

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  
William A. Shaw  
Prothonotary/Clerk of Courts  
Diff. pd. 85.00  
2cc Atty

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

LINDA JO KENNEDY,  
Plaintiff

vs.

TIMOTHY N. ELGAR,  
Defendant

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NO. \_\_\_\_\_ C.D.

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.

TIMOTHY N. ELGAR,  
Defendant

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NO. \_\_\_\_\_ C.D.

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".

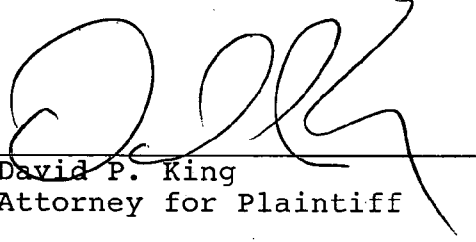
8. In that Agreement, the Defendant acknowledged his obligations in accordance with the Agreement of April 29, 1998, and the Defendant further agreed to pay certain repair bills to a motor cycle, as well as for electrical work to be done on the Plaintiff's separate home.

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.

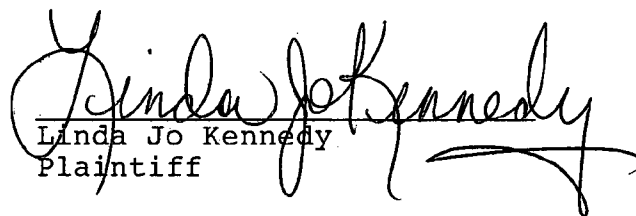
WHEREFORE, Plaintiff prays your Honorable Court to enter judgment against the Defendant, TIMOTHY N. ELGAR, in the amount of \$14,125.36, together with interest calculated from the applicable due dates on each element of damages as set forth above, as well as record costs, and she will so ever pray.



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 NELGAR OWE  
TO LINDA KENNEDY \$22,000<sup>00</sup> (TWENTY  
TWO THOUSAND DOLLARS)

SHOULD OUR RELATIONSHIP TERMINATE;  
ANY UNPAID BALANCE SHALL BE  
REPAID 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 \$22,000<sup>00</sup> SHALL BE PAID  
FROM MY ESTATE.

APRIL 29, 1998  
Timothy J. Elgar

Witness:

Linda C. Elgar  
Clearfield, PA 16830

David L. Elgar  
RD #1 Box 816  
GRANVILLE, PA 16838



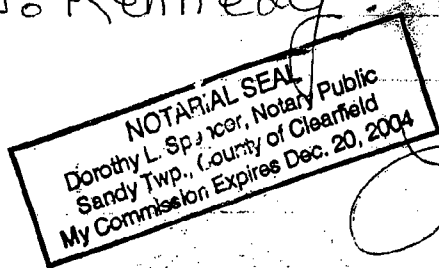
9-06-2002

I Linda Jo Kennedy accept, MC  
1968 Harley Davidson, title # 40304 DB1006 EL,  
Vehicle ID# 68XLH14879 from Timothy N. Elgar.  
Upon immediately inspection any major  
repairs needed will be the responsibility  
of Timothy N. Elgar.

Plus Timothy is to pay for  
Electrical work & Labor & only materials  
for job for Mountain Sun Home RR1 Box 324  
Penfield P.A 15849. Work to be completed  
By October 2002.

And honor the agreement of April 29<sup>th</sup> 1996  
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. H

Linda Jo Kennedy  
Timothy N. Elgar

**Unauthorized**

Nº 1794

Name LINDA KENNEDY Date \_\_\_\_\_  
Phone \_\_\_\_\_  
Address \_\_\_\_\_

QUANTITY	DESCRIPTION	AMOUNT	
	SPEEDO	65	00
	BATTERY	50	00
	R BRAKE SHOES	35	00
	Insp	18	00
CUSTOMER SIGNATURE		SUB TOTAL	173 00
MECHANIC SIGNATURE		SALES TAX	10 38
		TOTAL	183 38

64303

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

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"

CA

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

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA JO KENNEDY	:	CIVIL ACTION- (LAW)
Plaintiff,	:	
	:	No. 07-1696-C.D.
vs.	:	
	:	Type of Case: Contract
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

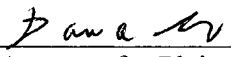
IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

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.

  
\_\_\_\_\_  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

LINDA JO KENNEDY	:	CIVIL ACTION- (LAW)
Plaintiff,	:	
	:	No. 07-1696-C.D.
vs.	:	
	:	
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 on  
going.

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 paid 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.

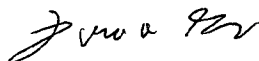
IV. Preliminary Objection raising misjoinder of a cause of action pursuant to Pa. R.C.P. 1028(a)(5).

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

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

FILED

DEC 17 2007

12:50 PM

William A. Shaw

Prothonotary/Clerk of Courts

no C/L (GR)

LINDA JO KENNEDY

Plaintiff,

CIVIL ACTION- (LAW)

No. 07-1696-C.D.

vs.

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

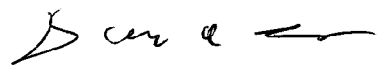
IMPORTANT NOTICE

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  
Sccond & 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,

vs.

TIMOTHY N. ELGAR

Defendant,

NO. 2003-325-C.D.

NO. 2007-1696-C.D.

**SCHEDULING ORDER**

AND NOW, this 25<sup>th</sup> 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 **11<sup>th</sup> 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:

  
FREDRICK J. AMMERMAN  
President Judge

**FILED** Original  
01/11/08 to 03-325-CD  
JAN 28 2008

William A. Shaw  
Prothonotary/Clerk of Courts

1 CC Atty's: D. King  
D. Grady @

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

☐ 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

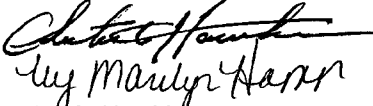
FILED  
FEB 08 2008  
6/2:30/   
William A. Shaw  
Prothonotary/Clerk of Courts

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  
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: Praecipe 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** No CC &  
m/11:00am  
SEP 16 2008  
1 Cert of Dismissal  
to Atty King

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

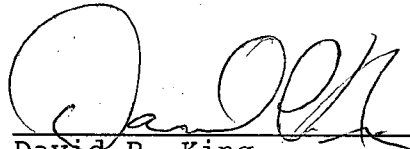
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NO. 2007-1696 C.D.

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.

No. 2007-01696-CD

Timothy N. Elgar

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-plff.

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, Prothonotary

LM