

07-730-CD
J. Thibeault vs John C. Beirlair

jean Thibeault et al vs John Beirlair

C. COMMONWEALTH OF PENNSYLVANIA

COURT OF COMMON PLEAS

Forty-Sixth Judicial District, County Of Clearfield

NOTICE OF APPEAL

FROM
MAGISTERIAL DISTRICT JUDGE JUDGMENT

COMMON PLEAS No.

NOTICE OF APPEAL

07-730-CD

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the Magisterial District Judge on the date and in the case referenced below.

NAME OF APPELLANT Jean K. Thibeault and Dawn D. Burd	MAG. DIST. NO. 46-3-04	NAME OF MDJ Judge James L. Hawkins
ADDRESS OF APPELLANT 390 Ponderosa Drive	CITY Howard	STATE PA
DATE OF JUDGMENT April 10, 2007	IN THE CASE OF (Plaintiff) Thibeault, Jean K., et al.	(Defendant) Beirlair, John C.
DOCKET No. CV-41-07	SIGNATURE OF APPELLANT OR ATTORNEY OR AGENT <i>Frederick M. Newswender</i>	
<p>This block will be signed ONLY when this notation is required under Pa. R.C.P.D.J. No. 1008B. This Notice of Appeal, when received by the Magisterial District Judge, will operate as a SUPERSEDEAS to the judgment for possession in this case.</p> <p>If appellant was Claimant (see Pa.R.C.P.D.J. No. 1001(6) in action before a Magisterial District Judge, A COMPLAINT MUST BE FILED within (20) days after filing the NOTICE of APPEAL</p> <p><i>Atty 012-66301 pd 85.00</i> <i>MAY 09 2007 Notice</i></p>		
<p>Signature of Prothonotary or Deputy</p>		

PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

William A. Shaw
Prothonotary/Clerk of Courts
to
Def
Maj. Hawk
Atty Newswender

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa.R.C.P.D.J. No. 1001(7) in action before Magisterial District Judge. IF NOT USED, detach from copy of notice of appeal to be served upon appellee.

PRAECIPE: To Prothonotary

Enter rule upon _____

Name of appellee(s)

appellee(s), to file a complaint in this appeal

(Common Pleas No. _____)

) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

Signature of appellant or attorney or agent

RULE: To _____

, appellee(s)

Name of appellee(s)

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS MAY BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of the mailing.

Date: _____, 20____

Signature of Prothonotary or Deputy

YOU MUST INCLUDE A COPY OF THE NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH THIS NOTICE OF APPEAL.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

46-3-04

MDJ Name: Hon.

JAMES L. HAWKINS
Address: **251 SPRING ST
PO BOX 362
HOUTZDALE, PA**

Telephone: (814) 378-7160

16651-0362

**JEAN K. THIBEAULT
390 PONDEROSA DRIVE
HOWARD, PA 16841**

CORRECTED COPY

THIS IS TO NOTIFY YOU THAT:

Judgment: FOR DEFENDANT

(Date of Judgment) 4/10/07

<input checked="" type="checkbox"/> Judgment was entered for: (Name) <u>BEIRLAIR, JOHN C</u>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Docket No.: CV-0000041-07</td> </tr> <tr> <td style="padding: 5px;">Date Filed: 3/06/07</td> </tr> </table>	Docket No.: CV-0000041-07	Date Filed: 3/06/07
Docket No.: CV-0000041-07			
Date Filed: 3/06/07			
<input checked="" type="checkbox"/> Judgment was entered against: (Name) <u>THIBEAULT, JEAN K, ET AL.</u> in the amount of \$ <u>.00</u>			
<input type="checkbox"/> Defendants are jointly and severally liable.	Amount of Judgment \$ <u>.00</u>		
<input type="checkbox"/> Damages will be assessed on Date & Time _____	Judgment Costs \$ <u>.00</u>		
<input type="checkbox"/> This case dismissed without prejudice.	Interest on Judgment \$ <u>.00</u>		
<input type="checkbox"/> Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127 \$ _____	Attorney Fees \$ <u>.00</u>		
<input type="checkbox"/> Portion of Judgment for physical damages arising out of residential lease \$ _____	Total \$ <u>.00</u>		
	Post Judgment Credits \$ _____		
	Post Judgment Costs \$ _____		
	Certified Judgment Total \$ _____		

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

EXCEPT AS OTHERWISE PROVIDED IN THE RULES OF CIVIL PROCEDURE FOR MAGISTERIAL DISTRICT JUDGES, IF THE JUDGEMENT HOLDER ELECTS TO ENTER THE JUDGMENT IN THE COURT OF COMMON PLEAS, ALL FURTHER PROCESS MUST COME FROM THE COURT OF COMMON PLEAS AND NO FURTHER PROCESS MAY BE ISSUED BY THE MAGISTERIAL DISTRICT JUDGE.

UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE MAGISTERIAL DISTRICT JUDGE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

4-10-07 Date James L. Hawkins, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

Date _____, Magisterial District Judge

My commission expires first Monday of January, **2012**

SEAL

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

46-3-04

MDJ Name: Hon.

JAMES L. HAWKINS
Address: **251 SPRING ST**
PO BOX 362
HOUTZDALE, PA

Telephone: **(814) 378-7160**

16651-0362

**NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE**

PLAINTIFF:

THIBEAULT, JEAN K, ET AL.
390 PONDEROSA DRIVE
HOWARD, PA 16841

NAME and ADDRESS

2007-730-CV

DEFENDANT:

BEIRLAIR, JOHN C
7958 CURWENSVILLE TYRONE
OLANTA, PA 16863

NAME and ADDRESS

VS.

JAMES L. HAWKINS
251 SPRING ST
PO BOX 362
HOUTZDALE, PA 16651-0362

Docket No.: **CV-0000041-07**
Date Filed: **3/06/07**



CORRECTED COPY

THIS IS TO NOTIFY YOU THAT:

FOR DEFENDANT

(Date of Judgment)

4/10/07
FILED

Judgment was entered for: (Name) **BEIRLAIR, JOHN C**

Judgment was entered against: (Name) **THIBEAULT, JEAN K, ET AL.** in the amount of \$ **.00**

Defendants are jointly and severally liable.

Damages will be assessed on Date & Time _____

This case dismissed without prejudice.

Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127 \$ _____

Portion of Judgment for physical damages arising out of residential lease \$ _____

William A. Shaw Prothonotary/Clerk of Court	
Amount of Judgment	.00
Judgment Costs	\$.00
Interest on Judgment	\$.00
Attorney Fees	\$.00
Total	\$.00
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
Certified Judgment Total \$ _____	

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4-10-07 Date *James L. Hawkins*, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

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SEAL

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

46-3-04

MDJ Name: Hon.

JAMES L. HAWKINS
Address: **251 SPRING ST**
PO BOX 362
HOUTZDALE, PA

Telephone: **(814) 378-7160**

16651-0362

**COMMON PLEAS NOTIFICATION
REQUEST FORM**

PLAINTIFF:

THIBEAULT, JEAN K, ET AL.
390 PONDEROSA DRIVE
HOWARD, PA 16841

NAME and ADDRESS

DEFENDANT:

BEIRLAIR, JOHN C
7958 CURWENSVILLE TYRONE
OLANTA, PA 16863

VS.

NAME and ADDRESS

Docket No.: **CV-0000041-07**
Date Filed: **3/06/07**



Disposition Date: 4/10/07

Please be advised that an appeal has been filed in the above captioned case. Kindly use this form to indicate the results in this case, and return to the issuing authority (listed above).

RESULT OF APPEAL

Common Pleas Judge

2007-730-C0

CIVIL-LANDLORD/TENANT APPEAL

APPEAL STRICKEN - appeal has been disallowed.

APPEAL DISCONTINUED - appeal has been discontinued by appellant.

MAGISTERIAL DISTRICT JUDGE DECISION UPHELD - court has reached the same decision as the magisterial district judge judgement.

MAGISTERIAL DISTRICT JUDGE DECISION DISMISSED - court has reached a decision that does not concur with the district justice decision.

WRIT OF CERTIORARI

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MAGISTERIAL DISTRICT JUDGE DECISION SET ASIDE - the case will be reheard due to irregularity, lack of jurisdiction, or improper venue.

WRIT DISMISSED - magisterial district judge decision was not found to be flawed, lacking jurisdiction, or having improper venue.

STATEMENT OF OBJECTION (Please give a general summary of the results)

OBJECTION DISCONTINUED - objection has been discontinued by the appellant.

OBJECTION DENIED - objection has been denied by the Court of Common Pleas.

OBJECTION UPHELD - appellant's objection has been upheld by the Court of Common Pleas.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

46-3-04

MDJ Name: Hon.

JAMES L. HAWKINS

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PO BOX 362
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Telephone:

(814) 378-7160

16651-0362

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REQUEST FORM**

PLAINTIFF:

**THIBEAULT, JEAN K, ET AL.
390 PONDEROSA DRIVE
HOWARD, PA 16841**

NAME and ADDRESS

DEFENDANT:

**BEIRLAIR, JOHN C
7958 CURWENSVILLE TYRONE
OLANTA, PA 16863**

VS.

NAME and ADDRESS

Docket No.: **CV-0000041-07**
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REQUEST FORM**

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**THIBEAULT, JEAN K, ET AL.
390 PONDEROSA DRIVE
HOWARD, PA 16841**

NAME and ADDRESS

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COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

46-3-04

MDJ Name: Hon.

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Address:

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PO BOX 362
HOUTZDALE, PA**

Telephone:

(814) 378-7160

16651-0362

**COMMON PLEAS NOTIFICATION
REQUEST FORM**

PLAINTIFF:

NAME and ADDRESS

**THIBEAULT, JEAN K, ET AL.
390 PONDEROSA DRIVE
HOWARD, PA 16841**

DEFENDANT:

NAME and ADDRESS

**BEIRLAIR, JOHN C
7958 CURWENSVILLE TYRONE
OLANTA, PA 16863**

VS.

Docket No.: **CV-0000041-07**
Date Filed: **3/06/07**



Disposition Date: 4/10/07

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CIVIL-LANDLORD/TENANT APPEAL

2007-730-40

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COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

46-3-04

MDJ Name: Hon.

JAMES L. HAWKINS

Address:

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PO BOX 362
HOOTZDALE, PA**

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16651-0362

**COMMON PLEAS NOTIFICATION
REQUEST FORM**

PLAINTIFF:

**THIBEAULT, JEAN K, ET AL.
390 PONDEROSA DRIVE
HOWARD, PA 16841**

NAME and ADDRESS

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**BEIRLAIR, JOHN C
7958 CURWENSVILLE TYRONE
OLANTA, PA 16863**

VS.

NAME and ADDRESS

Docket No.: **CV-0000041-07**
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N & K

NEISWENDER & KUBISTA

ATTORNEYS AT LAW

211 1/2 NORTH SECOND STREET

CLEARFIELD, PENNSYLVANIA 16830

CERTIFIED TRUE AND CORRECT COPY

ORIGINAL

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

JEAN K. THIBEAULT and
DAWN D. BURD,

Plaintiffs,

vs.

JOHN C. BEIRLAIR,

Defendant.

: No. 07 - 730 -CD

: Type of case: Civil

: Type of pleading: Complaint

: Filed on behalf of: Plaintiffs,
: Jean K. Thibeault and
: Dawn D. Burd

: Counsel for Plaintiffs:
: Frederick M. Neiswender, Esquire
: Supreme Court No. 74456

: NEISWENDER & KUBISTA
: 211½ North Second Street
: Clearfield, Pennsylvania 16830
: (814) 765-6500

FILED
03/08/01 4CC
MAY 29 2007 Atty
William A. Shaw
Prothonotary/Clerk of Courts
Neiswender
(6K)

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

JEAN K. THIBEAULT and	:	
DAWN D. BURD,	:	
	Plaintiffs,	:
		:
vs.	:	No. 07 - 730 -CD
		:
JOHN C. BEIRLAIR,	:	
	Defendant.	:

NOTICE TO DEFEND

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

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

COURT ADMINISTRATOR
1 North Second Street
Clearfield, Pennsylvania 16830
(814) 765-2641

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

JEAN K. THIBEAULT and	:	
DAWN D. BURD,	:	
	Plaintiffs,	:
		:
vs.	:	No. 07 - 730 -CD
		:
JOHN C. BEIRLAIR,	:	
	Defendant.	:

COMPLAINT

AND NOW, come the Plaintiffs, JEAN K. THIBEAULT and DAWN D. BURD, by and through their attorneys, NEISWENDER & KUBISTA, and file this Complaint against the Defendant, JOHN C. BEIRLAIR, on a cause of action upon which the following is a statement:

1. That Plaintiff, Jean K. Thibeault [hereinafter Plaintiff Thibeault], is an adult individual residing at 390 Ponderosa Drive, Howard, Centre County, Pennsylvania 16841.
2. That Plaintiff, Dawn D. Burd [hereinafter Plaintiff Burd], is an adult individual residing at 253 Burd Lane, Bellefonte, Centre County, Pennsylvania 16823.
3. That Defendant, John C. Beirlair, is an adult individual residing at 7958 Curwensville Tyrone, Olanta, Clearfield County, Pennsylvania 16830.
4. That Plaintiff Burd holds title to a 1936 Chevrolet Sedan with a VIN #04488430501 BU.
5. That the automobile has significant monetary and sentimental value as it was previously owned by Plaintiff Burd and her late husband.

6. That upon her husband's death, prior to 2000, Plaintiff Burd gifted the automobile to Plaintiff Thibeault, her daughter, so that the automobile would remain in the family in the event of her untimely death.

7. That sometime after October of 2000, the automobile was moved onto the property of Plaintiff Thibeault and Defendant as the two were married and residing at 817 Mary Street, Houtzdale, Pennsylvania 16651.

8. That Defendant began restoring the automobile, stripping the paint, etc. while it remained in the garage of the marital residence.

9. That on or about January 17, 2003, the parties separated as Plaintiff Thibeault moved from the residence and filed a divorce complaint.

10. That within a year of their separation, Defendant moved the automobile from the garage into the driveway where it was exposed to the elements.

11. That throughout the pendency of the divorce, Plaintiff Thibeault, through counsel, attempted to make arrangements with Defendant to retrieve the automobile from the residence.

12. That Defendant would not permit Plaintiff Thibeault or Plaintiff Burd to enter the property for any reason.

13. That on February 28, 2006, a Master's Hearing was held with regard to the parties' pending divorce and the master determined that the automobile was non-marital property belonging to Plaintiff Thibeault.

14. That following the Report and Recommendation of Master, Defendant continued to deny Plaintiff Thibeault and Plaintiff Burd entry onto the property to retrieve the automobile.

15. That on or about March 2006, Plaintiffs' were able to retrieve the automobile when Defendant was forced to leave the property following foreclosure proceedings.

16. That upon inspection, Plaintiffs determined that the automobile had suffered extensive damage.

17. That the estimated cost to return Plaintiffs' automobile to the condition it was in prior to Defendant's actions is Forty-three Thousand Four Hundred Sixty Dollars (\$43,460.00).

See attached Exhibit A

18. That the Defendant, by moving the automobile into the elements as described above, directly and proximately caused the damages to Plaintiffs' automobile.

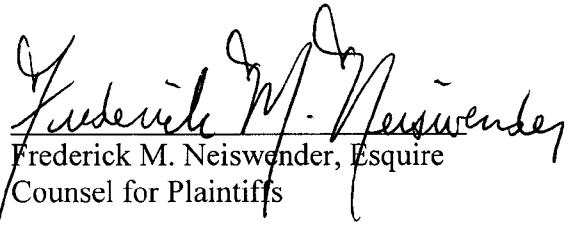
19. That Defendant, through his actions was negligent, careless and reckless with total disregard for the damages his actions may cause.

20. That at no time prior to March 2006 was either Plaintiff permitted to enter the property of the Defendant to remove the automobile or inspect it for damage.

21. That Plaintiffs are entitled to monetary damages as compensation for the damage to their property caused by the Defendant.

WHEREFORE, Plaintiffs request that your Honorable Court enter a judgment in favor of the Plaintiffs and against the Defendant in an amount in excess of Twenty Thousand Dollars (\$20,000.00) plus interest and costs of the suit.

Respectfully submitted,


Frederick M. Neiswender, Esquire
Counsel for Plaintiffs

Peterson Auto Body

Box 119 Williams Street
Ramey, Pa 16671

ESTIMATE AND REPAIR ORDER

Car Owner Jean Duxault/Dawn Baird Business Phone _____

Date 4-09-07

Address 390 Ponderosa Dr. Harvard Home Phone 814-383-2114

Insurance Co. _____ Phone _____

I.D. 36 Henry Adjuster _____

The above estimate is based on our inspection and does not cover additional parts or labor which may be required after work has started. Worn or damaged parts, not evident on first inspection, may be discovered and you will be contacted for authorization for additional work.

Parts prices subject to change without notice. This estimate is good for _____ days.

THIS WORK AUTHORIZED
BY _____ DATE _____

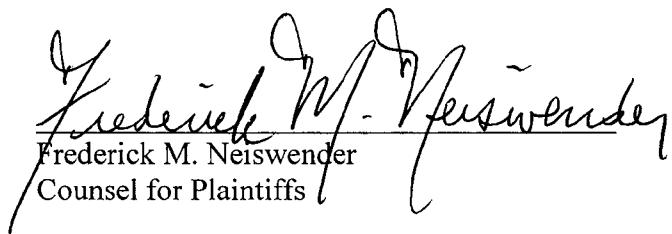
WORK ACCEPTED
BY: _____ DATE _____

_____ HRS. OF LABOR @ \$ _____ PER HR. \$ _____
Estimate Amount \$ 37500.00
Revised Estimate \$ 3500.00
Customer's O.K. by _____
PAINT MATERIALS 3500.00
SUBLET 41000.00
TAX 2460.00
ADVANCE CHARGES _____
TOTALS 43460.00
DEPOSIT \$ _____
CHGS. if not Repaired \$ _____

VERIFICATION

FREDERICK M. NEISWENDER, ESQUIRE hereby states that he is Counsel for the Plaintiffs in this action and that the statements of fact made in the foregoing Complaint are true and correct upon opinion and belief based on information provided to him by the Plaintiffs. The undersigned is verifying this Complaint on behalf of the Plaintiffs as per the Pennsylvania Rules of Civil Procedure due to the fact that the Plaintiffs reside outside the jurisdiction of this Court and time constraints do not permit their verification of the Complaint. Both the Plaintiffs and the undersigned understand the statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

Date: 5/29/2007


Frederick M. Neiswender
Counsel for Plaintiffs

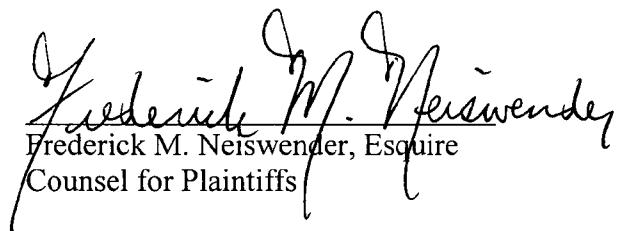
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

JEAN K. THIBEAULT and :
DAWN D. BURD, :
Plaintiffs, :
vs. : No. 07 - 730 -CD
JOHN C. BEIRLAIR, :
Defendant. :
:

CERTIFICATE OF SERVICE

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Complaint was made upon John C. Beirlair, by mailing, first class, postage prepaid, a true copy to him on May 29, 2007, at the following address:

John C. Beirlair
7958 Curwensville Tyrone
Olanta, Pennsylvania 16863


Frederick M. Neiswender, Esquire
Counsel for Plaintiffs

NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830

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

JEAN K. THIBEAULT and
DAWN D. BURD
Plaintiffs
VS.
JOHN C. BEIRLAIR
Defendant

: NO. 07-730-CD
:
Type of Case: Civil
:
:
Type of Pleading: Answer & New Matter
:
:
Filed on Behalf of: Defendant
:
:
:
Counsel of Record for this
Party:
:
Ann B. Wood, Esquire
:
Supreme Court No. 23364
:
Bell, Silberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA 16830
:
(814) 765-5537
:
:

FILED

JUN 19 2007

11:30 (C)

William A. Shaw
Prothonotary/Clerk of Courts

FIGURE 10.

1 CENT TO "

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

JEAN K. THIBEAULT and :
DAWN D. BURD :
Plaintiffs :
vs. : No. 07-730-CD
JOHN C. BEIRLAIR :
Defendant :
:

NOTICE TO PLEAD

TO: THE WITHIN NAMED PLAINTIFFS:

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

BELL, SILBERBLATT & WOOD
BY

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

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

JEAN K. THIBEAULT and :
DAWN D. BURD :
Plaintiffs :
vs. : No. 07-730-CD
JOHN C. BEIRLAIR :
Defendant :
:

ANSWER AND NEW MATTER

NOW COMES the Defendant, John C. Beirlair, by his attorneys, Bell, Silberblatt & Wood, and files his Answer to the Complaint as follows:

1. Paragraph 1 of the Complaint is admitted.
2. Paragraph 2 of the Complaint is admitted.
3. Paragraph 3 of the Complaint is denied as stated and, on the contrary, it is averred that the proper address for John C. Beirlair is 7942 Curwensville-Tyrone Highway, Olanta, Clearfield County, Pennsylvania, 16863.
4. Paragraph 4 of the Complaint is admitted.
5. Paragraph 5 of the Complaint is denied as stated and, on the contrary, it is averred that the allegations therein being within the particular knowledge of the Plaintiffs, the Defendant, after reasonable investigation, is unable to determine the truth thereof and, strict proof is demanded at trial.
6. Paragraph 6 of the Complaint is denied as stated and, on the contrary, it is averred that the Plaintiff, Dawn D. Burd, gave the subject automobile to the Plaintiff, Jean K. Thibeault, and the Defendant during the time of their marriage.

7. Paragraph 7 of the Complaint is denied as stated and, on the contrary, it is averred that the automobile was first stored by Plaintiff, Jean K. Thibeault, and the Defendant at a garage located at 7958 Curwensville-Tyrone Highway, Olanta, Pennsylvania, and was subsequently moved in 2001 to property of Plaintiff, Jean K. Thibeault, and the Defendant, at 817 Mary Street, Houtzdale, Pennsylvania 16651.

8. Paragraph 8 of the Complaint is denied as stated and, on the contrary, it is averred that Plaintiff, Jean K. Thibeault, and the Defendant during their marriage began to remodel and rehabilitate the automobile but, it is denied that these parties were restoring the automobile to its original condition.

9. Paragraph 9 of the Complaint is admitted.

10. Paragraph 10 of the Complaint is denied as stated and, on the contrary, it is averred that the Defendant moved the automobile out of the garage but covered the vehicle itself as well as protecting certain of the parts inside the vehicle and/or wrapping them in tarps to protect them from the elements.

11. Paragraph 11 of the Complaint is denied as stated and, on the contrary, it is averred that there was an issue during the divorce of the parties as to whether the subject automobile was a marital asset during which time the Defendant retained the physical possession of the property.

12. Paragraph 12 of the Complaint is denied as stated and, on the contrary, it is averred that the Plaintiff, Jean K. Thibeault, was on the property where the vehicle was stored on a number of occasions. It is further averred that Plaintiff, Dawn D. Burd, never requested access to the property nor possession of the vehicle.

13. Paragraph 13 of the Complaint is admitted in part and denied in part. It is denied that the Master's Hearing was held February 28, 2006, which was, in fact, the date the Master's Report was filed.

14. Paragraph 14 of the Complaint is denied as stated and, on the contrary it is averred that, following Report and Recommendation of the Master, the Defendant never denied the Plaintiff, Jean K. Thibeault, access to the car or the property.

15. Paragraph 15 of the Complaint is denied as stated and, on the contrary, it is averred that the Defendant had relocated from the property prior to the time of the Master's Hearing. It is further averred that the Defendant was finally forced to have a realtor, who was involved with the property, contact Plaintiff, Jean K. Thibeault, to give notice that it was necessary that she remove the vehicle from the property. It is further averred that the specific date when the Plaintiffs took possession of the property, being within the particular knowledge of the Plaintiffs, the Defendant, after reasonable investigation, is unable to determine the truth thereof and, strict proof is demanded at trial

16. Paragraph 16 of the Complaint is denied as stated and, on the contrary, it is averred that the vehicle did not suffer any type of extensive damage from the time of the parties' separation until the time that the Plaintiffs took possession of the vehicle.

17. Paragraph 17 of the Complaint is denied as stated and, on the contrary, it is averred that the estimate provided as Exhibit "A" to the Complaint does not represent the cost to restore the vehicle to the condition at the time of the parties' separation.

18. Paragraph 18 of the Complaint, being a legal conclusion, no answer is required thereto. However, in the event that an answer is required, it is denied as stated and, on the

contrary, it is averred that the Defendant, through his actions, took steps to protect the condition of the vehicle and, it is further averred that the present condition of the vehicle is due, in part, to the neglect since March of 2006 when the Plaintiffs took possession and have left it sitting exposed to the elements including those parts which were specifically covered and/or protected by the Defendant while the vehicle was in his possession.

19. Paragraph 19 of the Complaint is denied as stated and, on the contrary, it is averred that any damage to the vehicle has been caused by the neglect, carelessness and recklessness of the Plaintiffs since assuming possession of the vehicle in March of 2006.

20. Paragraph 20 of the Complaint is denied as stated and, on the contrary, it is averred that the Plaintiff, Jean K. Thibeault had numerous opportunities to view the vehicle at the property. It is further averred that Defendant, Dawn D. Burd, never requested permission to enter the property of the Defendant nor to examine the vehicle.

21. Paragraph 21 of the Complaint is denied as stated and, on the contrary, it is averred that any damage to the vehicle was caused by the actions of the Plaintiffs and not by any action of the Defendant.

WHEREFORE, Defendant would request your Honorable Court to enter judgment in favor of the Defendant and against the Plaintiffs.

NEW MATTER

NOW COMES the Defendant, John C. Beirlair, by his attorneys, Bell, Silberblatt & Wood, and sets forth his New Matter as follows:

22. Paragraphs 1 through 21 of the Complaint and Answer are incorporated herein by reference as though the same were set forth in full.

23. From the time that the automobile was placed in the garage at the home of Plaintiff, Jean K. Thibeault, and the Defendant at 817 Mary Street, Houtzdale, Pennsylvania 16651, until the departure of the Plaintiff, Jean K. Thibeault, on January 17, 2003, the parties agreed and took steps to convert the vehicle from the condition in which it was received to turn the vehicle into a street rod.

24. At the time that Plaintiff, Jean K. Thibeault, and the Defendant received the vehicle from Plaintiff, Dawn D. Burd, the automobile was not in operating condition, the motor did not run, the brakes did not work and, it had broken and/or fogged windows.

25. The Plaintiff, Jean K. Thibeault, and the Defendant agreed to the Defendant stripping the paint on certain parts of the vehicle, replacing the interior wood, changing the front suspension with a modern style suspension and replacing the motor, transmission and a number of other parts.

26. The Plaintiff, Jean K. Thibeault, and the Defendant agreed to give a number of parts which they did not feel they needed on the vehicle, including the motor, transmission and rear differential to Harold Zulick.

27. When the Defendant moved the vehicle outside of the garage in Houtzdale, he covered the vehicle with plastic, put the grill inside and protected the fenders, running boards and hood by individually wrapping those parts in tarps.

28. Since the Plaintiffs took possession of the vehicle sometime in March of 2006, the Plaintiffs have left the vehicle outside allowing the entire vehicle, including the fenders, running boards, hood and grill to be exposed to the elements.

29. As a result of the Plaintiffs' actions in leaving the vehicle and certain parts unprotected, the vehicle has experience some surface rust on certain of the body parts.

30. The Plaintiffs, through their actions, were negligent, careless and reckless with total disregard to the damages that their actions may cause.

31. At no time during the possession of the automobile by Plaintiff, Jean K. Thibeault and the Defendant, or during the time of the possession by Defendant solely did the Plaintiff, Dawn D. Burd, ever request possession of the vehicle or to enter the property where the vehicle was located to inspect the vehicle.

WHEREFORE, the Defendant would request the Honorable Court to enter judgment in favor of the Defendant and against the Plaintiffs.

BELL, SILBERBLATT & WOOD
BY:

Ann B. Wood
Ann B. Wood, Esquire
Bell, Silberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, PA
(814) 765-5537
Attorney for Defendant, John C. Beirlair

VERIFICATION

I, John C. Beirlair, state that the within statements in the foregoing Answer and New Matter are true and correct to the best of my knowledge, information and belief. This verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904, relating to unsworn falsifications to authorities.

John C. Beirlair
John C. Beirlair, Defendant

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

JEAN K. THIBEAULT and :
DAWN D. BURD :
Plaintiffs :
vs. : No. 07-730-CD
JOHN C. BEIRLAIR :
Defendant :
:

CERTIFICATE OF SERVICE

I hereby certify that a certified copy of the Answer and New Matter with reference to the above matter has been served upon the following attorney for Plaintiffs by mailing the same to him by United States First Class Mail, postage prepaid, addressed as follows on June 19, 2007, as follows:

Frederick M. Neiswender, Esquire
Neiswender & Kubista
211-1/2 North Second Street
Clearfield, PA 16830

BELL, SILBERBLATT & WOOD
By:

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

N & K

NEISWENDER & KUBISTA
ATTORNEYS AT LAW
211 1/2 NORTH SECOND STREET
CLEARFIELD, PENNSYLVANIA 16830

CERTIFIED TRUE AND CORRECT COPY
ORIGINAL

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

JEAN K. THIBEAULT and :
DAWN D. BURD, :
Plaintiffs, :
vs. : No. 07 - 730 - CD
JOHN C. BEIRLAIR, :
Defendant. :
: Type of case: Civil
: Type of pleading: Reply to New Matter
: Filed on behalf of: Plaintiffs,
: Jean K. Thibeault and Dawn D. Burd
: Counsel for Plaintiffs:
: Frederick M. Neiswender, Esquire
: Supreme Court No. 74456
: NEISWENDER & KUBISTA
: 211½ North Second Street
: Clearfield, Pennsylvania 16830
: (814) 765-6500

FILED 2CC
02-416744
OCT 05 2007
Neiswender
William A. Shaw
Prothonotary/Clerk of Courts
(6K)

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

JEAN K. THIBEAULT and :
DAWN D. BURD, :
Plaintiffs, :
vs. : No. 07 - 730 - CD
: :
JOHN C. BEIRLAIR, :
Defendant. :
:

REPLY TO NEW MATTER

NOW, come the Plaintiffs, JEAN K. THIBEAULT and DAWN D. BURD, by and through their attorneys, NEISWENDER & KUBISTA and make their Reply to Defendant's New Matter as follows:

22. No reply is required.
23. Paragraph 23 is denied. It is denied that Plaintiff Thibeault and Defendant agreed to convert the vehicle to a street rod.
24. Paragraph 24 is denied. It is denied that at the time Plaintiff Thibeault received the vehicle from Plaintiff Burd the automobile was not in operating condition, the motor did not run, the brakes did not work and it had broken and/or fogged windows.
25. Paragraph 25 is admitted in part, denied in part. It is admitted that Plaintiff Thibeault agreed to the Defendant stripping the paint on certain parts of the vehicle. It is denied that Plaintiff Thibeault and Defendant agreed to the Defendant replacing the interior wood, changing the front suspension with a modern style suspension and replacing the motor, transmission and a number of other parts.

26. Paragraph 26 is denied. It is denied that Plaintiff Thibeault and Defendant agreed to give away a number of parts including the motor, transmission and rear differential to Harold Zulick.

27. After reasonable investigation Plaintiffs are without knowledge or information sufficient to form a belief as to the truth of this averment.

28. Paragraph 28 is denied. It is denied that since Plaintiffs took possession of the vehicle in March of 2006, the vehicle was left outside allowing the entire vehicle, including the fenders, running boards, hood and grill to be exposed to the elements. Strict proof thereof is demanded at trial.

29. Paragraph 29 is denied. It is denied that as a result of Plaintiffs' actions in leaving the vehicle and certain parts unprotected, the vehicle has experienced some surface rust on certain of the body parts. To the contrary, any rust on body of the vehicle is the direct result of the Defendant's actions while he was in possession of the vehicle.

30. Paragraph 30 is denied. It is denied that Plaintiffs through their actions, were negligent, careless and reckless with total disregard to the damages that their actions may cause. To the contrary, any damage to the vehicle is the direct result of the Defendant's actions while he was in possession of the vehicle.

31. Paragraph 31 is denied. It is denied that at no time during the possession of the automobile by Plaintiff Thibeault and the Defendant, or during the time of the possession by the Defendant solely did Plaintiff Burd ever request possession of the vehicle or to enter the property where the vehicle was located to inspect the vehicle. To the contrary, Plaintiffs requested return of the vehicle on numerous occasions and were informed in no uncertain terms that they were not permitted to enter the property of the Defendant.

WHEREFORE, Plaintiffs respectfully request this Honorable Court award judgment to Plaintiffs as set forth in their Complaint.

Respectfully submitted,



Frederick M. Neiswender
Counsel for Plaintiffs

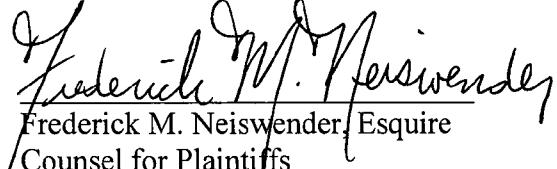
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

JEAN K. THIBEAULT and :
DAWN D. BURD, :
Plaintiffs, :
vs. : No. 07 - 730 - CD
JOHN C. BEIRLAIR, :
Defendant. :
:

CERTIFICATE OF SERVICE

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Reply to New Matter was made upon John C. Beirlair, by hand delivery, a true copy to the office of their attorney of record, Ann B. Wood, Esquire, on October 8, 2007, at the following address:

Ann B. Wood, Esquire
Bell, Silberblatt & Wood
318 East Locust Street
P.O. Box 670
Clearfield, Pennsylvania 16830


Frederick M. Neiswender, Esquire
Counsel for Plaintiffs
NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830

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

JEAN K. THIBEAULT and
DAWN D. BURD,
Plaintiffs,

vs.

JOHN C. BEIRLAIR,
Defendant.

: No. 07 - 730 - CD

: Type of case: Civil

: **Type of pleading:**
Certificate of Readiness

: Filed on behalf of: Plaintiffs,

: Counsel for Plaintiffs:
: Frederick M. Neiswender, Esquire
: Supreme Court No. 74456

: NEISWENDER & KUBISTA
: 211½ North Second Street
: Clearfield, Pennsylvania 16830
: (814) 765-6500

FILED 3cc
06/30/2008 JUN 13 2008 Atty Neiswender

William A. Shaw
Prothonotary/Clerk of Courts (610)

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

JEAN K. THIBEAULT and :
DAWN D. BURD, :
Plaintiffs, :
vs. : No. 07 - 730 - CD
: :
JOHN C. BEIRLAIR, :
Defendant. :
:

CERTIFICATE OF READINESS

TO THE PROTHONOTARY:

Please place the above captioned case on the Civil Trial List.

1. Date presented: June 13, 2008.
2. Date compliant filed: May 29, 2007.
3. Type of trial requested: Bench Trial.
4. Estimated trial time: $\frac{1}{2}$ day.
5. Amount at issue: In excess of \$20,000.00 plus interest and costs of the suit.
6. Counsel for the Defendant: Ann B. Wood, Esq., Telephone: (814) 765-5537.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.

Respectfully submitted,



Frederick M. Neiswender
Counsel for Plaintiffs

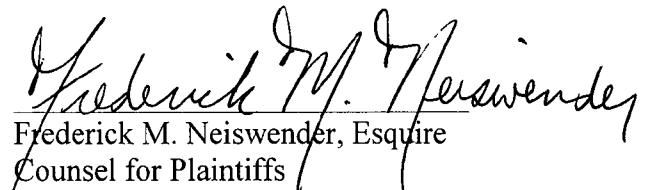
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

JEAN K. THIBEAULT and	:
DAWN D. BURD,	:
Plaintiffs,	:
vs.	:
	No. 07 - 730 - CD
JOHN C. BEIRLAIR,	:
Defendant.	:

CERTIFICATE OF SERVICE

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Certificate of Readiness was made upon John C. Beirlair, by mailing, first class, postage prepaid, a true copy to the office of his attorney of record, Ann B. Wood, Esquire, on June 13, 2008, at the following address:

Ann B. Wood, Esquire
Bell, Silberblatt & Wood
Attorneys at Law
318 East Locust Street
P.O. Box 670
Clearfield, Pennsylvania 16830


Frederick M. Neiswender, Esquire
Counsel for Plaintiffs
NEISWENDER & KUBISTA
211½ North Second Street
Clearfield, Pennsylvania 16830

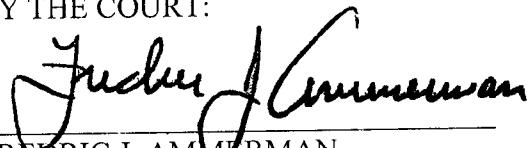
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

JEAN K. THIBEAULT and :
DAWN D. BURD :
vs. : No. 07-730-CD
JOHN C. BEIRLAIR :
:

O R D E R

AND NOW, this 17th day of June, 2008, it is the Order of the Court that a pre-trial conference in the above-captioned matter shall be and is hereby scheduled for Tuesday, July 8, 2008 at 3:00 P.M. in Judges Chambers, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

FILED 2cc Atty Neiswender
07/11/08 JUN 17 2008 610
2cc Atty Wood

William A. Shaw
Prothonotary/Clerk of Courts

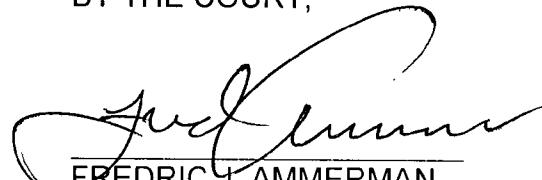
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

JA
JEAN K. THIBEAULT and DAWN D. BURD, *
Plaintiffs *
vs. * NO. 07-730-CD
JOHN C. BEIRLAIR, *
Defendant *
JA

ORDER

NOW, this 9th day of July, 2008, following pre-trial conference with counsel for the parties as set forth above, it is the ORDER of this Court that a one day Non Jury Trial be and is hereby scheduled for **August 22, 2008**, commencing at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED ^{ICC Attn:}
07-2008
JUL 09 2008 Neiswender
Wood

William A. Shaw
Prothonotary/Clerk of Courts
GK

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

JEAN K. THIBEULT and
DAWN D. BURD

-VS-

No. 07-730-CD

JOHN C. BEIRLAIR

ORDER

AND NOW, this 22nd day of August, 2008, following
civil non-jury trial, it is the ORDER of this Court that
counsel for both parties supply the Court with letter brief
within no more than thirty (30) days from this date.

BY THE COURT,

President Judge

ED
09.55 AM
AUG 26 2008

William A. Shaw
Prothonotary/Clerk of Courts
2CC Attns: Neiswender
Wood

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

JEAN K. THIBEULT and DAWN D. BURD,
Plaintiffs

vs.

*

*

*

NO. 07-730-CD

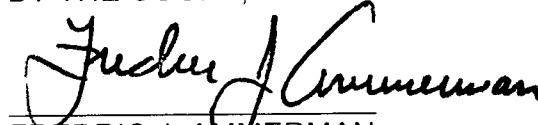
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JOHN C. BEIRLAIR,
Defendant

ORDER

NOW, this 23rd day of September, 2008, following non-jury trial and the Court's receipt of briefs, it is the finding of this Court that the Plaintiffs have not met their burden of proof in regard to showing liability on the part of the Defendant. In addition, the Court finds that the repair estimate attempted to be offered into evidence by Plaintiff is inadmissible hearsay and as such the Plaintiffs have not proven any level of damages. Accordingly, it is the ORDER of this Court that the Plaintiffs' Complaint be and is hereby DISMISSED, with prejudice.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED
03:35 PM
SEP 24 2008
1CC Attns:
Neiswender
Wood

William A. Shaw
Prothonotary/Clerk of Courts

(610)