John D. Duttry



**FILED**

**AUG 28 2008**

William A. Shaw  
Prothonotary/Clerk of Courts

JA

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

CHERRY TIMBER ASSOCIATES, INC. and \*  
CHAGRIN LAND LIMITED PARTNERSHIP, \*  
Plaintiffs \*

vs. \*

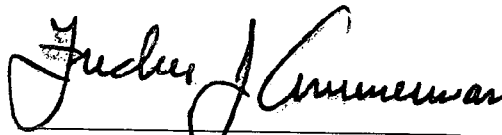
AUDRA MITCHELL, JOHN D. DUTTRY, \*  
THELMA BUSH and BEVERLY R. WILLIAMS, \*  
a/k/a BEVERLY COPELLI, \*  
Defendants \*

NO. 06-1498-CD

ORDER

AND NOW, this 21<sup>st</sup> day of August, 2008, it is the ORDER of this Court that Pre-trial conference in the above matter shall be held on the 2<sup>nd</sup> day of October, 2008 in Chambers at 2:30 p.m.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

5 FILED  
012:3951  
AUG 21 2008

William A. Shaw  
Prothonotary/Clerk of Courts

ICC Atty's:  
Pennick  
Mohney  
Sughrue  
Hopkins

(60)



FILED

AUG 21 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 8/21/08

     You are responsible for serving all appropriate parties.

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

     Plaintiff(s) X Plaintiff(s) Attorney      Other

     Defendant(s) X Defendant(s) Attorney

     Special Instructions:

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

CHERRY TIMBER ASSOCIATES, INC., and  
CHAGRIN LAND LIMITED PARTNERSHIP,  
Plaintiffs

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R. WILLIAMS,  
a/k/a BEVERLY COPELLI,  
Defendants

No. 06-1498-CD

**FILED** *icc Atty's:*  
*0110:12/20/08*  
**AUG 20 2008**

William A. Shaw  
Prothonotary/Clerk of Courts

*Pennick  
Mohney  
Sughrue  
Hopkins  
CST*

ORDER

NOW, this 20<sup>th</sup> day of August, 2008 after argument on Defendant Audra Mitchell's Petition for Order to Discontinue Action as to Defendant Audra Mitchell, and upon stipulation made on the record before the Court of Defendant Audra Mitchell as follows:

1. That she, both individually and as the sole heir of the Estate of Paul Mitchell, releases any and all claim and/or right to the ownership of the escrow money that is the subject of this litigation; and
2. That she, to the extent she has standing to do so, agrees to cooperate by executing any reasonable document required to be signed to remove Mitchell Lumber Company as a joint tenant on the escrow account for which ownership is the subject of this litigation.

In consideration of the Petition and Stipulation it is hereby ORDERED and DECREED as follows:


1. The relief requested in the Petition for Order to Discontinue is granted.
2. Audra Mitchell shall execute a Release individually and as sole beneficiary and Executrix of the Estate of Paul L. Mitchell releasing any claim she or

*#27*

the Estate has to the funds being held in escrow which are the subject of this litigation.

3. Upon execution of the Release by Audra Mitchell, the Plaintiffs shall mark this action discontinued as to Audra Mitchell only.
4. Audra Mitchell shall sign all documents and take all action necessary to remove the name of Mitchell Lumber Company from the account (Account No. 2460-000-3006808) at First Commonwealth Bank in which the escrow funds are being held.
5. No disbursements shall be made from the funds being held at First Commonwealth Bank (Account No. 2460-000-3006808) except as directed by Order of Court.
6. That First Commonwealth Bank shall on a quarterly basis provide a statement of said account to Keith Pemrick, Esquire, of Franklin, Pennsylvania, and John Sughrue, Esquire of Clearfield, Pennsylvania.
7. Scott Jones is relieved of all duties and responsibilities as escrow agent for the funds being held at First Commonwealth Bank.
8. This action shall continue as to all Defendants other than Audra Mitchell.

BY THE COURT



FREDRIC J. AMMERMAN  
President Judge

FILED

AUG 20 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 8/20/08

☐ 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:

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

v.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,

Defendants.

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

Civil Action

No. 06-1498-CD

Type of Pleading:  
Praecipe for Trial List

Filed on behalf of: Plaintiffs

Counsel of Record for this Party:

Keith M. Pemrick

Supreme Court I.D. No. 30322

Joseph H. Keebler

Supreme Court I.D. No. 76581

DALE WOODARD LAW FIRM

1030 Liberty Street

Franklin, Pennsylvania 16323-1298

Telephone: (814) 432-2181

Facsimile: (814) 437-3212

FILED  
m/10/44/61  
AUG 20 2008

William A. Shaw  
Prothonotary/Clerk of Courts

#326

CHERRY TIMBER ASSOCIATES, INC., )  
and CHAGRIN LAND LIMITED )  
PARTNERSHIP; )

Plaintiffs, )

v. )

AUDRA MITCHELL, JOHN D. DUTTRY )  
THELMA BUSH and BEVERLY R. )  
WILLIAMS a/k/a BEVERLY COPELLI, )

Defendants. )

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

Civil Action

No. 06-1498-CD

PRAECIPE FOR TRIAL LIST

To: William A. Shaw, Sr., Prothonotary

Please place the above captioned action on the next Civil Trial List. The undersigned hereby certifies that:

- a. The pleadings are closed and there are no outstanding motions;
- b. Discovery is complete and the case is ready for trial;
- c. The case is to be heard non-jury; and
- d. Notice of the filing of this Praecipe for Trial List has been given to all counsel of record and unrepresented parties.

DALE WOODARD LAW FIRM

By Keith M. Pennick  
Attorneys for Plaintiffs



CERTIFICATE OF SERVICE


I, Keith M. Pemrick, Esquire, hereby certify that a true and correct copy of the foregoing Praecept for Trial List has been served by U.S. first-class mail, postage prepaid, this 18<sup>th</sup> day of August, 2008, as follows:

John Sughrue, Esquire  
Sughrue and Kesner  
23 North Second Street  
Clearfield, PA 16830

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

Thelma D. Bush  
450 Salada Road  
DuBois, PA 15801

Beverly Copelli  
1220 Second Avenue  
Brockway, PA 15824

  
Keith M. Pemrick

**FILED**

**AUG 20 2008**

William A. Shaw  
Prothonotary/Clerk of Courts

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

CHERRY TIMBER ASSOCIATES, INC. :  
and CHAGRIN LAND LIMITED :  
PARTNERSHIP :

VS. :

NO. 06-1498-CD

AUDRA MITCHELL, JOHN D. DUTTRY, :  
THELMA BUSH and BEVERLY R. :  
WILLIAMS, a/k/a BEVERLY COPELLI :

O R D E R

AND NOW, this 17th day of July, 2008, following argument on the Petition filed on behalf of Audra Mitchell for Order to Discontinue, it is the ORDER of this Court that counsel for the Defendant, Audra Mitchell, the Plaintiffs, and John Duttry, supply the Court with proposed Order within no more than fifteen (15) days from this date. The Court has no objection to the Order being received by fax.

BY THE COURT,



President Judge

**FILED**  
JUL 18 2008  
William A. Shaw  
Prothonotary/Clerk of Courts

Atty. Penick  
Mohney  
Sughrue  
Hopkins

(60)

(22)

FILED

JUL 18 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 7/18/08

☐ 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—LAW

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

**Type of Case:** Civil Action

**Type of Pleading:** Answer of Defendant, John D.  
Duttry, to Audra Mitchell's Petition for Order to  
Discontinue Action

**Filed on Behalf of:** Defendant, John D. Duttry

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
225 East Market Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**Other Counsel of Record:**

Keith Pemrick, Esq.  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

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

Thelma D. Bush, Pro Se  
450 Salada Road  
DuBois, PA 15801

Ms. Beverly Copelli, Pro Se  
1220 Second Avenue  
Brockway, PA 15824

**FILED**  
O 9:21am GK GCL TO  
JUL 17 2008 ATTY SUGHRUE

William A. Shaw  
Prothonotary/Clerk of Courts

24

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**ANSWER OF DEFENDANT, JOHN D. DUTTRY, TO AUDRA MITCHELL'S  
PETITION FOR ORDER TO DISCONTINUE ACTION**

AND NOW, comes Defendant, John D. Duttry, by his attorney, John Sughrue, and responds to the Petition of Co-Defendant, Audra Mitchell, requesting an Order to discontinue action as to said Defendant as follows:

1-13. Defendant Duttry opposes discontinuance with respect to Defendant Mitchell, generally, and for the following reasons:

A. If she is the widow, sole heir and successor in interest to Paul Mitchell t/a Mitchell Lumber Company, she is an indispensable party, generally, and for the following reasons:

(1) The funds held in escrow by Attorney Scott Jones, which are the subject of this action, were deposited with Scott Jones by Paul Mitchell of Mitchell Lumber Company and Attorney Jones' escrow account is in the name of Mitchell Lumber Company, which gives Defendant Mitchell an apparent financial interest in the said funds;

(2) As a named Defendant, an adjudication with respect to the claims and counterclaims filed in this action are required unless there are appropriate stipulations of facts and Defendant Mitchell would, in fact, release Mitchell Lumber Company's interest

in the disputed funds and the Court replaced Mitchell Lumber Company on the trustee account with Defendant, John D. Duttry, as requested by Defendant Mitchell in Paragraph 10 of the Petition;

(3) Mitchell Lumber Company is a party to the Timber Harvest Agreement, which is at issue in this case;

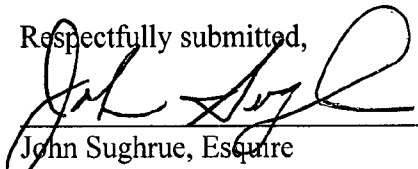
(4) That Defendant Mitchell is an indispensable party to Defendant Duttry's counterclaim (cross-claim) as set forth in his Answer and New Matter;

B. Under Pa.R.C.P. 229, only the Plaintiff may discontinue their action with respect to one Defendant;

C. After initially indicating, upon inquiry, that it appeared that Audra Mitchell was not making a claim to the funds, Defendant Duttry's counsel examined the matter from a procedural standpoint more closely and determined that Defendant Duttry could not consent to the discontinuance and that adjudication or proper stipulations would be required in order to allow the Court to make a full and complete determination of all issues in this case. Defendant Duttry's concerns were provided to Defendant Mitchell's Counsel by letter dated June 5, 2008, a copy of which is attached hereto and incorporated herein by reference.

WHEREFORE, Defendant Duttry respectfully moves the Honorable Court to deny Motion of Audra Mitchell or, in the alternative, to continue the matter pending an attempt by the parties to this action to stipulate to appropriate facts, adjudications, including the registration of the trustee account in dispute.

Respectfully submitted,



John Sughrue, Esquire  
Attorney for Defendant, John D. Duttry

**JOHN SUGHRUE**  
**Attorney at Law**

Phone (814) 765-1704

23 North Second Street  
Clearfield, PA 16830

Fax (814) 765-6959

June 5, 2008

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

**RE: Cherry Timber, et al. v. Audra Mitchell, et al.-**  
**No. 06-1498-C.D.**  
**Proposed termination of action with respect to Defendant, Audra Mitchell**

Dear Chris,

Since we spoke, I have been studying and researching this case a bit more. We have also concluded your client's deposition. Thinking about it, it now appears to me inappropriate to terminate the action with respect to Audra Mitchell. She was in the action, as I understand it, because Attorney Pemrick's theory with respect to an action for declaratory judgment.

In fact, Audra Mitchell's husband's company (who is not a party) generated the money that is in dispute and paid it to Scott Jones, apparently as an escrow agent. There has to be adjudication on the record of her rights, obligations or lack of rights and obligations.

As a result, it appears to me that your client does have an interest in this lawsuit that has to be adjudicated. Rather than discontinue the action as you propose, it appears to me that it would be more appropriate to have a stipulation of facts with respect to her. It would essentially place on the record her release and quitclaim of any interest in the funds to such individuals as ultimately determined by the Court to be entitled to the funds. If there was only one party interested in the funds, we could enter a judgment against your client in favor of the claimant of the funds but since there is a dispute over the proper claimant, we can't do that.

It appears to me that we need a stipulation of two or three facts and a release by her of any claim in the funds on the record. It appears to me that she wouldn't have to actively participate in the rest of the case. In consideration of her release of any interest in the funds, we can also stipulate to no further claims against Audra Mitchell. Ultimately, a judgment has to be entered against her to adjudicate her non-claim.



Christopher E. Mohnney

Page 2

6/5/08

I hope you understand what I am trying to say. Please think about it. By copy of this letter, I am giving my thoughts to Keith Pemrick and the other parties involved.

Please let me know what you conclude.

Very truly yours,

John Sughrue

JS/aw

cc: Keith Pemrick, Esquire  
Ms. Thelma Bush  
Ms. Beverly Copelli

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on July 17, 2008, I caused ANSWER OF  
DEFENDANT, JOHN D. DUTTRY, TO AUDRA MITCHELL'S PETITION FOR ORDER TO  
DISCONTINUE ACTION, to be served on the following and in the manner indicated below:

**By Personal Service:**

Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298  
Fax: 814-437-3212

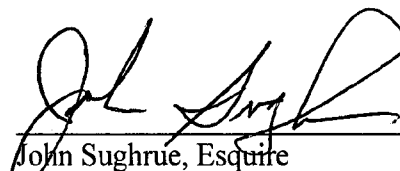
Christopher E. Mohnery, Esquire  
25 East Park Avenue, Suite 6  
DuBois, PA 15801  
Fax: 814-375-1088

Ms. Thelma D. Bush  
450 Salada Road  
DuBois, PA 15801

**By United States Mail, First Class, Postage Prepaid**  
**Addressed as Follows:**

Ms. Beverly Copelli  
1220 Second Avenue  
Brockway, PA 15824

Date: July 17, 2008

  
John Sughrue, Esquire  
Attorney for Defendant, John D. Duttry

**FILED**

**JUL 17 2008**

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

**FILE**

**JUL 17 2008**

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



CHERRY TIMBER ASSOCIATES, INC., ) IN THE COURT OF COMMON PLEAS OF  
and CHAGRIN LAND LIMITED ) CLEARFIELD COUNTY, PENNSYLVANIA  
PARTNERSHIP, )

Plaintiffs, )

v. )

AUDRA MITCHELL, JOHN D. DUTTRY ) Civil Action  
THELMA BUSH and BEVERLY R. )  
WILLIAMS a/k/a BEVERLY COPELLI, )

Defendants. )

No. 06-1498-CD

**RESPONSE TO PETITION FOR ORDER TO DISCONTINUE ACTION**  
**AS TO DEFENDANT AUDRA MITCHELL**

NOW come the plaintiffs, through their undersigned counsel, and file this Response to  
Petition for Order to Discontinue Action as to Defendant Audra Mitchell, and in support  
thereof state as follows:

1-6. Admitted.

7. It is admitted that Audra Mitchell, as the surviving spouse of Paul Mitchell, was  
named as a necessary party in this Declaratory Judgment action.

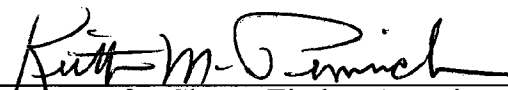
8. Admitted.

9. It is admitted that the Plaintiffs consent to this litigation being discontinued as to  
Audra Mitchell only, subject to the entry of an appropriate Order extinguishing  
any interest which Audra Mitchell or Mitchell Lumber Company may have in  
the escrow funds.

10. So much of the averment of Paragraph 10 of the Petition which states that John D. Duttry be named as a joint tenant on the escrow account is denied. To the contrary, the escrow account has been maintained under the name of Chagrin Land Limited Partnership and Mitchell Lumber Company for over thirteen (13) years, and no change should be made to that account other than removing Mitchell Lumber Company as a joint owner/tenant. The remaining averments in Paragraph 10 are admitted.
11. It is admitted that the Plaintiffs stipulate to the discontinuance of this action as to Audra Mitchell, subject to the entry of an appropriate Order.
12. Admitted.
13. Admitted.

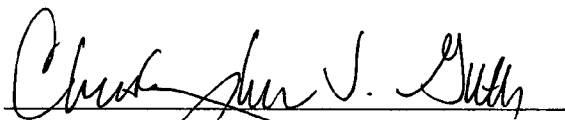
WHEREFORE, the Plaintiffs stipulate to the entry of an Order discontinuing this action as to Audra Mitchell only.

DALE WOODARD LAW FIRM

By   
Attorneys for Cherry Timber Associates, Inc.  
and Chagrin Land Limited Partnership

**VERIFICATION**

The undersigned states that the facts averred in the foregoing Response to Petition for Order of Discontinuance of Action as to Defendant Audra Mitchell are true and correct to the best of his knowledge, information and belief. The undersigned further states that he understands that false statements therein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

  
Chris Guth

Dated: June 9, 2008

**CERTIFICATE OF SERVICE**

I, Keith M. Pemrick, Esquire, hereby certify that a true and correct copy of the foregoing Response to Petition for Order to Discontinue Action as to Defendant Audra Mitchell has been served by U.S. first-class mail, postage prepaid, this 10<sup>th</sup> day of June, 2008, as follows:

John Sughrue, Esquire  
Sughrue and Kesner  
23 North Second Street  
Clearfield, PA 16830

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

Thelma D. Bush  
450 Salada Road  
DuBois, PA 15801

Beverly Williams  
1220 Second Avenue  
Brockway, PA 15824

  
Keith M. Pemrick



**FILED**

**JUN 12 2008**

William A. Shaw  
Prothonotary/Clerk of Courts



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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH and  
BEVERLY R. WILLIAMS, a/k/a  
BEVERLY COPELLI,

Defendants.

: NO. 06-1498-C.D.

: Type of Case: CIVIL ACTION

: Type of Pleading: PETITION FOR  
: ORDER TO DISCONTINUE  
: ACTION AS TO DEFENDANT  
: AUDRA MITCHELL

: Filed on behalf of: DEFENDANT  
: AUDRA MITCHELL

: Counsel of Record:  
: CHRISTOPHER E. MOHNEY,  
: ESQUIRE

: Supreme Court No.: 63494

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

FILED

019:4581  
MAY 15 2008

4cc  
Atty Mohney

William A. Shaw  
Prothonotary/Clerk of Courts

CR

#22

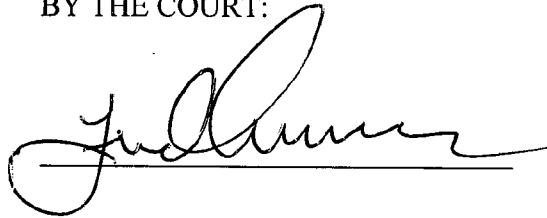
②③\*

DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU AND SERVE A COPY ON THE ATTORNEY OR PERSON FILING THE PETITION. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR THE RELIEF REQUESTED BY THE PETITIONER. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

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

Court Administrator  
Clearfield County Courthouse  
Second & Market Streets  
Clearfield, PA 16830  
(814) 765-2641, Ext. 50-51

BY THE COURT:

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

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

NO. 06-1498-C.D.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS, a/k/a BEVERLY COPELLI,

Defendants.

**PETITION FOR ORDER TO DISCONTINUE ACTION AS TO DEFENDANT**  
**AUDRA MITCHELL**

AND NOW, comes Defendant *AUDRA MITCHELL*, by and through her counsel, *CHRISTOPHER E. MOHNEY, ESQUIRE*, and files the following Petition for Order to Discontinue Action as to Defendant Audra Mitchell, pursuant to Pa.R.C.P. 229(b), and in support thereof avers the following:

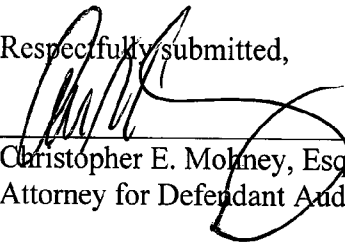
1. Plaintiffs initiated this action by the filing of a Complaint for Declaratory Judgment on September 14, 2006.
2. Plaintiffs allege, relevant to this petition, generally the following:
  - a. Plaintiffs and Defendants Duttry, Copelli and Bush own adjoining real property;
  - b. Defendant Duttry entered into a Timber Harvest Agreement dated October 18, 1994 with Mitchell Lumber Company;
  - c. Mitchell Lumber Company cut timber on Plaintiff's land;

- d. Mitchell Lumber Company paid \$45,000.00 into an escrow account back in 1995, and the account is titled in the names of Mitchell Lumber Company and Chagrin Land Limited Partnership; and
  - e. Plaintiffs are entitled to the escrow money, and all interest accrued thereon.
- 3. Defendant Duttry has answered, generally, that he is entitled to the escrow account money, in that any timber cut by Mitchell Lumber Company was cut from his property, not Plaintiffs' property.
  - 4. Mitchell Lumber Company was a sole proprietorship owned by Paul Mitchell.
  - 5. Paul Mitchell died on January 2, 2003, at which time the operations of Mitchell Lumber Company ceased.
  - 6. Defendant Audra Mitchell is the widow of Paul Mitchell.
  - 7. Defendant Audra Mitchell believes, and therefore avers, that she was joined in that she, as the surviving spouse of Paul Mitchell, may have claim or interest to the money in escrow, or otherwise be affected by the declaration of the Court to ultimately be made in this case.
  - 8. Defendant Audra Mitchell was deposed by counsel for Plaintiffs, Keith M. Pemrick, Esquire, and Defendant Duttry, John Sughrue, Esquire, on April 17, 2008.
  - 9. At the conclusion of her deposition, Mssrs. Pemrick and Sughrue informed the undersigned of they and their respective clients' willingness to consent to this litigation being discontinued as to Ms. Mitchell only.

10. Defendant Audra Mitchell stakes no claim to the money deposited into escrow by Mitchell Lumber Company, generally releases any claim to the money that she is deemed to have under law<sup>1</sup>, and requests the Court enter an Order permitting Mitchell Lumber Company to be removed as a joint tenant on the above-mentioned escrow account and replaced by Defendant JOHN D. DUTTRY.
11. Plaintiffs and Defendant Duttry, through their above-named respective counsel, stipulate to the Court granting leave to the discontinuance of this action as to Ms. Mitchell.
12. Defendants Williams a/k/a Copelli and Bush have no counsel of record, did not appear at the recent depositions, and since their counsel, David J. Hopkins, Esquire, withdrew his appearance have generally be communicative regarding this case.
13. Pursuant to Pa.R.C.P. 229(b)(1), a discontinuance may not be entered as to less than all defendants except upon the written consent of all parties or leave of court after notice to all parties.

WHEREFORE, Defendant Audra Mitchell requests this Honorable Court to enter a rule upon the parties to show cause why the above-captioned action should not be discontinued as to Defendant Audra Mitchell only.

Respectfully submitted,

  
\_\_\_\_\_  
Christopher E. Moloney, Esquire  
Attorney for Defendant Audra Mitchell

---

<sup>1</sup> In releasing any and claim she has to the escrow money, Ms. Mitchell is not releasing and/or assigning her interest to any other party or person; rather, she is releasing her interest as to the eventual recipient of the money as a result of this lawsuit.

**VERIFICATION**

I, AUDRA MITCHELL, being duly authorized to make this verification, have read the foregoing Petition for Leave to Discontinue Action as to Defendant Audra Mitchell. The statements therein are correct to the best of my personal knowledge or information and belief.

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

Date: 5-7-08

  
AUDRA MITCHELL



**FILED**

**MAY 15 2008**

William A. Shaw  
Prothonotary/Clerk of Courts

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

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

**Type of Case:** Civil Action

**Type of Pleading:** Certificate of Service for  
Notice of Taking of  
Deposition and Subpoena  
to Steven Jilk

**Filed on Behalf of:** Defendant, John D. Duttry

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
23 North Second Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**Other Counsel of Record:**

Keith Pemrick, Esq.  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

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

Thelma D. Bush, Pro Se  
450 Salada Road  
DuBois, PA 15801

Ms. Beverly Copelli, Pro Se  
1220 Second Avenue  
Brockway, PA 15824

FILED  
APR 16 2008

William A. Shaw  
Prothonotary/Clerk of Courts

401

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

\*  
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\*  
\*

No. 06-1498-CD

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on April 16, 2008, I caused Defendant's Notice of Taking of Deposition of and Subpoena to Steven Jilk to be served on the following and in the manner indicated below:

**By Facsimile and United States Mail, First Class, Postage Prepaid**  
**Addressed as Follows:**

Mr. Steven Jilk  
c/o Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298  
Fax: 814-437-3212

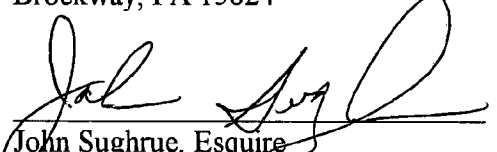
Christopher E. Mohny, Esquire  
25 East Park Avenue, Suite 6  
DuBois, PA 15801  
Fax: 814-375-1088

**By United States Mail, First Class, Postage Prepaid**  
**Addressed as Follows:**

Ms. Thelma D. Bush  
450 Salada Road  
DuBois, PA 15801

Ms. Beverly Copelli  
1220 Second Avenue  
Brockway, PA 15824

Date: April 16, 2008

  
John Sughrue, Esquire  
Attorney for Defendant, John D. Duttry

**FILED**

**APR 16 2008**

William A. Shaw  
Prothonotary/Clerk of Courts

CHERRY TIMBER ASSOCIATES, INC., )  
and CHAGRIN LAND LIMITED )  
PARTNERSHIP, )

Plaintiffs, )

v. )

AUDRA MITCHELL, JOHN D. DUTTRY, )  
THELMA BUSH and BEVERLY R. )  
WILLIAMS a/k/a BEVERLY COPELLI, )

Defendants. )

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

Civil Action

No. 06-1498-CD

**NOTICE OF DEPOSITION**

To: Audra Mitchell  
c/o Christopher E. Mohny, Esquire  
25 East Park Avenue  
Suite 6  
DuBois, PA 15801

FILED  
m/11/08/08  
APR 02 2008  
William A. Shaw  
Prothonotary/Clerk of Courts

YOU ARE hereby respectfully notified that Cherry Timber Associates, Inc., and Chagrin Land Limited Partnership, Plaintiffs in the above captioned action, will take the deposition of Audra Mitchell in the Board Room of the Clarion Hotel, 1896 Rich Highway, DuBois, PA 15801, upon oral examination on April 17, 2008, at 11:00 a.m., by a person authorized by law to administer an oath.

The deposition may be used for all purposes permitted under the Pennsylvania Rules of Civil Procedure including, but not limited to, use at trial in accordance with Pa. R.C.P. No. 4020(a)(3)(b).

DALE WOODARD LAW FIRM

By *Keith M. Pennington*  
Attorneys for Cherry Timber Associates, Inc.

Date: March 31, 2008

cc: John Sughrue, Esquire  
Thelma D. Bush  
Beverly Copelli  
Northwest Pennsylvania Court Reporters

20

**CERTIFICATE OF SERVICE**

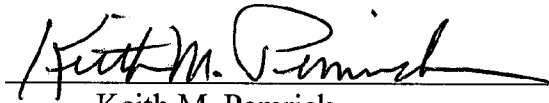
I, Keith M. Pemrick, Esquire, hereby certify that a true and correct copy of the foregoing Notice of Deposition has been served on counsel of record, by U.S. first-class mail, postage prepaid, this 31<sup>st</sup> day of March, 2008, as follows:

John Sughrue, Esquire  
Sughrue and Kesner  
23 North Second Street  
Clearfield, PA 16830

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

Thelma D. Bush  
450 Salada Road  
DuBois, PA 15801

Beverly Copelli  
1220 Second Avenue  
Brockway, PA 15824

  
Keith M. Pemrick

FILED

APR 02 2008

William A. Shaw  
Prothonotary/Clerk of Courts

CHERRY TIMBER ASSOCIATES, INC., )  
and CHAGRIN LAND LIMITED )  
PARTNERSHIP, )

Plaintiffs, )

v. )

AUDRA MITCHELL, JOHN D. DUTTRY, )  
THELMA BUSH and BEVERLY R. )  
WILLIAMS a/k/a BEVERLY COPELLI, )

Defendants. )

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

Civil Action

No. 06-1498-CD

**NOTICE OF DEPOSITION**

To: John D. Duttry  
c/o John Sughrue, Esquire  
23 North Second Street  
Clearfield, PA 16830

FILED  
MAY 11 2008  
APR 11 2008  
William A. Shaw  
Prothonotary/Clerk of Courts

YOU ARE hereby respectfully notified that Cherry Timber Associates, Inc., and Chagrin Land Limited Partnership, Plaintiffs in the above captioned action, will take the deposition of John D. Duttry in the Board Room of the Clarion Hotel, 1896 Rich Highway, DuBois, PA 15801, upon oral examination on April 17, 2008, at 10:00 a.m., by a person authorized by law to administer an oath.

The deposition may be used for all purposes permitted under the Pennsylvania Rules of Civil Procedure including, but not limited to, use at trial in accordance with Pa. R.C.P. No. 4020(a)(3)(b).

DALE WOODARD LAW FIRM

By Keith M. Woodard  
Attorneys for Cherry Timber Associates, Inc.

Date: March 31, 2008

cc: Christopher E. Mohny, Esquire  
Thelma D. Bush  
Beverly Copelli  
Northwest Pennsylvania Court Reporters

#19



**CERTIFICATE OF SERVICE**

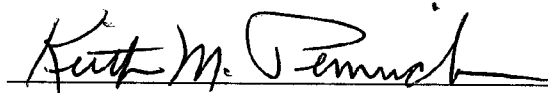
I, Keith M. Pemrick, Esquire, hereby certify that a true and correct copy of the foregoing Notice of Deposition has been served on counsel of record, by U.S. first-class mail, postage prepaid, this 31<sup>st</sup> day of March, 2008, as follows:

John Sughrue, Esquire  
Sughrue and Kesner  
23 North Second Street  
Clearfield, PA 16830

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

Thelma D. Bush  
450 Salada Road  
DuBois, PA 15801

Beverly Copelli  
1220 Second Avenue  
Brockway, PA 15824

  
Keith M. Pemrick

FILED

APR 02 2008

William A. Shaw  
Prothonotary/Clerk of Courts

(5)

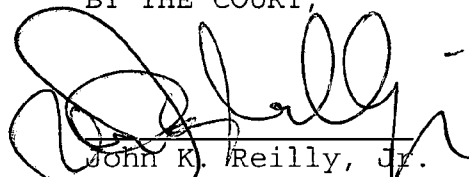
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

CHERRY TIMBER ASSOCIATES, INC. :  
and CHAGRIN LAND LIMITED :  
PARTNERSHIP :  
VS. : NO. 06-1498-CD  
AUDRA MITCHELL, JOHN D. DUTTRY, :  
THELMA BUSH and BEVERLY R. :  
WILLIAMS, a/k/a BEVERLY COPELLI :

O R D E R

AND NOW, this 6th day of November, 2007, this being the day and date set for hearing into Petition to Withdraw as Counsel filed on behalf of David J. Hopkins, Esquire, attorney of record for Beverly R. Williams and Thelma Bush, Defendants above-named; nobody having appeared to object thereto. it is the ORDER of this Court that said Motion be and is hereby granted and David J. Hopkins, Esquire, be permitted to withdraw as counsel.

BY THE COURT,

  
John K. Reilly, Jr.  
Senior Judge  
Specially Presiding

FILED

04:00 PM  
NOV 06 2007

William A. Shaw  
Prothonotary/Clerk of Courts

(6K)  
1CC Atty's:  
Pernick  
Mohney  
Sughrue  
Hopkins  
1CC Thelma Bush  
450 Salada Road  
Dubois, PA 15801  
1CC Beverly Williams  
1220 Second Ave.  
Brookway, PA 15824

(18)

FILED

NOV 06 2007

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 11/6/07

☐ 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

☒ T. Bush Defendant(s) ☒ Defendants Attorney

☐ Special Instructions:

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

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

**Type of Case:** Civil Action

**Type of Pleading:** Certificate of Service

**Filed on Behalf of:** Defendant, John D. Duttry

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
23 North Second Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**Other Counsel of Record:**

Keith Pemrick, Esq.  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

David J. Hopkins, Esq.  
Hopkins Heltzel, LLP  
100 Meadow Lane, Suite 5  
DuBois, PA 15801

Christopher E. Mohnney  
25 East Park Avenue, Ste. 6  
DuBois, PA 15801

**FILED**

OCT 19 2007

0/1110 h  
William A. Shaw  
Prothonotary/Clerk of Courts

4 sent to Atty

#17

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

\*  
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\*

No. 06-1498-CD

**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on October 19, 2007, I caused a true and correct copy of ANSWERS TO INTERROGATORIES AND ANSWERS TO REQUEST FOR PRODUCTION to be served on the following and in the manner indicated below:

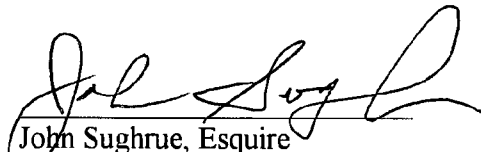
By United States Mail, First Class, Postage Prepaid  
Addressed as Follows:

Keith Pemrick, Esq.  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

David Hopkins, Esq.  
Hopkins Heltzel, LLP  
100 Meadow Lane, Suite 5  
DuBois, PA 15801

Christopher E. Mohney, Esq.  
25 East Park Avenue, Ste. 6  
DuBois, PA 15801

Date: October 19, 2007

  
John Sughrue, Esquire  
Attorney for John D. Duttry, Defendant

William A. Shaw  
Prothonotary/Clerk of Courts

OCT 19 2007

FILED

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

CHERRY TIMBER ASSOCIATES, INC.  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs

vs.

No. 06-1498-C.D.

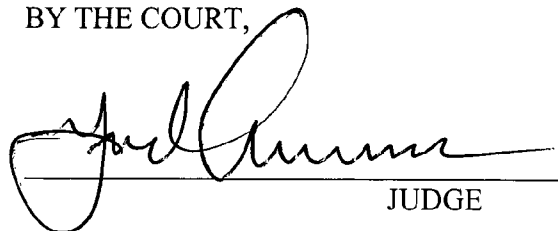
AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants

**RULE TO SHOW CAUSE**

AND NOW, this 27 day of Sept, 2007, upon consideration of the  
Foregoing Petition to Withdraw as Counsel filed on behalf of Defendants, Thelma Bush  
and Beverly R. Williams a/k/a Beverly Copelli, a Rule is hereby issued upon the  
Defendants, Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli, to show cause,  
if any, why the Prayer of the Petitioner should not be granted.

Rule Returnable on the 6<sup>th</sup> day of November, 2007, at 9:00  
o'clock A.M. in Courtroom No. 3 of the Clearfield County Courthouse,  
Clearfield, Pennsylvania. with the Honorable John K. Reilly, Jr. Specially  
presiding.

BY THE COURT,

  
JUDGE

4 FILED 1cc  
06:00:01  
SEP 27 2007 Atty Hopkins  
(GK)

William A. Shaw  
Prothonotary/Clerk of Courts

116



FILED

SEP 27 2007

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 9/27/07  
☒ 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:

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

CHERRY TIMBER ASSOCIATES, INC.  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants

No. 06-1408-C.D.

Type of Pleading: Petition to Withdraw  
as Counsel

Filed on behalf of: Defendants, Thelma  
Bush and Beverly R. Williams a/k/a  
Beverly Copelli

Counsel of Record for this party:

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

100 Meadow Lane, Suite 5  
DuBois, Pennsylvania 15801  
(814) 375-0300

FILED  
012:04201  
SEP 25 2007

William A. Shaw  
Prothonotary/Clerk of Courts

#15

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

CHERRY TIMBER ASSOCIATES, INC.  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs

vs.

No. 06-2498 C.D.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,

Defendants

**PETITION TO WITHDRAW AS COUNSEL**

AND NOW, comes David J. Hopkins, Esquire, Attorney of record for the Defendants, Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli, and sets forth the following:

1. The Plaintiffs in the above captioned action are Cherry Tree Timber Associates, Inc, and Chagrin Land Limited Partnership.
2. The Defendants in the above captioned matter are Audra Mitchell, John D. Duttry, Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli.
3. The Defendants, Thelma Bush and Beverly R. Williams a/k/a Beverly Copell, consulted with the Petitioner and requested the Petitioner file pleadings on their behalf to the above captioned term and number.
4. The Petitioner filed an Answer and New Matter on behalf of Thelma Bush and Beverly Copelli.

5. Substantial document review has taken place. The Petitioner has requested Defendants to pay outstanding billing.

6. Since the commencement of this action, Defendants have failed or refused to pay Petitioner's outstanding billing.

7. The case has proceeded slowing and neither Beverly Copelli nor Thelma Bus will be prejudiced by counsels withdrawal.

WHEREFORE, Petitioner respectfully request your Honorable Court to enter a Rule upon the Defendants, Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli, to show cause why Petitioner should not be permitted to withdraw as counsel.

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 Defendants, Thelma Bush  
and Beverly Copelli

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

CHERRY TIMBER ASSOCIATES, INC.	:	
and CHAGRIN LAND LIMITED	:	
PARTNERSHIP,	:	
Plaintiffs	:	
	:	
vs.	:	No. 06-2498 C.D.
	:	
AUDRA MITCHELL, JOHN D. DUTTRY,	:	
THELMA BUSH and BEVERLY R.	:	
WILLIAMS a/k/a BEVERLY COPELLI,	:	
Defendants	:	

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of the Petition to Withdraw as Counsel filed on behalf of Defendants, Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli was forwarded on the 25<sup>th</sup> day of September, 2007 by U.S. Mail, postage prepaid, to all counsel of record, addressed as follows:


John Sughrue, Esquire  
23 North Second Street  
Clearfield, PA 16830

Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

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

Mrs. Thelma D. Bush  
450 Salada Road  
DuBois, PA 15801

Mrs. Beverly Copelli  
1220 Second Avenue  
Brockway, PA 15824

  
David J. Hopking, Esquire  
Attorney for Defendants

**FILED**

**SEP 25 2007**

William A. Shaw  
Prothonotary/Clerk of Courts

#14



**FILED**

**AUG 31 2007**

William A. Shaw  
Prothonotary/Clerk of Courts

CHERRY TIMBER ASSOCIATES, INC., ) IN THE COURT OF COMMON PLEAS OF  
and CHAGRIN LAND LIMITED ) CLEARFIELD COUNTY, PENNSYLVANIA  
PARTNERSHIP, )  
)  
)  
Plaintiffs, )  
)  
)  
v. )  
)  
)  
AUDRA MITCHELL, JOHN D. DUTTRY, ) Civil Action  
THELMA BUSH and BEVERLY R. )  
WILLIAMS a/k/a BEVERLY COPELLI, )  
)  
)  
Defendants. ) No. 06-1498-CD

4 FILED 1cc  
m/11:25 am  
AUG 31 2007

V.

Civil Action

No. 06-1498-CD

4  
**FILED** ICC *Att*  
*m/11:25 am*  
**AUG 31 2007**  
*(S)*  
William A. Shaw

## NOTICE OF SERVICE

DALE WOODARD LAW FIRM

Keith M. Pemrick  
PA Supreme Court I.D. No. 30322  
1030 Liberty Street  
Franklin, Pennsylvania 16323-1298  
Telephone: (814) 432-2181  
Facsimile: (814) 437-3212  
Attorneys for Plaintiffs

#13

**FILED**

**AUG 31 2007**

William A. Shaw  
Prothonotary/Clerk of Courts

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH and  
BEVERLY R. WILLIAMS, a/k/a  
BEVERLY COPELLI,

Defendants.

: NO. 06-1498-C.D.

: Type of Case: CIVIL ACTION

: Type of Pleading: ANSWER

: Filed on behalf of: DEFENDANT,  
AUDRA MITCHELL

: Counsel of Record:  
CHRISTOPHER E. MOHNEY,  
ESQUIRE

: Supreme Court No.: 63494

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

5  
**FILED** SEC  
01:42 PM  
JUL 25 2007  
Atty Mohney  
GK  
William A. Shaw  
Prothonotary/Clerk of Courts

#12

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

NO. 06-1498-C.D.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS, a/k/a BEVERLY COPELLI,

Defendants.

**ANSWER**

AND NOW, comes Defendant **AUDRA MITCHELL**, by and through her counsel, **CHRISTOPHER E. MOHNEY, ESQUIRE**, and files the following Answer to Plaintiffs' Complaint for Declaratory Judgment, averring as follows:

1-2. After reasonable investigation, Defendant Audra Mitchell is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 1 and 2 of Plaintiffs' Complaint, the same being deemed denied.

3. Admitted.

4. Admitted.

5. Admitted.

6-8. After reasonable investigation, Defendant Audra Mitchell is without knowledge or information sufficient to form a belief as to the truth of paragraphs 6 through 8 of Plaintiffs' Complaint, the same being deemed denied.

9. Paragraph 9 of Plaintiffs' Complaint are conclusions of law to which no response is necessary, the same being deemed denied. To the extent a response is necessary, the Timber Harvest Agreement attached to Plaintiffs' Complaint is a written document, the terms of which speak for itself.

10. Admitted in part, denied in part. Defendant Audra Mitchell admits that Mitchell Lumber Company harvested timber pursuant to the Timber Harvest Agreement, but, at this time, can neither confirm nor deny the suggested specific beginning and ending dates of harvest.

11. After reasonable investigation, Defendant Audra Mitchell is without sufficient knowledge or information sufficient to form a belief as to the truth of paragraph 11 of Plaintiffs' Complaint, the same being deemed denied.

12. Admitted.

13. Admitted.

14. Admitted.

15. Paragraph 15 of Plaintiffs' Complaint relies upon a written document, the contents of which speak for itself.

16-23. After reasonable investigation, Defendant Audra Mitchell is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraphs 16 through 23 of Plaintiffs' Complaint, the same being deemed denied. To the extent an answer is deemed necessary, Defendant Audra Mitchell admits knowing that in February and March of 1995, Mitchell Lumber Company gave \$45,000.00 to Attorney Scott V. Jones to be held in escrow pending resolution of the boundary line dispute between Plaintiffs and Defendant John D. Duttry.

WHEREFORE, Defendant Audra Mitchell requests the Honorable Court to enter a judgment in her favor and against Plaintiffs, with costs to be assessed to Plaintiffs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. E. Mohnhey", written over a horizontal line.

Christopher E. Mohnhey, Esquire  
Attorney for Defendant Audra Mitchell

**VERIFICATION**

I, AUDRA MITCHELL, being duly authorized to make this verification, have read the foregoing Answer. The statements therein are correct to the best of my personal knowledge or information and belief.

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

Date:

7/25/07

  
AUDRA MITCHELL



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

CHERRY TIMBER ASSOCIATES, INC., :  
and CHAGRIN LAND LIMITED :  
PARTNERSHIP, :

Plaintiffs, :

VS. :

NO. 06-1498-C.D. :

AUDRA MITCHELL, JOHN D. DUTTRY, :  
THELMA BUSH and BEVERLY R. :  
WILLIAMS, a/k/a BEVERLY COPELLI, :

Defendants. :

**CERTIFICATE OF SERVICE**

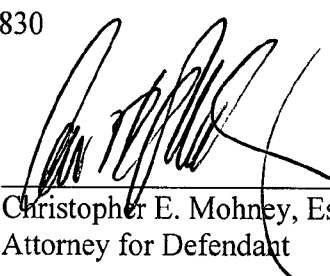
I, Christopher E. Mohney, Esquire, do hereby certify that on the 25 day of July,  
2007, I served Answer on behalf of Defendant, Audra Mitchell, via First Class United  
States Mail, postage prepaid on the following:

Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

David J. Hopkins, Esquire  
Hopkins Heltzel, LLP  
100 Meadow Lane, Suite 5  
DuBois, PA 15801

John Sughrue, Esquire  
23 North Second Street  
Clearfield, PA 16830

By:

  
Christopher E. Mohney, Esquire  
Attorney for Defendant

**FILED**

**JUL 25 2007**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102155

NO: 06-1498-CD

SERVICE # 1 OF 1

COMPLAINT FOR DECLARATORY JUDGMENT

PLAINTIFF: CHERRY TIMBER ASSOCIATES, INC. and CHAGRIN LAND LIMITED PARTNERSHIP

vs.

DEFENDANT: AUDRA MITCHELL, JOHN D. DUTTRY al

**SHERIFF RETURN**

---

NOW, November 17, 2006, SHERIFF OF ELK COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON AUDRA MITCHELL.

NOW, November 27, 2006 AT 2:30 PM SERVED THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON AUDRA MITCHELL, DEFENDANT. THE RETURN OF ELK COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

**FILED**

FEB 14 2007

William A. Shaw  
Prothonotary Clerk of Courts

#11

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102155  
NO: 06-1498-CD  
SERVICES 1  
COMPLAINT FOR DECLARATORY JUDGMENT

PLAINTIFF: CHERRY TIMBER ASSOCIATES, INC. and CHAGRIN LAND LIMITED PARTNERSHIP  
vs.  
DEFENDANT: AUDRA MITCHELL, JOHN D. DUTTRY al

SHERIFF RETURN

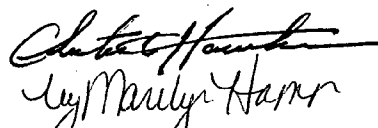
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	WOODARD	12493	10.00
SHERIFF HAWKINS	WOODARD	12493	21.00
ELK CO.	WOODARD	12494	30.79

Sworn to Before Me This

\_\_\_\_\_ Day of \_\_\_\_\_ 2007

So Answers,



Chester A. Hawkins  
Sheriff

# Affidavit of Service

Cherry Timber Associates, Inc. and  
Chagrin Land Limited Partnership  
vs.

Audra Mitchell, et al.

No. 1498 Term, 20 06

Returnable within \_\_\_\_\_ days  
from date of service hereof.

NOW November 27, 20 06 at 2:30 o'clock P.M.

served the within Complaint on Audra Mitchell

at 108 Catalina Rd., St. Marys, Elk County, PA

by handing to her

a true and attested copy of the original Complaint and made

known to her the contents thereof. Sheriff's Costs - \$30.79 PAID

Sworn to before me this 28th

day of November A.D. 20 06

*Candace May*

Prothonotary  
My Commission Expires  
January 7, 2008

So answers,

*Thomas C. Koster*

*John J. Hill*

Sheriff

Deputy

118.11-010

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF ELK COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, November 17, 2006.

RESPECTFULLY,

*Chester A. Hawkins*

CHESTER A. HAWKINS,  
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

**FILED**

**FEB 14 2007**

William A. Shaw  
Prothonotary/Clerk of Courts

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS, a/k/a BEVERLY COPELLI,

Defendants.

: NO. 06-1498-C.D.  
:  
: Type of Case: CIVIL ACTION  
:  
: Type of Pleading: PRAECIPE FOR  
: ENTRY OF APPEARANCE  
:  
: Filed on behalf of: DEFENDANT,  
: AUDRA MITCHELL  
:  
: Counsel of Record:  
: CHRISTOPHER E. MOHNEY, ESQUIRE  
:  
: Supreme Court No.: 63494  
:  
: 25 EAST PARK AVENUE, SUITE 6  
: DUBOIS, PA 15801  
: (814) 375-1044

<sup>S</sup>FILED

FEB 14 2007

m/10:00/w AS  
William A. Shaw  
Prothonotary/Clerk of Courts

no

C/C

copy to C/A

#10

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

NO. 06-1498-C.D.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS, a/k/a BEVERLY COPELLI,

Defendants.

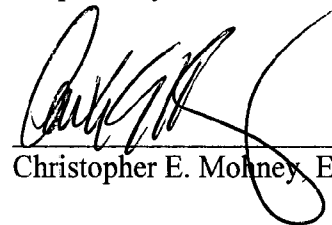
**PRAECIPE FOR ENTRY OF APPEARANCE**

TO: WILLIAM A. SHAW, PROTHONOTARY

Kindly enter my appearance on behalf of Defendant, AUDRA MITCHELL, in the above-captioned case.

Respectfully submitted,

By:



Christopher E. Molney, Esquire



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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

NO. 06-1498-C.D.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS, a/k/a BEVERLY COPELLI,

Defendants.

**CERTIFICATE OF SERVICE**

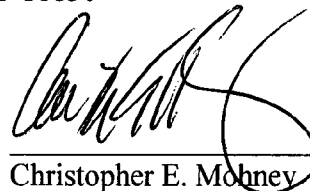
I, Christopher E. Mohney, Esquire, do hereby certify that on the 13<sup>th</sup> day of February, 2007, I served Præcipe for Entry of Appearance on behalf of Defendant, Audra Mitchell, via First Class United States Mail, postage prepaid on the following:

Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

David J. Hopkins, Esquire  
Hopkins Heltzel, LLP  
100 Meadow Lane, Suite 5  
DuBois, PA 15801

John Sughrue, Esquire  
23 North Second Street  
Clearfield, PA 16830

By:



Christopher E. Mohney  
Attorney for Defendant  
Audra Mitchell

**FILED**  
**FEB 14 2007**  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101932  
NO: 06-1498-CD  
SERVICE # 1 OF 3  
COMPLAINT FOR DECLARATORY JUDGMENT

PLAINTIFF: CHERRY TIMBER ASSOCIATE, INC. and CHAGRIN LAND  
LIMITED PARTNERSHIP

vs.

DEFENDANT: AUDRA MITCHELL, JOHN D. DUTTRY, THELMA BUSH and  
BEVERLY R. WILLIAMS a/k/a BEVERLY COPELLI

SHERIFF RETURN

---

NOW, October 05, 2006 AT 1:42 PM SERVED THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON JOHN D. DUTTRY DEFENDANT AT 114 ATHENA DRIVE, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO JOHN DUTTRY, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING /

FILED  
DEC 13 2006  
William A. Shaw  
Prothonotary/Clerk of Courts

#9

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

DOCKET # 101932  
NO: 06-1498-CD  
SERVICE # 2 OF 3  
COMPLAINT FOR DECLARATORY JUDGMENT

PLAINTIFF: CHERRY TIMBER ASSOCIATE, INC. and CHAGRIN LAND  
LIMITED PARTNERSHIP

vs.

DEFENDANT: AUDRA MITCHELL, JOHN D. DUTTRY, THELMA BUSH and  
BEVERLY R. WILLIAMS a/k/a BEVERLY COPELLI

**SHERIFF RETURN**

---

NOW, October 05, 2006 AT 1:35 PM SERVED THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON THELMA BUSH DEFENDANT AT 450 SALADA RD, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO ROBERT BUSH, HUSBAND A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101932  
NO: 06-1498-CD  
SERVICE # 3 OF 3  
COMPLAINT FOR DECLARATORY JUDGMENT

PLAINTIFF: CHERRY TIMBER ASSOCIATE, INC. and CHAGRIN LAND  
LIMITED PARTNERSHIP

vs.

DEFENDANT: AUDRA MITCHELL, JOHN D. DUTTRY, THELMA BUSH and  
BEVERLY R. WILLIAMS a/k/a BEVERLY COPELLI

**SHERIFF RETURN**

---

NOW, September 19, 2006, SHERIFF OF JEFFERSON COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON BEVERLY R. WILLIAMS aka BEVERLY COPELLI.

NOW, September 22, 2006 AT 1:00 PM SERVED THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON BEVERLY R. WILLIAMS aka BEVERLY COPELLI, DEFENDANT. THE RETURN OF JEFFERSON COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101932  
NO: 06-1498-CD  
SERVICES 3  
COMPLAINT FOR DECLARATORY JUDGMENT

PLAINTIFF: CHERRY TIMBER ASSOCIATE, INC. and CHAGRIN LAND  
LIMITED PARTNERSHIP

vs.

DEFENDANT: AUDRA MITCHELL, JOHN D. DUTTRY, THELMA BUSH and  
BEVERLY R. WILLIAMS a/k/a BEVERLY COPELLI

SHERIFF RETURN

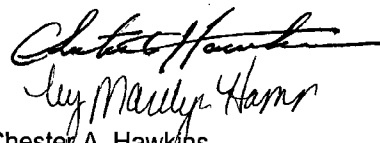
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	DALE	12214	30.00
SHERIFF HAWKINS	DALE	12214	53.30
JEFFERSON CO.	DALE	12227	34.76

Sworn to Before Me This

\_\_\_\_\_ Day of \_\_\_\_\_ 2006

So Answers,



Chester A. Hawkins  
Sheriff

No. 06-1498 C.D.

Personally appeared before me, Harry Dunkle, Deputy for Thomas A. Demko, Sheriff of Jefferson County, Pennsylvania, who according to law deposes and says that on September 22, 2006 at 1:00 o'clock P.M. served the Complaint for Declaratory Judgment upon BEVERLY R. WILLIAMS, Defendant, at the address of 1220 Second Avenue, Borough of Brockway, County of Jefferson, State of Pennsylvania, by handing to Beverly, personally, a true copy of the Complaint and by making known to her the contents thereof.

Advance Costs Received:	\$125.00
My Costs:	\$ 32.76 Paid
Prothy:	\$ 2.00
Total Costs:	\$ 34.76
Refunded:	\$ 90.24

Sworn and subscribed

to before me this

day of

By

My

Expires the 1st mon.

Jan. 2010.

So Answers,

*Harry Dunkle*  
*Thomas A. Demko*  
 Deputy  
 Sheriff  
 JEFFERSON COUNTY, PENNSYLVANIA

8



CHERRY TIMBER ASSOCIATES, INC., ) IN THE COURT OF COMMON PLEAS OF  
and CHAGRIN LAND LIMITED )  
PARTNERSHIP, )  
)  
)  
Plaintiffs, )  
)  
)  
v. )  
)  
)  
AUDRA MITCHELL, JOHN D. DUTTRY ) Civil Action  
THELMA BUSH and BEVERLY R. )  
WILLIAMS a/k/a BEVERLY COPELLI, )  
)  
)  
Defendants. ) No. 06-1498-CD

E. The averments of paragraph 24 E of Duttry's New Matter state or allege conclusions of law to which no response is required.

25. It is denied that plaintiffs' claim is barred by the doctrines of laches or Estoppel, and plaintiffs aver as follows:

A. At the time the funds were placed in escrow with Attorney Jones, the plaintiffs and the defendants agreed that the funds would remain in escrow until such time as a court of competent jurisdiction decided which party was entitled to receive the funds. In subsequent years, the parties jointly instructed Attorney Jones as to the investment of the escrow funds pending a resolution of the dispute as to the ownership of the funds. The defendants have failed to seek a ruling from a court of competent jurisdiction as to the disposition of the funds since they were placed in escrow in 1995, and any delay, or the alleged consequences of any delay, relating to the disposition of the funds is equally attributable to the defendants.

B. It is admitted that plaintiffs claimed ownership of the subject timber in 1995. It is denied that plaintiffs represented that they would pursue a claim for conversion in 1995, or that Duttry allowed the funds to remain in escrow with Attorney Jones as a result of reliance on any representation by the plaintiffs. To the contrary, all parties agreed that the funds would be held in escrow by Attorney Jones until such time as a court of competent jurisdiction decided which party was entitled to receive the funds. Attached hereto and now by reference incorporated herein as Exhibit 1 is a March 8, 1995, letter from counsel for the defendants to Scott V. Jones confirming the defendants' knowledge of and assent to the funds being held by Attorney Jones as escrow agent for the parties. The defendants have failed to seek a ruling from a court of competent jurisdiction as to the disposition of the funds since they were placed in escrow in 1995, and any delay, or any consequences of any delay, relating to the disposition of the funds is equally attributable to the defendants.

26. The averments of paragraph 26 of Duttry's New Matter state or allege conclusions of law to which no response is required.

ANSWER TO COUNTERCLAIM

27. The averments of plaintiffs' Complaint, plaintiffs' Reply to New Matter and Answer to Counterclaim of Thelma Bush and Beverly R. Williams, and plaintiffs' Reply to New Matter of Duttry (hereinafter collectively "plaintiffs' pleadings") are now by reference incorporated herein as though fully set forth at length.

28. Denied for the reasons set forth in plaintiffs' pleadings.

29. Denied for the reasons set forth in paragraphs 24 and 25 of this Reply to New Matter. Answering further, the funds were initially placed in escrow by Mitchell pursuant to an agreement between Mitchell, the plaintiffs and John Duttry. Attached hereto and now by reference incorporated herein as Exhibit 2 is a March 7, 1995, letter from Audra L. Mitchell to Attorney John Sughrue confirming the circumstances under which the funds were placed in escrow.

30. Denied for the reasons hereinbefore set forth in paragraph 29.

31. Denied for the reasons set forth in plaintiffs' pleadings.

32. Denied. In the Timber Harvest Agreement, Duttry guaranteed that he was the owner of the subject property and that he had full title and authority to sell the timber. Duttry breached the Agreement with Mitchell Lumber in that he was not the owner of the described property and he did not have full title and authority to sell the timber.


33-37. Denied for the reasons hereinbefore set forth in paragraphs 25 and 29.

WHEREFORE, Cherry Timber Associates, Inc., and Chagrin Land Limited Partnership deny liability on the Counterclaim filed by John D. Duttry, and request your Honorable Court to declare, after hearing, that:

- a) Cherry Timber Associates, Inc., was the owner of the timber lawfully harvested by Mitchell Lumber pursuant to the Timber Harvest Agreement; and

- b) The plaintiffs are entitled to the escrow funds, including the principal deposited by Mitchell Lumber and all interest earned thereon from the date of deposit to the date the funds are distributed.

DALE WOODARD LAW FIRM

By   
Attorneys for Cherry Timber Associates, Inc.  
and Chagrin Land Limited Partnership

**EXHIBIT 1**

LAW OFFICES  
SUGHRUE & KESNER  
23 NORTH SECOND STREET  
CLEARFIELD, PA. 16830

JOHN SUGHRUE  
KIM C. KESNER

March 8, 1995

(814) 765-1704  
FAX (814) 765-2957

Facsimile (375-1082) and first class mail

Scott V. Jones, Esquire  
BLAKLEY & JONES  
Box 6  
DuBois, PA 15801

RE: Thelma Bush et al, Paul Mitchell Lumber,  
and Endeavor Timber, property located  
in Huston Township

Dear Scott:

Please be advised that this office has been retained by Thelma Bush, John D. Duttry, and Beverly Copelli, owners of a tract of land situate in Huston Township. My clients entered into an Agreement with Paul Mitchell to have their land timbered. As I understand it, in the course of the operation, Mr. Mitchell was contacted by representatives of Endeavor Timber who claimed ownership of timber involved in the operation. Obviously, there is a dispute that needs to be resolved.

Under his agreement with us, Mr. Mitchell is obligated to pay my clients for the timber being removed. He advises me that at the request of Endeavor Timber, he has transmitted proceeds of timber sales (I have been given the figure of \$45,000) to you to hold in escrow as an escrow agent for Endeavor Timber and my clients pending resolution of the dispute. Would you kindly confirm that you have received money, the amount, and that you are acting as an escrow agent on behalf of all claimants?

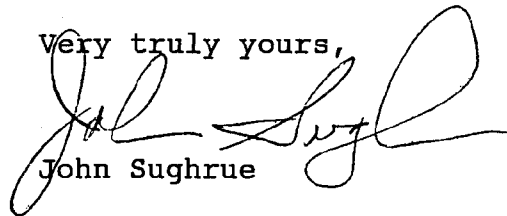
Assuming my information is correct, I would propose that we enter into a formal escrow agreement and invest the moneys in your name and my name in an interest-bearing account pending resolution of the dispute. I would appreciate receiving by return mail confirmation of the account and your position with respect to my suggestions.

I spoke briefly with Mr. Mitchell and advised him that I would keep him informed as matters develop. As I write this letter, I have talked with your office and I understand you are on vacation until the 16th. I am advising your office that my clients claim ownership of the moneys that you receive and we would expect that you will not disburse the moneys until the dispute has been resolved.

Scott V. Jones, Esquire  
Page 2  
March 8, 1995

My clients have authorized me to investigate the situation and I would appreciate the opportunity to discuss the matter with you in detail upon your return. Thank you for your immediate attention to these matters.

Very truly yours,



John Sughrue

JS/mbb

cc: Mrs. Thelma Bush  
Mr. John D. Duttry  
Mrs. Beverly Copelli  
Mitchell Lumber

**EXHIBIT 2**



MITCHELL LUMBER COMPANY  
P.O. BOX 28  
BROCKPORT, PA 15823  
TELEPHONE (814) 265-1146

March 7, 1995

Atty. John Sughrue  
23 North Second Street  
Clearfield, PA 16830

RE: JOHN DUTTRY

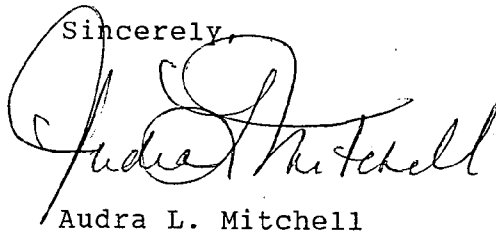
Dear Mr. Sughrue:

This letter is to confirm our telephone conversation my husband and I has with you on March 6, 1995.

As per an agreement that my husband made with Stephen A. Jilk, Manager for Industrial Timber & Land Company and John Duttry I have forward \$45,000 to Atty. Scott Jones to put into an escrow account for the Industrial Timber & Land Company and John Duttry. The money was to be left in the escrow account until the line dispute was surveyed and the differances were resolved.

If I can be of any further assitance, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Audra L. Mitchell". The signature is written in dark ink and is positioned above the printed name.

Audra L. Mitchell

**VERIFICATION**

The undersigned, President of Cherry Timber Associates, Inc., states that the facts averred in the foregoing Reply to New Matter and Answer to Counterclaim are true and correct to the best of his knowledge, information and belief. The undersigned further states that he understands that false statements therein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

 (Pres)

Michael Drusinsky

Dated: November 28, 2006

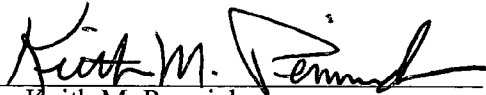
**CERTIFICATE OF SERVICE**

I, Keith M. Pemrick, Esquire, hereby certify that a true and correct copy of the foregoing Reply to New Matter and Answer to Counterclaim has been served by U.S. first-class mail, postage prepaid, this 30<sup>th</sup> day of November, 2006, as follows:

John Sughrue, Esquire  
Sughrue and Kesner  
23 North Second Street  
Clearfield, PA 16830

David J. Hopkins, Esquire  
Hopkins Heltzel, LLP  
100 Meadow Lane, Suite 5  
DuBois, PA 15801

Audra Mitchell  
108 Catalina Road  
St. Mary's, PA 15857

  
Keith M. Pemrick

**FILED**

**DEC 04 2006**

William A. Shaw  
Prothonotary/Clerk of Courts



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

)  
)  
)  
)

) )

) Civil Action

) No. 06-1498-CD

NOW come the plaintiffs, through their undersigned counsel, and file this Reply to the New Matter and Answer to the Counterclaim filed by Thelma Bush and Beverly R. Williams, a/k/a Beverly Copelli:

REPLY TO NEW MATTER

24. Denied. At all times material hereto Cherry Timber held title to the property from which the timber was harvested by Mitchell Lumber Company.

25. Denied for the reasons set forth in paragraphs 12 through 14 of plaintiffs' Complaint and paragraphs 25 through 36 of plaintiffs' Reply to New Matter and Answer to Counterclaim of John D. Duttry, the averments of which are now by reference incorporated herein as though fully set forth at length.

26. It is denied that plaintiffs coerced, threatened or harassed Paul Mitchell into paying \$45,000.00 to be held in escrow by Scott Jones, Esquire. To the contrary, as set forth in the March 7, 1995, letter from Audra L. Mitchell to Attorney John Sughrue and the March 8, 1995, letter from Attorney John Sughrue to Scott V. Jones, Esquire, copies of which are attached hereto as Exhibits 1 and 2, respectively, the funds were voluntarily placed in escrow by Mitchell Lumber Company pursuant to an agreement between Mitchell and the parties.

ANSWER TO COUNTERCLAIM

1. No response required.
2. Denied for the reasons set forth in paragraphs 9 through 14 of plaintiffs' Complaint and paragraph 26 of the within Reply to New Matter and plaintiffs' Reply to New Matter and Answer to Counterclaim of John D. Duttry, the averments of which are now by reference incorporated herein as though fully set forth at length.
3. Denied for the reasons set forth in plaintiffs' Complaint, plaintiffs' Reply to New Matter and Answer to Counterclaim of John D. Duttry, and the within Reply to New Matter, all of which are now by reference incorporated herein as though fully set forth at length.
4. It is admitted that the escrow funds will not be released without an Order of Court directing distribution. The remaining averments of paragraph 4 are denied for the reasons set forth in plaintiffs' Complaint, plaintiffs' Reply to New Matter and Answer to Counterclaim of John D. Duttry, and the within Reply to New Matter, all of which are now by reference incorporated herein as though fully set forth at length.

WHEREFORE, Cherry Timber Associates, Inc., and Chagrin Land Limited Partnership deny liability on the Counterclaim filed by Thelma Bush and Beverly R. Williams, a.k.a Beverly Copelli, and request your Honorable Court to declare, after hearing, that:

- a) Cherry Timber Associates, Inc., was the owner of the timber lawfully harvested by Mitchell Lumber pursuant to the Timber Harvest Agreement; and
- b) The plaintiffs are entitled to the escrow funds, including the principal deposited by Mitchell Lumber and all interests earned thereon from the date of deposit to the date the funds are distributed.

DALE WOODARD LAW FIRM

By Keith M. Pinnich  
Attorneys for Cherry Timber Associates, Inc.  
and Chagrin Land Limited Partnership



EXHIBIT 1

MITCHELL LUMBER COMPANY  
P.O. BOX 28  
BROCKPORT, PA 15823  
TELEPHONE (814) 265-1146

March 7, 1995

Atty. John Sughrue  
23 North Second Street  
Clearfield, PA 16830

RE: JOHN DUTTRY

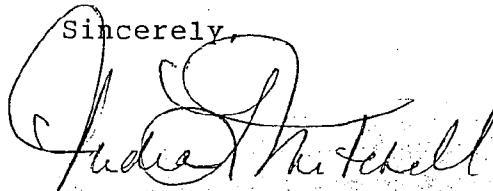
Dear Mr. Sughrue:

This letter is to confirm our telephone conversation  
my husband and I has with you on March 6, 1995.

As per an agreement that my husband made with  
Stephen A. Jilk, Manager for Industrial Timber & Land  
Company and John Duttry I have forward \$45,000 to  
Atty. Scott Jones to put into an escrow account for  
the Industrial Timber & Land Company and John Duttry.  
The money was to be left in the escrow account until  
the line dispute was surveyed and the differances  
were resolved.

If I can be of any further assitance, please let  
me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Audra L. Mitchell".

Audra L. Mitchell

EXHIBIT 2

LAW OFFICES  
SUGHRUE & KESNER  
23 NORTH SECOND STREET  
CLEARFIELD, PA. 16830

JOHN SUGHRUE  
KIM C. KESNER

March 8, 1995

(814) 765-1704  
FAX (814) 765-2957

Facsimile (375-1082) and first class mail

Scott V. Jones, Esquire  
BLAKLEY & JONES  
Box 6  
DuBois, PA 15801

RE: Thelma Bush et al, Paul Mitchell Lumber,  
and Endeavor Timber, property located  
in Huston Township

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Dear Scott:

Please be advised that this office has been retained by Thelma Bush, John D. Duttry, and Beverly Copelli, owners of a tract of land situate in Huston Township. My clients entered into an Agreement with Paul Mitchell to have their land timbered. As I understand it, in the course of the operation, Mr. Mitchell was contacted by representatives of Endeavor Timber who claimed ownership of timber involved in the operation. Obviously, there is a dispute that needs to be resolved.

Under his agreement with us, Mr. Mitchell is obligated to pay my clients for the timber being removed. He advises me that at the request of Endeavor Timber, he has transmitted proceeds of timber sales (I have been given the figure of \$45,000) to you to hold in escrow as an escrow agent for Endeavor Timber and my clients pending resolution of the dispute. Would you kindly confirm that you have received money, the amount, and that you are acting as an escrow agent on behalf of all claimants?

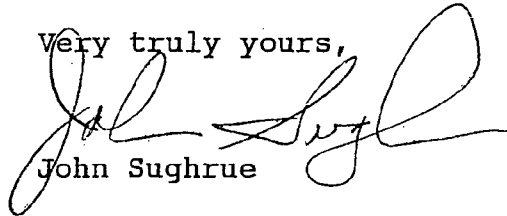
Assuming my information is correct, I would propose that we enter into a formal escrow agreement and invest the moneys in your name and my name in an interest-bearing account pending resolution of the dispute. I would appreciate receiving by return mail confirmation of the account and your position with respect to my suggestions.

I spoke briefly with Mr. Mitchell and advised him that I would keep him informed as matters develop. As I write this letter, I have talked with your office and I understand you are on vacation until the 16th. I am advising your office that my clients claim ownership of the moneys that you receive and we would expect that you will not disburse the moneys until the dispute has been resolved.

Scott V. Jones, Esquire  
Page 2  
March 8, 1995

My clients have authorized me to investigate the situation and I would appreciate the opportunity to discuss the matter with you in detail upon your return. Thank you for your immediate attention to these matters.

Very truly yours,



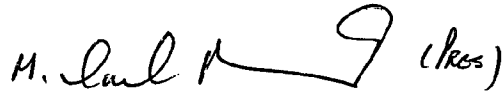
John Sughrue

JS/mbb

cc: Mrs. Thelma Bush  
Mr. John D. Duttry  
Mrs. Beverly Copelli  
Mitchell Lumber

**VERIFICATION**

The undersigned, President of Cherry Timber Associates, Inc., states that the facts averred in the foregoing Reply to New Matter and Answer to Counterclaim are true and correct to the best of his knowledge, information and belief. The undersigned further states that he understands that false statements therein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

 (Pres)

---

Michael Drusinsky

Dated: November 28, 2006


**CERTIFICATE OF SERVICE**

I, Keith M. Pemrick, Esquire, hereby certify that a true and correct copy of the foregoing Reply to New Matter and Answer to Counterclaim has been served by U.S. first-class mail, postage prepaid, this 30<sup>th</sup> day of November, 2006, as follows:

John Sughrue, Esquire  
Sughrue and Kesner  
23 North Second Street  
Clearfield, PA 16830

David J. Hopkins, Esquire  
Hopkins Heltzel, LLP  
100 Meadow Lane, Suite 5  
DuBois, PA 15801

Audra Mitchell  
108 Catalina Road  
St. Mary's, PA 15857

  
Keith M. Pemrick

**FILED**

**DEC 04 2006**

William A. Shaw  
Prothonotary/Clerk of Courts





) IN THE COURT OF COMMON PLEAS OF  
) CLEARFIELD COUNTY, PENNSYLVANIA  
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Attorneys for Plaintiffs

**FILED**

**NOV 16 2006**

William A. Shaw  
Prothonotary/Clerk of Courts

James M. Greenfield  
Keith M. Pemrick  
Brian M. Spaid  
Joseph H. Keebler, Jr.



1030 Liberty Street  
Franklin, PA 16323-1298  
814/432-2181  
FAX 814/437-3212

Raymond S. Woodard  
(Of Counsel)  
Ralph L. Montgomery, Jr.  
(Of Counsel)  
Robert M. Dale  
(1905-1983)

email: pemricklaw@csonline.net  
website: www.dalewoodard.com

November 14, 2006

William A. Shaw, Sr., Prothonotary  
Clearfield County Courthouse  
230 E. Market Street  
Clearfield, PA 16830

Re: Cherry Timber Associates, Inc., et al., v. Audra Mitchell, et al.  
Complaint for Declaratory Judgment  
No. 06-1498-CD

Dear Mr. Shaw:

Enclosed please find the following items relating to the above referenced matter:

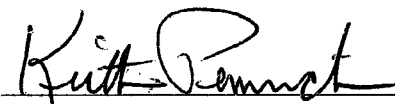
- A copy of the Complaint for Declaratory Judgment filed in the above referenced matter, as well as an extra copy of the cover sheet for the Complaint.
- A Praecipe to Re-issue Complaint, together with our check No. 12492 for the filing fee, in the amount of \$7.00.
- Directions to the Sheriff, with our check No. 12493 in the amount of \$100.00 for advanced service costs.
- Our check No. 12494 in the amount of \$75.00, made payable to the Sheriff of Elk County, for his service costs.

Please re-issue the Complaint, note the date of re-issuance on the enclosed copy of the Complaint and the cover sheet, and forward the enclosed copy of the Complaint, the Directions to the Sheriff, and check Nos. 12493 and 12494 to Sheriff Hawkins.

If you have any questions about the enclosures, please do not hesitate to contact me.

Sincerely yours,

DALE WOODARD LAW FIRM

By   
Keith M. Pemrick

KMP/cnb  
Enclosures: As stated

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

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

Type of Case: **Civil Action**

Type of Pleading: **Answer of John D. Duttry  
to Original Complaint**

Filed on Behalf of: **Defendant, John D. Duttry**

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
23 North Second Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**Other Counsel of Record:**

Keith Pemrick, Esq.  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

David J. Hopkins, Esq.  
Hopkins Heltzel, LLP  
100 Meadow Lane, Suite 5  
DuBois, PA 15801

FILED acc AMH  
9/3/2008  
NOV - 3 2008  
Sughrue

William A. Shaw  
Prothonotary/Clerk of Courts

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD


**CERTIFICATE OF SERVICE**

AND NOW, I do hereby certify that on November 3, 2006, I caused a true and correct copy of ANSWER OF JOHN D. DUTTRY TO ORIGINAL COMPLAINT to be served on the following and in the manner indicated below:

By United States Mail, First Class, Postage Prepaid  
Addressed as Follows:

Ms. Audra Mitchell  
108 Catalino Road  
St. Mary's, PA 15857.

Date: November 3, 2006

  
John Sughrue, Esquire  
Attorney for Defendant

**FILED**

**NOV - 3 2006**

William A. Shaw  
Prothonotary/Clerk of Courts

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

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

Type of Case: **Civil Action**

Type of Pleading: **Answer of John D. Duttry  
to Original Complaint**

Filed on Behalf of: **Defendant, John D. Duttry**

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
23 North Second Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**Other Counsel of Record:**

Keith Pemrick, Esq.  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

David J. Hopkins, Esq.  
Hopkins Heltzel, LLP  
100 Meadow Lane, Suite 5  
DuBois, PA 15801

**FILED**

NOV 03 2006

0/2-00/cw (OK)  
William A. Shaw  
Prothonotary/Clerk of Courts

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ATTY

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

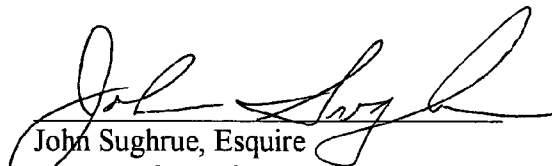
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No. 06-1498-CD

**NOTICE**

TO: Cherry Timber Associates, Inc.,  
Chagrin Land Limited Partnership

**YOU ARE HEREBY NOTIFIED to file a written response to the enclosed Answer  
and New Matter within twenty (20) days from service hereof or a judgment may be entered  
against you.**

  
John Sughrue, Esquire  
Attorney for Defendant

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants.

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No. 06-1498-CD

**ANSWER OF JOHN D. DUTTRY TO ORIGINAL COMPLAINT**

AND NOW, comes the Defendant, John D. Duttry, by his attorney, John Sughrue, and responds to the original Complaint filed in this matter as follows:

1a. Denied. After reasonable investigation, Defendant is without information and knowledge sufficient to form a belief as to whether or not said statement is true for the reason that the same is within the control of the Plaintiffs and strict proof of the same if relevant is demanded at the trial of this action.

1b. Admitted in part and denied in part. Based on information received, Defendant believes that Plaintiffs were the owner of a 58 acre parcel in Huston Township. It is denied that the parcel was erroneously identified in instruments of record as Tax Map Parcel No. 119-E3-33. On the contrary, said designation was not erroneous and was, in fact, the parcel that the Plaintiffs purchased and owned. It is denied that the Plaintiff's property is designated as Tax Map Parcel No. 119-E4-16. On the contrary, said parcel number identifies the property owned and/or possessed and/or occupied and/or utilized by Defendant at relevant times. Further, Defendant recalls an individual whose identity cannot be presently recollected claiming to represent a

company known as Endeavor Timber and/or Industrial Timber and claiming such companies had an ownership interest in said 58 acre tract.

2a. Denied. After reasonable investigation, Defendant is without information and knowledge sufficient to form a belief as to whether or not said statement is true for the reason that the same is within the control of the Plaintiffs and strict proof of the same if relevant is demanded at the trial of this action.

2b. Denied. After reasonable investigation, Defendant is without information and knowledge sufficient to form a belief as to whether or not said statement is true for the reason that the same is within the control of the Plaintiffs and strict proof of the same if relevant is demanded at the trial of this action.

3a. Denied. On the contrary, Defendant believes that Audra Mitchell was either the owner, a co-owner, or authorized to conduct business on behalf of Mitchell Lumber at pertinent times. Defendant is otherwise without specific knowledge sufficient to form a belief as to the truth of said averment and strict proof of the same is demanded at trial.

3b. Admitted.

4. Admitted in part and denied in part. Defendant is without knowledge sufficient to form a belief as to whether or not Mitchell Lumber ceased to conduct business at said time and strict proof of the same is demanded at trial.

5a. Admitted.

5b. Admitted.

5c. Denied. The Defendant is without knowledge or information sufficient to form a belief as to whether or not Audra Mitchell is the sole beneficiary of the Estate of Paul Mitchell and strict proof of the same, if relevant, is demanded at the trial of this action.

5d. Admitted in part and denied in part. It is admitted that Audra Mitchell appears to have executed said Timber Harvest Agreement. Defendant is without knowledge or information sufficient to form a belief as to whether or not Audra Mitchell maintained books and records while Mitchell Lumber was in business and strict proof of the same, if relevant, is demanded at the trial of this action.

6a. Admitted.

6b. Admitted in part and denied in part. It is denied that said parcel was erroneously identified on record as Tax Map Parcel No. 119E4-16 and it is denied that it is, in fact, Parcel No. 119E3-33. On the contrary, at all times pertinent to this action, Defendant Duttry together with Co-Defendants were the owners and/or possessed and/or controlled and/or occupied and/or utilized without objection a tract of land situate in Huston Township believed to consist of 123.2 acres more or less and being the same premises which vested in Defendants by virtue of Decree of Distribution in the Estate of Harold E. Duttry recorded in the Clearfield County Recorder's Office in DRBV 1300, page 20. Said property was originally purchased by the Defendant's father, Harold Duttry. The said Harold Duttry and his heirs thereafter, entered what he believed and understood to be the premises purchased, occupied, possessed and controlled the said premises, utilized the said premises, paid taxes on the said premises, continuously, openly, and exclusive of all other persons and claims and adverse and hostile to any and all other persons, including the Plaintiffs for a period in excess of twenty-one (21) years. Thereafter the Defendants did the same. Those premises from which the timber was harvested are referred to herein as the "Duttry Premises". Further, at the time of the timber harvesting which is a subject of this matter, the Defendants were in exclusive possession and control of the Duttry Premises and had the right and/or reasonably believed that they had the right to sell the timber and receive the proceeds as more fully set forth herein.

7. Denied in part. Bush was not a one-third (1/3) owner of the property described in the Complaint as the "Duttry Property" but rather was a one-third (1/3) owner of the property described in this Answer as "Duttry Premises".

8. Denied in part. Williams was not a one-third (1/3) owner of the property described in the Complaint as the "Duttry Property" but rather was a one-third (1/3) owner of the property described in this Answer as "Duttry Premises".

9. It is admitted that Duttry entered into said agreement. Said agreement was for the timber on the property then occupied, possessed and/or claimed and/or controlled and/or owned by Duttry, Bush, and Williams, and is the "Duttry Premises" described herein. It is denied that the property was purportedly owned by Defendants. On the contrary, it was actually owned, occupied, possessed, and controlled by Duttry and others as set forth in this Answer.

10. Admitted. Further, Mitchell Lumber did so at the direction of and under the authority and control of Defendant Duttry, the only other party to said agreement. Further, under said agreement, Mitchell acquired the right to harvest the timber and title to the timber passed to Mitchell. Duttry acquired the right and was entitled to receive the funds due him under said agreement (hereafter referred to as "Contract Funds").

11. Denied. It is denied that Mitchell cut and removed merchantable timber from the Cherry Timber property. On the contrary, the facts are as set forth in this Answer, all of which are incorporated herein by reference. On the contrary, Cherry Timber admits that it did not have good title to the premises and is only now purporting to commence an action to quiet title concurrent with this action. In essence, Cherry Timber complains about the unlawful or improper cutting of timber from property allegedly claimed by it, all of which constitutes the tort of conversion and such claim is barred by the statute of limitations of two (2) years as set forth under new matter. Further, at relevant times in 1994 and 1995, one or more individuals claiming to be agents for

Endeavor Timber (hereafter, "Endeavor") and/or Industrial Timber (hereafter, "Industrial") and/or Chagrin Land made conflicting representations of ownership of the timber.

12. Denied. On the contrary, Paul Mitchell, trading as Mitchell Lumber, , was confronted by an individual (whose identity cannot be presently recalled) who alleged to be an employee and/or agent of Endeavor Timber Company and/or Industrial Timber Land Company and/or Chagrin Land and was at said time threatened with arrest, lawsuits, and damage claims, all of which intimidated Mitchell and coerced him into giving the sum of Forty-Five Thousand (\$45,000) Dollars to Attorney Scott V. Jones, who is believed to have been an agent for Endeavor and/or Chagrin Land. It is denied that Mitchell agreed to any escrow arrangement at that time pending resolution of the dispute. On the contrary, Mitchell simply walked away from the Contract Funds which were Duttry's funds and advised Duttry of his action. Contract Funds were not voluntarily turned over to Jones but rather were turned over as a result of coercion and duress. In any event, Mitchell did so without the knowledge or consent of Duttry and was not authorized in any manner to transfer Duttry's Contract Funds to Attorney Jones.

13. Denied. On the contrary, Paul Mitchell, trading as Mitchell Lumber, transferred Contract Funds that belonged to Duttry and were then due Duttry to Jones as attorney for Endeavor, Industrial, Cherry Timber, or Chagrin Land as the case may be. Duttry is presently without knowledge or information sufficient to form a belief as to when said Contract Funds were given to Jones. Duttry was not aware of the transfer until it had been completed and Mitchell breached his contract with Duttry by failing or refusing to deliver to Duttry the Contract Funds. Further, the facts are as set forth in the answer to paragraph 12 above, all of which are incorporated herein by reference.

14. Denied. Duttry does not believe that said funds were initially deposited as averred herein. After reasonable investigation Duttry is without information sufficient to form a belief as

to what Attorney Jones did with said funds upon initially acquiring them from Mitchell for the reason that the same is within Jones' exclusive knowledge and strict proof of the same, if relevant, is demanded at the trial of this action.

15. When Duttry learned of the diversion of his Contract Funds from Mitchell to Jones, he advised Jones emphatically that the Contract Funds were his money and due him under the Timber Harvest Agreement. Duttry claimed the Contract Funds and demanded that Jones refrain from expending them under threat of suit. To assure that there was no conversion, Duttry's counsel sought immediate payment to Duttry or in the alternative, adequate assurances from Jones that the funds would not be diverted to his clients, including a suggestion that a formal escrow agreement be established. Notwithstanding such demands, Jones failed or refused to pay Duttry his money, did not execute any formal escrow agreement, and did not expend the money. Jones is believed to have continued to control the money through the current time although precise knowledge of how it is registered or where it is located is not within Duttry's knowledge.

16. Denied as stated. On the contrary, Duttry and his counsel claimed the Contract Funds, claimed title to the Contract Funds, claimed the said Contract Funds were payable to Duttry under the Timber Harvest Agreement and took a position that Plaintiffs, if they had a claim, had the burden of pursuing it. Plaintiffs, including Endeavor and Industrial, and their counsel claimed title to certain land where the timber was harvested without providing proof of title, occupancy, possession or control and claimed that Duttry had committed the tort of conversion. Notwithstanding such claims, Plaintiffs and their counsel did nothing. As a result, the statute of limitations and the doctrines of Laches and Estoppel bar Plaintiffs from securing said Contract Funds at this time as set forth in new matter, all of which is incorporated herein by reference.

17. Denied in part and admitted in part. The parties were unable to reach an agreement regarding ownership and disposition of the Contract Funds held by Jones. Duttry did not agree

necessarily to Jones holding the Contract Funds, but had no choice since Jones had actual possession of the Contract Funds. At said time, Plaintiffs represented that they were owners of certain property, that the timber was cut from their property, and that a tort of conversion had been committed. Further, Plaintiff's threatened Defendant with double and triple damages as a result of said alleged conversion. Plaintiffs indicated that they would bring an action for conversion. Duttry waited for said action to be filed and nothing was done. Ultimately, the statute of limitations expired for said action and the facts are as set forth in this Answer, including paragraph 16 and under New Matter, all of which are incorporated herein by reference.

18. It is admitted that no formal escrow agreement was ever executed. Further, it is alleged that no agreement was, in fact, made between Duttry and the Plaintiffs except that Attorney Jones, who found himself with the Contract Funds in dispute, indicated that he would not transfer the money to anybody without agreement or court order. As a result, said Contract Funds have languished in Jones' possession through the current time.

19. Duttry has no knowledge of said accounts and/or their investments, but assuming said information was secured from Attorney Jones, accepts the same as true. Further, strict proof of the same is demanded at trial of this action.

20. Denied. After reasonable investigation, Duttry is without knowledge sufficient to form a belief as to the truth of said averment for the reason it is within the exclusive knowledge of the Plaintiffs and their attorney, Jones. In any event, such identification is irrelevant for the reason that Mitchell Lumber Company acknowledged and admitted that the Contract Funds were the property of Duttry and due Duttry under the timber agreement. On the contrary, the facts are as set forth in this Answer above, all of which are incorporated herein by reference. Said Contract Funds are presently, in fact, owned by Duttry and should be transferred to him immediately.



21. Denied. It is denied that Cherry Timber was, at all times material, the owner of the property from which the timber was harvested and is the rightful owner of the escrow funds. On the contrary, the Defendants were the owners, occupants, claimants, and/or possessors in control of the property from which the timber was harvested and as such are the owners of said property, the Duttry Premises, to the exclusion of Plaintiffs. Further, Cherry Timber did not have possession of said property, or have good and marketable title to said property. Plaintiffs, in 1995, only alleged title to the Duttry Premises. In any event, Plaintiffs had only an unliquidated claim against the Defendant personally, arising out of an allegation of improper conversion of timber. The statute of limitations for bringing such claim is two (2) years. Cherry Timber has no color of title to the Contract Funds. The Plaintiff's claim is barred by the Statute of Limitations, Laches and Estoppel, as set forth in New Matter, all of which is incorporated herein by reference.

22. Denied. It is denied that a contemporaneously filing of an action to quiet title with respect to some unspecified property will retroactively provide Cherry Timber with a basis for claiming said Contract Funds. On the contrary, such action to quiet title at this point in time is irrelevant for the reason that Duttry is not a party thereto and previously sold his interest in his property to other persons.

23. Denied in part and admitted in part. Duttry does know what Cherry Timber believes or avers for the reason that the same is exclusively within its knowledge. However, Duttry likewise expects that Attorney Jones as a result of the initial allegations and manner in which he became custodian of said Contract Funds would not distribute the Contract Funds without an order from a court of competent jurisdiction.

#### **NEW MATTER**

24. Plaintiff's claim is barred by the applicable statute of limitations, generally and for the following specific reasons:

- A. Mitchell Timber cut and removed the timber from the subject premises between October 19, 1994 and October 1995;
- B. That Mitchell transferred the \$45,000 payable under Duttry's contract to Jones no later than March 1995;
- C. As early as March 1995, Plaintiffs alleged a wrongful cutting and therefore conversion of timber located on Plaintiff's property which constituted the tort of conversion;
- D. That the tort of conversion has a statute of limitations of two (2) years;
- E. Under the facts as admitted and the law, Plaintiffs were required to bring their action for conversion and damages on or before the first day of April 1997.

25. Plaintiff's claim is barred by the applicable Doctrines of Laches and Estoppel, generally and for the following reasons:

A. LACHES:

(1) The facts set forth in the foregoing paragraph are incorporated herein by reference;

(2) That an unreasonable period of time has passed during which Plaintiffs have failed to take any action to assert their claim and to allow them to do so at this time is unreasonable and inequitable under the facts and circumstances;

(3) That Paul Mitchell and Mary Jo Duttry, material witnesses, have died since the Contract Funds were originally diverted and their death and loss of them as witnesses causes actual prejudice to Defendants;

(4) Due to the death of said material witnesses and the extreme passage of time, the Plaintiffs as a matter of equity should be barred from prosecuting the claim to the Contract Funds at this time.

B. ESTOPPEL:

(1) The facts and averments set forth above in this Answer and New Matter are incorporated herein by reference as though the same were set forth at length verbatim;

(2) At all times relevant, Plaintiffs through their authorized agent acting within the scope of their authority alleged and represented an ownership, represented an allegation of conversion of their timber and represented that they would pursue such claim in 1995;

(3) As a result of said allegation and representation, Duttry allowed said Contract Funds to remain with Jones and waited for Plaintiffs to prosecute the action that they claimed in 1995 to have;

(4) Notwithstanding said representations and claims, Plaintiffs did nothing from 1995 until the present time;

(5) Duttry relied upon said representations and allegations in 1995 to his detriment;

(6) During said extended period of time, during which Plaintiffs did nothing in support of their claim, at least two (2) material witnesses, Paul Mitchell and Mary Jo Duttry have died;

(7) The death of each said material witness is actually prejudicial to Defendant's ability to defend himself against this action;

(8) In view of the foregoing, as a matter of equity, Plaintiffs should be estopped at this time from pursuing an alternative claim under the guise of a declaratory judgment claim or any other revised claim.

26. Plaintiffs fail to set forth a cause of action upon which declaratory relief may be granted.

**NEW MATTER/COUNTERCLAIM**

27. The facts and averments admitted herein by Defendant Duttry and the facts and averments set forth in his Answer above are all incorporated herein by reference as though the same were set forth herein at length verbatim.

28. The sum of Forty-Five Thousand (\$45,000) Dollars was due Duttry under contract from Mitchell as aforesaid.

29. Mitchell secured and possessed the sum of Forty-Five Thousand (\$45,000) Dollars as Contract Funds owned by Duttry and due and payable to Duttry.

30. Mitchell was prepared, willing, and able to pay the original Contract Funds of Forty-Five Thousand (\$45,000) Dollars to Duttry and failed or refused to do so.

31. Title to said Contract Funds held by Mitchell was vested in Duttry under the contract that had been executed.

32. The contract executed between Mitchell and Duttry had been performed and substantially completed by Duttry and had been partially performed and ultimately totally performed by Mitchell resulting in said Contract Funds being generated.

33. At all times, material hereto, Duttry was the lawful owner of the original Forty-Five Thousand (\$45,000) Dollars that was given to Jones.

34. That the original Forty-Five Thousand (\$45,000) Dollars was wrongfully given to Jones by Mitchell.

35. That Jones held said funds under a constructive trust, as agent for Duttry, and all increments, appreciation, and interest earned on said account equitably and necessarily attaches to

the original principal and is the lawful Contract Funds of Duttry for the same reasons that the principal giving rise to said funds are his property.

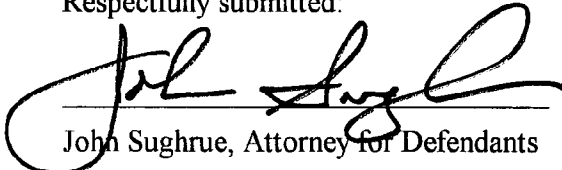
36. As a result of the foregoing, Mitchell breached his contract with Duttry.

37. Jones had no lawful basis to receive and retain said Contract Funds and to the extent that he did so initially, he no longer has any lawful basis for retaining said Contract Funds to the detriment of Duttry for the reason that any claim held or potentially held by the Plaintiffs is presently barred by the statute of limitations and/or the Doctrines of Laches and Estoppel as set forth above.

WHEREFORE, Defendant Duttry moves the Honorable Court to dismiss the Plaintiff's claim forthwith and in the alternative to grant Duttry's Counterclaim as follows:

1. Declare that Plaintiff's claim is barred as a matter of law and that Duttry is the lawful owner of the Contract Funds paid by Mitchell to Scott V. Jones;
2. That Duttry is entitled to the Contract Funds together with all interest and appreciation thereon and to direct Scott V. Jones to forthwith deposit the same with Duttry;
3. Enter judgment against the Plaintiffs and in favor of Defendant Duttry in the amount of Forty-Five Thousand (\$45,000) Dollars plus all interest and appreciation that has accrued on said sum together with costs of this action.

Respectfully submitted:



John Sughrue, Attorney for Defendants

**VERIFICATION**

I, John D. Duttry, Defendant, verify that the statements made in this ANSWER AND NEW MATTER are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Date: November 2, 2006

  
John D. Duttry

**CERTIFICATE OF SERVICE**

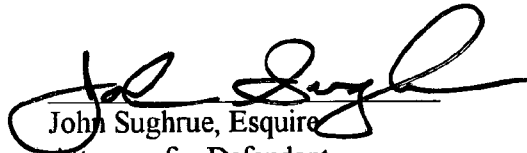
AND NOW, I do hereby certify that on November 3, 2006, I caused a true and correct copy of ANSWER OF JOHN D. DUTTRY TO ORIGINAL COMPLAINT to be served on the following and in the manner indicated below:

By United States Mail, First Class, Postage Prepaid  
Addressed as Follows:

Keith Pemrick, Esq.  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

David Hopkins, Esq.  
Hopkins Heltzel, LLP  
100 Meadow Lane, Suite 5  
DuBois, PA 15801

Date: November 3, 2006

  
John Sughrue, Esquire  
Attorney for Defendant

William A. Shaw  
Prothonotary/Clerk of Courts

NOV 03 2006

FILED



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

CHERRY TIMBER ASSOCIATES,  
INC, AND CHAGRIN LAND  
LIMITED PARTNERSHIP,  
Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D.  
DUTTRY, THELMA BUSH AND  
BEVERLY R. WILLIAMS A/K/A  
BEVERLY COPELLI,  
Defendants.

No. 06-1498-CD

Type of Case: Civil Action

Type of Pleading: Praecipe for Entry of  
Appearance

Filed on Behalf of: Defendant, John D. Duttry

**Counsel of Record for this Party:**

John Sughrue, Esq.  
Supreme Court No. 01037  
23 North Second Street  
Clearfield, PA 16830  
Phone: (814) 765-1704  
Fax: (814) 765-6959

**Other Counsel of Record:**

Keith Pemrick, Esq.  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

David J. Hopkins, Esq.  
Hopkins Heltzel, LLP  
100 Meadow Lane, Suite 5  
DuBois, PA 15801

FILED

OCT 25 2006

013-000 (u)  
William A. Shaw  
Prothonotary/Clerk of Courts

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COPY TO Y/A

3

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

CHERRY TIMBER ASSOCIATES, INC.,  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs,

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,  
Defendants

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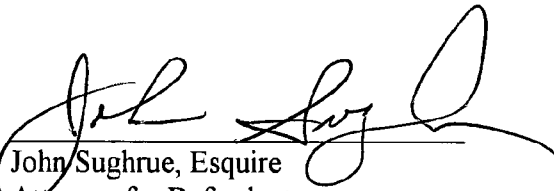
No. 06-1498-CD

**PRAECIPE FOR ENTRY OF APPEARANCE**

TO: WILLIAM A. SHAW, PROTHONOTARY.

Kindly enter my appearance on behalf of John D. Duttry, Defendant in the above-captioned matter. Direct all notices, pleadings, and matters concerning the client or this case to the undersigned.

Date: October 25, 2006

  
John Sughrue, Esquire  
Attorney for Defendant  
Attorney I. D. #01037  
23 North Second Street  
Clearfield, PA 16830  
(814) 765-1704  
Fax: (814) 765-6959

Cc: Mr. John Duttry  
Keith Pemrick, Esq.  
David Hopkins, Esq.

**CERTIFICATE OF SERVICE**

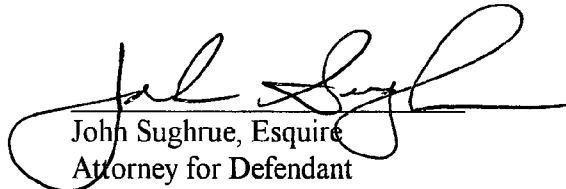
AND NOW, I do hereby certify that on October 25, 2006, I caused a true and correct copy of PRAECIPE FOR ENTRY OF APPEARANCE to be served on the following and in the manner indicated below:

By United States Mail, First Class, Postage Prepaid  
Addressed as Follows:

Keith Pemrick, Esq.  
Dale Woodward Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

David Hopkins, Esq.  
Hopkins Heltzel, LLP  
100 Meadow Lane, Suite 5  
DuBois, PA 15801

Date: October 25, 2006

  
John Sughrue, Esquire  
Attorney for Defendant

William A. Shaw  
Prothonotary/Clerk of Courts

OCT 25 2006

FILED

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

CHERRY TIMBER ASSOCIATES, INC.  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs

vs.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,

Defendants

No. 06-<sup>1</sup>2498 C.D.

Type of Pleading: Answer to  
Complaint for Declaratory  
Judgment, New Matter and  
Counterclaim for Declaratory  
Judgment

Filed on behalf of: Thelma Bush and  
Beverly R. Williams a/k/a Beverly Copelli

Counsel of Record for this party:

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

100 Meadow Lane  
Suite 5  
DuBois, Pennsylvania 15801

(814) 375-0300

NOTICE TO PLEAD

You are hereby notified to plead  
to the within pleading within  
twenty (20) days of service thereof  
or default judgment may be entered  
against you.

  
David J. Hopkins, Esquire

<sup>5</sup> FILED  
OCT 24 2006  
0/3:50/0  
William A. Shaw  
Prothonotary/Clerk of Courts  
1 CEN TO ATT

#2

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

CHERRY TIMBER ASSOCIATES, INC.  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs

vs.

No. 06-2498 C.D.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,

Defendants

**ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT**

AND NOW comes Defendants, Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli, by and through their attorneys, Hopkins Heltzel LLP, and answers the Complaint for Declaratory Judgment filed by Cherry Timber Associates, Inc. and Chagrin Land Limited Partnership as follows:

1. a. Neither admitted nor denied. Answering Defendants are without sufficient knowledge to admit or deny the allegations set forth in paragraph 1a and strict proof is demanded at trial.

b. Neither admitted nor denied. Answering Defendants are without sufficient knowledge to admit or deny the allegations set forth in paragraph 1b and strict proof is demanded at trial.

2. a. Neither admitted nor denied. Answering Defendants are without sufficient knowledge to admit or deny the allegations set forth in paragraph 2a and strict proof is demanded at trial.

b. Neither admitted nor denied. Answering Defendants are without sufficient knowledge to admit or deny the allegations set forth in paragraph 2b and strict proof is demanded at trial.

3. a. Admitted.

b. Admitted.

4. Admitted.

5. a. Admitted.

b. Admitted.

c. Admitted.

d. Neither admitted nor denied. Answering Defendants are without sufficient knowledge to admit or deny the allegations set forth in paragraph 5d.

6. a. Admitted.

b. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Denied. To the best knowledge, information and belief of Answering Defendants, all timber harvested by Mitchell Lumber was timber from the Duttry/Bush/Williams-Copelli property.

12. Denied. To the best knowledge, information and belief of Answering Defendants, Plaintiffs' coerced, threatened and harassed Mitchell Lumber until Mitchell Lumber paid \$45,000.00 into the escrow account of Scott V. Jones, Esquire.

13. Admitted.

14. Admitted in part and denied in part. Answering Defendants admit Scott V. Jones, Attorney at Law, held the money from Mitchell Lumber. Answering Defendants are without sufficient knowledge to admit or deny the investment vehicle Mr. Jones used to escrow the funds.

15. Admitted.

16. Admitted.

17. Admitted in part and denied in part. It is admitted that the parties failed to reach an agreement as to the disposition of the funds held by Attorney Jones. All other allegations in paragraph 17 are denied and strict proof is demanded at trial.

18. Admitted.

19. Neither admitted nor denied. Answering Defendants are uncertain of the investment vehicles Attorney Jones used with regard to the escrowed funds.

20. Neither admitted nor denied. Answering Defendants are without sufficient knowledge to admit or deny any allegations as to the investment vehicles Attorney Jones used when escrowing the funds.

21. Denied. At all material times, Mitchell Lumber harvested lumber from the lands of Duttry, Bush and Williams/Copelli the escrowed monies belongs to Duttry, Bush and Williams/Copelli.

22. No answer is required of this paragraph.

23. Admitted.



WHEREFORE, Answering Defendants respectfully request the Court enter an Order dismissing Plaintiffs' Complaint with prejudice and ordering the funds held by Attorney Jones be paid over to John D. Duttry, Thelma Bush and Beverly R. Copelli.

**NEW MATTER**

24. The claims of Plaintiffs must fail inasmuch as all timber harvested by Paul Mitchell and Mitchell Lumber Company was cut from lands of Duttry, Bush and Williams/Copelli.

25. The claims of Plaintiffs must fail inasmuch as at all material times, Paul Mitchell and Mitchell Lumber Company was holding said \$45,000.00 for and on behalf of Duttry, Bush and Williams/Copelli.

26. The claims of Plaintiffs must fail inasmuch as Plaintiffs coerced, threatened and harassed Paul Mitchell into paying said \$45,000.00 over to Scott Jones, Esquire, when in fact the money was being held for Duttry, Bush and Williams/Copelli.

**COUNTERCLAIM FOR DECLARATORY JUDGMENT**

AND NOW, comes the Defendants/Plaintiffs on the Counterclaim, Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli and in support of their counterclaim state as follows:

1. Defendants/Plaintiffs on the Counterclaim repeat the allegations set forth in Plaintiffs' original Complaint for the following paragraphs and sections: 1a, 1b, 2a, 2b, 3a, 3b, 4, 5a-c, 6a, 6b, 7, 8, 9, 10 and 11.

2. After Mitchell Lumber cut and removed merchantable timber from the Duttry, Bush and Williams/Copelli property, Mitchell was approached by representatives

of Plaintiffs/Defendants on the Counterclaim and forced Paul Mitchell to pay over money rightfully due Duttry, Bush and Williams/Copelli to Cherry Timber/Chagrin Land.

3. Said money that was rightfully due Mitchell to Duttry, Bush and Williams/Copelli was paid to Scott V. Jones, Esquire, of the law firm of Blakely and Jones, 90 Beaver Drive, DuBois, Pennsylvania 15801, where the money has been held since that time.

4. Said money held by Scott V. Jones, Esquire, of Blakely and Jones rightfully belongs to Duttry, Bush and Williams/Copelli and who will not release the escrowed funds without an Order of Court directing distribution of the funds.

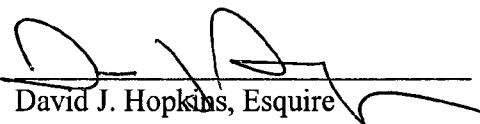
WHEREFORE, Defendants/Plaintiffs on the Counterclaim, Thelma Bush and Beverly Copelli, request your Honorable Court declare after hearing that:

a. John D. Duttry, Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli, are the owners of the timber harvested by Mitchell pursuant to the timber harvest agreement; and

b. John D. Duttry, Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli are entitled to the escrowed funds, including the principal deposited by Mitchell Lumber and all interest earned thereafter from the date of deposit to the date the funds are distributed.

Respectfully submitted,

HOPKINS HELTZEL LLP

  
David J. Hopkins, Esquire  
Attorney for Thelma Bush and  
Beverly Copelli

**VERIFICATION**

I hereby 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.

Thelma Bush  
Thelma Bush

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

CHERRY TIMBER ASSOCIATES, INC.  
and CHAGRIN LAND LIMITED  
PARTNERSHIP,

Plaintiffs

vs.

No. 06-2498 C.D.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH and BEVERLY R.  
WILLIAMS a/k/a BEVERLY COPELLI,

Defendants

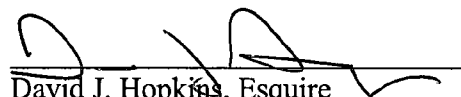
**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of the Answer to Complaint for Declaratory Judgment, New Matter and Counterclaim for Declaratory Judgment, filed on behalf of Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli, was forwarded on the 23rd day of October, 2006 by United States Mail postage prepaid, addressed as follows:

John Sughrue, Esquire  
23 North Second Street  
Clearfield, PA 16830

Keith M. Pemrick, Esquire  
Dale Woodard Law Firm  
1030 Liberty Street  
Franklin, PA 16323-1298

Edward R. Ferraro, Esquire  
690 Main Street  
Brockway, PA 15824

  
David J. Hopkins, Esquire  
Supreme Court No. 42519

**FILED**

**OCT 24 2006**

William A. Shaw  
Prothonotary/Clerk of Courts

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William A. Shaw  
Prothonotary/Clerk of Courts



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

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) No. \_\_\_\_\_, 2006

## COMPLAINT FOR DECLARATORY JUDGMENT

NOW come the plaintiffs, through their undersigned counsel, and file this Complaint for Declaratory Judgment, and in support thereof state as follows:

1. Cherry Timber Associates, Inc. (“Cherry Timber”):
  - a. Is, and was at all times material hereto, an Ohio corporation with an office and principal place of business at 23925 Commerce Park Road, Beechwood, Ohio 44122; and
  - b. Is, and was at all times material hereto was the owner of a fifty-eight (58) acre parcel in Huston Township, Clearfield County, Pennsylvania, being erroneously identified in instruments of record as Tax Parcel No. 119-E3-33, but which in fact is Tax Map Parcel No. 119-E4-16 (“the Cherry Timber property”).
2. Chagrin Land Limited Partnership (“Chagrin”):



- a. Is, and was at all times material hereto, an Ohio limited partnership with an office and principal place of business at 23925 Commerce Park Road, Beechwood, Ohio 44122; and
  - b. Is affiliated with Cherry Timber through common ownership.
3. Mitchell Lumber Company ("Mitchell Lumber"), at all times material hereto:
  - a. Was a sole proprietorship owned and operated by Paul Mitchell; and
  - b. Maintained an office and place of business at Box 64, German Settlement Road, Ridgway, Elk County, Pennsylvania 15853.
4. Paul Mitchell died on January 2, 2003, and Mitchell Lumber Company ceased doing business on or prior to that date.
5. Audra Mitchell ("Mitchell"):
  - a. Is an adult citizen of the Commonwealth of Pennsylvania residing at 108 Catalina Road, St. Mary, PA 15857;
  - b. Is the widow of Paul Mitchell;
  - c. Is the sole beneficiary of the estate of Paul Mitchell; and
  - d. Maintained the books and records of Mitchell Lumber Company while it was in business, and from time to time signed Agreements on behalf of Mitchell Lumber Company, including the Timber Harvest Agreement hereinafter identified.
6. John D. Duttry ("Duttry") was at all times material hereto:
  - a. An adult citizen of the Commonwealth of Pennsylvania; and
  - b. A one-third owner as a tenant-in-common of a 123.2 acre parcel in Huston Township, Clearfield County, Pennsylvania, being erroneously identified in instruments of record as Tax Map Parcel No. 119-E4-16, but which in fact is Tax Map Parcel No. 119-E3-33 ("the Duttry property").

7. Thelma Bush ("Bush") was at all times material hereto an adult citizen of the Commonwealth of Pennsylvania, and a one-third owner as tenant-in-common of the Duttry property.

8. Beverly R. Williams, a/k/a Beverly Copelli ("Williams") was at all times material hereto an adult citizen of the Commonwealth of Pennsylvania, and a one-third owner as tenant-in-common of the Duttry property.

9. On October 18, 1994, Duttry, on behalf of himself, Bush and Williams, entered into a Timber Harvest Agreement with Mitchell Lumber which provided for the removal of timber from property purportedly owned by Duttry, Bush and Williams in Clearfield County. A true and correct copy of the Timber Harvest Agreement is attached hereto as Exhibit 1.

10. Between October 18, 1994, and October 18, 1995, Mitchell Lumber harvested timber pursuant to the Timber Harvest Agreement.

11. During the course of harvesting timber pursuant to the Timber Harvest Agreement, Mitchell Lumber cut and removed merchantable timber from the Cherry Timber property.

12. When Mitchell Lumber was advised by the plaintiffs that they believed it had wrongfully removed timber from the Cherry Timber property, it agreed to deposit Forty-Five Thousand (\$45,000.00) Dollars into an escrow account pending a resolution of the dispute as to the ownership of the timber which had been harvested.

13. In February and March, 1995, Mitchell Lumber forwarded five (5) payments, totaling Forty-Five Thousand (\$45,000.00) Dollars to Scott V. Jones, Esquire, of Blakley & Jones, 90 Beaver Drive, DuBois, Pennsylvania 15801 ("the Escrow Agent").

14. The Mitchell Lumber Company funds were deposited as "Scott V. Jones, Escrow Agent for Mitchell Lumber Co. and Chagrin Land Limited Partnership" (the "escrow funds").

15. When Duttry, Bush and Williams learned that the escrow funds had been deposited with Attorney Jones, they advised Mr. Jones, through their counsel, that they claimed ownership of the escrow funds, and requested, inter alia, that "a formal escrow agreement" be executed regarding the handling of the escrow funds. A true and correct copy of a March 8, 1995, letter from Attorney John Sughrue to Attorney Jones is attached hereto as Exhibit 2.

16. Thereafter, discussions ensued between counsel for the plaintiffs and counsel for Duttry, Bush and Williams regarding the disposition of the escrow funds.

17. The parties were unable to reach an agreement regarding disposition of the escrow funds, but they did agree that the funds would continue to be held by Attorney Jones until a court of competent jurisdiction decided which party was entitled to receive the funds.

18. No formal escrow agreement was ever executed with regard to the escrow funds.

19. The escrow funds have been held in various interest bearing accounts and instruments since 1995, and on October 17, 2005, the escrow funds were re-invested in a two-year Certificate of Deposit at First Commonwealth Bank (CD No. 2460-000-3006808). The escrow funds totaled \$62,646.93 as of that date.

20. The aforesaid Certificate of Deposit identifies Mitchell Lumber Company and Chagrin Land Limited Partnership as the owners.

21. The plaintiffs believe, and therefore aver, that Cherry Timber is, and was at all times material hereto, the owner of the property from which the timber was harvested by Mitchell Lumber, and is the rightful owner of the escrow funds.

22. Contemporaneously herewith Cherry Timber Associates, Inc., is filing a Quiet Title Action with respect to the Cherry Timber property.

23. Cherry Timber believes, and therefore avers, that the Escrow Agent will not release the escrow funds without an order from the Court directing distribution of the funds.

WHEREFORE, the plaintiffs request that your Honorable Court declare, after hearing,  
that:

- a. Cherry Timber Associates, Inc., was the owner of the timber wrongfully harvested by Mitchell Lumber pursuant to the Timber Harvest Agreement; and
- b. The plaintiffs are entitled to the escrow funds, including the principal deposited by Mitchell Lumber and all interest earned thereon from the date of deposit to the date the funds are distributed.

DALE WOODARD LAW FIRM

By Keith M. Penick  
Attorneys for Plaintiffs

EXHIBIT 1

TIMBER HARVEST AGREEMENT

This agreement, made this 18<sup>th</sup> day of OCTOBER,

1994 by and between:

JOHN D. BUTTEY  
P.O. BOX 736  
DuBois, PA 15801  
375-9407

Parties of the first part,  
LANDOWNERS

A N D

MITCHELL LUMBER COMPANY  
Box 64, German Settlement Road  
Ridgway, PA 15853  
(814) 772-2720 or (814) 265-1146

Parties of the second part,  
TIMBER OPERATORS.

In consideration of the following promises and covenants, the parties have agreed as follows:

1. Timber Operator will remove such timber from the property of the Landowner located at HUSTON Township, CLARKE County, Pennsylvania, more fully described in CLARKE County Plat Book at Page N/A Parcel N/A, comprising of \_\_\_\_\_ acres more or less, under the following terms and conditions:

2. The timber operator will remove all standing timber on the above described property down to a diameter of 16 inches,

3. Timber operator shall pay Landowner according to the following schedule: 300/M Oak, 500/M Oak, 600/M Cherry, 350/M W. Oak, 200/M Maple, 75/M Pine - Hemlock, 75/M Poplar - Bass, 50/M Blacking 1.50/ton pulp.

4. Timber Operator shall, as soon as conditions permit, secure necessary permits (State and Federal), for the harvesting of said timber.

5. Landowner guarantees that he is the owner of the above described property and that he has full title and authority to sell the above timber. Landowner also guarantees the said boundaries of said property.

6. Timber Operator agrees to repair and maintain all skid roads and trails on the above property, according to law.

7. All cutters and skidder operators will be required to carry their own liability and compensation insurance, including hospitalization, during the term of this agreement.

8. Timber Operator agrees to keep streams on the property free of all tree tops during this agreement.

9. This agreement will terminate on October, 1945 at 12:00 noon EST.

10. IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and the year first above stated.

John H. Smith  
LANDOWNER

W. H. P. Parnell  
WITNESS

Andrew D. Mitchell  
OPERATOR

\_\_\_\_\_  
WITNESS

EXHIBIT 2



LAW OFFICES  
SUGHRUE & KESNER  
23 NORTH SECOND STREET  
CLEARFIELD, PA. 16830

JOHN SUGHRUE  
KIM C. KESNER

March 8, 1995

(814) 765-1704  
FAX (814) 765-2957

Facsimile (375-1082) and first class mail

Scott V. Jones, Esquire  
BLAKLEY & JONES  
Box 6  
DuBois, PA 15801

RE: Thelma Bush et al, Paul Mitchell Lumber,  
and Endeavor Timber, property located  
in Huston Township

Dear Scott:

Please be advised that this office has been retained by Thelma Bush, John D. Duttry, and Beverly Copelli, owners of a tract of land situate in Huston Township. My clients entered into an Agreement with Paul Mitchell to have their land timbered. As I understand it, in the course of the operation, Mr. Mitchell was contacted by representatives of Endeavor Timber who claimed ownership of timber involved in the operation. Obviously, there is a dispute that needs to be resolved.

Under his agreement with us, Mr. Mitchell is obligated to pay my clients for the timber being removed. He advises me that at the request of Endeavor Timber, he has transmitted proceeds of timber sales (I have been given the figure of \$45,000) to you to hold in escrow as an escrow agent for Endeavor Timber and my clients pending resolution of the dispute. Would you kindly confirm that you have received money, the amount, and that you are acting as an escrow agent on behalf of all claimants?

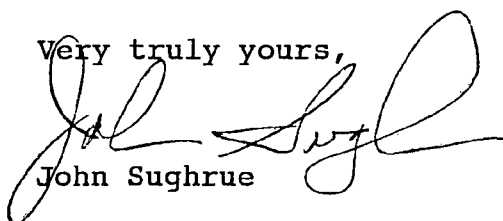
Assuming my information is correct, I would propose that we enter into a formal escrow agreement and invest the moneys in your name and my name in an interest-bearing account pending resolution of the dispute. I would appreciate receiving by return mail confirmation of the account and your position with respect to my suggestions.

I spoke briefly with Mr. Mitchell and advised him that I would keep him informed as matters develop. As I write this letter, I have talked with your office and I understand you are on vacation until the 16th. I am advising your office that my clients claim ownership of the moneys that you receive and we would expect that you will not disburse the moneys until the dispute has been resolved.

Scott V. Jones, Esquire  
Page 2  
March 8, 1995

My clients have authorized me to investigate the situation and I would appreciate the opportunity to discuss the matter with you in detail upon your return. Thank you for your immediate attention to these matters.

Very truly yours,



John Sughrue

JS/mbb

cc: Mrs. Thelma Bush  
Mr. John D. Duttry  
Mrs. Beverly Copelli  
Mitchell Lumber

**VERIFICATION**

The undersigned, President of Cherry Timber Associates, Inc., states that the facts averred in the foregoing Complaint are true and correct to the best of his knowledge, information and belief. The undersigned further states that he understands that false statements therein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.



\_\_\_\_\_  
Michael Drusinsky

Dated: Sept 1., 2006

**FILED**

**SEP 14 2006**

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



# Superior Court of Pennsylvania

Karen Reid Bramblett, Esq.  
Prothonotary  
Eleanor R. Valecko  
Deputy Prothonotary

Western District

310 Grant Street, Suite 600  
Pittsburgh, PA 15219-2297  
(412) 565-7592  
www.superior.court.state.pa.us

## CERTIFICATE OF REMITTAL/REMAND OF RECORD

TO: Mr. Shaw  
Prothonotary

RE: Cherry Timber Assoc v. Mitchell Appeal of: Duttry  
2159 WDA 2009  
Trial Court: Clearfield County Court of Common Pleas  
Trial Court Docket No: No. 06-1498-CD

**FILED**

MAY 13 2011  
M 12:05  
William A. Shaw  
Prothonotary/Clerk of Courts

Annexed hereto pursuant to Pennsylvania Rules of Appellate Procedure 2571 and 2572 is the entire record for the above matter.

Submitted to  
Court

### Original Record contents:

Item	Filed Date	Description
Original Record	February 25, 2010	2 Parts
Transcripts	February 25, 2010	2
Exhibits	February 25, 2010	1 Bundle

### Additional Item(s): Superior Court Memorandum

Remand/Remittal Date: 05/11/2011

ORIGINAL RECIPIENT ONLY - Please acknowledge receipt by signing, dating, and returning the enclosed copy of this certificate to our office. Copy recipients (noted below) need not acknowledge receipt.

Very truly yours,

*Eleanor R. Valecko*

Eleanor R. Valecko  
Deputy Prothonotary

/mln

### Enclosure

cc: The Honorable Fredric J. Ammerman, President Judge  
Thelma Bush  
Beverly Copelli  
Keith Michael Pemrick, Esq.  
John Sughrue, Esq.

Cherry Timber Assoc v. Mitchell Appeal of: Duttry  
2159 WDA 2009

Letter to: Mr. William A. Shaw

**Acknowledgement of Certificate of Remittal/Remand of Record (to be returned):**

  
\_\_\_\_\_  
Signature

MAY 13, 2011  
Date

\_\_\_\_\_  
Printed Name

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan, 2014  
Clearfield Co., Clearfield, PA

J. A36016-10

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

CHERRY TIMBER ASSOCIATES, INC.  
AND CHAGRIN LAND LIMITED  
PARTNERSHIP,

Appellees

v.

AUDRA MITCHELL, JOHN D. DUTTRY,  
THELMA BUSH, AND BEVERLY R.  
WILLIAMS A/K/A BEVERLY COPELLI,

APPEAL OF: JOHN D. DUTTRY,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

06-1498-CD  
**FILED** (E)

MAY 13 2011  
m/12:10/12  
William A. Shaw  
Prothonotary/Clerk of Courts

No. 2159 WDA 2009

Appeal from the Judgment Entered December 15, 2009, in  
the Court of Common Pleas of Clearfield County, Civil  
Division, at No. 06-1498-CD.

BEFORE: FORD ELLIOTT, P.J., BOWES, and FREEDBERG, JJ.

MEMORANDUM:

FILED: March 28, 2011

John D. Duttry appeals from the judgment entered on December 15, 2009 following a non-jury trial in this declaratory judgment action. After careful review, we affirm.

This matter centers around a property dispute involving sixty acres contained within an approximate one hundred and eighty-three acre tract of land in Clearfield County, Pennsylvania, which the parties have called the Bucksbee Farm. Appellant alleges that he is the owner of a 123 ½ acre parcel in the southern end of Bucksbee Farm and that Appellees own a sixty acre plot in the northern section of that property. Appellees submit that

they own sixty acres in the southern portion of the farm.<sup>1</sup> A brief history of the division of the land is beneficial to understanding the dispute.

In 1927, G.E. Bucksbee owned approximately 180 acres in Huston Township, Clearfield County, Pennsylvania. This land was acquired from John E. DuBois. The land was tax assessed as two separate properties, one being a sixty acre tract, which, in the 1927 deed, is described as being in the south of the farm, and another 123 ½ acre plot necessarily located in the north. Thus, the 1927 deed specifically places the sixty acres in dispute in the southern portion of the farm. This fact is conceded by Appellant.

Mr. Bucksbee neglected to pay taxes on the sixty acre parcel in the south and the county sold the property to David DuBois. The deed did not contain a metes or bounds description. Subsequently, in 1947, the David DuBois family sold the sixty acre section to Green Glen Corporation ("Green Glen"). That deed also failed to include a metes or bounds description. In or around the same time, the Clearfield County Treasurer sold property of Mrs. G.E. Bucksbee to the county. That property consisted of 123 ½ acres. Again, no description of the land was recorded, but, due to the 1927 deed description, it had to be situated in the north. Thereafter, the county sold the property to Harry Bender without a metes or bounds description. Mr. Bender assigned the property to two other individuals. However, the

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<sup>1</sup> The actual plot is fifty-eight acres; however, the parties generally refer to the property as consisting of sixty acres.



County Treasurer conveyed the acreage back to Howard Bender, together with Annie Bender, after the taxes were not paid. The relevant deed contained no description of the applicable property. In 1955, the Benders sold the acreage to Appellant's parents, Harold E. Duttry and Mary Duttry. The 1955 deed from the Benders to the Duttrys contained a description of the property that located the 123 ½ acre tract in the southern portion of the Bucksbee Farm.<sup>2</sup> The parties acknowledge that 1955 deed mistakenly places the 123 ½ acres in the south because the chain of title generated from the 1927 deed locates the 123 ½ acre plot in the north. The Duttrys paid taxes on property in the south of Bucksbee Farm. Correspondingly, the county assessed property taxes against Green Glen in the northern section of Bucksbee Farm.

In 1988, Harold E. Duttry died and his 123 ½ acre parcel was distributed to his three heirs, John D. Duttry, Thelma Bush, and Beverly Williams a/k/a Beverly Copelli. The decree, since it was drafted from the

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<sup>2</sup> We are cognizant that the trial court stated in its Pa.R.A.P. 1925(a) opinion that it found the testimony of Zoe Withey, a title abstractor, credible regarding the description in the pertinent deed placing the tract in the north. However, Ms. Withey did not testify in this manner. **See** N.T., 4/21/09, at 164. She did state that the tax assessment maps showed the larger tract in the north, but Green Glen was assessed the taxes on that parcel. **See** N.T., 4/22/09, at 11. Furthermore, Appellees, in discussing Ms. Withey's testimony, do not refer to testimony on her part describing the relevant deed as locating the one hundred and twenty-three and one-half acre plot in the north. **See** Appellees' brief at 7. Indeed, Appellees acknowledge that the deed contained an incorrect description placing the property in the south. **Id.** at 10.

1955 deed, again improperly defined the property as being located in the southern portion of Bucksbee Farm. Also in 1988, Green Glen conveyed, via a quitclaim deed, several plots in Clearfield County to Appellee Cherry Timber Associates, Inc. ("Cherry Timber"). The deed described one section, parcel thirteen, as a sixty acre tract situated in the northern portion of Bucksbee Farm. However, in that same deed, Green Glen provided to Cherry Timber all of Green Glen's right and title to all of its real property in Clearfield County. Appellant does not dispute that, based on the subsequent retracing of the description of the properties, the original sixty acre plot was actually located in the south and the remaining acreage was situated in the northern area of the farm.

The present dispute came to a head when, believing that he had good title to that tract, Appellant entered into a Timber Harvest Agreement with Paul Mitchell to remove timber from land in the southern end of Bucksbee Farm. Mr. Mitchell, the owner of Mitchell Lumber Company, was to pay Appellant for the privilege of harvesting the timber. However, on January 27, 1995, Mr. Mitchell was approached by Stephen Jilk, an employee of Industrial Timber and Land Company ("Industrial") and told that he was trespassing.<sup>3</sup> In response, Mr. Mitchell agreed to place \$45,000

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<sup>3</sup> At trial, Mr. Jilk also testified that he represented both Cherry Timber and Chagrin Land L.P. ("Chagrin") at various points. Cherry Timber, Chagrin, and Industrial each apparently share some common ownership.

in an escrow account with Attorney Scott Jones, who represented Industrial, pending the resolution of the property dispute. The estimated value of the timber was \$45,381.07. In 2005, Appellant sold his 123 ½ acre parcel, again locating it in the south of Bucksbee Farm.

After the parties were unable to come to an amicable solution, on September 14, 2006, Appellees filed the instant action seeking to have the court declare them the owners of the money held by Attorney Jones and the southern sixty acre tract. Appellant filed an answer, new matter, and counterclaims arguing that he was the lawful owner of funds in the escrow account and that Appellees' claims were barred by the statute of limitations, laches, and estoppel. Subsequently, on February 27, 2009, Appellant filed a motion for summary judgment based on his statute of limitations defense. The trial court denied Appellant's motion and the matter proceeded to a two-day non-jury trial.

On July 28, 2009, the trial court issued an order in favor of Appellees. Appellant entered judgment and timely appealed. The trial court directed Appellant to file a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. Appellant complied and the trial court authored a Pa.R.A.P. 1925(a) opinion. The matter is now ripe for our review. Appellant raises the following issues:

1. Did Landowner Duttry and his predecessor Father, who mistakenly believed their 123 ½ acre parcel was located in

the southern end of the old Bucksbee Farm and occupied and utilized the parcel for over thirty-five years acquire title to the disputed 60 acre parcel located in the southern end of the old Bucksbee Farm under the Doctrine of Consentable Lines, specifically the Doctrine of Recognition and Acquiescence?

Sub-question 1A: Does the fact that Claimant Cherry Timber's predecessor in title, Green Glen Corporation, conveyed to Claimant Cherry Timber, the disputed 60 acre parcel by deed description specifically locating it in the northern end of the old Bucksbee Farm, specifically identifying the parcel as County Map Number 119-E3-33 and specifically identifying Harold Duttry as an adjoining landowner on the south constitute recognition of and acquiescence in the northern location of its 60 acre parcel and bind Claimant Cherry Timber?

Sub-question 1B: Does a color-coded topographical map, prepared by Green Glen Corporation, Plaintiffs' Exhibit 11, (R.465a), identifying and locating the disputed 60 acre parcel in blue in the northern part of the Bucksbee Farm and questioning ownership but not location constitute recognition and acquiescence of the location of Green Glen's 60 acre parcel?

Sub-question 1C: Does Green Glen's specific conveyance to Claimant Cherry Timber of 60 acres identified and located in the northern part of the Bucksbee Farm, parcel 13, (R.612a), supersede the catchall provisions of parcel 21 (R.613a) contained in Green Glen's deed?

2. After alleging that Logger Mitchell unlawfully trespassed on the disputed 60 acre parcel and removed timber under a Timber Harvest Agreement with Landowner Duttry and inducing Logger Mitchell to pay Landowner Duttry's money to Attorney Jones, were Claimants Cherry Timber and/or Chagrin required to prosecute their claim in tort within the two-year statute of limitations applicable to such conversion pursuant

to 42 Pa.C.S. § 8311(a) and 42 Pa.C.S. § 5524(3),(4),(5) and (7)?

Sub-question 2A: Are Claimants using the declaratory judgment action to define the underlying original dispute and circumvent the clear meaning of the two-year statute of limitations?

Sub-question 2B: Did Landowner Duttry waive the two year statute of limitations and/or the four-year statute of limitations applicable to declaratory judgment acts?

Appellant's brief at 4-6. (emphasis in original).

Preliminarily, we set forth our standard and scope of review.

Our standard of review in non-jury trials is to assess whether the findings of facts by the trial court are supported by the record and whether the trial court erred in applying the law. Upon appellate review the appellate court must consider the evidence in the light most favorable to the verdict winner and reverse the trial court only where the findings are not supported by the evidence of record or are based on an error of law. ***Allegheny County Housing Authority v. Johnson***, 908 A.2d 336, 340 (Pa.Super.2006). Our scope of review regarding questions of law is plenary. ***Id.***

***Skiff re Business, Inc. v. Buckingham Ridgeview, LP***, 991 A.2d 956, 962 (Pa.Super. 2010).

Appellant's initial claim is premised on the doctrine of recognition and acquiescence. Further, Appellant's sub-issues 1A, 1B, and 1C deal with factual evidence he contends supports his position regarding that doctrine. Therefore, we address Appellant's first issue and its subparts together.

According to Appellant, both he and his predecessor in title, his father, mistakenly believed that their 123 ½ acre parcel was located in the southern end of the old Bucksbee Farm and occupied and utilized that parcel for over thirty-five years. Additionally, Appellant posits that Appellees' predecessor, Green Glen, believed that they possessed the remaining sixty acres in the northern section of the farm.

Appellant's argument relates to the following facts. Green Glen, via a 1988 quit-claim deed, sold all of its property in Clearfield County to Cherry Timber. The deed from Green Glen described the Bucksbee Farm parcel as parcel thirteen, wherein the sixty acres was placed in the north. Additionally, the deed contained a catch-all provision which stated that Green Glen conveyed its right and title to all of its real property in Clearfield County. Accordingly, Cherry Timber has record title to sixty acres of Bucksbee Farm.

Appellant argues that Cherry Timber's acceptance of the 1988 deed from Green Glen describing its sixty acre tract, parcel thirteen, as being located in the northern section of Bucksbee Farm, bars Cherry Timber from now asserting that it owns sixty acres in the southern section of Bucksbee Farm. In addition, Appellant points out that since at least 1955, Green Glen believed it owned sixty acres in the north and Appellant's predecessor understood that his property was located in the south. As support for this

position, Appellant references that Green Glen and Appellant's father paid taxes on the land that they assumed that each owned, *i.e.*, Green Glen paid taxes on property in the north and the Duttry family paid taxes on acreage in the south. In sum, Appellant alleges that Green Glen and the Duttry family "mistakenly flip-flopped the location of their parcels[,] and acquiesced to the location of their respective properties. Appellant's brief at 8. Since Green Glen is Cherry Timber's predecessor in interest, Appellant asserts that Cherry Timber is bound by the prior acts of Green Glen.

Appellees counter that the evidence establishes that they have title to the disputed property and that Appellant presented no evidence to indicate that the doctrine of acquiescence was applicable. According to Appellees, the inclusion of the catch-all provision in the deed from Green Glen to Cherry Timber conveyed the sixty acre plot in the south regardless of the language of the deed referencing parcel thirteen as sixty acres in the northern portion of Bucksbee Farm. Furthermore, Appellees posit that Appellant did not occupy the land, since occasional hunting and logging does not establish occupation. Appellees also submit that the doctrine of acquiescence requires the establishment of a visible boundary line, which Appellant failed to prove. Finally, Appellees maintain that Appellant has waived his argument that the language contained in the deed conveying parcel thirteen supersedes the catch-all provision of the deed, and that even

if Appellant did not waive this assertion, a quit claim deed cannot convey a property interest that the party does not possess.

Before we begin our discussion of the doctrine of recognition and acquiescence, we dispose of Appellees' waiver argument. Appellees aver that Appellant did not specifically raise part of his issue in his 1925(b) statement. We find this position without merit. Although Appellant did not explicitly reference parcel twenty-one in his concise statement, Appellant plainly delineates his position relative to the language provided in parcel thirteen and its applicability. We set forth the relevant provision of Appellant's 1925(b) statement verbatim:

The Trial Court erred in failing to conclude that Plaintiff's predecessors in title, Green Glen Corporation, had recognized and acquiesced in the location of its 60 acre tract in the northern end of the old Bucksbee Farm as confirmed by the specific conveyance of 60 acres in the northern part by Item 13 in Cherry Timber's deed from Green Glen Corporation[.]

Appellant's Pa.R.A.P. 1925(b) statement. The argument that the sale of parcel thirteen describing the sixty acres in the north of Bucksbee Farm is binding upon Appellees necessarily requires the catch-all provision to be inapplicable.<sup>4</sup> Therefore, we reject Appellees' request for this Court to find

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<sup>4</sup> Simply put, if Green Glen had already acquiesced in its ownership of property in the north, it could not convey property in the south which it did not own. Appellees recognize this principle, but argue that since Green Glen did not own the property in the northern portion of the farm it could not have conveyed that interest via a quitclaim deed.



this aspect of Appellant's issue waived and now address the applicability of the doctrine of recognition and acquiescence to the facts herein.

Our Supreme Court expounded upon the doctrine of recognition and acquiescence in **Zeglin v. Gahagen**, 812 A.2d 558 (Pa. 2002), and stated:

The establishment of a boundary line by acquiescence for the statutory period of twenty-one years has long been recognized in Pennsylvania. Two elements are prerequisites: 1) each party must have claimed and occupied the land on his side of the line as his own; and 2) such occupation must have continued for the statutory period of twenty-one years.

**Id.** at 561 (footnote omitted). This Court has also provided that "the parties need not have specifically consented to the location of the line. It must nevertheless appear that for the requisite twenty-one years a line was recognized and acquiesced in as a boundary by adjoining landowners." **Plauchak v. Boling**, 653 A.2d 671, 676 (Pa.Super. 1995) (citations and internal quotations omitted).

This Court has stated that in the context of adverse possession, a closely related doctrine to the doctrine of recognition and acquiescence, **see Zeglin, supra**, adverse possession may be established by "maintenance of a residence, by cultivation of the land, by inclosure of the land, or by making improvements to the land and paying property taxes." **Moore v. Duran**, 687 A.2d 822, 828 (Pa.Super. 1996) (citation omitted). Notably, however, the court in **Moore** also opined that "when dealing with a woodland, a person must establish actual possession of the woodland by residence or

cultivation of a part of the tract of land to which the woodland belongs.” **Id.** (citing **Niles v. Fall Creek Hunting Club, Inc.**, 545 A.2d 926 (Pa.Super. 1988) (*en banc*)).

This Court in **Niles** concluded that sporadic hunting and removing timber from property was insufficient to establish adverse possession, although it determined that other evidence in the case supported a finding that the parties acquiesced in the property line. The **Niles** Court relied upon **Hole v. Rittenhouse**, 37 Pa. 116 (1860), which held that “it is indispensable that the intruder take actual possession by residence or cultivation of part of the tract to which the woodland belongs.” **Id.** The Court further stated in *dicta* that the payment of taxes in combination with occasional trespassing would not have supported a claim of adverse possession. **Moore, Niles**, and **Hole** all relate to adverse possession and not the doctrine of recognition and acquiescence. However, both adverse possession and recognition and acquiescence have the element of occupancy. While such occupancy does not actually require residence on the property, it does entail some type of cultivation and the payment of taxes alone is insufficient. Accordingly, it would seem that unless Appellant was able to establish that he cultivated a portion of the land in some manner, his claim of occupying the property would fail. Perhaps more importantly,

herein, there is no recognized single boundary line by the parties. Rather, the issue is confusion over the location of an entire plot of land.

The trial court held that Appellant "did not set forth sufficient evidence to show that there was occupation up to a fence and/or other boundary by his predecessors in interest." Trial Court Opinion, 2/5/10, at 5. Therefore, it ruled that Appellant did not prove the elements of the doctrine of recognition and acquiescence. Although such a fence or visible marking can establish the requisite proof, it is not a necessary prerequisite. *See Niles, supra*, at 930 (stating "a boundary line **may** be proved by a long-standing fence[.]" (emphasis added)). Nevertheless, the existence of a boundary demarcation of some sort is a necessary component of the doctrine, and none is present herein.

The facts viewed in a light most favorable to Appellees demonstrate that in 1947, Green Glen, Appellees' predecessor in interest, owned a sixty acre tract in the south of Bucksbee Farm. In 1955, the Duttry family acquired a 123 ½ acre parcel of the original Bucksbee Farm; however, the deed incorrectly described the plot in the south of the farm. The Duttry family and Green Glen then began to pay taxes on the incorrect plots of land. Additionally, the Duttry family occasionally hunted on the southern property. Further, while Appellant testified to timbering the property, there was testimony that indicated that no timber was taken from the sixty acre

southern section of the property for a period of forty to fifty years. Apparently, Appellant did timber a southern portion of the property that did not consist of the sixty acres in dispute, but which would have been located within the southern parcel if it consisted of 123 ½ acres. **See** Appellant's brief at 27 citing Trial Court Opinion, 2/5/10, at 5.

Instantly, Appellant failed to provide evidence that he cultivated the southern tract he contends that he owns. Even assuming Appellant occasionally timbered a portion of 123 ½ acres in the southern section of Bucksbee Farm, such conduct would not establish the necessary occupation of the acreage in dispute. Moreover, there is no evidence of record indicating that Green Glen recognized a specific northern/southern boundary line, which would have separated Green Glen's border from Appellant's border. While Appellant argues that the "exact location of the common boundary" is immaterial, we disagree insofar as no location of a common boundary was ever established. Appellant's brief at 26. One cannot establish a common boundary where no boundary is recognized. Since Appellant does not argue that he owns only the sixty acre parcel in the south and that Appellees own 123 ½ acres in the north, he has not proven a common boundary line. Hence, Appellant's claims with respect to the doctrine of recognition and acquiescence must fail.

Appellant's second issue raises the applicability of a statute of limitations. According to Appellant, Appellees had two years to file their claim since it was, in essence, a conversion claim. The trial court ruled that Appellees' dispute regarded the ownership of escrow funds and was not against Mitchell Lumber for removing the timber and therefore was properly brought as a declaratory judgment action. It further held that Appellant waived the four-year statute of limitations for declaratory judgment actions by its conduct. The court relied upon letters sent by Appellant's counsel in 1995 indicating that money representing the value of the timber should be placed in an escrow account pending a court determination or agreement by the parties. In addition, the court cited to the testimony of three other witnesses that it was agreed that the money would remain in escrow until the matter was resolved.

Appellant argues that his attorney's correspondence must be read in the context in which they were written, which he contends were to dispute the trespass allegation. He further submits that Appellees' failure to prosecute its tort claim within two years lawfully entitled him to the money in the escrow account since, absent a legitimate claim by another party, that money was owed to him by Mitchell. Appellees respond that more than sufficient evidence exists in the record to demonstrate that Appellant waived his statute of limitations defense.

It is settled that a "statute of limitations is a procedural bar to recovery which may be waived by explicit consent or by conduct." **Cobbs v. Allied Chemical Corp.**, 661 A.2d 1375, 1378 (Pa.Super. 1995). Undoubtedly, this dispute originated as a possible trespass and conversion claim. Nevertheless, once all of the parties involved agreed to place and hold a sum representing the value of the timber in an escrow account, the issue of trespass and conversion was ostensibly resolved and the only matter left to be decided was the lawful owner of the timber and the corresponding money placed in the escrow account. Therefore, we hold that the trial court did not err in determining that the applicable statute of limitations was four years. This, of course, does not end the matter since Appellees neglected to file suit within that four-year period, waiting in excess of ten years to bring suit.

Nonetheless, we agree that the statute of limitations was waived. To hold otherwise would lend itself to the absurd result of the escrow money being placed in indefinite limbo since Appellant also would be procedurally barred from claiming that money by the same statute of limitations. The record demonstrates that each party claimed ownership of the funds and recognized that a court proceeding may be necessary to resolve the matter. Without a court proceeding, it is evident that the money would not have been released to either party. Accordingly, we conclude that the trial court

J. A36016-10

did not err in holding that Appellant waived his statute of limitations defense.

Judgment affirmed.

Judgment Entered:

Eleanor K. Valecko

Deputy Prothonotary

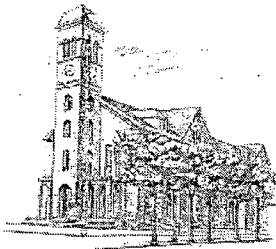
DATE: March 28, 2011

**FILED**

**MAY 13 2011**

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





## Clearfield County Office of the Prothonotary and Clerk of Courts

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

**Jacki Kendrick**  
Deputy Prothonotary/Clerk of Courts

**Bonnie Hudson**  
Administrative Assistant

**David S. Ammerman**  
Solicitor

PO Box 549, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ [www.clearfieldco.org](http://www.clearfieldco.org)

Fredric J. Ammerman, President Judge  
Court of Common Pleas  
230 E. Market Street  
Clearfield, PA 16830

Keith M. Pemrick, Esq.  
1030 Liberty Street  
Franklin, PA 16323

COPY

John Sughrue, Esq.  
225 East Market Street  
Clearfield, PA 16830

Cherry Timber Associates, Inc. and  
Chagrin Land Limited Partnership  
Vs.

Audra Mitchell, John D. Duttry, Thelma Bush,  
and Beverly R. Williams a/k/a Beverly Copelli

Court No. 06-1498-CD; Superior Court No. 2159 WDA 2009

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on February 9, 2010. The transcripts will be forwarded upon their filing in my office, per Superior Court's instructions.

Sincerely,

William A. Shaw  
Prothonotary/Clerk of Courts

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

**No. 06-1498-CD**

**Cherry Timber Associates, Inc. and  
Chagrin Land Limited Partnership**

**Vs.**

**Audra Mitchell, John D. Duttry, Thelma Bush,  
and Beverly R. Williams a/k/a Beverly Copelli**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
01	09/14/06	Complaint for Declaratory Judgment	14
02	10/24/06	Answer to Complaint for Declaratory Judgment, New Matter, and Counterclaim for Declaratory Judgment	08
03	10/25/06	Praecipe for Entry of Appearance	03
04	11/03/06	Answer of John D. Duttry to Original Complaint	16
05	11/03/06	Certificate of Service, Re: Answer of John D. Duttry to Original Complaint	02
06	11/16/06	Praecipe to Re-issue Complaint	03
07	12/04/06	Reply to New Matter and Answer to Counterclaim, Re: Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli	11
08	12/04/06	Reply to New Matter and Answer to Counterclaim, Re: John D. Duttry	12
09	12/13/06	Sheriff Return	05
10	02/14/07	Praecipe for Entry of Appearance	03
11	02/14/07	Sheriff Return	04
12	07/25/07	Answer	06
13	08/31/07	Notice of Service	01
14	08/31/07	Notice of Service	01
15	09/25/07	Petition to Withdraw as Counsel	05
16	09/27/07	Rule, Re: Petition to Withdraw as Counsel	01
17	10/19/07	Certificate of Service	02
18	11/16/07	Order, Re: David J. Hopkins, Esq. be permitted to withdraw as counsel	01
19	04/02/08	Notice of Deposition of John D. Duttry	02
20	04/02/08	Notice of Deposition of Audra Mitchell	02
21	04/16/08	Certificate of Service	02
22	05/15/08	Petition for Order to Discontinue Action as to Defendant Audra Mitchell and Order filed May 16, 2008, issuing rule and scheduling a hearing	07
23	06/12/08	Response to Petition for Order to Discontinue Action as to Defendant Audra Mitchell	05
24	07/17/08	Answer of Defendant John D. Duttry	06
25	07/18/08	Order, Re: counsel to propose order regarding discontinuance as to Audra Mitchell	01
26	08/20/08	Certificate of Readiness for Non-Jury Trial	03
27	08/20/08	Order, Re: Petition for Order to Discontinue Action as to Audra Mitchell	02
28	08/21/08	Order, Re: Pre-trial conference scheduled	01
29	08/28/08	Motion to Strike Case from Trial List	04
30	08/29/08	Order, Re: Rule issued and hearing scheduled re: Motion to Strike Case from Trial List	01
31	09/17/08	Plaintiffs' Response to Motion to Strike Case from Trial List	11
32	09/24/08	Release of All Claims	04
33	09/24/08	Praecipe for Partial Discontinuance, Re: Audra Mitchell Only	03
34	09/25/08	Motion to Reschedule Argument and Pre-Trial Conference	06
35	09/26/08	Motion for Protective Order	10
36	09/26/08	Order, Re: hearing scheduled re: Motion to Reschedule Argument to Outstanding Motions and Pre-Trial Conference	01
37	09/29/08	Amended Certificate of Service	02
38	09/29/08	Scheduling Order, re: rescheduling of Pre-Trial Conference	01
39	09/29/08	Order, Re: argument on Plaintiffs' Motion for Protective Order scheduled	01
40	10/15/08	Affidavit in Support of Defendant John D. Duttry's Motion to Strike Case from Trial List	05

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

**No. 06-1498-CD**

**Cherry Timber Associates, Inc. and  
Chagrin Land Limited Partnership**

**Vs.**

**Audra Mitchell, John D. Duttry, Thelma Bush,  
and Beverly R. Williams a/k/a Beverly Copelli**

<b>ITEM NO.</b>	<b>DATE OF FILING</b>	<b>NAME OF DOCUMENT</b>	<b>NO. OF PAGES</b>
41	10/27/08	Order, Re: Non-Jury Trial is scheduled	02
42	01/19/09	Certificate of Service	02
43	01/19/09	Certificate of Service	02
44	02/25/09	Plaintiffs' Supplemental Pre-Trial Statement	08
45	02/25/09	Notice of Service	01
46	02/27/09	Motion for Summary Judgment	30
47	03/02/09	Order, Re: Rule issued and hearing scheduled re: Motion for Summary Judgment	01
48	03/16/09	Notice of Trial Deposition	01
49	03/30/09	Factual Affidavit of John Sughrue, Attorney, in Support of Motion for Summary Judgment	11
50	03/30/09	Plaintiffs' Response to John D. Duttry's Motion for Summary Judgment	14
51	03/30/09	Plaintiffs' Exhibits in Response to Motion for Summary Judgment	121
52	03/31/09	Proof of Service of Subpoenas	03
53	04/01/09	Order, Re: letter brief to be submitted	01
54	04/20/09	Motion in Limine	07
55	04/20/09	Order, Re: Motion for Summary Judgment Denied	01
56	04/21/09	Certificate of Service	02
57	04/23/09	Stipulation	06
58	04/24/09	Order, Re: Letter brief to be submitted	01
59	07/29/09	Order, Re: following non-jury trial, Plaintiffs' request for declaratory judgment is Granted; Defendants' counterclaims including any counterclaim for declaratory relief and/or adverse possession are Dismissed	02
60	08/10/09	Praecipe for Appearance	03
61	08/10/09	(title of pleading amended)-Defendants' Post-Trial Motion/ Exceptions of Defendants, John Duttry, Thelma Bush, and Beverly Williams	17
62	08/12/09	Scheduling Order, Re: argument on Exceptions scheduled	01
63	10/08/09	Order, Re: hearing on Defendants' Exceptions rescheduled	01
64	11/19/09	Order, Re: Exceptions are dismissed	01
65	12/15/09	Praecipe for Entry of Judgment Pursuant to Pa.R.C.P. No. 227.4(2) on the Court's Decision (Non-Jury Verdict)	04
66	12/16/09	Motion to Amend Title of Pleading	07
67	12/16/09	Notice of Appeal to High Court	10
68	12/23/09	Order, Re: John D. Duttry to file concise statement	01
69	12/23/09	Motion to Enter Consent Order	04
70	12/23/09	Order to Amend Pleading, Re: Defendants granted leave to amend the pleading filed August 10, 2009, titled "Exceptions of Defendants, John D. Duttry, Thelma Bush and Beverly R. Williams to Order Dated dated July 28, 2009, docketed July 29, 2009," to "Defendants' Post-Trial Motion"	01
71	12/28/09	Appeal Docket Sheet from Superior Court, 2159 WDA 2009	03
72	01/12/10	Defendant's/Appellant's Concise Statement of Matters Complained of on Appeal	07
73	02/05/10	Opinion	12

Date: 2/9/2010  
Time: 03:13 PM

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Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

Civil Other-COUNT

Date		Judge
9/14/2006	New Case Filed.	No Judge
	Filing: Complaint for Declaratory Judgment Paid by: Pemrick, Keith M. (attorney for Cherry Timber Associates, Inc.) Receipt number: 1915563 Dated: 09/14/2006 Amount: \$85.00 (Check) 3CC shff.	No Judge
10/24/2006	Answer to Complaint For Declaratory Judgment, New Matter And Counterclaim For Declaratory Judgment, filed by s/ David J. Hopkins, Esquire. 1CC to Atty.	No Judge
10/25/2006	Praeipe For Entry of Appearance, filed by Atty. Sughrue, 4 Cert. to Atty. copy to C/A Enter my appearance on behalf of John D. Duttry, s/John Sughrue.	No Judge
11/3/2006	Answer of John D. Duttry to Original Complaint, filed by s/ John Sughrue, Esquire. 4CC to Atty	No Judge
	Certificate of Service, filed. That on November 3, 2006, a true and correct copy of Answer of John D. Duttry to Original Complaint to be served on Ms. Audra Mitchell, filed by s/ John Sughrue Esq. 2CC Atty Sughrue.	No Judge
11/16/2006	Filing: Praeipe to Re-issue Complaint Paid by: Pemrick, Keith M. (attorney for Cherry Timber Associates, Inc.) Receipt number: 1916481 Dated: 11/16/2006 Amount: \$7.00 (Check) 1 reinstated Complaint to shff.	No Judge
12/4/2006	Reply to New Matter and Answer to Counterclaim, filed by s/ Keith M. Pemrick Esq. NO CC. (In Re: Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli)	No Judge
	Reply to New Matter and Answer to Counterclaim, filed by s/ Keith M. Pimrick Esq. NO CC. (In Re: John D. Duttry)	No Judge
12/13/2006	Sheriff Return, October 5, 2006 at 1:42 om Served the within Complaint for Declaratory Judgment on John D. Duttry. October 5, 2006 at 1:35 pm Served the within Complaint for Declaratory Judgment on Thelma Bush. September 19, 2006, Sheriff of Jefferson County was deputized. September 22, 2006 at 1:00 pm Served the within Complaint for Declaratory Judgment on Beverly R. Williams a/k/a Beverly Copelli. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Dale \$83.30 Jefferson Co costs pd by Dale \$34.76	No Judge
2/14/2007	Praeipe For Entry of Appearance, filed. Kindly enter my apperance on behalf of Defendant, Audra Mitchell, in the above-captioned case, filed by s/ Christopher E. Mohney Esq. NO CC., copy to C/A.	No Judge
	Sheriff Return, November 17, 2006, Sheriff of Elk County was deputized. November 27, 2006 at 2:30 pm Served the Complaint for Declratory Judgment on Audra Mitchell. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Woodard \$31.00 Elk Co. costs pd by Woodard \$30.79	No Judge
7/25/2007	Answer, filed by s/ Christopher E. Mohney, Esquire. 5CC Atty. Mohney	No Judge
3/31/2007	Notice of Service, filed. That an original and one (1) copy of Plaintiffs' interrogatories and Request for Production of Documents to John D. Duttry were served on counsel for John D. Duttry, and copies were served on all other counsel of record on August 28, 2007, filed by s/ Keith M. Pemrick Esq. 1CC Atty.	No Judge

Date: 2/9/2010

Clearfield County Court of Common Pleas

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Time: 03:13 PM

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Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

Civil Other-COUNT

Date		Judge
3/31/2007	Notice of Service, filed. That an original and one (1) copy of Plaintiffs' Interrogatories and Requests for Production of Documents Directed to Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli, were served on counsel for Thelma Bush and Beverly R. Williams, and copies were served on all other counsel of record on August 28, 2007, filed by s/ Keith M. Pemrick Esq. 1CC Atty.	No Judge
3/25/2007	Petition to Withdraw as Counsel, filed by s/ David J. Hopkins, Esquire. No CC	No Judge
3/27/2007	Rule, NOW, this 27th day of Sept., 2007, upon consideration of the Petition to Withdraw as Counsel filed on behalf of Defendants, Thelma Bush and Beverly R. Williams, Rule Returnable on the 6th day of Nov., 2007, at 9:00 a.m. in Courtroom 3. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Hopkins	Fredric Joseph Ammerman
10/19/2007	Certificate of Service, filed. That on October 19, 2007, a true and correct copy of Answers to Interrogatories and Answers to Request for Production to be served by first class mail to Keith Pemrick Esq., David Hopkins Esq., Christopher E. Mohny Esq. filed by s/ John Sughrue Esq. 4CC Atty.	Fredric Joseph Ammerman
11/6/2007	Order, this 6th day of Nov., 2007, it is Ordered that David J. Hopkins, Esquire, be permitted to withdraw as counsel for Beverly R. Williams and Thelma Bush, Defendants. By The Court, /s/ John K. Reilly, Jr., Senior Judge. 1CC Attys: Pemrick, Mohny, Sughrue, Hopkins; 1CC Thelma Bush, 450 Salada Road, DuBois, PA 15801; 1CC Beverly Williams, 1220 Second Ave., Brockway, PA 15824	John K. Reilly Jr.
4/2/2008	Notice of Deposition of John D. Duttry, filed by s/ Keith M. Pemrick Esq. No CC.	Fredric Joseph Ammerman
	Notice of Deposition of Audra Mitchell, filed by s/ Keith M. Pemrick Esq. No CC.	Fredric Joseph Ammerman
4/16/2008	Certificate of Service, filed. That on April 16, 2008, Defendant's Notice of Taking of Deposition of and Subpoena to Steven Jilk, by fax and first class mail to Mr. Steven Jilk-c/o Keith M Pemrick Esq. and Christopher E. Mohny Esq. and by first class mail to Ms. Thelma D. Bush and Ms. Beverly Copelli, filed by s/ John Sughrue Esq. 4CC Atty Sughrue.	Fredric Joseph Ammerman
5/15/2008	Petition For Order to Discontinue Action as to Defendant Audra Mitchell, filed by s/ Christopher E. Mohny, Esquire. 4CC Atty. Mohny	Fredric Joseph Ammerman
5/16/2008	Order, this 16th day of May, 2008, upon consideration of the foregoing Petition, a Rule is issued upon the parties in interest/respondents. A hearing on the Petition shall be held on the 17th day of July, 2008 in Courtroom 1 at 10:00 a.m. Notice of the entry of this Order shall be provided to all parties by the Petitioner. By The Court, /s/ Fredric J. Ammerman, pres. Judge. 3CC to Atty.	Fredric Joseph Ammerman
3/12/2008	Response to Petition for Order to Discontinue Action as to Defendant Audra Mitchell, filed by s/ Keith M. Pemrick, Esquire. No CC	Fredric Joseph Ammerman
7/17/2008	Answer of Defendant, John D. Duttry. Filed by s/ John Sughrue, Esquire. 6CC to Atty	Fredric Joseph Ammerman

Date: 2/9/2010

Clearfield County Court of Common Pleas

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Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

Civil Other-COUNT

Date		Judge
7/18/2008	Order, this 17th day of July, 2008, following argument on the Petition filed on behalf of Audra Mitchell for Order to Discontinue, it is Ordered that counsel for the Defendant, Audra Mitchell, the Plaintiffs, and John Duttry, supply the Court with proposed Order within no more than 15 days from this date. The Court has no objection to the Order being received by fax. By The Court /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Pemrick, Mohny, Sughrue, Hopkins	Fredric Joseph Ammerman
3/20/2008	Certificate of Readiness for Non-Jury Trial, filed by s/ Keith M. Pemrick, Esquire. no CC	Fredric Joseph Ammerman
	Order, this 20th day of August, 2008, after argument on Defendant Audra Mitchell's Petition for Order to Discontinue Action as to Defendant Audra Mitchell, and upon stipulation made on the record before the Court of Defendant Audra Mitchell as follows: The relief requested in the Petition for Order to Discontinue is granted. Audra Mitchell shall execute a Release individually and as sole beneficiary and Executrix of the Estate of Paul L. Mitchell releasing any claim she or the Estate has to the funds being held in escrow which are the subject of this litigation. Upon execution of the Release by Audra Mitchell, the Plaintiffs shall mark this action discontinued as to Audra Mitchell, only. (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Pemrick, Mohny, Sughrue, Hopkins	Fredric Joseph Ammerman
3/21/2008	Order, this 21st day of August, 2008, it is Ordered that Pre-trial conference shall be held on the 2nd day of Oct., 2008 in Chambers at 2:30 p.m. By The Court, /s/ Fredric J. ammerman, Pres. Judge. 1CC Attys: Pemrick, Mohny, Sughrue, Hopkins	Fredric Joseph Ammerman
3/28/2008	Motion to Strike Case From Trial List, filed by s/John Sughrue, esquire. 3CC Atty. Sughrue	Fredric Joseph Ammerman
3/29/2008	Order, this 29th day of August, 2008, upon consideration of Defendant, John D. Duttry's Motion to Strike Case from Trial List, a Rule is issued upon Plaintiffs and Co-Defendants. Rule Returnable on the 22nd day of Sept., 2008, for filing written response. Hearing on the Merits of said Motion shall be held on the 2nd day of Oct., 2008 at 2:30 p.m. in Courtroom 1. By The Court, /s/ Fredric J. ammerman, Pres. Judge. 3CC Atty. Sughrue	Fredric Joseph Ammerman
3/17/2008	Plaintiffs' Response to Motion to Strike Case from Trial List, filed by s/ Keith Pemrick, Esquire. No CC	Fredric Joseph Ammerman
3/24/2008	Release of All Claims, signed by Audra Mitchell. 1CC to Atty.	Fredric Joseph Ammerman
	Praeipe for Partial Discontinuance, please mark the above captioned action settled and discontinued as to Audra Mitchell ONLY. Filed by s/ Keith M. Pemrick, Esquire. 1CC to Atty.	Fredric Joseph Ammerman
3/25/2008	Motion to Reschedule Argument and Pre-Trial Conference, filed by Atty. Sughrue 6 Cert. to Atty.	Fredric Joseph Ammerman
3/26/2008	Motion for Protective Order, filed by s/Keith M. Pemrick No CC	Fredric Joseph Ammerman
	Order, this 26th day of Sept., 2008, upon consideration of Defendant, John D. Duttry's Motion to Reschedule Argument to Outstanding Motions and Pre-Trial Conference, a Rule is issued upon Plaintiffs and Co-Defendants. Argument on the Merits of said Motion shall be held on the 15th day of Oct., 2008 at 10:00 a.m. in Courtroom 2. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Sughrue	Fredric Joseph Ammerman

Date: 2/9/2010

Clearfield County Court of Common Pleas

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Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs. Audra Mitchell, et al

Civil Other-COUNT

Date		Judge
3/29/2008	Amended Certificate of Service, filed. That on September 29, 2008 Co-defendant, John D. Duttry's Pre-trial Statement to be served by first class mail to Court Administrator, Christopher E. Mohny Esq., Ms Beverly Copelli, Keith M. Pemrick Esq., Ms. Thelma D. Bush, filed by s/ John Sughrue Esq. 1CC Atty Sughrue.	Fredric Joseph Ammerman
	Scheduling Order, this 29th day of Sept., 2008, it is Ordered that Pre-Trial Conf. scheduled for Oct. 2, 2008 is rescheduled for Oct. 15, 2008 at 10:00 a.m. in Courtroom 2. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins	Fredric Joseph Ammerman
	Order, this 29th day of Sept., 2008, it is Ordered that argument on the Plaintiffs' Motion for Protective Order shall be held on Oct. 15, 2008, in Courtroom 2 at 10:00 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Pemrick	Fredric Joseph Ammerman
10/15/2008	Affidavit in Support of Defendant John D. Duttry's Motion to Strike Case from Trial List, filed by s/ John Sughrue Esq. 3CC Atty Sughrue.	Fredric Joseph Ammerman
10/27/2008	Order, this 27th day of Oct., 2008, following argument relative the hearing on Motion for to Strike Case from Trial List, Pre-Trial Conference and Motion and for Protective Order, it is Ordered: Non-Jury trial is scheduled for two days, being April 21 and 22, 2009 in Courtroom 1 to commence at 9:00 a.m. on each day. (see original). By the Court, /s/ Paul E. Cherry, Judge. 1CC Attys; Pemrick, Hopkins, Sughrue	Fredric Joseph Ammerman
1/19/2009	Certificate of Service, filed. That on January 16, 2009, a true and correct copy of Defendant's Request for Admissions and Interrogatories to be served by first class mail to Keith M. Pemrick Esq., filed by s/ John Sughrue Esq. 3CC Atty Sughrue.	Fredric Joseph Ammerman
	Certificate of Service, filed. That on January 16, 2009, a true and correct copy of Defendant's Request for Production of Documents to be served by first class mail to Keith M. Pemrick Esq., filed by s/ John Sughrue Esq. 3CC Atty Sughrue.	Fredric Joseph Ammerman
2/25/2009	Plaintiff's Supplemental Pre-Trial Statement, filed by s/ Keith M. Pemrick Esq. 1CC Atty Pemrick.	Fredric Joseph Ammerman
	Notice of Service, filed. Served Plaintiffs' Response to Request for Admissions and Interrogatories and Response to Requests for Production of Documents via first class mail on February 23, 2008 to John Sughrue Esq., filed by s/ Keith M. Pemrick Esq. 1CC Atty Pemrick.	Fredric Joseph Ammerman
2/27/2009	Motion For Summary Judgment, filed by s/ John Sughrue, Esquire. 6cC Atty. Sughrue	Fredric Joseph Ammerman
3/2/2009	Order, this 2nd day of March, 2009, upon consideration of Defendant, John D. Duttry's Motion For Summary Judgment, a Rule is issued upon Plaintiffs. Argument on the merits of said motion shall be held on the 31st day of March, 2009 at 9:00 A.M. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Sughrue	Fredric Joseph Ammerman
3/9/2009	Filing: Subpoena Paid by: Pemrick, Keith M. (attorney for Cherry Timber Associates, Inc.) Receipt number: 1928425 Dated: 3/9/2009 Amount: \$3.00 (Check) For: Cherry Timber Associates, Inc. (plaintiff)	Fredric Joseph Ammerman

Date: 2/9/2010

Clearfield County Court of Common Pleas

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Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

Civil Other-COUNT

Date		Judge
3/16/2009	Notice of Trial Deposition, filed. To John D. Duttry-c/o John Sughrue Esq., Thelma D. Bush and Beverly Williams, you are hereby respectfully notified that Cherry Timber Associates Inc., and Chagrin Land Limited Partnership, will take the deposition of Lionel Alexander, Alexander and Associates Inc. oral examination on March 31, 2009 at 12:30 pm., filed by s/ Keith M. Penrick Esq. 1CC ASsty Pemrick.	Fredric Joseph Ammerman
3/30/2009	Factual Affidavit of John Sughrue, Attorney, in Support of Motion for Summary Judgment, filed by s/John Sughrue, Esq. One CC Attorney Sughrue	Fredric Joseph Ammerman
	Plaintiffs' Response to John D. Duttry's Motion for Summary Judgment, filed by s/Keith M. Pemrick, Esq. No CC	Fredric Joseph Ammerman
	Plaintiff's Exhibits in Response to Motion for Summary Judgment, filed. No CC	Fredric Joseph Ammerman
3/31/2009	Proof of Service of Subpoenas, filed. Subpoenas directing attendance at Trial on April 21, 2009, were served on Audra Mitchell (now Audra Geiser) and Scott V. Jones Esq., pursuant to Pennsylvania Rule of Civil Procedure by certified mail, restricted delivery, filed by s/ Keith M. Pemrick Esq. 1CC Atty Pemrick.	Fredric Joseph Ammerman
4/1/2009	Order, AND NOW, this 31st day of March 2009, following argument on the Defendant's Motion for Summary Judgment, it is the ORDER of this Court that either counsel may have until and including Friday, April 3, 2009, in which to submit letter brief. The same may be submitted by fax, if counsel so desires. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins.	Fredric Joseph Ammerman
4/20/2009	Motion In Limine, filed by s/ John Sughrue, Esquire. 5CC Atty. Sughrue	Fredric Joseph Ammerman
	Order, filed Cert. copies to Atty. Sughrue for Service NOW, this 20th day of April, 2009, ORDER that Defendant John D. Duttry's Motion for Summary Judgment, be and is hereby DENIED.	Fredric Joseph Ammerman
4/21/2009	Certificate of Service, filed. That on April 21, 2009 I caused Order dated April 21, 2009 Denying the Motion for Summary Judgment to be served on Keith M. Pemrick Esq. by facsimile and by personal service upon Keith M. Pemrick Esq. Christopher E. Mohny Esq., Ms. Thelma D. Bush and Ms. Beverly Copelli, filed by s/ John Sughrue Esq. 1CC Atty Sughrue.	Fredric Joseph Ammerman
4/23/2009	Stipulation, signed by Keith M. Pemrick, Esquire, and John Sughrue, Esquire. No CC	Fredric Joseph Ammerman
4/24/2009	Order, this 22nd day of April, 2009, it is Ordered that counsel for the Plaintiff provide the Court with appropriate letter brief within no more than 30 days from this date. Counsel for Defendant shall provide the Court with appropriate letter brief within no more than 45 days from this date. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins	Fredric Joseph Ammerman
7/29/2009	Order, this 28th day of July, 2009, following non-jury trial, it is the FINDINGS and Ordered: Plaintiff's request for Declaratory Judgment is GRANTED. The Defendants' Counterclaims including any Counterclaim for Declaratory Relief and/or Adverse Possession are hereby DISMISSED. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins	Fredric Joseph Ammerman
3/10/2009	Praeipce for Appearance, filed. Kindly enter my appearance on behalf of Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli, defendant, filed by s/ John Sughrue Esq. 4CC Atty Sughrue.	Fredric Joseph Ammerman



Date: 2/9/2010

Clearfield County Court of Common Pleas

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Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

Civil Other-COUNT

Date		Judge
3/10/2009	Exceptions of Defendants, John Duttry, Thelma Bush and Beverly Williams to Order dated July 28, 2009, Docketed July 29, 2009. filed by s/ 5CC Atty. Sughrue	Fredric Joseph Ammerman
3/12/2009	Scheduling Order, this 12th day of August, 2009, Argument on Exceptions of Defendants, John D. Duttry, Thelma Bush and Beverly Williams to Order dated July 28, 2009, shall be held on the 8th day of Oct., 2009 at 2:00 p.m. in courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Sughrue	Fredric Joseph Ammerman
10/8/2009	Order, this 8th day of Oct., 2009, the hearing on the Defendants' Exceptions to Order of July 28, 2009 scheduled this date is rescheduled to Nov. 2, 2009 at 10:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Hopkins, Sughrue, Pemrick	Fredric Joseph Ammerman
11/19/2009	Order, NOW, this 17th day of November, 2009, following hearing on the Exceptions of Defendants John Duttry, Thelma Bush, and Beverly Williams to Order dated July 28, 2009, Order that said Exceptions be and are hereby dismissed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attorneys Pemrick, Sughrue, and Hopkins	Fredric Joseph Ammerman
12/15/2009	Filing: Praecipe for Entry of Judgment Pursuant to Pa.R.C.P. No. 227.4(2) on the Court's Decision (Non-Jury Verdict) Paid by: Sughrue, John (attorney for Duttry, John D.) Receipt number: 1932589 Dated: 12/15/2009 Amount: \$20.00 (Check) For: Duttry, John D. (defendant) filed by s/John Sughrue, Esq. Judgment in favor of the Plaintiffs and against the Defendants, John D. Duttry, Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli on the Court's Decision (non-jury verdict) entered by Order dated July 28, 2009, and docketed on July 29, 2009. One CC and Notice of Judgment to Cherry Timber Associates, Inc., Chagrin Land Limited Partnership, John D. Duttry, Thelma Bush, Beverly R. Williams, and Audra Mitchell Seven CC Attorney Sughrue	Fredric Joseph Ammerman
12/16/2009	Motion to Amend Title of Pleading, filed by Atty. Sughrue 5 cert. copies. Filing: Notice of Appeal to High Court Paid by: Sughrue, John (attorney for Duttry, John D.) Receipt number: 1932616 Dated: 12/16/2009 Amount: \$50.00 (Check) For: Duttry, John D. (defendant) 1 Cert. to Superior Court with \$73.50 Check. 2 Cert. to Atty.	Fredric Joseph Ammerman Fredric Joseph Ammerman
12/23/2009	Order, this 22nd day of Dec., 2009, it is Ordered that John D. Duttry file a concise statement of the matters complained of on appeal no later than 21 days herefrom. by The Court, /s/ Fredric J. Ammerman, Pres. Judge 1CC Attys: Pemrick, Sughrue Motion to Enter Consent Order, filed by s/ John Sughrue, Esquire. 2CC Atty. Sughrue	Fredric Joseph Ammerman Fredric Joseph Ammerman
	Order to Amend Pleading, NOW, this 22nd day of Dec., 2009, it is Ordered that Defendants are granted Leave to Amend the Pleading filed on August 10, 2009 titled "Exceptions of Defendants, John D. Duttry, Thelma Bush and Beverly R. Williams to Order Dated July 28, 2009, Docketed July 29, 2009" to "Defendants' Post-Trial Motion" and said Pleading is amended to be titled, "Defendants' Post-Trial Motion". By The Court, /s/ Fredric J. Ammerman, Pres. JUDGE. 1CC Atty. Sughrue	Fredric Joseph Ammerman
12/28/2009	Appeal Docket Sheet from Superior Court with docket number 2159-WDA 2009	Fredric Joseph Ammerman

Date: 2/9/2010

Clearfield County Court of Common Pleas

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Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

Civil Other-COUNT

Date

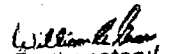
Judge

1/12/2010	Defendant/Appellant's Concise Statement of Matters Complained of on Appeal, filed by s/ John Sughrue, esquire. 7CC to Atty.	Fredric Joseph Ammerman
2/5/2010	Opinion, filed Cert. to Atty's Pemrick, Mohnney, Sughrue, Miksell and Law Library	Fredric Joseph Ammerman

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

FEB 09 2010

Attest.

  
Prothonotary/  
Clerk of Courts

Date: 12/17/2009

## Clearfield County Court of Common Pleas

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Time: 09:34 AM

ROA Report

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Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

## Civil Other-COUNT

Date		Judge	
9/14/2006	New Case Filed.	No Judge	
	① Filing: Complaint for Declaratory Judgment Paid by: Pemrick, Keith M. (attorney for Cherry Timber Associates, Inc.) Receipt number: 1915563 Dated: 09/14/2006 Amount: \$85.00 (Check) 3CC shff.	No Judge	14
10/24/2006	② Answer to Complaint For Declaratory Judgment, New Matter And Counterclaim For Declaratory Judgment, filed by s/ David J. Hopkins, Esquire. 1CC to Atty.	No Judge	8
10/25/2006	③ Praecipe For Entry of Appearance, filed by Atty. Sughrue, 4 Cert. to Atty. copy to C/A Enter my appearance on behalf of John D. Duttry, s/John Sughrue.	No Judge	3
11/3/2006	④ Answer of John D. Duttry to Original Complaint, filed by s/ John Sughrue, Esquire. 4CC to Atty	No Judge	16
	⑤ Certificate of Service, filed. That on November 3, 2006, a true and correct copy of Answer of John D. Duttry to Original Complaint to be served on Ms. Audra Mitchell, filed by s/ John Sughrue Esq. 2CC Atty Sughrue.	No Judge	2
11/16/2006	⑥ Filing: Praecipe to Re-issued Complaint Paid by: Pemrick, Keith M. (attorney for Cherry Timber Associates, Inc.) Receipt number: 1916481 Dated: 11/16/2006 Amount: \$7.00 (Check) 1 reinstated Complaint to shff.	No Judge	3
12/4/2006	⑦ Reply to New Matter and Answer to Counterclaim, filed by s/ Keith M. Pemrick Esq. No CC. (In Re: Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli)	No Judge	11
	⑧ Reply to New Matter and Answer to Counterclaim, filed by s/ Keith M. Pimrick Esq. NO CC. (In Re: John D. Duttry)	No Judge	12
12/13/2006	⑨ Sheriff Return, October 5, 2006 at 1:42 om Served the within Complaint for Declaratory Judgment on John D. Duttry. October 5, 2006 at 1:35 pm Served the within Complaint for Declaratory Judgment on Thelma Bush. September 19, 2006, Sheriff of Jefferson County was deputized. September 22, 2006 at 1:00 pm Served the within Complaint for Declaratory Judgment on Beverly R. Williams a/k/a Beverly Copelli. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Dale \$83.30 Jefferson Co costs pd by Dale \$34.76	No Judge	5
2/14/2007	⑩ Praecipe For Entry of Appearance, filed. Kindly enter my apperance on behalf of Defendant, Audra Mitchell, in the above-captioned case, filed by s/ Christopher E. Mohney Esq. NO CC., copy to C/A.	No Judge	3
	⑪ Sheriff Return, November 17, 2006, Sheriff of Elk County was deputized. November 27, 2006 at 2:30 pm Served the Complaint for Declratory Judgment on Audra Mitchell. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm Shff Hawkins costs pd by Woodard \$31.00 Elk Co. costs pd by Woodard \$30.79	No Judge	3
7/25/2007	⑫ Answer, filed by s/ Christopher E. Mohney, Esquire. 5CC Atty. Mohney	No Judge	6
8/31/2007	⑬ Notice of Service, filed. That an original and one (1) copy of Plaintiffs' interrogatories and Request for Production of Documents to John D. Duttry were served on counsel for John D. Duttry, and copies were served on all other counsel of record on August 28, 2007, filed by s/ Keith M. Pemrick Esq. 1CC Atty.	No Judge	1

## Civil Other-COUNT

Date		Judge	
8/31/2007	Notice of Service, filed. That an original and one (1) copy of Plaintiffs' Interrogatories and Requests for Production of Documents Directed to Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli, were served on counsel for Thelma Bush and Beverly R. Williams, and copies were served on all other counsel of record on August 28, 2007, filed by s/ Keith M. Pemrick Esq. 1CC Atty.	No Judge	1
9/25/2007	Petition to Withdraw as Counsel, filed by s/ David J. Hopkins, Esquire. No CC	No Judge	5
9/27/2007	Rule, NOW, this 27th day of Sept., 2007, upon consideration of the Petition to Withdraw as Counsel filed on behalf of Defendants, Thelma Bush and Beverly R. Williams, Rule Returnable on the 6th day of Nov., 2007, at 9:00 a.m. in Courtroom 3. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Hopkins	Fredric Joseph Ammerman	1
10/19/2007	Certificate of Service, filed. That on October 19, 2007, a true and correct copy of Answers to Interrogatories and Answers to Request for Production to be served by first class mail to Keith Pemrick Esq., David Hopkins Esq., Christopher E. Mohny Esq. filed by s/ John Sughrue Esq. 4CC Atty.	Fredric Joseph Ammerman	2
11/6/2007	Order, this 6th day of Nov., 2007, it is Ordered that David J. Hopkins, Esquire, be permitted to withdraw as counsel for Beverly R. Williams and Thelma Bush, Defendants. By The Court, /s/ John K. Reilly, Jr., Senior Judge. 1CC Attys: Pemrick, Mohny, Sughrue, Hopkins; 1CC Thelma Bush, 450 Salada Road, DuBois, PA 15801; 1CC Beverly Williams, 1220 Second Ave., Brockway, PA 15824	John K. Reilly Jr.	1
4/2/2008	Notice of Deposition of John D. Duttry, filed by s/ Keith M. Pemrick Esq. No CC.	Fredric Joseph Ammerman	2
	Notice of Deposition of Audra Mitchell, filed by s/ Keith M. Pemrick Esq. No CC.	Fredric Joseph Ammerman	2
4/16/2008	Certificate of Service, filed. That on April 16, 2008, Defendant's Notice of Taking of Deposition of and Subpoena to Steven Jilk, by fax and first class mail to Mr. Steven Jilk-c/o Keith M Pemrick Esq. and Christopher E. Mohny Esq. and by first class mail to Ms. Thelma D. Bush and Ms. Beverly Copelli, filed by s/ John Sughrue Esq. 4CC Atty Sughrue.	Fredric Joseph Ammerman	2
5/15/2008	Petition For Order to Discontinue Action as to Defendant Audra Mitchell, filed by s/ Christopher E. Mohny, Esquire. 4CC Atty. Mohny	Fredric Joseph Ammerman	1
5/16/2008	Order, this 16th day of May, 2008, upon consideration of the foregoing Petition, a Rule is issued upon the parties in interest/respondents. A hearing on the Petition shall be held on the 17th day of July, 2008 in Courtroom 1 at 10:00 a.m. (notice of the entry of this Order shall be provided to all parties by the Petitioner. By The Court, /s/ Fredric J. Ammerman, pres. Judge. 3CC to Atty.	Fredric Joseph Ammerman	6
6/12/2008	Response to Petition for Order to Discontinue Action as to Defendant Audra Mitchell, filed by s/ Keith M. Pemrick, Esquire. No CC	Fredric Joseph Ammerman	5
7/17/2008	Answer of Defendant, John D. Duttry. Filed by s/ John Sughrue, Esquire. 6CC to Atty	Fredric Joseph Ammerman	6

## Civil Other-COUNT

Date		Judge	
7/18/2008	Order, this 17th day of July, 2008, following argument on the Petition filed on behalf of Audra Mitchell for Order to Discontinue, it is Ordered that counsel for the Defendant, Audra Mitchell, the Plaintiffs, and John Duttry, supply the Court with proposed Order within no more than 15 days from this date. The Court has no objection to the Order being received by fax. By The Court /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Pemrick, Mohny, Sughrue, Hopkins	Fredric Joseph Ammerman	1
8/20/2008	25 Certificate of Readiness for non-jury Trial, filed by s/ Keith M. Pemrick, Esquire. no CC	Fredric Joseph Ammerman	3
	26 Order, this 20th day of august, 2008, after argument on Defendant Audra Mitchell's Petition for Order to Discontinue Action as to Defendant Audra Mitchell, and upon stipulation made on the record before the Court of Defendant Audra Mitchell as follows: The relief requested in the Petition for Order to Discontinue is granted. Audra Mitchell shall execute a Release individually and as sole beneficiary and Executrix of the Estate of Paul L. Mitchell releasing any claim she or the Estate has to the funds being held in escrow which are the subject of this litigation. Upon execution of the Release by Audra Mitchell, the Plaintiffs shall mark this action discontinued as to Audra Mitchell, only. (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Pemrick, Mohny, Sughrue, Hopkins	Fredric Joseph Ammerman	2
8/21/2008	27 Order, this 21st day of August, 2008, it is Ordered that Pre-trial conference shall be held on the 2nd day of Oct., 2008 in Chambers at 2:30 p.m. By The Court, /s/ Fredric J. ammerman, Pres. Judge. 1CC Attys: Pemrick, Mohny, Sughrue, Hopkins	Fredric Joseph Ammerman	1
8/28/2008	28 Motion to Strike Case From Trial List, filed by s/John Sughrue, esquire. 3CC Atty. Sughrue	Fredric Joseph Ammerman	4
8/29/2008	29 Order, this 29th day of August, 2008, upon consideration of Defendant, John D. Duttry's Motion to Strike Case from Trial List, a Rule is issued upon Plaintiffs and Co-Defendants. Rule Returnable on the 22nd day of Sept., 2008, for filing written response. Hearing on the Merits of said Motion shall be held on the 2nd day of Oct., 2008 at 2:30 p.m. in Courtroom 1. By The Court, /s/ Fredric J. ammerman, Pres. Judge. 3CC Atty. Sughrue	Fredric Joseph Ammerman	1
9/17/2008	30 Plaintiffs' Response to Motion to Strike Case from Trial List, filed by s/ Keith Pemrick, Esquire. No CC	Fredric Joseph Ammerman	11
9/24/2008	31 Release of All Claims, signed by Audra Mitchell. 1CC to Atty.	Fredric Joseph Ammerman	4
	32 Praeipce for Partial Discontinuance, please mark the above captioned action settled and discontinued as to Audra Mitchell ONLY. Filed by s/ Keith M. Pemrick, Esquire. 1CC to Atty.	Fredric Joseph Ammerman	3
9/25/2008	33 Motion to Reschedule Argument and Pre-Trial Conference, filed by Atty. Sughrue 6 Cert. to Atty.	Fredric Joseph Ammerman	6
9/26/2008	34 Motion for Protective Order, filed by s/Keith M. Pemrick No CC	Fredric Joseph Ammerman	10
	35 Order, this 26th day of Sept., 2008, upon consideration of Defendant, John D. Duttry's Motion to Reschedule Argument to Outstanding Motions and Pre-Trial Conference, a Rule is issued upon Plaintiffs and Co-Defendants. Argument on the Merits of said Motion shall be held on the 15th day of Oct., 2008 at 10:00 a.m. in Courtroom 2. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Sughrue	Fredric Joseph Ammerman	1
	36		

## Civil Other-COUNT

Date		Judge	
9/29/2008	Amended Certificate of Service, filed. That on September 29, 2008 Co-defendant, John D. Duttry's Pre-trial Statement to be served by first class mail to Court Administrator, Christopher E. Mohny Esq., Ms Beverly Copelli, Keith M. Pemrick Esq., Ms. Thelma D. Bush, filed by s/ John Sughrue Esq. 1CC Atty Sughrue.	Fredric Joseph Ammerman	2
	(37)		
	(38) Scheduling Order, this 29th day of Sept., 2008, it is Ordered that Pre-Trial Conf. scheduled for Oct. 2, 2008 is rescheduled for Oct. 15, 2008 at 10:00 a.m. in Courtroom 2. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins	Fredric Joseph Ammerman	1
	(39) Order, this 29th day of Sept., 2008, it is Ordered that argument on the Plaintiffs' Motion for Protective Order shall be held on Oct. 15, 2008, in Courtroom 2 at 10:00 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. judge. 3CC Atty. Pemrick	Fredric Joseph Ammerman	1
10/15/2008	(40) Affidavit in Support of Defendant John D. Duttry's Motion to Strike Case from Trial List, filed by s/ John Sughrue Esq. 3CC Atty Sughrue.	Fredric Joseph Ammerman	5
10/27/2008	Order, this 27th day of Oct., 2008, following argument relative the hearing on Motion for to Strike Case from Trial List, Pre-Trial Conference and Motion and for Protective Order, it is Ordered: Non-Jury trial is scheduled for two days, being April 21 and 22, 2009 in Courtroom 1 to commence at 9:00 a.m. on each day. (see original). By the Court, /s/ Paul E. Cherry, Judge. 1CC Attys: Pemrick, Hopkins, Sughrue	Fredric Joseph Ammerman	2
	(41)		
1/19/2009	(42) Certificate of Service, filed. That on January 16, 2009, a true and correct copy of Defendant's Request for Admissions and Interrogatories to be served by first class mail to Keith M. Pemrick Esq., filed by s/ John Sughrue Esq. 3CC Atty Sughrue.	Fredric Joseph Ammerman	2
	(43) Certificate of Service, filed. That on January 16, 2009, a true and correct copy of Defendant's Request for Production of Documents to be served by first class mail to Keith M. Pemrick Esq., filed by s/ John Sughrue Esq. 3CC Atty Sughrue.	Fredric Joseph Ammerman	2
2/25/2009	(44) Plaintiff's Supplemental Pre-Trial Statement, filed by s/ Keith M. Pemrick Esq. 1CC Atty Pemrick.	Fredric Joseph Ammerman	8
	(45) Notice of Service, filed. Served Plaintiffs' Response to Request for Admissions and Interrogatories and Response to Requests for Production of Documents via first class mail on February 23, 2008 to John Sughrue Esq., filed by s/ Keith M. Pemrick Esq. 1CC Atty Pemrick.	Fredric Joseph Ammerman	1
2/27/2009	(46) Motion For Summary Judgment, filed by s/ John Sughrue, Esquire. 6cC Atty. Sughrue	Fredric Joseph Ammerman	30
3/2/2009	Order, this 2nd day of March, 2009, upon consideration of Defendant, John D. Duttry's motion For Summary Judgment, a Rule is issued upon Plaintiffs. Argument on the merits of said motion shall be held on the 31st day of March, 2009 at 9:00 A.M. in Courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Sughrue	Fredric Joseph Ammerman	1
	(47)		
3/9/2009	X Filing: Subpoena Paid by: Pemrick, Keith M. (attorney for Cherry Timber Associates, Inc.) Receipt number: 1928425 Dated: 3/9/2009 Amount: \$3.00 (Check) For: Cherry Timber Associates, Inc. (plaintiff)	Fredric Joseph Ammerman	

Date: 12/17/2009

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:34 AM

ROA Report

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Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

Civil Other-COUNT

Date		Judge	
3/16/2009	Notice of (Trail) Deposition, filed. To John D. Duttry-c/o John Sughrue Esq., Thelma D. Bush and Beverly Williams, you are hereby respectfully notified that Cherry Timber Associates Inc., and Chagrin Land Limited Partnership, will take the deposition of Lional Alexander, Alexander and Associates Inc. oral examination on March 31, 2009 at 12:30 pm., filed by s/ Keith M. Penrick Esq. 1CC ASsty Pemrick.	Fredric Joseph Ammerman	1
3/30/2009	Factual Affidavit of John Sughrue, Attorney, in Support of Motion for Summary Judgment, filed by s/John Sughrue, Esq. One CC Attorney Sughrue	Fredric Joseph Ammerman	11
	Plaintiffs' Response to John D. Duttry's Motion for Summary Judgment, filed by s/Keith M. Pemrick, Esq. No CC	Fredric Joseph Ammerman	14
	Plaintiff's Exhibits in Response to Motion for Summary Judgment, filed. No CC	Fredric Joseph Ammerman	121
3/31/2009	Proof of Service of Subpoenas, filed. Subpoenas directing attendance at Trial on April 21, 2009, were served on Audra Mitchell (now Audra Geiser) and Scott V. Jones Esq., pursuant to Pennsylvania Rule of Civil Procedure by certified mail, restricted delivery, filed by s/ Keith M. Pemrick Esq. 1CC Atty Pemrick.	Fredric Joseph Ammerman	3
4/1/2009	Order, AND NOW, this 31st day of March 2009, following argument on the Defendant's Motion for Summary Judgment, it is the ORDER of this Court that either counsel may have until and including Friday, April 3, 2009, in which to submit letter brief. The same may be submitted by fax, if counsel so desires. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins.	Fredric Joseph Ammerman	1
4/20/2009	Motion In Limine, filed by s/ John Sughrue, Esquire. 5CC Atty. Sughrue	Fredric Joseph Ammerman	7
	Order, filed Cert. copies to Atty. Sughrue for Service	Fredric Joseph Ammerman	1
	NOW, this 20th day of April, 2009, ORDER that Defendant John D. Duttry's Motion for Summary Judgment, be and is hereby DENIED.		
4/21/2009	Certificate of Service, filed. That on April 21, 2009 I caused Order dated April 21, 2009 Denying the Motion for Summary Judgment to be served on Keith M. Pemrick Esq. by facsimile and by personal service upon Keith M. Pemrick Esq. Christopher E. Mohnhey Esq., Ms. Thelma D. Bush and Ms. Beverly Copelli, filed by s/ John Sughrue Esq. 1CC Atty Sughrue.	Fredric Joseph Ammerman	2
4/23/2009	Stipulation, signed by Keith M. Pemrick, Esquire, and John Sughrue, Esquire. No CC	Fredric Joseph Ammerman	6
4/24/2009	Order, this 22nd day of April, 2009, it is Ordered that counsel for the Plaintiff provide the Court with appropriate letter brief within no more than 30 days from this date. Counsel for Defendant shall provide the Court with appropriate letter brief within no more than 45 days from this date. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins	Fredric Joseph Ammerman	1
7/29/2009	Order, this 28th day of July, 2009, following non-jury trial, it is the FINDINGS and Ordered: Plaintiff's request for Declaratory Judgment is GRANTED. The Defendants' Counterclaims including any Counterclaim for Declaratory Relief and/or Adverse Possession are hereby DISMISSED. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Pemrick, Sughrue, Hopkins	Fredric Joseph Ammerman	2
8/10/2009	Praecipe for Appearance, filed. Kindly enter my appearance on behalf of Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli, defendant, filed by s/ John Sughrue Esq. 4CC Atty Sughrue.	Fredric Joseph Ammerman	3

Date: 12/17/2009

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 09:34 AM

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Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

Civil Other-COUNT

Date		Judge	
8/10/2009	(161) Exceptions of Defendants, John Duttry, Thelma Bush and Beverly Williams to Order dated July 28, 2009, Docketed July 29, 2009. filed by s/ 5CC Atty. Sughrue	Fredric Joseph Ammerman	17
8/12/2009	(162) Scheduling Order, this 12th day of August, 2009, Argument on Exceptions of Defendants, John D. Duttry, Thelma Bush and Beverly Williams to Order dated July 28, 2009, shall be held on the 8th day of Oct., 2009 at 2:00 p.m. in courtroom 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Sughrue	Fredric Joseph Ammerman	1
10/8/2009	(163) Order, this 8th day of Oct., 2009, the hearing on the Defendants' Exceptions to Order of July 28, 2009 scheduled this date is rescheduled to Nov. 2, 2009 at 10:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys; Hopkins, Sughrue, Pemrick	Fredric Joseph Ammerman	1
11/19/2009	(164) Order, NOW, this 17th day of November, 2009, following hearing on the Exceptions of Defendants John Duttry, Thelma Bush, and Beverly Williams to Order dated July 28, 2009, Order that said Exceptions be and are hereby dismissed. BY THE COURT: /s/Fredric J. Ammerman, P.J. One CC Attorneys Pemrick, Sughrue, and Hopkins	Fredric Joseph Ammerman	1
12/15/2009	(165) Filing: Praecipe for Entry of Judgment Pursuant to Pa.R.C.P. No. 227.4(2) on the Court's Decision (Non-Jury Verdict) Paid by: Sughrue, John (attorney for Duttry, John D.) Receipt number: 1932589 Dated: 12/15/2009 Amount: \$20.00 (Check) For: Duttry, John D. (defendant) filed by s/John Sughrue, Esq. Judgment in favor of the Plaintiffs and against the Defendants, John D. Duttry, Thelma Bush and Beverly R. Williams a/k/a Beverly Copelli on the Court's Decision (non-jury verdict) entered by Order dated July 28, 2009, and docketed on July 29, 2009. One CC and Notice of Judgment to Cherry Timber Associates, Inc., Chagrin Land Limited Partnership, John D. Duttry, Thelma Bush, Beverly R. Williams, and Audra Mitchell Seven CC Attorney Sughrue	Fredric Joseph Ammerman	4
12/16/2009	(166) Motion to Amend Title of Pleading, filed by Atty. Sughrue 5 cert. copies. (167) Filing: Notice of Appeal to High Court Paid by: Sughrue, John (attorney for Duttry, John D.) Receipt number: 1932616 Dated: 12/16/2009 Amount: \$50.00 (Check) For: Duttry, John D. (defendant) 1 Cert. to Superior Court with \$73.50 Check. 2 Cert. to Atty.	Fredric Joseph Ammerman Fredric Joseph Ammerman	7 10



Date: 12/23/2009

Clearfield County Court of Common Pleas

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Time: 08:51 AM

ROA Report

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Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

Civil Other-COUNT

Date	Selected Items	Judge
12/23/2009	<p>(108) Order, this 22nd day of Dec., 2009, it is Ordered that John D. Duttry file a concise statement of the matters complained of on appeal no later than 21 days herefrom. by The Court, /s/ Fredric J. Ammerman, Pres. Judge 1CC Attys: Pemrick, Sughrue</p> <p>(109) Motion to Enter Consent Order, filed by s/ John Sughrue, Esquire. 2CC Atty. Sughrue</p> <p>(110) Order to Amend Pleading, NOW, this 22nd day of Dec., 2009, it is Ordered that Defendants are granted Leave to Amend the Pleading filed on August 10, 2009 titled "Exceptions of Defendants, John D. Duttry, Thelma Bush and Beverly R. Williams to Order Dated July 28, 2009, Docketed July 29, 2009" to "Defendants' Post-Trial Motion" and said Pleading is amended to be titled, "Defendants' Post-Trial Motion". By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Sughrue</p>	<p>Fredric Joseph Ammerman</p> <p>Fredric Joseph Ammerman</p> <p>Fredric Joseph Ammerman</p>
12/28/2009	<p>Appeal Docket Sheet from Superior Court with docket number 2159-WDA 2009</p>	<p>Fredric Joseph Ammerman</p>

Date: 2/9/2010

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 02:38 PM

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Case: 2006-01498-CD

Current Judge: Fredric Joseph Ammerman

Cherry Timber Associates, Inc., et alvs.Audra Mitchell, et al

Civil Other-COUNT

Date	Selected Items	Judge
12/28/2009	(71) Appeal Docket Sheet from Superior Court with docket number 2159-WDA 2009	3 Fredric Joseph Ammerman
1/12/2010	(12) Defendant/Appellant's Concise Statement of Matters Complained of on Appeal, filed by s/ John Sughrue, esquire. 7CC to Atty.	7 Fredric Joseph Ammerman
2/5/2010	(13) Opinion, filed Cert. to Atty's Pemrick, Mooney, Sughrue, Miksell and Law Library	12 Fredric Joseph Ammerman