

07-1305-CD  
Hugh Grattan al vs Michipongo & Coal Co.

LEHMAN & KASUBICK  
611 BRISBIN STREET  
HOUTZDALE, PA 16651  
(814) 378-7840

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

HUGH K. GRATTAN and : No.: 2007- 1305-CD  
SHIRLEY A. GRATTAN, his wife, : Type of Case:  
Plaintiffs : Quite Title Action  
vs. : Type of Pleading:  
MACHIONGO LAND AND : Complaint  
COAL COMPANY, : Filed on behalf of:  
Defendant : Plaintiffs  
: Counsel Of Record For  
: This Party:  
: Girard Kasubick, Esq.  
: Supreme Court #30109  
: 611 Brisbin Street  
: Hutzdale, PA 16651  
:

FILED

AUG 13 2007

011:006

William A. Shaw

Prothonotary/Clerk of Courts

1 case to Att

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

HUGH K. GRATTAN and : No.: 2007-  
SHIRLEY A. GRATTAN, his wife, :  
Plaintiffs :  
vs. : QUIET TITLE ACTION  
MACHIPONGO LAND AND :  
COAL COMPANY, :  
Defendant :  
NOTICE

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

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

Court Administrator's Office  
Clearfield County Courthouse  
One North Second Street  
Clearfield, PA 16830  
(814) 765-2641, Ext. 5982

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

HUGH K. GRATTAN and	:	No.: 2007-
SHIRLEY A. GRATTAN, his wife,	:	
Plaintiffs	:	
	:	
vs.	:	QUIET TITLE ACTION
	:	
MACHIPONGO LAND AND	:	
COAL COMPANY,	:	
Defendant	:	

**COMPLAINT**

AND NOW comes HUGH K. GRATTAN and SHIRLEY A. GRATTAN, his wife, by and through their attorney, Girard Kasubick, Esq., and files the following Complaint:

**COUNT I - PROPERTY IN FEE**

1. The Plaintiffs are Hugh K. Grattan and Shirley A. Grattan, husband and wife, who reside at 124 Hillside Drive, P.O. Box 102, Houtzdale, Pennsylvania 16651.
2. The Defendant, Machipongo Land and Coal Company, is a corporation formed under the laws of the Commonwealth of Pennsylvania with its principal place of business at 8324 Janesville Pike, P.O. Box 295, Smithmill, PA 16680.
3. The real property involved in and subject to this action is that certain piece or parcel of land situated in Woodward Township, Clearfield County,

Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin at the northwest corner of property of Hugh K. Grattan and Shirley A. Grattan, his wife, conveyed in Clearfield County Deed Book 1028, Page 360; thence along said lands of Hugh K. Grattan and Shirley A. Grattan, South Six Degrees Thirty-five Minutes Eighteen Seconds West ( $S\ 6^{\circ}\ 35'\ 18''\ W$ ), Three Hundred Ninety-four and Twelve One-Hundredths (394.12') feet to an iron pin; thence North Eighty-three Degrees Twenty-four Minutes Forty-two Seconds West ( $N\ 83^{\circ}\ 24'\ 42''\ W$ ), Forty and Ninety One-Hundredths (40.90') feet to an iron pin; thence along lands of Machipongo Land and Coal Company, North One Degree Fifty-nine Minutes Fifty-one Seconds West ( $N\ 1^{\circ}\ 59'\ 51''\ W$ ), Three Hundred Ninety-eight and Fifty-eight One-Hundredths (398.58') feet to an iron pin; thence still along lands of Machipongo Land and Coal Company, South Eighty-three Degrees Twenty-four Minutes Forty-two Seconds East ( $S\ 83^{\circ}\ 24'\ 42''\ E$ ), One Hundred and Forty One-Hundredths (100.40) feet to an iron pin and place of beginning. CONTAINING 0.639 acres.

The above described property shown on and being the shaded area on the survey map of Keller Engineers dated July 3, 2007 and attached hereto and marked Exhibit "A".

The above described real property hereinafter referred to as "Premises".

4. The Premises is a part of the real property conveyed to Machipongo Land and Coal Company by deed from Elizabeth K. Minds dated December 31, 1952 and recorded in Clearfield County Deed Book 426, Page 481.

5. The Premises is currently a part of the real property assessed to Machipongo Land and Coal Company that is assessed as Tax Map Number 130-M14-164. The property was previously a part of Tax Map Number 130-M14-56, which was divided up into other assessments in 2006.

6. The Plaintiffs are the owners of an adjacent tract of land to the Premises in Woodward Township, Clearfield County, Pennsylvania. The tract owned by Plaintiffs is known by Clearfield County Tax Map Number 130-M14-401-51 and was conveyed to Plaintiffs by deed from Mary C. Smith, et al. dated July 18, 1985 and recorded in Clearfield County Deeds and Records Book 1028, Page 360.

7. The Plaintiffs reside on Tax Map Number 130-M14-401-51 and have resided there since 1985.

8. The Plaintiff, Shirley A. Grattan, resided on Tax Map Number 130-M14-401-51 with her aunt and uncle, Rosella May and Earl May, her husband, from October 1961 until June 1963.

9. The Plaintiff, Shirley A. Grattan, had several aunts and uncles residing on Tax Map Number 130-M14-401-51 from at least 1960 after the Mays bought the property until 1985 when the Plaintiffs bought the property. Tax Map Number 130-M14-401-51 being owned by Shirley A. Grattan's family members since 1956 when the Mays bought the property.

10. The Plaintiffs and their predecessors in title have been in open, continuous, notorious, actual, exclusive, visible, distinct, and hostile possession of the Premises described in paragraph 3 in excess of twenty-

one (21) years immediately preceding the filing of this action, and thereby claim title by adverse possession.

11. The acts of adverse possession of the Plaintiffs and their predecessors in title who owned Tax Map Number 130-M14-401-51 to and on the Premises subject of this action are as follows:

a). The Plaintiffs and their predecessors in title have maintained the Premises as a lawn and mowed grass.

b). The Plaintiffs have planted a wisteria bush, crab apple tree, and other shrubs and bushes on the Premises.

c). The Plaintiffs and their predecessors in title have maintained and repaired the roadway on the Premises.

d). The Plaintiffs predecessors in title constructed and used a storage building approximately 8 feet by 10 feet along the western boundary of the Premises, which Plaintiffs have torn down, but the base or foundation of the shed remains.

e). The Plaintiffs have constructed a small stone wall along the western boundary of the Premises about 10 to 12 feet long and a foot or two high.

f). In 1987 the Plaintiffs had a ditch dug approximately three (3) feet deep and then filled it with stone and other material to act as surface drainage on the Premises to the West of the roadway to the Premises and approximately 300 feet in length.

g). Plaintiffs and their predecessor in title have maintained the Premises as their own yard and property since at least 1960.

12. This Quiet Title Action is necessary to establish the adverse possession claim of Plaintiffs to the Premises and establish record legal title of Premises to the Plaintiffs.

13. It is finally averred that this Quiet Title Action is necessary to determine the validity or discharge of any document, obligation, assessment or deed affecting any right, title, and interest in the Premises subject of this action, which may affect the rights of the Defendant.

WHEREFORE, Plaintiffs bring this action and respectfully requests the Court to decree as follows:

a). That the Plaintiffs, their heirs, executors, personal representatives and assigns are seized of an indefeasible title to the property and Premises situated in Woodward Township, Clearfield County,

Pennsylvania, described herein and that an Order and Decree be entered adjudicating that the Defendant and any of their heirs, successors, trustees, personal representatives, or assigns be forever barred from asserting any right, title, lien or interest in the within described parcel of land or Premises.

b). That such other relief be granted as may be necessary in establishing Plaintiffs title, including determinations on the validity or discharge of any documents, obligations or deeds affecting right, title, and interest in the property described herein.

c). Declaring that the Plaintiffs have adversely possessed the Premises subject of this action and adjudicating that the Defendant and any of their heirs, successors, trustees, personal representatives, or assigns be forever barred from asserting any right, title, lien or interest in the within described Premises due to the adverse possession by Plaintiffs.

d). Such other and further relief as the Court deems proper.

**COUNT II - DESCRIPTIVE RIGHT-OF-WAY**

14. Paragraphs one through thirteen of this Complaint are incorporated herein by reference thereto.

15. The Plaintiffs and their predecessors in title to Tax Map Number 130-M14-401-51 have used a roadway for access to their property across Defendant's property now known as Tax Map Number 130-M14-164 from State Route 253 to Plaintiffs property.

16. A portion of the roadway used by Plaintiffs and their predecessors in title is outlined in red on the survey map of Keller Engineers attached hereto and marked Exhibit "A". From the southern most point of the roadway shown on Exhibit "A" the roadway continues in a southerly direction until it intersects with State Route 253.

The right-of-way described hereinafter referred to as "Roadway".

17. The Roadway is approximately twenty (20) feet in width and is named Hillside Drive by government officials.

18. Plaintiffs and their predecessors in title have been in open, continuous, visible, notorious, hostile, adverse, and uninterrupted use of the Roadway easement for more than twenty-one (21) years immediately preceding the filing of this action, and thereby claim a prescriptive easement to the existing Roadway known by Hillside Drive from State Route 253 northward to Tax Map Number 130-M14-401-51.

19. The acts of the Plaintiffs and their predecessors in title to claim a prescriptive easement to the Roadway subject of this action are as follows:

a). The Plaintiffs and their predecessors in title have used the Roadway now known as Hillside Drive as their exclusive access road to Tax Map Number 130-M14-401-51 since 1956.

b). The Plaintiffs and their predecessors in title have maintained the Roadway by hauling stone and shale on numerous occasions to keep it passable.

c). The Plaintiffs in 1987 had a ditch dug approximately three (3) feet deep to the west of the Roadway, and then filled it with stone and other material to act as surface drainage to keep the Roadway from washing out and becoming muddy.

20. This Quiet Title Action is necessary to establish the Plaintiffs prescriptive easement claim to the Roadway from State Route 253 northward to Tax Map Number 130-M14-401-51 twenty (20') feet in width.

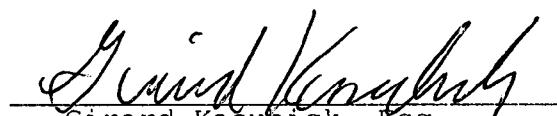
WHEREFORE, Plaintiffs bring this action and respectfully requests the Court to decree as follows:

a). That the Plaintiffs, their heirs, executors, personal representatives and assigns are seized of a prescriptive easement across the property of

Defendant situated in Woodward Township, Clearfield County, Pennsylvania, known by Tax Map Number 130-M14-164 described herein and that an Order and Decree be entered adjudicating that the Defendant and any of their heirs, successors, trustees, personal representatives, or assigns be forever barred from denying Plaintiffs, their heirs, executors, personal representatives, and assigns from using said Hillside Drive as a non-exclusive Roadway for access to Plaintiffs property.

b). Declaring that the Plaintiffs have acquired a prescriptive right for a Roadway across property of Defendant and adjudicating that the Defendant and any of their heirs, successors, trustees, personal representatives, or assigns be forever barred from denying any right, title or interest in the prescriptive easement described herein due to the rights acquired by Plaintiffs.

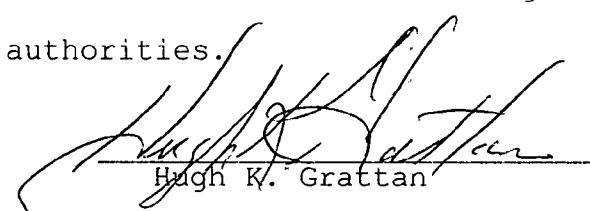
c). Such other and further relief as the Court deems proper.



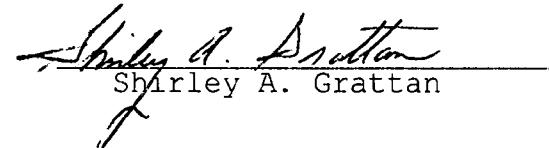
Girard Kasubick  
Girard Kasubick, Esq.  
Attorney for Plaintiffs

**VERIFICATION**

We, the undersigned, verify that the statements made in the foregoing Complaint are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.



Hugh K. Grattan



Shirley A. Grattan



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103094  
NO. 07-1305-CD  
SERVICE # 1 OF 1  
COMPLAINT ACTION TO QUIET TITLE

PLAINTIFF: HUGH K. GRATTAN and SHIRLEY A. GRATTAN  
vs.  
DEFENDANT: MACHIPONGO LAND and COAL COMPANY

SHERIFF RETURN

NOW, August 22, 2007 AT 9:30 AM SERVED THE WITHIN COMPLAINT ACTION TO QUIET TITLE ON MACHIPONGO LAND AND COAL COMPANY DEFENDANT AT 8324 JANESVILLE PIKE, SMITHMILL, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO JULIA NESTLERODE, PARTNER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT ACTION TO QUIET TITLE AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DAVIS /

FILED

JAN 11 2008  
6/11/08 (C) (S)  
William A. Shaw  
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	KASUBICK	13021	10.00
SHERIFF HAWKINS	KASUBICK	13021	45.57

Sworn to Before Me This

\_\_\_\_ Day of \_\_\_\_\_ 2008

So Answers,

*Chester A. Hawkins  
by Marilyn Harris*  
Chester A. Hawkins  
Sheriff

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

HUGH K. GRATTAN and SHIRLEY  
A. GRATTAN, his wife,  
Plaintiffs

vs.

MACHIPONGO LAND AND  
COAL COMPANY,  
Defendant

: No.: 2007-1305-CD  
: Type of Case: Quiet  
: Title Action  
: Type of Pleading:  
: Praeclipe to Settle,  
: Discontinue, and End  
: Filed on behalf of:  
: Plaintiffs  
: Counsel of Record for  
: This Party:  
: Girard Kasubick, Esq.  
: Supreme Court No. 30109  
: LEHMAN & KASUBICK  
: 611 Brisbin Street  
: Houtzdale, PA 16651  
: (814) 378-7840

FILED 3cc  
01/29/09 Atty Kasubick  
MAR 03 2009  
(60)

S William A. Shaw  
Prothonotary/Clerk of Courts

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

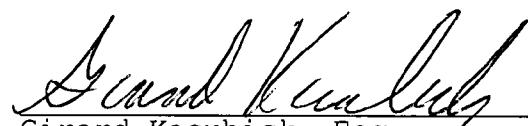
HUGH K. GRATTAN and	:	No.: 2007-1305-CD
SHIRLEY A. GRATTAN, his wife,	:	
Plaintiffs	:	
vs.	:	QUIET TITLE ACTION
MACHIPONGO LAND AND	:	
COAL COMPANY,	:	
Defendant	:	

PRAECIPE TO SETTLE AND DISCONTINUE

TO: William A. Shaw, Prothonotary:

Please mark the above-captioned case settled,  
discontinued, and ended.

Dated: March 3, 2009

  
Girard Kasubick, Esq.,  
Attorney for Plaintiffs