

08-1222-CD

Jacqueline Schoch vs PennDot al

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

JACQUELINE L. SCHOCH, and
THERON G. NOBLE,
adult individuals;

PLAINTIFFS,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

Type of Pleading:

CIVIL COMPLAINT

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED

01:50 PM
JUL 02 2008

William A. Shaw
Prothonotary/Clerk of Courts

lcc
Atty Noble

Atty pd. \$95.00

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

JACQUELINE ~~B.~~ SCHOCH, and
THERON G. NOBLE,
adult individualS;

PLAINTIFFS,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08-_____-CD

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIM 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 CLAIM IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF(S). 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 AN ATTORNEY, OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
c/o Clearfield County Courthouse
2nd and Market Streets
Clearfield, PA 16830
(814)-765-2641

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

JACQUELINE L. SCHOCH, and)	
Theron G. Noble,)	
adult individuals;)	
)	
PLAINTIFFS,)	
)	
v.)	No. 08-_____-CD
)	
PENNSYLVANIA DEPARTMENT OF)	
TRANSPORTATION (PennDOT), and)	
FRANCIS J. PALO, INC., a)	
Pennsylvania Corporation,)	
)	
DEFENDANTS.)	

CIVIL COMPLAINT

NOW COMES, Jacqueline L. Schoch, by and through her counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, and Theron G. Noble, individually, pro se, who avers as follows in support of Plaintiff's CIVIL COMPLAINT:

The Parties

1. First Plaintiff is Jacqueline L. Schoch, hereinafter "Schoch", an adult individual, who does, and at all relevant times did reside at 908 South Brady Street, Sandy Township, Clearfield County, Pennsylvania 15801.
2. Second Plaintiff is Theron G. Noble, hereinafter "Noble", an adult individual, who does reside at 912 South Brady Street, Sandy Township, Clearfield County, Pennsylvania 15801.
3. First Defendant is Pennsylvania Department of Transportation, hereinafter "PennDOT", an agency of the Commonwealth charged with the responsibility to build

and maintain the Commonwealth's highway system, with principal office located at 1101 South Front Street, Harrisburg, Dauphin County, Pennsylvania 17104-2516, and with a regional office located at 1924 Daisy Street Extension, Clearfield, Clearfield County, Pennsylvania 16830.

4. Second Defendant is Francis J. Palo, Inc., hereinafter "Palo", upon information and belief, a duly formed and existing Pennsylvania Corporation with principal office located at 309 South Fourth Ave., Clarion, Clarion County, Pennsylvania 16214.

Background

5. That Defendant PennDOT decided to replace a bridge located on State Route 219 which connects the City of DuBois and Sandy Township, also known as the DuBois/Sandy Bridge, also being a portion of South Brady Street.

6. That Defendant PennDOT contracted with Defendant Palo to perform all or certain functions of this project, known by at least Defendant Palo as project "SR 219 (A03/N06/228), City of DuBois, Clearfield Co.", hereinafter "the Brady Street Bridge Project".

7. That Defendant Palo acted as, and was in fact, the agent for PennDOT concerning the Brady Street Bridge Project from December 20, 2002 through December 15, 2003.

8. That Plaintiff Schoch's property, consisting of her home and land, is located within a few blocks of the "Brady Street Bridge".

9. That Plaintiff Noble's property, also consisting of his home and land, is adjacent to the Schoch property, immediately to the south.

10. That Noble acquired this property in August, 2007.

11. That Noble's predecessor in interest was Donald Cox, et.ux., hereinafter "Cox".
12. That the Schoch/Noble property is separated by a private road, which is an "L" shape, providing ingress and egress to their properties connecting from Maloney Street and Brady Streets.
13. That the land of the private road is owned by Schoch with Noble having an easement for ingress and egress.
14. That prior to the Brady Street Bridge Project, representatives of PennDOT met with Plaintiff Schoch for the purposes of gaining her permission concerning work which would need to be done for the overall widening of South Brady Street in the vicinity of her home, which would constitute a partial taking, destruction and inconvenience to Plaintiff Schoch and to her property.
15. That Plaintiff Schoch consented to PennDOT's proposal as to the work needed to be done concerning the "front" of her property, being that portion which faces South Brady Street, with the work consisting of building of a retention wall, removal of certain trees and stairs, for the purpose of widening South Brady Street by establishing a third lane.
16. That upon information and belief Defendant PennDOT and Cox, et ux., had similar arrangements.
17. That as the aforementioned Brady Street Bridge Project, also now consisting of the widening of Brady Street in the vicinity of the Schoch/Cox properties commenced, it became necessary to move the existing water line from the easterly side of Brady Street to the westerly side and also the water line into the then Cox home.
18. That, upon information and belief, Cox insisted and Defendants PennDOT and Palo agreed to place, and did in fact so place the Cox water line such that it originates on

South Brady Street, go underneath the entranceway on the aforementioned private road, travel under said private road a distance of about 30 - 40 feet, and then turn into the Cox, now Noble home.

19. That Plaintiff Schoch never agreed to the placement of the Cox water line underneath her property nor did Cox ever have any legal right to have his water line placed underneath the Schoch property.

20. That despite Plaintiff Schoch asserting while this work on the water line was ongoing that the same was her property and she did not consent to its placement on her property, Defendants PennDOT and Palo continued to and did place the water line as aforementioned.

21. That the area about the Schoch and Noble/Cox properties, South Brady Street, Maloney Road and private road is significantly hilly.

22. That as part of the placement of the Cox water line, the entranceway to the private road from and to South Brady Street (as compared with from and to Maloney Road) was destroyed and needed to be replaced.

23. That prior to the destruction and replacement of the South Brady Street entranceway to the private road, the same was in good order and repair, made out of bricks and contained a safe, gradual slope.

24. That after Defendants PennDOT and Palo destroyed and replaced the South Brady Street entranceway, during the spring of 2003, the same is now dangerous in that the slope immediately before South Brady Street is significant, especially when one considers wet and/or winter conditions.

25. That upon information and belief, the slope of said entranceway does not conform to established standards concerning roadways.

26. That Defendants in order to complete the Cox water line placement, and ancillary tasks, used the private road for their heavy equipment and made numerous trips up and down the private road.

27. That as a result of the defendants heavy equipment traversing on the private road, it deteriorated and/or destroyed the same such that it no longer has a smooth surface and one side is lower than the other.

28. That despite Plaintiff Schoch's objections while this work was on going, and despite her concerns, Defendants continued on as aforementioned and assured Plaintiff Schoch that once she was able to prove her ownership of the private road, the situation would be rectified.

29. That on March 25, 2005, in the case of Plaintiff Schoch versus Donald W. Cox, et.ux., filed in Clearfield County Court of Common Pleas at 04-645-CD, it was determined that Plaintiff Schoch did in fact own the private road. A true and correct copy of such ORDER is attached hereto as Exhibit "A" (along with a June 23, 2005 ORDER amending the same).

30. That Plaintiff Schoch did provide notice to Defendant PennDOT of the same, who for a period of time acted as if it would rectify the situation but then stopped so acting in the winter of 2005.

31. That with the passage of time, and as water from rain and snow flow down the private road, it has caused more erosion of the private road, being the southerly side of private road (or right side as one travels towards South Brady Street) and has diverted the

water to flow unto the property of Plaintiff Noble, into a parking area and with significant water fall, into his basement.

32. That the flow of water unto the property of Plaintiff Noble's property, caused the need to have work performed so that the water would not flow unto his property or into his home, at an approximate cost of \$8,000.

33. That to eliminate the unsafe and dangerous condition of the significantly sloped entranceway from the private road onto South Brady Street, the same will need to be replaced, at a cost to be determined at time of trial, but upon information and belief to be in excess of \$20,000.

34. That to eliminate and correct the private road such that it is smooth and water does not cause further erosion, to restore it to the same or similar condition prior to Defendants assaults on the same, the same will need to be repaired at a cost to be determined at time of trial, but upon information and belief to be in excess of \$20,000.

35. That the liability of defendants is joint and several.

Count I: Schoch v. PennDOT and Palo;
Trespass

36. That the averments of paragraphs 1 - 35, inclusive, are hereby incorporated as if again fully set forth at length.

37. That Defendants did not have permission nor any legal right to be on the property of Plaintiff Schoch for the purpose of placement of the Cox waterline, to destroy and replace the existing entranceway, nor to cause damage to the private road.

38. That the defendants trespassed upon Plaintiff's Schoch's property, were informed of

their trespass, and yet continued to trespass and do as they pleased.

39. That as a direct and proximate result of the Defendants' trespass, Plaintiff Schoch suffered damages consisting of the need to have the entranceway replaced so that it is safe and in conformity to safety regulations for appropriate slope; and to have the private road restored to its condition prior to the damage inflicted upon it by Defendants.

40. That the defendants acted intentionally in their aforementioned conduct, despite having been put on notice of Plaintiff Schoch's ownership interest, such that they acted with malice, wanton and/or recklessness such that they should be also ordered to pay punitive damages, in amount to be determined.

WHEREFORE, Plaintiff Schoch requests that JUDGMENT be entered in her favor and against each Defendant, jointly and severally, in amount to be determined but in excess of Twenty Thousand Dollars (\$20,000), plus interest, costs and punitive damages.

Count II: Schoch v. PennDOT & Palo;
Breach of Contract
(in the alternative)

41. That the averments of paragraphs 1 - 40, inclusive, are hereby incorporated as if again fully set forth at length.

42. That in the event it is determined that Defendants had either an express or implied contractual right to be on the property of Plaintiff Schoch, than Defendants still had an either an express or implied obligation to (i) make the entranceway safe and within reasonable standards regarding its slope; and (ii) not destroy and/or cause the deterioration of the private road.

WHEREFORE, Plaintiff Schoch requests that JUDGMENT be entered in her favor and against each Defendant, jointly and severally, in amount to be determined but in excess of Twenty Thousand Dollars (\$20,000), plus interest and costs.

Count III: Schoch v. PennDOT & Palo;
Negligence

43. That the averments of paragraphs 1 - 42, inclusive, are hereby incorporated as if again fully set forth at length.

44. That Defendants had duties (i) to make the entranceway reasonably safe regarding its slope; and (ii) not cause damage to the private road.

45. That the Defendants were negligent in their aforementioned duties in that:

- (a) The slope of the entranceway from and onto South Brady Street to the private road is unsafe;
- (b) The slope of the entranceway from and onto South Brady Street to the private road does not conform to established regulations;
- (c) The slope of the entranceway from and onto South Brady Street to the private road does not conform to industry standards;
- (d) ran heavy equipment up and down the private road which was not designed for the weight of such heavy equipment nor the frequency of such weight; and
- (e) failed to correct the damage caused by the defendants heavy equipment traversing the private road, thereby causing further damage.

46. That as a proximate result of the defendants' negligence, Plaintiff Schoch has suffered damages which include the need to have the entranceway replaced and/or repaired and to have the private road to be repaired, in an amount to be determined at

time of trial, but upon information and belief, to be in excess of Twenty Thousand (\$20,000) dollars.

WHEREFORE, Plaintiff Schoch requests that JUDGMENT be entered in her favor and against each Defendant, jointly and severally, in amount to be determined but in excess of Twenty Thousand Dollars (\$20,000), plus interest and costs.

Count IV: Noble v. PennDOT & Palo;
Trespass

47. That the averments of paragraphs 1 - 46, inclusive, are hereby incorporated as if again fully set forth at length.

48. That the defendants caused water to flow onto the property now belonging to Noble, causing damage to it and the home located thereon.

49. That the defendants had no legal right to redirect the flow of water onto Noble's property or into his home.

50. That Noble has suffered damages, in the amount of Eight Thousand Dollars (\$8,000), to remediate the problems associated with water flow caused by the defendants as aforementioned.

WHEREFORE, Plaintiff Noble requests that JUDGMENT be entered in his favor and against each Defendant, jointly and severally, in the amount of Eight Thousand Dollars (\$8,000), plus interest and costs.

Count V: Noble v. PennDOT & Palo;
Negligence

51. That the averments of paragraphs 1 - 50, inclusive, are hereby incorporated as if

again fully set forth at length.

52. That the defendants owed a duty to Noble, and his predecessors in interest, Donald Cox, et. ux., to not cause damage to the property located at 912 South Brady Street, Sandy Township, Clearfield County, Pennsylvania while they performed their work on the "Brady Street Bridge Project".

53. That the Defendants were negligent concerning their work on the Brady Street Bridge Project as follows:

(a) ran heavy equipment up and down the private road which was not designed for the weight of such heavy equipment nor the frequency of such weight; and

(b) failed to correct the damage caused by the defendants heavy equipment traversing the private road, thereby causing further damage.

54. That as a direct and proximate result of the defendants' aforementioned negligence, water was redirected and entered upon the property now belonging to Noble and into the home located thereupon.

55. That to remediate the problem caused by the defendants as aforementioned, Noble did spend Eight Thousand Dollars (\$8,000) to have the water flow redirected.

WHEREFORE, Plaintiff Noble requests that JUDGMENT be entered in his favor and against each Defendant, jointly and severally, in the amount of Eight Thousand Dollars (\$8,000), plus interest and costs.

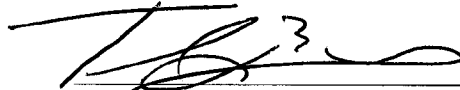
Miscellaneous Averments

56. That joinder is proper.

57. That venue is proper.
58. That jurisdiction is proper.
59. That the liability of defendants is joint and several.

WHEREFORE, each Plaintiff requests that JUDGMENT be entered in their favor and against each Defendant, jointly and severally, in the amounts as herein requested, plus interest, costs and where appropriate, punitive damages.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'T. G. Noble', is written over a horizontal line.

Theron G. Noble, Esquire
Attorney for Plaintiff Schoch and Pro Se
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

Rec'd 6.27.04
Jm

vehicles block the cartway for a period exceeding one (1) hour, the other party shall be immediately notified of the same.

6. Neither party shall harass the other in any way or interfere with the enjoyment of the other with respect to use of the cartway.

7. Any stakes or reflectors placed by either party shall be placed in the grass and not be placed in the cartway.

8. Neither party, nor anyone on their behalf, shall do anything that would change the grading, or contour, of the cartway without permission of the other.

9. An easement shall exist on behalf of the Defendants for the purpose of repair and/or maintenance of an existing water line running across the cartway to the Defendants' residence.

BY THE COURT,

/s/ Paul E. Cherry

Judge

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

JACQUELINE SCHOCK :
VS. : NO. 04-645-CD
DONALD W. COX and ROBIN COX :

O R D E R

NOW, this 23rd day of June, 2005, it is the ORDER of
this Court that the Order entered on March 23, 2005, be and is
hereby AMENDED to include the following stipulation:

The corner of the alley along South Brady Street
shall be established at the pin placed by Land and Mapping
Services.

All remaining provisions of the Order dated March
23, 2005, not inconsistent herewith shall remain in full force
and effect.

BY THE COURT,

/s/ Paul E. Cherry

Judge

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

JUN 24 2005

Attest.

William D. Shaw
Prothonotary/
Clerk of Courts

Rec'd 6-28-05
Jm

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

JACQUELINE L. SCHOCH, and
THERON G. NOBLE,
adult individuals;

PLAINTIFFS,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08-_____-CD

VERIFICATION

I, Jacqueline L. Schoch, Plaintiff, do hereby swear and affirm that I have read the foregoing CIVIL COMPLAINT and that the averments therein contained are true and correct to the best of my knowledge, information and belief. Furthermore, I am over the age of 18 years of age and give this unsworn statement knowing it is to authorities and subject to the penalties of 18 Pa.C.S.A. 4904.

So made this 1st day of July, 2008.

By,

Jacqueline L. Schoch
Jacqueline L. Schoch, Plaintiff

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

JACQUELINE L. SCHOCH, and
THERON G. NOBLE,
adult individuals;

PLAINTIFFS,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.


No. 08-_____-CD

VERIFICATION

I, Theron G. Noble, Plaintiff, do hereby swear and affirm that I have read the foregoing CIVIL COMPLAINT and that the averments therein contained are true and correct to the best of my knowledge, information and belief. Furthermore, I am over the age of 18 years of age and give this unsworn statement knowing it is to authorities and subject to the penalties of 18 Pa.C.S.A. 4904.

So made this 30th day of June, 2008.

By,



Theron G. Noble, Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
NO: 08-1222-CD

JACQUELINE L. SCHOCH, and THERON G. NOBLE

vs

SERVICE # 1 OF 3

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION (PennDot) and FRANCIS J. PALO, INC.
a Pennsylvania Corporation

COMPLAINT

SERVE BY: 08/01/2008

HEARING:

PAGE: 104370

DEFENDANT: PENNSYLVANIA DEPARTMENT OF TRANSPORTATION (PennDOT)

ADDRESS: 1924 DAISY ST. EXT.
CLEARFIELD, PA 16830

ALTERNATE ADDRESS

SERVE AND LEAVE WITH: DEFENDANT/PIC

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS:

VACANT

OCCUPIED

ATTEMPTS

SHERIFF'S RETURN

NOW, 7/11/08 AT 930 (AM) PM SERVED THE WITHIN

COMPLAINT ON PENNSYLVANIA DEPARTMENT OF TRANSPORTATION (PennDOT), DEFENDANT

BY HANDING TO Pete Filo, Fort Co.

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

ADDRESS SERVED 1924 Daisy st ext. Clfd

NOW _____ AT _____ AM / PM POSTED THE WITHIN

COMPLAINT FOR PENNSYLVANIA DEPARTMENT OF TRANSPORTATION (PennDOT)

AT (ADDRESS) _____

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

I MAKE RETURN OF **NOT FOUND** AS TO PENNSYLVANIA DEPARTMENT OF TRANSPORTATION (PennDOT)

REASON UNABLE TO LOCATE _____

SWORN TO BEFORE ME THIS

_____ DAY OF _____ 2008

So Answers: CHESTER A. HAWKINS, SHERIFF

BY:

Deputy J. Hunter
Deputy Signature

S Hunter
Print Deputy Name

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JACQUELINE L. SCHOCH,
AND THERON G. NOBLE,

Plaintiffs,

vs.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a Pennsylvania
Corporation,

Defendants.

CIVIL ACTION - LAW

No. 08-1222

PRAECIPE FOR APPEARANCE

Filed on behalf of Defendant:
Pennsylvania Department of Transportation
(PennDOT)

Counsel of Record for This Party:

Robert T. McDermott
Sr. Deputy Attorney General
Pa. I.D. #39338

Commonwealth of Pennsylvania
Office of Attorney General
Torts Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

(412) 565-2574

FILED *NO CC*
m/11/21/08
AUG 11 2008 *60*

William A. Shaw
Prothonotary/Clerk of Courts

PRAECIPE FOR APPEARANCE

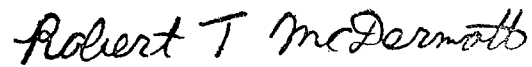
TO THE PROTHONOTARY:

Please enter my appearance in the above-referenced case on behalf of the defendant, Pennsylvania Department of Transportation (PennDOT). The defendant, Pennsylvania Department of Transportation (PennDOT), hereby demands a trial by a jury of twelve.

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY:



ROBERT T. McDERMOTT
Sr. Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PRAECIPE FOR APPEARANCE** was served upon the following counsel of record, via first-class mail, postage pre-paid on August 6, 2008:

Theron G. Noble, Esq.
FERRARACCIO & NOBLE
301 East Pine Street
Clearfield, PA 16830
(Counsel for Plaintiffs)

Francis J. Palo, Inc.
309 South Fourth Avenue
Clarion, PA 16214

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY:

Robert T McDermott

ROBERT T. McDERMOTT
Sr. Deputy Attorney General

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JACQUELINE L. SCHOCH AND
THERON G. NOBLE, ADAULT
INDIVIDUALS

PLAINTIFFS,

VS.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PENNDOT), AND
FRANCIS J. PALO, INC., A
PENNSYLVANIA CORPORATION,

DEFENDANTS.

) CIVIL DIVISION

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08-1222-CD

NO. 1222-CD

ISSUE NO.

PRAECIPE FOR APPEARANCE

FILED ON BEHALF OF DEFENDANT:
FRANCIS J. PALO, INC.

COUNSEL OF RECORD FOR PARTY:
MARK REILLY
PA. I.D. #53549

SUITE 510, U.S. STEEL TOWER
PITTSBURGH, PA 15219-3421

(412)560-3429

FILED *no cc*
no 11:02:37
AUG 20 2008 *@*


William A. Shaw
Prothonotary/Clerk of Courts

PRAECIPE FOR APPEARANCE

TO: PROTHONOTARY

Kindly enter my Appearance on behalf of FRANCIS J. PALO, INC., A
PENNSYLVANIA CORPORATION in the above-referenced case.

MARK REILLY



Attorney for DEFENDANT,
FRANCIS J. PALO, INC.

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE


I hereby certify that I served a true and correct copy of the within PRAECIPE
FOR APPEARANCE upon:

Theron G. Noble, Esquire
Ferraccio, & Noble
301 East Pine Street
Clearfield, PA 16830
Attorney for Plaintiff, Jacqueline Schoch

Pennsylvania Department of Transportation
1924 Daisy Street Extension
Clearfield, PA 16830

by first class mail, postage prepaid in the above-referenced case on this 12th day of
August, 2008.

MARK REILLY



Attorney for DEFENDANT,
FRANCIS J. PALO, INC.

CA

) CIVIL DIVISION

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ISSUE NO.

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)

[Handwritten signature]

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE


I hereby certify that I served a true and correct copy of the within **PRAECIPE**
FOR BRIEFING SCHEDULE AND ARGUMENT DATE upon:

Theron G. Noble, Esquire
Ferraccio, & Noble
301 East Pine Street
Clearfield, PA 16830
Attorney for Plaintiff, Jacqueline Schoch

Robert McDermott, Esquire
Sr. Deputy Attorney General
Manor Complex, 564 Forbes Avenue
Pittsburgh, PA 15219
Attorney for Pennsylvania Department of Transportation

by first class mail, postage prepaid in the above-referenced case on this 19 day of
APR, 2008.

MARK REILLY



Attorney for DEFENDANT,
FRANCIS J. PALO, INC.

IN THE COURT OF COMMON FLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JACQUELINE L. SCHOCH AND
THERON G. NOBLE, ADAULT
INDIVIDUALS

PLAINTIFFS,

VS.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PENNDOT), AND
FRANCIS J. PALO, INC., A
PENNSYLVANIA CORPORATION,

DEFENDANTS.

) CIVIL DIVISION

) NO. ⁰⁸⁻1222-CD

) ISSUE NO.

) **PALO'S PRELIMINARY OBJECTIONS IN**
) **THE NATURE OF A DEMURRER**

) FILED ON BEHALF OF DEFENDANT:
) FRANCIS J. PALO, INC.

) COUNSEL OF RECORD FOR PARTY:
) MARK REILLY
) PA. I.D. #53549

) SUITE 510, U.S. STEEL TOWER
) PITTSBURGH, PA 15219-3421

) (412)560-3429

TO ALL PARTIES:

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


MARK L. REILLY

FILED ^{NO CC}
mjl:slr
AUG 21 2008 (60)

William A. Shaw
Prothonotary/Clerk of Courts

PALO'S PRELIMINARY OBJECTIONS IN THE NATURE OF A DEMURRER

AND NOW, comes the defendant, Francis J. Palo, Inc., by its attorney, Mark L. Reilly, and files the following preliminary objections:

1. These are property damage claims allegedly associated with the Brady Street Bridge Project which took place December 2002 through December 2003.
2. Defendant PennDot contracted this work to defendant Francis J. Palo, Inc.
3. Plaintiff Schoch allegedly owns property located at 908 South Brady Street and a private road along that property.
4. Plaintiff Noble allegedly owns property located at 912 South Brady Street.
5. Plaintiff Noble purchased this property in August 2007, prior to that time and at all times relevant to this action, 912 South Brady Street was owned by Donald Cox, who is not a party to this action.
6. In the course of constructing this project, Brady Street was widened making it necessary to relocate a water line running it under the aforementioned private road.
7. Plaintiff Schoch claims that this was a trespass by the defendants and is seeking recovery, including punitive damages under Count I. Punitive damages are also requested in the last ad damnum paragraph of the complaint
8. For the reasons set forth in the attached brief, the conduct of defendant Francis J. Palo, Inc. did not rise to the requisite level of outrageousness, evil motive or reckless indifference to justice a claim for punitive damages.

9. Plaintiff Schoch is also claiming that the construction damaged the private road that she owns.

10. At Count II, under that caption, breach of contract, plaintiff is alleging that the defendants breached an "expressed or implied" obligation not to cause damage to the road.

11. Count II is merely a negligence theory brought in terms of a claimed breach of contract. The plaintiff Schoch is also alleging a negligence action at Count III.

12. Pursuant to the Gist of the Action Doctrine, Count II should be dismissed.

13. Plaintiff Noble is claiming that the construction activity caused the private road to redirect water runoff onto the property that he now owns.

14. At Count IV the plaintiff is seeking recovery under a trespass theory. At Count V plaintiff Noble is seeking recovery under a negligence theory.

15. The alleged tortious conduct which led to these damages took place between December 2002 and December 2003. At that time, the property was not owned by plaintiff Noble, it was owned by Donald Cox.

16. At the time of the alleged tort, defendant Francis J. Palo owned no duty to plaintiff Noble and as such Count V of the complaint should be stricken.

WHEREFORE, defendant Francis J. Palo, Inc., requests this Honorable Court enter the attached proposed Order of Court.

MARK REILLY



Attorney for DEFENDANT,
FRANCIS J. PALO, INC.

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the within **PALO'S**
PRELIMINARY OBJECTIONS IN THE NATURE OF A DEMURRER upon:

Theron G. Noble, Esquire
Ferraccio, & Noble
301 East Pine Street
Clearfield, PA 16830
Attorney for Plaintiff, Jacqueline Schoch

Robert McDermott, Esquire
Sr. Deputy Attorney General
Manor Complex, 564 Fortes Avenue
Pittsburgh, PA 15219
Attorney for Pennsylvania Department of Transportation

by first class mail, postage prepaid in the above-referenced case on this 19 day of
AUG 2002.

MARK REILLY



Attorney for DEFENDANT,
FRANCIS J. PALO, INC.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JACQUELINE L. SCHOCH AND
THERON G. NOBLE, ADAULT
INDIVIDUALS

PLAINTIFFS,

VS.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PENNDOT). AND
FRANCIS J. PALO, INC., A
PENNSYLVANIA CORPORATION,

DEFENDANTS.

) CIVIL DIVISION

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NO. 1222-CD

ISSUE NO.

**PALO'S PRELIMINARY OBJECTIONS IN
THE NATURE OF A DEMURRER**

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, it is ORDERED, ADJUDGED

and DECREED that defendant Palo's preliminary objections are granted:

1. The claim for punitive damages under Count I and in the last ad damnum paragraph are stricken;
2. Count II of the complaint is stricken; and,
3. Count V of the complaint is stricken.

BY THE COURT:

_____, J.

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

JACQUELINE L. SCHOCH, and
THERON G. NOBLE,
adult individuals;

PLAINTIFFS,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

FILED No CC.

m/11:42am
AUG 27 2008

William A. Shaw
Prothonotary/Clerk of Courts

Type of Pleading:

**REPLY TO PRELIMINARY
OBJECTIONS OF DEFENDANT
FRANCIS J. PALO, INC.**

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

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

JACQUELINE L. SCHOCH, and
THERON G. NOBLE,
adult individuals;

PLAINTIFFS,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

**REPLY TO PRELIMINARY OBJECTIONS OF
DEFENDANT FRANCIS J. PALO, INC.,**

AND NOW, comes the Plaintiffs, by and through their counsel of record, who responds to Defendant Palo's PRELIMINARY OBJECTIONS as follows:

1. Admitted.
2. After reasonable investigation, the same can not be admitted nor denied and proof of the same is demanded at time of trial.
3. Admitted.
4. Admitted.
5. Admitted.
6. In so far as the necessity of relocation of the water line, after reasonable investigation, the same can not be admitted nor denied and proof of the same is demanded at time of trial. As to all else, the same is admitted.

7. In that such documents speaks for itself, there is no need to either admit nor deny this particular averment.

8. Denied. The same is a legal conclusion for which no response is necessary. To the extent one might be deemed necessary, it is DENIED and Plaintiffs aver that the intentional acts of Defendants in the complained of matters, would legally support the imposition of punitive damages in the attenuate circumstances.

9. Admitted.

10. Admitted.

11. Denied. The same is a legal conclusion for which no response is necessary. To the extent one might be deemed necessary, it is DENIED and Plaintiffs aver that there are elements of each cause of action to independently support each as of this time.

12. Denied. The same is a legal conclusion for which no response is necessary.

13. Admitted.

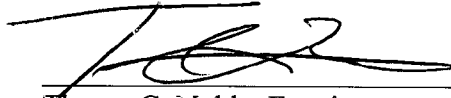
14. Admitted.

15. Admitted.

16. Denied. The same is a legal conclusion for which no response is necessary. To the extent one might be deemed necessary, it is DENIED and Plaintiffs aver that the duty owed by Defendant Palo was to the Mr. and Mrs. Cox and the premises, each of which has been assigned to Plaintiff Noble by Deed at time of purchase.

**WHEREFORE, Plaintiffs request that Defendant Palo's PRELIMINARY
OBJECTIONS be DISMISSED.**

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'T. Noble', is written over a horizontal line.

Theron G. Noble, Esquire
Attorney for Plaintiff Schoch and Pro Se
Ferraraccic & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

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

JACQUELINE L. SCHOCH, and
THERON G. NOBLE,
adult individuals;

PLAINTIFFS,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

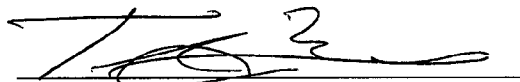
CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiffs, does hereby certify that this
26th day of August, 2008, that I did mail a true and correct copy
of Plaintiffs' REPLY TO PRELIMINARY OBJECTIONS OF DEFENDANT PALO to
the below indicated persons, being counsel of record for the Defendants, via United
States Mail, first class, postage prepaid, as follows:

Mark. L. Reilly, Esquire
c/o John V. DeMarco
US Steel Tower, Suite 510
Pittsburgh, PA 15219

Robert T. McDermott, Esquire
Attorney General -Tort Litigation
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff Schoch and Pro Se
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JACQUELINE L. SCHOCH AND
THERON G. NOBLE, ADAULT
INDIVIDUALS

PLAINTIFFS,

VS.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PENNDOT), AND
FRANCIS J. PALO, INC., A
PENNSYLVANIA CORPORATION,

DEFENDANTS.

) CIVIL DIVISION

) NO. ⁰⁸⁻1222-CD

) ISSUE NO.

) **SCHEDULING ORDER**

) FILED ON BEHALF OF DEFENDANT:
) FRANCIS J. PALO, INC.

) COUNSEL OF RECORD FOR PARTY:
) MARK REILLY
) PA. I.D. #53549

) SUITE 510, U.S. STEEL TOWER
) PITTSBURGH, PA 15219-3421

) (412)560-3429

FILED ^{icc}
09:04 AM
SEP 09 2008
Any Reilly
(GIC)

William A. Shaw
Prothonotary/Clerk of Courts

Fred J. Cunneman

CERTIFICATE OF SERVICE


I hereby certify that I served a true and correct copy of the within
SCHEDULING ORDER upon:

Theron G. Noble, Esquire
Ferruccio, & Noble
301 East Pine Street
Clearfield, PA 16830
Attorney for Plaintiff, Jacqueline Schoch

Robert McDermott, Esquire
Sr. Deputy Attorney General
Manor Complex, 564 Forbes Avenue
Pittsburgh, PA 15219
Attorney for Pennsylvania Department of Transportation

by first class mail, postage prepaid in the above-referenced case on this 28 day of
Aug, 2008.

MARK REILLY



Attorney for DEFENDANT,
FRANCIS J. PALO, INC.

DATE: 8/9/08

☒ You are responsible for serving all appropriate parties.

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

____ Plaintiff(s) _____ Attorney _____ Other _____

____ Defendant(s) _____ Defendant(s) / Attorney _____

____ Special Instructions: _____

William A. Shaw
Prothonotary/Clerk of Courts

SEP 09 2008

FILED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 104370
NO: 08-1222-CD
SERVICE # 2 OF 3
COMPLAINT

PLAINTIFF: JACQUELINE L. SCHOCH, and THERON G. NOBLE

vs.
DEFENDANT: PENNSYLVANIA DEPARTMENT OF TRANSPORTATION (PennDot) and FRANCIS J. PALO, INC.
a Pennsylvania Corporation

SHERIFF RETURN

NOW, July 08, 2008, SHERIFF OF CLARION COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON FRANCIS J. PALO, INC..

NOW, July 16, 2008 AT 9:11 AM SERVED THE WITHIN COMPLAINT ON FRANCIS J. PALO, INC., DEFENDANT. THE RETURN OF CLARION COUNTY IS HERETO ATTACHED AND MADE PART OF THIS RETURN.

FILED

0/3/2008
SEP 19 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 104370
NO: 08-1222-CD
SERVICE # 3 OF 3
COMPLAINT

PLAINTIFF: JACQUELINE L. SCHOCH, and THERON G. NOBLE

vs.

DEFENDANT: PENNSYLVANIA DEPARTMENT OF TRANSPORTATION (PennDot) and FRANCIS J. PALO, INC.
a Pennsylvania Corporation

SHERIFF RETURN

NOW, July 08, 2008, SHERIFF OF DAUPHIN COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON THOMAS W. CORBETT, ATTORNEY GENERAL.

NOW, July 15, 2008 AT 9:00 AM SERVED THE WITHIN COMPLAINT ON THOMAS W. CORBETT, ATTORNEY GENERAL, DEFENDANT. THE RETURN OF DAUPHIN COUNTY IS HERETO **ATTACHED** AND MADE PART OF THIS RETURN.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 104370
NO: 08-1222-CD
SERVICES 3
COMPLAINT

PLAINTIFF: JACQUELINE L. SCHOCH, and THERON G. NOBLE

vs.

DEFENDANT: PENNSYLVANIA DEPARTMENT OF TRANSPORTATION (PennDot) and FRANCIS J. PALO, INC.
a Pennsylvania Corporation

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	NOBLE	3396	30.00
SHERIFF HAWKINS	NOBLE	3396	44.00
CLARION CO.	NOBLE	3397	41.00
DAUPHIN CO.	NOBLE	3398	41.25

Sworn to Before Me This

_____ Day of _____ 2008

So Answers,




Chester A. Hawkins
Sheriff

AFFIDAVIT OF SERVICE
IN THE COURT OF COMMON PLEAS OF CLARION COUNTY

NO. 1222-2008

JACQUELINE L SLOCH AND THERON G NOBLE

VERSUS

FRANCIS J PALO INC

COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF CLARION :

Before me, the undersigned, personally appeared:

DEPUTY KATIE KACZMARCZYK

Who being duly sworn according to law, deposes and says that on the
16TH day of July, 2008, at 9:11AM

Served the within Complaint, for the within named
FRANCIS J PALO INC., at the address of 309 S. Fourth Avenue, Clarion PA
16214, Clarion County, Pennsylvania, by making known the contents to Paul
A Palo, president, and by handing and leaving with Paul A Palo, a copy of
the within Complaint, received from the Clearfield County

So Answers

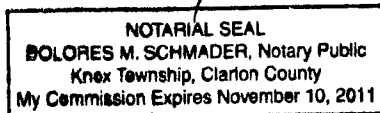
Katie Kaczmarczyk
Deputy Katie Kaczmarczyk

William H. Peck III
Sheriff of Clarion County

Sworn to and subscribed before me this

18th day of July A.D. 2008

Bohlores M. Schmader - Notary Public





CHESTER A. HAWKINS
SHERIFF

Sheriff's Office Clearfield County

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641
FAX (814) 765-5915
ROBERT SNYDER
CHIEF DEPUTY
MARILYN HAMM
DEPT. CLERK
CYNTHIA AUGHENBAUGH
OFFICE MANAGER
KAREN BAUGHMAN
CLERK TYPIST
PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 104370

TERM & NO. 08-1222-CD

JACQUELINE L. SCHOCH, and THERON G. NOBLE

COMPLAINT

VS.

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION (PennDot) and FRANCIS J. PALO, INC.
a Pennsylvania Corporation

SERVE BY: 08/01/08

COURT DATE:

MAKE REFUND PAYABLE TO THERON G. NOBLE, ESQ.

SERVE: FRANCIS J. PALO, INC.

ADDRESS: 309 FOURTH AVE., CLARION, PA 16214

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF CLARION COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, July 08, 2008.

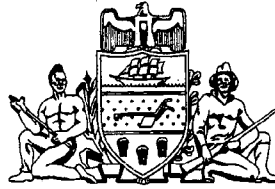
RESPECTFULLY,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

Office of the Sheriff

Mary Jane Snyder
Real Estate Deputy

William T. Tully
Solicitor



Charles E. Sheaffer
Chief Deputy

Michael W. Rinehart
Assistant Chief Deputy

Dauphin County
Harrisburg, Pennsylvania 17101
ph: (717) 780-6590 fax: (717) 255-2889

Jack Lotwick
Sheriff

Commonwealth of Pennsylvania

: JACQUELINE SCHOCH
VS

County of Dauphin

: THOMAS W. CORBETT, ATTORNEY
GENERAL

Sheriff's Return

No. 2008-T-1547

OTHER COUNTY NO. 081222CD

And now: JULY 15, 2008 at 9:00:00 AM served the within COMPLAINT upon THOMAS W. CORBETT, ATTORNEY GENERAL by personally handing to KELLY SPITTLE 1 true attested copy of the original COMPLAINT and making known to him/her the contents thereof at 1600 STRAWBERRY SQUARE HARRISBURG PA 17120

EXE. SEC.

Sworn and subscribed to
before me this 15TH day of July, 2008

NOTARIAL SEAL
MARY JANE SNYDER, Notary Public
Highspire, Dauphin County
My Commission Expires Sept 1, 2010

So Answers,

Sheriff of Dauphin County, Pa.

By

Deputy Sheriff

Deputy: R HOPKINS

Sheriff's Costs: \$41.25 7/11/2008



CHESTER A. HAWKINS
SHERIFF

Sheriff's Office Clearfield County

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

OFFICE (814) 765-2641
FAX (814) 765-5915
ROBERT SNYDER
CHIEF DEPUTY
MARILYN HAMM
DEPT. CLERK
CYNTHIA AUGHENBAUGH
OFFICE MANAGER
KAREN BAUGHMAN
CLERK TYPIST
PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PAGE 104370

TERM & NO. 08-1222-CD

JACQUELINE L. SCHOCH, and THERON G. NOBLE

COMPLAINT

VS.

PENNSYLVANIA DEPARTMENT OF TRANSPORTATION (PennDot) and FRANCIS J. PALO, INC.
a Pennsylvania Corporation

SERVE BY: 08/01/08
COURT DATE:

MAKE REFUND PAYABLE TO THERON G. NOBLE, ESQ.

SERVE: THOMAS W. CORBETT, ATTORNEY GENERAL

ADDRESS: 1600 STRAWBERRY SQUARE, HARRISBURG, PA 17120

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF OF CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF DAUPHIN COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this day, July 08, 2008.

RESPECTFULLY,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JACQUELINE L. SCHOCH,
AND THERON G. NOBLE,

Plaintiffs,

vs.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a Pennsylvania
Corporation,

Defendants.

CIVIL ACTION - LAW

No. 08-1222

PRELIMINARY OBJECTIONS

You are hereby notified to plead to the
within pleading within twenty (20) days
hereof or a default judgment may be
entered against you.

Robert T. McDermott
Attorney for *PennDOT*

Filed on behalf of Defendant:
Pennsylvania Department of Transportation
(PennDOT)

Counsel of Record for This Party:

Robert T. McDermott
Sr. Deputy Attorney General
Pa. I.D. #39338

Commonwealth of Pennsylvania
Office of Attorney General
Torts Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

(412) 565-2574

FILED *McC*
7/12/08
SEP 22 2008 *60*

William A. Shaw
Prothonotary/Clerk of Courts

PRELIMINARY OBJECTIONS

AND NOW, comes the Defendant, Pennsylvania Department of Transportation (PennDOT), by and through the Office of Attorney General and files the following Preliminary Objections:

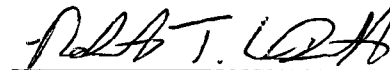
1. The Defendant, PennDOT, hereby adopts and incorporates the Preliminary Objections and Brief filed by Co-Defendant Francis J. Palo, Inc.
2. In addition to the Preliminary Objections raised by Co-Defendant, Francis J. Palo, Inc., the Defendant, PennDOT, also avers that punitive damages are not recoverable against a Commonwealth agency. Feingold v. SEPTA, 517 A2d 1270 (Pa.1986).
3. PennDOT raises lack of jurisdiction of this Honorable Court to hear Plaintiff's claim for breach of contract since the Board of Claims has exclusive jurisdiction over all claims arising from a contract entered into by a Commonwealth agency. 62 Pa. C.S.A. §1724 (a)(1).

WHEREFORE, the Defendant, PennDOT, respectfully requests that this Honorable Court enter the attached Order of Court.

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY:



ROBERT T. McDERMOTT
Sr. Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PRELIMINARY
OBJECTIONS** was served upon the following counsel of record, via first-class mail, postage
pre-paid on September 19, 2008:

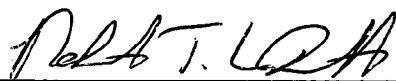
Theron G. Noble, Esq.
FERRARACCIO & NOBLE
301 East Pine Street
Clearfield, PA 16830
(Counsel for Plaintiffs)

Mark Reilly, Esq.
Law Ofcs of John DeMarco
600 Grant St Suite 510
Pittsburgh PA 15219
(Counsel for Palo)

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY:



ROBERT T. McDERMOTT
Sr. Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JACQUELINE L. SCHOCH,
AND THERON G. NOBLE,

CIVIL ACTION - LAW

No. 08-1222

Plaintiffs,

vs.

PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION (PennDOT),
and FRANCIS J. PALO, INC.,
a Pennsylvania Corporation,

Defendants.

ORDER OF COURT

AND NOW, to wit, this ____ day of _____, 2008, it is HEREBY ORDERED,
ADJUDGED AND DECREED that Defendant PennDOT's Preliminary Objections are granted:

1. The claims for punitive damages under Count I and in the last ad damnum paragraph are stricken.
2. Count II of the Complaint is stricken.
3. Plaintiff's claim against Defendant PennDOT for breach of contract is stricken for lack of jurisdiction.
4. Count V of the Complaint is stricken.

BY THE COURT:

_____. J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JACQUELINE L. SCHOCH,
AND THERON G. NOBLE,

CIVIL ACTION - LAW

No. 08-1222

Plaintiffs,

vs.

PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION (PennDOT),
and FRANCIS J. PALO, INC.,
a Pennsylvania Corporation,

Defendants.

FILED

SEP 23 2008

0/3:36/W
William A. Shaw
Prothonotary/Clerk of Courts

(610)

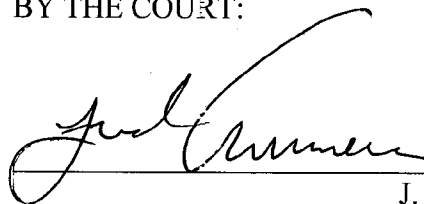
1 CENT TO

ATTN

ORDER OF COURT

AND NOW, to wit, this 23 day of September, 2008, upon
consideration of the Defendant, the Pennsylvania, Department of Transportation's Preliminary
Objections, it is hereby ORDERED that an argument on said matter be scheduled for the 3rd day
of October, 2008, at 1:30 P.M., before the Honorable Fredric J. Ammerman. Defendant's Brief
~~is to be filed and served on or before the _____ day of _____, 2008.~~ Plaintiffs' Brief is
~~to be filed and served on or before the _____ day of _____, 2008.~~

BY THE COURT:


J.

FILED
SEP 23 2008
William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9-23-08

☒ 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:

FILED
 01:10:00
 OCT 07 2008

ICC Atty's: Noble
 Reilly
 McDermott
 (60)

William A. Shaw
 Prothonotary/Clerk of Courts

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

JACQUELINE L. SCHOCH and	:	
THERON G. NOBLE,	:	
Adult Individuals	:	
	:	
VS.	:	NO. 08-1222-CD
	:	
PENNSYLVANIA DEPARTMENT OF	:	
TRANSPORTATION (PENNDOT), and	:	
FRANCIS J. PALO, INC., a	:	
Pennsylvania Corporation	:	

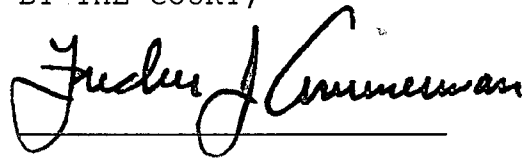
O R D E R

AND NOW, this 3rd day of October, 2008, following argument on the Preliminary Objections filed on behalf of both Francis J. Palo, Inc., and the Pennsylvania Department of Transportation, it is the ORDER of this Court as follows:

1. The Preliminary Objections filed against Counts I and II of the claims made by Plaintiff Jacqueline L. Schoch are hereby dismissed. The Court believes that the parties should engage in further discovery and that any party would be at liberty to file a motion for partial or full summary judgment in the future.
2. The Preliminary Objection of PennDOT is granted in that the claim by Plaintiff Schoch for punitive damages against PennDOT is hereby dismissed.
3. Counsel for the parties shall have no more than twenty (20) days from this date in which to submit further brief

relative the Preliminary Objections on behalf of PennDOT concerning breach of contract going to the Board of Claims and the Preliminary Objection made by both Defendants as to Count V of the action by Plaintiff Noble indicating that there is a claim in negligence.

BY THE COURT,

A handwritten signature in cursive script, reading "Frederick J. Cunningham", written over a horizontal line.

President Judge

FILED

OCT 07 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/17/08

___ You are responsible for serving all appropriate parties.

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

___ Plaintiff(s) ___ X Plaintiff(s) Attorney ___ Other

___ Defendant(s) ___ X Defendant(s) Attorney

___ Special Instructions:

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

JACQUELINE L. SCHOCH,
and THERON G. NOBLE,

Plaintiffs,

vs.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a Pennsylvania
Corporation,

Defendants

NO. 08-1222

ORDER

AND NOW, this 1st day of December, 2008 upon consideration of the Preliminary Objections filed by Pennsylvania Department of Transportation (hereinafter PennDOT) and Francis J. Palo, Inc. (hereinafter "Palo"), (collectively hereinafter "Defendants"), to the Complaint filed by Jacqueline Schoch (hereinafter "Schoch") and Theron Noble (hereinafter "Noble"), (collectively hereinafter "Plaintiffs"), it is the ORDER of this Court as follows:

1. PennDot's Preliminary Objection to this Court's jurisdiction to hear Plaintiff's Complaint regarding *breach of contract*, pursuant to 62 Pa.C.S.A. § 1724(a)(1), is hereby DISMISSED.
2. Both Defendants have filed Preliminary Objections to Count V of the Plaintiffs' Complaint, which addresses Defendant Noble's claim of *negligence*. The Defendant PennDot contracted with the Defendant Palo to undergo repair and rebuilding of South Brady Street, Sandy Township, Clearfield County, which occurred on or about December 20, 2002 through December 15, 2003. A private road dividing the

FILED
01/11/09
DEC 01 2008


William A. Shaw
Prothonotary/Clerk of Courts

2 cc Atty's: Noble
Reilly
McDermott

1 cc: S. Mikesell
Law Library (610)
(without service memo)

Plaintiffs' property connects to South Brady Street. During the course of the construction project, a waterline running underneath the Plaintiffs' property was relocated. The Plaintiffs' claims for recovery arise from the relocation of the waterline by the Defendants. However, Plaintiff Noble purchased the aforementioned property in August 2007. "Duty, in any given situation, is predicated upon the relationship existing between the parties at the relevant time." *Zanine v. Gallagher*, 497 A.2d 1332 (Pa.Super 1985). The repair, construction and alleged injury occurred prior to Noble's purchase of the relevant property. In *Hoffman v. Sun Pipe Line Company*, the Pennsylvania Superior Court held that a pipeline company did not have any duty to a subsequent purchaser of a home, who purchased the home after the spill and resulting damages had occurred. *Hoffman v. Sun Pipe Line Co.*, 575 A.2d 122, (Pa.Super.,1990). Noble purchased the property years after the construction project and the occurrence of the alleged damage to the property. Therefore, the Defendants had no foreseeable duty to Plaintiff Noble for the damage alleged. *Id.* As such, subsequent purchaser Noble is not privy to a *negligence* claim against the Defendants. The Defendants' Preliminary Objection to Count V of the Plaintiffs' Complaint, Noble's claim of *negligence*, is hereby GRANTED. The claims set forth within Count V of the Complaint on behalf of Noble are hereby DISMISSED.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED

DEC 01 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12/1/08

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s) X Plaintiff(s) Attorney Clerk

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JACQUELINE L. SCHOCH AND
THERON G. NOBLE, ADAULT
INDIVIDUALS

PLAINTIFFS,

VS.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PENNDOT), AND
FRANCIS J. PALO, INC., A
PENNSYLVANIA CORPORATION,

DEFENDANTS

) CIVIL DIVISION

) NO. 08-1222-CD

) ISSUE NO.

) ANSWER, NEW MATTER AND
) CROSSCLAIM PURSUANT TO Pa.R.C.P.
) 1031.1

) FILED ON BEHALF OF DEFENDANT:
) FRANCIS J. PALO, INC.

) COUNSEL OF RECORD FOR PARTY:
) MARK REILLY
) P.A. I.D. #53549


) SUITE 510, U.S. STEEL TOWER
) PITTSBURGH, PA 15219-3421

) (412)560-3429

To the within named Parties

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

MARK L. REILLY



FILED *NO CC*
M/11/43/01
JAN 08 2009 *EW*

William A. Shaw
Prothonotary/Clerk of Courts

ANSWER AND NEW MATTER

AND NOW, comes the Defendant Francis J. Palo, Inc., by its attorney and files the following Answer, New Matter and Crossclaim Pursuant to Pa.R.C.P. 1031.1:

Answer

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. The averments contained in this paragraph are conclusions of law to which no response is required.
8. Admitted.
9. Admitted.
10. After reasonable investigation, this defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.
11. Admitted.
12. Admitted.
13. Admitted.
14. After reasonable investigation, this defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

15. After reasonable investigation, this defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

16. After reasonable investigation, this defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

17. Admitted.

18. Admitted.

19. The averments contained in this paragraph are conclusions of law to which no response is required. In the alternative, if any response is required, which is denied, then in that alternative, the remaining averments are denied pursuant to Pa.R.C.P. 1029(e).

20. It is admitted that a waterline was installed. The remaining averments contained in this paragraph are denied pursuant to Pa.R.C.P. 1029(e).

21. Admitted.

22. Admitted.

23. The averments contained in this paragraph are denied pursuant to Pa.R.C.P. 1029(e).

24. The averments contained in this paragraph are conclusions of law to which no response is required. In the alternative, if any response is required, which is denied, then in that alternative, the remaining averments are denied pursuant to Pa.R.C.P. 1029(e).

25. The averments contained in this paragraph are conclusions of law to which no response is required. In the alternative, if any response is required, which is denied, then in that alternative, the averments contained in this paragraph are denied pursuant to Pa.R.C.P. 1029(e).

26. It is admitted that construction equipment was used in connection with the work. The remaining averments contained in this paragraph are denied pursuant to Pa.R.C.P. 1029(e).

27. The averments contained in this paragraph are denied pursuant to Pa.R.C.P. 1029(e).

28. The averments as they are directed to the answering party are denied pursuant to Pa.R.C.P. 1029(e). By way of further response, at all times relevant, the answering party was acting at the direction of the Department of Transportation.

29. To the extent that the averments contained in paragraph 29 are consistent with the document attached as Exhibit "A," those averments are admitted.

30. After reasonable investigation, this defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

31. After reasonable investigation, this defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

32. After reasonable investigation, this defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

33. It is denied pursuant to Pa.R.C.P. that any unsafe and dangerous condition exists with regard to the private road. After reasonable investigation, this defendant is without knowledge or information sufficient to form a belief as to the remaining averments.

34. After reasonable investigation, this defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in this paragraph.

35. The averments contained in this paragraph are conclusions of law to which no response is required.

Count I: Schoch v. PennDOT and Palo

Trespass

36. To the extent that paragraph 36 incorporates averments contained in any other paragraph of plaintiff's complaint, this defendant incorporates its response to those averments as though fully set forth herein.

37. The averments contained in this paragraph are conclusions of law to which no response is required.

38. The averments contained in this paragraph are conclusions of law to which no response is required.

39. The averments contained in this paragraph, as directed to the answering party, are denied pursuant to Pa.R.C.P. 1029(e).

40. The averments contained in this paragraph, as directed to the answering party, are denied pursuant to Pa.R.C.P. 1029(e).

WHEREFORE, Defendant Francis J. Palo, Inc., demands judgment in its favor and against all parties of this suit, with cost of suit.

Count II: Schoch v. PennDOT and Palo

Breach of Contract
(in the alternative)

41. To the extent that paragraph 41 incorporates averments contained in any other paragraph of plaintiff's complaint, this defendant incorporates its response to those averments as though fully set forth herein.

42. The averments contained in this paragraph are conclusions of law to which no response is required. In the alternative, if any response is required, then in that alternative, the averments as directed to the answering party are denied pursuant to Pa.R.C.P. 1029(e).

WHEREFORE, Defendant Francis J. Palo, Inc., demands judgment in its favor and against all parties of this suit, with cost of suit.

Count III: Schoch v. PennDOT and Palo

Negligence

43. To the extent that paragraph 43 incorporates averments contained in any other paragraph of plaintiff's complaint, this defendant incorporates its response to those averments as though fully set forth herein.

44. The averments contained in this paragraph are conclusions of law to which no response is required. In the alternative, if any response is required, which is denied as set forth above, it is denied that any dangerous condition exists or that this defendant caused any damage to the private road.

45. The averments contained in paragraph 45 and the subparagraphs thereto, with regard to the answering defendant are denied pursuant to Pa.R.C.P. 1029(e).

46. The averments contained in this paragraph are conclusions of law to which no response is required. In the alternative, if any response is required, with regard to the answering party, these averments are denied pursuant to Pa.R.C.P. 1029(e).

WHEREFORE, Defendant Francis J. Palo, Inc., demands judgment in its favor and against all parties of this suit, with cost of suit.

Count IV: Noble v. PennDOT and Palo

Trespass

47. To the extent that paragraph 47 incorporates averments contained in any other paragraph of plaintiff's complaint, this defendant incorporates its response to those averments as though fully set forth herein.

48. With respect to the answering party, the averments contained in this paragraph are denied pursuant to Pa.R.C.P. 1029(e).

49. The averments contained in this paragraph are conclusions of law to which no response is required.

50. The averments contained in this paragraph as directed to the answering party are denied pursuant to Pa.R.C.P. 1029(e).

WHEREFORE, Defendant Francis J. Palo, Inc., demands judgment in its favor and against all parties of this suit, with cost of suit.

Count V: Noble v. PennDOT and Palo

Negligence

51-55. Paragraphs 51 through 55 have been stricken pursuant to Order of Court.

WHEREFORE, Defendant Francis J. Palo, Inc., demands judgment in its favor and against all parties of this suit, with cost of suit.

Miscellaneous Averments

56. The averments contained in this paragraph are conclusions of law to which no response is required.

57. The averments contained in this paragraph are conclusions of law to which no response is required.

58. The averments contained in this paragraph are conclusions of law to which no response is required.

59. The averments contained in this paragraph are conclusions of law to which no response is required.

WHEREFORE, Defendant Francis J. Palo, Inc., demands judgment in its favor and against all parties of this suit, with cost of suit.

New Matter

60. The defendant entered upon the subject premises with the apparent consent of the owners.

61. All the work done on the subject premises was done at the direction of the Pennsylvania Department of Transportation and according to the Department of Transportation specifications.

62. Any alleged damage or defect on the subject premises was caused by individuals or conditions outside of the reasonable control of the answering party.

WHEREFORE, Defendant Francis J. Palo, Inc., demands judgment in its favor and against all parties of this suit, with cost of suit.

Crossclaim Pursuant to Pa.R.C.P. 1031.1

63. This defendant has denied and continues to deny all liability owing to the plaintiffs. In the alternative, if the answering party is found in any way liable, which liability is specifically denied, and if the Pennsylvania Department of Transportation is found in any way

liable, then in that alternative, the answering party asserts a crossclaim for contribution and indemnification.

WHEREFORE, Defendant Francis J. Palo, Inc., demands judgment in its favor and against all parties of this suit, with cost of suit.

Respectfully submitted,

MARK REILLY



Attorney for DEFENDANT,
FRANCIS J. PALO, INC.

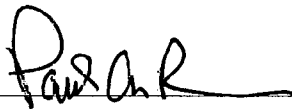
VERIFICATION BY CORPORATE PARTY

I certify that the facts set forth in the Answer, New Matter and Crossclaim Pursuant to Pa.R.C.P. 1031.1 are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

I am authorized to make this Verification on behalf of Francis J. Palo, Inc., because of my position as PRESIDENT.

Date:

12/19/08



CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the within **ANSWER,**
NEW MATTER AND CROSSCLAIM PURSUANT TO Pa.R.C.P. 1031.1 upon:

Theron G. Noble, Esquire
Ferrareccic, & Noble
301 East Pine Street
Clearfield, PA 16830
Attorney for Plaintiff, Jacqueline Schoch

Robert McDermott, Esquire
Sr. Deputy Attorney General
Manor Complex, 564 Forbes Avenue
Pittsburgh, PA 15219
Attorney for Pennsylvania Department of Transportation

by first class mail, postage prepaid in the above-referenced case on this 6 day of

JAN, 2009.

MARK REILLY



Attorney for DEFENDANT,
FRANCIS J. PALO, INC.

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

JACQUELINE L. SCHOCH, and
THERON G. NOBLE,
adult individualS;

PLAINTIFFS,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

Type of Pleading:

NOTICE OF SERVICE

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED

JAN 15 2009

William A. Shaw
Prothonotary/Clerk of Courts

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

JACQUELINE L. SCHOCH, and
THERON G. NOBLE,
adult individualS;

PLAINTIFFS,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

NOTICE OF SERVICE

To: William A. Shaw, Prothonotary

I, Theron G. Noble, Esquire, counsel for Plaintiffs, does hereby certify that this
12th day of January, 2009, that I did propound on the Defendants,
Plaintiffs' FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION
OF DOCUMENTS, to the below indicated persons, being counsel of record for the
Defendants, via United States Mail, first class, postage prepaid, as follows:

Mark. L. Reilly, Esquire
c/o John V. DeMarco
US Steel Tower, Suite 510
Pittsburgh, PA 15219

Robert T. McDermott, Esquire
Attorney General -Tort Litigation
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff Schoch and Pro Se
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

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

JACQUELINE L. SCHOCH, and
THERON G. NOBLE,
adult individualS;

PLAINTIFFS,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

Type of Pleading:

**REPLY TO NEW MATTER
OF DEFENDANT PALO**

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED

m/12:53 PM
JAN 15 2009

5
William A. Shaw
Prothonotary/Clerk of Courts

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

JACQUELINE L. SCHOCH, and
THERON G. NOBLE,
adult individualS;

PLAINTIFFS,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

**PLAINTIFFS' REPLY TO NEW MATTER
OF DEFENDANT FRANCIS J. PALO, INC.**

AND NOW, comes the Plaintiffs, Jacqueline L. Schoch and Theron G. Noble, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in response to NEW MATTER raised by Defendant Francis J. Palo, Inc., as follows:

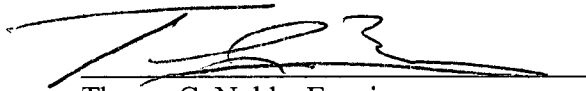
60. Admitted in part, Denied in part. Although it is ADMITTED that Plaintiff Schoch gave permission to Defendants to be on her premises concerning some aspects of "the Brady Street project", the Defendants exceeded the scope of said permission when they (i) moved the Cox water line onto Schoch's property; and (ii) used her property for ingress and egress for their various heavy equipment as part of the project.

61. After reasonable investigation, the same can not be admitted nor denied and therefore strict proof of the same is demanded at time of trial.

62. Denied. This answering Defendant did and acted as averred in Plaintiff's CIVIL COMPLAINT, whether or not it did so at the direction or behest of others is DENIED in that after reasonable investigation Plaintiffs are unable to so determine and strict proof is therefore demanded at time of trial.

WHEREFORE, Plaintiffs request JUDGMENT in their favor as prayed for in their CIVIL COMPLAINT.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'T. Noble', is written over a horizontal line.

Theron G. Noble, Esquire
Attorney for Plaintiff Schoch and Pro Se
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

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

JACQUELINE L. SCHOCH, and
THERON G. NOBLE,
adult individualS;

PLAINTIFFS,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

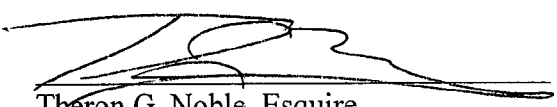
CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiffs, does hereby certify that this
12th day of January, 2009, that I did mail a true and correct copy
of Plaintiffs' REPLY TO NEW MATTER (of Defendant Palo), to the below indicated
persons, being counsel of record for the Defendants, via United States Mail, first class,
postage prepaid, as follows:

Mark. L. Reilly, Esquire
c/o John V. DeMarco
US Steel Tower, Suite 510
Pittsburgh, PA 15219

Robert T. McDermott, Esquire
Attorney General -Tort Litigation
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Respectfully Submitted,


Theron G. Noble, Esquire
Attorney for Plaintiff Schoch and Pro Se
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

FILED

MAR 20 2009

William A. Shaw
Prothonotary of Courts

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

JACQUELINE L. SCHOCH, an
adult individual;

PLAINTIFF,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

Type of Pleading:

MOTION TO COMPEL

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

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

JACQUELINE L. SCHOCH, an
adult individual;

PLAINTIFF,

v.

PENNSYLVANIA DEPARTMENT OF
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FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

MOTION TO COMPEL

AND NOW, comes the Plaintiff, Jaqueline L. Schoch, by and through her counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of her **MOTION TO COMPEL**:

Background

1. This matter was commenced by the filing of a CIVIL COMPLAINT on July 2, 2008.
2. That defendants filed PRELIMINARY OBJECTIONS, which were sustained in part and dismissed in part on October 3, 2008.

Motion to Compel

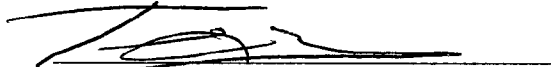
3. On January 12, 2009, Plaintiff propounded on Defendants her first set of discovery materials, including interrogatories and request for production of documents.
4. That neither defendant has responded to said discovery materials by way of objection or answer.
5. That about a month ago, counsel for Plaintiff called each defense counsel and left messages indicating that responses to discovery were past due with no response

forthcoming from counsel for Defendant PennDOT while counsel for Defendant Palo indicated responses were forthcoming.

6. That to date, despite said responses being more than one month past due, Plaintiff has not received any such response to her discovery requests.

WHEREFORE, Plaintiff respectfully requests that her MOTION TO COMPEL be GRANTED and Defendants ordered to fully respond to her discovery requests.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Theron G. Noble', is written over a horizontal line.

Theron G. Noble, Esquire
Attorney for Plaintiff Schoch
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

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

JACQUELINE L. SCHOCH, and
THERON G. NOBLE,
adult individualS;

PLAINTIFFS,

v.

PENNSYLVANIA DEPARTMENT OF
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No. 08- 1222 -CD

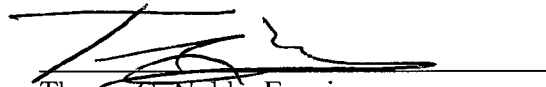
CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiffs, does hereby certify that this
18th day of March, 2009, that I did mail a true and correct copy of
Plaintiffs' MOTION TO COMPEL, to the below indicated persons, being counsel of
record for the Defendants, via United States Mail, first class, postage prepaid, as follows:

Mark. L. Reilly, Esquire
c/o John V. DeMarco
US Steel Tower, Suite 510
Pittsburgh, PA 15219

Robert T. McDermott, Esquire
Attorney General -Tort Litigation
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Respectfully Submitted,


Theron G. Noble, Esquire
Attorney for Plaintiff Schoch and Pro Se
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

u

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

JACQUELINE L. SCHOCH, an
adult individual;

PLAINTIFF,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

FILED (610)

MAR 23 2009

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William A. Shaw

Prothonotary/Clerk of Courts

No. 08- 1222 -CD

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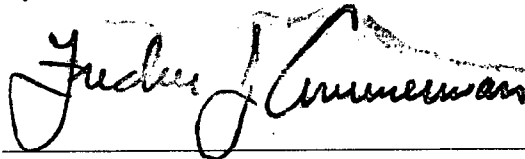
Attol

ORDER

AND NOW this 23rd day of March, 2009, Plaintiff's MOTION TO COMPEL is
hereby GRANTED. Each Defendant shall file complete responses to her discovery
requests, including request for production of documents, within 30 days hereof.

FTA

By the Court,



Fredric J. Ammerman, PJ

FILED
MAR 23 2000
William A. Shaw
Prothonotary/Clerk of Courts

DATE: 3-23-00
You are responsible for serving all appropriate parties.
☒ You are responsible for providing service to the following parties:
The Prothonotary's office has provided service to the following parties:
____ Plaintiff(s) _____ Plaintiff(s) Attorney _____ Other
____ Plaintiff(s) _____ Defendant(s) Attorney
____ Defendant(s) _____
____ Special Instructions:

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

JACQUELINE L. SCHOCH, an
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v.

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FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

FILED NOCC.
m/11:57am
MAR 27 2009

William A. Shaw
Prothonotary/Clerk of Courts

Type of Pleading:

NOTICE OF SERVICE

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY,
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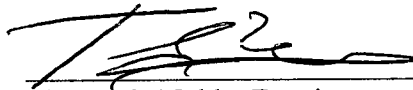
CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiffs, does hereby certify that this
26th day of March, 2009, that I did mail a true and correct copy of
ORDER issued upon Plaintiffs' MOTION TO COMPEL, to the below indicated persons,
being counsel of record for the Defendants, via United States Mail, first class, postage
prepaid, as follows:

Mark. L. Reilly, Esquire
c/o John V. DeMarco
US Steel Tower, Suite 510
Pittsburgh, PA 15219

Robert T. McDermott, Esquire
Attorney General -Tert Litigation
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff Schoch and Pro Se
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JACQUELINE L. SCHOCH,
AND THERON G. NOBLE,

Plaintiffs,

vs.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a Pennsylvania
Corporation,

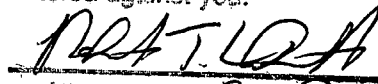
Defendants.


CIVIL ACTION - LAW

No. 08-1222

**ANSWER, NEW MATTER AND CROSS
CLAIM PURSUANT TO PA. R.C.P.
1031.1 DIRECTED TO DEFENDANT
FRANCIS J. PALO, INC.**

You are hereby notified to plead to the
within pleading within twenty (20) days
hereof or a default judgement may be
entered against you.



Attorney for 

Filed on behalf of Defendant:
Pennsylvania Department of Transportation
(PennDOT)

Counsel of Record for This Party:

Robert T. McDermott
Sr. Deputy Attorney General
Pa. I.D. #39338

Commonwealth of Pennsylvania
Office of Attorney General
Torts Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

(412) 565-2574

FILED No CC.
m/11: 44/Lm
APR 13 2009 (60)

William A. Shaw
Prothonotary/Clerk of Courts

**ANSWER, NEW MATTER AND CROSS CLAIM PURSUANT TO
PA. R.C.P. 1031.1 DIRECTED TO DEFENDANT FRANCIS J. PALO, INC.**

AND NOW, comes the Defendant, Pennsylvania Department of Transportation (PennDOT), by and through the Office of Attorney General and files the following **ANSWER, NEW MATTER AND CROSS CLAIM PURSUANT TO PA. R.C.P. 1031.1 DIRECTED TO DEFENDANT FRANCIS J. PALO, INC.:**

1. In response to the averments contained in paragraph 1 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

2. In response to the averments contained in paragraph 2 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

3. The averments contained in paragraph 3 of Plaintiffs' Complaint are admitted.

4. The averments contained in paragraph 4 of Plaintiffs' Complaint are admitted.

5. The averments contained in paragraph 5 of Plaintiffs' Complaint are admitted.

6. The averments contained in paragraph 6 of Plaintiffs' Complaint are admitted.

7. The averments contained in paragraph 7 of Plaintiffs' Complaint are denied. At all times relevant to the events at issue in the instant litigation, the Defendant, Palo, was acting as an independent contractor.

8. In response to the averments contained in paragraph 8 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

9. The averments contained in paragraph 9 of Plaintiffs' Complaint are admitted.

10. In response to the averments contained in paragraph 10 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

11. In response to the averments contained in paragraph 11 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

12. In response to the averments contained in paragraph 12 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

13. In response to the averments contained in paragraph 13 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information

sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

14. In response to the averments contained in paragraph 14 of Plaintiffs' Complaint, the Defendant, PennDOT, admits that prior to the Brady Street Bridge project, representatives of PennDOT met with Plaintiff, Schoch, concerning work which would need to be done as part of the project. With respect to the remaining averments contained in paragraph 14 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

15. In response to the averments contained in paragraph 15 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

16. In response to the averments contained in paragraph 16 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

17. In response to the averments contained in paragraph 17 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information

sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

18. In response to the averments contained in paragraph 18 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

19. In response to the averments contained in paragraph 19 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

20. In response to the averments contained in paragraph 20 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

21. In response to the averments contained in paragraph 21 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

22. In response to the averments contained in paragraph 22 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

23. The averments contained in paragraph 23 of Plaintiffs' Complaint are denied.

24. The averments contained in paragraph 24 of Plaintiffs' Complaint are denied.

25. In response to the averments contained in paragraph 25 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

26. In response to the averments contained in paragraph 26 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

27. The averments contained in paragraph 27 of Plaintiffs' Complaint are denied.

28. In response to the averments contained in paragraph 28 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

29. In response to the averments contained in paragraph 29 of Plaintiffs' Complaint, the Defendant, PennDOT, denies that a copy of the court order was attached to the Complaint as Exhibit "A". By way of further response, the Defendant, PennDOT, avers that the court order speaks for itself.

30. In response to the averments contained in paragraph 30 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

31. In response to the averments contained in paragraph 31 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

32. In response to the averments contained in paragraph 32 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

33. In response to the averments contained in paragraph 33 of Plaintiffs' Complaint, the Defendant, PennDOT, denies that the entrance way is unsafe and dangerous. With respect to the remaining averments contained in paragraph 33 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form

a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

34. In response to the averments contained in paragraph 34 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

35. The averments contained in paragraph 35 of Plaintiffs' Complaint set forth legal conclusions to which no response is required by this Defendant. To the extent to which a response may be required, the averments are denied.

COUNT I

36. The Defendant, PennDOT, hereby incorporates its responses to paragraphs 1 through 35 of the Plaintiffs' Complaint as though fully set forth herein at length.

37. The averments contained in paragraph 37 of Plaintiffs' Complaint are denied.

38. The averments contained in paragraph 38 of Plaintiffs' Complaint are denied.

39. The averments contained in paragraph 39 of Plaintiffs' Complaint are denied.

40. The averments contained in paragraph 40 of Plaintiffs' Complaint are denied.

COUNT II

41. The Defendant, PennDOT, hereby incorporates its responses to paragraphs 1 through 40 of the Plaintiffs' Complaint as though fully set forth herein at length.

42. The averments contained in paragraph 42 of Plaintiffs' Complaint set forth legal conclusions to which no response is required by this Defendant. To the extent to which a response may be required, the averments are denied.

COUNT III

43. The Defendant, PennDOT, hereby incorporates its responses to paragraphs 1 through 42 of the Plaintiffs' Complaint as though fully set forth herein at length.

44. The averments contained in paragraph 44 of Plaintiffs' Complaint set forth legal conclusions to which no response is required by this Defendant.

45. The averments contained in paragraph 45 of Plaintiffs' Complaint are denied.

46. The averments contained in paragraph 46 of Plaintiffs' Complaint are denied.

COUNT IV

47. The Defendant, PennDOT, hereby incorporates its responses to paragraphs 1 through 46 of the Plaintiffs' Complaint as though fully set forth herein at length.

48. The averments contained in paragraph 48 of Plaintiffs' Complaint are denied.

49. The averments contained in paragraph 49 of Plaintiffs' Complaint set forth legal conclusions to which no response is required by this Defendant. To the extent to which a response may be required, the averments are denied.

50. In response to the averments contained in paragraph 50 of Plaintiffs' Complaint, the Defendant, PennDOT, after reasonable investigation, is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments contained in said Paragraph; consequently, the averments contained in said Paragraph are denied and strict proof, thereof, is demanded at trial.

COUNT V

51-55. The averments contained in paragraphs 51 through 55 of Plaintiffs' Complaint have been stricken pursuant to court order.

MISCELLANEOUS AVERMENTS

56. The averments contained in paragraph 56 of Plaintiffs' Complaint set forth legal conclusions to which no response is required by this Defendant.

57. The averments contained in paragraph 57 of Plaintiffs' Complaint set forth legal conclusions to which no response is required by this Defendant.

58. The averments contained in paragraph 58 of Plaintiffs' Complaint set forth legal conclusions to which no response is required by this Defendant.

59. The averments contained in paragraph 59 of Plaintiffs' Complaint set forth legal conclusions to which no response is required by this Defendant.

NEW MATTER

By way of further and more complete answer to Plaintiffs' Complaint, the Defendant, PennDOT, sets forth the following New Matter:

60. The cause of action against the Defendant, PennDOT, is barred by the Doctrine of Sovereign Immunity.

61. By way of further defense, it is averred that the cause of action against the Defendant, PennDOT, does not fall within one of the nine (9) categories enumerated by §8522 of Act 152, September 28, 1978, P.L. 788, as amended, 42 Pa. C.S.A. §8522.

62. By way of further defense, it is averred that the cause of action against the Defendant, PennDOT, fails as a result of the failure of this Defendant to receive actual written notice pursuant to §8555 of Act 152, September 28, 1978, P.L. 788, as amended, 42 Pa. C.S.A. §5522.

63. By way of further defense, it is averred that in the event that damages are awarded in this case, said damages are limited to the amounts and for the losses as set forth in §8528 of Act 152, September 28, 1978, P.L. 788, as amended, 42 Pa. C.S.A. §8528.

64. The rights of the Plaintiffs in this action are diminished or fully barred by Plaintiffs' contributory negligence in accordance with the provisions of the Pennsylvania Comparative Negligence Law, 42 Pa. C.S.A. §7102.

65. The injuries, losses, damages or occurrences alleged in the Plaintiffs' Complaint were the result of an independent and intervening cause or causes over which the Defendant, PennDOT, had no control or in any way participated.

66. The injuries, losses, damages or occurrences alleged in the Plaintiffs' Complaint were the result of the assumption of the risk of such injuries, losses or damages by the Plaintiff.

67. All rights which might otherwise exist against this party are barred in whole or in part by the applicable statutes of limitations, other similar statutes, contractual provisions and/or other fundamental provisions, including waiver, estoppel and laches.

68. By way of further defense, it is averred that the Defendant, PennDOT, is protected by the defense that it was acting pursuant to a duty required by statute or statutorily authorized regulation at all times relevant to the events at issue herein, and therefore, said acts were within the discretion granted to them by statute or statutorily authorized regulation and said defenses are articulated at 42 Pa. C.S.A. §8524.

WHEREFORE, the Defendant, PennDOT, prays this Honorable Court to dismiss the Plaintiffs' Complaint, with costs assessed against the Plaintiffs.

CROSS CLAIM PURSUANT TO PA. R.C.P. 1031.1
DIRECTED TO DEFENDANT FRANCIS J. PALO, INC.

69. If it is proven that the accident at issue in the instant litigation occurred as alleged in Plaintiffs' Complaint, then any injuries or damages allegedly sustained by the Plaintiffs were due to the negligence, carelessness and recklessness of the Defendant, FRANCIS J. PALO, INC.,

for the reasons set forth against it in Plaintiffs' Complaint, which allegations are incorporated herein by reference as though the same were set forth in full again.


WHEREFORE, the action against the Defendant, PennDOT, should be dismissed as against it and judgment be entered in its favor with costs assessed against the Plaintiffs.

Alternatively, if it is proven that the Defendant, PennDOT, is liable to the Plaintiffs, which liability is specifically denied, then the Defendant, FRANCIS J. PALO, INC., is jointly and/or severally liable to the Plaintiffs with the Defendant, PennDOT, or liable over to the Defendant, PennDOT, on the cause of action declared upon.

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY:




ROBERT T. McDERMOTT
Sr. Deputy Attorney General

AFFIDAVIT

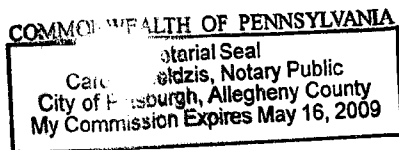
COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF ALLEGHENY)

Robert T. McDermott, being duly sworn according to law, deposes and says that he is the attorney for the Defendant, Pennsylvania Department of Transportation (PennDOT), that he makes this Affidavit to expedite the litigation; that an Affidavit by this Defendant will be provided the Court should the Court so desire; and that the facts set forth in the foregoing **ANSWER, NEW MATTER AND CROSS CLAIM PURSUANT TO PA. R.C.P. 1031.1 DIRECTED TO DEFENDANT FRANCIS J. PALO, INC.** are true and correct to the best of his knowledge, information and belief.


Robert T. McDermott
Sr. Deputy Attorney General

Sworn to and subscribed
before me this 9th day
of April, 2009.

Carol Kubelzy
Notary Public



CERTIFICATE OF SERVICE

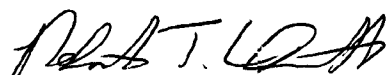
I hereby certify that a true and correct copy of the foregoing **ANSWER, NEW
MATTER AND CROSS CLAIM PURSUANT TO PA. R.C.P. 1031.1 DIRECTED TO
DEFENDANT FRANCIS J. PALO, INC.** was served upon the following counsel of record,
via first-class mail, postage pre-paid on April 9, 2009:

Theron G. Noble, Esq.
FERRARACCIO & NOBLE
301 East Pine Street
Clearfield, PA 16830
(Counsel for Plaintiffs)

Mark Reilly, Esq.
Law Ofcs of John DeMarco
600 Grant St Suite 510
Pittsburgh PA 15219
(Counsel for Palo)

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY: 
ROBERT T. McDERMOTT
Sr. Deputy Attorney General

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

JACQUELINE L. SCHOCH, an
adult individual;

PLAINTIFF,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

FILED NO CC.
m/12:15pm
APR 15 2009 (64)

William A. Shaw
Prothonotary/Clerk of Courts

Type of Pleading:

**REPLY TO NEW MATTER OF
DEFENDANT PENNDOT**

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

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

JACQUELINE L. SCHOCH, an
adult individual;

PLAINTIFF,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

PLAINTIFFS' REPLY TO NEW MATTER
OF DEFENDANT PENNDOT

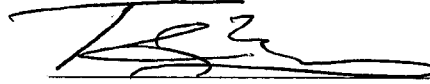
AND NOW, comes the Plaintiffs, Jaqueline L. Schoch and Theron G. Noble, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of their REPLY TO NEW MATTER OF DEFENDANT PENNDOT:

60 - 68. Said averments state conclusions of law for which no response is deemed necessary. To the extent such a response might be so required, the same are DENIED and strict proof demanded at time of trial.

69. Said averment is directed at other parties to the case and therefore no answer is required.

WHEREFORE, Plaintiffs respectfully request that JUDGMENT be entered in their favor and against defendants as requested in their CIVIL COMPLAINT.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'T. Noble', is written over a horizontal line.

Theron G. Noble, Esquire
Attorney for Plaintiffs
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

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

JACQUELINE L. SCHOCH, and
THERON G. NOBLE,
adult individuals;

PLAINTIFFS,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

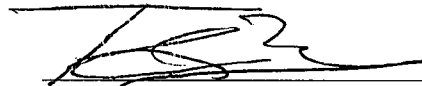
CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiffs, does hereby certify that this
14th day of April, 2009, that I did mail a true and correct copy of
Plaintiffs' REPLY TO NEW MATTER OF DEFENDANT PENNDOT to the below
indicated persons, being counsel of record for the Defendants, via United States Mail,
first class, postage prepaid, as follows:

Mark. L. Reilly, Esquire
c/o John V. DeMarco
Two Chatham Center, Suite 1420
112 Washington Place
Pittsburgh, PA 15219

Robert T. McDermott, Esquire
Attorney General - Tort Litigation
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff Schoch and Pro Se
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

JACQUELINE L. SCHOCH AND
THERON G. NOBLE, ADULT
INDIVIDUALS

PLAINTIFFS,

VS.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PENNDOT), AND
FRANCIS J. PALO, INC., A
PENNSYLVANIA CORPORATION,

DEFENDANTS.

) CIVIL DIVISION

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NO. 08-1222-CD

ISSUE NO.

**REPLY TO CROSSCLAIM OF THE
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PENNDOT)**

FILED ON BEHALF OF DEFENDANT:
FRANCIS J. PALO, INC.

COUNSEL OF RECORD FOR PARTY:
MARK REILLY
PA. I.D. #53549

SUITE 1420 TWO CHATHAM CENTER
112 WASHINGTON PLACE
PITTSBURGH, PA 1521

(412)560-3429

⁵ FILED NO CC
m12:56:37
APR 20 2009
William A. Shaw
Prothonotary/Clerk of Courts


REPLY TO CROSSCLAIM

AND NOW, comes the Defendant Francis J. Palo, Inc., by and through their attorney Mark L. Reilly and files the following Reply to Crossclaim of The Pennsylvania Department of Transportation:

69. To the extent that this paragraph incorporates averments contained in the plaintiff's complaint, this defendant incorporates its answer, new matter and crossclaim as though fully set forth herein. In further response, the remaining averments contain conclusions of law to which no response is required. In the alternative, if any response is required, which is denied as set forth above, then in that alternative, the remaining averments are denied pursuant to Pa.R.C.P. 1029(e).

WHEREFORE, Defendant, Francis J. Palo, Inc., denies any and all liability and demands that judgment be entered in its favor.

MARK REILLY




Attorney for DEFENDANT,
FRANCIS J. PALO, INC.

VERIFICATION

I, Mark L. Reilly, Attorney for Francis J. Palo, Inc., hereby certify that the facts set forth in the foregoing Reply to Crossclaim of the Pennsylvania Department of Transportation (PennDOT) are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

MARK REILLY



Attorney for DEFENDANT,
FRANCIS J. PALO, INC.

CERTIFICATE OF SERVICE


I hereby certify that I served a true and correct copy of the within **REPLY TO CROSSCLAIM OF THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION (PENNDOT)** upon:

Theron G. Noble, Esquire
Ferrarccio, & Noble
301 East Pine Street
Clearfield, PA 16830
Attorney for Plaintiff, Jacqueline Schoch

Robert McDermott, Esquire
Sr. Deputy Attorney General
Manor Complex, 564 Forbes Avenue
Pittsburgh, PA 15219
Attorney for Pennsylvania Department of Transportation

by first class mail, postage prepaid in the above-referenced case on this 16 day of April, 2009.

MARK REILLY



Attorney for DEFENDANT,
FRANCIS J. PALO, INC.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JACQUELINE L. SCHOCH,
AND THERON G. NOBLE,

Plaintiffs,

vs.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a Pennsylvania
Corporation,

Defendants.

CIVIL ACTION - LAW

No. 08-1222

**NOTICE OF SERVICE OF ANSWERS
TO PLAINTIFFS' FIRST SET OF
INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS**

Filed on behalf of Defendant:
Pennsylvania Department of Transportation
(PennDOT)

Counsel of Record for This Party:

Robert T. McDermott
Sr. Deputy Attorney General
Pa. I.D. #39338

Commonwealth of Pennsylvania
Office of Attorney General
Torts Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

(412) 565-2574

FILED *no cc*
mjo:19/161
APR 23 2009
5 William A. Shaw
Prothonotary/Clerk of Courts

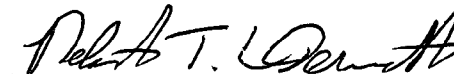
NOTICE OF SERVICE

Please take note that the undersigned has served upon Plaintiffs Answers to First Set of Interrogatories and Request for Production of Documents and copies sent to all counsel of record, on behalf of the Pennsylvania Department of Transportation (PennDOT), in the above-referenced case.

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY:



ROBERT T. McDERMOTT
Sr. Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Service of Answers to Plaintiffs' First Set of Interrogatories and Request for Production of Documents was served upon the following counsel of record, via first-class mail, postage pre-paid on April 21, 2009:

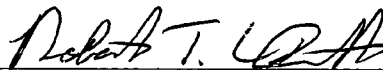
Theron G. Noble, Esq.
FERRARACCIO & NOBLE
301 East Pine Street
Clearfield, PA 16830
(Counsel for Plaintiffs)

Mark Reilly, Esq.
Law Ofcs of John DeMarco
600 Grant St., Suite 510
Pittsburgh, PA 15219
(Counsel for Palo)

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY:



ROBERT T. McDERMOTT
Sr. Deputy Attorney General

CM

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

JACQUELINE L. SCHOCH, an
adult individual;

PLAINTIFF,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

Type of Pleading:

MOTION TO COMPEL

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED

APR 30 2009

5

William A. Shaw
Prothonotary/Clerk of Courts

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

JACQUELINE L. SCHOCH, an
adult individual;

PLAINTIFF,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

MOTION TO COMPEL

(as To Interrogatories 5 and 6 for Answer by Defendant PennDOT)

AND NOW, comes the Plaintiffs, Jaqueline L. Schoch and Theron G. Noble, by and through her counsel of record, and pro se, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of her **MOTION TO COMPEL**:

Background

1. This matter was commenced by the filing of a CIVIL COMPLAINT on July 2, 2008.
2. That defendants filed PRELIMINARY OBJECTIONS, which were sustained in part and dismissed in part on October 3, 2008.

Motion to Compel

3. On January 12, 2009, Plaintiff propounded on Defendants her first set of discovery materials, including interrogatories and request for production of documents.
4. That a MOTION TO COMPEL was filed, an ORDER issued and Defendant PennDOT essentially complied therewith.
5. However, PennDOT objected to specifically Interrogatories 5 and 6 (See Exhibit A

and B attached hereto, being respectively, the questions and answers).


6. That the thrust of this case is the slope of the cartway in the vicinity in which it intersects Brady Street/Rt. 219.

7. That these interrogatories go to the heart of liability in this case and do specifically ask defendants whether the cartway as they left it comply with applicable safety features and why or why not.

8. That to have meaningful discovery responses are required and there is no legitimate basis not to respond.

WHEREFORE, Plaintiffs respectfully requests that their MOTION TO COMPEL be GRANTED and Defendant PennDOT to fully and completely respond to Interrogatories 5 and 6.

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff Schoch
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

4. Identify the slope of the private drive owned by Plaintiff Schoch which runs perpendicular to Brady Street and which separates her premises from that of Plaintiff Noble. Your response hereto shall be given in ten (10) foot intervals, each with a starting point of the western edge of Brady Street and proceeding westerly up said private drive, a distance of fifty (50) feet, producing five (5) such slopes.

Answer

5. Identify any and all regulations, rules, laws, guidelines, and or the like which control the amount of slope permitted in instances in which (i) roads or (ii) driveways intersect with State Highways of the type for which State Route 219 in the vicinity of Plaintiffs' homes.

Answer

6. For any such responses to Interrogatory 5 above, please state whether or not your position is that the slope of the "private road", identified in Interrogatory 4, complies or does not comply. Please also state your reasons why or why not the slope is or is not in compliance.

Answer

Exhibit "A"

**ANSWERS TO PLAINTIFFS' FIRST SET OF
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS**

AND NOW, comes the Defendant, Pennsylvania Department of Transportation (PennDOT), by the Attorney General of the Commonwealth of Pennsylvania, and files the within Answers to Plaintiffs' First Set of Interrogatories and Request for Production of Documents, averring in support thereof, as follows:

Answers to Plaintiffs' First Set of Interrogatories

1. Dean Josephson, PennDOT Eng. Dist. 2-0, 1924-30 Daisy St., Clearfield, PA 16830.
2. None.
3. A decision as to witnesses to be called at the time of trial has not yet been made by this Defendant.
4. This Interrogatory is objected to as calling for information that is equally available and obtainable by the Plaintiffs. Notwithstanding this objection, attached as Exhibit "A" is a drawing showing the roadway/driveway prior to construction and after construction.
5. This Interrogatory is objected to as being overly broad and burdensome and in requesting information that is equally available to the Plaintiffs. Notwithstanding this objection, please see Chapter 441 of Title 67 of the Pennsylvania Code.
6. This Interrogatory is objected to as calling for expert opinion and legal conclusions.
7. This Interrogatory is objected to as being overly broad and burdensome. Notwithstanding this objection, please see Exhibit "A".

Exhibit "B"

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

JACQUELINE L. SCHOCH, and
THERON G. NOBLE,
adult individuals;

PLAINTIFFS,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

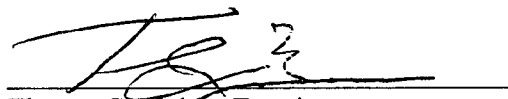
CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiffs, does hereby certify that this
29th day of April, 2009, that I did mail a true and correct copy of
Plaintiffs' MOTION TO COMPEL to the below indicated persons, being counsel of
record for the Defendants, via United States Mail, first class, postage prepaid, as follows:

Mark. L. Reilly, Esquire
c/o John V. DeMarco
Two Chatham Center, Suite 1420
112 Washington Place
Pittsburgh, PA 15219

Robert T. McDermott, Esquire
Attorney General -Tort Litigation
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff Schoch and Pro Se
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

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

JACQUELINE L. SCHOCH, an
adult individual;

PLAINTIFF,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

Type of Pleading:

NOTICE OF SERVICE

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

5
FILED *no cc*
MAY 11 2009
William A. Shaw
Prothonotary/Clerk of Courts

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

JACQUELINE L. SCHOCH, and
THERON G. NOBLE,
adult individuals;

PLAINTIFFS,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

NOTICE OF SERVICE


To: William A. Shaw, Prothonotary

I, Theron G. Noble, Esquire, counsel for Plaintiffs, does hereby certify that this
29th day of April, 2009, that I did propound on the Defendants,
Plaintiffs' SECOND SET OF DISCOVERY REQUESTS CONSISTING OF
INTERROGATORIES, to the below indicated persons, being counsel of record for the
Defendants, via United States Mail, first class, postage prepaid, as follows:

Mark. L. Reilly, Esquire
c/o John V. DeMarco
US Steel Tower, Suite 510
Pittsburgh, PA 15219

Robert T. McDermott, Esquire
Attorney General -Tort Litigation
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Respectfully Submitted,


Theron G. Noble, Esquire
Attorney for Plaintiff Schoch and Pro Se
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

LA

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

JACQUELINE L. SCHOCH, an
adult individual;

PLAINTIFF,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

RULE TO SHOW CAUSE

Now, this 4 day of MAY, 2009, upon consideration of the attached MOTION TO COMPEL (as to Defendant PennDOT concerning Interrogatories 5 and 6), a RULE is hereby issued upon said Defendant to SHOW CAUSE why the MOTION should not be granted. RULE RETURNABLE, for filing written response, is set for the 26th day of May, 2009, and hearing will be held on the 29th day of May, 2009, commencing at 2 : 30 P.M., Courtroom No.1, Clearfield County Courthouse.

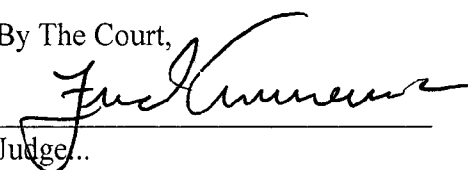
NOTICE

A PETITION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION YOU SHOULD DO SO BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITION. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

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

Court Administrator
Second & Market Streets
Clearfield, PA 16830
(814)-765-2641

By The Court,


Judge..

FILED ^{icc}

04:00 PM
MAY 04 2009

Any Noble

William A. Shaw
Prothonotary/Clerk of Courts

FILED

MAY 04 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5/4/09

☒ 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, CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

JACQUELINE L. SCHOCH, an
adult individual;

PLAINTIFF,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

Type of Pleading:

NOTICE OF SERVICE

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED *no cc*
MAY 11 2009
William A. Shaw
Prothonotary/Clerk of Courts

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

JACQUELINE L. SCHOCH, and
THERON G. NOBLE,
adult individuals;

PLAINTIFFS,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

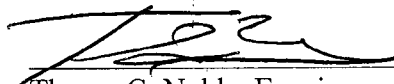
CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiffs, does hereby certify that this
7th day of May, 2009, that I did mail a true and correct copy of
the RULE TO SHOW CAUSE issued upon Plaintiffs' MOTION TO COMPEL to the
below indicated persons, being counsel of record for the Defendants, via United States
Mail, first class, postage prepaid, as follows:

Mark. L. Reilly, Esquire
c/o John V. DeMarco
Two Chatham Center, Suite 1420
112 Washington Place
Pittsburgh, PA 15219

Robert T. McDermott, Esquire
Attorney General -Tort Litigation
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff Schoch and Pro Se
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JACQUELINE L. SCHOCH,
AND THERON G. NOBLE,

Plaintiffs,

vs.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a Pennsylvania
Corporation,

Defendants.

CIVIL ACTION - LAW

No. 08-1222

FILED

MAY 28 2009

12:30 PM
William A. Shaw
Prothonotary/Clerk of Courts

**RESPONSE TO RULE TO SHOW
CAUSE**

Filed on behalf of Defendant:
Pennsylvania Department of Transportation
(PennDOT)

Counsel of Record for This Party:

Robert T. McDermott
Sr. Deputy Attorney General
Pa. I.D. #39338

Commonwealth of Pennsylvania
Office of Attorney General
Torts Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

(412) 565-2574

RESPONSE TO RULE TO SHOW CAUSE

AND NOW, comes the Defendant, Pennsylvania Department of Transportation (PennDOT), by the Attorney General of the Commonwealth of Pennsylvania, and files the within **RESPONSE TO RULE TO SHOW CAUSE**, averring in support thereof, as follows:

1. Plaintiff has filed a Motion to Compel relating to PennDOT's Responses to Interrogatories 5 and 6.
2. Interrogatory 5 requested that PennDOT identify any and all regulations, rules, laws, guidelines, and/or the like which control the amount of slope permitted in instances in which (i) roads or (ii) driveways intersect with State Highways of the type for which State Route 219 in the vicinity of plaintiffs' homes.
3. PennDOT objected to this Interrogatory as being overly broad and burdensome and in requesting information that was equally available to the plaintiffs. Despite this objection, PennDOT referred the plaintiffs to Chapter 441 of Title 67 of the Pennsylvania Code which sets forth the applicable regulations dealing with highway occupancy permits and driveways.
4. In responding to plaintiffs' Interrogatory, PennDOT has sufficiently set forth the applicable regulations relating to this type of situation. The rules of discovery are designed to encourage a fair trial on the merits, and to discourage unfair surprise. It is not a purpose of discovery for a party to supply information readily available to the opposing party. A party will not be compelled to answer interrogatories when the matters contained in the interrogatories are at least equally within an opposing party's knowledge. Eigen v. Textron Lycoming Reciprocating Engine Division, 874 A.2d 1179 (Pa. Super. 2005).

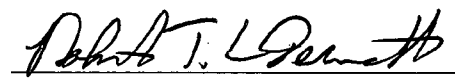
5. Interrogatory 6 was objected to because it calls for legal conclusions and expert opinions by defendant, PennDOT. PennDOT, at this point in the case, has not yet determined an expert to testify at trial on behalf of PennDOT.

WHEREFORE, the defendant, PennDOT, respectfully requests that Plaintiffs' Motion to Compel be denied.

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY:


ROBERT T. McDERMOTT
Sr. Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **RESPONSE TO RULE TO SHOW CAUSE** was served upon the following counsel of record, via first-class mail, postage pre-paid on May 26, 2009:

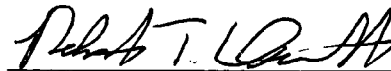
Theron G. Noble, Esq.
FERRARACCIO & NOBLE
301 East Pine Street
Clearfield, PA 16830
(Counsel for Plaintiffs)

Mark Reilly, Esq.
600 Grant St., Suite 510
Pittsburgh, PA 15219
(Counsel for Palo)

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY:



ROBERT T. McDERMOTT
Sr. Deputy Attorney General

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

JACQUELINE L. SCHOCH

VS.

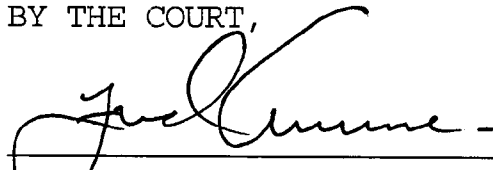
NC. 08-1222-CD


PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION and FRANCIS J.
PALO, INC.

ORDER

NOW this 29th day of May, 2009, following argument on the Plaintiff's Motion to Compel Relative Answer to Interrogatory No. 5, it is the ORDER of this Court that the Department of Transportation supply more specific answer to Interrogatory No. 5 within no more than thirty (30) days from this date. The Department of Transportation shall provide the regulatory standard of slope to which it feels the driveway/cartway should have been constructed.

BY THE COURT,


President Judge

FILED ice Atty's:
01400671
JUN 02 2009
William A. Shaw
Prothonotary/Clerk of Courts

Noble
Reilly
McDermott

FILED

JUN 02 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 6/2/09

☐ 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:

JK

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

JACQUELINE L. SCHOCH, an
adult individual;

PLAINTIFF,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

Type of Pleading:

MOTION TO COMPEL

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED

6/12/09
JUN 09 2009

William A. Shaw
Prothonotary/Clerk of Courts

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

JACQUELINE L. SCHOCH, an
adult individual;

PLAINTIFF,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

MOTION TO COMPEL

AND NOW, comes the Plaintiff, Jaqueline L. Schoch, by and through her counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of her MOTION TO COMPEL:

Background

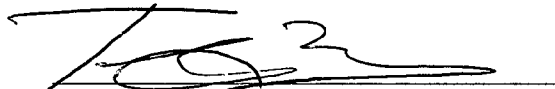
1. This matter was commenced by the filing of a CIVIL COMPLAINT on July 2, 2008.
2. That defendants filed PRELIMINARY OBJECTIONS, which were sustained in part and dismissed in part on October 3, 2008.

Motion to Compel

3. On April 29, 2009, Plaintiffs propounded on Defendants their second set of discovery materials, as a follow up to materials obtained in the first request.
4. That neither defendant has responded to said discovery materials by way of objection or answer.
6. That to date, despite said responses being more than two weeks past due, Plaintiffs have not received any such response to her discovery requests.

**WHEREFORE, Plaintiff respectfully requests that their MOTION TO
COMPEL be GRANTED and Defendants ordered to fully respond to their
discovery requests.**

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'T. G. Noble', is written over a horizontal line.

Theron G. Noble, Esquire
Attorney for Plaintiffs
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

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

JACQUELINE L. SCHOCH, an
adult individual;

PLAINTIFF,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

ORDER

AND NOW this _____ day of _____, 2009, Plaintiff's MOTION TO
COMPEL (as to their Second Set of Discovery materials) is hereby GRANTED. Each
Defendant shall file complete responses to their discovery requests, including request for
production of documents, within _____ days hereof.

By the Court,

Fredric J. Ammerman, PJ

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

JACQUELINE L. SCHOCH, and
THERON G. NOBLE,
adult individuals;

PLAINTIFFS,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

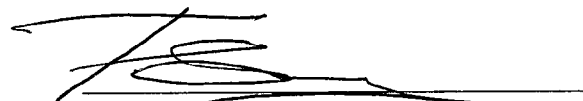
CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, counsel for Plaintiffs, does hereby certify that this
8th day of June, 2009, that I did mail a true and correct copy of
Plaintiffs' MOTION TO COMPEL to the below indicated persons, being counsel of
record for the Defendants, via United States Mail, first class, postage prepaid, as follows:

Mark. L. Reilly, Esquire
c/o John V. DeMarco
Two Chatham Center, Suite 1420
112 Washington Place
Pittsburgh, PA 15219

Robert T. McDermott, Esquire
Attorney General -Tort Litigation
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff Schoch and Pro Se
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

EIA

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

JACQUELINE L. SCHOCH, an adult
individual

Plaintiff,

vs.

NO. 08-1222-C.D.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a Pennsylvania
Corporation,

Defendant,

FILED *(initials)*

JUN 12 2009

0/12/20/09

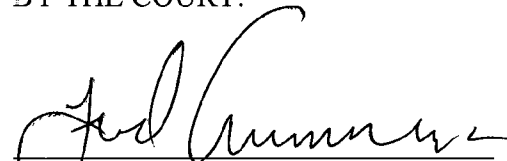
William A. Shaw
Prothonotary/Clerk of Courts

3 CEN TO ATT

SCHEDULING ORDER

AND NOW, this 12 day of June 2009, it is hereby ORDERED that
argument on Plaintiff's Motion to Compel in the above captioned matter shall be and
is hereby scheduled for **August 19, 2009 at 1:30 P.M.** in Courtroom No. 1, of the
Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:



Fredric J. Ammerman,
President Judge

FILED

JUN 12 2009

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 6-12-09
X 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, CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

JACQUELINE L. SCHOCH, an
adult individual;

PLAINTIFF,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

Type of Pleading:

NOTICE OF SERVICE

Filed By:

Plaintiffs

Counsel of Record:

Theron G. Noble, Esquire
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D.#: 55942

FILED *no cc*
10:47 AM
JUN 18 2009
William A. Shaw
Prothonotary/Clerk of Courts

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

JACQUELINE L. SCHOCH, and
THERON G. NOBLE,
adult individuals;

PLAINTIFFS,

v.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a
Pennsylvania Corporation,

DEFENDANTS.

No. 08- 1222 -CD

NOTICE OF SERVICE

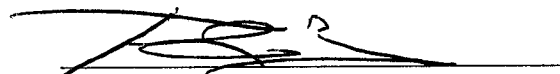
To: William A. Shaw, Prothonotary

I, Theron G. Noble, Esquire, counsel for Plaintiffs, does hereby certify that this
16th day of June, 2009, that I did serve on the Defendants, the
SCHEDULING ORDER issued upon Plaintiffs' MOTION TO COMPEL, to the below
indicated persons, being counsel of record for the Defendants, via United States Mail,
first class, postage prepaid, as follows:

Mark. L. Reilly, Esquire
c/o John V. DeMarco
US Steel Tower, Suite 510
Pittsburgh, PA 15219

Robert T. McDermott, Esquire
Attorney General -Tort Litigation
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Respectfully Submitted,



Theron G. Noble, Esquire
Attorney for Plaintiff Schoch and Pro Se
Ferraraccio & Noble
301 East Pine Street
Clearfield, PA 16830
(814)-375-2221
PA I.D. #: 55942

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JACQUELINE L. SCHOCH,
AND THERON G. NOBLE,

Plaintiffs,

vs.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a Pennsylvania
Corporation,

Defendants.

CIVIL ACTION - LAW

No. 08-1222

**NOTICE OF SERVICE OF
SUPPLEMENTAL ANSWERS TO
PLAINTIFFS' INTERROGATORIES**

Filed on behalf of Defendant:
Pennsylvania Department of Transportation
(PennDOT)

Counsel of Record for This Party:

Robert T. McDermott
Sr. Deputy Attorney General
Pa. I.D. #39338

Commonwealth of Pennsylvania
Office of Attorney General
Torts Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

(412) 565-2574

FILED *no cc*
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JUL 07 2009

William A. Shaw
Prothonotary/Clerk of Courts

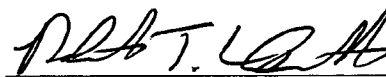
NOTICE OF SERVICE OF SUPPLEMENTAL ANSWERS TO PLAINTIFFS'
INTERROGATORIES

Please take note that the undersigned has served upon Plaintiffs Supplemental Answers to Interrogatories and copies sent to all counsel of record, on behalf of the Pennsylvania Department of Transportation (PennDOT), in the above- referenced case.

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY:



ROBERT T. McDERMOTT
Sr. Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NOTICE OF SERVICE OF SUPPLEMENTAL ANSWERS TO PLAINTIFFS' INTERROGATORIES** was served upon the following counsel of record, via first-class mail, postage pre-paid on July 2, 2009:

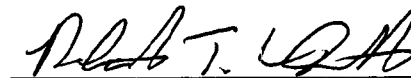
Theron G. Noble, Esq.
FERRARACCIO & NOBLE
301 East Pine Street
Clearfield, PA 16830
(Counsel for Plaintiffs)

Mark Reilly, Esq.
Law Ofcs of John DeMarco
600 Grant St., Suite 510
Pittsburgh, PA 15219
(Counsel for Palo)

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY:



ROBERT T. McDERMOTT
Sr. Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JACQUELINE L. SCHOCH,
AND THERON G. NOBLE,

Plaintiffs,

vs.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a Pennsylvania
Corporation,

Defendants.

CIVIL ACTION - LAW

No. 08-1222

**NOTICE OF SERVICE OF ANSWERS
TO PLAINTIFFS' SECOND SET OF
INTERROGATORIES**

Filed on behalf of Defendant:
Pennsylvania Department of Transportation
(PennDOT)

Counsel of Record for This Party:

Robert T. McDermott
Sr. Deputy Attorney General
Pa. I.D. #39338

Commonwealth of Pennsylvania
Office of Attorney General
Torts Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

(412) 565-2574

5 FILED No CC
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AUG 19 2009
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

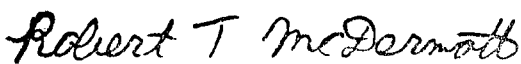
I hereby certify that a true and correct copy of the foregoing Notice of Service of Answers to Plaintiffs' Second Set of Interrogatories was served upon the following counsel of record, via first-class mail, postage pre-paid on August 17, 2009:

Theron G. Noble, Esq.
FERRARACCIO & NOBLE
301 East Pine Street
Clearfield, PA 16830
(Counsel for Plaintiffs)

Mark Reilly, Esq.
Law Ofcs of John DeMarco
600 Grant St., Suite 510
Pittsburgh, PA 15219
(Counsel for Palo)

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY: 

ROBERT T. McDERMOTT
Sr. Deputy Attorney General

UA

FILED

AUG 20 2009

2:15

William A. Shaw

Prothonotary/Clerk of Courts

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

CFR to

Arty's NOBUE

McDermott

JACQUELINE L. SCHOCH

VS.

NC. 08-1222-CD

PENNSYLVANIA DEPARTMENT OF

TRANSPORTATION and

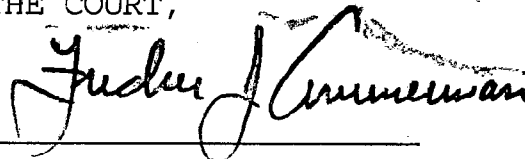
FRANCIS J. PALO, INC.

ORDER

NOW this 19th day of August, 2009, this being the date set for argument on the Motion to Compel filed on June 9, 2009, on behalf of the Plaintiff; upon agreement of counsel for the Plaintiff and the Pennsylvania Department of Transportation and counsel for Francis J. Palo, Inc., it is the ORDER of this Court that the said Motion to Compel be and is hereby granted.

Defendants Pennsylvania Department of Transportation and Francis J. Palo, Inc., shall have no more than thirty (30) days from this date in which to supply the discovery materials that are requested.

BY THE COURT,



President Judge

DATE: 8-20-09

☒ You are responsible for serving all appropriate parties.
☒ The Probationary's office has provided service to the following parties:
Plaintiff(s) ☒ Defendant(s) Attorney ☒ Other

FILED
AUG 20 2009
William A. Smith
Probationary/Clerk of Court

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JACQUELINE L. SCHOCH,
AND THERON G NOBLE,

Plaintiffs,

vs.

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a Pennsylvania
Corporation,

Defendants.

CIVIL ACTION - LAW

No. 08-1222

**JOINT PRAECIPE TO MARK ALL
CLAIMS AND CROSS-CLAIMS
SETTLED AND DISCONTINUED**

Filed on behalf of Defendant:
Pennsylvania Department of Transportation
(PennDOT)

Counsel of Record for This Party:

Robert T. McDermott
Sr. Deputy Attorney General
Pa. I.D. #39338

Commonwealth of Pennsylvania
Office of Attorney General
Torts Litigation Unit
Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

(412) 565-2574

FILED NO CC
NOV 12 2009 (611)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JACQUELINE L. SCHOCH,
AND THERON G. NOBLE,

CIVIL ACTION - LAW

No. 08-1222

Plaintiffs,

vs.

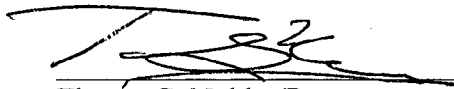
PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION (PennDOT), and
FRANCIS J. PALO, INC., a Pennsylvania Corporation,

Defendants.

**JOINT PRAECIPE TO MARK ALL CLAIMS AND
CROSS-CLAIMS SETTLED AND DISCONTINUED**

AND NOW, come the parties in the above-captioned case and praecipe the Prothonotary
to mark the docket in the above-captioned case and all claims and cross-claims settled and
discontinued.

Respectfully Submitted,



Theron G. Noble, Esq.
Attorney for Plaintiffs



Robert T. McDermott
Attorney for Pennsylvania Department
of Transportation (PennDOT)



Mark Reilly, Esq.
Attorney for Francis J. Palo, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **JOINT PRAECIPE TO MARK ALL CLAIMS AND CROSS-CLAIMS SETTLED AND DISCONTINUED** was served upon the following counsel of record, via first-class mail, postage pre-paid on November 10, 2009:

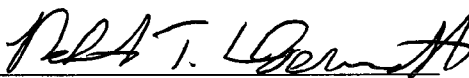
Theron G. Noble, Esq.
FERRARACCIO & NOBLE
301 East Pine Street
Clearfield, PA 16830
(Counsel for Plaintiffs)

Mark Reilly, Esq.
Two Chaham Center, Suite 1420
112 Washington Place
Pittsburgh, PA 15219
(Counsel for Palo)

Respectfully Submitted,

THOMAS W. CORBETT, JR.
Attorney General

BY:


ROBERT T. McDERMOTT
Sr. Deputy Attorney General