

08-1075-CD

Chd B&T vs Kephart Trucking Co al

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

FILED

JUN 11 2008

03:15/wn
William A. Shaw

Prothonotary/Clerk of Courts

CLEARFIELD BANK AND TRUST
COMPANY,

Plaintiff

No. 2008-1075-CD

Filed on behalf of : Plaintiff

Type of Pleading: Complaint in
Confession of Judgment

KEPHART TRUCKING COMPANY
a/k/a KEPHART TRUCKING CO.
Defendant

Counsel of Record For This Party:

BABST, CALLAND, CLEMENTS,
AND ZOMNIR, PC.

Alan F. Kirk, Esquire

ID#36893

328 Innovation Boulevard, Suite 200

State College, PA 16803

Phone: 814.867.8055

Fax: 814.867.8051

E-mail: akirk@bccz.com

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
Clearfield County Courthouse
Clearfield, PA 16830
(814) 765.2641

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

CLEARFIELD BANK AND TRUST COMPANY,	:	No.
	:	
Plaintiff	:	Filed on behalf of : Plaintiff
	:	
	:	Type of Pleading: Complaint in
	:	Confession of Judgment
	:	
KEPHART TRUCKING COMPANY	:	
a/k/a KEPHART TRUCKING CO.	:	<u>Counsel of Record For This Party:</u>
Defendant	:	BABST, CALLAND, CLEMENTS,
	:	AND ZOMNIR, PC.
	:	Alan F. Kirk, Esquire
	:	ID#36893
	:	328 Innovation Boulevard, Suite 200
	:	State College, PA 16803
	:	Phone: 814.867.8055
	:	Fax: 814.867.8051
	:	E-mail: akirk@bccz.com

COMPLAINT IN CONFESSION OF JUDGMENT

NOW COMES, Clearfield Bank and Trust Company, Plaintiff, by and through their attorney, Alan F. Kirk, Esquire and represents as follows:

1. Plaintiff is CLEARFIELD BANK AND TRUST COMPANY, whose address is 11 North Second Street, P.O. Box 171, Clearfield, Pennsylvania 16830.
2. Defendant is KEPHART TRUCKING COMPANY whose address is 983 Woodland Bigler Highway, P.O. Box 386, Bigler, Pennsylvania 16825-0386.
3. Attached is a true and correct copy of the original of a Promissory Note signed by Defendants, dated August 20, 2007, in the sum of Seven Hundred Forty-Eight Seven Hundred Twenty-Five and 00/100 (\$748,725.00) Dollars, on which this confession of judgment is based. A true and correct copy of the Promissory Note is attached hereto and incorporated herein by references as Exhibit "A".
4. Judgment is not being entered by confession against a natural person in connection with a consumer credit transaction.
5. Judgment on Exhibit "A" has not heretofore been entered in any jurisdiction.

6. Exhibit "A" has not been assigned.
7. Judgment may now be entered on the instrument because pursuant to the authority contained in the Warrant of Attorney, a copy of which is attached hereto, I, the undersigned, do appear for the Plaintiff and confess Judgment in favor of the Plaintiff and against Defendant in the following amount:

Amount Due	\$ 617,342.82
Interest Due @ 7.75%	\$ 11,055.15
Late Charges	\$ 8,196.30
Attorney's Commission	<u>\$ 30,867.14</u>
Total	\$ 667,461.41

8. Judgment in favor of Plaintiff and against Defendant is demanded as authorized by the Warrant of Attorney filed in connection with this Complaint.
9. The instrument is less than twenty (20) years old, and a copy is attached hereto; no application for a Court Order granting leave to enter judgment after notice is required.

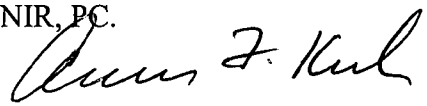
WHEREFORE, Plaintiff demands Judgment in the amount of \$667,461.41 in its favor, and against Defendant, KEPHART TRUCKING COMPANY, plus continuing interest.

Date:

6-10-08

BABST, CALLAND, CLEMENTS,
AND ZOMNIR, PC.

By:


Alan F. Kirk, Esquire
Attorney for Plaintiff

983 WOOLLAND BIGLER HWY
PO BOX 386
BIGLER PA 16825-0386

CLEARFIELD BANK & TRUST COMPANY
11 N. SECOND ST, P O BOX 171
CLEARFIELD, PA 16830

Loan Number 1075942
Date 08/20/07
Maturity Date 08/20/10
Loan Amount \$ 748,725.00
Renewal Of _____

BORROWER'S NAME AND ADDRESS

"I" includes each borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS

"You" means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of Seven hundred forty eight thousand seven hundred twenty five & no/100 Dollars \$ 748,725.00

☒ **Single Advance:** I will receive all of this principal sum on 08/20/07. No additional advances are contemplated under this note.

☐ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

☐ **Open End Credit:** You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____

☒ **Closed End Credit:** You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from AUGUST 20, 2007 at the rate of 7.75 % per year until AUGUST 20, 2010

☐ **Variable Rate:** This rate may then change as stated below.

☐ **Index Rate:** The future rate will be _____ the following index rate: _____

☐ **No Index:** The future rate will not be subject to any internal or external index. It will be entirely in your control.

☐ **Frequency and Timing:** The rate on this note may change as often as _____ A change in the interest rate will take effect _____

☐ **Limitations:** During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments: _____

☐ The amount of each scheduled payment will change.

☐ The amount of the final payment will change.

ACCUAL METHOD: Interest will be calculated on a Actual/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____

☒ **LATE CHARGE:** If a payment is made more than 15 days after it is due, I agree to pay a late charge of 5.00% of the Past Due Payment Amount subject to a \$20.00 Minimum

☐ **RETURNED CHECK CHARGE:** I agree to pay a fee of \$ _____ for each check, negotiable order of withdrawal or draft I issue in connection with this loan that is returned because it has been dishonored.

☒ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☒ are not included in the principal amount above: SEE DISBURSEMENT AUTHORIZATION OR ITEMIZATION

PAYMENTS: I agree to pay this note as follows:

☐ **Interest:** I agree to pay accrued interest _____

☐ **Principal:** I agree to pay the principal _____

☒ **Installments:** I agree to pay this note in 36 payments. The first payment will be in the amount of \$ 23,417.92 and will be due SEPTEMBER 20, 2007

A payment of \$ 23,417.92 will be due _____

_____ Monthly _____

unpaid balance of principal and interest will be due AUGUST 20, 2010 thereafter. The final payment of the entire _____

☒ **WARRANT OF AUTHORITY TO CONFESS JUDGMENT.** Upon default, in addition to all other remedies and rights available to you, by signing below Borrower irrevocably authorizes the prothonotary, clerk, or any attorney to appear in any court of record having jurisdiction over this matter and to confess judgment against me at any time without stay of execution. I waive notice, service of process and process. I agree and understand that judgment may be confessed against me for any unpaid principal, accrued interest and accrued charges due on this note, plus collection costs and reasonable attorneys' fees up to 15 percent of the judgment. The exercise of the power to confess judgment will not exhaust this warrant of authority to confess judgment, and may be done as often as you elect. I further understand that my property may be seized without prior notice to satisfy the judgment. I knowingly, intentionally, and voluntarily waive any and all constitutional rights I have to pre-deprivation notice and hearing under federal and state laws and fully understand the consequences of this waiver.

ADDITIONAL TERMS: _____

PURPOSE: The purpose of this loan is ACQUIRE 29 USED FREIGHTLINERS

☒ **SECURITY:** This note is separately secured by (describe separate documents by type and date): SECURITY AGREEMENT DATED 8/20/07
GUARANTEES DATED 8/20/07

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

KEPHART TRUCKING COMPANY

KEPHART TRUCKING COMPANY

Signature for Lender

LOUIS CYNKAR
VICE PRESIDENT

EXHIBIT

tabbles

NOTICE: Unless otherwise required by law, any notice to me shall be given by delivering it or by mailing it by first class mail addressed to me at my last known address. My current address is on page 1. I agree to inform you in writing of any change in my address. I will give any notice to you by mailing it first class to your address stated on page 1 of this agreement, or to any other address that you have designated.

DAVID J KEPHART	CLEARFIELD BANK & TRUST COMPANY	KEPHART TRUCKING COMPANY
129 HARVARD ROAD	11 N. SECOND ST, P O BOX 171	Y983 WOODLAND BIGLER HWY
PORT MATILDA, PA 16870	CLEARFIELD, PA 16830	PO BOX 386
GUARANTOR'S NAME AND ADDRESS "I" includes each guarantor above, jointly and severally.	LENDER'S NAME AND ADDRESS "You" means the Lender, its successors and assigns.	BORROWER'S NAME AND ADDRESS "Borrower" means each person above.

GUARANTY

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce you, at your option, to make loans or engage in any other transactions with borrower from time to time, I absolutely and unconditionally guarantee the full payment of the following debts (as defined herein) when due (whether at maturity or upon acceleration):

PRESENT DEBT GUARANTY

☐ I absolutely and unconditionally guarantee to you the payment and performance of the following described debt (including all renewals, extensions, refinancings and modifications) of the borrower: _____

PRESENT AND FUTURE DEBT GUARANTY

☒ I absolutely and unconditionally guarantee to you the payment and performance of each and every debt, of every type and description, that the borrower may now or at any time in the future owe you including, but not limited to, the following described debt(s): Promissory Note # 1075942 In the Amount of \$748,725.00 Dated AUGUST 20, 2007

☐ I absolutely and unconditionally guarantee to you the payment and performance of each and every debt, of every type and description, that the borrower may now or at any time in the future owe you, up to the principal amount of \$ _____ plus accrued interest, attorneys' fees and collection costs referable thereto (when permitted by law), and all other amounts agreed to be paid under all agreements evidencing the debt and securing the payment of the debt. You may, without notice, apply this guaranty to such debts of the borrower as you may select from time to time.

DEFINITIONS - As used in this agreement, the terms "I," "we," and "my" mean all persons signing this guaranty agreement, individually and jointly, and their heirs, executors, administrators and assigns.

The term "debt" means all debts, liabilities, and obligations of the borrower (including, but not limited to, all amounts agreed to be paid under the terms of any notes or agreements securing the payment of any debt, liability or obligation, overdrafts, letters of credit, guaranties, advances for taxes, insurance, repairs and storage, and all extensions, renewals, refinancings and modifications of these debts) whether now existing or created or incurred in the future, due or to become due, or absolute or contingent, except for any obligations incurred by borrower after the date of this guaranty for which the borrower meets your standard of creditworthiness based on the borrower's own assets and income without the addition of a guaranty, or to which, although you require the addition of a guaranty, the borrower chooses someone other than me to guaranty the obligation.

APPLICABLE LAW - This agreement is governed by the law of the state in which you are located. Any term of this agreement that does not comply with applicable law will not be effective if that law does not expressly or impliedly permit variations by agreement. If any part of this agreement cannot be enforced according to its terms, this fact will not affect the balance of this agreement.

REVOCAION - I agree that this is an absolute and continuing guaranty. If this guaranty is limited to the payment of a specific debt of the borrower described above, this agreement cannot be revoked and will remain in effect until the debt is paid in full. If this guaranty covers both the borrower's present and future debts, I agree that this guaranty will remain binding on me, whether or not there are any debts outstanding, until you have actually received written notice of my revocation or written notice of my death or incompetence.

Notice of revocation or notice of my death or incompetence will not effect my obligations under this guaranty with respect to any debts incurred by or for which you have made a commitment to borrower before you actually receive such notice, and all renewals, extensions, refinancings, and modifications of such debts. I agree that if any other person signing this agreement provides a notice of revocation to you, I will still be obligated under affect my obligations under this agreement.

OBLIGATIONS INDEPENDENT - I agree that I am obligated to pay according to the terms of this guaranty even if any other person has agreed to pay the borrower's debt. My obligation to pay according to the terms of this guaranty shall not be affected by the illegality, invalidity or unenforceability of any notes or agreements evidencing the debt, the violation of any applicable usury laws, forgery, or any other circumstances which make the indebtedness unenforceable against the borrower.

I will remain obligated to pay on this guaranty even if any other person who is obligated to pay the borrower's debt, including the borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law. In such situations, my obligation shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which borrower is discharged from paying or which do not otherwise accrue to borrower's indebtedness due to borrower's discharge. I will also be obligated to pay you, to the fullest extent permitted by law, any deficiency remaining after foreclosure of any mortgage or security interest securing borrower's debt, whether or not the liability of borrower or any other obligor for such deficiency is discharged by statute or judicial decision. If any payments by borrower to you are thereafter set aside, recovered, rescinded, in whole or in part, are settled by you at your discretion, or are in any way recouped or recovered from you for any reason (including, without limitation, the bankruptcy, insolvency, or reorganization of borrower or any other obligor), then I am obligated to reimburse or indemnify you for the full amount you so pay together with costs, interest, attorneys' fees and all other expenses which you incur in connection therewith. I also agree that if my liability is limited to a stated principal amount (plus other agreed charges), you may allow the borrower to incur debt in excess of the specified amount and apply to the payment of such excess any amounts you receive for payment of the debt from the borrower or any other person, any amounts resulting from any collateral, or amounts received from any other source, without affecting my obligations under this agreement.

No modification of this agreement is effective unless in writing and signed by you and me, except that you may, without notice to me and without the addition of a signed writing or my approval: (1) release any borrower or other person who may be liable for borrower's debt, (2) release or substitute any collateral, (3) fail to perfect any security interest or otherwise impair any collateral, (4) waive or impair any right you may have against any borrower or other person who may be liable for borrower's debt, (5) settle or compromise any claim against the borrower or any person who may be liable for the debt, (6) procure any additional security or persons who agree to be liable for borrower's debt, (7) delay or fail to pursue enforcement of the debt, (8) apply amounts you receive from the borrower or other persons to payment of the debt in any order you select, (9) make any election with respect to the debt provided by law or any agreement with any person liable for the debt, (10) exercise or fail to exercise any rights you have with respect to the debt, (11) extend new credit to the borrower, or (12) renew, extend, refinance or modify the borrower's debt on any terms agreed to by you and the borrower (including, but not limited to, changes in the interest rate or in the method, time, place or amount of payment) without affecting my obligation to pay under this guaranty.

WAIVER - I waive presentment, demand, protest, notice of dishonor, and notice of acceptance of this guaranty. I also waive, to the extent permitted by law, all notices, all defenses and claims that the borrower could assert, any right to require you to pursue any remedy or seek payment from any other person before seeking payment under this agreement, and all other defenses to the debt, except payment in full. You may without notice to me and without my consent, enter into agreements with the borrower from time to time for purposes of creating or continuing the borrower's debt as allowed by this guaranty. I agree that I will be liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure (or repossession) and sale of any collateral without regard to whether borrower's obligation to pay such deficiency is discharged by law. If any payments on the debt are set aside, recovered or required to be returned in the event of the insolvency, bankruptcy or reorganization of the borrower, my obligations under this agreement will continue as if such payments had never been made.

I also waive and relinquish all present and future claims, rights, and remedies against borrower or any other obligated party arising out of the creation or my performance of this guaranty. My waiver includes, but is not limited to, the right of contribution, reimbursement, indemnification, subrogation, exoneration, and any right to participate in any claim or remedy you may have against the borrower, collateral, or other party obligated for borrower's debts, whether or not such claim, remedy, or right arises in equity, or under contract, statute or common law.

REMEDIES - If I fail to keep any promise contained in this agreement or any agreement securing this agreement, you may, make this agreement and the borrower's debt immediately due and payable, you may set-off this obligation against any right I have to receive money from you (however, you may not have under state or federal law, and you may use any remedy given to you by any agreement securing this agreement. If I die, am declared incompetent, or become insolvent (either because my liabilities exceed my assets or because I am unable to pay my debts as they become due), you may make the debt immediately due and payable.

COLLECTION COSTS - Except when prohibited by law, I agree to pay the reasonable costs and expenses you incur to enforce and collect this agreement, including attorneys' fees and court costs.

SECURITY - This guaranty is ☒ unsecured ☐ secured by _____

NOTICE TO COSIGNER

You are being asked to guarantee the debts described above. If you are making a "Present and Future Debt Guaranty" as identified above, you are being asked to guarantee present as well as future debts of the borrower entered into with this lender. Think carefully before you do. If the borrower doesn't pay these debts, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of these debts if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The lender can collect these debts from you without first trying to collect from the borrower. The lender can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If these debts are ever in default, that fact may become part of your credit record.

In witness whereof, I have signed my name and affixed my seal on this _____ day of _____, and, by doing so, agree to the terms of this guaranty and acknowledge having read the Notice to Cosigner.

DAVID J KEPHART

(SEAL)

(SEAL)

(SEAL)

(SEAL)

TIMOTHY L KEPHART 105 HUMMINGBIRD ROAD MORRISDALE PA 16858 GUARANTOR'S NAME AND ADDRESS *I includes each guarantor above, jointly and severally.	CLEARFIELD BANK & TRUST COMPANY 11 N. SECOND ST, P O BOX 171 CLEARFIELD, PA 16830 LENDER'S NAME AND ADDRESS *You means the Lender, its successors and assigns.	KEPHART TRUCKING COMPANY 983 WOODLAND BIGLER HWY PO BOX 386 BIGLER PA 16825-0386 BORROWER'S NAME AND ADDRESS *Borrower means each person above.
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GUARANTY

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce you, at your option, to make loans or engage in any other transactions with borrower from time to time, I absolutely and unconditionally guarantee the full payment of the following debts (as defined herein) when due (whether at maturity or upon acceleration):

PRESENT DEBT GUARANTY

☐ I absolutely and unconditionally guarantee to you the payment and performance of the following described debt (including all renewals, extensions, refinancings and modifications) of the borrower: _____

PRESENT AND FUTURE DEBT GUARANTY

☒ I absolutely and unconditionally guarantee to you the payment and performance of each and every debt, of every type and description, that the borrower may now or at any time in the future owe you including, but not limited to, the following described debt(s): Promissory Note # 1075942 In the Amount of \$748,725.00 Dated AUGUST 20, 2007

☐ I absolutely and unconditionally guarantee to you the payment and performance of each and every debt, of every type and description, that the borrower may now or at any time in the future owe you, up to the principal amount of \$ _____ plus accrued interest, attorneys' fees and collection costs referable thereto (when permitted by law), and all other amounts agreed to be paid under all agreements evidencing the debt and securing the payment of the debt. You may, without notice, apply this guaranty to such debts of the borrower as you may select from time to time.

DEFINITIONS - As used in this agreement, the terms "I," "we," and "my" mean all persons signing this guaranty agreement, individually and jointly, and their heirs, executors, administrators and assigns.

The term "debt" means all debts, liabilities, and obligations of the borrower (including, but not limited to, all amounts agreed to be paid under the terms of any notes or agreements securing the payment of any debt, liability or obligation, overdrafts, letters of credit, guaranties, advances for taxes, insurance, repairs and storage, and all extensions, renewals, refinancings and modifications of these debts) whether now existing or created or incurred in the future, due or to become due, or absolute or contingent, except for any obligations incurred by borrower after the date of this guaranty for which the borrower meets your standard of creditworthiness based on the borrower's own assets and income without the addition of a guaranty, or to which, although you require the addition of a guaranty, the borrower chooses someone other than me to guaranty the obligation.

APPLICABLE LAW - This agreement is governed by the law of the state in which you are located. Any term of this agreement that does not comply with applicable law will not be effective if that law does not expressly or impliedly permit variations by agreement. If any part of this agreement cannot be enforced according to its terms, this fact will not affect the balance of this agreement.

REVOCACTION - I agree that this is an absolute and continuing guaranty. If this guaranty is limited to the payment of a specific debt of the borrower described above, this agreement cannot be revoked and will remain in effect until the debt is paid in full. If this guaranty covers both the borrower's present and future debts, I agree that this guaranty will remain binding on me, whether or not there are any debts outstanding, until you have actually received written notice of my revocation or written notice of my death or incompetence.

Notice of revocation or notice of my death or incompetence will not affect my obligations under this guaranty with respect to any debts incurred by or for which you have made a commitment to borrower before you actually receive such notice, and all renewals, extensions, refinancings, and modifications of such debts. I agree that if any other person signing this agreement provides a notice of revocation to you, I will still be obligated under this agreement until I provide a notice of revocation to you. If any other person signing this agreement dies or is declared incompetent, such fact will not affect my obligations under this agreement.

OBLIGATIONS INDEPENDENT - I agree that I am obligated to pay according to the terms of this guaranty even if any other person has agreed to pay the borrower's debt. My obligation to pay according to the terms of this guaranty shall not be affected by the illegality, invalidity or unenforceability of any notes or agreements evidencing the debt, the violation of any applicable usury laws, forgery, or any other circumstances which make the indebtedness unenforceable against the borrower.

I will remain obligated to pay on this guaranty even if any other person who is obligated to pay the borrower's debt, including the borrower, has such obligation discharged in bankruptcy, foreclosure, or otherwise discharged by law. In such situations, my obligation shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which borrower is discharged from paying or which do not otherwise accrue to borrower's indebtedness due to borrower's discharge. I will also be obligated to pay you, to the fullest extent permitted by law, any deficiency remaining after foreclosure of any mortgage or security interest securing borrower's debt, whether or not the liability of borrower or any other obligor for such deficiency is discharged by statute or judicial decision. If any payments by borrower to you are thereafter set aside, recovered, rescinded, in whole or in part, are settled by you at your discretion, or are in any way recouped or recovered from you for any reason (including, without limitation, the bankruptcy, insolvency, or reorganization of borrower or any other obligor), then I am obligated to reimburse or indemnify you for the full amount you so pay together with costs, interest, attorneys' fees and all other expenses which you incur in connection therewith. I also agree that if my liability is limited to a stated principal amount (plus other agreed charges), you may allow the borrower to incur debt in excess of the specified amount and apply to the payment of such excess any amounts you receive for payment of the debt from the borrower or any other person, any amounts resulting from any collateral, or amounts received from any other source, without affecting my obligations under this agreement.

No modification of this agreement is effective unless in writing and signed by you and me, except that you may, without notice to me and without the addition of a signed writing or my approval: (1) release any borrower or other person who may be liable for borrower's debt, (2) release or substitute any collateral, (3) fail to perfect any security interest or otherwise impair any collateral, (4) waive or impair any right you may have against any borrower or other person who may be liable for borrower's debt, (5) settle or compromise any claim against the borrower or any person who may be liable for the borrower's debt, (6) procure any additional security or persons who agree to be liable for borrower's debt, (7) delay or fail to pursue enforcement of the debt, (8) apply amounts you receive from the borrower or other persons to payment of the debt in any order you select, (9) make any election with respect to the debt provided by law or any agreement with any person liable for the debt, (10) exercise or fail to exercise any rights you have with respect to the debt, (11) extend new credit to the borrower, or (12) renew, extend, refinance or modify the borrower's debt on any terms agreed to by you and the borrower (including, but not limited to, changes in the interest rate or in the method, time, place or amount of payment) without affecting my obligation to pay under this guaranty.

WAIVER - I waive presentment, demand, protest, notice of dishonor, and notice of acceptance of this guaranty. I also waive, to the extent permitted by law, all notices, all defenses and claims that the borrower could assert, any right to require you to pursue any remedy or seek payment from any other person before seeking payment under this agreement, and all other defenses to the debt, except payment in full. You may without notice to me and without my consent, enter into agreements with the borrower from time to time for purposes of creating or continuing the borrower's debt as allowed by this guaranty. I agree that I will be liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure (or repossession) and sale of any collateral without regard to whether borrower's obligation to pay such deficiency is discharged by law. If any payments on the debt are set aside, recovered or required to be returned in the event of the insolvency, bankruptcy or reorganization of the borrower, my obligations under this agreement will continue as if such payments had never been made.

I also waive and relinquish all present and future claims, rights, and remedies against borrower or any other obligated party arising out of the creation or my performance of this guaranty. My waiver includes, but is not limited to, the right of contribution, reimbursement, indemnification, subrogation, exoneration, and any right to participate in any claim or remedy you may have against the borrower, collateral, or other party obligated for borrower's debts, whether or not such claim, remedy, or right arises in equity, or under contract, statute or common law.

REMEDIES - If I fail to keep any promise contained in this agreement or any agreement securing this agreement, you may, make this agreement and the borrower's debt immediately due and payable, you may set-off this obligation against any right I have to receive money from you (however, you may not have under state or federal law, and you may use any remedy given to you by any agreement securing this agreement. If I die, am declared incompetent, or become insolvent (either because my liabilities exceed my assets or because I am unable to pay my debts as they become due), you may make the debt immediately due and payable.

COLLECTION COSTS - Except when prohibited by law, I agree to pay the reasonable costs and expenses you incur to enforce and collect this agreement, including attorneys' fees and court costs.

SECURITY - This guaranty is ☒ unsecured ☐ secured by _____

NOTICE TO COSIGNER

You are being asked to guarantee the debts described above. If you are making a "Present and Future Debt Guaranty" as identified above, you are being asked to guarantee present as well as future debts of the borrower entered into with this lender. Think carefully before you do. If the borrower doesn't pay these debts, you will have to be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of these debts if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The lender can collect these debts from you without first trying to collect from the borrower. The lender can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If these debts are ever in default, that fact may become part of your credit record.

In witness whereof, I have signed my name and affixed my seal on this _____ day of _____, and, by doing so, agree to the terms of this guaranty and acknowledge having read the Notice to Cosigner.

TIMOTHY L KEPHART (SEAL)

(SEAL)

(SEAL)

(SEAL)

(SEAL)

VERIFICATION

I, LORI A. KURTZ, have read the foregoing and hereby affirm that it is true and correct to the best of my personal knowledge, information and belief. This Verification and statement is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities. I verify that all the statements made in the foregoing are true and correct and that false statements may subject me to the penalties of 18 Pa. C.S. §4904.

CLEARFIELD BANK AND TRUST COMPANY

By: 
Lori A. Kurtz, Assistant Vice President and
Collection Manager

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

CLEARFIELD BANK AND TRUST COMPANY,	:	No.
Plaintiff	:	Filed on behalf of : Plaintiff
	:	Type of Pleading: Confession of Judgment
KEPHART TRUCKING COMPANY	:	
a/k/a KEPHART TRUCKING CO.	:	<u>Counsel of Record For This Party:</u>
Defendant	:	BABST, CALLAND, CLEMENTS, AND ZOMNIR, PC.
	:	Alan F. Kirk, Esquire
	:	ID#36893
	:	328 Innovation Boulevard, Suite 200
	:	State College, PA 16803
	:	Phone: 814.867.8055
	:	Fax: 814.867.8051
	:	E-mail: akirk@bccz.com

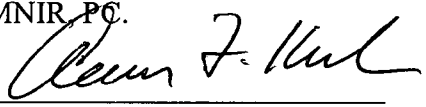
CONFESSION OF JUDGMENT

Pursuant to the authority contained in the warrant of attorney, a copy of which is attached to the Complaint filed in this action, I appear for the Defendant, KEPHART TRUCKING COMPANY and confess judgment in favor of CLEARFIELD BANK AND TRUST COMPANY and against KEPHART TRUCKING COMPANY as follows:

Principal Sum	\$617,342.82
Interest	\$ 11,055.15
Late Charges	\$ 8,196.30
Attorneys' fees	<u>\$ 30,867.14</u>
Total	\$667,461.41

Date: 6-10-08

BABST, CALLAND, CLEMENTS,
AND ZOMNIR, PC.

By: 
Alan F. Kirk, Esquire
Attorney for Plaintiff

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

CLEARFIELD BANK AND TRUST
COMPANY,

Plaintiff

No.

Filed on behalf of : Plaintiff

KEPHART TRUCKING COMPANY
a/k/a KEPHART TRUCKING CO.
Defendant

Counsel of Record For This Party:
BABST, CALLAND, CLEMENTS,
AND ZOMNIR, PC.
Alan F. Kirk, Esquire
ID#36893
328 Innovation Boulevard, Suite 200
State College, PA 16803
Phone: 814.867.8055
Fax: 814.867.8051
E-mail: akirk@bccz.com

PLAINTIFF'S AFFIDAVIT

JUDGMENT IS NOT BEING ENTERED BY CONFESSION AGAINST A NATURAL
PERSON IN CONNECTION WITH A CONSUMER CREDIT TRANSACTION.

Affirmed to and sworn before me this 10th
day of June, 2008.

[Signature]
Notary Public

BABST, CALLAND, CLEMENTS AND
ZOMNIR, PC.

[Signature]
Alan F. Kirk, Esquire, Counsel for
Plaintiff

My commission expires:

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal
Michele M. Steudler, Notary Public
College Twp., Centre County
My Commission Expires Apr. 7, 2010

Member, Pennsylvania Association of Notaries

I/We further certify that the precise residence of the:

Plaintiff is 11 North Second Street, P.O. Box 171, Clearfield, PA 16830.

Defendant is 983 Woodland Bigler Hwy, P.O. Box 386, Bigler, PA 16825-0386.

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

CLEARFIELD BANK AND TRUST
COMPANY,

Plaintiff

No. 2008-1075-CD

Filed on behalf of : Plaintiff

KEPHART TRUCKING COMPANY
a/k/a KEPHART TRUCKING CO.
Defendant

Counsel of Record For This Party:

BABST, CALLAND, CLEMENTS,
AND ZOMNIR, PC.

Alan F. Kirk, Esquire

ID#36893

328 Innovation Boulevard, Suite 200

State College, PA 16803

Phone: 814.867.8055

Fax: 814.867.8051

E-mail: akirk@bccz.com

NOTICE OF ENTRY OF JUDGMENT, ORDER, OR DECREE

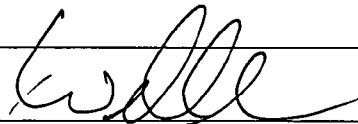
PURSUANT TO REQUIREMENTS OF PENNSYLVANIA CIVIL RULE #236, YOU ARE
NOTIFIED THAT THERE WAS ENTERED IN THE OFFICE OF THE PROTHONOTARY
TODAY, IN THE ABOVE CAPTIONED CASE:

X Judgment of \$ 667,461.41 for Plaintiff, CLEARFIELD BANK AND TRUST
COMPANY and against Defendant, KEPHART TRUCKING COMPANY

___ Judgment for Defendant(s) and against Plaintiff

___ Order or decree in favor of ___

Dated: JUNE 11, 2008



Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NO: 08-1075-CD

CLEARFIELD BANK AND TRUST COMPANY

vs

SERVICE # 1 OF 1

KEPHART TRUCKING COMPANY aka KEPHART TRUCKING CO.

COMPLAINT IN CONFESSION OF JUDGMENT

SERVE BY: 07/11/2008

HEARING:

PAGE: 104270

DEFENDANT: KEPHART TRUCKING COMPANY aka KEPHART TRUCKING CO.

ADDRESS: 983 WOODLAND BIGLER HWY, PO BOX 386
BIGLER, PA 16825

ALTERNATE ADDRESS

SERVE AND LEAVE WITH: DEFENDANT/PIC

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS:

VACANT

OCCUPIED

ATTEMPTS

FILED

JUN 16 2008

012:45 (e) (GR)
William A. Shaw
Prothonotary/Clerk of Courts

SHERIFF'S RETURN

NOW 16 JUNE 2008 AT 9:40 AM/PM SERVED THE WITHIN

COMPLAINT IN CONFESSION OF JUDGMENT ON KEPHART TRUCKING COMPANY aka KEPHART TRUCKING CO., DEFENDANT

BY HANDING TO DAVID KEPHART, U P

A TRUE AND ATTESTED COPY OF THE ORIGINAL DOCUMENT AND MADE KNOW TO HIM / HER THE CONTENTS THEREOF.

ADDRESS SERVED 983 WOODLAND Bigler Hwy

NOW _____ AT _____ AM / PM POSTED THE WITHIN

COMPLAINT IN CONFESSION OF JUDGMENT FOR KEPHART TRUCKING COMPANY aka KEPHART TRUCKING CO.

AT (ADDRESS) _____

NOW _____ AT _____ AM / PM AFTER DILIGENT SEARCH IN MY BAILIWICK,

I MAKE RETURN OF NOT FOUND AS TO KEPHART TRUCKING COMPANY aka KEPHART TRUCKING CO.

REASON UNABLE TO LOCATE _____

SWORN TO BEFORE ME THIS

_____ DAY OF _____ 2008

So Answers: CHESTER A. HAWKINS, SHERIFF

BY:

Deputy Signature

Print Deputy Name

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

CLEARFIELD BANK AND TRUST
COMPANY,
PLAINTIFF

KEPHART TRUCKING COMPANY
a/k/a KEPHART TRUCKING CO.
DEFENDANT

NO. 2008-1075-CD

Filed On Behalf Of: Plaintiff

Type of Pleading: Praecipe

Counsel Of Record For This Party:

BABST, CALLAND, CLEMENTS,
AND ZOMNIR, P.C.

Alan F. Kirk, Esquire

ID#36893

330 Innovation Boulevard, Suite 200

State College, PA 16803

Phone: 814.867.8055

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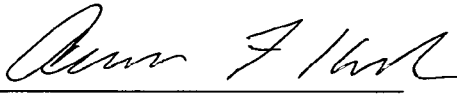
PRAECIPE

Please withdraw the Confession of Judgment in the above matter.

Date: **July 3, 2008**

Respectfully submitted,

BABST, CALLAND, CLEMENTS, AND ZOMNIR, P.C.

By 

Alan F. Kirk, Esquire
Counsel for Plaintiff

FILED No CC
m12:09/01 Amy Kirk
JUL 07 2008 pd. \$7.00

William A. Shaw
Prothonotary/Clerk of Courts

(612)

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

CLEARFIELD BANK AND TRUST
COMPANY,
PLAINTIFF

NO. 2008-1075-CD

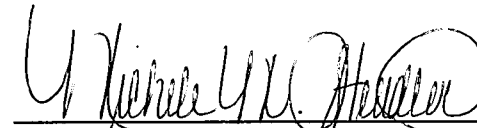
KEPHART TRUCKING COMPANY
a/k/a KEPHART TRUCKING CO.
DEFENDANT

Counsel Of Record For This Party:
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AND ZOMNIR, P.C.
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Phone: 814.867.8055
Fax: 814.867.8051
E-mail: akirk@bccz.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Praecipe was
served via First Class U.S.Mail, this 3rd day of **July 2008**, upon the following:

***Kephart Trucking Company
a/k/a Kephart Trucking Co.
983 Woodland Bigler Highway
P.O. Box 386
Bigler, PA 16825-0386***



Michele M. Steudler, Paralegal
to Alan F. Kirk, Esquire
330 Innovation Boulevard, Third Floor
State College, PA 16803

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 104270
NO: 08-1075-CD
SERVICES 1
COMPLAINT IN CONFESSION OF JUDGMENT

PLAINTIFF: CLEARFIELD BANK AND TRUST COMPANY

vs.

DEFENDANT: KEPHART TRUCKING COMPANY aka KEPHART TRUCKING CO.

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	BCCZ	2542	10.00
SHERIFF HAWKINS	BCCZ	2542	26.50

FILED
013:0364
SEP 29 2008
William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before Me This

_____ Day of _____ 2008

So Answers,



Chester A. Hawkins
Sheriff