

06-1533-CD
Jerome Demchak vs Roy Mays, Estate

2006-1533-CD
Jerome Demchak vs Mays Estate

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

JEROME P. DEMCHAK,
Plaintiff

vs.

ESTATE OF ROY W. MAYS,
Defendant

No. 06-1533-CD

Complaint in Equity

Filed on behalf of:

Jerome P. Demchak,
Plaintiff

Attorney of record for this party:

George S. Test, Esquire
P.O. Box 706
Philipsburg, PA 16866-0706
(814) 342-4640

P.A.I.D. #15915

FILED Atty pd. \$5.00
m/10/40/2006 SEP 22 2006 No CC
S

William A. Shaw
Prothonotary/Clerk of Courts

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

JEROME P. DEMCHAK,
Plaintiff

No. _____

VS.

ESTATE OF ROY W. MAYS,
Defendant

NOTICE

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

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

Court Administrator's Office
Clearfield County Court House
Clearfield, PA 16830
(814) 765-2641 Ext. 5982

GEORGE S. TEST
ATTORNEY-AT-LAW
PHILIPSBURG, PA

George S. Test, Esquire

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

JEROME P. DEMCHAK, *
Plaintiff * No. _____
*
vs. * Code: Complaint in Equity
*
ESTATE OF ROY W. MAYS, *
Defendant *

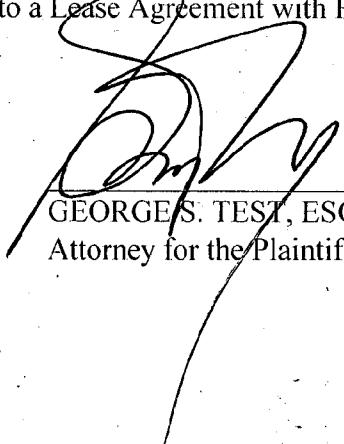
COMPLAINT SEEKING SPECIFIC PERFORMANCE

1. The Plaintiff is an adult individual residing at 229 North Railroad Street, Houtzdale, Pennsylvania 16651.
2. The Defendant is the Estate of Roy W. Mays, who departed this life, testate, on April 9, 2005, Estate Number 1705-0211.
3. The Executors of the Estate are Olan L. London, 320 Stony Lonesome Road, Luthersburg, Pennsylvania 15848 and Kathleen A. Bloom, 188 Doe Road, Olanta, Pennsylvania 16863.
4. The Plaintiff is in the business of mining coal.
5. The decedent was in the business of mining coal.
6. The decedent was the owner of 40 acres of real estate in Pike Township, Clearfield County, Pennsylvania. A true and correct copy of the Deed to said tract is attached hereto as Exhibit A.
7. When the decedent became critically ill, he asked the Plaintiff if he wanted to mine the coal under the real property described in Exhibit A since the decedent would not be able to do said mining.

GEORGE S. TEST
ATTORNEY-AT-LAW
PHILIPSBURG, PA

8. The Plaintiff indicated he wanted to mine said property.
9. The decedent then advised the Plaintiff that Plaintiff needed to move a loader onto the property and load and remove a block of coal.
10. In consideration of decedent's promise to let Plaintiff mine the rest of the coal, Plaintiff moved a machine onto the property and loaded and removed said coal.
11. The Executors now refuse to lease said property to the Plaintiff.

WHEREFORE, the Plaintiff requests your Honorable Court enter and Order directing the Executors of the decedent's estate to enter into a Lease Agreement with Plaintiff.



GEORGE S. TEST, ESQUIRE
Attorney for the Plaintiff

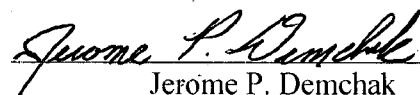
COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CENTRE

} SS:

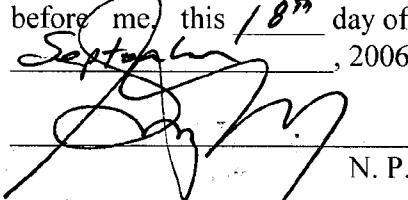
AFFIDAVIT

On this, the 18th day of SEPTEMBER, 2006, before me, a Notary Public, personally appeared **JEROME P. DEMCHAK**, the Plaintiff herein and acknowledged that he has read the foregoing Complaint and that the statements made therein are true and correct to the best of his information and belief.

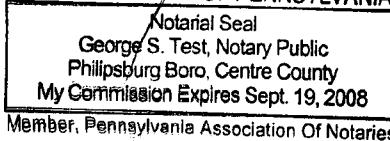


Jerome P. Demchak

SWORN TO and SUBSCRIBED
before me this 18th day of
September, 2006.


N. P.

COMMONWEALTH OF PENNSYLVANIA



This Deed,

Made the 12 day of May in the year Nineteen
Hundred and Fifty-four.

Between MILTON MAYS, Single, of Pike Township, Clearfield County
Pennsylvania, Party of the first part, hereinafter called the grantor,
and ROY MAYS, of Pike Township, Clearfield County, Pennsylvania,
party of the second part, hereinafter called the grantee.

450 PAGE 32

Witnesseth, that in consideration of One (\$1.00) Dollars,

in hand paid, the receipt whereof is hereby acknowledged, the said grantor do

hereby grant and convey to the said grantee , his heirs and assigns

All that certain piece or parcel of land situate in Pike Township,
bounded and described as follows;

BEGINNING at a hemlock, corner of land conveyed to Theodore Farnsworth; thence by said lands north one-half degrees west, one hundred forty-three perches, more or less, to a post corner of land of John Owens; thence by same north eighty-seven and one-half degrees west, fifty-four perches to a line; thence by land of Jacob Ritter and land formerly property of George Lord, now W. M. Cathcart, south one degree east one hundred forty-three perches, more or less to a post corner of Theodore Farnsworth; thence by same south eighty-seven and one-half degrees east, fifty perches to the place of beginning. Containing Forty acres, more or less, being the same premises which John Owens and wife by deed dated August 2nd, 1897, recorded at Clearfield, Pa., in Deed book 100 page 271, granted and conveyed to Bertha Rowles, and the said

Bertha Rowles and husband, by deed dated February 7th, 1914, and duly recorded, granted and conveyed unto H. E. Powell, in trust, for certain purposes as set forth in Declaration of Trust dated 21st day of March 1914. The said grantor hereby conveying no greater title than that acquired by him in the conveyance hereinbefore recited. And the said purpose as set forth in said trust having been fully complied with, this conveyance is made to vest the title in the said Roy Mays, grantee herein.

Reserving all the coal, in, under and upon the same with such rights and privileges as to removal as are set forth in said deed recorded in Deed Book 100 page 271. Containing forty acres, more or less.

And the said grantor, does hereby covenant and agree to and with the said grantee that he, the grantor, his heirs, executors and administrators Shall and will specially Warrant and forever Defend the hereinabove described premises, with the hereditaments and appurtenances, unto the said grantee his heirs and assigns against the said grantor, and against every other person lawfully claiming or who shall hereafter claim the same or any part thereof

BOOK 450 PAGE 323
In Witness Whereof said grantor has hereunto set his hand and
seal the day and year first above written.

Sealed and delivered in the presence of

Robert D. Miller

Milton Mays

L.S.

L.S.

L.S.

State of Pennsylvania

County of Clearfield

On this, the 22 day of May, 1954, before me,
Robert D. Miller, the undersigned officer,
personally appeared Milton Mays, known to me (or satisfactorily proven) to be the person whose name is
subscribed to the within instrument, and acknowledged that
he has executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

Robert D. Miller
Title of Officer

I Herby Certify that the precise residence of the grantee or grantees is

Clearfield, Pennsylvania

Frank D. Miller Jr.
Attorney for Grantee

Assitant No. 2463

Entered of Record MAY 18 1956 12:40 P.M. Dick Reed, Recorder

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

JEROME P. DEMCHAK,
Plaintiff
vs.
ESTATE OF ROY W. MAYS,
Defendant

*
* No. 2006-01533-CD
*

* Acceptance of Service
*
*

Filed on behalf of:
Jerome P. Demchak,
Plaintiff

Attorney of record for this party:
George S. Test, Esquire
P.O. Box 706
Philipsburg, PA 16866-0706
(814) 342-4640

P.A.I.D. #15915

GEORGE S. TEST
ATTORNEY-AT-LAW
PHILIPSBURG, PA

FILED

OCT 11 2006
m 10:15 AM
William A. Shaw
Prothonotary/Clerk of Courts
No C/C

10-2006-01533-CD

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

JEROME P. DEMCHAK,
Plaintiff

*
* No. 2006-01533-CD

vs.

* Complaint in Equity

*

ESTATE OF ROY W. MAYS,
Defendant

*

*

ACCEPTANCE OF SERVICE

The undersigned, Ann B. Wood, Esquire, attorney for the Defendant in the above captioned matter, acknowledges receipt of a copy of the Complaint in Equity filed in Clearfield County, Pennsylvania at the above term and number.

Ann B. Wood

ANN B. WOOD, ESQUIRE
Attorney for the Estate of Roy W. Mays

Date: Oct. 2, 2006

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

JEROME P. DEMCHAK,
Plaintiff

vs.

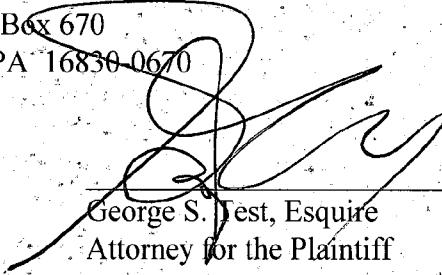
ESTATE OF ROY W. MAYS,
Defendant

* * * No. 2006-01533-CD

CERTIFICATE OF SERVICE

The undersigned, George S. Test, Esquire hereby certifies that he has served a true and correct copy of the Complaint in Equity in the above captioned matter via first class mail, postage prepaid in Philipsburg, Pennsylvania, on September 25, 2006 addressed to the following:

Ann B. Wood, Esquire
Bell, Silberblatt & Wood
P.O. Box 670
Clearfield, PA 16830-0670


George S. Test, Esquire
Attorney for the Plaintiff

GEORGE S. TEST
ATTORNEY-AT-LAW
PHILIPSBURG, PA

William A. Shaw
Prothonotary/Clerk of Courts

OCT 11 2006

FILED

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

JEROME P. DEMCHAK, : NO. 2006-01533-CD
Plaintiff : Type of Case: IN EQUITY
VS. : Type of Pleading:
ESTATE OF ROY W. MAYS, : ANSWER AND NEW MATTER TO
Defendant : COMPLAINT
: Filed on Behalf of:
: Estate of Roy W. Mays, Defendant
: Counsel of Record for this
: Party:
: Ann B. Wood, Esquire
: Supreme Court No. 23364
: Bell, Silberblatt & Wood
: 318 East Locust Street
: P.O. Box 670
: Clearfield, PA 16830
: (814) 765-5537
:
:
:
:

FILED
01/16/07 Atty Wood
DEC 15 2006
(6K)

William A. Shaw
Prothonotary/Clerk of Courts

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

JEROME P. DEMCHAK, : No.2006-01533-CD
Plaintiff :
vs. : Code: Complaint In Equity
ESTATE OF ROY W. MAYS, :
Defendant :
:

NOTICE TO PLEAD

TO: JEROME P. DEMCHAK, PLAINTIFF,

You are hereby notified to file a written response to the enclosed New Matter within twenty (20) days from service hereof or a judgment may be entered against you.

BELL, SILBERBLATT & WOOD
BY:

Ann B. Wood
Ann B. Wood, Esquire
Attorney for Defendant

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

JEROME P. DEMCHAK, :
Plaintiff : No.2006-01533-CD
vs. : Code: Complaint In Equity
ESTATE OF ROY W. MAYS, :
Defendant :
:

ANSWER AND NEW MATTER TO COMPLAINT

AND NOW COMES, the Defendant Estate by and through its
Executors and its attorney, Ann B. Wood, Esquire, and sets forth its Answer to
Complaint for specific performance as follows:

1. Paragraph 1 of the Complaint is admitted.
2. Paragraph 2 of the Complaint is admitted.
3. Paragraph 3 of the Complaint is admitted.
4. Paragraph 4 of the Complaint is admitted.
5. Paragraph 5 of the Complaint is admitted.
6. Paragraph 6 of the Complaint is admitted.
7. Paragraph 7 of the Complaint is denied as stated and on the

contrary, it is averred that the Decedent arranged for the removal of a small
amount of coal from the subject property under an Exploration Permit to the Roy
Coal Company and engaged the Plaintiff to conduct a portion of that actual
exploration mining for Roy Coal Company.

8. Paragraph 8 of the Complaint being within the particular knowledge of the Plaintiff, after reasonable investigation, the Defendants are unable to determine the truth thereof and strict proof is demanded at trial.

9. Paragraph 9 of the Complaint is denied as stated and on the contrary, it is averred that the Decedent engaged the services of the Plaintiff to remove coal for Roy Coal Company under an Exploration Permit.

10. Paragraph 10 of the Complaint is denied as stated and on the contrary, it is averred that the Decedent intended any further mining of the subject premises to be conducted by or on behalf of the Roy Coal Company.

11. Paragraph 11 of the Complaint is admitted.

NEW MATTER

NOW COMES, the Defendant Estate by and through its Executors and its attorney, Ann B. Wood, Esquire, and sets forth its New Matter as follows:

12. Defendant would incorporate herein by reference its Answers to Paragraphs One (1) through Eleven (11) of the Complaint as though set forth in full.

13. The Decedent was the sole Shareholder, Director, and President of Roy Coal Company, a Pennsylvania business corporation.

14. That the Roy Coal Company filed an Exploration Permit to remove certain coal on property owned by the Decedent, which is the subject of this action.

15. That a total of 249.31 tons of coal was removed from the Decedent's property under the Exploration Permit.

16. That the Plaintiff did participate in the mining and removal of that coal as a contract stripper for the Roy Coal Company.

17. That the Decedent had initiated, prior to his death, the preparation of an Application under the Small Operator Assistance Program in the name of the Roy Coal Company for further mining on the subject premises.

18. That the documentation for the Application required a lease from the Decedent to the Roy Coal Company for submission.

19. That the Decedent did not intend to lease the subject property to the Plaintiff, but rather to the Roy Coal Company.

20. That the Decedent had executed a Contractual Consent of Landowners (Supplemental "C") to the Roy Coal Company, Inc.

21. The Defendants would raise the Statute of Frauds from the Plaintiff's failure to have a writing evidencing the alleged agreement.

WHEREFORE, the Defendant Estate would request your Honorable Court to deny the request of Plaintiff for a lease to mine the subject property.

BELL, SILBERBLATT & WOOD
BY:

Ann B. Wood
Ann B. Wood, Esquire
Attorney for Roy W. Mays Estate, Defendant

VERIFICATION

We, KATHLEEN A. BLOOM and OLAN L. LONDON, Co-Executors of the Estate of Roy W. Mays, state that the within statements in the foregoing ANSWER AND NEW MATTER TO COMPLAINT, are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

Estate of Roy W. Mays
By:

Kathleen A. Bloom
Kathleen A. Bloom, Co-Executor

Olan L. London
Olan L. London, Co-Executor

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

JEROME P. DEMCHAK, :
Plaintiff : No.2006-01533-CD
vs. : Code: Complaint In Equity
ESTATE OF ROY W. MAYS, :
Defendant :
:

CERTIFICATE OF SERVICE

I hereby certify that Certified Copy of ANSWER AND NEW MATTER
TO COMPLAINT with reference to the above captioned matter has been served
upon the attorney for Plaintiff by mailing a true and correct copy of same to him
by United States First Class Mail, postage prepaid, addressed as follows on____

December 15, 2006 :

George S. Test, Esquire
P.O. Box 706
Philipsburg, PA 16866

BELL, SILBERBLATT & WOOD
By:

Ann B. Wood
Ann B. Wood, Esquire
Attorney for Defendant

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

JEROME P. DEMCHAK,
Plaintiff

vs.

ESTATE OF ROY W. MAYS,
Defendant

No. 2006-01533-CD

* ANSWER TO NEW MATTER

Filed on behalf of:
Jerome P. Demchak,
Plaintiff

Attorney of record for this party:
George S. Test, Esquire
P.O. Box 706
Philipsburg, PA 16866-0706
(814) 342-4640

P.A.I.D. #15915

GEORGE S. TEST
ATTORNEY-AT-LAW
PHILIPSBURG, PA

FILED
MAY 22 2006
NO CC
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William A. Shaw
Prothonotary/Clerk of Courts

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

JEROME P. DEMCHAK

Plaintiff

No. 2006-01533-CD

VS.

ESTATE OF ROY W. MAYS

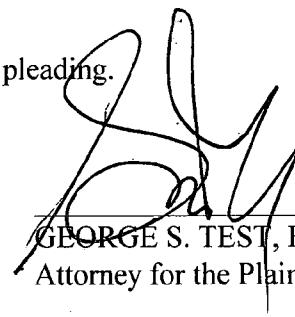
Defendant

ANSWER TO NEW MATTER

12. Paragraph 12. incorporating Defendant's Answer to Plaintiff's Complaint does not require responsive pleading.
13. Paragraph 13. of Defendant's New Matter is within the particular knowledge of the Defendant and after reasonable investigation, the Plaintiff is unable to determine the truth thereof and strict proof thereof is demanded at trial.
14. Admitted.
15. Admitted.
16. Denied. The decedent requested Plaintiff mine said coal to determine if Plaintiff would be interested in mining the entire property and to preserve the mining permits.
17. Paragraph 13. of Defendant's New Matter is within the particular knowledge of the Defendant and after reasonable investigation, the Plaintiff is unable to determine the truth thereof and strict proof thereof is demanded at trial.
18. Paragraph 13. of Defendant's New Matter is within the particular knowledge of the Defendant and after reasonable investigation, the Plaintiff is unable to determine the truth thereof and strict proof thereof is demanded at trial.

**GEORGE S. TEST
ATTORNEY-AT-LAW
PHILIPSBURG, PA**

19. Paragraph 13. of Defendant's New Matter is within the particular knowledge of the Defendant and after reasonable investigation, the Plaintiff is unable to determine the truth thereof and strict proof thereof is demanded at trial.
20. Paragraph 13. of Defendant's New Matter is within the particular knowledge of the Defendant and after reasonable investigation, the Plaintiff is unable to determine the truth thereof and strict proof thereof is demanded at trial.
21. Paragraph 21. does not require responsive pleading.



GEORGE S. TEST, ESQUIRE
Attorney for the Plaintiff

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

JEROME P. DEMCHAK,
Plaintiff

No. 2006-01533-CD

VS.

ESTATE OF ROY W. MAYS,
Defendant

CERTIFICATE OF SERVICE

The undersigned, George S. Test, Esquire hereby certifies that he has served a true and correct copy of the Answer to New Matter in the above captioned matter via first class mail, postage prepaid in Philipsburg, Pennsylvania, on May 21, 2007 addressed to the following:

Ann B. Wood, Esquire
Bell, Silberblatt & Wood
P.O. Box 670
Clearfield, PA 16830-0670

George S. Test, Esquire
Attorney for the Plaintiff

GEORGE S. TEST
ATTORNEY-AT-LAW
PHILIPSBURG, PA

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

JEROME P. DEMCHAK,
Plaintiff

vs.

ESTATE OF ROY W. MAYS,
Defendant

*
* No. 2006-01533-CD
*

* PRAEICE TO DISCONTINUE
*
*
*

Filed on behalf of:

Jerome P. Demchak,
Plaintiff

Attorney of record for this party:

George S. Test, Esquire
P.O. Box 706
Philipsburg, PA 16866-0706
(814) 342-4640

P.A.I.D. #15915

GEORGE S. TEST
ATTORNEY-AT-LAW
PHILIPSBURG, PA

cert. of Disc. to
ATTY WOOD

FILED

JUN 12 2008

William A. Shaw
Prothonotary/Clerk of Courts
No CC

No Cert. of Disc. requested

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

JEROME P.DEMCHAK,
Plaintiff

*
* No. 2006-01533-CD
*
*

vs.

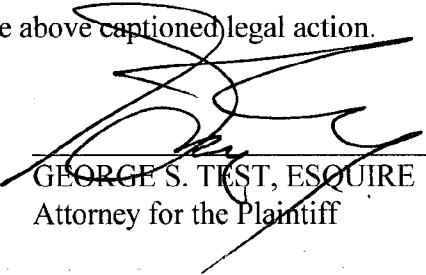
ESTATE OF ROY W. MAYS,
Defendant

PRAECIPE

TO THE PROTHONOTARY:

Please discontinue and mark "satisfied" the above captioned legal action.

Date: 6-11-08


GEORGE S. TEST, ESQUIRE
Attorney for the Plaintiff

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Jerome P. Demchak

Vs. No. 2006-01533-CD
Roy W. Mays Estate

CERTIFICATE OF DISCONTINUATION

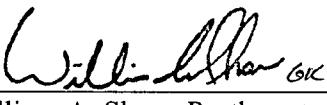
Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on June 12, 2008, marked:

Discontinued

Record costs in the sum of \$85.00 have been paid in full by George S. Test, Esquire.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 18th day of June A.D. 2008.



William A. Shaw, Prothonotary