

Civil Other

Date		Judge
1/22/2007	New Case Filed.	No Judge
	✓ Filing: Civil Complaint Paid by: Naddeo, James A. (attorney for Shepler, Traci A.) Receipt number: 1917317 Dated: 1/22/2007 Amount: \$85.00 (Check) 1CC Atty and 1CC shff.	No Judge
1/23/2007	✓ Petition For Ex-Parte Preliminary Injunctive Relief, filed by s/ James A. Naddeo, Esquire. 1CC Shff, 1CC Atty.	Fredric Joseph Ammerman
	✓ Bond, that Traci A. Shepler is bound unto the commonwealth of Pa. in the sum of \$10,000 to be paid to the Commonwealth of Pa. Filed by s/ James A. Naddeo, Esquire. 1CC Atty., 1CC Shff	Fredric Joseph Ammerman
	✓ Order, NOW, this 23rd day of Jan., 2007, Ordered that: a) Defendant be enjoined from entering upon the land of Plaintiffs, b) Defendant be enjoined from removing or harvesting any tree from the land of Plaintiffs. A hearing on the continuance of this injunction shall be held on the 26th day of Jan., 2007 at 11:00 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1 CC Sheriff, 1CC Atty.	Fredric Joseph Ammerman
1/26/2007	✓ Motion For Continuance, filed by s/ David J. Hopkins, Esquire. No CC	Fredric Joseph Ammerman
	✓ Answer to Complaint, filed by s/ David J. Hopkins Esq. 2CC Hopkins.	Fredric Joseph Ammerman
	✓ Order, NOW, this 26th day of Jan., 2007, upon consideration of the Def.'s Motion for Continuance, it is Ordered that the hearing on Plaintiffs' Preliminary Injunctive Relief scheduled for Jan. 26, 2007 is rescheduled for the 6th day of Feb., 2007 at 2:00 p.m. The Temporary Injunction Order shall remain in effect until the rescheduled hearing date. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Hopkins	Fredric Joseph Ammerman
2/7/2007	✓ Praecipe for Entry of Appearance/Praecipe for Withdrawal of Appearance, filed. Please withdraw my appearance for Wesley D. Smith, filed by s/ David J. Hopkins Esq., and Please enter my appearance for Wesley D. Smith, filed by s/ Theron G. Noble Esq. NO CC and copy to C/A.	Fredric Joseph Ammerman
2/9/2007	✓ Order, NOW, this 7th day of Feb. 2007, Ordered that the Court's Injunction issued on Jan. 23, 2007 shall continue to be in effect (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. CC to Attys: Noble, Naddeo	Fredric Joseph Ammerman
2/16/2007	✓ Motion To Reconsider, filed by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman
	✓ Motion To Permit Inspection of Premises, filed by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman
	✓ Motion to Increase Bond, filed by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman
2/21/2007	✓ Rule To Show Cause, NOW, this 20th day of Feb., 2007, NOW, this 20th day of Feb., 2007, upon consideration of the attached Motion to Reconsider, Motion to Increase Bond, and Motion to Permit Inspection of Premises, a Rule is issued upon the Plaintiffs. Rule Returnable for filing written response is set for the 12th day of March, 2007 and hearing will be held on the 14th day of March, 2007, commencing at 9:00 a.m., Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Noble	Fredric Joseph Ammerman
	✓ Rule To Show Cause, NOW, this 20th day of Feb., 2007, NOW, this 20th day of Feb., 2007, upon consideration of the attached Motion to Reconsider, Motion to Increase Bond, and Motion to Permit Inspection of Premises, a Rule is issued upon the Plaintiffs. Rule Returnable for filing written response is set for the 12th day of March, 2007 and hearing will be held on the 14th day of March, 2007, commencing at 9:00 a.m., Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Noble	Fredric Joseph Ammerman

Date: 4/25/2007

Clearfield County Court of Common Pleas

User: LMILLER

Time: 04:04 PM

Hearings by Judge

Page 2 of 3

CT COMMON PLEAS,

All Case Types

From 04/30/2007 08:00 AM to 05/04/2007 05:00 PM

Fredric Joseph Ammerman

Begin Date and Time End Date and Time

05/01/2007 10:30 AM 05/01/2007 03:30 PM William Lynn Hollen vs. Deborah M. Montour, etal.

Case: 2002-00934-CD

Civil Jury Selection

Courtroom:

Plaintiff: Hollen, William Lynn

Attorney: Bily, Raymond M.

Defendants: Montour, Deborah M.

Days to Speedy Trial:

Speedy Trial Date:

Attorney: Sundberg, Eugene C. Jr.

Attorney: Schmidt, Andrew M. Esq

Commonwealth of Pa. Dept. of Transportation

Days to Speedy Trial:

Speedy Trial Date:

Attorney: Donahoe, Thomas L.

Subjects: C P S Cable Vision, Inc.

Attorney: Doherty, John R.

Cooney Cable Associated of West Virginia, LP.

Attorney: Geis, Dennis J. Jr.

05/02/2007 09:00 AM 05/02/2007 12:00 PM

Clearfield Leather, Inc. vs. Clearfield County Board of Assessment A

Case: 2006-00999-CD

Hearing

Courtroom:

On Ptf's Appeal

Plaintiff: Clearfield Leather, Inc.

Attorney: Naddeo, James A.

Alias: Wickett & Craig of America (1 of 1)

Defendants: Clearfield County Board of Assessment Appeals

Days to Speedy Trial:

Speedy Trial Date:

Attorney: Kesner, Kim C.

Curwensville Area School District

Days to Speedy Trial:

Speedy Trial Date:

Attorney: Fanelli, Patrick J.

Curwensville Borough

Days to Speedy Trial:

Speedy Trial Date:

Attorney: Seaman, Laurance B.

05/02/2007 01:30 PM 05/02/2007 02:00 PM

Capital One Bank vs. Lynn D. Mauk

Case: 2007-00037-CD

Preliminary Objections

Courtroom:

Def's

Plaintiff: Capital One Bank

Attorney: Weinberg, Frederic I.

Defendant: Mauk, Lynn D.

Days to Speedy Trial:

Speedy Trial Date:

Attorney: Zimmerman, Brenda

Civil Other

Date		Judge
2/21/2007	✓ Rule To Show Cause, NOW, this 20th day of Feb., 2007, NOW, this 20th day of Feb., 2007, upon consideration of the attached Motion to Reconsider, Motion to Increase Bond, and Motion to Permit Inspection of Premises, a Rule is issued upon the Plaintiffs. Rule Returnable for filing written response is set for the 12th day of March, 2007 and hearing will be held on the 14th day of March, 2007, commencing at 9:00 a.m., Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Noble	Fredric Joseph Ammerman
2/26/2007	✓ Notice of Service, Rule Returnable issued upon Defendant's Motion For Reconsideration, Motion to Permit Inspection of the Premises, and Motion to Increase Bond, served upon James Naddeo, Esquire, on Feb. 23, 2007 by first class mail. Filed by s/ Theron G. Noble, Esquire. No CC	Fredric Joseph Ammerman
3/2/2007	✓ Sheriff Return, January 23, 2007, Sheriff of Jefferson County was deputized. January 25, 2007 at 10:16 am Served the within Order; Bond; Complaint; Pet./Ex-Parte Prelim, Inj. on Wesley D. Smith t/d/b/a Smith Logging & Timber Sales. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamr Shff Hawkins costs pd by Naddeo \$28.39 Jefferson Co. costs pd by Naddeo \$35.52	Fredric Joseph Ammerman
3/8/2007	✓ Notice of Service, filed. I did propound upon Plaintiffs a Request for Production of Documents in the above captioned matter to James Naddeo Esq., filed by s/ Theron G. Noble Esq. No CC.	Fredric Joseph Ammerman
3/13/2007	✓ Plaintiff's Reply to Defendant's Motion to Permit Inspection of The Premises, filed by s/ James A. Naddeo, Esquire. 1CC Atty	Fredric Joseph Ammerman
	✓ Plaintiff's Reply to Defendant's Motion For Reconsideration, filed by s/ James A. Naddeo, Esquire. 1CC Atty	Fredric Joseph Ammerman
	✓ Plaintiff's Reply to Defendant's Motion to Increase Bond. filed by s/ James A. Naddeo, Esquire. 1CC Atty	Fredric Joseph Ammerman
3/14/2007	✓ Order, NOW, this 14th day of March, 2007, 1. Defendant's Motion for Reconsideration is denied; 2. Relative the Motion to Increase Bond, the same is denied. 3. Motion to Permit Inspection is granted. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Naddeo, Noble	Fredric Joseph Ammerman
4/4/2007	✓ Certificate of Service, filed. That a true and correct copy of Plaintiff's Reply to Request for Production of Documents served on Theron G. Noble Esq on the 4th day of April 2007, filed by s/ James A. Naddeo Esq. NO CC.	Fredric Joseph Ammerman
4/10/2007	✓ Motion to Compel, filed by Atty. Noble, no cert. copies.	Fredric Joseph Ammerman
4/17/2007	✓ Rule to Show Cause, Now, this 17th day of April, 2007, upon consideration of the Motion to Compel, a Rule is issued upon the Plaintiffs. Rule Returnable for filing written response is set for the 17th day of May, 2007, and hearing will be held on the 17th day of May, 2007, commencing at 9:30 a.m. Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Noble	Fredric Joseph Ammerman
4/18/2007	✓ Plaintiffs' Reply to Motion to Compel, filed by s/ James A. Naddeo Esq. 1CC Atty Naddeo.	Fredric Joseph Ammerman
4/20/2007	✓ Notice of Service, filed. That I did propound upon Plaintiffs a true and correct of the Rule Returnable issued upon his Motion to Compel in the above captioned matter on James A. Naddeo, filed by s/ Theron G. Noble Esq. NO CC.	Fredric Joseph Ammerman

5-10-2007 Notice of Service.

JURY SELECTION

1-2

DATE: Feb. 24, 2005

JUDGE: CHERRY

CASE#: 04-521, 04-523, & 04-623-CRA

Trial date: March 30, 2005
(3 days)

DAVID LEE ANTHONY, STEVEN CURRIE,

COMMONWEALTH OF PA

-vs- ZACHARY A. WAGNER

1.	LINDA OLEWNICK	DUBOIS	1		
2.	ARDELL MC CALL	GRAMPIAN	2		
3.	BERNADETTE IDINGS	DUBOIS	3	7	
4.	JIMMY JOE MILES	DUBOIS			Comm #6
5.	SHIRLEY RICHARDS	XXXXXX HAWK RUN			W#7
6.	JAMES SLOAN	DUBOIS			Δ#1
7.	SHANNON HOOVER	KARTHAUS			Comm #2
8.	JOELLE ADAMS	DUBOIS	4		
9.	ARLENE SAULA	GRAMPIAN	5		
10.	BARBARA DUPPRE	DUBOIS			Comm #1
11.	RICHARD RHOADES	HOUTZDALE			Δ#3
12.	XXXX DIANE SWIGART	DUBOIS	6		
13.	WALTER FRY	CLEARFIELD			Δ#4
14.	MARY TAPPER	DUBOIS	7		
15.	JOHN EAMIGH	WOODLAND	8		
16.	CHARLES FLEEGER	DUBOIS			Comm #7
17.	JOYCE TURNER	CLEARFIELD			Δ#5
18.	RONALD UBERTI	PENNSFIELD			W#2
19.	ANNETTE FUGATE	DUBOIS	9		
20.	AMY TAPPER	TROUTVILLE			Comm #10
21.	JOHN SMITH	COALPORT			Δ#10
22.	PATRICK CARFLEY	CURWENSVILLE			Comm #3
23.	DARLENE LITZ-GROSS	hyde	10		
24.	DEBRA SAGGESE	RAMEY	11		
25.	DONALD DINANT	MORRISDALE	12		
26.	ANGELA CALDWELL	DUBOIS			Comm #4
27.	CHESTER THOMPSON	BRISBIN	A1		
28.	JANET FORGER	PARAFFEY			Δ#9
29.	SHARON BURFIELD	CLEARFIELD			Δ#8
30.	TINA BARONICK	DUBOIS	A2		
31.	SCOTT MISCAVISH	HOUTZDALE			Δ#8
32.	WILLIAM WERNIKSKY VERBITSKY	MORRISDALE			Δ#7
33.	JOHN SHIMKO	CLEARFIELD			Δ#2
34.	LORI CROYLE	WINBURNE			
35.	HAROLD DAVIDSON	MAHAFFEY			
36.	SANDRA CERVENAK	MORANN			

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

Plaintiffs

vs.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,
Defendant

No. 07 -104 - CD

FILED *pd \$85.00*
Att'y
9/3:30 am ICC SHRP
JAN 22 2007 *ICC ATT*

William A. Shaw
Prothonotary/Clerk of Courts

Type of Pleading:

COMPLAINT

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: January 22, 2007

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

JAN 22 2007

Attest.

William A. Shaw
Prothonotary/
Clerk of Courts

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

TRACI A. SHEPLER and HARRY E. *
SHEPLER, III, *

Plaintiffs *

vs. *

No. 07 - - CD

WESLEY D. SMITH, T/D/B/A *
SMITH LOGGING & TIMBER SALES, *

Defendant *

COMPLAINT

NOW COMES the Plaintiffs, TRACI A. SHEPLER AND HARRY E. SHEPLER, III, and by their attorney, James A. Naddeo, Esquire, set forth the following:

1. That Plaintiff, Traci Shepler is an adult individual residing at 475 Cabin Lane, Luthersburg, Pennsylvania.

2. That Plaintiff, Harry E. Shepler, III, is an adult individual residing at 2560 Steamille Road, Odessa, New York 14869.

3. That the Plaintiff, Traci A. Shepler (hereinafter Ms. Shepler), is the equitable title holder of property situate in Brady Township and Bloom Township, Clearfield County, Pennsylvania, which Plaintiff acquired by an agreement made pursuant to a marriage settlement dated April 29, 2006. A true

and correct copy of *Separation, Custody and Support Agreement* is attached hereto as Exhibit "A."

4. That contained in the marriage settlement agreement at paragraph six, Ms. Shepler, was granted all of her husband's, Mr. Shepler's, right title and interest in and to the marital residence located at 475 Cabin Lane, Luthersburg, Pennsylvania. See Exhibit A, at page 3.

5. That it was known and understood by the parties to the marriage settlement agreement that the grant of property as contained in paragraph 4 above to Ms. Shepler included the lot and land upon which the marital residence was and is located.

6. Further, that Ms. Shepler and Mr. Shepler agreed that in consideration for such grant of the lot and all land owned by the couple at that time being granted to Ms. Shepler, Mr. Shepler received the sum of \$33,500.00, said sum being tendered to Mr. Shepler from the monies paid to the couple in exchange for the signing of a Timber Agreement.

7. That the marriage settlement agreement provided that the Mr. Shepler execute all deeds and documents necessary to effectuate his grant of the marital property to Ms. Shepler.

8. That subsequent to the signing of the marriage settlement agreement no deed has been executed from Mr. Shepler and Ms. Shepler to Ms. Shepler individually.

9. That deed to the property and land upon which the marital residence is located is presently recorded in Clearfield County Deeds and Records Books to Volume 1801, Page 73 and describes the land owned by Ms. Shepler and Mr. Shepler as follows:

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

BEGINNING at a pin at the N.W. corner of lands now or late of Clifford Serene; thence by lands of said Serene South 30 degrees 00 minutes East 392 feet; thence along Donald Miller lot and Robert Miller lot South degrees 30 minutes East 560 feet; thence along Robert Miller lot North 86 degrees 07 minutes East 232 feet; thence along residue of Elizabeth Miller and Garnett Morgan land South 2 degrees 30 minutes East 50 feet and South 4 degrees 25 minutes West 425 feet; thence along center of Little Anderson Creek the following general courses and distances: North 60 degrees 50 minutes West 60 feet; South 43 degrees 15 minutes West 150 feet; South 67 degrees 35 minutes West 280 feet; North 38 degrees West 300 feet; South 77 degrees 30 minutes West 520; North 50 degrees West 240 feet; North 76 degrees 30 minutes West 150 feet and south 40 degrees 55 minutes West 580 feet; thence along Everett Cramer land North 58 degrees 45 minutes West 485 feet; thence along Schaffer land North 80 degrees 30 minutes West 450 feet; thence along Raymond Berkey lot North 8 degrees 25 minutes East 1,529 feet; thence along Fred Rafferty land South 81 degrees 35 minutes East 1,130 feet; thence along the remaining lands of the Grantors herein, 600 feet to place of beginning, containing more or less 69.846 acres of land.

A true and correct copy of said deed is attached hereto as Exhibit "B."

10. That Plaintiff, Mr. Shepler, has joined in this lawsuit as a necessary part, although he acknowledges he is not

the owner of the property as described in paragraph 9 of this Complaint.

11. That a timber agreement was entered into by and between Ms. Shepler and Mr. Shepler and Wesley D. Smith t/d/b/a Smith Logging and Timber Sales. A true and correct copy of said agreement is attached hereto as Exhibit "C."

12. That the timber agreement involves the harvesting of timber from the land as described in paragraph 9 of this Complaint.

13. That the timber agreement provides for a specified wooded area from which the timber is to be harvested and that only certain species of trees were to be cut and these trees had been previously selected and marked.

14. That in addition to the terms as specified in paragraph 13 above, that in any case, no trees under 12 inches in diameter chest high were to be harvested. That is, even though said smaller trees may have been marked or selected they would not be harvested if they did not meet this measurement.

15. That despite the limitation in the timber agreement to a certain designated and agreed upon wooded area from which the trees were to be harvested the defendant has cut down trees outside of this wooded area.

16. That despite the limitation in the timber agreement that only trees within a certain designated and agreed

upon wooded area would be harvested the defendant has marked trees outside of this designated area to be harvested by defendant.

17. That despite the limitation in the timber agreement that only trees 12 inches diameter chest high or greater would be harvested the defendant has cut down trees that are not 12 inches diameter chest high or greater.

18. That subsequent to the agreement between plaintiffs and defendant, defendant marked additional trees within the designated area and has harvested some of these additional trees and some remain marked for harvesting.

19. That defendant has failed to comply with the Department of Environmental Protection (DEP) of the Commonwealth of Pennsylvania and has caused reports to be issued regarding his failure to comply from this department. True and correct copies of DEP inspection reports are collectively attached hereto as Exhibit "D."

20. That defendant has breached the timber agreement as agreed upon by the parties.

21. That plaintiff, Ms. Shepler, has made repeated demands that defendant cease his unlawful actions and the harvesting of timber to which he has no lawful right.

22. That plaintiffs' consider defendant to be in material breach of the contract and have attempted to prevent

defendant from entering upon the property. Furthermore, the same (preventing the defendant from entering upon Plaintiff's property) is necessary to ensure the defendant does not damage the land beyond repair.

23. That despite Ms. Shepler's demands that defendant cease harvesting and cease from entering upon the property defendant continues to make attempts to come onto plaintiffs' property and harvest trees.

24. That specifically defendant has stated his full intent to enter upon Ms. Shepler's property on Monday, January 22, 2007. A true and correct copy of letter received from defendant's counsel is attached hereto as Exhibit "E."

25. That Ms. Shepler's land is unique as it stands including the timber thereon.

26. That absent an equitable remedy Plaintiffs will be required to file a multiplicity of suits.

27. That Plaintiffs have no adequate remedy at law.

WHEREFORE, the Plaintiffs, pray for relief from Defendant's actions and the entry of an order preliminarily, and after final hearing, permanently:

a. Enjoining the Defendant from entering upon Plaintiff's property;

b. Enjoining the Defendant from removing any timber from the property herein involved;

c. Awarding damages for the trespass and taking of timber which defendant had no lawful right to harvest;

d. Awarding other damages as the Court deems just and proper;

e. Granting any other relief as the Court deems just and proper.

NADDEO & LEWIS, LLC

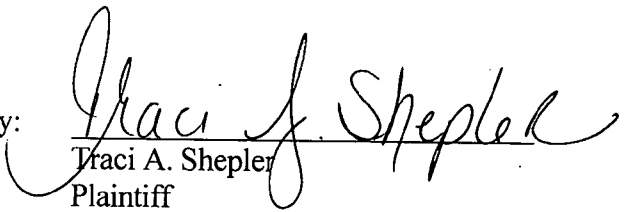
By:

A handwritten signature in cursive script, appearing to read "James A. Naddeo", written over a horizontal line.

James A. Naddeo, Esquire
Attorney for Plaintiffs

V E R I F I C A T I O N

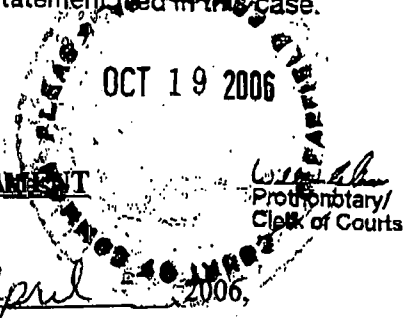
I, Traci A. Shepler, plaintiff, verify that the statements made in the foregoing Complaint are true and correct upon my personal knowledge or information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

By: 
Traci A. Shepler
Plaintiff

Dated: 1-15-07

06-1110-CD

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



SEPARATION, CUSTODY AND SUPPORT AGREEMENT

THIS AGREEMENT, made this 29th day of April, 2006,

by and between **HARRY ELMER SHEPLER, III**, Social Security No. 186-60-5621, an
individual hereinafter referred to as "**HUSBAND**";

AND

TRACI ANN SHEPLER, Social Security No. 191-66-9106, an individual hereinafter referred to
as "**WIFE**".

WITNESSETH:

WHEREAS, the parties are husband and wife; and

WHEREAS, there were three (3) minor children born of their marriage, namely,
LACEY KAYE SHEPLER, date of birth November 21, 1990, **KAILYN NICOLE SHEPLER**,
date of birth April 28, 1995, and **FAITH LYNMARIE SHEPLER**, date of birth July 29, 2002;
and

WHEREAS, the parties desire to provide for the custody and support of their
minor children; and

WHEREAS, the parties desire to settle their property rights permanently and for
all time; and

WHEREAS, both parties agree to relinquish any and all claims which either may
have against any property now owned or belonging to the other or which may hereafter be
acquired by either of them by purchase, gift, devise, bequest, inheritance and otherwise, except as
to the obligations, covenants and agreements contained herein; and

Exhibit "A"

WHEREAS, the parties hereto have each had the benefit of competent and independent legal advice by separate counsel.

NOW THEREFORE, the parties intending to be legally bound hereby do covenant and agree:

1. **SEPARATION**: It shall be lawful for each party at all times hereafter to live separate and apart from the other party at such place as he or she may from time to time choose or deem fit. The foregoing provisions shall not be taken as an admission on the part of either party of the lawfulness or unlawfulness of the causes leading to their living apart.
2. **INTERFERENCE**: Each party shall be free from interference, authority, and contract by the other, as fully as if he or she were single and unmarried, except as may be necessary to carry out the provisions of this Agreement. Neither party shall molest the other or attempt to endeavor to molest the other, nor compel the other to cohabit with the other, nor in any way harass or malign the other, nor in any way interfere with the peaceful existence, separate and apart from the other, and each of the parties hereto completely understands and agrees that neither shall do nor say anything to the children of the parties at any time which might in any way influence the children adversely against the other party.
3. **DESIRE OF THE PARTIES**: It is the desire of the parties, after long and careful consideration, to amicably adjust, compromise and settle all property rights and all rights in, to or against each other's property or estate, including property heretofore or subsequently acquired by either party, and to settle all disputes existing between them, including any and all claims for **WIFE'S** and/or **HUSBAND'S** maintenance and/or for support, alimony, counsel fees and costs, equitable distribution, and custody.

4. **DEBTS: HUSBAND and WIFE** represent and warrant to each other that neither one has contracted any debt or debts, charges, or liabilities whatsoever, except as herein expressly set forth, for which the other party or their property or their estates shall or may be or may become liable or answerable, and they covenant that they will at all times keep each other free, harmless and indemnified against and from any and all debts and liabilities heretofore or hereafter contracted or incurred by either of them, except as expressly provided in this Agreement.

5. **MUTUAL RELEASE:** Subject to the provisions of this Agreement, each party has released and discharged, and by this Agreement does for himself or herself and for his or her heirs, legal representatives, executors, administrators and assigns, release and discharge the other of and from all causes of action, claims, rights or demands whatsoever, in law or equity, which either of the parties ever had or now has against the other, except any or all cause or causes of action for breach of any provisions of this Agreement.

6. **DIVISION OF REAL PROPERTY:** HUSBAND agrees and by these presents does convey to WIFE all of his right, title and interest in and to the marital residence of the parties located at 475 Cabin Lane, Luthersburg, Clearfield County, Pennsylvania, and agrees to execute all deeds or other documents necessary to effectuate such transfer. The parties stipulate that the value of the parties' marital residence is approximately **One Hundred Fifty Thousand and no/100 (\$150,000.00) Dollars**, as shown by the appraisal of Michele A. Dennison dated August 28, 2002, a copy of which is attached hereto. The parties further waive the right to seek a current appraisal of the real property, they being satisfied with the valuation as set forth above.

WIFE further agrees to assume sole responsibility for the payment of an outstanding mortgage taken for the purchase of said property through Washington Mutual, the same having an approximate balance of **Ninety-seven Thousand One Hundred Eighty-six and 71/100 (\$97,186.71) Dollars** as of December 29, 2005. **WIFE'S** obligation to assume responsibility for the said outstanding mortgage is expressly conditioned on **HUSBAND'S** continued payment of child support as hereinafter set forth. Should **HUSBAND** cease to pay child support for whatever reason, **HUSBAND** shall assume responsibility for the payment of the outstanding mortgage and hold **WIFE** harmless from same. **WIFE** shall be permitted to refinance the aforesaid mortgage as she deems appropriate. In consideration thereof, **WIFE** waives any and all right and entitlement to support for the minor children, with the parties stipulating that **HUSBAND'S** payment of such mortgage obligation shall be in lieu of child support. The parties further agree, however, that, should **WIFE** sell the subject premises, or should **HUSBAND** discontinue making payments upon said mortgage obligation, thereby obligating **WIFE** to make the same, or should the parties no longer be obligated on such Mortgage obligation during the minority of their children, **WIFE** shall be at will to seek child support from **HUSBAND** through a Domestic Relations Section then having jurisdiction over **HUSBAND**.

7. **DIVISION OF PERSONAL PROPERTY:** The parties hereby divide their personal property, including but not limited to all household goods and furnishings, personal effects and all other items of personal property used by them in common as follows:

- a. **WIFE** agrees and by these presents does convey to **HUSBAND** all of her right, title and interest in and to a 1984 GMC pickup truck

and to an 1987 GMC pickup truck and agrees to execute all titles or other documents necessary to effectuate such transfer. In consideration thereof, **HUSBAND** agrees and by these presents does convey to **WIFE** all of his right, title and interest in and to a 1995 Dodge Ram 1500 pickup and agrees to execute all titles or other documents necessary to effectuate such transfer.

- b. **HUSBAND** agrees and by these presents does convey to **WIFE** all of his right, title and interest in and to a 401(k) savings plan acquired by **HUSBAND** as the result of his employment through Penn Traffic Company, DuBois, Pennsylvania, the same having an approximate market value of **Eleven Thousand Three Hundred Sixty-two and 03/100 (\$11,362.03) Dollars**, the same to become the sole property of **WIFE**, free from the claims of **HUSBAND**. The parties further agree to execute all Qualified Domestic Relations Orders or other documents necessary to effectuate said transfer.

- c. All household goods and furnishings which are in the possession of the individual parties at the time of their execution of this Agreement, shall become the sole property of that party, holding the same free from the claims of the other.

- d. **HUSBAND and WIFE** agree that the aforesaid agreement is in lieu of any and all claims for equitable distribution of said property.

8. **CHECKING AND SAVINGS ACCOUNTS:** Except as otherwise provided herein, the parties agree that there are no checking or savings accounts in the name of **HUSBAND and WIFE** and that each has his or her own separate such accounts, with respect to which the other will make no claim.

9. **MUTUAL DEBTS:** Except as otherwise provided herein, the parties further agree that all debts incurred by the individual parties as of the date of the parties' execution of this Agreement shall become the sole obligation of that party incurring the same, with the debtor party holding the non-debtor party harmless upon the said debt or debts and with the debtor party agreeing to indemnify the non-debtor party for any damages or liability incurred by the non-debtor as a result of the debtor party's failure to satisfy such debts.

10. **CUSTODY:** **WIFE** shall have full legal and physical custody of the parties' minor children subject to rights of visitation in **HUSBAND** at such times and places as may be agreed upon by the parties.

11. **CHILD SUPPORT:** **HUSBAND** agrees to pay for the support of his children the sum of **One Thousand One Hundred Sixty-Two Dollars and Fifty Cents (\$1,162.50)** per month commencing on March 1, 2006, and continuing on the first day of each month thereafter until the oldest child of the parties, **LACEY KAYE SHEPLER**, turns eighteen (18) years of age or graduates from high school, whichever shall occur last. Upon the happening of such event, **HUSBAND'S** support obligation shall be reduced to **Nine Hundred Fifty and**

no/100 (\$950.00) Dollars per month commencing with the first day of the month following the parties' oldest child reaching the age of eighteen (18) or graduating from high school, and continuing on the first day of the month thereafter until the youngest child of the parties, **FAITH LYNMARIE SHEPLER**, turns eighteen (18) years of age, graduates from high school or the mortgage upon the home conveyed to **WIFE** pursuant to Paragraph 6 of this Agreement has been satisfied, whichever shall occur first. Should the satisfaction of said mortgage obligation occur prior to the youngest child reaching eighteen (18) years of age or graduating from high school, **HUSBAND'S** support obligation shall be redetermined by a Domestic Relations Section then having jurisdiction over **HUSBAND**. All payments made by **HUSBAND** shall be paid directly to **WIFE** at an address to be provided to **HUSBAND** by **WIFE**.

HUSBAND agrees that the aforesaid child support obligation shall not be reduced during the period set forth herein, however, should **HUSBAND'S** income increase, **WIFE** shall be permitted to seek a modification of said support obligation through the Domestic Relations Section then having jurisdiction over **HUSBAND**.

Should **HUSBAND** become delinquent in the payment of his support obligation, **WIFE** shall be permitted to apply for child support through a Domestic Relations Section then having jurisdiction over **HUSBAND**, said child support to be under the terms and conditions as set forth in this paragraph.

Upon youngest child of the parties reaching eighteen (18) years of age or graduating from high school, whichever shall occur last, **HUSBAND** shall cease paying child support but shall continue to pay the monthly mortgage payment due and owing on the parties marital residence on a monthly basis until such mortgage is fully satisfied, and shall pay all costs

incurred in the satisfaction of said mortgage. Should WIFE sell the aforesaid property during said period of time, HUSBAND'S obligation to make mortgage payments as set forth hereunder shall be relieved. Further, WIFE may seek to refinance the said mortgage and the principle amount then due and owing for an interest rate no greater than the present interest rate of said mortgage and HUSBAND'S obligation to pay said mortgage shall not be diminished. WIFE, however, may not increase the principle amount owing on said mortgage as a result of said refinancing, and should WIFE incur any other encumbrances on the marital residence, such as home equity loans or other loans encumbering the marital residence, said further encumbrances shall be the sole responsibility of WIFE.

12. **COUNSEL FEES, COSTS AND EXPENSES:** Neither party shall pay to the other party counsel fees, costs or expenses, and each party shall be responsible for the same and does release the other from any obligation to pay the same.

13. **FINANCIAL DISCLOSURE:** The parties confirm that each has relied on the substantial accuracy of the financial disclosure of the other as an inducement to the execution of this Agreement. In the event that it subsequently appears that any asset or income of significant value has been omitted, the other party may, as to that asset or income, claim an equitable share thereof, and the reasonable attorneys' fees, expert fees, costs and disbursements incurred in establishing such an omission shall be borne in full by the party having failed to make such an disclosure.

14. **ADVICE OF COUNSEL:** The provisions of this Agreement and their legal effect have been explained to the parties by their respective counsel. The parties acknowledge that they have received independent legal advice from counsel of their selection,

that they fully understand the facts and have been fully informed as to their legal rights and obligations, and that they acknowledge and accept that this Agreement is, in the circumstances, fair and equitable and that it is being entered into freely and voluntarily after having received such advice and with such knowledge, that execution of this Agreement is not the result of any duress or undue influence, and that it is not the result of any collusion or any improper or illegal agreement or agreements.

Each party acknowledges having had adequate time, opportunity, and financial wherewithal with which to obtain advice from a lawyer of his or her choice on all aspects of this Agreement, and of their possible divorce, including, but not limited to, all applicable law, the statutory rights of the parties and everything considered in this Agreement; and no presumption shall arise for or against either party with regard to the drafting of this Agreement. Each party further acknowledges having had adequate time, opportunity and financial wherewithal with which to retain any other tax, accounting and other professional advice that he or she might need or desire in considering whether to enter into this Agreement. Whether or not **HUSBAND** or **WIFE** has chosen to obtain such professional advice, each hereby waives any right to claim that any lack of an opportunity to obtain such professional advice shall be any reason to question the validity and enforceability of this Agreement.

15. **WAIVER OF CLAIMS AGAINST ESTATE:** Except as herein otherwise provided, each party may dispose of his or her property in any way, and each party hereby waives and relinquishes any and all rights he or she may now have or hereafter acquire, under the present or future laws of any jurisdiction, to share in the property or in the estate of the other as a result of marital relationship, including, without limitation, dower, courtesy, statutory

allowance, widow's allowance, right to take property under equitable distribution, right to take in intestacy, right to take against the Will of the other, and right to act as administrator or executor of the other's estate, and each will, at the request of the other, execute, acknowledge and deliver any and all instruments which may be necessary or advisable to carry into effect this mutual waiver and relinquishment of all such interest, rights and claims.

16. **BREACH**: If either party breaches any provision of this Agreement, except those provisions dealing with custody of the parties' minor children, the other party shall have the right, at his or her election, to sue for damages for such breach, or to seek such other remedies or relief as may be available to him or her, and the party breaching this contract shall be responsible for payment of legal fees and costs incurred by the other in enforcing their rights under this Agreement.

All remedies provided by law and all remedies provided for above for the enforcement of the Agreement shall be deemed to be cumulative, and the exercise of one remedy shall not bar or prevent the pursuit of any other remedy, and either party may elect to pursue such remedies simultaneously, and the exercise of a remedy one or more times shall not exhaust its use nor prevent further pursuit of such remedy.

17. **AFTER ACQUIRED PROPERTY**: Each of the parties shall hereafter own and enjoy, independently of any claim or right of the other, all items of personal property, tangible or intangible, hereafter acquired by him or her, with full power in him or her to dispose of the same as fully and effectively in all respects and for all purposes as though he or she were unmarried.

18. **ADDITIONAL INSTRUMENTS**: Each of the parties shall, from time to time, at the request of the other, execute, acknowledge, and deliver to the other party any and all further instruments that may be reasonably required to give full force and effect to the provisions of this Agreement.

19. **VOLUNTARY EXECUTION**: The provisions of this Agreement and their legal effect have been fully explained to the parties by their respective counsel, and each party acknowledges that the Agreement is fair and equitable, that it is being entered into voluntarily and that it is not the result of any duress or undue influence.

20. **ENTIRE AGREEMENT**: This Agreement contains the entire understanding of the parties and there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

21. **MODIFICATION AND WAIVER**: A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent default of the same or similar nature.

22. **DESCRIPTIVE HEADINGS**: The descriptive headings used herein are for convenience only. They shall have no effect whatsoever in determining the rights or obligations of the parties.

23. **INDEPENDENT SEPARATE COVENANTS**: It is specifically understood and agreed by and between the parties hereto that each paragraph hereof shall be deemed to be a separate and independent covenant and agreement.

24. **APPLICABLE LAW:** This Agreement shall be construed under the laws of the Commonwealth of Pennsylvania.

25. **VOID CLAUSE:** If any term, condition, clause or provision of this Agreement shall be determined or shall be declared to be void or invalid in law or otherwise, then only that term, condition, clause or provision shall be stricken from this Agreement, and in all other respects this Agreement shall be valid and shall continue in full force, effect and operation.

26. **ENTRY AS PART OF DECREE:** It is the intention of the parties that this instrument shall survive the action for divorce which has been instituted by the parties and that no order, judgment or decree of divorce, whether temporary, interlocutory, final or permanent, shall affect or modify the financial terms of this Agreement. It is also the intention of the parties that this Agreement shall survive any periods of reconciliation of the parties and that no attempt at reconciliation of the parties nor cohabitation by the parties hereinafter shall be assumed to cause the property as so divided in this Agreement to become marital property for the purposes of equitable distribution under the Divorce Code of the Commonwealth of Pennsylvania. The parties agree that all property divided by this Agreement shall remain the property of that party as specified within this agreement unless this Agreement is rescinded by the parties by a writing in similar form to this Agreement. If the parties are ever divorced, this Agreement shall be embodied in and made part of any such judgment or decree of final divorce.

The parties agree to execute an Affidavit of Consent for a No-fault Divorce under Section 3301(c) of the Divorce Code, in the event that either party shall file for divorce.

**EACH OF THE PARTIES REPRESENTS THAT THEY HAVE CAREFULLY
READ AND UNDERSTOOD EACH AND EVERY PAGE OF THIS AGREEMENT PRIOR
TO SIGNING BELOW.**

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

WITNESS:

Faith Kot

4-29-2006
Harry Elmer Shepler III
HARRY ELMER SHEPLER, III

Sam Richards

Traci Ann Shepler
TRACI ANN SHEPLER

SPECIAL WARRANTY DEED

THIS DEED,

MADE the 6th day of November,
in the year nineteen hundred and ninety-six (1996)

BETWEEN GLENN A. HARTZFELD and SANDRA K. HARTZFELD, husband and wife, of R.R. #1, Luthersburg, Clearfield County, Pennsylvania, 15848,

GRANTORS

A
N
D

HARRY E. SHEPLER III and TRACI A. SHEPLER, husband and wife, AS TENANTS BY THE ENTIRETIES, of Box 163, Luthersburg, Clearfield County, Pennsylvania, 15848,

GRANTEES

WITNESSETH, that in consideration of the sum of THIRTY THOUSAND AND NO/100-----(\$30,000.00-----Dollars and other good and valuable consideration, in hand paid, the receipt whereof is hereby acknowledged, the Grantors do hereby grant and convey to the said Grantees, their heirs and assigns,

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

BEGINNING at a pin at the N.W. corner of lands now or late of Clifford Serene; thence by lands of said Serene South 30 degrees 00 minutes East 392 feet; thence along Donald Miller lot and Robert Miller lot South degrees 30 minutes East 560 feet; thence along Robert Miller lot North 86 degrees 07 minutes East 232 feet; thence along residue of Elizabeth Miller and Garnett Morgan land South 2 degrees 30 minutes East 50 feet and South 4 degrees 25 minutes West 425 feet; thence along center of Little Anderson Creek the following general courses and distances: North 60 degrees 50 minutes West 60 feet; South 43 degrees 15 minutes West 150 feet; South 67 degrees 35 minutes West 280 feet; North 38 degrees West 300 feet; South 77 degrees 30 minutes West 520 feet; North 50 degrees West 240 feet; North 76 degrees 30 minutes West 150 feet and south 40 degrees 55 minutes West 580 feet; thence along Everett Cramer land North 58 degrees 45 minutes West 485 feet; thence along Schaffer land North 80 degrees 30 minutes West 450 feet; thence along Raymond Berkey lot North 8 degrees 25 minutes East 1,529 feet; thence along Fred Rafferty land South 81 degrees 35 minutes East 1,130 feet; thence along the remaining lands of the Grantors herein, 600 feet to place of beginning, containing more or less 69.846 acres of land.

Exhibit "B"

ALSO GRANTING AND CONVEYING unto the grantees a non-exclusive right-of-way together with the common obligation of prorata maintenance of the same with other users over the right-of-way, from U.S. Route 219 to the premises herein conveyed as shown on the plat attached hereto.

BEING a subdivided portion of premises conveyed to Glenn A. Hartzfeld and Sandra K. Hartzfeld, husband and wife, by deed of Elizabeth I. Miller, widow, and Garnett M. Morgan and Fred Morgan, her husband, deed dated August 20, 1996 and recorded in Clearfield County Deed Book Volume 1784, Page 551; said subdivision map having been recorded on October 25, 1996 to Clearfield County Recorder of Deeds Docket #1245..

IT IS HEREBY CERTIFIED IN COMPLIANCE WITH THE PENNSYLVANIA REALTY TRANSFER TAX ACT AND REGULATION, SECTION 1102-C.3(6) THAT THE WITHIN CONVEYANCE IS MADE BETWEEN PARENTS AND DAUGHTER AND SON-IN-LAW, AND THERE IS NO TAX PAYABLE THEREON.

NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1966", I/we, the undersigned grantee/grantees, hereby certify that I/we know and understand that I/we may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal. I/we further certify that this certification is in a color contrasting with that in the deed proper and is printed in twelve point type preceded by the word "notice" printed in twenty-four point type.

Witness:

Laurence D. J.R. *Harry E. Shepler*
Grace J. Shepler

This day of

NOTICE

To comply with the Act of July 17, 1957, P.L. 984, as amended, (52 P.S. Sections 1551-1554) notice is hereby given as follows:

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

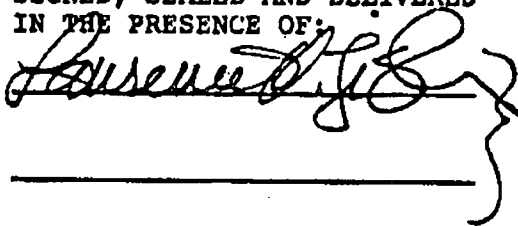
TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT.

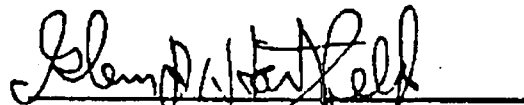
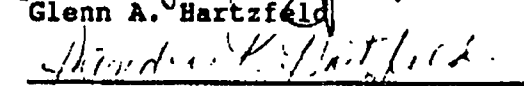
GRANTOR HAS NO ACTUAL KNOWLEDGE OF ANY HAZARDOUS WASTE, DEFINED IN ACT NO. 1980-97 OF THE COMMONWEALTH OF PENNSYLVANIA, HAVING BEEN OR WHICH IS PRESENTLY DISPOSED ON OR ABOUT THE PROPERTY DESCRIBED IN THIS DEED.

AND the said Grantors hereby covenants and agrees that he will SPECIALLY WARRANT AND FOREVER DEFEND the property hereby conveyed.

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

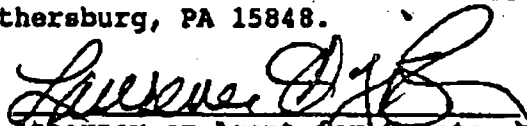
SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:




Glenn A. Hartzfeld

Sandra K. Hartzfeld

Certificate of Residence

I hereby certify that the precise residence of the Grantees herein is as follows: Box 163, Luthersburg, PA 15848.


Attorney or Agent for Grantees

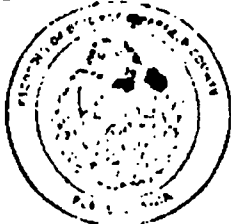
COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF CLEARFIELD }

On this, the 6th day of December, 1996, before me, a Notary Public, the undersigned officer, personally appeared GLENN A. HARTZFELD and SANDRA K. HARTZFELD, husband and wife, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument and acknowledged that they have executed the same for the purpose therein contained.

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

Yvonne L. Yench
Notary Public
Notarial Seal
Yvonne L. Yench, Notary Public
Dutels, Clearfield County
My Commission Expires Nov. 15, 1997
Member, Pennsylvania Association of Notaries

I hereby CERTIFY that this document is recorded in the Recorder's Office of Clearfield County, Pennsylvania.



Karen L. Starck
Karen L. Starck
Recorder of Deeds

CLEARFIELD COUNTY
ENTERED OF RECORD
TIME 10:10pm 11-6-96
BY Karen L. Starck
FEES 13.50
Karen L. Starck, Recorder

Entered of Record NOV 6 19 96: 12:10p Karen L. Starck, Recorder

11:00
Thursday

Smith Logging and Timber Sales

Feb. 16
2007

Smith Logging is submitting a bid of **\$38,000** for the various species of trees that have been previously selected. The wooded area that has been marked out to cut is located in . All trees 12 inches in diameter chest high will be selectively harvested. All trees will be directionally fallen so that younger growth will not be damaged or bumped. Money will be paid after contract is agreed on. All access roads will be properly leveled, brush will be cut to land owners specification and diversion ditches will be put in where needed to stop ground erosion dew to heavy rain and all roads and landings will be hydro seeded after completion of all logging activities. We as the logger have estimated all standing timber and will offer a certain percentage more if the board feet comes up greater than we estimated. Remember you as the landowner has control, so if there is any type of problem please tell us so we are aware of any situation.

Tree species

1. Black Cherry	Total: \$17,278.20
2. Soft Maple	Total: \$10,527.25
3. Black Walnut	Total: \$
4. Hard Maple	Total: \$750.00
5. Red Oak	Total: \$3,803.57
6. Ash	Total: \$260.00
7. Misc.	Total: \$3000.00
	Total: \$35619.02

Actual Bid: 38,000

Trees under 12" have been
cut and are on landing.
Environmental issues - closed.

Buyer

Walter D. Smith

Seller

Klaus J. Geller
Paul M. Fell

Cut By Spring of 2007

137 Lewis St.

Exhibit "C"



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATER QUALITY PROTECTION

EARTH DISTURBANCE INSPECTION REPORT

Report No. 1Inspection Date 4-4-06County CLARKEFIELDProject name HARRY SHEPLER PROPERTY LOGGINGTotal Project area UNKNOWNLocation BEAR RIDGE ROADMunicipality BRADY TWPReceiving water(s) LITTLE ANDERSON CREEKChapter 93 designation COLD WATER FISHERYResponsible party (name & address) WES SMITH / SMITH LOGGING AND TIMBER SALES137 LEWIS ST.
REYNOLDSVILLE, PA 15851Phone 814 591-4106Weather conditions CLOUDY 35°FTime of Inspection 9:00Site Representative (name & title) NO ONE AT SITEInspector FREDERICK CLEARFIELD CO. CONSERVATION DISTRICT

Type of Inspection (check only one)

Photographs taken

Yes ☒No ☐Routine complete ☐Routine partial ☒Follow-up ☐Complaint ☐Final ☐

Site Description & Observations

LOG LANDING IS LOCATED OFF BEAR RIDGE ROAD. LOG LANDING IS RUTTED. TWO MAIN SKID/HAIL ROADS LEAD OUT OF LOG LANDING INTO WOODS. THESE TWO SKID TRAILS (AND OTHERS) ARE DEEPLY RUTTED FROM SKIDDER WHEELS. FOLLOWED A RUTTED SKID TRAIL DOWN TO MAIN BRANCH OF LITTLE ANDERSON CREEK. SEVERAL LARGE TREES ARE MARKED WITH BLUE PAINT ALONG STREAM BANK. ALSO TREES ARE MARKED ACROSS THE STREAMS ON THE SHEPLER PROPERTY. AN OLD STREAM CROSSING WAS WITNESSED WHERE A BLACK PLASTIC PIPE WAS USED IN THE PAST, BUT NOW IT IS WASHED-OUT. A GENERAL PERMIT (CHAPTER 105 FOR STREAM ENCROACHMENT) WILL BE REQUIRED FOR ANY ^{OR PIPE OR} PIPES TO BE PLACED OR REPLACED IN THIS OR ANY STREAM WHERE >100 ACRES IS IN DRAINAGE AREA ABOVE PIPE OR BRIDGE. DRAINAGE AREA AT OLD CROSSING IS 125 ACRES.

continued ☐

Permit and Plan Requirements

Type of Activity (check as many as appropriate)

Y N

☒ ☐ Written Erosion & Sediment Control Plan required☒ ☐ Erosion & Sediment Control Plan requested☐ ☒ E & S Control Permit required☐ ☒ NPDES Permit required

_____ Phased Constr.

_____ Non-Phased Constr.

Permit # _____

☐ Pub. Road Constr./Maint. (PRC)☐ Res. Subdivision (RSBD)☐ Govt. Facilities (GOV)☐ Utilities Facilities (UTL)☐ Sewer/Water Systems (SWS)☐ Remediation/Restoration (RRES)☐ Pvt. Road/Residence (PRRS)☐ Comm./Indust. Dev. (CMIN)☐ Recreation Facilities (RECF)☐ Agricul. Activities (AGA)☐ Oil/Gas Development (OGD)☒ Silviculture (SILV)



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATER QUALITY PROTECTION

EARTH DISTURBANCE INSPECTION REPORT

4-4-06

Inspection Findings (check as many as appropriate)

- | Inspection Findings (check as many as appropriate) | Reference |
|---|---|
| a. No violations observed at this time: | <input type="checkbox"/> (N/A) |
| b. Failure to develop a written Erosion and Sediment Control Plan: | <input type="checkbox"/> (102.4) |
| c. Failure to have an Erosion and Sediment Control Plan available on site: | <input type="checkbox"/> (102.4) |
| d. Failure to submit Erosion and Sediment Control Plan as requested: | <input type="checkbox"/> (102.4) |
| e. Failure to implement effective Best Management Practices: | <input checked="" type="checkbox"/> (102.4) |
| f. Failure to maintain effective Best Management Practices: | <input type="checkbox"/> (102.4) |
| g. Failure to use Special Protection Best Management Practices for discharges to High Quality or Exceptional Value Waters: | <input type="checkbox"/> (102.4) |
| h. Failure to obtain an NPDES Permit for Stormwater Discharges Associated With a Construction Activity: | <input type="checkbox"/> (102.5) |
| i. Failure to obtain an Erosion and Sediment Control Permit: | <input type="checkbox"/> (102.5) |
| j. Failure to demonstrate that alternative Best Management Practices achieve regulatory standards: | <input type="checkbox"/> (102.11) |
| k. Failure to permanently stabilize the earth disturbance site: | <input type="checkbox"/> (102.22) |
| l. Failure of earth disturbance activities to comply with permit conditions: | <input type="checkbox"/> (402 CSL) |
| m. Failure to prevent sediment or other pollutant discharge into waters of the Commonwealth: | <input type="checkbox"/> (401 CSL) |
| n. Site conditions present a potential for pollution to waters of the Commonwealth: | <input checked="" type="checkbox"/> (402 CSL) |
| o. Other (describe): _____ | |
| <input type="checkbox"/> Inspection of this project has revealed site conditions which constitute violations of 25 Pa. Code Chapters 92 and/or 102 and the Clean Streams Law, the act of June 22, 1937, P.L. 1987, 35 P.S. §691.1 et seq. | |

Additional information regarding these violations can be found on the back of this report

Compliance Assistance Measures ALL WHEEL RUTS IN LOG LANDING AND ON ALL SKID TRAILS MUST BE GRADED FLAT. DO NOT LEAVE TREE TOPS IN ANY STREAM. OBTAIN A GENERAL PERMIT FOR TEMPORARY STREAM CROSSINGS PRIOR TO CROSSING THE STREAM TO CUT TREES. EXTRA PRECAUTIONS SHOULD BE TAKEN IN AREAS WITH HIGH WATER TABLE AND NEAR STREAMS TO PREVENT WHEEL RUTS. SEE ATTACHED INFORMATION ON ETS PLAN AND GENERAL PERMIT APPLICATIONS.

continued ☐

Follow-up Inspection will occur on or about (date) NONE SCHEDULED

NO WORK AT SITE.
(Signature of Site Representative)

(Date)

[Signature]
(Inspector's Signature)

(Date)

The Site Representative's signature acknowledges that they have read the report and received a copy and that they were given an opportunity to discuss it with the inspector. The signature does not necessarily mean the signee agrees with the report.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATERSHED MANAGEMENT

EARTH DISTURBANCE INSPECTION REPORT

Project Name TRACI HARRIS SHEPLER PROPERTY Inspection Date 1/5/07 Report No. 2
Weather Conditions RAIN 50°F Time of Inspection 8:45
Location BEAR RIDGE ROAD Total Project Area UNKNOWN
Municipality BRAND TWP. County CLEARFIELD
Receiving Water(s) LITTLE ANDERSON CR. Designated/Existing Use COLD WATER FISHERY

Responsible Party(s) SMITH LUCINE AND TIMARA SALER

(name & address)

137 LEWIS ST.
REINOLDSVILLE, PA 15851

Phone (717) 591-4106Site Representative (name) NO ONE AT SITE

(title)

Inspector (name) FRED BEAN

(title)

CLEARFIELD CO. COORDINATOR

Type of Inspection (check only one)

Photographs Taken Yes ☒ No ☐Routine complete ☐ Routine partial ☒ Follow-up ☐ Complaint ☐ Final ☐

Site Description & Observations CAT SKIDDER IS ON SITE. LOGS ARE ~~BEING~~ LAID OUT AT LANDING. ADDITIONAL TREE CUTTING HAS OCCURRED AT THIS SITE SINCE LAST INSPECTION ON 4-4-06. SKID TRAILS OUT OF LOG LANDING ARE SEVERELY RUTTED. NO WATER PANS LOCATED BELOW LOG LANDING. NO WATER BARS ON SKID TRAILS. SKID TRAILS FROM APRIL SITE INSPECTION ARE STILL THERE AND HAVE NOT BEEN GRADED AS REQUESTED. SKIDDER HAS TRAVELED THROUGH SMALL STREAMS, SPRINGS AND WET AREAS. SEDIMENT IS GETTING INTO LITTLE ANDERSON CREEK.

Continued ☐

Permit and Plan Requirements

Y N

- ☒ ☐ Written Erosion & Sediment Control Plan required
☒ ☐ Erosion & Sediment Control Plan requested
☐ ☒ E & S Control Permit required
☐ ☒ NPDES Permit required

☐ Phased Constr. ☐ Non-Phased Constr.

Permit #:

Exp. Date:

Type of Activity (check as many as appropriate)

- ☐ Pub. Road Constr./Maint. (FRC) ☐ Pvt. Road/Residence (PRRS)
☐ Res. Subdivision (RSBD) ☐ Comm./Indust. Dev. (CMIN)
☐ Govt. Facilities (GOV) ☐ Recreation Facilities (RECF)
☐ Utilities Facilities (UTL) ☐ Agricul. Activities (AGA)
☐ Sewer/Water Systems (SWS) ☐ Oil/Gas Development (OGD)
☐ Remediation/Restoration (RRES) ☒ Silviculture (SILV)

Page 1 of 2

☐ White - Inspector☐ Yellow - Responsible Party☐ Pink - Department☐ Goldenrod - Other



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATERSHED MANAGEMENT

EARTH DISTURBANCE INSPECTION REPORT

Project Name HARRY SHEPHERD PROPERTY Inspection Date 1/5/07 Report No. 2 1/5/07

Inspection Findings (check as many as appropriate)

- | Inspection Findings (check as many as appropriate) | Reference |
|--|---|
| a. No violations observed at this time: | <input type="checkbox"/> (N/A) |
| b. Failure to develop a written Erosion and Sediment Control Plan: | <input type="checkbox"/> (102.4) |
| c. Failure to have an Erosion and Sediment Control Plan available on site: | <input type="checkbox"/> (102.4) |
| d. Failure to submit Erosion and Sediment Control Plan as requested: | <input type="checkbox"/> (102.4) |
| e. Failure to implement effective Best Management Practices: | <input checked="" type="checkbox"/> (102.4) |
| f. Failure to maintain effective Best Management Practices: | <input checked="" type="checkbox"/> (102.4) |
| g. Failure to use Special Protection Best Management Practices for discharges to High Quality or Exceptional Value Waters: | <input type="checkbox"/> (102.4) |
| h. Failure to obtain an NPDES Permit for Stormwater Discharges Associated With a Construction Activity: | <input type="checkbox"/> (102.5) |
| i. Failure to obtain an Erosion and Sediment Control Permit: | <input type="checkbox"/> (102.5) |
| j. Failure to demonstrate that alternative Best Management Practices achieve regulatory standards: | <input type="checkbox"/> (102.11) |
| k. Failure to permanently stabilize the earth disturbance site: | <input type="checkbox"/> (102.22) |
| l. Failure of earth disturbance activities to comply with permit conditions: | <input type="checkbox"/> (402 CSL) |
| m. Failure to prevent sediment or other pollutant discharge into waters of the Commonwealth: | <input type="checkbox"/> (401 CSL) |
| n. Site conditions present a potential for pollution to waters of the Commonwealth: | <input checked="" type="checkbox"/> (402 CSL) |
| o. Other (describe): _____ | |

☐ Inspection of this project has revealed site conditions which constitute violations of 25 Pa. Code Chapters 92 and/or 102 and the Clean Streams Law, the act of June 22, 1937, P.L. 1987, 35 P.S. §691.1 et seq.

Additional information regarding these violations can be found on the back of this page.

Compliance Assistance Measures INSTALL WATER BARS BELOW LOT LANDING TO
DIRECT WATER OFF OF MAIN SKID TRAILS. & INSTALL TEMPORARY
WATER BARS ON SKID TRAILS. GRADE ALL SKID TRAIL SMOOTH. DO NOT
LEAVE WHEEL RUTS ON-SITE. SEED AND MULCH LOT LANDING WHEN FINISHED.
HAVE A WRITTEN EROSION CONTROL PLAN ON-SITE TO SHOW TEMPORARY AND PERMANENT
EROSION CONTROLS PREVENT SEDIMENT FROM GETTING INTO STREAMS.

Continued ☐

Follow-up Inspection will occur on or about (date) NONE SCHEDULED

NO ONE AT SITE
(Signature of Site Representative)

(Date)

[Signature]
(Inspector's Signature)

1/5/07
(Date)

The Site Representatives' signature acknowledges that they have read the report and received a copy and that they were given an opportunity to discuss it with the inspector. The signature does not necessarily mean the signee agrees with the report.

Page 2 of 2

☐ White - Inspector

☐ Yellow - Responsible Party

☐ Pink - Department

☐ Goldenrod - Other

Exhibit "D"

HOPKINS HELTZEL LLP

100 Meadow Lane, Suite 5 • DuBois, PA 15801

David J. Hopkins
Licensed in PA & NJ
Masters in Taxation

Les Ann Heltzel
Licensed in PA

- Voice: (814) 375 - 0300
- Fax: (814) 375 - 5035
- Email: hopkinslaw@adelphia.net

January 19, 2007

VIA HAND DELIVERY

Ms. Traci A. Shepler
475 Cabin Lane
P.O. Box 163
Luthersburg, Pennsylvania 15848

Re: Smith Logging v. Shepler

Dear Ms. Shepler:

Please be advised that this office represents Wesley D. Smith the owner of Smith Logging. As you know, Smith Logging entered into an agreement with you and your former husband and pursuant thereto paid you \$38,000.00 for timber located upon your property in Bloom Township. To date you, through your father Glen Hartsfeld, have frustrated Smith Lumber's attempt to cut and remove the timber from your property.

My client has complied with all of the requirements of the Commonwealth of Pennsylvania and the Department of Environmental Protection. Please be advised that on Monday, January 22, 2007, my client will be at your property where he will commence working to cut and remove timber. You have installed a gate and that gate must be unlocked or it will be removed. Be advised that under the terms of the contract only you are permitted to contact and interact with Smith Logging because you are the landowner. Your father is not the landowner and he may have no further contact with Smith Logging.

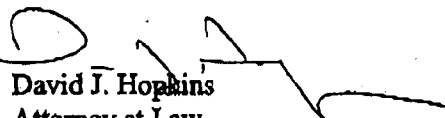
If you undertake any action to frustrate my client's removal of the timber, I will immediately file a lawsuit against you obtaining access to your property and sue you for damages which are substantial at this point and which will grow each day. You will further be obligated to pay my legal fees for this unnecessary equitable action.

Exhibit "E"

January 19, 2007
Page two

Please guide yourself accordingly and expect my client at your property on Monday,
January 22, 2007.

Very truly yours,


David J. Hopkins
Attorney at Law

DJH/cs

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

Plaintiffs

vs.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,
Defendant

No. 07 - 104 - CD

Type of Pleading:

**PETITION FOR EX-PARTE
PRELIMINARY INJUNCTIVE
RELIEF**

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: January 22, 2007

FILED *iccshff*
01/25/07
JAN 23 2007 *iccatty*
William A. Shaw
Prothonotary/Clerk of Courts *(SR)*

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

TRACI A. SHEPLER and HARRY E. *
SHEPLER, III, *

Plaintiffs *

vs. *

No. 07 - - CD

WESLEY D. SMITH, T/D/B/A *

SMITH LOGGING & TIMBER SALES, *

Defendant *

PETITION FOR EX-PARTE PRELIMINARY INJUNCTIVE RELIEF

Petitioners/Plaintiffs, by and through their attorney, James A. Naddeo, Esq., petition this Court for the issuance of a preliminary injunction pursuant to Pa.R.C.P. 1531, and in support allege as follows:

1. Petitioners/Plaintiffs, filed a verified Complaint in equity with the Prothonotary of this Court on January 22, 2007. A true and correct copy of the Complaint is attached hereto as Exhibit "A."

2. The plaintiff, Traci A. Shepler, to this action holds equitable title to property which is located in the Township of Brady and Bloom, Clearfield County, Pennsylvania.

3. As set forth in their complaint Defendant has trespassed, and cut down trees from the property to which he had no lawful right.

4. Plaintiffs have brought their complaint, and seek this preliminary injunction, on thier own behalf against

Respondent/Defendant, to enjoin his continuing acts which violate Petitioners/Plaintiffs rights as the owner of the property described in the Complaint.

5. That Petitioner/Plaintiff, Traci A. Shepler, as the owner of unique land situate in Brady and Bloom Township seeks this injunction to prevent irreparable harm to her land.

6. That the land as it presently exists with the timber thereon has a personal value to Ms. Shepler which cannot be replaced monetarily.

7. That Petitioners/Plaintiffs will suffer immediate and irreparable harm if an injunction is not granted enjoining defendant from entering upon the land of Plaintiffs and enjoining the defendant from removing or harvesting any trees from the land of Plaintiffs.

8. The Petitioner/Plaintiff is likely to succeed on the merits of its claim. The timber agreement is ambiguous but the intention of the parties is clear and defendant has breached said agreement and trespassed and took timber to which he had no lawful right.

WHEREFORE, Petitioners/Plaintiffs, request that this Court grant a preliminary injunction based upon the facts set forth in

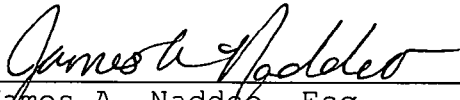
///

///

///

the Complaint and this Petition.

NADDEO & LEWIS, LLC

By: 
James A. Naddeo, Esq.
Attorney for Plaintiffs

V E R I F I C A T I O N

I, Traci A. Shepler, petitioner, verify that the statements made in the foregoing Petition are true and correct upon my personal knowledge or information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

By:


Traci A. Shepler
Petitioner

Dated:

1-19-07

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

TRACI A. SHEPLER and HARRY E. *
SHEPLER, III, *
Plaintiffs *

vs. *

No. 07 - - CD

WESLEY D. SMITH, T/D/B/A *
SMITH LOGGING & TIMBER SALES, *
Defendant *

COMPLAINT

NOW COMES the Plaintiffs, TRACI A. SHEPLER AND HARRY E. SHEPLER, III, and by their attorney, James A. Naddeo, Esquire, set forth the following:

1. That Plaintiff, Traci Shepler is an adult individual residing at 475 Cabin Lane, Luthersburg, Pennsylvania.

2. That Plaintiff, Harry E. Shepler, III, is an adult individual residing at 2560 Steamille Road, Odessa, New York 14869.

3. That the Plaintiff, Traci A. Shepler (hereinafter Ms. Shepler), is the equitable title holder of property situate in Brady Township and Bloom Township, Clearfield County, Pennsylvania, which Plaintiff acquired by an agreement made pursuant to a marriage settlement dated April 29, 2006. A true

and correct copy of *Separation, Custody and Support Agreement* is attached hereto as Exhibit "A."

4. That contained in the marriage settlement agreement at paragraph six, Ms. Shepler, was granted all of her husband's, Mr. Shepler's, right title and interest in and to the marital residence located at 475 Cabin Lane, Luthersburg, Pennsylvania. See Exhibit A, at page 3.

5. That it was known and understood by the parties to the marriage settlement agreement that the grant of property as contained in paragraph 4 above to Ms. Shepler included the lot and land upon which the marital residence was and is located.

6. Further, that Ms. Shepler and Mr. Shepler agreed that in consideration for such grant of the lot and all land owned by the couple at that time being granted to Ms. Shepler, Mr. Shepler received the sum of \$33,500.00, said sum being tendered to Mr. Shepler from the monies paid to the couple in exchange for the signing of a Timber Agreement.

7. That the marriage settlement agreement provided that the Mr. Shepler execute all deeds and documents necessary to effectuate his grant of the marital property to Ms. Shepler.

8. That subsequent to the signing of the marriage settlement agreement no deed has been executed from Mr. Shepler and Ms. Shepler to Ms. Shepler individually.

9. That deed to the property and land upon which the marital residence is located is presently recorded in Clearfield County Deeds and Records Books to Volume 1801, Page 73 and describes the land owned by Ms. Shepler and Mr. Shepler as follows:

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

BEGINNING at a pin at the N.W. corner of lands now or late of Clifford Serene; thence by lands of said Serene South 30 degrees 00 minutes East 392 feet; thence along Donald Miller lot and Robert Miller lot South degrees 30 minutes East 560 feet; thence along Robert Miller lot North 86 degrees 07 minutes East 232 feet; thence along residue of Elizabeth Miller and Garnett Morgan land South 2 degrees 30 minutes East 50 feet and South 4 degrees 25 minutes West 425 feet; thence along center of Little Anderson Creek the following general courses and distances: North 60 degrees 50 minutes West 60 feet; South 43 degrees 15 minutes West 150 feet; South 67 degrees 35 minutes West 280 feet; North 38 degrees West 300 feet; South 77 degrees 30 minutes West 520; North 50 degrees West 240 feet; North 76 degrees 30 minutes West 150 feet and south 40 degrees 55 minutes West 580 feet; thence along Everett Cramer land North 58 degrees 45 minutes West 485 feet; thence along Schaffer land North 80 degrees 30 minutes West 450 feet; thence along Raymond Berkey lot North 8 degrees 25 minutes East 1,529 feet; thence along Fred Rafferty land South 81 degrees 35 minutes East 1,130 feet; thence along the remaining lands of the Grantors herein, 600 feet to place of beginning, containing more or less 69.846 acres of land.

A true and correct copy of said deed is attached hereto as Exhibit "B."

10. That Plaintiff, Mr. Shepler, has joined in this lawsuit as a necessary part, although he acknowledges he is not

the owner of the property as described in paragraph 9 of this Complaint.

11. That a timber agreement was entered into by and between Ms. Shepler and Mr. Shepler and Wesley D. Smith t/d/b/a Smith Logging and Timber Sales. A true and correct copy of said agreement is attached hereto as Exhibit "C."

12. That the timber agreement involves the harvesting of timber from the land as described in paragraph 9 of this Complaint.

13. That the timber agreement provides for a specified wooded area from which the timber is to be harvested and that only certain species of trees were to be cut and these trees had been previously selected and marked.

14. That in addition to the terms as specified in paragraph 13 above, that in any case, no trees under 12 inches in diameter chest high were to be harvested. That is, even though said smaller trees may have been marked or selected they would not be harvested if they did not meet this measurement.

15. That despite the limitation in the timber agreement to a certain designated and agreed upon wooded area from which the trees were to be harvested the defendant has cut down trees outside of this wooded area.

16. That despite the limitation in the timber agreement that only trees within a certain designated and agreed

upon wooded area would be harvested the defendant has marked trees outside of this designated area to be harvested by defendant.

17. That despite the limitation in the timber agreement that only trees 12 inches diameter chest high or greater would be harvested the defendant has cut down trees that are not 12 inches diameter chest high or greater.

18. That subsequent to the agreement between plaintiffs and defendant, defendant marked additional trees within the designated area and has harvested some of these additional trees and some remain marked for harvesting.

19. That defendant has failed to comply with the Department of Environmental Protection (DEP) of the Commonwealth of Pennsylvania and has caused reports to be issued regarding his failure to comply from this department. True and correct copies of DEP inspection reports are collectively attached hereto as Exhibit "D."

20. That defendant has breached the timber agreement as agreed upon by the parties.

21. That plaintiff, Ms. Shepler, has made repeated demands that defendant cease his unlawful actions and the harvesting of timber to which he has no lawful right.

22. That plaintiffs' consider defendant to be in material breach of the contract and have attempted to prevent

defendant from entering upon the property. Furthermore, the same (preventing the defendant from entering upon Plaintiff's property) is necessary to ensure the defendant does not damage the land beyond repair.

23. That despite Ms. Shepler's demands that defendant cease harvesting and cease from entering upon the property defendant continues to make attempts to come onto plaintiffs' property and harvest trees.

24. That specifically defendant has stated his full intent to enter upon Ms. Shepler's property on Monday, January 22, 2007. A true and correct copy of letter received from defendant's counsel is attached hereto as Exhibit "E."

25. That Ms. Shepler's land is unique as it stands including the timber thereon.

26. That absent an equitable remedy Plaintiffs will be required to file a multiplicity of suits.

27. That Plaintiffs have no adequate remedy at law.

WHEREFORE, the Plaintiffs, pray for relief from Defendant's actions and the entry of an order preliminarily, and after final hearing, permanently:

a. Enjoining the Defendant from entering upon Plaintiff's property;

b. Enjoining the Defendant from removing any timber from the property herein involved;

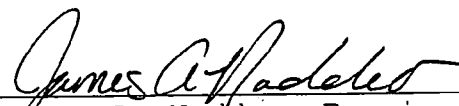
c. Awarding damages for the trespass and taking of timber which defendant had no lawful right to harvest;

d. Awarding other damages as the Court deems just and proper;

e. Granting any other relief as the Court deems just and proper.

NADDEO & LEWIS, LLC

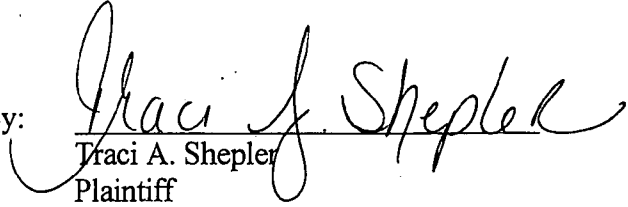
By:


James A. Naddeo, Esquire
Attorney for Plaintiffs

V E R I F I C A T I O N

I, Traci A. Shepler, plaintiff, verify that the statements made in the foregoing Complaint are true and correct upon my personal knowledge or information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

By:


Traci A. Shepler
Plaintiff

Dated: _____

1-15-07

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

OCT 19 2006

SEPARATION, CUSTODY AND SUPPORT AGREEMENT

Prot. Notary/
Clerk of Courts

THIS AGREEMENT, made this 29th day of April, 2006,

by and between **HARRY ELMER SHEPLER, III**, Social Security No. 186-60-5621, an

individual hereinafter referred to as "HUSBAND";

AND

TRACI ANN SHEPLER, Social Security No. 191-66-9106, an individual hereinafter referred to

as "WIFE".

WITNESSETH:

WHEREAS, the parties are husband and wife; and

WHEREAS, there were three (3) minor children born of their marriage, namely,

LACEY KAYE SHEPLER, date of birth November 21, 1990, **KAILYN NICOLE SHEPLER**,

date of birth April 28, 1995, and **FAITH LYNMARIE SHEPLER**, date of birth July 29, 2002;

and

WHEREAS, the parties desire to provide for the custody and support of their
minor children; and

WHEREAS, the parties desire to settle their property rights permanently and for
all time; and

WHEREAS, both parties agree to relinquish any and all claims which either may
have against any property now owned or belonging to the other or which may hereafter be
acquired by either of them by purchase, gift, devise, bequest, inheritance and otherwise, except as
to the obligations, covenants and agreements contained herein; and

WHEREAS, the parties hereto have each had the benefit of competent and independent legal advice by separate counsel.

NOW THEREFORE, the parties intending to be legally bound hereby do covenant and agree:

1. **SEPARATION**: It shall be lawful for each party at all times hereafter to live separate and apart from the other party at such place as he or she may from time to time choose or deem fit. The foregoing provisions shall not be taken as an admission on the part of either party of the lawfulness or unlawfulness of the causes leading to their living apart.
2. **INTERFERENCE**: Each party shall be free from interference, authority, and contract by the other, as fully as if he or she were single and unmarried, except as may be necessary to carry out the provisions of this Agreement. Neither party shall molest the other or attempt to endeavor to molest the other, nor compel the other to cohabit with the other, nor in any way harass or malign the other, nor in any way interfere with the peaceful existence, separate and apart from the other, and each of the parties hereto completely understands and agrees that neither shall do nor say anything to the children of the parties at any time which might in any way influence the children adversely against the other party.
3. **DESIRE OF THE PARTIES**: It is the desire of the parties, after long and careful consideration, to amicably adjust, compromise and settle all property rights and all rights in, to or against each other's property or estate, including property heretofore or subsequently acquired by either party, and to settle all disputes existing between them, including any and all claims for **WIFE'S** and/or **HUSBAND'S** maintenance and/or for support, alimony, counsel fees and costs, equitable distribution, and custody.

4. **DEBTS:** HUSBAND and WIFE represent and warrant to each other that neither one has contracted any debt or debts, charges, or liabilities whatsoever, except as herein expressly set forth, for which the other party or their property or their estates shall or may be or may become liable or answerable, and they covenant that they will at all times keep each other free, harmless and indemnified against and from any and all debts and liabilities heretofore or hereafter contracted or incurred by either of them, except as expressly provided in this Agreement.

5. **MUTUAL RELEASE:** Subject to the provisions of this Agreement, each party has released and discharged, and by this Agreement does for himself or herself and for his or her heirs, legal representatives, executors, administrators and assigns, release and discharge the other of and from all causes of action, claims, rights or demands whatsoever, in law or equity, which either of the parties ever had or now has against the other, except any or all cause or causes of action for breach of any provisions of this Agreement.

6. **DIVISION OF REAL PROPERTY:** HUSBAND agrees and by these presents does convey to WIFE all of his right, title and interest in and to the marital residence of the parties located at 475 Cabin Lane, Luthersburg, Clearfield County, Pennsylvania, and agrees to execute all deeds or other documents necessary to effectuate such transfer. The parties stipulate that the value of the parties' marital residence is approximately **One Hundred Fifty Thousand and no/100 (\$150,000.00) Dollars**, as shown by the appraisal of Michele A. Dennison dated August 28, 2002, a copy of which is attached hereto. The parties further waive the right to seek a current appraisal of the real property, they being satisfied with the valuation as set forth above.

WIFE further agrees to assume sole responsibility for the payment of an outstanding mortgage taken for the purchase of said property through Washington Mutual, the same having an approximate balance of **Ninety-seven Thousand One Hundred Eighty-six and 71/100 (\$97,186.71) Dollars** as of December 29, 2005. **WIFE'S** obligation to assume responsibility for the said outstanding mortgage is expressly conditioned on **HUSBAND'S** continued payment of child support as hereinafter set forth. Should **HUSBAND** cease to pay child support for whatever reason, **HUSBAND** shall assume responsibility for the payment of the outstanding mortgage and hold **WIFE** harmless from same. **WIFE** shall be permitted to refinance the aforesaid mortgage as she deems appropriate. In consideration thereof, **WIFE** waives any and all right and entitlement to support for the minor children, with the parties stipulating that **HUSBAND'S** payment of such mortgage obligation shall be in lieu of child support. The parties further agree, however, that, should **WIFE** sell the subject premises, or should **HUSBAND** discontinue making payments upon said mortgage obligation, thereby obligating **WIFE** to make the same, or should the parties no longer be obligated on such Mortgage obligation during the minority of their children, **WIFE** shall be at will to seek child support from **HUSBAND** through a Domestic Relations Section then having jurisdiction over **HUSBAND**.

7. **DIVISION OF PERSONAL PROPERTY:** The parties hereby divide their personal property, including but not limited to all household goods and furnishings, personal effects and all other items of personal property used by them in common as follows:

- a. **WIFE** agrees and by these presents does convey to **HUSBAND** all of her right, title and interest in and to a 1984 GMC pickup truck

and to an 1987 GMC pickup truck and agrees to execute all titles or other documents necessary to effectuate such transfer. In consideration thereof, **HUSBAND** agrees and by these presents does convey to **WIFE** all of his right, title and interest in and to a 1995 Dodge Ram 1500 pickup and agrees to execute all titles or other documents necessary to effectuate such transfer.

- b. **HUSBAND** agrees and by these presents does convey to **WIFE** all of his right, title and interest in and to a 401(k) savings plan acquired by **HUSBAND** as the result of his employment through Penn Traffic Company, DuBois, Pennsylvania, the same having an approximate market value of **Eleven Thousand Three Hundred Sixty-two and 03/100 (\$11,362.03) Dollars**, the same to become the sole property of **WIFE**, free from the claims of **HUSBAND**. The parties further agree to execute all Qualified Domestic Relations Orders or other documents necessary to effectuate said transfer.

- c. All household goods and furnishings which are in the possession of the individual parties at the time of their execution of this Agreement, shall become the sole property of that party, holding the same free from the claims of the other.

- d. **HUSBAND and WIFE** agree that the aforesaid agreement is in lieu of any and all claims for equitable distribution of said property.

8. **CHECKING AND SAVINGS ACCOUNTS:** Except as otherwise provided herein, the parties agree that there are no checking or savings accounts in the name of **HUSBAND and WIFE** and that each has his or her own separate such accounts, with respect to which the other will make no claim.

9. **MUTUAL DEBTS:** Except as otherwise provided herein, the parties further agree that all debts incurred by the individual parties as of the date of the parties' execution of this Agreement shall become the sole obligation of that party incurring the same, with the debtor party holding the non-debtor party harmless upon the said debt or debts and with the debtor party agreeing to indemnify the non-debtor party for any damages or liability incurred by the non-debtor as a result of the debtor party's failure to satisfy such debts.

10. **CUSTODY:** **WIFE** shall have full legal and physical custody of the parties' minor children subject to rights of visitation in **HUSBAND** at such times and places as may be agreed upon by the parties.

11. **CHILD SUPPORT:** **HUSBAND** agrees to pay for the support of his children the sum of **One Thousand One Hundred Sixty-Two Dollars and Fifty Cents (\$1,162.50)** per month commencing on March 1, 2006, and continuing on the first day of each month thereafter until the oldest child of the parties, **LACEY KAYE SHEPLER**, turns eighteen (18) years of age or graduates from high school, whichever shall occur last. Upon the happening of such event, **HUSBAND'S** support obligation shall be reduced to **Nine Hundred Fifty and**

no/100 (\$950.00) Dollars per month commencing with the first day of the month following the parties' oldest child reaching the age of eighteen (18) or graduating from high school, and continuing on the first day of the month thereafter until the youngest child of the parties, **FAITH LYNMARIE SHEPLER**, turns eighteen (18) years of age, graduates from high school or the mortgage upon the home conveyed to **WIFE** pursuant to Paragraph 6 of this Agreement has been satisfied, whichever shall occur first. Should the satisfaction of said mortgage obligation occur prior to the youngest child reaching eighteen (18) years of age or graduating from high school, **HUSBAND'S** support obligation shall be redetermined by a Domestic Relations Section then having jurisdiction over **HUSBAND**. All payments made by **HUSBAND** shall be paid directly to **WIFE** at an address to be provided to **HUSBAND** by **WIFE**.

HUSBAND agrees that the aforesaid child support obligation shall not be reduced during the period set forth herein, however, should **HUSBAND'S** income increase, **WIFE** shall be permitted to seek a modification of said support obligation through the Domestic Relations Section then having jurisdiction over **HUSBAND**.

Should **HUSBAND** become delinquent in the payment of his support obligation, **WIFE** shall be permitted to apply for child support through a Domestic Relations Section then having jurisdiction over **HUSBAND**, said child support to be under the terms and conditions as set forth in this paragraph.

Upon youngest child of the parties reaching eighteen (18) years of age or graduating from high school, whichever shall occur last, **HUSBAND** shall cease paying child support but shall continue to pay the monthly mortgage payment due and owing on the parties marital residence on a monthly basis until such mortgage is fully satisfied, and shall pay all costs

incurred in the satisfaction of said mortgage. Should WIFE sell the aforesaid property during said period of time, HUSBAND'S obligation to make mortgage payments as set forth hereunder shall be relieved. Further, WIFE may seek to refinance the said mortgage and the principle amount then due and owing for an interest rate no greater than the present interest rate of said mortgage and HUSBAND'S obligation to pay said mortgage shall not be diminished. WIFE, however, may not increase the principle amount owing on said mortgage as a result of said refinancing, and should WIFE incur any other encumbrances on the marital residence, such as home equity loans or other loans encumbering the marital residence, said further encumbrances shall be the sole responsibility of WIFE.

12. **COUNSEL FEES, COSTS AND EXPENSES:** Neither party shall pay to the other party counsel fees, costs or expenses, and each party shall be responsible for the same and does release the other from any obligation to pay the same.

13. **FINANCIAL DISCLOSURE:** The parties confirm that each has relied on the substantial accuracy of the financial disclosure of the other as an inducement to the execution of this Agreement. In the event that it subsequently appears that any asset or income of significant value has been omitted, the other party may, as to that asset or income, claim an equitable share thereof, and the reasonable attorneys' fees, expert fees, costs and disbursements incurred in establishing such an omission shall be borne in full by the party having failed to make such an disclosure.

14. **ADVICE OF COUNSEL:** The provisions of this Agreement and their legal effect have been explained to the parties by their respective counsel. The parties acknowledge that they have received independent legal advice from counsel of their selection,

that they fully understand the facts and have been fully informed as to their legal rights and obligations, and that they acknowledge and accept that this Agreement is, in the circumstances, fair and equitable and that it is being entered into freely and voluntarily after having received such advice and with such knowledge, that execution of this Agreement is not the result of any duress or undue influence, and that it is not the result of any collusion or any improper or illegal agreement or agreements.

Each party acknowledges having had adequate time, opportunity, and financial wherewithal with which to obtain advice from a lawyer of his or her choice on all aspects of this Agreement, and of their possible divorce, including, but not limited to, all applicable law, the statutory rights of the parties and everything considered in this Agreement; and no presumption shall arise for or against either party with regard to the drafting of this Agreement. Each party further acknowledges having had adequate time, opportunity and financial wherewithal with which to retain any other tax, accounting and other professional advice that he or she might need or desire in considering whether to enter into this Agreement. Whether or not **HUSBAND** or **WIFE** has chosen to obtain such professional advice, each hereby waives any right to claim that any lack of an opportunity to obtain such professional advice shall be any reason to question the validity and enforceability of this Agreement.

15. **WAIVER OF CLAIMS AGAINST ESTATE:** Except as herein otherwise provided, each party may dispose of his or her property in any way, and each party hereby waives and relinquishes any and all rights he or she may now have or hereafter acquire, under the present or future laws of any jurisdiction, to share in the property or in the estate of the other as a result of marital relationship, including, without limitation, dower, courtesy, statutory

allowance, widow's allowance, right to take property under equitable distribution, right to take in intestacy, right to take against the Will of the other, and right to act as administrator or executor of the other's estate, and each will, at the request of the other, execute, acknowledge and deliver any and all instruments which may be necessary or advisable to carry into effect this mutual waiver and relinquishment of all such interest, rights and claims.

16. **BREACH**: If either party breaches any provision of this Agreement, except those provisions dealing with custody of the parties' minor children, the other party shall have the right, at his or her election, to sue for damages for such breach, or to seek such other remedies or relief as may be available to him or her, and the party breaching this contract shall be responsible for payment of legal fees and costs incurred by the other in enforcing their rights under this Agreement.

All remedies provided by law and all remedies provided for above for the enforcement of the Agreement shall be deemed to be cumulative, and the exercise of one remedy shall not bar or prevent the pursuit of any other remedy, and either party may elect to pursue such remedies simultaneously, and the exercise of a remedy one or more times shall not exhaust its use nor prevent further pursuit of such remedy.

17. **AFTER ACQUIRED PROPERTY**: Each of the parties shall hereafter own and enjoy, independently of any claim or right of the other, all items of personal property, tangible or intangible, hereafter acquired by him or her, with full power in him or her to dispose of the same as fully and effectively in all respects and for all purposes as though he or she were unmarried.

18. **ADDITIONAL INSTRUMENTS**: Each of the parties shall, from time to time, at the request of the other, execute, acknowledge, and deliver to the other party any and all further instruments that may be reasonably required to give full force and effect to the provisions of this Agreement.

19. **VOLUNTARY EXECUTION**: The provisions of this Agreement and their legal effect have been fully explained to the parties by their respective counsel, and each party acknowledges that the Agreement is fair and equitable, that it is being entered into voluntarily and that it is not the result of any duress or undue influence.

20. **ENTIRE AGREEMENT**: This Agreement contains the entire understanding of the parties and there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

21. **MODIFICATION AND WAIVER**: A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent default of the same or similar nature.

22. **DESCRIPTIVE HEADINGS**: The descriptive headings used herein are for convenience only. They shall have no effect whatsoever in determining the rights or obligations of the parties.

23. **INDEPENDENT SEPARATE COVENANTS**: It is specifically understood and agreed by and between the parties hereto that each paragraph hereof shall be deemed to be a separate and independent covenant and agreement.

24. **APPLICABLE LAW:** This Agreement shall be construed under the laws of the Commonwealth of Pennsylvania.

25. **VOID CLAUSE:** If any term, condition, clause or provision of this Agreement shall be determined or shall be declared to be void or invalid in law or otherwise, then only that term, condition, clause or provision shall be stricken from this Agreement, and in all other respects this Agreement shall be valid and shall continue in full force, effect and operation.

26. **ENTRY AS PART OF DECREE:** It is the intention of the parties that this instrument shall survive the action for divorce which has been instituted by the parties and that no order, judgment or decree of divorce, whether temporary, interlocutory, final or permanent, shall affect or modify the financial terms of this Agreement. It is also the intention of the parties that this Agreement shall survive any periods of reconciliation of the parties and that no attempt at reconciliation of the parties nor cohabitation by the parties hereinafter shall be assumed to cause the property as so divided in this Agreement to become marital property for the purposes of equitable distribution under the Divorce Code of the Commonwealth of Pennsylvania. The parties agree that all property divided by this Agreement shall remain the property of that party as specified within this agreement unless this Agreement is rescinded by the parties by a writing in similar form to this Agreement. If the parties are ever divorced, this Agreement shall be embodied in and made part of any such judgment or decree of final divorce.

The parties agree to execute an Affidavit of Consent for a No-fault Divorce under Section 3301(c) of the Divorce Code, in the event that either party shall file for divorce.

**EACH OF THE PARTIES REPRESENTS THAT THEY HAVE CAREFULLY
READ AND UNDERSTOOD EACH AND EVERY PAGE OF THIS AGREEMENT PRIOR
TO SIGNING BELOW.**

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

WITNESS:

<u>Faith Kot</u>	<u>4-29-2006</u> <u>Harry Elmer Shepler III</u> HARRY ELMER SHEPLER, III
<u>Sam Belards</u>	<u>Traci Ann Shepler</u> TRACI ANN SHEPLER

SPECIAL WARRANTY DEED

THIS DEED,

MADE the 6th day of November,
in the year nineteen hundred and ninety-six (1996)

BETWEEN GLENN A. HARTZFELD and SANDRA K. HARTZFELD, husband and wife, of R.R. #1, Luthersburg, Clearfield County, Pennsylvania, 15848,

GRANTORS

A
M
D

HARRY E. SHEPLER III and TRACI A. SHEPLER, husband and wife, AS TENANTS BY THE ENTIRETIES, of Box 163, Luthersburg, Clearfield County, Pennsylvania, 15848,

GRANTEES

WITNESSETH, that in consideration of the sum of THIRTY THOUSAND AND NO/100-----(\$30,000.00-----Dollars and other good and valuable consideration, in hand paid, the receipt whereof is hereby acknowledged, the Grantors do hereby grant and convey to the said Grantees, their heirs and assigns,

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

BEGINNING at a pin at the N.W. corner of lands now or late of Clifford Serene; thence by lands of said Serene South 30 degrees 00 minutes East 392 feet; thence along Donald Miller lot and Robert Miller lot South degrees 30 minutes East 560 feet; thence along Robert Miller lot North 86 degrees 07 minutes East 232 feet; thence along residue of Elizabeth Miller and Garnett Morgan land South 2 degrees 30 minutes East 50 feet and South 4 degrees 25 minutes West 425 feet; thence along center of Little Anderson Creek the following general courses and distances: North 60 degrees 50 minutes West 60 feet; South 43 degrees 15 minutes West 150 feet; South 67 degrees 35 minutes West 280 feet; North 38 degrees West 300 feet; South 77 degrees 30 minutes West 520 feet; North 50 degrees West 240 feet; North 76 degrees 30 minutes West 150 feet and south 40 degrees 55 minutes West 580 feet; thence along Everett Cramer land North 58 degrees 45 minutes West 485 feet; thence along Schaffer land North 80 degrees 30 minutes West 450 feet; thence along Raymond Berkey lot North 8 degrees 25 minutes East 1,529 feet; thence along Fred Rafferty land South 81 degrees 35 minutes East 1,130 feet; thence along the remaining lands of the Grantors herein, 600 feet to place of beginning, containing more or less 69.846 acres of land.

Exhibit "B"

ALSO GRANTING AND CONVEYING unto the grantees a non-exclusive right-of-way together with the common obligation of prorata maintenance of the same with other users over the right-of-way, from U.S. Route 219 to the premises herein conveyed as shown on the plat attached hereto.

BEING a subdivided portion of premises conveyed to Glenn A. Hartzfeld and Sandra K. Hartzfeld, husband and wife, by deed of Elizabeth I. Miller, widow, and Garnett M. Morgan and Fred Morgan, her husband, deed dated August 20, 1996 and recorded in Clearfield County Deed Book Volume 1784, Page 551; said subdivision map having been recorded on October 25, 1996 to Clearfield County Recorder of Deeds Docket #1245..

IT IS HEREBY CERTIFIED IN COMPLIANCE WITH THE PENNSYLVANIA REALTY TRANSFER TAX ACT AND REGULATION, SECTION 1102-C.3(6) THAT THE WITHIN CONVEYANCE IS MADE BETWEEN PARENTS AND DAUGHTER AND SON-IN-LAW, AND THERE IS NO TAX PAYABLE THEREON.

NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1966", I/we, the undersigned grantee/grantees, hereby certify that I/we know and understand that I/we may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal. I/we further certify that this certification is in a color contrasting with that in the deed proper and is printed in twelve point type preceded by the word "notice" printed in twenty-four point type.

Witness:

Laurence D. J. R. *Harry E. Hopley Jr.*
Paul J. Shepler

This day of

NOTICE

To comply with the Act of July 17, 1957, P.L. 984, as amended, (52 P.S. Sections 1551-1554) notice is hereby given as follows:

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

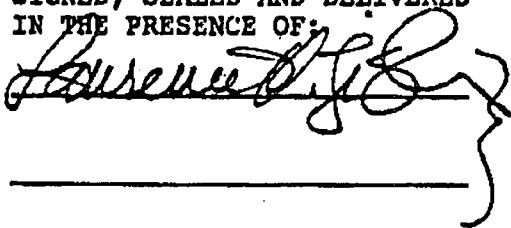
TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT.

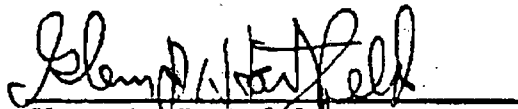
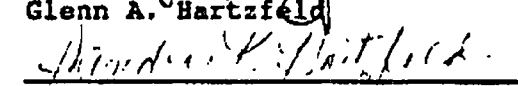
GRANTOR HAS NO ACTUAL KNOWLEDGE OF ANY HAZARDOUS WASTE, DEFINED IN ACT NO. 1980-97 OF THE COMMONWEALTH OF PENNSYLVANIA, HAVING BEEN OR WHICH IS PRESENTLY DISPOSED ON OR ABOUT THE PROPERTY DESCRIBED IN THIS DEED.

AND the said Grantors hereby covenants and agrees that he will SPECIALLY WARRANT AND FOREVER DEFEND the property hereby conveyed.

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

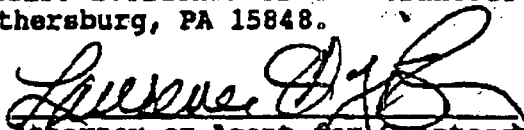
SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:




Glenn A. Hartzfeld

Sandra K. Hartzfeld

Certificate of Residence

I hereby certify that the precise residence of the Grantees herein is as follows: Box 163, Luthersburg, PA 15848.


Attorney or Agent for Grantees

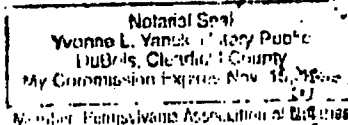
COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF CLEARFIELD }

ss:

On this, the 6th day of November, 1996, before me, a Notary Public, the undersigned officer, personally appeared GLENN A. HARTZFELD and SANDRA K. HARTZFELD, husband and wife, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument and acknowledged that they have executed the same for the purpose therein contained.

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

Yvonne L. Yank
Notary Public



I hereby CERTIFY that this document is recorded in the Recorder's Office of Clearfield County, Pennsylvania.



Karen L. Starck

Karen L. Starck
Recorder of Deeds

CLEARFIELD COUNTY
ENTERED OF RECORD
TIME 12:10pm 11-6-96
BY Karen L. Starck
FEES 13.50
Karen L. Starck, Recorder

Entered of Record NOV 6 19 96 12:10p Karen L. Starck, Recorder

11:00
Thursday

Smith Logging and Timber Sales

Feb. 16 2

Smith Logging is submitting a bid of \$38,000 for the various species of trees that have been previously selected. The wooded area that has been marked out to cut is located in . All trees 12 inches in diameter chest high will be selectively harvested. All trees will be directionally fallen so that younger growth will not be damaged or bumped. Money will be paid after contract is agreed on. All access roads will be properly leveled, brush will be cut to land owners specification and diversion ditches will be put in where needed to stop ground erosion dew to heavy rain and all roads and landings will be hydro seeded after completion of all logging activities. We as the logger have estimated all standing timber and will offer a certain percentage more if the board feet comes up greater than we estimated. Remember you as the landowner has control, so if there is any type of problem please tell us so we are aware of any situation.

Tree species

1. Black Cherry	Total: \$17,278.20
2. Soft Maple	Total: \$10,527.25
3. Black Walnut	Total: \$
4. Hard Maple	Total: \$750.00
5. Red Oak	Total: \$3,803.57
6. Ash	Total: \$260.00
7. Misc.	Total: \$3000.00
	Total: \$35619.02

Actual Bid: 38,000

These under 12" have been
cut and are on landing.
Environmental issues - close

Buyer [Signature]
Seller [Signature]
Paul M. Fell

Cut By Spring of 2007

137 Lewis St.

Exhibit "C"



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATER QUALITY PROTECTION

Report No. 1

EARTH DISTURBANCE INSPECTION REPORT

Inspection Date 7-4-06County CLEARFIELDProject name HARRI SHEPLER PROPERTY LOGGINGTotal Project area UNKNOWNLocation BEAR RIDGE ROADMunicipality BRADY TWPReceiving water(s) LITTLE ANDERSON CREEKChapter 93 designation COLD WATER FISHERYResponsible party WES GATTL / SMITH LOGGING AND TIMBER SALES

(name & address)

137 LEWIS ST.
REYNOLDSVILLE, PA 15851Phone (814) 391-4106Weather conditions Cloudy 75°FTime of inspection 9:00

Site Representative (name & title)

NO ONE AT SITE

Inspector

FRANKIE CLEARFIELD CO.
CONSERVATION
DISTRICT

Type of Inspection (check only one)

Photographs taken

Yes ☒No ☐Routine complete ☐Routine partial ☒Follow-up ☐Complaint ☐Final ☐

Site Description & Observations

LOG LANDING IS LOCATED OFF BEAR RIDGE ROAD. LOG LANDING IS RUTTED. TWO MAIN SKID/HILL ROADS LEAD OUT OF LOG LANDING INTO WOODS. THESE TWO SKID TRAILS (AND OTHERS) ARE DEEPLY RUTTED FROM SKIDDER WHEELS. FOLLOWED A RUTTED SKID TRAIL DOWN TO MAIN BRANCH OF LITTLE ANDERSON CREEK. SEVERAL LARGE TREES ARE MARKED WITH BLUE PAINT ALONG STREAM BANK. ALSO TREES ARE MARKED ACROSS THE STREAMS ON THE SHEPLER PROPERTY. AN OLD STREAM CASTING WAS WITNESSED WHERE A BLACK PLASTIC PIPE WAS USED IN THE PAST BUT NOW IT IS WASHED-OUT. A GENERAL PERMIT (CHAPTER 105 FOR STREAM ENCROACHMENT) WILL BE REQUIRED FOR ANY ^{BRIDGE OR} PIPES TO BE PLACED OR REPLACED IN THIS OR ANY STREAM WHERE >100 ACRES IS IN DRAINAGE AREA ABOVE PIPE OR BRIDGE. DRAINAGE AREA AT OLD CASTING IS 125 ACRES.

continued ☐

Permit and Plan Requirements

Type of Activity (check as many as appropriate)

Y N

☒ ☐ Written Erosion & Sediment Control Plan required☒ ☐ Erosion & Sediment Control Plan requested☐ ☒ E & S Control Permit required☐ ☒ NPDES Permit required

Phased Constr.

Non-Phased Constr.

Permit # _____

☐ Pub. Road Constr./Maint. (PRC)☐ Res. Subdivision (RSBD)☐ Govmt. Facilities (GOV)☐ Utilities Facilities (UTL)☐ Sewer/Water Systems (SWS)☐ Remediation/Restoration (RRES)☐ Pvt. Road/Residence (PRRS)☐ Comm./Indust. Dev. (CMIN)☐ Recreation Facilities (RECF)☐ Agricul. Activities (AGA)☐ Oil/Gas Development (OGD)☒ Silviculture (SILV)



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATER QUALITY PROTECTION

EARTH DISTURBANCE INSPECTION REPORT

Inspection Findings (check as many as appropriate)

- | | |
|--|---|
| a. No violations observed at this time. | Reference <input type="checkbox"/> (N/A) |
| b. Failure to develop a written Erosion and Sediment Control Plan. | <input type="checkbox"/> (102.4) |
| c. Failure to have an Erosion and Sediment Control Plan available on site. | <input type="checkbox"/> (102.4) |
| d. Failure to submit Erosion and Sediment Control Plan as requested. | <input type="checkbox"/> (102.4) |
| e. Failure to implement effective Best Management Practices. | <input checked="" type="checkbox"/> (102.4) |
| f. Failure to maintain effective Best Management Practices. | <input type="checkbox"/> (102.4) |
| g. Failure to use Special Protection Best Management Practices for discharges to High Quality or Exceptional Value Waters. | <input type="checkbox"/> (102.4) |
| h. Failure to obtain an NPDES Permit for Stormwater Discharges Associated With a Construction Activity. | <input type="checkbox"/> (102.5) |
| i. Failure to obtain an Erosion and Sediment Control Permit. | <input type="checkbox"/> (102.5) |
| j. Failure to demonstrate that alternative Best Management Practices achieve regulatory standards. | <input type="checkbox"/> (102.11) |
| k. Failure to permanently stabilize the earth disturbance site. | <input type="checkbox"/> (102.22) |
| l. Failure of earth disturbance activities to comply with permit conditions. | <input type="checkbox"/> (402 CSL) |
| m. Failure to prevent sediment or other pollutant discharge into waters of the Commonwealth. | <input type="checkbox"/> (401 CSL) |
| n. Site conditions present a potential for pollution to waters of the Commonwealth. | <input checked="" type="checkbox"/> (402 CSL) |
| o. Other (describe): | |

- ☐ Inspection of this project has revealed site conditions which constitute violations of 25 Pa. Code Chapters 92 and/or 102 and the Clean Streams Law, the act of June 22, 1937, P.L. 1987, 35 P.S. §691.1 et seq.

Additional information regarding these violations can be found on the back of this report.

Compliance Assistance Measures ALL WHEEL RUTS IN LOG LANDING AND ON ALL SKID TRAILS MUST BE GRADED FLAT. DO NOT LEAVE TREE TOPS IN ANY STREAM. OBTAIN A GENERAL PERMIT FOR TEMPORARY STREAM CROSSINGS PRIOR TO CROSSING THIS STREAM TO CUT TRAILS. EXTRA PRECAUTIONS SHOULD BE TAKEN IN AREAS WITH HIGH WATER TABLE AND NEAR STREAMS TO PREVENT WHEEL RUTS. SEE ATTACHED INFORMATION ON E+S PLANS AND GENERAL PERMIT APPLICATIONS.

continued ☐

Follow-up Inspection will occur on or about (date) NONE REQUIRED

NO ONE AT SITE
(Signature of Site Representative)

(Date)

[Signature]
(Inspector's Signature)

7-4-06
(Date)

The Site Representative's signature acknowledges that they have read the report and received a copy and that they were given an opportunity to discuss it with the inspector. The signature does not necessarily mean the signee agrees with the report.





COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATERSHED MANAGEMENT

EARTH DISTURBANCE INSPECTION REPORT

Project Name TRAC 1 LITTLE SHEPHERD PROPERTY Inspection Date 11/5/07 Report No. 2
Weather Conditions RAIN 50°F Time of Inspection 8:45
Location BEAR RIDGE ROAD Total Project Area unknown
Municipality BRADY TWP. County CLAYTON
Receiving Water(s) LITTLE ANDERSON CR. Designated/Existing Use COLD WATER FISHING

Responsible Party(s) SMITH LILLIAN AND TIMOTHY SALKS

(name & address)

177 LEWIS ST.
NEW HAVEN, PA 15851

Phone

(724) 591-4106

Site Representative (name)

NO ONE AT SITE

(title)

Inspector (name)

FRED BEATT

(title)

CLEARING CO. COASTAL OUT.

Type of Inspection (check only one)

Photographs Taken Yes ☒ No ☐Routine complete ☐ Routine partial ☒ Follow-up ☐ Complaint ☐ Final ☐

Site Description & Observations

CAT SKIDDER IS ON SITE. LOGS ARE ~~BEING~~ LAD-OUT
AT LANDFILL. ADDITIONAL TREE CUTTING HAS OCCURRED AT THIS SITE
SINCE LAST INSPECTION ON 4-4-06. SKID TRAILS OUT OF LOG LANDFILL
ARE VERTICALLY ALIGNED. NO WATER PANS LOCATED BELOW LOG LANDFILL.
NO WATER BARS OR SKID TRAILS SKID TRAILS FROM APRIL SITE INSPECTION
ARE STILL THERE AND HAVE NOT BEEN GRADEN AS REQUESTED. SKIDDER
HAS TRAVELED THROUGH SMALL STREAMS, SPRINGS AND WET AREAS.
SEDIMENT IS LETTING INTO LITTLE ANDERSON CREEK

Continued ☐

Permit and Plan Requirements

Type of Activity (check as many as appropriate)

Y N

☒ ☐ Written Erosion & Sediment Control Plan required☒ ☐ Erosion & Sediment Control Plan requested☐ ☒ E & S Control Permit required☐ ☒ NPDES Permit required☐ Phased Constr.☐ Non-Phased Constr.

Permit #:

Exp. Date:

☐ Pub. Road Constr./Maint. (PRC)☐ Res. Subdivision (RSBD)☐ Govmt. Facilities (GOV)☐ Utilities Facilities (UTL)☐ Sewer/Water Systems (SWS)☐ Remediation/Restoration (RRES)☐ Pvt. Road/Residence (PRRS)☐ Comm./Indust. Dev. (CMIN)☐ Recreation Facilities (RECF)☐ Agric./I. Activities (AGA)☐ Oil/Gas Development (CGD)☒ Silviculture (SILV)

Page 1 of 2

☐ White - Inspector☐ Yellow - Responsible Party☐ Pink - Department☐ Goldenrod - Other



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF WATERSHED MANAGEMENT

EARTH DISTURBANCE INSPECTION REPORT

Project Name HARRY CHERLER PROPERTY Inspection Date 1/5/07 Report No. 2

Inspection Findings (check as many as appropriate)

- | | Reference |
|--|--|
| a. No violations observed at this time. | <input type="checkbox"/> N/A) |
| b. Failure to develop a written Erosion and Sediment Control Plan. | <input type="checkbox"/> (102.4) |
| c. Failure to have an Erosion and Sediment Control Plan available on site. | <input type="checkbox"/> (102.4) |
| d. Failure to submit Erosion and Sediment Control Plans requested. | <input type="checkbox"/> (102.4) |
| e. Failure to implement effective Best Management Practices. | <input checked="" type="checkbox"/> (102.4) |
| f. Failure to maintain effective Best Management Practices. | <input checked="" type="checkbox"/> (102.4) |
| g. Failure to use Special Protection Best Management Practices for discharges to High Quality or Exceptional Value Waters. | <input type="checkbox"/> (102.4) |
| h. Failure to obtain an NPDES Permit for Stormwater Discharges Associated With a Construction Activity. | <input type="checkbox"/> (102.5) |
| i. Failure to obtain an Erosion and Sediment Control Permit. | <input type="checkbox"/> (102.5) |
| j. Failure to demonstrate that alternative Best Management Practices achieve regulatory standards. | <input type="checkbox"/> (102.1) |
| k. Failure to permanently stabilize the earth disturbance site. | <input type="checkbox"/> (102.22) |
| l. Failure of earth disturbance activities to comply with permit conditions. | <input type="checkbox"/> (402 CS) |
| m. Failure to prevent sediment or other pollutant discharge into waters of the Commonwealth. | <input type="checkbox"/> (401 CS) |
| n. Site conditions present a potential for pollution to waters of the Commonwealth. | <input checked="" type="checkbox"/> (402 CS) |
| o. Other (describe): _____ | |

☐ Inspection of this project has revealed site conditions which constitute violations of 25 Pa. Code Chapters 92 and/or 102 and the Clean Streams Law, the act of June 22, 1937, P.L. 1987, 35 P.S. §691.1 et seq.

Additional information regarding these violations can be found on the back of this page.

Compliance Assistance Measures INSTALL WATER BARS BELOW LOT LANDING TO
DIRECT WATER OFF OF MAIN SKID TRAILS & INSTALL TEMPORARY
WATER BARS ON SKID TRAILS. GRADE ALL SKID TRAILS SMOOTH. DO NOT
LEAVE WHEEL RUTS ON-SITE. SEED AND MULCH LOT LANDING WHEN FINISHED.
HAVE A WRITTEN EROSION CONTROL PLAN ON-SITE TO SHOW TEMPORARY AND PERMANENT
EROSION CONTROLS PREVENT SEDIMENT FROM GETTING INTO STREAMS.

Continued ☐

Follow-up Inspection will occur on or about (date) NONE SCHEDULED

NO ONE AT SITE (Signature of Site Representative) (Date) 1/5/07 (Inspector's Signature) (Date)

The Site Representatives' signature acknowledges that they have read the report and received a copy and that they were given an opportunity to discuss it with the Inspector. The signature does not necessarily mean the signee agrees with the report.

Page 2 of 2

☒ White - Inspector ☐ Yellow - Responsible Party ☐ Pink - Department ☐ Goldenrod - Other

Exhibit "N"

HOPKINS HELTZEL LLP

100 Meadow Lane, Suite 5 • DuBois, PA 15801

David J. Hopkins
Licensed in PA & NJ
Masters in Taxation

Lee Ann Heltzel
Licensed in PA

- Voice: (814) 375 - 0300
- Fax: (814) 375 - 5035
- Email: hopkinslaw@adelphia.net

January 19, 2007

VIA HAND DELIVERY

Ms. Traci A. Shepler
475 Cabin Lane
P.O. Box 163
Luthersburg, Pennsylvania 15848

Re: Smith Logging v. Shepler

Dear Ms. Shepler:

Please be advised that this office represents Wesley D. Smith the owner of Smith Logging. As you know, Smith Logging entered into an agreement with you and your former husband and pursuant thereto paid you \$38,000.00 for timber located upon your property in Bloom Township. To date you, through your father Glen Hartsfeld, have frustrated Smith Lumber's attempt to cut and remove the timber from your property.

My client has complied with all of the requirements of the Commonwealth of Pennsylvania and the Department of Environmental Protection. Please be advised that on Monday, January 22, 2007, my client will be at your property where he will commence working to cut and remove timber. You have installed a gate and that gate must be unlocked or it will be removed. Be advised that under the terms of the contract only you are permitted to contact and interact with Smith Logging because you are the landowner. Your father is not the landowner and he may have no further contact with Smith Logging.

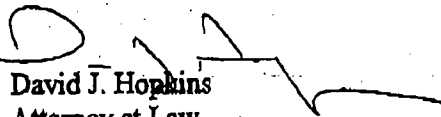
If you undertake any action to frustrate my client's removal of the timber, I will immediately file a lawsuit against you obtaining access to your property and sue you for damages which are substantial at this point and which will grow each day. You will further be obligated to pay my legal fees for this unnecessary equitable action.

Exhibit "E"

January 19, 2007
Page two

Please guide yourself accordingly and expect my client at your property on Monday,
January 22, 2007.

Very truly yours,


David J. Hopkins
Attorney at Law

DJH/cs

CA

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,
Plaintiffs

vs.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,
Defendant

No. 07 - 104 - CD

Type of Pleading:

BOND

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED 1cc Amy
01/19/32/01
JAN 23 2007 1cc Shff
William A. Shaw
Prothonotary/Clerk of Courts (6K)

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

TRACI A. SHEPLER and HARRY E. *
SHEPLER, III, *
Plaintiffs *

vs. *

No. 07 - 104 - CD

WESLEY D. SMITH, T/D/B/A *
SMITH LOGGING & TIMBER SALES, *
Defendant *

BOND

KNOW ALL MEN BY THESE PRESENTS, THAT, Traci A. Shepler, an above named Plaintiff is held and firmly bound unto the Commonwealth of Pennsylvania in the sum of \$ 10,000.-, to be paid to the Commonwealth of Pennsylvania; to which payment, well and truly to be made, it binds itself, it and each of its heirs, executors and administrators, firmly by these presents.

Sealed with our seals.

Dated the 23rd day of January, 2007.

WHEREAS, the Plaintiffs filed a Complaint in Equity in the Court of Common Pleas for the County of Clearfield, to the No. 07-104-CD, against, Wesley D. Smith, t/d/b/a Smith Logging & Timber Sales, Plaintiffs, requesting *inter alia*, an injunction to enjoin the defendant as therein particularly set forth, which said injunction was duly granted by the said Court on the entering of the security in the above-mentioned sum.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH, THAT if the injunction is dissolved because improperly granted, or for failure to hold a hearing, the Plaintiff, Traci A. Shepler shall pay to any person injured all damages sustained by reason of granting the injunction and all legally taxable costs and fees,

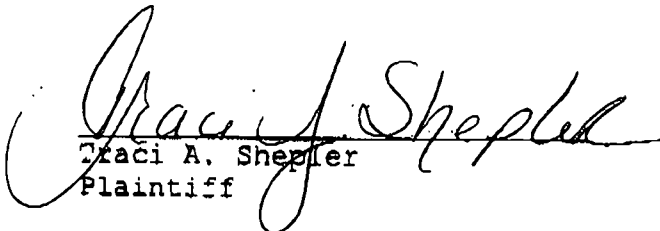
///

///

///

///

this obligation then to be void; otherwise it is to remain in full force and effect.


Traci A. Shepler
Plaintiff

Approved By:

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,
Plaintiffs

vs.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,
Defendant

No. 07 - *ky* - CD

Type of Pleading:

ORDER

Filed on behalf of:
Plaintiff

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

FILED *ICC Sheriff*
0/9:53/01
JAN 23 2007 *ICC Atty*

William A. Shaw
Prothonotary/Clerk of Courts

GLW

✓

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

TRACI A. SHEPLER and HARRY E. *
SHEPLER, III, *
Plaintiffs *

vs. *

No. 07 - 104 - CD

WESLEY D. SMITH, T/D/B/A *
SMITH LOGGING & TIMBER SALES, *
Defendant *

ORDER

AND NOW, this 23RD day of Jan., 2007, upon consideration of the verified Complaint in equity in this action and the accompanying Petition for Preliminary Injunctive Relief, pursuant to Pa.R.C.P. 1531 and Plaintiffs having filed a bond as required under Rule 1531(b)(1) it is hereby ORDERED that:

a) Defendant be enjoined from entering upon the land of Plaintiffs,

b) Defendant be enjoined from removing or harvesting any tree from the land of Plaintiffs.

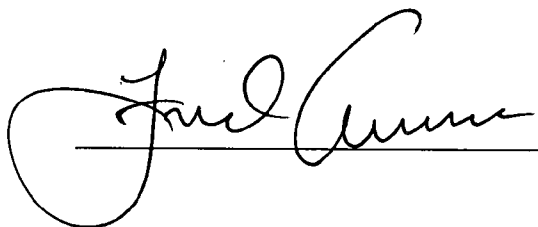
This injunction is granted without notice to the Defendant, a hearing on the continuance of this injunction shall be held not more than five days after the date of this Order. Said hearing shall be on the 26th day of January, 2007 at 11:00 A.M.

///

///

_____ o'clock __. M. in Courtroom Number _____, in Clearfield
County, Pennsylvania.

BY THE COURT



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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

Plaintiffs

vs.

WESLEY D. SMITH, t/d/b/a
SMITH LOGGING & TIMBER SALES,
Defendant

No. 07-104 C.D.

Type of Pleading: Motion for
Continuance

Filed on behalf of: Wesley D. Smith
t/d/b/a Smith Logging & Timber Sales,
Defendant

Counsel of Record for this party:

HOPKINS HELTZEL LLP

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

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

100 Meadow Lane, Suite 5
DuBois, Pennsylvania 15801

(814) 375-0300

FILED No
018:44/61 cc
JAN 26 2007 @

William A. Shaw
Prothonotary/Clerk of Courts

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

Plaintiffs

vs.

No. 07-104 C.D.

WESLEY D. SMITH, t/d/b/a
SMITH LOGGING & TIMBER SALES,
Defendant

MOTION FOR CONTINUANCE

AND NOW, comes Defendant, Wesley D. Smith, t/d/b/a Smith Logging & Timber Sales, by and through his attorneys, Hopkins Heltzel LLP, and files a Motion for Continuance and says as follows:

1. Plaintiff, Traci Shepler, is an adult individual residing at 475 Cabin Lane, Luthersburg, Pennsylvania.
2. Plaintiff, Harry E. Shepler, III, is an adult individual residing at 2560 Steamille Road, Odessa, New York, 14869.
3. Defendant, Wesley D. Smith, is an adult individual trading and doing business as Smith Logging. Defendant maintains a principal address at 137 Lewis Street, Reynoldsville, Pennsylvania 15851.
4. The Court has scheduled a hearing on Plaintiffs' Preliminary Injunctive Relief for Friday, January 26, 2007 at 11:00 a.m.

5. One of Defendant's primary witnesses is in Pittsburgh with his two year old son who had a tumor removed from his brain earlier this week. The witness will not be available until next week.

6. Defendant requests the Court to continue the hearing until Thursday, February 1, 2007 in the afternoon.

7. Defendant understands the Temporary Injunction Order will remain in effect until the rescheduled hearing date.

8. David J. Hopkins, Esquire has discussed a continuance with Plaintiffs' attorney, James A. Naddeo. Mr. Naddeo did not object to a continuance.

WHEREFORE, Defendant requests the hearing on Plaintiffs' Preliminary Injunctive Relief be continued until February 1, 2007.

Respectfully submitted,

HOPKINS HELTZEL LLP


David J. Hopkins, Esquire

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

Plaintiffs

vs.

No. 07-104 C.D.


WESLEY D. SMITH, t/d/b/a
SMITH LOGGING & TIMBER SALES,
Defendant

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing Motion for Continuance, filed on behalf of Defendant, Wesley D. Smith, t/d/b/a Smith Logging & Timber Sales, was forwarded on the 25th day of January, 2007, by facsimile to all counsel of record

By Facsimile: 814-765-8142

James A. Naddeo, Esquire
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830



David J. Hopkins, Esquire
Attorney for Defendant

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

Plaintiffs

vs.

WESLEY D. SMITH, t/d/b/a
SMITH LOGGING & TIMBER SALES,
Defendant

No. 07-104 C.D.

Type of Pleading: Answer to Complaint

Filed on behalf of: Wesley D. Smith
t/d/b/a Smith Logging & Timber Sales

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, ESQUIRE

Attorney at Law

Supreme Court No. 42519

LEA ANN HELTZEL, ESQUIRE

Attorney at Law

Supreme Court No. 83998

100 Meadow Lane, Suite 5

DuBois, Pennsylvania 15801

(814) 375-0300

FILED ^{cc}
01/26/07
JAN 26 2007
Atty. Hopkins

William A. Shaw
Prothonotary/Clerk of Courts

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,
Plaintiffs

vs.

No. 07-104 C.D.

WESLEY D. SMITH, t/d/b/a
SMITH LOGGING & TIMBER SALES,
Defendant

ANSWER TO COMPLAINT

AND NOW, comes Defendant, Wesley D. Smith, t/d/b/a Smith Logging Timber Sales,
by and through his attorneys, Hopkins Heltzel LLP, and answers Plaintiffs' Complaint as
follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted.
11. Admitted.
12. Admitted.

13. Admitted in part and denied in part. Defendant admits trees to be cut had previously been selected and marked. Defendant denies the timber agreement provides for any specified area of the Shepler property that was to be cut. Rather, the entire property had been marked and was to be cut. Defendant further denies that only certain species of trees were to be cut. The contract provides miscellaneous trees that had previously been selected and marked.

14. Admitted in part and denied in part. Defendant admits the contract provides that no trees under 12 inches in diameter, chest high, would be harvested. However, in the event a tree less than 12 inches was part of a cluster, then it would be harvested. No stand alone trees under 12 inches were to be harvested unless a smaller tree was damaged when a larger tree was cut as was agreed by Defendant and Harry Shepler.

15. Denied. The entire property was subject to cutting. Defendant has not cut any trees that were not previously marked.

16. Denied. As set forth above, there was no designated area. In addition thereto, all trees had been pre-marked prior to the execution of the contract.

17. Denied. Defendant has only cut trees that are 12 inches in diameter, chest high, or in a cluster that had previously been marked or had been damaged when a larger tree was cut.

18. Denied. No additional trees within the Shepler property have been marked. Defendant had not been on the property from the time of the execution of the contract until they began harvesting timber. Defendant marked every tree that was 12 inches in diameter, chest high, and greater when they initially cruised the property.

19. Denied. The report of the Department of Environmental Protection did not issue any citations to Defendant.

20. Denied. Defendant has not breached the timber agreement. By way of further answer, Plaintiffs have breached the timber agreement by denying Defendant access to the property.

21. Denied. Defendant has had one (1) conversation with Ms. Shepler after the contract was signed and it was unrelated to logging activities.

22. No answer is required of this paragraph inasmuch as it calls for a legal conclusion. To the extent an answer is required, Plaintiffs have breach the contract rather than Defendant.

23. Denied. Ms. Shepler has never specifically advised Defendant not to come onto her property. Ms. Shepler, by and through her father and boyfriend, have frustrated Defendant's attempts to execute Defendant's rights under the timber agreement.

24. Admitted.

25. Denied. Timber is a fungible product.


26. Denied.

27. Denied. In the event Defendant fails to comply with the terms of the contract, fails to remove ruts and hydroseed the landing areas, then Plaintiffs will have a cause of action at law for damages.

WHEREFORE, Defendant respectfully requests the Court to dismiss Plaintiffs Complaint should be dismissed with prejudice.

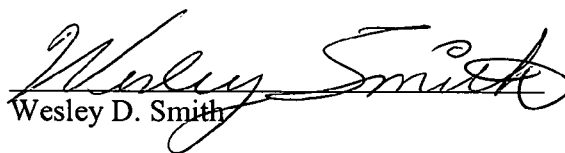
Respectfully submitted,

HOPKINS HELTZEL LLP


David J. Hopkins, Esquire
Attorney for Defendant

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.


Wesley D. Smith

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

Plaintiffs

vs.

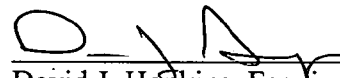
No. 07-104 C.D.

WESLEY D. SMITH, t/d/b/a
SMITH LOGGING & TIMBER SALES,
Defendant

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of Answer to Complaint,
was forwarded by first class mail, postage prepaid, on the 26th day of January, 2007 to all
counsel of record, addressed as follows:

James A. Naddeo, Esquire
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830


David J. Hopkins, Esquire
Attorney for Defendants

CA

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

Plaintiffs

vs.

No. 07-104 C.D.

WESLEY D. SMITH, t/d/b/a
SMITH LOGGING & TIMBER SALES,
Defendant

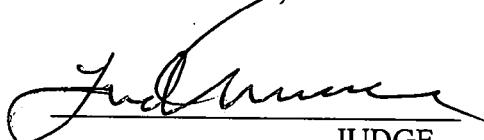
ORDER

AND NOW, this 26 day of January, 2007, upon consideration of the Defendant's Motion for Continuance, filed on behalf of Wesley D. Smith, t/d/b/a Smith Logging & Timber Sales; and for good cause shown;

It is ORDERED and ADJUDGED that the hearing on Plaintiffs' Preliminary Injunctive Relief scheduled for Friday, January 26, 2007 at 11:00 a.m. is hereby rescheduled for the 6th day of February, 2007 at 2:00 P.M. o'clock at the Clearfield County Courthouse, Clearfield, Pennsylvania.

The Temporary Injunction Order shall remain in effect until the rescheduled hearing date.

BY THE COURT,


JUDGE

FILED ICC AHY
01:45 am
JAN 26 2007
Hopkins
(GR)

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1-26-2007

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:

FILED

JAN 26 2007

William A. Shaw
Prothonotary/Clerk of Courts

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

Plaintiffs

vs.

WESLEY D. SMITH, t/d/b/a
SMITH LOGGING & TIMBER SALES,
Defendant

No.

07-108-CD

07-104 C.D.3

Type of Pleading: Withdrawal and
Entry of Appearance

Filed on behalf of: Wesley D. Smith
t/d/b/a Smith Logging & Timber Sales

Counsel of Record for this party:

HOPKINS HELTZEL LLP

DAVID J. HOPKINS, ESQUIRE

Attorney at Law

Supreme Court No. 42519

LEA ANN HELTZEL, ESQUIRE

Attorney at Law

Supreme Court No. 83998

100 Meadow Lane, Suite 5

DuBois, Pennsylvania 15801

(814) 375-0300

FILED No
013:34101 CC
FEB 06 2007
UN copy to CIA
William A. Shaw
Prothonotary/Clerk of Courts

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

WESLEY SMITH,

Plaintiff

vs.

TRACI A. SHEPLER,

Defendant

No. 2007-¹⁶⁷~~108~~ C.D.

07-108-CD

WITHDRAWAL OF APPEARANCE

TO THE PROTHONOTARY:

Please withdraw my appearance for Wesley D. Smith, Plaintiff in the above-captioned matter and enter the appearance of counsel as set forth below.

Date: 1-30-07

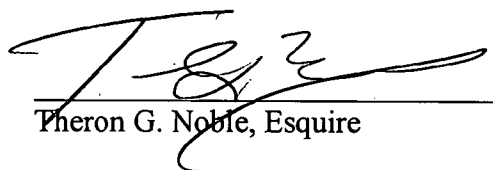

David J. Hopkins, Esquire

ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter my appearance for Wesley D. Smith, Plaintiff in the above-captioned matter.

Date: 2/6/07


Theron G. Noble, Esquire

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

WESLEY SMITH,

Plaintiff

vs.

TRACI A. SHEPLER,

Defendant

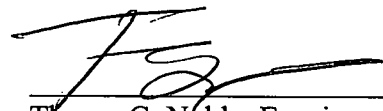
:
:
:
:
:
:
:

No. 2007 – 108 C.D.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of Withdrawal and Entry of Appearance, filed on behalf of Wesley D. Smith, was forwarded by first class mail, postage prepaid, on the 6th day of February, 2007 to all counsel of record, addressed as follows:

James A. Naddeo, Esquire
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830


Theron G. Noble, Esquire

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

TRACI A. SHEPLER and HARRY E. SHEPLER, III *
Plaintiffs *

vs. *

WESLEY D. SMITH t/d/b/a SMITH LOGGING *
and TIMBER SALES, *
Defendants *

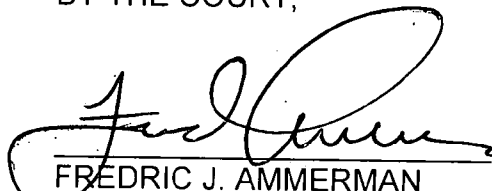
NO. 07-104-CD

ORDER

NOW, this 7th day of February, 2007, following evidentiary hearing on the Plaintiffs' Petition for Injunctive Relief it is the finding of the Court that the Plaintiffs may suffer irreparable harm in the event that the injunction is removed. Accordingly, it is the ORDER of this Court that the Court's injunction issued on January 23, 2007 shall continue to be in effect.

The Court recommends that the Plaintiff attempt to make appropriate arrangements with the Defendant for the removal of the Defendant's log skidder from the premises in the event that the Defendant should wish to remove this same. In addition, the Court recommends that the Plaintiff make arrangements with the Defendant in order that the Defendant may remove any previously cut logs from the premises which are 12 or more inches in diameter in order that there be no spoilage or waste.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED

FEB 09 2007
0/3:15/447 (60)
William A. Shaw
Prothonotary/Clerk of Courts
Clerk to Amy
Notary
MADON

CA

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

PLAINTIFFS,

v.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,

DEFENDANT.

No. 07- 104 -CD

: TYPE OF PLEADING:

: MOTION TO RECONSIDER

: FILED BY:

DEFENDANT

: ATTORNEY FOR PARTY:

Theron G. Noble, Esq

: Ferraraccio & Noble

Pa. I.D.#: 55942

: 301 East Pine Street

Clearfield, PA 16830

: (814)-375-2221.

FILED^{NO cc}
m 1:03 PM
FEB 16 2007 @GK

William A. Shaw
Prothonotary/Clerk of Courts

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

FILED
01/10/25/201
FEB 21 2007

William A. Shaw
Prothonotary/Clerk of Courts
ICC Amy Noble

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

PLAINTIFFS,

v.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,

DEFENDANT.

No. 07- 104 -CD

RULE TO SHOW CAUSE

Now, this 20th day of Feb, 2007, upon consideration of the attached MOTION TO RECONSIDER, MOTION TO INCREASE BOND, and MOTION TO PERMIT INSPECTION OF PREMISES, a RULE is hereby issued upon the Plaintiffs to SHOW CAUSE why the MOTION should not be granted. RULE RETURNABLE, for filing written response, is set for the 12th day of March, 2007, and hearing will be held on the 14th day of March, 2007, commencing at 9 : 00 , A .M., Courtroom No.1, Clearfield County Courthouse.

NOTICE

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION YOU SHOULD DO SO BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITION. 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 CAN NOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Second & Market Streets
Clearfield, PA 16830
(814)-765-2641.

By The Court,


Judge...

FILED

FEB 21 2007

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

DATE: 2/21/07

☒ 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, CLEARFIELD COUNTY,
PENNSYLVANIA
(CIVIL DIVISION)**

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

PLAINTIFFS,

v.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,

DEFENDANT.

No. 07- 104 -CD

DEFENDANT'S MOTION FOR RECONSIDERATION

AND NOW, comes the Defendant, Wesley D. Smith, by and through his counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of his **MOTION FOR RECONSIDERATION**:

Background

1. This matter was commenced by the filing of a Petition for Ex-Parte Preliminary Injunctive Relief on January 23, 2007.
2. Plaintiffs obtained an ex-parte injunction on the date of filing said request for relief, denying Defendant any access to Plaintiffs' property.
3. That a hearing was originally scheduled within the five (5) days as required by Pa.R.Civ.P. 1531, but was continued at the request of Defendant's then counsel of record.
4. That hearing was then scheduled for February 6, 2007, was commenced but then continued by the Court to perform a plea and sentencing on a criminal case scheduled for

trial the next day and hearing on the Preliminary Injunction continued until the next day.

5. That hearing on Plaintiffs' request for injunctive relief re-commenced at 1:30 P.M.

and lasted until approximately 4:00 P.M..

6. That following hearing, the Court advised that it would take the matter "under advisement" and would issue an ORDER the following day.

7. That an ORDER, sustaining the Preliminary Injunction, was entered of record on February 9th but dated for February 7th.

8. At no time was an argument given concerning the evidence presented, the requirements of the law nor were briefs requested concerning Plaintiffs' request.

9. That this Honorable Court can not have fully considered all of the legal and factual issues without benefit of the adversarial process given the lack of argument and/or briefs.

10. That at hearing, Plaintiffs produced three witnesses, Defendant Wesley D. Smith, Plaintiff Traci Shepler and Forrester Keith Conrad.

11. That Defendant testified, as on cross examination, that he purchased and marked with blue paint trees on the Plaintiffs' premises, having paid \$38,000 to Plaintiffs.

12. That Plaintiff Traci Shepler testified that she was not very involved in the contract process as that was done by her then husband, Plaintiff Harry E. Shepler, III, however she believed that trees "below her house" were not included in said sale which had then been subsequently marked (after the contract) with blue paint (indicating an intent by Defendant to convert said trees).

13. That Forrester Conrad testified that he found "young growth" had been damaged; that standing trees smaller than 12" in diameter had been marked; and in a few instances trees

smaller than 12" in diameter had been cut.

14. That Forrester Conrad is a "part-time forrester", working with Plaintiff Traci Shepler as a furniture salesman.

15. That Forrester Conrad testified the damage to the "young growth" was excessive, but on cross examination admitted that it was only slightly more than unreasonable damage which would be caused by any timber harvesting operation but since his interpretation of the contract between the parties called for no damage any damage would be "excessive".

16. That Plaintiffs pled essentially four issues in support of their request for injunctive relief, which are as follows: (i) trees have been marked which were not included in the sale; (ii) Defendant's timber harvesting operation is causing environmental issues; (iii) trees smaller than 12" have been cut; and (iv) Defendant has damaged "young growth".

17. At hearing, Plaintiffs did not produce any evidence of environmental issues.

18. The only evidence presented as to the remaining issues is as herein described.

19. That Plaintiff Harry E, Shepler, III, did not testify, was not present to testify, and is as per the record not amenable to subpoena as he now resides in the State of New York.

Count I: Failure to Consider the Requirements for Injunctive Relief

20. That the averments of paragraphs 1 - 19, inclusive, are hereby incorporated as if again fully set forth at length.

21. In order to issue a preliminary injunction, it has been determined (see All-Pak, Inc., v. Johnston, 694 A.2d. 347 (1997)), the following elements must be established: (i) necessary to prevent immediate and irreparable harm which can not be compensated by damages; (ii) greater injury would result in refusing rather than granting the requested

relief; and (iii) it properly restores the parties to their status immediately prior to the alleged wrongful conduct.

22. In addition, unless a plaintiff's right is clear and the wrong is manifest, a preliminary injunction will not be awarded. All-Pak.

23. As a matter of law, Plaintiffs' request for injunctive relief failed in that (i) damages were/are capable of being reduced to monetary amounts; (ii) the injunction failed to restore Defendant to his position prior to the alleged wrongful conduct; and (iii) Plaintiffs' right to relief was not clear.

(a) Monetary Damages

24. Immediately following Plaintiffs' "case-in-chief", Defendant moved for dismissal of Plaintiff's complaint and dissolution of the ex-parte injunction citing Martindale Lumber Company v. Trusch, 681 A.2d 803 (1996).

25. Martindale Lumber Company states that in that case, as in the case at hand, Plaintiffs failed to establish that the timber was unique and therefore not entitled to equitable relief.

26. That Martindale Lumber Company also established that timber is "goods" also supporting the principle of law not afforded equitable protection.

27. In denying Defendant's Motion to Dismiss and to Dissolve the Ex-Parte Injunction this Honorable Court stated that Martindale Lumber Company did not involve "standing timber" as in the case at hand but only logs, which this Honorable Court stated would be more akin to "goods".

28. That this Honorable Court erred, as a matter of law, as to the its interpretation of Martindale Lumber Company case and as its application to the case at hand.

28A. Because all of the issues presented by Plaintiffs, even if true, are capable of being

reduced to monetary value, i.e. per Martindale Lumber Company they are “goods”, Plaintiffs can not establish and did not establish irreparable harm.

(b) Injunction Failed to Restore the Parties to Prior Position

29. Notwithstanding the previous issue, the injunction issued and upheld in this case (denying Defendant access to *his* timber) wholly failed to restore the parties to their position prior to alleged wrongful conduct.

30. As the evidence demonstrated, Defendant paid Plaintiffs \$38,000 in 2005 for certain trees (although the exact ones might be in dispute) to which he had the right to remove through the spring of 2007.

31. The evidence also established that there are numerous trees which have been purchased by the Defendant which remain on the premises owned by Plaintiffs. See testimony of Traci Shepler, Defendant Wes Smith and Forrester Conrad.

32. Given this Court’s ORDER denying Defendant access to Plaintiff’s land, thus preventing Defendant from removing his property¹ bought and paid for, the Court did not restore Defendant to his position prior to the alleged wrongful act and has in essence converted his timber for Plaintiff once summer 2007 is reached in that Defendant can not remove his timber prior to expiration of the contract.

32A. An ORDER not permitting Defendant to cut any trees less than 12” in diameter and trees “below the Shepler house”² would amply cover the alleged wrongs complained of by Plaintiffs, while preserving Defendant’s right to retrieve his property, leaving

¹ The Court’s ORDER after hearing did not even permit Defendant to remove property which was also clearly his, i.e. the skidder and logs, but only recommended the parties to do so. However, the parties have now resolved that issue amongst themselves.

² The parties arguably could resolve how far below the Shepler house this no cut zone might extend in conformity to the Defendant Exhibit “A” being the map outlined by Plaintiff during cross examination.

substantially less litigation and harm in this case.

(c) Plaintiffs Right to Relief was not Clear

33. As before stated, Plaintiff alleged four harms (intent to cut trees less than 12” in diameter; cutting trees less than 12” in diameter; environmental issues and damage to “young growth”).

34. As to these issues, Plaintiff Traci Shepler was not in position to know what was or was not included in the sale to Defendant in that matter, according to her own testimony, which knowledge remains almost exclusively with her then husband, Plaintiff Harry E. Shepler, III and Defendant.

35. Her testimony on this point was that she did not believe the trees “below the house” were marked prior to execution of the contract, but was not there at least three days prior to execution of the contract.

36. Defendant himself and with three other witnesses each testified that trees “below the Shepler house” were marked as part of the timber cruise performed prior to execution of the contract.

37. Plaintiffs’ right to relief on this issue is certainly not clear to support an injunction.

38. That standing trees less than 12” in diameter are of no import in this case because (i) they have not been harmed (which is why they are standing) and (ii) were in an area already harvested (negating an intent to so harvest).

39. Plaintiffs failed to produce any evidence as to alleged environmental issues.

40. As before, although Forrester Conrad testified that the damage to “young growth” was excessive, he did admit that any harvesting is going to damage the property to some

degree and in this instance such damage was only slightly in excess of the typical amount of damage he would expect.

41. There was only evidence of one tree less than 12" in diameter which had been harvested³ and the photograph of that tree showed it measured about 11.75 inches with an issue as to whether it was measured at its broadest point.

Count II: Missing Material Witness

42. That the averments of paragraphs 1 - 41, inclusive, are incorporated as if again fully set forth at length.

43. That Harry E. Shepler, III, is a plaintiff in this case and he failed to attend or participate in the hearing on this matter.

44. In addition to being a party, he is also a material witness in that, according to the testimony of Plaintiff Traci A. Shepler, he did all of the contractual arrangements with Defendant.

45. In that Plaintiff has the burden of proof, which is heightened arguably to a "clear and convincing standard" (see All-Pak), Plaintiff can not prevail in her request without the testimony of Plaintiff Harry E. Shepler, III, and Defendant is entitled to every reasonable inference which could be possibly drawn from that testimony including that the trees below the Shepler house were included in the sale to Defendant.

46. Likewise, as a former timberer, Plaintiff Harry E. Shepler, III, most likely would have testified, and to which inference Defendant is entitled given his absence, that the contract only required that there would not be *unreasonable damage* to "young growth", not that

³ One might consider the "young growth" as being harvested but these trees which were removed because of damage or parts of clusters, were not of any value because of their species (beech, hemlock, etc.).

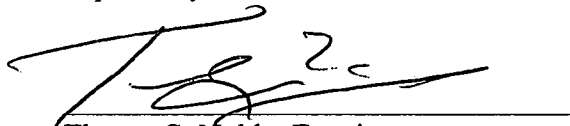
there would no damage to young growth as asserted.

47. In fact, given the testimony of Forrester Conrad, it is a factual impossibility to harvest without any damage and as such the contract must be interpreted to mean that there would not be unreasonable damage to young growth⁴.

48. Nonetheless, Plaintiff can not meet its burden in this case without the presence of Plaintiff Harry E, Shepolder, III, given his unique position in the contract formation.

WHEREFORE, as a matter of law, Defendant requests that this Honorable Court reconsider its ORDER sustaining the Ex-Parte Preliminary Injunction and dissolve the same.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'T. G. Noble', is written over a horizontal line.

Theron G. Noble, Esquire
Attorney for Defendant
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

⁴ Attached hereto as Exhibit "A" is materials entitled "Timber Harvesting in Pennsylvania", produced by Penn State University supporting Defendant's testimony at hearing that the removal of these smaller, non-valuable trees is actually not harmful conduct but productive conduct.

TIMBER HARVESTING in Pennsylvania

Information for Citizens and
Local Government Officials

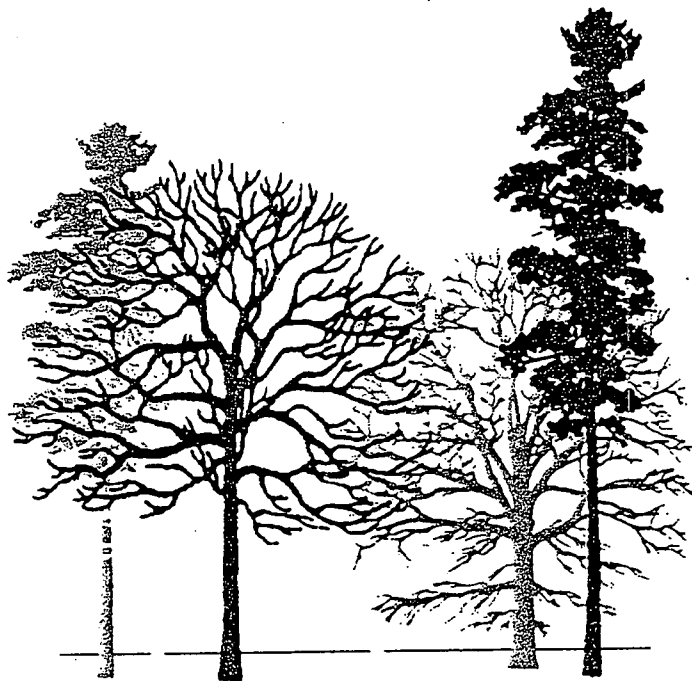


Exhibit "A"

PENNSTATE



College of Agricultural Sciences
School of Forest Resources

that are more like the large-scale natural disturbances caused by fire, wind, or insect epidemics, while tolerant species benefit from smaller disturbances, similar to those caused by the death of an individual tree or a small group of trees. In Pennsylvania, some of the most important economic assets of forests are produced by species that are intolerant of shade.

Both clear-cutting and selection cutting are acceptable silvicultural practices for managing Pennsylvania's forests. Clear-cutting, in which an entire timber stand is cut, is one of the silvicultural systems used by foresters to *regenerate*, or renew, forests. Like large-scale natural disturbances, clear-cutting promotes the establishment and growth of



Figure 7. Tionesta 1985—Tornado damage.



Figure 8. Tionesta 1992—Tornado site seven years later.

intolerant and intermediate species, such as black cherry and oak. It is used when landowners have a reason to harvest the existing trees, and when the seedlings that will become the future forest are already present or the area is to be replanted. Reasons to harvest might include the financial maturity of most of the trees or a desire to create temporary open habitat for certain wildlife species.

Clear-cutting is appropriate for Pennsylvania's two major forest types, northern hardwood and oak/hickory. It creates a new forest with trees of roughly the same age, or an *even-aged forest*. Another way to promote the establishment of seedlings is with a technique called *shelterwood*, which temporarily retains 30 to 70 percent of the forest canopy. Without clear-cutting or other even-aged management and harvesting techniques, the proportion of black cherry and oak in Pennsylvania forests will be reduced in the future.

Selection cutting, a regeneration technique in which trees are removed singly or in small groups, is appropriate for forests comprised of trees of different ages, or *uneven-aged forests*. Properly applied, selection cutting will remove not only some larger, higher-quality trees, but also many smaller, lower-quality ones. This will increase the growing space for the remaining trees and create areas where new seedlings can become established. The intent is to retain a full range of trees, from large old trees to seedlings. This process is designed to control species composition, age structure, and tree quality. Since the forest canopy remains largely intact, selection cutting is best used on shade-tolerant species, such as sugar maple, beech, and hemlock.

Diameter-limit cutting generally is a destructive practice. It is well known that high-grading (also referred to as "selective cutting"), or taking only the largest, best trees of the most valuable species, leads to a progressive deterioration of forest variety and quality. However, many people do not realize that diameter-limit cutting can be almost as destructive. When all trees above a certain diameter (measured at 4.5 feet above the ground) are removed, the smaller, slower-growing specimens are left. In Pennsylvania even-aged forests, small trees are usually about the same age as large ones. However, these small trees may be (1) a different species; (2) genetically inferior; or (3) in a poor location. Diameter-limit cutting shifts the composition of the forest toward slower-growing, less valuable shade-tolerant species, and it may degrade the quality of the forest by promoting inferior trees. It may also limit future options for the forest and slow down recovery from disturbance by eliminating the sources of seed for the species removed.

Tree planting (artificial regeneration) generally is not necessary in Pennsylvania. Through the use of acceptable silvicultural practices, most of Pennsylvania's forests will regenerate naturally from seeds or sprouts. Studies show that naturally regenerated trees usually grow faster and survive better than planted trees. However, trees may have to be planted to reforest former strip mine sites, old fields, conifer plantations, and areas where insects or diseases have killed all the seed-producing trees.

Theron G. Noble, Esquire
Attorney for Defendant
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221

C

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

PLAINTIFFS,

v.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,

DEFENDANT.

No. 07- 104 -CD

: TYPE OF PLEADING:

: MOTION TO PERMIT
INSPECTION OF PREMISES

: FILED BY:
DEFENDANT

: ATTORNEY FOR PARTY:
Theron G. Noble, Esq
: Ferraraccio & Noble
Pa. I.D.#: 55942
: 301 East Pine Street
Clearfield, PA 16830
: (814)-375-2221.

FILED No
m 11:03/21 cc
FEB 16 2007 GN

William A. Shaw
Prothonotary/Clerk of Courts

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

PLAINTIFFS,

v.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,

DEFENDANT.

No. 07- 104 -CD

FILED
010:25/201
FEB 21 2007

William A. Shaw
Prothonotary/Clerk of Courts
10 C. Aug Noble

RULE TO SHOW CAUSE

Now, this 20th day of Feb, 2007, upon consideration of the attached MOTION TO RECONSIDER, MOTION TO INCREASE BOND, and MOTION TO PERMIT INSPECTION OF PREMISES, a RULE is hereby issued upon the Plaintiffs to SHOW CAUSE why the MOTION should not be granted. RULE RETURNABLE, for filing written response, is set for the 12th day of March, 2007, and hearing will be held on the 14th day of March, 2007, commencing at 9:00, A.M., Courtroom No.1, Clearfield County Courthouse.


NOTICE

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION YOU SHOULD DO SO BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITION. 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 CAN NOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Second & Market Streets
Clearfield, PA 16830
(814)-765-2641

By The Court,


Judge...

FILED

FEB 21 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/21/07

☒ 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, CLEARFIELD COUNTY,
PENNSYLVANIA
(CIVIL DIVISION)**

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

PLAINTIFFS,

v.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,

DEFENDANT.

No. 07- 104 -CD

DEFENDANT'S MOTION TO PERMIT INSPECTION OF PREMISES

AND NOW, comes the Defendant, Wesley D. Smith, by and through his counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of his MOTION TO PERMIT INSPECTION OF PREMISES:

Background

1. This matter was commenced by the filing of a Petition for Ex-Parte Preliminary Injunctive Relief on January 23, 2007.
2. Plaintiffs obtained an ex-parte injunction on the date of filing said request for relief, denying Defendant any access to Plaintiffs' property.
3. That a hearing was originally scheduled within the five (5) days as required by Pa.R.Civ.P. 1531, but was continued at the request of Defendant's then counsel of record.
4. That hearing was then scheduled for February 6, 2007, was commenced but then continued by the Court to perform a plea and sentencing on a criminal case scheduled for

trial the next day and hearing on the Preliminary Injunction continued until the next day.

5. That hearing on Plaintiffs' request for injunctive relief re-commenced at 1:30 P.M. and lasted until approximately 4:00 P.M..

6. That following hearing, the Court advised that it would take the matter "under advisement" and would issue an ORDER the following day.

7. That an ORDER, sustaining the Preliminary Injunction, was entered of record on February 9th but dated for February 7th.

8. That since the issuance of the Ex-Parte Injunction, and affirmation of the same, Defendant has not been permitted on Plaintiff's property, excepting for arrangements to remove the logs previously harvested and to get his personal property.

9. That the issues raised by the Plaintiff, i.e. trees smaller than 12" diameter being marked and cut, environmental issues and damage to "young growth" are issues which Defendant was not aware prior to this litigation.

10. That Defendant needs to gather evidence on his behalf which evidence is solely on the Plaintiff's premises.

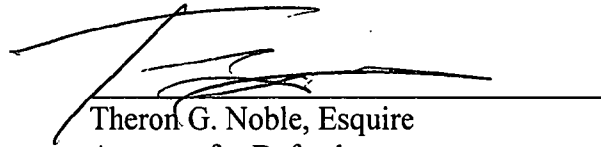
11. In addition to the issues raised by Plaintiffs, Defendant will have a significant issues as to the value of the trees which he can not harvest and which he purchased.

WHEREFORE, Defendant requests that this Honorable Court permit him and any lawful agents, servants or independent contractors to have access to Plaintiff's land in order to gather evidence relating to (i) diameter of trees cut; (ii) evidence of markings on trees; (iii) value of remaining timber; and (iv) environmental issues relating to harvesting of timber and (v) any other relevant and material issue raised

in this case; and that Plaintiffs be prevented from altering any of the above until.

Defendant is permitted to collect such evidence.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Theron G. Noble', is written over a horizontal line.

Theron G. Noble, Esquire
Attorney for Defendant
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

Theron G. Noble, Esquire
Attorney for Defendant
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221

CA

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

PLAINTIFFS,

v.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,

DEFENDANT.

No. 07- 104 -CD

: TYPE OF PLEADING:

: MOTION TO
INCREASE BOND

: FILED BY:
DEFENDANT

: ATTORNEY FOR PARTY:

Theron G. Noble, Esq
: Ferraraccio & Noble
Pa. I.D.#: 55942
: 301 East Pine Street
Clearfield, PA 16830
: (814)-375-2221.

FILED No
M 110361 CC
FEB 16 2007 GK

William A. Shaw
Prothonotary/Clerk of Courts

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

FILED
0110:25/04
FEB 21 2007

William A. Shaw
Prothonotary/Clerk of Courts
ICC Atty Noble

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

PLAINTIFFS,

v.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,

DEFENDANT.

No. 07- 104 -CD

RULE TO SHOW CAUSE

Now, this 20th day of Feb, 2007, upon consideration of the attached MOTION TO RECONSIDER, MOTION TO INCREASE BOND, and MOTION TO PERMIT INSPECTION OF PREMISES, a RULE is hereby issued upon the Plaintiffs to SHOW CAUSE why the MOTION should not be granted. RULE RETURNABLE, for filing written response, is set for the 12th day of March, 2007, and hearing will be held on the 14th day of March, 2007, commencing at 9 : 00, A.M., Courtroom No.1, Clearfield County Courthouse.

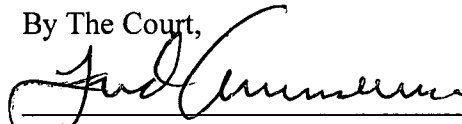
NOTICE

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION YOU SHOULD DO SO BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITION. 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 CAN NOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Second & Market Streets
Clearfield, PA 16830
(814)-765-2641

By The Court,


Judge...

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

PLAINTIFFS,

v.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,

DEFENDANT.

No. 07- 104 -CD

DEFENDANT'S MOTION TO INCREASE BOND

AND NOW, comes the Defendant, Wesley D. Smith, by and through his counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of his **MOTION TO INCREASE BOND**:

Background

1. This matter was commenced by the filing of a Petition for Ex-Parte Preliminary Injunctive Relief on January 23, 2007.
2. Plaintiffs obtained an ex-parte injunction on the date of filing said request for relief, denying Defendant any access to Plaintiffs' property.
3. That a hearing was originally scheduled within the five (5) days as required by Pa.R.Civ.P. 1531, but was continued at the request of Defendant's then counsel of record.
4. That hearing was then scheduled for February 6, 2007, was commenced but then continued by the Court to perform a plea and sentencing on a criminal case scheduled for

trial the next day and hearing on the Preliminary Injunction continued until the next day.

5. That hearing on Plaintiffs' request for injunctive relief re-commenced at 1:30 P.M.

and lasted until approximately 4:00 P.M..

6. That following hearing, the Court advised that it would take the matter "under advisement" and would issue an ORDER the following day.

7. That an ORDER, sustaining the Preliminary Injunction, was entered of record on February 9th but dated for February 7th.

8. That at the time Plaintiffs received the Ex-Parte Preliminary Injunction, upon information and belief, a bond in the amount of \$10,000 was filed with the Prothonotary.

Count I: Motion to Increase Bond

9. Contemporaneously herewith, Defendant has filed a MOTION TO RECONSIDER as to this Honorable Court keeping in place the Preliminary Injunction.

10. That in the event this Honorable Court should decide that the Preliminary Injunction, in its opinion, should remain in full force and effect, then pursuant to Pa.R.Civ.P.

1531(b)(1) &(2), a bond should be deposited such that *all damages* caused by the issuance of the injunction are covered and therefore recoverable by the Defendant.

11. In this case, there is no record as to how or why the sum of \$10,000 was determined and more important said sum is wholly inadequate for the reasons herein detailed.

12. That in the event Defendant is correct as to the timbering operations at issue, his damages will be (i) failure to remove Defendant's trees which have been bought and paid for and which remain on Plaintiffs' land; and (ii) loss of use of his skidder which was "trapped" on Plaintiff's land by issuance of the injunction between January 23, 2007 (date

of the injunction) and February 14th (date access permitted by agreement of the parties).

13. That as to the timber which remains on the Plaintiffs' premises, the evidence produced at hearing clearly demonstrated that there was an estimated 130,000 - 140,000 board feet of timber on the premises at the inception of this contract, purchased by Defendant.

14. That of this timber, only about 40,000 board feet has been harvested, leaving 90,000 - 100,000 board feet remaining on Plaintiffs' land.

15. That Defendant estimated the value to be realized from his harvesting efforts was \$80,000.

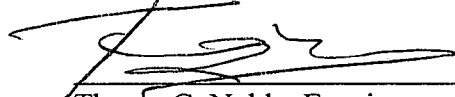
16. That to fully protect Defendant pursuant to Pa.R.Civ.P. 1531, the amount of \$57,000 would need to be posted to cover the value of the trees, purchased by Defendant, not harvested, and which remain on Plaintiffs' land. (The mathematics are $((140,000 - 40,000) / 140,000) \times \$80,000$; or percentage of unharvested timber multiplied by expected value.)

17. That as to the skidder, the fair rental rate of such a skidder is \$5,000 per month.

18. That the skidder was "trapped" for 20 days or 2/3rds of a month and as such Defendant potentially lost \$3,333.33 for its inability to use its skidder.

WHEREFORE, as a matter of law, Defendant requests that this Honorable Court increase the bond required to be posted by Plaintiffs to \$60,000, which would not be a hardship given its title to the subject premises.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Theron G. Noble', is written over a horizontal line.

Theron G. Noble, Esquire
Attorney for Defendant
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

Theron G. Noble, Esquire
Attorney for Defendant
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

PLAINTIFFS,

v.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,

DEFENDANT.

No. 07- 104 -CD

: TYPE OF PLEADING:

: NOTICE OF SERVICE

: FILED BY:
DEFENDANT

: ATTORNEY FOR PARTY:
Theron G. Noble, Esq
: Ferraraccio & Noble
Pa. I.D.#: 55942
: 301 East Pine Street
Clearfield, PA 16830
: (814)-375-2221.

FILED

FEB 26 2007

m/12-30/07
William A. Shaw
Prothonotary/Clerk of Courts
no c/c

Theron G. Noble, Esquire
Attorney for Defendant
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102363
NO: 07-104-CD
SERVICE # 1 OF 1
ORDER;BOND;COMPLAINT;PET./EX-PARTE

PRELIM.INJ.

PLAINTIFF: TRACI A. SHEPLER and HARRY E. SHEPLER III

vs.

DEFENDANT: WESLEY D. SMITH t/d/b/a SMITH LOGGIE & TIMBER SALES

SHERIFF RETURN

NOW, January 23, 2007, SHERIFF OF JEFFERSON COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN ORDER;BOND;COMPLAINT;PET./EX-PARTE PRELIM.INJ. ON WESLEY D. SMITH t/d/b/a SMITH LOGGING & TIMBER SALES.

NOW, January 25, 2007 AT 10:16 AM SERVED THE WITHIN ORDER;BOND;COMPLAINT;PET./EX-PARTE PRELIM.INJ. ON WESLEY D. SMITH t/d/b/a SMITH LOGGING & TIMBER SALES, DEFENDANT. THE RETURN OF JEFFERSON COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

FILED
MAR 02 2007
0/10:30/11
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102363
NO: 07-104-CD
SERVICES 1
ORDER;BOND;COMPLAINT;PET./EX-PARTE

PRELIM.INJ.

PLAINTIFF: TRACI A. SHEPLER and HARRY E. SHEPLER III

vs.

DEFENDANT: WESLEY D. SMITH t/d/b/a SMITH LOGGIE & TIMBER SALES

SHERIFF RETURN

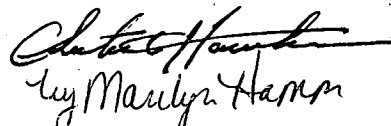
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	NADDEO	11387	10.00
SHERIFF HAWKINS	NADDEO	11387	18.39
JEFFERSON CO.	NADDEO	11388	35.52

Sworn to Before Me This

_____ Day of _____ 2007

So Answers,



Chester A. Hawkins
Sheriff

No. 07-104 C.D.

Personally appeared before me, Bill Dombrowski, Deputy for Thomas A. Demko, Sheriff of Jefferson County, Pennsylvania, who according to law deposes and says that on January 25, 2007 at 10:16 o'clock A.M. served the Order, Bond, Complaint and Petition upon WESLEY D. SMITH, t/d/b/a SMITH LOGGING & TIMBER SALES, Defendant, at the address of 137 Lewis Street, Borough of Reynoldsville, County of Jefferson, State of Pennsylvania, by handing to Rebecca, mother of the defendant and adult person in charge at time of service, a true copy of the Order, Bond, Complaint and Petition and by making known to her the contents thereof.

Advance Costs Received: \$125.00
My Costs: 33.52 Paid
Prothy: 2.00
Total Costs: 35.52
REFUNDED: \$ 89.48

Sworn and subscribed

to before me this

day of

By

My Commission Expires the
1st Monday, January 2010

So Answers,

Bill Dombrowski Deputy

Thomas A. Demko Sheriff

JEFFERSON COUNTY, PENNSYLVANIA

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

PLAINTIFFS,

v.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,

DEFENDANT.

No. 07- 104 -CD

: TYPE OF PLEADING:

: NOTICE OF SERVICE

: FILED BY:

DEFENDANT

: ATTORNEY FOR PARTY:

Theron G. Noble, Esq

: Ferraraccio & Noble

Pa. I.D.#: 55942

: 301 East Pine Street

Clearfield, PA 16830

: (814)-375-2221.

FILED *no ce*
MAR 08 2007 *(m)*

William A. Shaw
Prothonotary/Clerk of Courts

Theron G. Noble, Esquire
Attorney for Defendant
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

Plaintiffs

vs.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,
Defendant

No. 07-104-CD

Type of Pleading:

**PLAINTIFF'S REPLY TO
DEFENDANT'S MOTION TO
PERMIT INSPECTION OF THE
PREMISES**

Filed on behalf of:
Plaintiffs

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: March 13, 2007

FILED 1cc
07-104-CD
MAR 13 2007 Amy
(CP)

William A. Shaw
Prothonotary/Clerk of Courts

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

TRACI A. SHEPLER and HARRY E. *
SHEPLER, III, *
Plaintiffs *

vs. *

No. 07-104-CD

WESLEY D. SMITH, T/D/B/A *
SMITH LOGGING & TIMBER SALES, *
Defendant *

PLAINTIFFS' REPLY TO DEFENDANT'S MOTION TO
PERMIT INSPECTION OF THE PREMISES

Plaintiffs, by and through their attorney, James A. Naddeo, Esq., file the following reply in response to Defendant's Motion to Permit Inspection of the Premises and in support allege as follows:

Background

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted and in further answer thereto, this is consistent with this Court's Order as dated February 7, 2007.

As well, Defendant has never asked Plaintiffs permission to inspect the premises.

9. Denied.


10. After reasonable investigation, Plaintiffs are without knowledge and information sufficient to form a belief as to the truth of said paragraph 10.

11. To the extent that the word "issues" is interpreted to mean "damages" paragraph 11 states a conclusion of law to which no answer is required.

WHEREFORE, Plaintiffs request that this Court deny Defendant's request to inspect the premises and in the alternative that Defendant only be permitted access to the property for inspection purposes and only so long as Defendant is supervised by Plaintiffs.

NADDEO & LEWIS, LLC

By:


James A. Naddeo, Esq.
Attorney for Plaintiffs

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

TRACI A. SHEPLER and HARRY E. *
SHEPLER, III, *
Plaintiffs *

vs. *

No. 07-104-CD

WESLEY D. SMITH, T/D/B/A *
SMITH LOGGING & TIMBER SALES, *
Defendant *

CERTIFICATE OF SERVICE

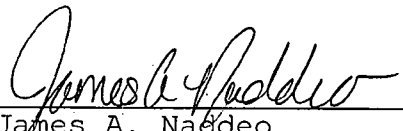
I, James A. Naddeo, Esquire, do hereby certify that a
certified copy of Plaintiff's Reply to Defendant's Motion to
Permit Inspection of the Premises served on the following and in
the following manner on the 13th day of March, 2007:

First-Class Mail, Postage Prepaid

Theron G. Noble
FERRARACCIO & NOBLE
301 East Pine Street
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Plaintiffs

William A. Shaw
Prothonotary/Clerk of Courts

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

TRACI A. SHEPLER and HARRY E. *
SHEPLER, III, *
Plaintiffs *

vs. *

No. 07-104-CD

WESLEY D. SMITH, T/D/B/A *
SMITH LOGGING & TIMBER SALES, *
Defendant *

PLAINTIFFS' REPLY TO DEFENDANT'S MOTION FOR RECONSIDERATION

Plaintiffs, by and through their attorney, James A. Naddeo, Esq., file the following reply in response to Defendant's Motion for Reconsideration and in support allege as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. No answer is required, the record in this case speaks for itself.
9. States a conclusion of law, to which no answer is required. To the extent an answer may be required paragraph 9 is denied.
10. Admitted.

11. No answer is required, the record and Defendant's testimony speak for themselves.

12. No answer is required, the record and Plaintiff Traci Shepler's testimony speak for themselves. To the extent an answer may be required it is denied that Ms. Shepler merely "believed" that the trees "below her house" were not included, but that Ms. Shepler in fact made certain that this was understood and part of the deal. Admitted that defendant subsequently marked trees that were not initially agreed to be sold to him.

13. No answer is required, the record of Mr. Conrad's testimony speaks for itself.

14. Admitted, in so far as it states the present status of Mr. Conrad's working arrangements.

15. No answer is required, the record of Mr. Conrad's testimony speaks for itself.

16. No answer is required, Plaintiffs' pleading speaks for itself. To the extent an answer may be required, paragraph 16 is denied as it understates the facts as pled by Plaintiffs.

17. No answer is required, the record and evidence submitted speak for themselves.

18. No answer is required, the record and evidence submitted speak for themselves. To the extent an answer may be required paragraph 18 is denied in that Defendant is claiming to

represent what is approximately a four hour record along with several pleadings in a few short paragraphs.

19. Admitted that Mr. Shepler did not testify and presently resides in New York.

Count I: The Court Considered the Requirements for Injunctive Relief

20. No answer is required.

21. States a conclusion of law, to which no answer is required.

22. States a conclusion of law, to which no answer is required. To the extent an answer may be required Plaintiffs respond with the fact that the requirement of a clear right to relief does not require the party seeking a preliminary injunction to demonstrate an absolute right to relief. Philips Gas and Oil Co. v. People's Natural Gas Co., 89 Pa. Commonwealth Ct. 377, 383, 492 A.2d 776, 780 (1985).

23. States a conclusion of law to which no answer is required. To the extent an answer may be required, it is denied. In further answer thereto, damages to Plaintiffs' land is irreparable as land is unique and the damage by Defendant will not be able to be compensated through monetary damages; the injunction restores Defendant to the position prior to the wrongful conduct. Prior to the wrongful conduct Defendant had the right to harvest certain trees upon the subject property.

Today Defendant retains the right to harvest certain trees upon the property. The trees that Defendant is entitled to harvest are not being altered or removed, whatsoever the court deems him to be the owner of he will have the right to harvest after judgment. Lastly, Plaintiffs' right to relief is clear as sufficient evidence was presented to demonstrate a material breach of the contract by Defendant.

(a) Monetary Damages

24. No answer is required, the record speaks for itself.

25. States a conclusion of law to which no answer is required. To the extent an answer may be required paragraph 25 is denied. In further answer thereto, Martindale Lumber Company is not on point. In that case, the harvester of the timber was requesting an injunction permitting it to harvest the timber. Matindale Lumber Company v. Trusch, 681 A.2d 803 (1996). The Court found that the timber to be harvested was not something that could not be compensated by monetary damages. The case stands for the premise that the Defendant in the case at bar could not obtain injunctive relief to permit him to harvest timber located on Plaintiffs' property. In contrast, the Plaintiffs are not asking for an injunction to harvest timber, they are asking for an injunction that will maintain their land as they desire to have it maintained. Their land as it sits is unique, has an aesthetic value and creates an environment they

desire for themselves and their family. Altering it by harvesting timber Plaintiffs did not agree to allow harvested will be irreparable and the loss will not be able to be compensated by monetary damages.

26. States a conclusion of law to which no answer is required. To the extent an answer maybe required paragraph 26 is irrelevant to Plaintiffs request to have the Defendant enjoined from destroying the subject property beyond repair and compensation.

27. State a conclusion of law to which no answer is required. To the extent an answer may be required, Plaintiffs incorporate their answer to paragraph 26 above as if set forth more fully herein.

28. States a conclusion of law to which no answer is required. To the extent an answer may be required paragraph 28 is unequivocally denied.

28A. States a conclusion of law to which no answer is required. To the extent an answer may be required paragraph 28A is unequivocally denied.

(b) Injunction Did Not Fail to Restore Parties to Prior Position

29. States a conclusion of law to which no answer is required. To the extent an answer may be required, it is denied. Defendant is in the same position as prior to the issuing of the injunction. That position is, Defendant owns

some amount of timber upon the subject property which he has the right to harvest.

30. No answer is required the record and evidence speak for themselves. To the extent an answer may be require dit is admitted, however in any case, Plaintiffs request that the evidence submitted speak for itself.

31. No answer is required the record and evidence speak for themselves.

32. States a conclusion of law to which no answer is required. To the extent an answer may be required paragraph 32 is denied and it is noted that it is a moot point by admission of Defendant.

32A. Denied.

(c) Plaintiffs' Right to Relief Is Clear

33. No answer is required, the facts as pled and evidence presented speak for themselves.

34. Denied as stated. Ms. Shepler testified to the best of her knowledge what the agreement included based on her own personal knowledge prior to and attendance at the final signing of the agreement.

35. No answer is required; testimony of the witness speaks for itself.

36. No answer is required; testimony of the witness speaks for itself.

37. States a conclusion of law to which no answer is required. To the extent an answer may be required paragraph 37 is denied. In further answer thereto, Plaintiffs made a clear showing that Defendant materially breached the contract and Plaintiffs are entitled to relief.

38. Denied. Whether or not Defendant is to be believed regarding the fact that trees less than 12" in diameter that were marked and still standing would not have ever been harvested is a question of credibility.

39. No answer is required, the record and evidence speak for themselves.

40. No answer is required, the testimony of Mr. Conrad speaks for itself. Plaintiffs respectfully request this court not to consider Defendant's potentially erroneous manner of conveying what was stated during testimony.

41. No answer is required, the evidence speaks for itself. In further answer thereto, the claim that the trees which were removed because of damaged parts or clusters were not of any value is just that "a claim." No unequivocal proof of this fact was evidenced.

Count II: Missing Material Witness

42. No answer is required.

43. Admitted.

44. States a conclusion of law to which no answer is required. To the extent an answer may be required it is denied that Mr. Shepler is a material witness. In further answer thereto, the evidence and testimony submitted is sufficient and the Court's decision is proper. In so far as paragraph 44 speaks to the testimony of Ms. Shepler, no answer is required. The testimony of Ms. Shepler speaks for itself.

45. States a conclusion of law, to which no answer is required. To the extent an answer may be required, the burden of proof cannot be "arguably" heightened to "clear and convincing standard." The standard to be met for a preliminary injunction to be granted is that the plaintiff's right to relief is clear and the wrong is manifest. All-Pak, Inc. v. Johnston, 694 A.2d 347 (Pa.Super.Ct. 1997). Nowhere in the All-Pak case are the words or the standard "clear and convincing" mentioned. Id. Defendant is not entitled to every reasonable inference. Defendant is stating the rule required for the Court to grant a demur, this is not applicable in a request for a preliminary injunction.

46. Denied. Defendant is attempting to state what a witness had he been present would have testified too. This is a ludicrous attempt by the Defendant and makes a mockery of the heart of our judicial system. Plaintiffs request that paragraph 46 be stricken.

47. States a conclusion of law to which no answer is required. To the extent an answer may be required paragraph 47 is denied. In further answer thereto, Defendant is attempting to offer additional evidence with his attached Exhibit "A," the record on this matter is closed and Plaintiffs ask this Court not to consider Defendant's Exhibit A and that it be stricken from the record.

48. States a conclusion of law to which no answer is required. To the extent an answer may be required paragraph 48 is denied.

WHEREFORE, Plaintiffs request that this Court deny Defendant's request for reconsideration and uphold this Court's prior Order granting a preliminary injunction.

NADDEO & LEWIS, LLC

By: James A. Naddeo
James A. Naddeo, Esq.
Attorney for Plaintiffs

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

TRACI A. SHEPLER and HARRY E. *
SHEPLER, III, *
Plaintiffs *

vs. *

No. 07-104-CD *

WESLEY D. SMITH, T/D/B/A *
SMITH LOGGING & TIMBER SALES, *
Defendant *

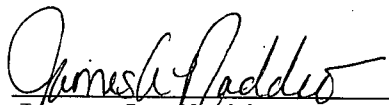
CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a
certified copy of Plaintiff's Reply to Defendant's Motion for
Reconsideration was served on the following and in the following
manner on the 13th day of March, 2007:

First-Class Mail, Postage Prepaid

Theron G. Noble
FERRARACCIO & NOBLE
301 East Pine Street
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By: 
James A. Naddeo
Attorney for Plaintiffs

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,
Plaintiffs

vs.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,
Defendant

No. 07-104-CD

Type of Pleading:

**PLAINTIFF'S REPLY TO
DEFENDANT'S MOTION TO
INCREASE BOND**

Filed on behalf of:
Plaintiffs

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: March 13, 2007

FILED
07-104-CD
MAR 13 2007
William A. Shaw
Prothonotary/Clerk of Courts

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

TRACI A. SHEPLER and HARRY E. *
SHEPLER, III, *
Plaintiffs *

vs. *

No. 07-104-CD

WESLEY D. SMITH, T/D/B/A *
SMITH LOGGING & TIMBER SALES, *
Defendant *

PLAINTIFFS' REPLY TO DEFENDANT'S MOTION TO INCREASE BOND

Plaintiffs, by and through their attorney, James A. Naddeo, Esq., file the following reply in response to Defendant's Motion to Increase Bond and in support allege as follows:

Background

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. No answer is required, the Bond posted and pleadings in this case speak for themselves.

Count I - Motion to Increase Bond

9. Admitted.

10. Denied. The Pa.R.Civ.P. 1531(b)(1) states as follows:

(1) the plaintiff files a bond in an amount fixed and with security approved by the court, naming the Commonwealth as obligee, conditioned that if the injunction is dissolved because improperly granted or for failure to hold a hearing, the plaintiff shall pay to any person injured all damages sustained by reason of granting the injunction and all legally taxable costs and fees, or

(2) the plaintiff deposits with the prothonotary legal tender of the United States in an amount fixed by the court to be held by the prothonotary upon the same condition as provided for the injunction bond.

The Court fixes and approves the amount and that amount is conditioned upon the understanding by the plaintiff that all damages will be should the injunction have been improperly granted. In addition, it is virtually impossible to know the exact damages that may or may not be determined in any case. Therefore, in any case the Court assesses and fixes what it deems to be a sufficient amount.

11. No answer is required, the record speaks for itself. To the extent an answer may be required there is no requirement in the rules as quoted herein in paragraph 10 that an explanation be given by the Court for the amount t fixes.

12. States conclusions of law to which no answer is required. To the extent an answer may be required, any loss that Defendant might prove will be the difference between the market value of the timber Defendant had a right to harvest at the time he would have harvested less the market value of the timber at the time and adjudication of the case. Said amount

may be zero if the timber rates remain constant. As well, even if Defendant can prove that he did not have access to his skidder and that it was "trapped" from January 23, 2007 until February 14, 2007 (23 days) the total amount of damages for this as admitted by Defendant would be \$3,333.33. Said amount is sufficiently less than the amount of the bond posted and leaves a sufficient amount to cover other potential damages.

13. Denied.

14. Denied, after reasonable investigation Plaintiffs are without knowledge and information sufficient to form a belief as to the amount of timber that has been harvested. That there is 90,000 - 100,000 board feet remaining on Plaintiffs' land to be timbered by Defendant pursuant to the agreement is denied.

15. After reasonable investigation Plaintiffs are without knowledge and information sufficient to form a belief as to the truth of paragraph 15 and therefore it is denied.

16. Denied, said amount assumes the conclusion of law that Defendant would be able prove such damages. In addition, the injunction in fact protects whatever trees Defendant ultimately is able to prove are his to harvest as it maintains the status quo. In the end, if Defendant is entitled to harvest trees from Plaintiffs' land the only measure of damages will be any loss in the market value of that which is harvested.

17. After reasonable investigation Plaintiffs are without knowledge and information sufficient to form a belief as to the truth of paragraph 15 and therefore it is denied.

18. Denied.

WHEREFORE, Plaintiffs request that this Court deny Defendant's request to have the bond amount increased.

NADDEO & LEWIS, LLC

By: James A. Naddeo
James A. Naddeo, Esq.
Attorney for Plaintiffs

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

TRACI A. SHEPLER and HARRY E. *
SHEPLER, III, *

Plaintiffs *

vs. *

No. 07-104-CD

WESLEY D. SMITH, T/D/B/A *

SMITH LOGGING & TIMBER SALES, *

Defendant *

CERTIFICATE OF SERVICE


I, James A. Naddeo, Esquire, do hereby certify that a
certified copy of Plaintiff's Reply to Defendant's Motion to
Increase Bond served on the following and in the following manner
on the 13th day of March, 2007:

First-Class Mail, Postage Prepaid

Theron G. Noble
FERRARACCIO & NOBLE
301 East Pine Street
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Plaintiffs

LA

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

TRACI A. SHEPLER and HARRY E. SHEPLER, III
Plaintiffs

v.

WESLEY D. SMITH, t/d/b/a SMITH LOGGING &
TIMBER SALES,
Defendant

NO. 07-104-CD

ORDER

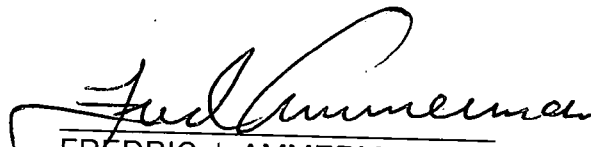
NOW, this 14th day of March, 2007, following argument on the Defendant's
Motions, it is the ORDER of this Court as follows:

1. Defendant's Motion for Reconsideration is hereby denied;
2. Relative the Motion to Increase Bond, the same is denied. Upon the
agreement of counsel, it is the further ORDER of this Court that the Plaintiffs
are precluded from removing or causing to be removed any trees on the
subject property. In addition, in the event the Defendant would prevail relative
the litigation, Plaintiffs agree Defendant shall have a reasonable period of
time to remove any trees on the property subject to the contract; and
3. The Motion to Permit Inspection is hereby granted. Defendant shall advise
Plaintiff at least 30 days in advance as to the identity of its' expert, when the
inspection shall occur and how long the expert will be on the property.

FILED
013.5561
MAR 14 2007
Noble

William A. Shaw
Prothonotary/Clerk of Courts

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED

MAR 14 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 3/14/07

 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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

Plaintiffs

vs.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,
Defendant

No. 07-104-CD

Type of Pleading:

CERTIFICATE OF SERVICE

Filed on behalf of:
Plaintiffs

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: April 4, 2007

FILED

APR 04 2007
07-104-CD
William A. Shaw
Prothonotary/Clerk of Courts

no 4/c

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

TRACI A. SHEPLER and HARRY E. *
SHEPLER, III, *
Plaintiffs *

vs. *

No. 07-104-CD

WESLEY D. SMITH, T/D/B/A *
SMITH LOGGING & TIMBER SALES, *
Defendant *

CERTIFICATE OF SERVICE

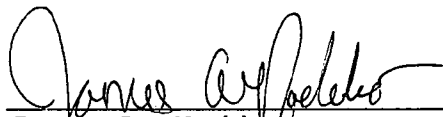
I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Plaintiffs' Reply to Request for Production of Documents served on the following and in the following manner on the 4th day of April, 2007:

First-Class Mail, Postage Prepaid

Theron G. Noble
FERRARACCIO & NOBLE
301 East Pine Street
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Plaintiffs

JA

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

PLAINTIFFS,

v.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,

DEFENDANT.

No. 07- 104 -CD

: TYPE OF PLEADING:

: **MOTION TO COMPEL**

: FILED BY:

DEFENDANT

: ATTORNEY FOR PARTY:

Theron G. Noble, Esq

: Ferraraccio & Noble

Pa. I.D.#: 55942

: 301 East Pine Street

Clearfield, PA 16830

: (814)-375-2221.

FILED

APR 10 2007

4/12/10/wn

William A. Shaw

Prothonotary/Clerk of Courts

no C/C

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

FILED ^{ICC}
014:00/61 Atty Noble
APR 17 2007 (64)

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

PLAINTIFFS,

v.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,

DEFENDANT.

No. 07- 104 -CD

William A. Shaw
Prothonotary/Clerk of Courts

RULE TO SHOW CAUSE

Now, this 17 day of April, 2007, upon consideration of the attached MOTION TO COMPEL, a RULE is hereby issued upon the Plaintiffs to SHOW CAUSE why the MOTION should not be granted. RULE RETURNABLE, for filing written response, is set for the 17th day of May, 2007, and hearing will be held on the 17th day of May, 2007, commencing at 9:30, A.M., Courtroom No.1, Clearfield County Courthouse.

NOTICE

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION YOU SHOULD DO SO BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITION. 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 CAN NOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Second & Market Streets
Clearfield, PA 16830
(814)-765-2641

By The Court

Judge...

DATE: 4/17/07

☒ You are responsible for serving all appropriate parties.

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

___ Plaintiff(s) ___ Plaintiff(s) Attorney ___ Other

___ Defendant(s) ___ Defendant(s) Attorney

___ Special Instructions:

FILED

APR 17 2007

William A. Shaw
Prothonotary/Clerk of Courts

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

PLAINTIFFS,

v.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,

DEFENDANT.

No. 07- 104 -CD

DEFENDANT'S MOTION TO COMPEL

AND NOW, comes the Defendant, Wesley D. Smith, by and through his counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of his **MOTION TO COMPEL**:

Background

1. This matter was commenced by the filing of a Petition for Ex-Parte Preliminary Injunctive Relief on January 23, 2007.
2. Plaintiffs obtained an ex-parte injunction on the date of filing said request for relief, denying Defendant any access to Plaintiffs' property.
3. That a hearing was originally scheduled within the five (5) days as required by Pa.R.Civ.P. 1531, but was continued at the request of Defendant's then counsel of record.
4. That an ORDER, sustaining the Preliminary Injunction, was entered of record on February 9th.

5. That the parties have presented and argued, and the Court had entered ORDERS concerning Defendant's MOTION TO INCREASE BOND, PERMIT INSPECTION OF PREMISES and RECONSIDERATION (as to injunction).

6. That on or about March 4, 2007, Defendant propounded his first set of REQUEST FOR PRODUCTION OF DOCUMENTS (attached hereto in pertinent part as Exhibit "A").

7. That Plaintiffs timely filed a response thereto (attached hereto as Exhibit "B").

Count I: Motion to Compel

8. That the averments of paragraphs 1 - 8, inclusive, are hereby incorporated as if again fully set forth at length.

9. That Defendant sought documents relative to Plaintiffs' bankruptcy filing concerning the valuation of their "real property" (attached hereto as Exhibits "C" and "D"; respectively, are documents showing that (i) Plaintiffs' valued their real property at \$129,000 for bankruptcy purposes (Exhibit "C"); and (ii) did not have their bankruptcy adjudicated until October 26, 2005.

10. Although Defendant is attempting to ascertain the date (and document the same) in which the \$38,000 cash payment was given to Plaintiffs for the purchase of the timber, it is believed that the same was while Plaintiffs' bankruptcy was pending.

11. That Defendant has met with bankruptcy counsel to determine what if any responsibilities he has concerning the purchase of the timber from Plaintiffs in this matter with such circumstances.

12. At the outset, Defendant needs to know whether (i) Plaintiffs were in bankruptcy when the purchase was completed; (ii) whether the timber was disclosed in the

bankruptcy process; and if so, (iii) whether Plaintiffs used their personal exemption to protect the value of the timber.

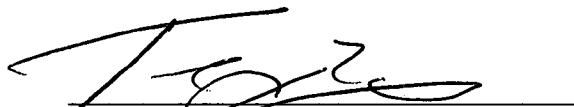
13. In addition, Plaintiffs sought and have received an equitable remedy in this matter (injunctive relief).

14. In the event that Plaintiffs have not fully disclosed the timber value in the bankruptcy case then there is certainly an issue as to whether Plaintiffs had "unclean hands" and are entitled to an equitable remedy.

15. As such, Defendant is absolutely entitled to the documents requested, which are relevant and material to the case at hand.

**WHEREFORE, Defendant requests that this Honorable Court compel
production of the documents sought in Defendants' REQUEST FOR
PRODUCTION OF DOCUMENTS.**

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Theron G. Noble", is written over a horizontal line.

Theron G. Noble, Esquire
Attorney for Defendant
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

PLAINTIFFS,

v.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,

DEFENDANT.

COPY

No. 07- 104 -CD

REQUEST FOR PRODUCTION OF DOCUMENTS

AND NOW comes the Defendant, Wesley D. Smith, t/d/b/a Smith Logging & Timber Sales, by and through his counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who pursuant to Pa.R.Civ.P. 4000, et.seq., demands production of the following documents within 30 days hereof:

1. True and correct copies of all appraisals or any other documents that indicate the fair market value of the premises subject matter of this litigation;
2. True and correct copies of all documents provided to the United States Bankruptcy Court to support Plaintiffs herein, petitioners/debtors therein, assertion that the subject premises had a value of \$129,000;
3. True and correct copies of all documents relied upon by Plaintiffs herein, petitioner/debtors therein, assertion that the subject premises had a value of \$129,000; and
4. True and correct copies of all photographs and/or videotape taken by any person in anticipation or for purposes of this litigation.

Exhibit "A"

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

TRACI A. SHEPLER and HARRY E. *
SHEPLER, III, *
Plaintiffs *

vs. *

No. 07-104-CD

WESLEY D. SMITH, T/D/B/A *
SMITH LOGGING & TIMBER SALES, *
Defendant *

PLAINTIFFS' REPLY TO REQUEST FOR PRODUCTION OF DOCUMENTS

Plaintiffs, by and through their attorney, James A. Naddeo, Esq., present the following reply in response to Defendant's Request for Production of Documents:

1. Objection. This requests records unrelated and not relevant to this matter. The information requested is not reasonably calculated to lead to the discovery of admissible evidence. Defendant is searching for information relative to a bankruptcy proceeding that is wholly irrelevant to this matter. This request is sought in bad faith. Therefore his request for such causes unreasonable annoyance, is oppressive and burdensome.

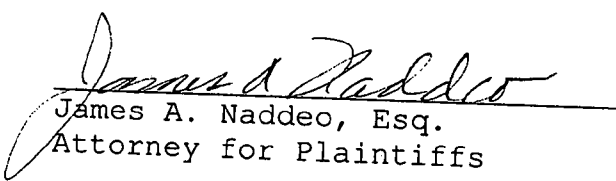
2. Objection. This requests personal records unrelated and not relevant to this matter. The information requested is not reasonably calculated to lead to the discovery of admissible evidence. Defendant is searching for information relative to a bankruptcy proceeding that is wholly irrelevant to this matter.

This request is sought in bad faith. Therefore his request for such causes unreasonable annoyance, is oppressive and burdensome. Furthermore, insofar as United States Bankruptcy Court records are public Defendant can obtain the same by his own efforts.

3. Objection. This requests personal records and information relative to a bankruptcy proceeding. The same is unrelated and not relevant to this matter. The information requested is not reasonably calculated to lead to the discovery of admissible evidence. This request is sought in bad faith. Therefore his request for such causes unreasonable annoyance, is oppressive and burdensome.

4. Copies of all photographs are included herewith. The videotape taken is enclosed herewith.

Signing as to Objections:


James A. Naddeo, Esq.
Attorney for Plaintiffs

Exhibiot "B"

In re Harry Elmer Shepler, III and Traci Ann Shepler / Debtor

FILED
 Case No. 95-71458
 2003 JUN 26 1:11
 CLERK (if known)
 U.S. BANKRUPTCY
 COURT - PGH to

SCHEDULE A-REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether the husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G-Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C-Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband-H Wife-W Joint-J Community-C	Current Market Value of Debtor's Interest, in Property Without Deducting any Secured Claim or Exemption	Amount of Secured Claim
Residence - 1-1/2 Story Log Cabin, 475 Cabin Road, Luthersburg, PA 15848	Co-tenancy	J	\$ 129,000.00	\$ 106,050.04
Exhibit "C"				
TOTAL \$			129,000.00	

No continuation sheets attached

(Report also on Summary of Schedules.)

United States Bankruptcy Court

Western District of Pennsylvania

Case No. 05-71258-BM

Chapter 7

In re: Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Harry Elmer Shepler III
475 Cabin Road
Luthersburg, PA 15848

Traci Ann Shepler
475 Cabin Road
Luthersburg, PA 15848

Social Security No.:

xxx-xx-5621

xxx-xx-9106

Employer's Tax I.D. No.:

DISCHARGE OF DEBTOR

It appearing that the debtor is entitled to a discharge,

IT IS ORDERED:

The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

BY THE COURT

Dated: 10/26/05

Bernard Markovitz
United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

Exhibit "D"

Theron G. Noble, Esquire
Attorney for Defendant
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No. 55942

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

Plaintiffs

vs.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,
Defendant

No. 07-104-CD

FILED ^{ICC}
9/10:50am ^{Atty}
APR 18 2007 ^{Naddeo}

William A. Shaw
Prothonotary/Clerk of Courts

Type of Pleading:

**PLAINTIFFS' REPLY TO
MOTION TO COMPEL**

Filed on behalf of:
Plaintiffs

Counsel of Record for
this party:

James A. Naddeo, Esq.
Pa I.D. 06820

NADDEO & LEWIS, LLC.
207 E. Market Street
P.O. Box 552
Clearfield, PA 16830
(814) 765-1601

Dated: April 18, 2007

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

TRACI A. SHEPLER and HARRY E. *
SHEPLER, III, *

Plaintiffs *

vs. *

No. 07-104-CD

WESLEY D. SMITH, T/D/B/A *
SMITH LOGGING & TIMBER SALES, *

Defendant *

PLAINTIFFS' REPLY TO MOTION TO COMPEL

Plaintiffs, by and through their attorney, James A. Naddeo, Esq., file the following reply in response to Defendant's Motion to Compel and in support allege as follows:

Background

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Denied as stated; the date Defendant propounded his first set of Request for Production of Documents was March 7, 2007 not March 4, 2007.

7. Admitted.

Count I - Motion to Compel

8. No answer is required.

9. No answer is required. All documents referenced in paragraph nine speak for themselves, including Defendant's Request for Production of Documents, Plaintiffs' Response to Request for Production of Documents, and Defendant's Exhibit C to his Motion to Compel.

10. Denied, that the date on which the \$38,000 cash payment was given to Plaintiffs is able to be ascertained. Both Defendant and Plaintiff, Traci Shepler, have testified before this Court that the date is unknown. In further answer thereto, Defendant will not be able to prove any date he now conjures up before this Court.

11. Denied after reasonable investigation, Plaintiffs are without knowledge and information sufficient to form a belief as to the truth of said averment.

12. Denied, whether the Plaintiffs were or were not in bankruptcy has no relevance to the transaction between Plaintiffs and Defendant. The doctrine upon which Defendant is relying to request this discovery, the doctrine of unclean hands, only applies to the transaction vis-à-vis the Plaintiffs and Defendant. No collateral transaction such as a bankruptcy is relevant to this doctrine or this litigation.

13. Admitted.

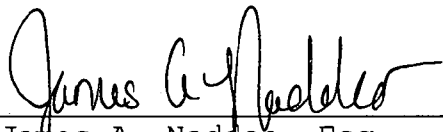
14. States a conclusion of law to which no answer is required. To the extent an answer may be required Plaintiffs

incorporate their answer to paragraph number 12 above as if set forth in full herein.

15. States a conclusion of law to which no answer is required. To the extent an answer may be required paragraph 15 is specifically denied on the grounds stated in paragraph 12 above which Plaintiffs incorporate herein by reference.

WHEREFORE, Plaintiffs request that this Court deny Defendant's request to compel production of documents that are wholly irrelevant to the transaction at hand and therefore not reasonably calculated to lead to the discovery of admissible information.

NADDEO & LEWIS, LLC

By: 
James A. Naddeo, Esq.
Attorney for Plaintiffs

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

TRACI A. SHEPLER and HARRY E. *
SHEPLER, III, *

Plaintiffs *

vs. *

No. 07-104-CD

WESLEY D. SMITH, T/D/B/A *

SMITH LOGGING & TIMBER SALES, *

Defendant *

CERTIFICATE OF SERVICE

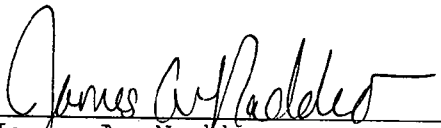
I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Plaintiffs' Reply Motion to Compel was served on the following and in the following manner on the 18th day of April, 2007:

First-Class Mail, Postage Prepaid

Theron G. Noble
FERRARACCIO & NOBLE
301 East Pine Street
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By:


James A. Naddeo
Attorney for Plaintiffs

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

PLAINTIFFS,

v.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,

DEFENDANT.

No. 07- 104 -CD

: TYPE OF PLEADING:

: **NOTICE OF SERVICE**

: FILED BY:

DEFENDANT

: ATTORNEY FOR PARTY:

Theron G. Noble, Esq

: Ferraraccio & Noble

Pa. I.D.#: 55942

: 301 East Pine Street

Clearfield, PA 16830

: (814)-375-2221.

FILED

APR 20 2007

William A. Shaw
Prothonotary/Clerk of Courts

Theron G. Noble, Esquire
Attorney for Defendant
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No. 55942

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

PLAINTIFFS,

v.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,

DEFENDANT.

No. 07- 104 -CD

: TYPE OF PLEADING:

: NOTICE OF SERVICE

: FILED BY:
DEFENDANT

: ATTORNEY FOR PARTY:
Theron G. Noble, Esq
: Ferraraccio & Noble
Pa. I.D.#: 55942
: 301 East Pine Street
Clearfield, PA 16830
: (814)-375-2221.

FILED

MAY 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

Theron G. Noble, Esquire
Attorney for Defendant
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No. 55942

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

TRACI A. SHEPLER and

:

HARRY E. SHEPLER III

:

VS.

:

NO. 07-104-CD

WESLEY D. SMITH, t/d/b/a SMITH

:

LOGGING AND TIMBER SALES

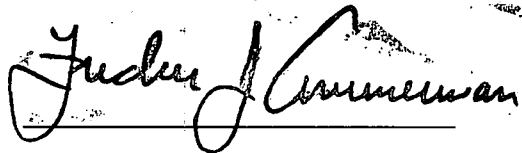
:

O R D E R

AND NOW, this 17th day of May, 2007, following argument on the Motion to Compel filed on April 10, 2007, by Defense, it is the ORDER of this Court that the Plaintiff supply, within no more than ten (10) days from this date, a true, correct and complete copy of the appraisal which was obtained on the residence and property in question that placed a market value for purposes of the bankruptcy proceedings, as discussed.

In all other regards, the Motion to Compel is dismissed.

BY THE COURT,



President Judge

FILED
01:55 PM
MAY 18 2007
Noble

William A. Shaw
Prothonotary/Clerk of Courts

CR

FILED

MAY 18 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5/18/07

X 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:

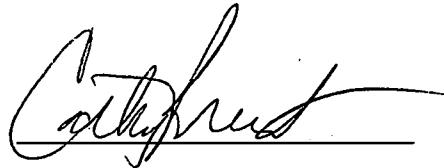
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

TRACI A. SHEPLER and :
HARRY E. SHEPLER III :
VS. : NO. 07-104-CD
WESLEY D. SMITH, t/d/b/a :
SMITH LOGGING AND TIMBER SALES :

N O T I C E

In accordance with the Rules of Appellate Procedure Rule 1922, Notice is hereby given that if no objections are made to the text of the transcript within five (5) days after such notice, the transcript in the above-captioned matter will become part of the record upon being filed in the Prothonotary's Office.

DATE: June 4, 2007



CATHY J. PROVOST, RMR

Official Court Reporter

FILED
07-09-07
JUN 11 2007
NCC
GK

William A. Shaw
Prothonotary/Clerk of Courts

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

PLAINTIFFS,

v.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,

DEFENDANT.

No. 07- 104 -CD

: TYPE OF PLEADING:

: **NOTICE OF SERVICE**

: FILED BY:

DEFENDANT

: ATTORNEY FOR PARTY:

Theron G. Noble, Esq

: Ferraraccio & Noble

Pa. I.D.#: 55942

: 301 East Pine Street

Clearfield, PA 16830

: (814)-375-2221.

FILED
JUL 03 2007

William A. Shaw
Prothonotary/Clerk of Courts

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

PLAINTIFFS,

v.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,

DEFENDANT.

No. 07-104-CD

NOTICE OF SERVICE

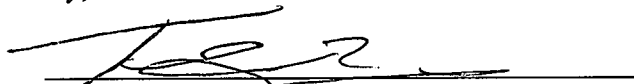
To: William A. Shaw, Prothonotary

Date: June 30, 2007

I, Theron G. Noble, Esquire, counsel for Defendant, does hereby certify that I did propound upon Plaintiffs a true and correct copy of the NOTICE OF DEPOSITION in the above captioned matter, to the below identified person, being counsel of record for the Plaintiffs, the day set forth above, via United States Mail, first class, postage prepaid:

James Naddeo, Attorney at Law
207 E. Market Street
Clearfield, PA 16830

By,



Theron G. Noble, Esquire
Attorney for Defendant
301 E. Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. No. 55942

Dated: January 23, 2008

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

TRACI A. SHEPLER and HARRY E.
SHEPLER, III,

Plaintiffs

vs.

WESLEY D. SMITH, T/D/B/A
SMITH LOGGING & TIMBER SALES,
Defendant

*
*
*
*
*
*
*
*
*

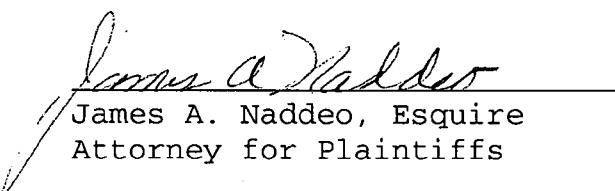
No. 07-104-CD

PRAECIPE TO SETTLE AND DISCONTINUE

TO THE PROTHONOTARY:

Dear Sir:

Please mark the above-captioned case settled and
discontinued.


James A. Naddeo, Esquire
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

Traci A. Shepler
Harry E. Shepler III

Vs.

No. 2007-00104-CD

Wesley D. Smith, T/D/B/A
Smith Logging & Timber Sales

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 January 23, 2008, marked:

Settle and Discontinue

Record costs in the sum of \$85.00 have been paid in full by Atty. Naddeo.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 23rd day of January A.D. 2008.



William A. Shaw, Prothonotary