

07-1696-CD
Linda Kennedy vs Timothy Elgar

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

LINDA JO KENNEDY,
Plaintiff

vs.

TIMOTHY N. ELGAR,
Defendant

NO. 07-1696-CD

Type of Case: Civil - Contract

Type of Pleading: Complaint

Filed on behalf of: Plaintiff

Counsel of Record for this Party:
David P. King, Esquire
23 Beaver Drive
P. O. Box 1016
DuBois, PA 15801
(814) 371-3760

Supreme Court No. 22980

FILED
OCT 18 2007
Diff pd.
85.00

William A. Shaw
Prothonotary/Clerk of Courts
2cc Atty

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

LINDA JO KENNEDY, :
Plaintiff :
: NO. _____ C.D.
vs. :
:
TIMOTHY N. ELGAR, :
Defendant :
:

NOTICE

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

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

Court Administrator
Clearfield County Courthouse
230 East Market Street, Suite 228
Clearfield, PA 16830
(814) 765-2641 Ext. 5982

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

LINDA JO KENNEDY, :
Plaintiff :
: vs. : NO. _____ C.D.
: :
TIMOTHY N. ELGAR, :
Defendant :
:

COMPLAINT

AND NOW, comes the Plaintiff, LINDA JO KENNEDY, through her Attorney, David P. King, and for her cause of action respectfully represents as follows:

1. The Plaintiff is LINDA JO KENNEDY, residing at 1290 Mountain Run Road, Penfield, PA 15849.
2. The Defendant, TIMOTHY N. ELGAR, is an adult individual residing at 570 Home Camp Road, Rockton, PA 15856.
3. At all times relevant hereto, the parties lived together but never married.
4. However, the parties separated at the end of September, 2002.
5. However, while the parties were living together, they did, however, enter into an Agreement that should they break up, the Defendant would pay to the Plaintiff \$22,000.00. This Agreement was in writing, and a copy is attached hereto and marked as Exhibit "A".
6. This \$22,000.00 as referred to in the Agreement marked as Exhibit "A", and dated April 29, 1998, was for monies that the Plaintiff contributed to pay off the mortgage on Defendant's house, which was in fact done.

7. Subsequent to this, as stated above, the parties separated in September of 2002. At that time, they also entered into another Agreement, in writing, a copy of which is attached hereto and marked as Exhibit "B".

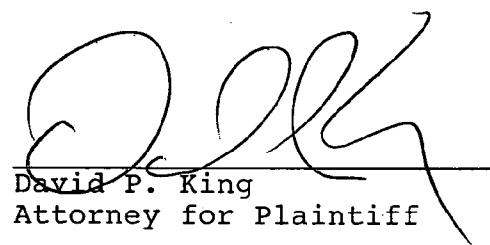
8. In that Agreement, the Defendant acknowledged his obligations in accordance with the Agreement of April 29, 1998, and the Defendant further agreed to pay certain repair bills to a motor cycle, as well as for electrical work to be done on the Plaintiff's separate home.

9. Following this, the Defendant did pay to the Plaintiff the amount of \$10,000.00 as called for in the Agreement. However, the Defendant has failed, refused and neglected to fulfill the other obligations created by Agreement and Contract in that he has not paid to the Plaintiff any of the following:

- (a) The balance of \$12,000.00;
- (b) The repair bill for the motorcycle, copy attached hereto and marked as Exhibit "C"; and
- (c) The repair bill/estimate for the electrical work, a copy of which is attached hereto and marked as Exhibit "D".

10. In addition to all of the above, in order to protect her interest, the Plaintiff paid to the Tax Claim Bureau of Clearfield County the sum of \$471.98 prior to the most recent Tax Sale as scheduled so that the real estate and property of the Defendant would not be sold. This was to the benefit of the Defendant.

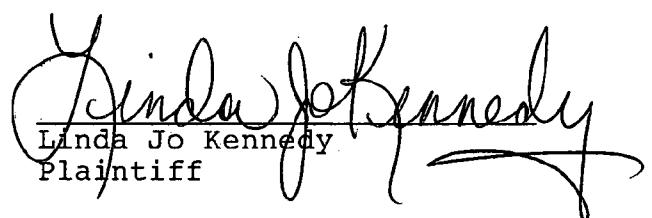
WHEREFORE, Plaintiff prays your Honorable Court to enter judgment against the Defendant, TIMOTHY N. ELGAR, in the amount of \$14,125.36, together with interest calculated from the applicable due dates on each element of damages as set forth above, as well as record costs, and she will so ever pray.



David P. King
Attorney for Plaintiff

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

Date: October 9, 2007


Linda Jo Kennedy
Plaintiff

I TIMOTHY N ELGAR OWE
TO LINDA KENNEDY \$22,000⁰⁰ (TWENTY
TWO THOUSAND DOLLARS)

SHOULD OUR RELATIONSHIP TERMINATE;
ANY UNPAID BALANCE SHALL BE
REPAYED TO LINDA KENNEDY AT THE RATE
OF \$10,000; (TEN THOUSAND DOLLARS) WITHIN
THE FIRST YEAR, WITHOUT INTEREST.

THE UNPAID BALANCE SHALL BE PAID
WITHIN THE NEXT FIVE YEARS, ALSO
WITHOUT INTEREST.

UPON MY DEATH; THE UNPAID BALANCE
OF THE \$22,000⁰⁰ SHALL BE PAID
FROM MY ESTATE.

APRIL 29, 1998
Timothy J. Elgar

Witness:

Linda C Lewis
Clearfield, PA 16830

Deeef L. Kuy
R.D #1 Box 816
GRAMPIAN, PA 16838

9-06-2002

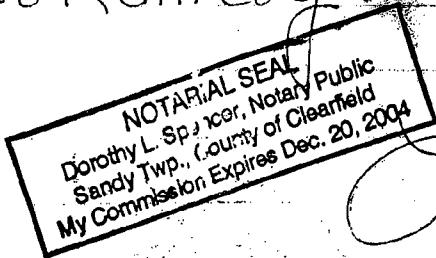
I Linda Jo Kennedy accept, MC
1968 Harley Davidson, titled # 40304 D61006 EL,
Vehicle ID# 68XLH14879 from Timothy N. Elgar
Upon immediate inspection any major
repairs needed will be the responsibility
of Timothy N. Elgar.

Plus, Timothy is to pay for
Electrical work & Labor & any materials
for job for Mountain Ban Home RL#0132A
Penfield P.A 15849. Work to be completed
By October 2002.

And honor the agreement of April 29th 1998
to pay back unpaid Balance of \$22,000.00
to: Linda Jo Kennedy or upon her
death to her Sons if not paid in full.

Timothy N. Elgar will be released
from a Common Law Divorce &
clear of responsibility of mate,
Linda Jo Kennedy.

Sworn to and subscribed before me
this 7 day of Sept 2002



D.A.Y.

Linda Jo Kennedy
Timothy N. Elgar

MICK'S

Unauthorized

Harley-Davidson Repair & Service

R.D. 1, Box 217-A • Grampian, PA 16838

Phone: (814) 236-3173

Nº 1794

Name LINDA KENNEDY Date _____
Phone _____

Address

$$\begin{array}{r} 64.367 \\ - 50 \\ \hline 233.38 \end{array}$$

Exhibit "C"



Passmore Homes

"Quality Built Dreams"

113 Sixth Avenue
Warren, PA 16365
(814) 726-1817

Proposal

Electrical For Linda Kennedy

Price includes:

Material & Labor for:

Preparation of walls for new electric runs
Installation of runs to up stairs
Installation of new receptacles
Installation of new light boxes
Installation of switches where needed
Wiring of proposed new bathroom
Separation of power to well from house
New power run to well

Total: \$1420.00

11/15/02

Thanks Shawn Passmore!

Exhibit "D"

10
FILED acc
9:12:00 AM NOV 06 2007 A/H
NOV 06 2007 Grady
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA JO KENNEDY

Plaintiff, : CIVIL ACTION- (LAW)

: No. 07-1696-C.D.

vs.

TIMOTHY N. ELGAR,

Defendant, : Type of Pleading: Preliminary
: Objection

: Filed on behalf of: Defendant

: Counsel of Record for the Party:

: David A. Grady, Esquire

: Supreme Court No. 201678

: PO Box 220

: 12 North Third Street

: Reynoldsville, Pa. 15851

: 814-653-8553

Dated: 11/6/07

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA JO KENNEDY : CIVIL ACTION- (LAW)
Plaintiff :
vs. : No. 07-1696-C.D.
: :
TIMOTHY N. ELGAR, :
Defendants, :
: :
: :

NOTICE TO PLEAD

TO: David P. King, Esquire
P.O Box 1016
23 Beaver Drive
DuBois, PA 15801
(Council for Defendants)

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE
ENCLOSED PRELIMINARY OBJECTION WITHIN TWENTY (20) DAYS FROM SERVICE
HEREOF OR A JUDGMENT MAY BE ENTERED AGAINST YOU.

Dawn M

Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA JO KENNEDY : CIVIL ACTION- (LAW)
Plaintiff, :
vs. : No. 07-1696-C.D.
TIMOTHY N. ELGAR, :
Defendants, :

DEFENDANT'S PRELIMINARY OBJECTION TO PLAINTIFF'S COMPLAINT

Defendant, TIMOTHY N. ELGAR, by and through his undersigned counsel, hereby preliminarily objects to Plaintiff's Complaint as follows:

I. Preliminary Objection raising pendency of prior action pursuant to Pa. R.C.P. 1028(a)(6).

1. On March 7, 2003 Plaintiff initiated a Quiet Title Action in this Court against the Defendant. (No. 2003-325 C.D.)
2. In said Quiet Title Action, Plaintiff alleged an ownership interest in the property, which is referred to in Paragraph 6 of the Plaintiff's current Complaint.
3. Plaintiff has now brought this action, claiming a mortgage interest in the same property.
4. Therefore the Plaintiff is barred from bringing this action to while the prior action is ongoing.

Wherefore, Plaintiff respectfully requests that this Court dismiss the Plaintiff's complaint pending a resolution of the prior action.

II.. Preliminary Objection raising legal insufficiency of Plaintiff's Complaint pursuant to Pa. R.C.P. 1028(a)(4).

4. The relief which the Plaintiff seeks is based on the April 29, 1998 agreement, Plaintiff's Exhibit "A", which states "should our relationship terminate; any unpaid balance shall be [repaid] to Linda Kenney at the rate of \$10,000.00 within the first year, without interest. The [unpaid] balance shall be payed within the *next* five years, also without interest" (emphasis added)

5. Paragraph 7 of Plaintiff's complaint states that the parties separated in September 2002..

6. The plain language meaning of the terms indicates that the loan is not due until September of 2008. September 2002 to September 2003 being the "first year" and September 2003 to September 2008 being the "next five years".

6. Therefore the loan is not in default, and the Plaintiff has no cause of action, with which to demand relief.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant its Preliminary Objection by way of demurrer and dismiss Defendants' complaint until such time as the repayment period ends.

III. Preliminary Objection raising nonjoinder of a necessary party pursuant to Pa. R.C.P. 1028(a)(5).

7. Plaintiff claims in Paragraph 10 of her complaint that Plaintiff paid the sum of \$471.98 in delinquent taxes on the Defendant's real estate.

8. Said taxes were in fact paid by Todd White.

9 Todd White is not a party to this action.

10. The Plaintiff has no standing to bring an action for the taxes on her own behalf.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant its Preliminary Objection for failure to join a necessary party and dismiss the Complaint as it refers to the tax bill

IV. Preliminary Objection raising misjoinder of a cause of action pursuant to Pa. R.C.P. 1028(a)(5).

11. On March 7, 2003 Plaintiff initiated a Quiet Title Action in this Court against the Defendant. (No. 2003-325 C.D.)

12. Said action concerned the alleged rights of the Plaintiff of the parties relationship and subsequent separation.

13. The September 6, 2002 agreement, Plaintiff's Exhibit "B" in this case and introduced as Exhibit "C" in the 2003 complaint, states that the electrical work was to be "completed by October 2002."

14. Plaintiff's Exhibit "D", the estimate for the electrical work is dated 11/15/02

15. The claim for the alleged electrical work was ripe, between the same parties and arising from the same transaction or occurrence.

16. The claim for the alleged electrical work was therefore a compulsory cause of action in the 2003 suit pursuant to Pa. R.C.P. 1020(d)(1), and is deemed waived and now barred pursuant to Pa. R.C.P. 1020(d)(4).

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant its Preliminary Objection for misjoinder of a cause of action and dismiss the Complaint as it refers to the electrical work.

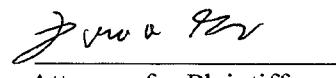
IV. Preliminary Objection raising misjoinder of a cause of action pursuant to Pa. R.C.P. 1028(a)(5).

17. The September 6, 2002 agreement, Plaintiff's Exhibit "B" in this case and introduced as Exhibit "C" in the 2003 complaint, calls for "immediate inspection" of the motorcycle.

18. The claim for the alleged motorcycle repairs was ripe, between the same parties and arising from the same transaction or occurrence.

19. The claim for the alleged motorcycle repairs was therefore a compulsory cause of action in the 2003 suit pursuant to Pa. R.C.P. 1020(d)(1), and is deemed waived and now barred pursuant to Pa. R.C.P. 1020(d)(4).

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant its Preliminary Objection for misjoinder of a cause of action and dismiss the Complaint as it refers to the motorcycle.



Attorney for Plaintiff

FILED

DEC 17 2007

~12:50h

William A. Shaw
Prothonotary/Clerk of Courts

No C/c GR

LINDA JO KENNEDY

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA JO KENNEDY
vs.

Plaintiff, : CIVIL ACTION- (LAW)
: No. 07-1696-C.D.

TIMOTHY N. ELGAR,

Defendants,

TIMOTHY N. ELGAR,
Defendants,

TO: David P. King, Esquire
P.O Box 1016
23 Beaver Drive
DuBois, PA 15801
(Council for Defendants)

Date of Notice: 12/14/2007

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE OBJECTIONS SET FORTH AGAINST YOUR COMPLAINT. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS..

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER

IF YOU CAN NOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Court Administrator
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641 ext. 5982

David A. Grady
Attorney for Plaintiff

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

LINDA JO KENNEDY,

Plaintiff,

NO. 2003-325-C.D.

vs.

NO. 2007-1696-C.D.

TIMOTHY N. ELGAR

Defendant,

SCHEDULING ORDER

AND NOW, this 25th day of January 2008, following pre-trial conference, it is the ORDER of the Court that a Civil Bench Trial shall be and is hereby scheduled in the above captioned cases for the 11th day of July 2008 at 9:00 o'clock A.M. in Courtroom #1 of the Court of Common Pleas of Clearfield County, Pennsylvania.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED
01/11/08
JAN 28 2008
to 03-325-C.D

William A. Shaw
Prothonotary/Clerk of Courts

ICC Atts: D. King
D. Grady (RK)

FILED

JAN 28 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/28/08

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney Other

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103324
NO: 07-1696-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: LINDA JO KENNEDY
vs.
DEFENDANT: TIMOTHY N. ELGAR

SHERIFF RETURN

NOW, October 23, 2007 AT 9:36 AM SERVED THE WITHIN COMPLAINT ON TIMOTHY N. ELGAR DEFENDANT AT 570 HOME CAMP ROAD, ROCKTON, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO TIMOTHY ELGAR, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING / COUDRIET

FILED

FEB 08 2008

6/2/30/

William A. Shaw
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	M.O.	576529	10.00
SHERIFF HAWKINS	M.O.	576529	31.02

Sworn to Before Me This

Day of 2008
2007

So Answers,

Chester A. Hawkins
by Marilyn Hawn
Chester A. Hawkins
Sheriff

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

LINDA JO KENNEDY,
Plaintiff

vs.

TIMOTHY N. ELGAR,
Defendant

NO. 2007-1696 C.D.

Type of Case: Civil

Type of Pleading: Praeclipe for
Settlement and Discontinuance

Filed on behalf of: Plaintiff

Counsel of Record for this Party:
David P. King, Esquire
23 Beaver Drive
P. O. Box 1016
DuBois, PA 15801
(814) 371-3760

Supreme Court No. 22980

FILED

5/11/00 am

SEP 16 2008

No CC &

Certified dismissed
to Atty. King

W.M.
William A. Shaw
Prothonotary/Clerk of Courts

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

LINDA JO KENNEDY,
Plaintiff

vs.

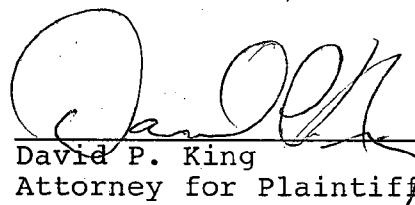
TIMOTHY N. ELGAR,
Defendant

: NO. 2007-1696 C.D.

PRAECIPE

TO THE PROTHONOTARY:

Please mark the above captioned case "SETTLED AND DISCONTINUED".



David P. King
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Linda Jo Kennedy

Vs.
Timothy N. Elgar

No. 2007-01696-CD

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 September 16, 2008, marked:

Settled and Discontinued

Record costs in the sum of \$85.00 have been paid in full by Linda Jo Kennedy-plaintiff.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 16th day of September A.D. 2008.

William A. Shaw *LM*

William A. Shaw, Prothonotary