

08-2458-CJ

Gary Klebacha vs Debra Antonio

COMMONWEALTH OF PENNSYLVANIA

COURT OF COMMON PLEAS

Judicial District, County Of Clearfield

NOTICE OF APPEAL

FROM William A. Shaw
Prothonotary/Clerk of Courts

MAGISTERIAL DISTRICT JUDGE JUDGMENT

COMMON PLEAS No. 2008-2458-CD

NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the Magisterial District Judge on the date and in the case referenced below.

NAME OF APPELLANT Debra Antonio		MAG. DIST. NO. 46-3-01	NAME OF MDJ Patrick N. Ford	
ADDRESS OF APPELLANT 333 Cherry Lane		CITY Weedville	STATE PA	ZIP CODE 15868
DATE OF JUDGMENT 12/15/08	IN THE CASE OF (Plaintiff) Gary Klebacha		(Defendant) Debra Antonio	
DOCKET No. CV-537-08		SIGNATURE OF APPELLANT OR ATTORNEY OR AGENT David P. King, Esq.		
This block will be signed ONLY when this notation is required under Pa. R.C.P.D. J. No. 1008B. This Notice of Appeal, when received by the Magisterial District Judge, will operate as a SUPERSEDEAS to the judgment for possession in this case.		If appellant was Claimant (see Pa. R.C.P.D. J. No. 1001(6) in action before a Magisterial District Judge, A COMPLAINT MUST BE FILED within twenty (20) days after filing the NOTICE of APPEAL.		
_____ Signature of Prothonotary or Deputy				

PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

This section of form to be used ONLY when appellant was DEFENDANT (see Pa. R.C.P.D.J. No. 1001(7) in action before Magisterial District Judge. IF NOT USED, detach from copy of notice of appeal to be served upon appellee.

PRAECIPE: To Prothonotary

Enter rule upon Gary Klebacha appellee(s), to file a complaint in this appeal
Name of appellee(s)(Common Pleas No. 2008-2458-CD) within twenty (20) days after service of rule or suffer entry of judgment or non pros._____
Signature of appellant or attorney or agentRULE: To Gary Klebacha appellee(s)
Name of appellee(s)

OWNER

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time JUDGMENT OF NON PROS MAY BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of the mailing.

Date December 29, 2008_____
Signature of Prothonotary or Deputy

YOU MUST INCLUDE A COPY OF THE NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH THIS NOTICE OF APPEAL.

PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT

(This proof of service MUST BE FILED WITHIN TEN (10) DAYS AFTER filing the notice of appeal. Check applicable boxes)

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF _____; SS

AFFIDAVIT: I hereby swear or affirm that I served

- ☐ a copy of the Notice of Appeal, Common Pleas No. _____, upon the Magisterial District Judge designated therein on
(date of service) _____, 20____, ☐ by personal service ☐ by (certified) (registered) mail,
sender's receipt attached hereto, and upon the appellee, (name) _____ on
_____, 20____ ☐ by personal service ☐ by (certified) (registered) mail,
sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME

THIS _____ DAY OF _____, 20____

Signature of official before whom affidavit was made

Signature of affiant

Title of official

My commission expires on _____, 20____



PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT

(This proof of service **MUST BE FILED WITHIN TEN (10) DAYS AFTER** filing the notice of appeal. Check applicable boxes)

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF _____; SS

AFFIDAVIT: I hereby swear or affirm that I served

- ☐ a copy of the Notice of Appeal, Common Pleas No. _____, upon the Magisterial District Judge designated therein on
(date of service) _____, 20____, ☐ by personal service ☐ by (certified) (registered) mail,
sender's receipt attached hereto, and upon the appellee, (name) _____ on
_____, 20____ ☐ by personal service ☐ by (certified) (registered) mail,
sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME

THIS _____ DAY OF _____, 20____

Signature of official before whom affidavit was made

Signature of affiant

Title of official

My commission expires on _____, 20____

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:	46-3-01
MDJ Name: Hon.	PATRICK N. FORD
Address:	309 MAPLE AVENUE PO BOX 452 DUBOIS, PA 15801
Telephone:	(814) 371-5321

**NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE**

PLAINTIFF: **KLEBACHA, GARY**
~~333 CHERRY AVENUE~~ **117 Betsy Rd.**
REYNOLDSVILLE, PA 15851

VS.
DEFENDANT: **ANTONIO, DEBRA**
333 CHERRY LANE
WEEDVILLE, PA 15868

DEBRA ANTONIO
333 CHERRY LANE
WEEDVILLE, PA 15868

Docket No.: **CV-0000537-08**
Date Filed: **11/13/08**



THIS IS TO NOTIFY YOU THAT:

Judgment: **DEFAULT JUDGMENT PLTF** (Date of Judgment) **12/15/08**

- ☒ Judgment was entered for: (Name) **KLEBACHA, GARY**
- ☒ Judgment was entered against: (Name) **ANTONIO, DEBRA**
in the amount of \$ **948.05**
- ☐ Defendants are jointly and severally liable.
- ☐ Damages will be assessed on Date & Time _____
- ☐ This case dismissed without prejudice.
- ☐ Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127
\$ _____
- ☐ Portion of Judgment for physical damages arising out of
residential lease \$ _____

Amount of Judgment	\$ 869.05
Judgment Costs	\$ 79.00
Interest on Judgment	\$.00
Attorney Fees	\$.00
Total	\$ 948.05
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
Certified Judgment Total	\$ _____

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

EXCEPT AS OTHERWISE PROVIDED IN THE RULES OF CIVIL PROCEDURE FOR MAGISTERIAL DISTRICT JUDGES, IF THE JUDGMENT HOLDER ELECTS TO ENTER THE JUDGMENT IN THE COURT OF COMMON PLEAS, ALL FURTHER PROCESS MUST COME FROM THE COURT OF COMMON PLEAS AND NO FURTHER PROCESS MAY BE ISSUED BY THE MAGISTERIAL DISTRICT JUDGE.

UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE MAGISTERIAL DISTRICT JUDGE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

12/15/08 Date **Patrick N. Ford - bnf**, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

_____, Date _____, Magisterial District Judge

My commission expires first Monday of January, **2012**

SEAL

AOPC 315-07

DATE PRINTED: 12/15/08 9:33:00 AM

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE

Mag. Dist. No.: **46-3-01**
MDJ Name: Hon.
PATRICK N. FORD
Address: **309 MAPLE AVENUE**
PO BOX 452
DUBOIS, PA
Telephone: **(814) 371-5321** **15801**

PLAINTIFF: NAME and ADDRESS
KLEBACHA, GARY
333 CHERRY AVENUE
REYNOLDSVILLE, PA 15851

VS.
DEFENDANT: NAME and ADDRESS
ANTONIO, DEBRA
333 CHERRY LANE
WEEDVILLE, PA 15868

Docket No.: **CV-0000537-08**
Date Filed: **11/13/08**



PATRICK N. FORD
309 MAPLE AVENUE
PO BOX 452
DUBOIS, PA 15801

THIS IS TO NOTIFY YOU THAT:

Judgment: **DEFAULT JUDGMENT PLTF** (Date of Judgment) **12/15/08**

☒ Judgment was entered for: (Name) **KLEBACHA, GARY**

☒ Judgment was entered against: (Name) **ANTONIO, DEBRA**
in the amount of \$ **948.05**

☐ Defendants are jointly and severally liable.

☐ Damages will be assessed on Date & Time _____

☐ This case dismissed without prejudice.

☐ Amount of Judgment Subject to Attachment/42 Pa.C.S. § 8127
\$ _____

☐ Portion of Judgment for physical damages arising out of
residential lease \$ _____

Amount of Judgment	\$ 869.05
Judgment Costs	\$ 79.00
Interest on Judgment	\$.00
Attorney Fees	\$.00
Total	\$ 948.05
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
Certified Judgment Total	\$ _____

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UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE MAGISTERIAL DISTRICT JUDGE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

FILED

m. 12:50 PM
JAN 02 2009

S
William A. Shaw
Prothonotary/Clerk of Courts

12-15-08 Date *Patrick N. Ford - PNF*, Magisterial District Judge

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

_____, Date _____, Magisterial District Judge

My commission expires first Monday of January, **2012**

SEAL

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF: **CLEARFIELD****CIVIL COMPLAINT**

Mag. Dist. No.:

46-3-01

MDJ Name: Hon.

PATRICK N. FORDAddress: **309 MAPLE AVENUE****PO BOX 452****DUBOIS, PA****15801**Telephone: **(814) 371-5321**

PLAINTIFF:

NAME and ADDRESS

GARY KLEBACHA**117 BETSY RD****L REYNOLDSVILLE, PA 15851****VS.**

DEFENDANT:

NAME and ADDRESS

DEBRA ANTONIO**333 CHERRY LN.****L WEEPVILLE PA. 15868**Docket No.: **CJ-537-C8**Date Filed: **11-13-08**

	AMOUNT	DATE PAID
FILING COSTS	\$ <u>19.00</u>	<u>11/13/08</u>
POSTAGE	\$ <u> </u>	<u> / / </u>
SERVICE COSTS	\$ <u> </u>	<u> / / </u>
CONSTABLE ED.	\$ <u> </u>	<u> / / </u>
 TOTAL	\$ <u> </u>	<u> / / </u>

Pa.R.C.P.D.J. No. 206 sets forth those costs recoverable by the prevailing party.

TO THE DEFENDANT: The above named plaintiff(s) asks judgment against you for \$ 869.05 together with costs upon the following claim (Civil fines must include citation of the statute or ordinance violated):

OVERPAID DOMESTIC RELATIONS

I, GARY KLEBACHA verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of Section 4904 of the Crimes Code (18 PA. C.S. § 4904) related to unsworn falsification to authorities.

(Signature of Plaintiff or Authorized Agent)

Plaintiff's
Attorney:

Address:

Telephone:

IF YOU INTEND TO ENTER A DEFENSE TO THIS COMPLAINT, YOU SHOULD NOTIFY THIS OFFICE IMMEDIATELY AT THE ABOVE TELEPHONE NUMBER. YOU MUST APPEAR AT THE HEARING AND PRESENT YOUR DEFENSE. UNLESS YOU DO, JUDGMENT MAY BE ENTERED AGAINST YOU BY DEFAULT.

If you have a claim against the plaintiff which is within magisterial district judge jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office at least five days before the date set for the hearing.

If you are disabled and require a reasonable accommodation to gain access to the Magisterial District Court and its services, please contact the Magisterial District Court at the above address or telephone number. We are unable to provide transportation.

FILED

JAN 16 2009

o/a: uol w
William A. Shaw
Prothonotary/Clerk of Courts
6 1/2 hr to Plea

FILED

JAN 16 2009

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA

Gary Klebacha,

Plaintiff/Appellant

vs.

Debra Antonio,

Defendant/Appellee

) District Justice Appeal

) Case No.: ~~CV-537-08~~

) 2008-2458-CD

) Type of Pleading:

) COMPLAINT

) Filed on Behalf of:

) PLAINTIFF

) Plaintiff's address:

117 Betsey Rd.

Reynoldsville, PA 15851

1
2 IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA

3 Gary Klebacha,) District Justice Appeal
4) Case No.: CV-537-08 or 2008 2458CD
Plaintiff/Appellant)
5) Type of Pleading:
vs.) COMPLAINT
6)
Debra Antonio,)
7)
Defendant/Appellee)
8)

9
10 **NOTICE**

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

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

26
27 Court Administrator
28 Clearfield County Courthouse
29 230 East Market Street
30 Clearfield, Pennsylvania 16830
31 (814 765-2641, extension 1300

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Gary Klebacha,) District Justice Appeal
) Case No.: CV-537-08 or 2008 2458CD
)
 Plaintiff/Appellant)
)
 vs.) Type of Pleading:
) **COMPLAINT**
)
)
 Debra Antonio,)
)
)
 Defendant/Appellee)
)

COMPLAINT

NOW, comes the **Plaintiff**, Gary Klebacha, who hereby avers as follows:

1. Gary Klebacha is an adult individual whose address is 117 Betsey Road, Reynoldsville, Pennsylvania, 15851.
2. Defendant is Debra Antonio, an adult individual, whose address is 333 Cherry Lane, Weedville, Pennsylvania, 15868.
3. On May 23, 2008 Plaintiffs spousal support obligation was terminated.
4. Court order was amended to terminate obligation effective May 23, 2008.
5. Plaintiff over paid Defendant \$869.05
6. Wherefore Plaintiff demands judgment against Defendant in the amount of \$869.05 plus interest and court costs and such other reasonable costs as the court may allow.

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VERIFICATION

I verify that the statements made in this Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to Unsworn Falsification to Authorities.



Gary Klebacha

FILED

JAN 16 2009

William A. Shaw
Prothonotary/Clerk of Courts

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

GARY KLEBACHA,
Plaintiff

vs.

DEBRA ANTONIO,
Defendant

NO. 2008-2458 C.D.

Type of Case: Civil

Type of Pleading: Answer with
Counterclaim

Filed on behalf of: Defendant

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

Supreme Court No. 22980

FILED 2cc Atty
9/11:00am King
FEB 17 2009 (610)

William A. Shaw
Prothonotary/Clerk of Courts

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

GARY KLEBACHA,	:	
Plaintiff	:	
	:	
vs.	:	NO. 2008-2458 C.D.
	:	
DEBRA ANTONIO,	:	
Defendant	:	

NOTICE

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

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

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

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

GARY KLEBACHA,
Plaintiff

vs.

DEBRA ANTONIO,
Defendant

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NO. 2008-2458 C.D.

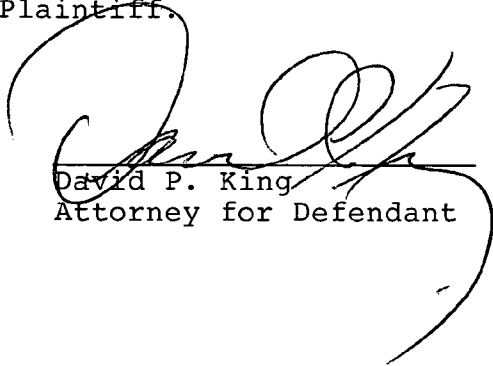
ANSWER

AND NOW, comes the Defendant, DEBRA ANTONIO, through her Attorney, David P. King, and responds to Plaintiff's Complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.

5. The averments in Plaintiff's Paragraph 5 are denied in that the Defendant is without information sufficient to form a belief as to the averments contained, and strict proof of the same is demanded at time of trial.

6. For the same reasons as set forth above, Defendant does not believe that she is indebted to the Plaintiff.


David P. King
Attorney for Defendant

COUNTERCLAIM

7. The averments in Defendant's Answers to Paragraphs 1 through 6 above are herein incorporated by reference.

8. At all times relevant hereto, the parties were lawfully married, but have since been divorced.

9. Notwithstanding, there remained marital property owned by the Plaintiff and the Defendant of significant value, situated on Route 255, in Sandy Township, Clearfield County, Pennsylvania.

10. The Plaintiff, GARY KLEBACHA, managed said property, and the Defendant, DEBRA ANTONIO, then DEBRA KLEBACHA, relied on the Plaintiff to do so for their mutual benefit.

11. Notwithstanding, the Plaintiff received a notification from the insurance carrier that covered the liability insurance on the subject matter premises that the insurance was to be canceled for nonpayment of premium.

12. The Defendant, DEBRA ANTONIO, inquired of the Plaintiff about the same, who responded to the effect that it was being taken care of, and would be taken care of.

13. Defendant relied on such representations made by the Plaintiff, and further consistent with his having undertaken to manage the subject matter premises.

14. Notwithstanding, on or about September 5, 2008, the valuable commercial property suffered a casualty loss in the nature of fire, which completely destroyed the building and improvements thereon.

15. The damage cost to such fire has been listed at \$350,000.00, for which there is no casualty insurance to cover or pay for the same in the names of the parties hereto, as the Plaintiff had allowed such to elapse.

16. There was a mortgage on the subject matter premises in favor of Community First Bank of Reynoldsville, PA, who had taken out appropriate insurance to cover the payoff on the mortgage. However, there was no insurance beyond this to cover additional losses to the Plaintiff and the Defendant.

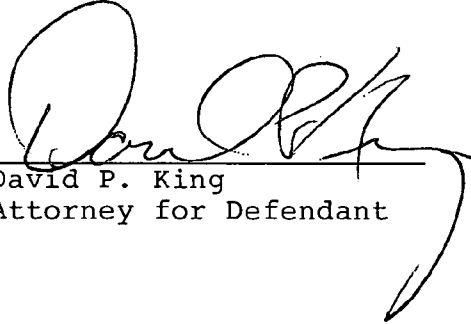
17. The commercial property which Plaintiff managed and undertook to maintain and preserve, was a commercial property as aforesaid, and received significant rentals which were going towards the payment of the mortgage.

18. Had the Defendant known that the insurance premium was in fact not paid, and in fact had lapsed, she would have had the opportunity on her own, or in conjunction with the Plaintiff, and/or the lending institution to make such arrangements to protect the interest of both the Plaintiff and the Defendant.

19. The Plaintiff in this matter, GARY KLEBACHA, who undertook a duty to manage, maintain and preserve the property of these parties did in fact fail, neglect and breach his duty to do so.

20. Because of his breach of duty undertaken and otherwise imposed and implied, and because of Defendant's reliance on the Plaintiff that he would continue to do so, she has suffered a significant and permanent loss.


WHEREFORE, Defendant prays for a judgment against the Plaintiff in the amount of \$175,000.00, plus loss of rentals as calculated for an indefinite but reasonable amount of time, less any residual value of the unimproved property as may be appropriate, and she will so ever pray.



David P. King
Attorney for Defendant

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

Date: February 17, 2009


Debra Antonio

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

GARY KLEBACHA,
Plaintiff

vs.

DEBRA ANTONIO,
Defendant

NO. 2008-2458 C.D.

Type of Case: Civil

Type of Pleading: Certification
and Affidavit of Service

Filed on behalf of: Defendant

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

Supreme Court No. 22980

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FILED
M105461
FEB 20 2009
NOCC
Shaw
of Courts

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

GARY KLEBACHA,
Plaintiff

vs.

DEBRA ANTONIO,
Defendant

:
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: NO. 2008-2458 C.D.
:
:
:

CERTIFICATION AND AFFIDAVIT OF SERVICE

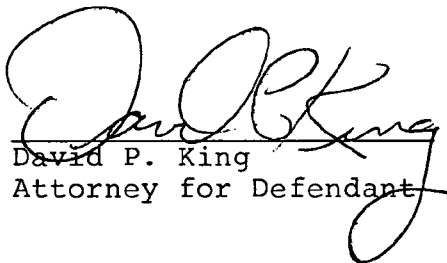
COMMONWEALTH OF PENNSYLVANIA

ss.

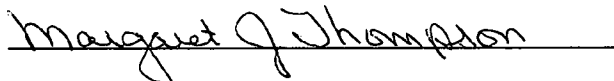
COUNTY OF CLEARFIELD

The undersigned, David P. King, Esquire, Attorney for Defendant in this matter, does hereby certify, swear and affirm that on the 19th day of February, 2009, a certified copy of Defendant's Answer, along with a Counterclaim was served upon the Plaintiff in this matter, GARY KLEBACHA, by sending to him a certified copy of the same by first class mail, postage prepaid, to the following address:

Gary Klebacha
117 Betsy Road
Reynoldsville, PA 15851


David P. King
Attorney for Defendant

Sworn to and subscribed before me
this 19th day of February, 2009.



NOTARIAL SEAL
Margaret J. Thompson, Notary Public
City of Dubois, Clearfield County
My commission expires October 31, 2010

FILED

FEB 20 2009

William A. Shaw
Prothonotary/Clerk of Courts

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

GARY KLEBACHA,
Plaintiff,

vs.

DEBRA ANTONIO,
Defendant.

: No. 2008-2458 C.D.

: Type of Case: Civil

: Type of Pleading: Answer to Counterclaim

: Filed on behalf of: Plaintiff

: Counsel of Record for this Party:

: Mark A. Wallisch, Esquire

: Achille, Ellermeyer & Wallisch

: 379 Main Street

: Brookville, PA 15825

: Phone: 814-849-6701

: Supreme Court No. 23658

FILED

SEP 25 2009

William A. Shaw
Prothonotary/Clerk of Courts

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

GARY KLEBACHA,	:	
Plaintiff,	:	
	:	No. 2008-2458 C.D.
vs.	:	
	:	
DEBRA ANTONIO,	:	
Defendant.	:	

ANSWER TO COUNTERCLAIM

AND NOW, comes the Plaintiff, Gary Klebacha, by and through his attorney, Mark A. Wallisch, Esquire and answers the Defendant's Answer with Counterclaim as follows:

1. The averments contained in paragraphs 1 through 6 of Plaintiff's Complaint are incorporated herein by reference.
2. The averments contained in paragraph 8 of Defendant's Counterclaim are admitted.
3. The averments contained in paragraph 9 of Defendant's Counterclaim are admitted.
4. The averments contained in paragraph 10 of Defendant's Counterclaim are denied and to the contrary Defendant avers that the management of the subject property was the responsibility of both parties.
5. The averments contained in paragraph 11 of Defendant's Counterclaim are admitted but by further answer Plaintiff avers that insurance coverage was being canceled because Defendant and Plaintiff were changing insurance carriers.
6. The averments contained in paragraph 12 of Defendant's Counterclaim are denied and to the contrary Defendant did not contact the Plaintiff about receipt of any notice of cancellation.
7. The averments contained in paragraph 13 of Defendant's Counterclaim are denied and to the contrary Plaintiff avers that Defendant was aware or should have been aware of the

changes in the insurance coverage.

8. The averments contained in paragraph 14 of Defendant's Counterclaim are admitted.

9. The averments contained in paragraph 15 of Defendant's Counterclaim are denied and to the contrary Plaintiff avers that there was adequate insurance to cover the mortgage that was due and owing on the subject premises as well as fixtures and equipment owned by the parties' tenant. The Defendant further denies that the value of the building was Three Hundred Fifty Thousand and 00/100ths (\$350,000.00) Dollars. Regarding the averment that damage was in the amount of Three Hundred Fifty Thousand and 00/100ths (\$350,000.00) Dollars the Defendant avers that this amount does not reflect the fair market value of the building at the time of the fire, but rather, included the value for items that were insured by the parties' tenant.

10. The averments contained in paragraph 16 of Defendant's Counterclaim are denied and to the contrary Plaintiff avers that the parties had always had adequate insurance to cover the mortgage payoff. By way of further answer in the past the parties had always only maintained insurance to cover the outstanding balance of the mortgage.

11. The averments contained in paragraph 17 of Defendant's Counterclaim are denied to the extent that it can be inferred that Defendant had no duty to ensure that the property was adequately insured and maintained.

12. The averments contained in paragraph 18 of Defendant's Counterclaim are denied and to the contrary Plaintiff avers that at all times Defendant was aware of the insurance coverage that had been and continued to be in place in connection with the subject property.

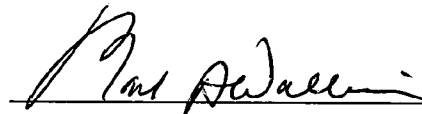
13. The averments contained in paragraph 19 of Defendant's Counterclaim are conclusions of law and require no response, by way of further answer, Plaintiff avers that the

Defendant shared equal responsibility with the Plaintiff to maintain, manage and preserve the property.

14. The averments contained in paragraph 20 of Defendant's Counterclaim are conclusions of law and require no response, by way of further answer Plaintiff avers that Defendant shared equal responsibility for ensuring that the subject premises was adequately maintained and Plaintiff owed no duty to the Defendant upon which she could rely for purpose of this action.

WHEREFORE, Plaintiff requests this Honorable Court to dismiss the Defendant's Counterclaim with prejudice.

Respectfully submitted,


A handwritten signature in dark ink, appearing to read 'Mark A. Wallisch', is written over a horizontal line.

Mark A. Wallisch, Esquire
Attorney for Plaintiff
Gary Klebacha

VERIFICATION

I, Gary Klebacha, Plaintiff in this action, hereby verify that the statements made in the foregoing Answer to Counterclaim are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Date: 9-18-09



Gary Klebacha

FILED

SEP 25 2009

**William A. Shaw
Prothonotary/Clerk of Courts**

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

GARY KLEBACHA,
Plaintiff,

vs.

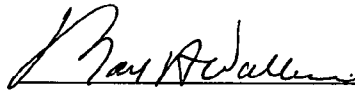
DEBRA ANTONIO,
Defendant.

No. 2008-2458 C.D.

CERTIFICATE OF SERVICE

The undersigned, Mark A. Wallisch, Esquire, hereby certifies that he served a copy of Plaintiff's Answer to Counterclaim in the above captioned case on the following party at the address shown below by first class mail on September 23, 2009:

David P. King, Esquire
23 Beaver Drive
PO Box 1016
DuBois, PA 15801



Mark A. Wallisch, Esquire
Achille, Ellermeyer & Wallisch

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319:5234
SEP 25 2009

William A. Shaw
Prothonotary/Clerk of Courts

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SEP 25 2009

William A. Shaw
Prothonotary/Clerk of Courts