

DOCKET NO. 173

NUMBER                  TERM                  YEAR

308                  November                  1960

Fred Lundgren, Inc.

VERSUS

James V. DeAngelo, d/b/a

Superior Landscape Company

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRED LUNDGREN, INC.  
Plaintiff

vs.

JAMES V. DeANGELO, d/b/a  
SUPERIOR LANDSCAPE COMPANY,  
Defendant

:No. 308 November Term, 1960

:  
:  
:  
:  
:  
:  
:

:In Assumpsit

ANSWER AND COUNTERCLAIM

NOW COMES the defendant, James DeAngelo, and makes answer to the Complaint as follows:

Paragraphs 1, 2, 3 and 4 are admitted.

5. It is admitted that the defendant seeded the ground, but it is denied that defendant cut it only once, and that the grass was approximately two feet high, but on the contrary it is averred that the defendant cut and cleaned up the grass the first time on May 27 and 28, 1960, and the second cutting was completed on June 4 and June 5, 1960.

6. It is denied that the plaintiff informed the defendant that he was obligated to cut the grass two more times, and on the contrary it is averred that the defendant had cut the grass twice, and he was only obligated to cut the grass a total of three times, thereby leaving only one cutting required by the contract, which is attached to the original Complaint as Exhibit "A".

7. Paragraph 7 is denied. It is admitted that the defendant and the plaintiff's employe met at the school site, and that the defendant promised to cut the grass for the third and final cutting on August 22 and 23, 1960.

8. After reasonable investigation the defendant is unable to determine the truth of the averment in paragraph 8, as the information and means of proof are within the exclusive control of an adverse party or hostile person, and strict proof thereof is demanded at trial. Even if the grass were cut on the dates

specified by the plaintiff, it is denied that the cost would be \$142.38, as plaintiff sets forth in Exhibit "C", and on the contrary it is averred that the defendant cut the grass, raked the lawn and carried away excess grass, etc. on two separate occasions, and that a reasonable cost for each cutting would be approximately \$50.00.

9. Paragraph 9 is neither admitted nor denied, as after reasonable investigation the defendant is unable to determine the truth of the averments. However, it is averred that the defendant was obligated under his contract to cut the grass three times, and further that he cut the grass on two occasions, and any cutting after the third cutting would not be his responsibility, and therefore he denies any liability for cutting the grass if same were cut on October 15, 1960.

10. Paragraph 10 is admitted. It is further averred that the defendant was never contacted by the plaintiff or presented with a statement for repairing same, and if so requested he would have promptly paid the amount claimed.

11. The purchases and amounts set forth in paragraph 11 are admitted. It is further averred that these fertilizers were used on other projects and not on the Madison Township School, and that the plaintiff had no right or duty to pay the Eisler Nurseries any amount without first contacting the defendant.

12. It is admitted that the plaintiff is liable under his Performance Bond for all labor and materials furnished in the Madison Township School. However, it is averred that some of the materials were not used in the Madison Township School, and it is further averred that the plaintiff had no right to pay any of these obligations without first consulting the defendant. It is further averred that the plaintiff never contacted the defendant in regard to any of the items set forth in the Complaint, and that the primary duty was to contact the defendant, who should have been given an opportunity to pay said claims. In addition, the Bond for the Madison Township School did not expire until

February 18, 1961, and the plaintiff was not liable under its performance bond for any payment prior to that time.

13. It is denied that the plaintiff paid the defendant in full in the amount of \$4,550.00, and on the contrary it is averred that payment of \$125.00 to Roland G. Barrett was made without consulting the defendant, and that the defendant never owed Roland G. Barrett \$125.00 for the work done on the Madison School. It is further averred that the contract between the defendant and Roland G. Barrett for the work on the Madison School was in the amount of \$52.50, and that the payment to Barrett was an over-payment in the amount of \$72.50. It is further averred that a payment to George E. Musser in the amount of \$262.50 was made without consulting the defendant, and that the defendant never owed George E. Musser \$262.50 for the work done on the Madison School. It is further averred that the contract between the defendant and George E. Musser for the work on the Madison School was in the amount of \$80.93, and that the payment to Musser was an over payment in the amount of \$181.57. It is further averred that the plaintiff had no duty or right to pay either Roland G. Barrett or George E. Musser without first consulting the defendant.

14. It is denied that the plaintiff is entitled to the sum of \$664.07, and on the contrary it is averred that the only sum due the plaintiff by reason of said contract is the sum of \$10.75, representing the cost of the broken window, and that if this bill had been presented the defendant would have paid same.

#### COUNTERCLAIM

In further answer to the Complaint the defendant alleges the following New Matter and Counterclaim:

We herein incorporate by reference paragraphs 1, 2 and 3 of the Plaintiff's Bill of Complaint.

4. It is averred that attached to the Contract marked

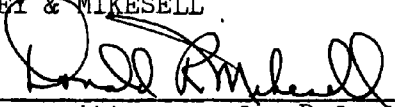
Exhibit "A" and the Specifications marked Exhibit "B", was a writing dated August 25, 1959, setting forth that the defendant agreed to landscape 140,000 square feet of land at the Madison Township School for the sum of \$4,550.00. When the defendant was in the process of completing the seeding of the 140,000 square feet, the plaintiff requested the seeding of an additional 2,033 feet, which defendant agreed to do on the basis of 3 $\frac{1}{4}$  cents per square foot, making the total seeded area 142,033 square feet. The additional seeding supplied by the defendant amounted to \$66.07, which was never paid by the plaintiff, even though requested to do so on several occasions.

5. At the request of the plaintiff the defendant repaired a manhole cover on a septic tank, for which he was to be paid \$12.63, and which the plaintiff has never paid, even though requested to do so on several occasions.

6. The plaintiff made payment to Roland G. Barrett and George E. Musser of \$72.50 and \$181.57 respectively, which was an over-payment as set forth in detail in paragraph 13 of this Answer. Said paragraph 13 is incorporated herein by reference and made a part hereof.

WHEREFORE, the defendant seeks judgment against the plaintiff in this action against him; and the defendant further seeks judgment against the plaintiff as follows: Additional seeding, \$66.07; repairs to manhole cover, \$12.63; overpayment to Barrett, \$72.50; overpayment to Musser, \$181.57, making a total claim against the plaintiff in the amount of \$332.77; and the defendant also claims damages in the nature of interest for delay in payment from May 26, 1960.

UREY & MIKESELL

By   
Attorneys for Defendant

  
James V. DeAngelo, Defendant

STATE OF PENNSYLVANIA :  
 : SS  
COUNTY OF CLEARFIELD :

Before me, the undersigned officer, personally appeared JAMES V. DeANGELO, who, being duly sworn according to law, deposes and says that the facts set forth in the foregoing Answer and Counterclaim are true and correct to the best of his knowledge, information and belief.

James V. DeAngelo  
James V. DeAngelo

Sworn to and subscribed before  
me this 3<sup>rd</sup> day of *April*  
1961.

Wm. T. Hagerty

PROTHONOTARY  
My Commission Expires  
1st Monday Jan. 1962

*Handwritten: 10/10/60*

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.

No. 308 November Term, 1960

FEED LUNDGREN, INC.  
Plaintiff

vs.  
JAMES V. DeANGELO d/b/a  
SUPERIOR LANDSCAPE COMPANY  
Defendant

ANSWER AND COUNTERCLAIM

To the within named  
Plaintiff:

You are hereby notified  
to plead to the enclosed  
Counterclaim within twenty  
(20) days from service  
hereof.

UREY & MIKESSELL  
By *[Signature]*  
Attorneys for Defendant

UREY & MIKESSELL  
ATTORNEYS AT LAW  
CLEARFIELD TRUST COMPANY BUILDING  
CLEARFIELD, PA.

# Affidavit of Service

Fred Lundgren, Inc

vs.

James V. DeAngelo d/b/a  
Superior Landscape Company

No. 308 November Term, 1960

Complaint In Assumpsit

Returnable within \_\_\_\_\_ days  
from date of service hereof.

NOW December 30<sup>th</sup> 1960 at 1:40 o'clock P.M.

served the within Complaint In Assumpsit

on James V. DeAngelo d/b/a Superior Landscape Company

at place of business and residence, Box 654, DuBois, Pennsylvania

by handing to Norma DeAngelo an adult member of the family being the  
wife of James V. DeAngelo

a true and attested copy of the original Complaint In Assumpsit and made

known to her the contents thereof.

Costs. Sheriff Ammerman \$11.60  
(Paid by Atty Frantz)

Sworn to before me this 3rd

day of January A. D. 19 61

John T. Nagerty  
Prothonotary

So answers,

Charles G. Ammerman  
CHARLES G. AMMERMAN

Sheriff



FILED  
JAN 16 1961  
WM. T. HAGERTY  
PROTHONOTARY

Fred Lundgren, Inc., Plaintiff ) In the Court of Common Pleas of  
 )  
 vs. ) Clearfield County, Pennsylvania  
 )  
 James V. DeAngelo d/b/a )  
 Superior Landscape Company, ) No. , 19  
 Defendant. )

COMPLAINT IN ASSUMPSIT

1.

The Plaintiff is a corporation organized and doing business under the corporation laws of the Commonwealth of Pennsylvania, with its principal place of business at R. D. #5, Kittanning, Armstrong County, Pennsylvania.

2.

The Defendant is an individual trading and doing business as the Superior Landscape Company with his principal place of business at Box 654, DuBois, Pennsylvania.

3.

On September 9, 1959, the Plaintiff and the Defendant entered into a written contract by which the Defendant agreed to complete the seeding in accordance with specifications for the School Building for the Madison Township School District. A copy of the contract marked Exhibit A and a copy of the specifications marked Exhibit B are attached and thereby made a part of this Complaint.

4.

The specifications state that the Defendant was to seed the ground surrounding the school building and to cut the grass three times after it started growing.

5.

The Defendant seeded the ground but cut it only once, with the result

that the grass was approximately two feet high.

6.

The Plaintiff informed the Defendant that he was obligated to cut the grass two more times, but the Defendant failed to cut it.

7.

The Plaintiff sent a man up to the School to do the cutting but the Defendant, at that time, assured the Plaintiff that he would fulfill his contract; however, the Defendant again failed to cut the grass.

8.

On August 27, 1960, and August 29, 1960, the Plaintiff had his men cut the grass for the second time at a total cost of \$142.38, which included cutting the grass behind the school building. An itemized copy of the Invoice for this work, marked Exhibit C is attached to and thereby made a part of this Complaint.

9.

On October 15, 1960, the Madison Township School District had the grass cut for the third time and submitted a bill of \$74.70 to the Plaintiff which he has paid in full. The Madison Township School District only had the front and side lawns cut this time as the back lawn was being used for ballfields by the school's students. An itemized copy of the Invoice for this work, marked Exhibit D is attached to and thereby made a part of this Complaint.

10.

When the Defendant cut the grass for the first time, his rotary lawn mower threw a stone through a screen and window of the School Building, which was replaced at a cost of \$10.75 to the Plaintiff. An itemized copy of the Invoice for this work, marked Exhibit E, is attached to and thereby made a part of this Complaint.

11.

In 1958, the Defendant purchased \$61.80 worth of mushroom manure from Eisler Nurseries of Butler, Pa., and in 1959, the Defendant purchased \$374.44 worth of the mushroom manure from Eisler Nurseries for which the Defendant has never paid; therefore, the Plaintiff paid the said Eisler Nurseries in full for the material furnished. An itemized copy of the Invoice, marked Exhibit F, is attached to and thereby made a part of this Complaint.

12.


The Plaintiff, who is fully liable under his performance bond with the Aetna Casualty and Surety Company for all labor and material furnished, has paid these obligations in full.

13.

The Plaintiff has paid the Defendant in full, in the amount of \$4,550.00, less \$125.00 paid Roland G. Barrett and \$262.50 paid George E. Musser for labor they performed on the Defendant's behalf and at his request.

14.

The Plaintiff demands the sum of \$664.07 for paying the aforesaid primary obligations of the Defendant for which the Plaintiff was secondarily liable under his Performance Bond.

  
Attorney for Plaintiff

Commonwealth of Pennsylvania )  
 ) ss.  
County of Armstrong )

Carl Lundgren being duly sworn deposes and says that he is the Vice-President of the Fred Lundgren, Inc., a corporation and that the averments of this pleading are true to his personal knowledge, information and belief.

Karl Ludwig

Sworn to and subscribed before

me this 14<sup>th</sup> day of October, 1960.

Ann H Claypool

Notary Public, Kittanning, Armstrong Co.  
My Commission Expires May 15, 1963

BUILDING CONTRACT --- SUB-CONTRACTOR

AGREEMENT, made this 9 day of September, 1959, between  
Fred Landman, R. D. #5, Kittanning, Pa.  
hereinafter designated Contractor, and Superior Landscape  
Company, Box 168, Reynoldsville, Pa.  
hereinafter designated Sub-Contractor.

WHEREAS, said Contractor has entered into a contract with  
Madison Township School District  
owner, to erect for said owner One School Building  
Said Sub-Contractor ~~for~~ for the consideration hereinafter named  
covenants and agrees with said Contractor as follows:

FIRST. Said Sub-Contractor agrees to furnish the  
materials as and when needed, and to construct, perform and  
complete grading in accordance with specifications  
for the building above mentioned, and to do said work in a  
good and workmanlike manner and according to plans and speci-  
fications.

SECOND. Said Sub-Contractor agrees to begin said work  
upon 5 days' notice, and will complete the same within  
two weeks thereafter, unless detained by the  
said Contractor or other Sub-Contractors; and if so detained,  
that he will forthwith give notice thereof, in writing, to  
said Contractor, who will allow additional time, sufficient  
in Contractor's judgment, to make up for the time so lost.

THIRD. Said Sub-Contractor agrees to furnish said  
materials and prosecute said work without delay, and will not  
interfere with the work of the Contractor or other Sub-Con-  
tractors.

FOURTH. Said Sub-Contractor further agrees that if, at  
any time during the progress of the work said Sub-Contractor  
does not do said work according to, or does not furnish such  
materials as are provided for in specifications, said Con-  
tractor may give said Sub-Contractor notice of his dis-  
satisfaction of the work done or materials furnished. EXHIBIT "A"

FIFTH. Should any alteration be required in said work, a fair valuation of said work, added or omitted, shall be made and the sum hereinafter agreed to be paid for said work shall be increased or diminished as the case may be, to the extent of the valuation. The valuation thereof shall be the fair, reasonable and market price thereof at the time the alteration is made, unless the charge is agreed upon at the time of such alteration. No claim shall be made for extra work or materials, unless Contractor orders Sub-Contractor to do such extra work or furnish such extra materials, in writing, setting forth the nature of such extra work and materials.

SIXTH. Said Contractor has the right to reject all materials of an inferior quality, which said Sub-Contractor may attempt to use in said work.

IN CONSIDERATION THEREOF, said Contractor agrees to pay to said Sub-Contractor the sum of Four Thousand Five Hundred and Fifty  
and <sup>00</sup>100. 4,550.00 Dollars, as follows:

90% of completed work entered each month for payment

the balance to be paid with 10 days after the said building is fully completed.

This agreement shall be binding upon the heirs, executors, administrators and assigns of the parties hereto.

Fred Lundgren, Inc.  
Carl F. Lundgren V.P.  
James DeAngelo, Owner  
SUPERIOR LANDSCAPE CO.  
James DeAngelo

Copy

The lawn seed, as specified, shall be sown at the rate of four pounds minimum per one thousand square feet, exercising great care that a uniform distribution of seed is obtained. Seeding shall be done on a still day, using a hopper type seeder, one-half of the seed for each area being sown in a direction at right angles to the other half. After seeding, the surface shall be lightly raked, rolled once with a roller weighing not less than one hundred pounds per lineal foot.

#### Maintenance of Seeded Areas:

Contractor shall maintain all lawn areas until the final acceptance of the Lawn and Planting Contract. Maintenance shall begin immediately after each area is seeded and shall continue for a minimum of thirty (30) days. Lawn areas shall be maintained at a maximum height of two and one-half (2-1/2) inches by mowing at least three (3) times. They shall be weeded thoroughly at least once and maintained until time of acceptance by reseeding and refertilizing with original mixtures, watering, or whatever may be necessary to establish over the entire lawn areas a close stand of the grasses specified, reasonably free of weeds and undesirable native grasses.

#### Final Inspection:

Inspection of work of LAWNS AND PLANTING will be made at conclusion of maintenance. Written notice requesting inspection should be submitted at least ten (10) days prior to anticipated date. The work of LAWNS AND PLANTING will be accepted upon the completion of all work of this section, exclusive of guarantee period. All grass shall be closely cut, weeded and cleaned of foreign matter, and the entire area placed in first-class condition immediately before the final acceptance of the building.

### 13. FRENCH DRAINS

Install tile drains where indicated as "French Drains" on the drawings. Tile drains shall be unglazed, sound, standard four (4") inch diameter field tile, twelve inches (12") long and laid on an even solid base with one-half inch (1/2") wide joints. Cover the top half of all joints with four inch (4") strips of fifteen (15) pound asphalt rag felt roofing wired in place. Pitch all drains slightly in the direction of flow toward the outlets. All French Drains shall be covered to a depth of at least twelve inches (12") with uniformly graded broken stone in sizes from 3/4" to 2-1/2". Before backfilling place a three inch (3") layer of loose hay over the broken stone. French drains will be connected to the storm sewer by the Plumbing Contractor.

EXHIBIT "B"



*Commercial*

*Industrial*

*Institutional*

*Residential*

**FRED LUNDGREN, INC.**

GENERAL CONTRACTOR  
BUILDING CONSTRUCTION

R. D. 5 : : : KITTANNING, PA.

EXHIBIT "C"

PHONE: RURAL VALLEY  
SUNSET 3-3201

SOLD TO Superior Landscape Co.  
Box 588  
DuBois, Pa.

DATE November 1, 1960

INVOICE NO.

TERMS:

Re: Madison Twp. Elem. School

Aug. 27 & 29, 1960	Cutting and raking grass and removing grass from site		
	12 hrs. Tractor & Operator with rotary cutter @ \$4.00	\$ 72.00	
	18 hrs. laborers raking and removing grass from site	46.35	
	18 hrs. Pension & Welfare Funds @ .20	3.60	
	15% Insurance & Taxes on labor	<u>7.49</u>	
	10% Profit & Overhead		\$ 129.44
			<u>12.94</u>
	TOTAL AMOUNT		\$ 142.38

*Commercial*

*Industrial*

*Institutional*

*Residential*

**FRED LUNDGREN, INC.**

GENERAL CONTRACTOR  
BUILDING CONSTRUCTION

P. O. BOX 1111 KITTANNING, PA.

EXHIBIT "D"

PHONE: RURAL VALLEY  
SUNSET 3-3201

**SOLD TO** Superior Landscape Co.  
Box 588  
DuBois, Pa.

**DATE** November 1, 1960  
**INVOICE NO.**

**TERMS:** Re: Madison Twp. Elem. School

10/15/60

6 hrs. Tractor & Operator with rotarybutter @6.00  
10 hrs. laborers raking & removing grass from site  
10 hrs. Pension & Welfare Funds @ .20  
15% Insurance & Taxes  
  
10% Profit & Overhead

\$ 36.00  
25.75  
2.00  
4.16

\$ 67.91  
6.79

\$ 74.70

**TOTAL AMOUNT**  
This invoice covers cutting the grass for second time  
and includes cutting of front and side lawn only.

Commercial

Industrial

Institutional

Residential

## FRED LUNDGREN, INC.

GENERAL CONTRACTOR  
BUILDING CONSTRUCTION

R. D. 5 : : : KITTANNING, PA.

EXHIBIT "E"

PHONE: RURAL VALLEY  
SUNSET 3-3201

SOLD TO Superior Landscape Co.  
Box 588  
DuBois, Pa.

DATE November 1, 1960

INVOICE NO.

TERMS:

Re: Madison Twp. Elem. School

Oct. 17, 1960

Replacing one light of glass and repairing screen that was damaged by Superior Landscape Co. men by their rotary lawn mower when they cut grass at first cutting.

1 - lt. 16" X 40" DSA window glass complete with putty and two coats of paint to match existing paint  
1 new window screen 16" X 40" furnished by Truscon Steel, Youngstown, Ohio to match existing screens and to replace damaged screen

\$ 5.00

5.75

TOTAL AMOUNT

\$ 10.75



INVOICE

N<sup>o</sup> 4321

## EISLER NURSERIES

P. O. BOX 70

BUTLER, PA.

EXHIBIT "F"

Phone: 73-783

Office Address:  
218 East Pearl St.

SOLD TO Superior Landscape Company  
Dubois, Pennsylvania  
Shipped To

Date October 29, 1959

Purchase Order No. \_\_\_\_\_

Terms: \_\_\_\_\_

Our Order No. \_\_\_\_\_

	Description	Unit Price	Total
3	"Mushroom Manure picked up at plant"		
	"Y" plate loads	\$ 20.00	\$ 60.00
	<u>Delivery Slip Numbers</u>	<u>Date of Purchase</u>	
	B 3291	9/22/59	
	B 3296	9/22/59	
	B 3909	10/21/59	
10	"ZZ" plate loads	\$ 30.00	\$300.00
	B 3290	9/22/59	
	B 3292	9/22/59	
	B 3293	9/22/59	
	B 3294	9/22/59	
	B 3295	9/22/59	
	B 3297	9/22/59	
	B 3973	10/12/59	
	B 3972	10/12/59	
	B 3908	10/21/59	
	B 3289	10/22/59	
			\$360.00
	Pennsylvania Sales Tax		14.44
		TOTAL	\$ 374.44

If incorrect in any detail, please notify us promptly. We appreciate your business and will endeavor to please you.  
No claims allowed unless made on receipt of goods.

Eisler Nurseries

Butler, Pennsylvania

In the Court of Common Pleas of  
Clearfield County, Pennsylvania  
No. 708 7/16/1960

FRED LUNDGREN, INC.,  
Plaintiff

vs.

JAMES V. DeANGELO, d/b/a  
SUPERIOR LANDSCAPE COMPANY,  
Defendant.

COMPLAINT IN ASSUMPSIT

To the within Defendant:

You are hereby notified to  
plead to the within Complaint  
in Assumpsit within twenty (20)  
days from service hereof.

*Paul DeLuca*  
Attorney for Plaintiff

FILED  
AND  
RECORDED  
DEC 27 1960  
ATTORNEYS AT LAW  
KIRKMAN, HARTY  
AND KIRKMAN  
Clearfield, Pa.

4.50 3.00 1.00