

00-5134  
PENN LYON HOMES -vs- GLOSSNER'S BLUE MAXX WALL SYSTEMS

COURT OF COMMON PLEAS  
Clearfield County  
JUDICIAL DISTRICT

46th

## NOTICE OF APPEAL

FROM  
DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No. 00-518-CO

## 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 District Justice on the date and in the case mentioned below.

NAME OF APPELLANT		MAG. DIST. NO. OR NAME OF D.J.		
Glossner's Blue Maxx Wall Systems		46-3-03		
ADDRESS OF APPELLANT		CITY STATE ZIP CODE		
R.R. 1, Box 292		Beech Creek PA 16822		
DATE OF JUDGMENT		IN THE CASE OF (Plaintiff) (Defendant)		
4/14/00		Penn Lyon Homes vs. Glossner's Blue Maxx Wall Systems		
CLAIM NO.		SIGNATURE OF APPELLANT OR HIS ATTORNEY OR AGENT		
CV 10x 0000043-00 LT 19		<i>Randy Obregon</i>		
<p>This block will be signed ONLY when this notation is required under Pa. R.C.P.J.P. No. 1008B.</p> <p>This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.</p> <p><i>Signature of Prothonotary or Deputy</i></p>				
<p>If appellant was Claimant (see Pa. R.C.P.J.P. No. 1001(6) in action before District Justice, he MUST FILE A COMPLAINT within twenty (20) days after filing his NOTICE of APPEAL.</p>				

## 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.J.P. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee).

PRAECIPE: To Prothonotary

Enter rule upon Penn Lyon Homes, appellee(s), to file a complaint in this appeal  
*Name of appellee(s)*

(Common Pleas No. 00-518-CO) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

RULE: To Penn Lyon Homes, appellee(s)  
*Name of appellee(s)*

*Randy Obregon*  
Signature of appellant or his attorney or agent

(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, a JUDGMENT OF NON PROS WILL BE ENTERED AGAINST YOU.

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

Date: May 4, 2000

*William A. Shaw*  
Signature of Prothonotary or Deputy

FILED

MAY 04 2000

William A. Shaw  
Prothonotary

## 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 District Justice designated therein on  
(date of service) \_\_\_\_\_, 19\_\_\_\_\_,  by personal service  by (certified) (registered) mail, sender's receipt attached hereto, and upon the appellee, (name) \_\_\_\_\_, on  
\_\_\_\_\_, 19\_\_\_\_\_,  by personal service  by (certified) (registered) mail, sender's receipt attached hereto.

and further that I served the Rule to File a Complaint accompanying the above Notice of Appeal upon the appellee(s) to whom the Rule was addressed on \_\_\_\_\_, 19\_\_\_\_\_,  by personal service  by (certified) (registered) mail, sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_\_\_\_.

*Signature of affiant*

*Signature of official before whom affidavit was made*

*Title of official*

My commission expires on \_\_\_\_\_, 19\_\_\_\_\_.  
  
**FILED**

*Shaw*  
MAY 04 2000  
m/b/487 R.Brunsgard  
William A. Shaw  
Prothonotary  
PA  
80-06  
CC to Brunsgard

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

**46-3-03**

DJ Name: Hon.

**MICHAEL A. RUDELLA**  
Address: **MOUNTAIN VIEW PLAZA**  
**P.O. BOX 210**  
**KYLERTOWN, PA**

Telephone: **(814) 345-6789**      **16847-0000**

**ATTORNEY DEF PRIVATE :**

**RANDY BRUNGARD**  
**241 W MAIN STREET**  
**LOCK HAVEN, PA 17745**

**NOTICE OF JUDGMENT/TRANSCRIPT**  
**CIVIL CASE**

PLAINTIFF: **PENN LYON HOMES** NAME and ADDRESS

**P.O. BOX 27**  
**AIRPORT ROAD**  
**SELLINGROVE, PA 17870**

VS.

DEFENDANT: NAME and ADDRESS

**GLOSSNER'S BLUE MAXX WALL SYSTEMS**  
**R.R.1 BOX 292**  
**BEECH CREEK, PA 16822**

Docket No.: **CV-0000043-00**  
Date Filed: **3/13/00**



**THIS IS TO NOTIFY YOU THAT:**

Judgment:

**FOR PLAINTIFF**

**00.518.00**

Judgment was entered for: (Name) **PENN LYON HOMES**

Judgment was entered against: (Name) **GLOSSNER'S BLUE MAXX WALL SYSTEMS**

in the amount of \$ **5,032.13** on: (Date of Judgment) **4/14/00**

Defendants are jointly and severally liable. (Date & Time) \_\_\_\_\_

Damages will be assessed on: \_\_\_\_\_

This case dismissed without prejudice. \_\_\_\_\_

Amount of Judgment Subject to Attachment/Act 5 of 1996 \$ \_\_\_\_\_

Levy is stayed for \_\_\_\_\_ days or  generally stayed. \_\_\_\_\_

Objection to levy has been filed and hearing will be held: \_\_\_\_\_

Amount of Judgment	\$ <b>4,961.25</b>
Judgment Costs	\$ <b>70.88</b>
Interest on Judgment	\$ <b>.00</b>
Attorney Fees	\$ <b>.00</b>
<b>Total</b>	<b>\$ 5,032.13</b>
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
<b>Certified Judgment Total</b>	<b>\$ _____</b>

Date:	Place:
Time:	

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.

**4/14/00** Date **M. Rudella**, District Justice

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

Date \_\_\_\_\_, District Justice

My commission expires first Monday of January,

**2006**

SEAL

AOPC 315-99

Z 365 725 760

US Postal Service  
**Receipt for Certified Mail**  
No Insurance Coverage Provided.  
Do not use for International Mail (See reverse)

Sent to	
Michael A. Rudella, D.J.	
Street & Number	
Mountain View Plaza	
P.O. Box 210	
Post Office, State, & Zip Code	
Kylertown, PA 16847	
Postage	X \$ 33
Certified Fee	X 140
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered X 125	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees \$ 298	
Postmark or Date	

PS Form 3800, April 1995

*125*

*298*

*125*

**Stick postage stamps to article to cover First-Class postage, certified mail fee, and charges for any selected optional services (See front).**

- If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached, and present the article at a post office service window or hand it to your rural carrier (*no extra charge*).
- 2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach, and retain the receipt, and mail the article.
- 3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.
- 4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.
- 5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
- 6. Save this receipt and present it if you make an inquiry. 102395-99-M-0079

COMMONWEALTH OF PENNSYLVANIA

COURT OF COMMON PLEAS  
Clearfield County  
JUDICIAL DISTRICT

46th

NOTICE OF APPEAL

FROM  
DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No. 00-518-CO

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 District Justice on the date and in the case mentioned below.

NAME OF APPELLANT		MAG. DIST. NO. OR NAME OF D.J.		
Glossner's Blue Maxx Wall Systems		46-3-03		
ADDRESS OF APPELLANT		CITY	STATE	ZIP CODE
R.R. 1, Box 292		Beech Creek	PA	16822
DATE OF JUDGMENT	IN THE CASE OF (Plaintiff)		(Defendant)	
4/14/00	Penn Lyon Homes		Glossner's Blue Maxx Wall Systems	
CLAIM NO.	VS.			
CV 19 0000043-00 LT 19	<i>Randy Reijst</i>			
This block will be signed ONLY when this notation is required under Pa. R.C.P.J.P. No. 1008B: This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.				
Signature of Prothonotary or Deputy				

If appellant was Claimant (see Pa. R.C.P.J.P. No. 1001(6) in action before District Justice, he MUST FILE A COMPLAINT within twenty (20) days after filing his NOTICE of APPEAL.

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.J.P. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee).

PRAECIPE: To Prothonotary

Enter rule upon Penn Lyon Homes, appellee(s), to file a complaint in this appeal  
(Name of appellee(s))  
(Common Pleas No. 00-518-CO) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

RULE: To Penn Lyon Homes, appellee(s)  
(Name of appellee(s))

*Randy Reijst*  
Signature of appellant or his attorney or agent

- (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, a JUDGMENT OF NON PROS WILL BE ENTERED AGAINST YOU.
- (3) The date of service of this rule if service was by mail is the date of mailing.

Date: May 1, 2000

*William H.*  
Signature of Prothonotary or Deputy

00-518 CD

### 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 CLINTON ; ss

AFFIDAVIT: I hereby swear or affirm that I served

a copy of the Notice of Appeal, Common Pleas No. 00-518-CD, upon the District Justice designated therein on  
(date of service) May 8, 2000,  by personal service  by (certified) ~~mail~~ mail, sender's receipt attached hereto, and upon the appellee, (name) Penn Lyon Homes, on  
May 8, 2000  by personal service  by (certified) ~~mail~~ mail, sender's receipt attached hereto.

and further that I served the Rule to File a Complaint accompanying the above Notice of Appeal upon the appellee(s) to whom the Rule was addressed on May 8, 2000,  by personal service  by (certified) ~~mail~~ mail, sender's receipt attached hereto.

SWORN (AFFIRMED) AND SUBSCRIBED BEFORE ME  
THIS 8th DAY OF May, 2000.

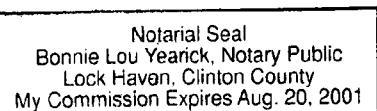
  
Signature of affiant

Bonnie Lou Yearick  
Signature of official before whom affidavit was made

Notary Public

Title of official

My commission expires on \_\_\_\_\_, 19 \_\_\_\_.



FILED

May 11 2000  
110:35am.  
William A. Shaw  
Prothonotary 

7 365 725 759

US Postal Service

**Receipt for Certified Mail**

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

Sent to

Penn Lyon Homes

Special Number Box 27

P.O. Box, Street, Box, Route  
Selinsgrove, PA 17870

Postage	<input checked="" type="checkbox"/>	\$ 33
Certified Fee	<input checked="" type="checkbox"/>	140
Special Delivery Fee	<input type="checkbox"/>	
Restricted Delivery Fee	<input type="checkbox"/>	
Return Receipt Showing to Whom & Date Delivered	<input checked="" type="checkbox"/>	125
Return Receipt Showing to Whom, Date, & Address	<input type="checkbox"/>	
<b>TOTAL Postage &amp; Fees</b>		<b>\$ 298</b>



Stick postage stamps to article to cover First-Class postage, certified mail fee, and charges for any selected optional services (See front).

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address, leaving the receipt attached, and present the article at a post office service window or hand it to your rural carrier (no extra charge).
2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach, and retain the receipt, and mail the article.
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5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.
6. Save this receipt and present it if you make an inquiry.

102595-99-M-0079

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

PENN LYON HOMES )  
vs. ) NO: 00 - 518 - CD  
GLOSSNER'S BLUE MAXX WALL SYSTEMS )

CERTIFICATE OF SERVICE

I, Randy P. Brungard, Esquire, of the Law Firm of ROSAMILIA & BRUNGARD, hereby certify that a true and correct copy of the Notice of Appeal from District Justice Judgment was served upon District Justice Michael Rudella and upon the Appellee, Penn Lyon Homes, by certified mail.

The "green cards" indicating said services are attached hereto and were signed for by appropriate persons on May 9, 2000 and May 11, 2000, respectively.

ROSAMILIA & BRUNGARD

Date: 5/12/00

BY: Randy P. Brungard

Randy P. Brungard, Esquire  
Attorney for Appellant,  
Glossner's Blue Maxx Wall Systems  
241 West Main Street  
Lock Haven, PA 17745  
(570) 748-5572  
Attorney I.D. NO: 32102

**FILED**

Wm. A. Shaw

Prothonotary

Penn Lyon Homes  
vs.  
Glossner's Blue Maxx Wall Systems

Clearfield County NO: 00-518-CD

Is your RETURN ADDRESS completed on the reverse side?	<b>SENDER:</b>	
	<input type="checkbox"/> Complete items 1 and/or 2 for additional services. <input type="checkbox"/> Complete items 3, 4a, and 4b. <input type="checkbox"/> Print your name and address on the reverse of this form so that we can return this card to you. <input type="checkbox"/> Attach this form to the front of the mailpiece, or on the back if space does not permit. <input type="checkbox"/> Write "Return Receipt Requested" on the mailpiece below the article number. <input type="checkbox"/> The Return Receipt will show to whom the article was delivered and the date delivered.	
Is your RETURN ADDRESS completed on the reverse side?	<b>4a. Article Number</b> <i>Glossner</i> Z 365 725 760	
	<b>4b. Service Type</b> <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD	
Is your RETURN ADDRESS completed on the reverse side?	<b>7. Date of Delivery</b> <i>5-9-00</i>	
	<b>8. Addressee's Address (Only if requested and fee is paid)</b> Michael A. Rudella, D. J. Mountain View Plaza P.O. Box 210 Kylertown, PA 16847	
3. Article Addressed to:  Michael A. Rudella, D. J. Mountain View Plaza P.O. Box 210 Kylertown, PA 16847		
5. Received By: (Print Name) <i>C</i>		
6. Signature: (Addressee or Agent) <i>Michael Rudella</i>		

PS Form 3811, December 1994      102595-99-B-0223      Domestic Return Receipt

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?	<b>SENDER:</b>	
	<input type="checkbox"/> Complete items 1 and/or 2 for additional services. <input type="checkbox"/> Complete items 3, 4a, and 4b. <input type="checkbox"/> Print your name and address on the reverse of this form so that we can return this card to you. <input type="checkbox"/> Attach this form to the front of the mailpiece, or on the back if space does not permit. <input type="checkbox"/> Write "Return Receipt Requested" on the mailpiece below the article number. <input type="checkbox"/> The Return Receipt will show to whom the article was delivered and the date delivered.	
Is your RETURN ADDRESS completed on the reverse side?	<b>4a. Article Number</b> <i>Sue Grace</i> Z 365 725 759	
	<b>4b. Service Type</b> <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD	
Is your RETURN ADDRESS completed on the reverse side?	<b>7. Date of Delivery</b> <i>MAY 11 2000</i>	
	<b>8. Addressee's Address (Only if requested and fee is paid)</b> Penn Lyon Homes P.O. Box 27 Airport Road Selinsgrove, PA 17870	
3. Article Addressed to:  Penn Lyon Homes P.O. Box 27 Airport Road Selinsgrove, PA 17870		
5. Received By: (Print Name) <i>Sue Grace</i>		
6. Signature: (Addressee or Agent) <i>X</i>		

PS Form 3811, December 1994      102595-99-B-0229      Domestic Return Receipt

Thank you for using Return Receipt Service.

HARRISBURG, PA 17108  
P. O. BOX 1166  
100 PINE STREET  
MCNEES, WALLACE & NURICK

(A)

FILED

MAY 31 2000  
William A. Shaw  
3CC-Catty Young  
Promontory  
8:00

PENN LYON HOMES, INC., : IN THE COURT OF COMMON PLEAS  
Plaintiff, : OF CLEARFIELD COUNTY  
v. :  
: CIVIL ACTION NO. 00-518-CD  
GLOSSNER'S BLUE MAXX :  
WALL SYSTEMS, :  
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 Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

COURT ADMINISTRATOR  
Clearfield County Courthouse  
Second & Market Streets  
Clearfield, PA 16830  
(814) 765-2641, Ext. 50-51

**FILED**

**MAY 31 2000**

William A. Shaw  
Prothonotary

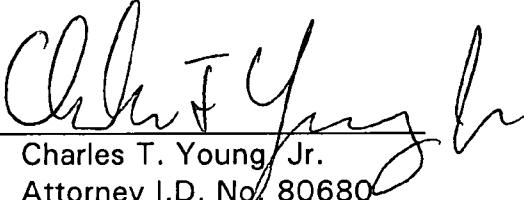
NOTICIA

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene viente (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Usted debe presentar una apariencia escrita o en persona o por abogado y archivar en la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede entrar una orden contra usted sin previo aviso notificacion y por cualquier queja o alivio que es pedido en la peticion de demanda. Usted puede perder dinero o sus propiedades o otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABODAGO IMMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SOFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

COURT ADMINISTRATOR  
Clearfield County Courthouse  
Second & Market Streets  
Clearfield, PA 16830  
(814) 765-2641, Ext. 50-51

McNEES, WALLACE & NURICK

By   
Charles T. Young, Jr.  
Attorney I.D. No. 80680  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
(717) 232-8000

Attorneys for Plaintiff  
Penn Lyon Homes, Inc.

Dated: May 30, 2000

PENN LYON HOMES, INC.,	:	IN THE COURT OF COMMON PLEAS
	:	OF CLEARFIELD COUNTY
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO. 00 518 CV
	:	
GLOSSNER'S BLUE MAXX	:	
WALL SYSTEMS,	:	
	:	
Defendant.	:	

COMPLAINT

The Plaintiff, Penn Lyon Homes, Inc., by its attorneys, McNees, Wallace & Nurick, hereby files this Complaint against Defendant, Glossner's Blue Maxx Wall Systems. In support of its Complaint, Plaintiff avers as follows:

1. The Plaintiff, Penn Lyon Homes, Inc., is a Pennsylvania business corporation with a principle place of business at 101 Airport Road, Selinsgrove, Pennsylvania. It manufactures housing that is constructed in a factory and transported to the job site where it is assembled and completed.
2. The Defendant, Glossner's Blue Maxx Wall Systems, is a business entity doing business at R.R. No. 1, Beech Creek, Pennsylvania.
3. William and Denise Anderson, who are not parties to this action, contracted with Plaintiff and/or its related entities for the construction of their private residence, at R.R. No. 3, Morrisdale, Pennsylvania.
4. The Plaintiff entered into an oral contract (the "subcontract") with the Defendant to construct the concrete basement floor of the residence later sold to the Andersons.

5. Following the Defendant's completion of the concrete basement floor, the floor cracked and was otherwise defective.

6. As a direct and proximate result of the floor's defective condition, the Plaintiff incurred six thousand, six hundred and fifteen dollars (\$6,615) in damages. These damages represented the costs that were incurred in order to replace and/or repair the basement floor.

7. On or about November 29, 1999, the Andersons filed a Complaint against the Plaintiff with District Justice Michael A. Rudella. Thereafter, the Plaintiff compensated the Andersons in money, goods, and/or services valued at \$6,615.

8. On or about March 13, 2000, the Plaintiff filed a Complaint against the Defendant with District Justice Rudella, seeking to recover the above amounts, which Plaintiff paid to the Andersons.

9. District Justice Rudella ruled in the Plaintiff's favor and awarded damages in the amount of five thousand, thirty-two dollars and thirteen cents (\$5,032.13).

10. Defendant filed the instant appeal, as well as a praecipe to enter rule upon Plaintiff to file a Complaint. Accordingly, Plaintiff files this Complaint against the Defendant.

Count I  
Breach of Contract

11. The Plaintiff hereby incorporates paragraphs 1 through 10.

12. The Plaintiff and Defendant entered into an oral contract (the "subcontract") for the construction of the basement floor of the residence later sold to the Andersons.

13. The Plaintiff has fulfilled all the provisions of the subcontract on its part, including fully compensating the Defendant for the work performed.

14. The Defendant breached the subcontract by performing in a poor, improper, and unworkmanlike manner certain things which were expressly or by necessary implication required to be done and performed under the subcontract.

15. The Defendant's poor, improper, and unworkmanlike conduct, includes but is not limited to, (1) pouring the concrete floor while the temperature was too cold for such activity; (2) providing inadequate fill underneath the concrete floor; and/or (3) failing to properly compact the fill located underneath the concrete floor.

16. As a direct and proximate result of the Defendant's breach of the aforesaid subcontract, the concrete basement floor was defective, and the Plaintiff incurred damages in the amount of six thousand, six hundred and fifteen dollars (\$6,615).

WHEREFORE, the Plaintiff, Penn Lyon Homes, Inc., requests judgment against Defendant, Glossner's Blue Maxx Wall Systems, in the amount of \$6,615, plus costs and interest.

Count II  
In Quantum Meruit

17. The Plaintiff hereby incorporates paragraphs 1 through 16.
18. The Plaintiff compensated Defendant for a work product that was defective or otherwise without value.
19. The above compensation conferred a significant and appreciable benefit upon the Defendant.
20. The Defendant has accepted the benefits conferred upon it by the Plaintiff.
21. Given the defective and/or worthless condition of the Defendant's work product, the Defendant would be unjustly enriched if it were allowed to retain the benefits conferred upon it by the Plaintiff.

WHEREFORE, the Plaintiff, Penn Lyon Homes, Inc., requests judgment against Defendant, Glossner's Blue Maxx Wall Systems, in the amount of two thousand, three hundred dollars (\$2,300), which was the amount paid to the Defendant for the defective work product in question.

Count III  
Breach of Express Warranty

22. The Plaintiff hereby incorporates paragraphs 1 through 21.
23. The Defendant sold certain goods to the Plaintiff, *viz*, the concrete and other materials used to construct the basement floor of the house later sold to the Andersons.

24. In selling the aforesaid goods to the Plaintiff, the Defendant expressly warranted that the aforesaid goods were of good and merchantable quality, and otherwise satisfactory for the construction of the basement floor.

25. The above warranty became a substantial part of the basis of the parties' bargain.

26. The Defendant breached and/or otherwise violated the terms of the above warranty by supplying goods, which were not of good or merchantable quality or otherwise satisfactory for the construction of the basement floor.

27. As a direct and proximate result of the Defendant's breach of the warranty, the Plaintiff has suffered damages in the amount of six thousand, six hundred and fifteen dollars (\$6,615).

WHEREFORE, the Plaintiff, Penn Lyon Homes, Inc., requests judgment against Defendant, Glossner's Blue Maxx Wall Systems, in the amount of \$6,615, plus costs, interest, and any other incidental or consequential damages available under 13 Pa.C.S.A. §§ 2714 & 2715.

Count IV  
Breach of Implied Warranty of Merchantability

28. The Plaintiff hereby incorporates paragraphs 1 through 27.

29. The Defendant sold certain goods to the Plaintiff, *viz*, the concrete and other materials used to construct the basement floor of the house later sold to the Andersons.

30. In selling the aforesaid goods to the Plaintiff, the Defendant impliedly warranted that (1) the goods would pass without objection within the building/contractor/subcontractor trade and (2) the goods were fit for the ordinary purposes for which they would be used.

31. The implied warranty of merchantability was not excluded or modified by the parties.

32. The Defendant breached or otherwise violated the terms of the above warranty by supplying goods, which were not fit for the ordinary purposes for which they would be used.

33. As a direct and proximate result of the Defendant's breach of the warranty, the Plaintiff has suffered damages in the amount of six thousand, six hundred and fifteen dollars (\$6,615).

WHEREFORE, the Plaintiff, Penn Lyon Homes, Inc., requests judgment against Defendant, Glossner's Blue Maxx Wall Systems, in the amount of \$6,615, plus costs, interest, and any other incidental or consequential damages available under 13 Pa.C.S.A. §§ 2714 & 2715.

Count V  
Breach of Implied Warranty of Fitness for a Particular Purpose

34. The Plaintiff hereby incorporates paragraphs 1 through 33.

35. The Defendant sold certain goods to the Plaintiff, *viz*, the concrete and other materials used to construct the basement floor of the house later sold to the Andersons.

36. In selling the aforesaid goods to the Plaintiff, the Defendant had reason to know the particular purpose for which the goods would be used.

37. The Plaintiff relied on the Defendant's skill and/or judgment in selecting or furnishing suitable goods.

38. The parties did not exclude or modify any warranties.

39. As a result of the above facts, the Defendant impliedly warranted that the above goods would be fit for a particular purpose, *viz*, the construction of a concrete basement floor in the home later bought by the Andersons.

40. The Defendant breached or otherwise violated the terms of the above warranty by supplying goods, which were not fit for the particular purpose of constructing a concrete basement floor in a personal residence.

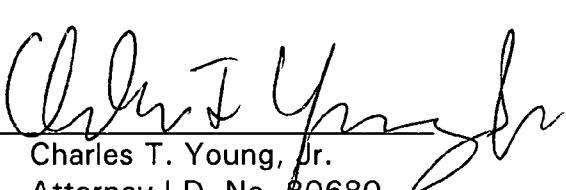
41. As a direct and proximate result of the Defendant's breach of the warranty, the Plaintiff has suffered damages in the amount of six thousand, six hundred and fifteen dollars (\$6,615).

WHEREFORE, the Plaintiff, Penn Lyon Homes, Inc., requests judgment against Defendant, Glossner's Blue Maxx Wall Systems, in the amount of \$6,615,

plus costs, interest, and any other incidental or consequential damages available under 13 Pa.C.S.A. §§ 2714 & 2715.

McNEES, WALLACE & NURICK

By



Charles T. Young, Jr.  
Attorney I.D. No. 80680  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
(717) 232-8000

Attorneys for Plaintiff  
Penn Lyon Homes, Inc.

Dated: May 30, 2000

VERIFICATION

Subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities, I hereby certify that I am the Asst Sec/Treas of Penn Lyon Homes, Inc., the Plaintiff in this action. In that capacity, I am authorized to make this Verification on its behalf. I further certify that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information, and belief.

Signature

John A. Kircher

Printed Name

John A. Kircher

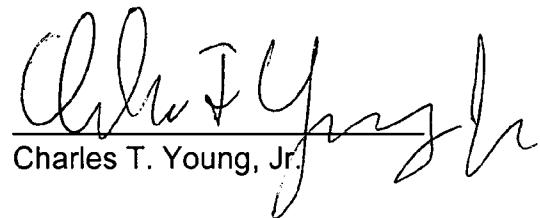
Dated:

7/25/00

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing document was served by Federal Express, overnight delivery, on the following:

Attorney for the Defendant:  
Randy P. Brungard, Esq.  
Law Offices of Rosamilia & Brungard  
241 West Main Street  
Lock Haven, Pennsylvania 17745

  
Charles T. Young, Jr.

Dated: May 30, 2000

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

PENN LYON HOMES, INC., )  
                            Plaintiff )  
                            )  
                            vs.              )                           NO: 00 518 CV  
                            )  
                            )  
GLOSSNER'S BLUE MAXX    )  
WALL SYSTEMS,            )  
                            Defendant )

**DEFENDANT'S ANSWER WITH NEW MATTER TO PLAINTIFF'S COMPLAINT**

AND NOW, comes the Defendant, Glossner's Blue Maxx Wall Systems, by and through its attorney, Randy P. Brungard, and files this answer to Plaintiff's Complaint.

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied. On the contrary, the oral contract was for Defendant to supply concrete, place (pour) concrete, and smooth the concrete surface with a power trowel.
5. Denied as stated. Following Defendant completing its work, the floor incurred some cracking.
6. Denied. Any loss incurred by Plaintiff was due solely as a result of Plaintiff's own negligence, which includes but is not limited to failure to properly prepare the sub-grade site and surrounding area prior to Defendant's (placing) of the concrete. In addition, any loss was due to Plaintiff's failure to request control joints or any other method of "jointing". It is believed and

**FILED**

Plaintiff's failure to request control joints or any other method of "jointing". It is believed and

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10:25 AM  
William A. Shaw  
Prothonotary

I CERT TO ATTY

therefore averred that some of Plaintiff's loss was due to Plaintiff's work on the house unrelated to the basement floor.

7. Admitted in part; denied as to the remainder. It is admitted that the Andersons filed a Complaint against the Plaintiff. With reference to the remaining allegations, answering Defendant can neither confirm or deny said allegations, and therefore said allegations are denied and strict proof is demanded.

8. Admitted. By way of further answer, the allegation is totally irrelevant and should be stricken, since this is a De Novo matter in front of the Common Pleas Court.

9. Admitted. By way of further answer, this allegation is irrelevant and should be stricken. This is a De Novo Hearing in front of the Common Pleas Court.

10. Admitted. By way of further answer, this allegation is irrelevant and should be stricken. A De Novo Appeal was filed and this matter is in front of the Common Pleas Court.

#### **COUNT I - BREACH OF CONTRACT**

11. Answering Defendant incorporates by reference its answers to Paragraphs 1-10 of Plaintiff's Complaint, as though said answers were herein set forth at length.

12. Denied as stated. On the contrary, the contract was for Defendant to supply concrete, "place" the concrete, and smooth the concrete surface with a power trowel.

13. Admitted in part; denied as to the remainder. It is admitted that Plaintiff has compensated Defendant for the work performed. It is specifically denied that Plaintiff fulfilled all the provisions of the subcontract. On the contrary, Plaintiff failed to properly prepare the sub-grade site and surrounding area prior to Defendant performing its portion of the contract.

14. Denied. On the contrary, Defendant did everything that it was contracted to do and did so in a proper and workmanlike manner, and did all things that were expressly or by necessary implication required to be done under the contract.

15. Denied. It is specifically denied that Defendant did its job in an improper or in an un-workmanlike manner. It is also specifically denied that it was too cold to pour under the precautions taken by Defendant based upon the temperature that existed at the time; it is specifically denied that it was Defendant's responsibility to provide the fill underneath the concrete floor, which was Plaintiff's responsibility; and it is specifically denied that Defendant was to compact the fill underneath the concrete floor, which was Plaintiff's responsibility.

16. Denied. It is specifically denied that Defendant breached its contract. By way of further answer, the reasons for any loss incurred by Plaintiff were due to Plaintiff's own negligence, and/or lack of site preparation, or failure to request control joints.

WHEREFORE, answering Defendant, Glossner's Blue Maxx Wall Systems, demands judgment in its favor.

**COUNT II - IN QUANTUM MERUIT**

17. Answering Defendant incorporates by reference its answers to Paragraphs 1-16 of Plaintiff's Complaint, as though said answers were herein set forth at length.

18. Denied as stated. It is specifically denied that Defendant's work was done defectively or that it had no value. By way of further answer, Defendant's work was done properly under the site conditions and specifications provided to Defendant by Plaintiff.

19. Denied as stated. Although the Defendant was compensated for its work, Defendant does not understand what Plaintiff means by significant or appreciable benefit, and therefore said allegation is denied and strict proof is demanded.

20. Admitted to the extent that Defendant got paid for pouring the concrete and troweling same.

21. Denied. It is specifically denied that Defendant's work was defective and/or worthless, as Defendant did everything requested and incurred costs, time, labor, and materials in placing said concrete floor.

WHEREFORE, answering Defendant, Glossner's Blue Maxx Wall Systems, demands judgment in its favor.

**COUNT III - BREACH OF EXPRESS WARRANTY**

22. Answering Defendant incorporates by reference its answers to Paragraphs 1-21 of Plaintiff's Complaint, as though said answers were herein set forth at length.

23. Denied as stated. On the contrary, the contract between Defendant and Plaintiff was Defendant sold concrete and labor for "placing" and troweling said concrete basement floor of the Anderson home.

24. Admitted to the extent that the concrete provided was of good and merchantable quality, and otherwise satisfactory for the construction of the basement floor, which it was.

25. Admitted to the extent that the concrete provided was of good and merchantable quality.

26. Denied. On the contrary, Defendant fulfilled the entire terms of its contract, supplied concrete of good and merchantable quality, and was satisfactory for the construction of the basement floor.

27. Denied. On the contrary, any loss incurred by Plaintiff was due to Plaintiff's own negligence, which has previously been set forth.

WHEREFORE, answering Defendant, Glossner's Blue Maxx Wall Systems, demands judgment in its favor.

**COUNT IV - BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

28. Answering Defendant incorporates by reference its answers to Paragraphs 1-27 of Plaintiff's Complaint, as though said answers were herein set forth at length.

29. Denied as stated. On the contrary, the contract between Defendant and Plaintiff was Defendant sold concrete and labor for "placing" and troweling said concrete basement floor of the Anderson home.

30. Denied as stated. Any warranty provided by Defendant was that the concrete would pass without objection within the trade and that the concrete was fit for the ordinary purposes for which it would be used, and said concrete was fit.

31. Denied as stated. There was no mention one way or the other concerning any implied warranty of merchantability.

32. Denied. It is specifically denied that Defendant violated any terms of any warranty for the concrete supplied, and it is specifically denied that the concrete was not fit for the ordinary purposes for which it was used, as said concrete was in fact fit for its intended use.

33. Denied. Any loss suffered by Plaintiff was due to Plaintiff's own negligence, which has previously been set forth.

WHEREFORE, answering Defendant, Glossner's Blue Maxx Wall Systems, demands judgment in its favor.

**COUNT V - BREACH OF IMPLIED WARRANTY OF FITNESS  
FOR A PARTICULAR PURPOSE**

34. Answering Defendant incorporates by reference its answers to Paragraphs 1-33 of Plaintiff's Complaint, as though said answers were herein set forth at length.

35. Denied as stated. On the contrary, the contract between Defendant and Plaintiff was Defendant sold concrete and labor for "placing" and troweling said concrete basement floor of the Anderson home.

36. Denied as stated. Defendant knew the purpose for which the concrete was to be used.

37. Denied as stated. On the contrary, any reliance on Defendant's skill by Plaintiff would have been in selecting and furnishing suitable concrete.

38. Denied as stated. No mention one way or the other was discussed between the parties concerning any warranties.

39. Denied as stated. Any warranty by Defendant would be that the concrete would be fit for a particular purpose, i.e. the placing and troweling of a concrete basement floor in the home later bought by the Andersons.

40. Denied. It is specifically denied that Defendant breached or otherwise violated the terms of any warranty concerning the concrete. It is specifically denied that the concrete was not fit for the particular purpose of constructing a basement floor in a personal residence.

41. Denied. Any loss suffered by Plaintiff was due as a result of Plaintiff's own negligence, which has previously been outlined.

WHEREFORE, answering Defendant, Glossner's Blue Maxx Wall Systems, demands judgment in its favor.

**NEW MATTER**

42. Penn Lyon Homes, Inc. was responsible for the site preparation prior to Defendant "placing" the concrete.

43. Penn Lyon Homes, Inc.'s site preparation should have included the following:

- a. Proper compacting of the job site;
- b. Proper leveling of the job site;
- c. Covering the "footer" with stone;
- d. Placing either a bond breaker or expansion joint material around the perimeter of the job site to be concreted;
- e. Having the pipes installed prior to the arrival of the concrete truck;
- f. Having the area around the pipes filled and graded prior to the concrete trucks arriving;
- g. Installing a plastic vapor barrier over the site to be concreted;
- h. Having all the "forming" installed;
- i. Having proper fill;
- j. Having the structure enclosed prior to the concrete being poured; and
- k. Installing control joints to the site to be concreted in the proper dimensions.

44. Penn Lyon Homes, Inc. failed to have the site properly prepared prior to Defendant placing the concrete.

45. Penn Lyon Homes, Inc. was in a hurry to complete the job prior to deer hunting season.

46. Penn Lyon Homes, Inc. failed to even have a supervisor or a labor foreman on the job site when the concrete trucks arrived.

47. Penn Lyon Homes, Inc. and Glossner's Blue Maxx Wall Systems agreed that Penn Lyon Homes, Inc. would have the job site completely and properly prepared prior to the arrival of the concrete trucks.

48. The contract between Penn Lyon Homes, Inc. and Glossner's Blue Maxx Wall Systems was solely for Glossner's Blue Maxx Wall Systems to "place" concrete on the basement sub-grade and power trowel to finish the "placed" concrete.

49. Penn Lyon Homes, Inc., as a general contractor, totally controlled all of the job specifications.

50. Glossner's Blue Maxx Wall Systems did everything requested of them by Penn Lyon Homes, Inc.

51. Penn Lyon Homes, Inc. was responsible for enclosing the house structure.

52. Penn Lyon Homes, Inc. failed to enclose the house structure.

WHEREFORE, Defendant, Glossner's Blue Maxx Wall Systems, demands judgment in its favor.

ROSAMILIA & BRUNGARD

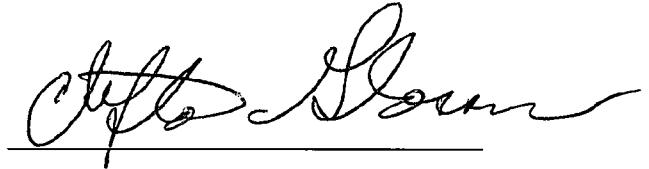
BY:

  
Randy P. Brungard, Esquire  
Attorney for Defendant,  
Glossner's Blue Maxx Wall Systems  
241 West Main Street  
Lock Haven, PA 17745  
(570) 748-5572  
Attorney I.D. NO: 32102

**VERIFICATION STATEMENT**

I verify that the facts contained in the foregoing Answer and New Matter are true and correct to the best of my knowledge. 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.

Date: 6-24-00



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

PENN LYON HOMES, INC., )  
                            Plaintiff )  
                            )  
vs.                       )                          NO: 00 518 CV  
                            )  
                            )  
GLOSSNER'S BLUE MAXX )  
WALL SYSTEMS,          )  
                            Defendant )

CERTIFICATE OF SERVICE

I, Randy P. Brungard, Esquire, of the Law Firm of ROSAMILIA & BRUNGARD, hereby certify that a true and correct copy of Defendant's Answer With New Matter to Plaintiff's Complaint was served upon Charles Young, Esquire, Attorney for Plaintiff, by placing a copy of same in the U.S. mail, first class, postage prepaid, addressed as follows:

Charles Young, Esquire  
McNEES, WALLACE & NURICK  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166

ROSAMILIA & BRUNGARD

Date: 6-28-00

BY: Randy P. Brungard

Randy P. Brungard, Esquire  
Attorney for Defendant,  
Glossner's Blue Maxx Wall Systems  
241 West Main Street  
Lock Haven, PA 17745  
(570) 748-5572  
Attorney I.D. NO: 32102

113  
PENN LYON HOMES, INC.,

Plaintiff

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY

v.

CIVIL ACTION NO. 00 518 CV

110  
GLOSSNER'S BLUE MAXX  
WALL SYSTEMS,

Defendant.

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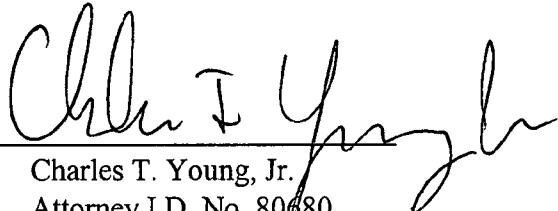
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**PRAECIPE FOR DISCONTINUANCE WITH PREJUDICE**

TO THE PROTHONOTARY: Please mark the above-listed action as discontinued in its entirety, with prejudice, pursuant to Pennsylvania Rule of Civil Procedure 229. The parties have reached a settlement, and the Plaintiff, Penn Lyon Homes, Inc., hereby discontinues its claims against Defendant, Glossner's Blue Maxx Wall Systems, with prejudice.

McNEES, WALLACE & NURICK

By

  
Charles T. Young, Jr.  
Attorney I.D. No. 80680  
100 Pine Street  
Harrisburg, PA 17108-1166  
(717) 237-5397

Attorneys for the Plaintiff, Penn Lyon Homes, Inc.

Dated: AUGUST 15, 2000

**FILED**

AUG 21 2000

112-5562

William A. Shaw  
Prothonotary

4 CENTS TO MAIL

HARRISBURG, PA 17108

P.O. BOX 1166

100 PINE STREET

MCKEESS, WALLACE & NURICK

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**FILED**

AUG 21 2000

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CIVIL DIVISION

PENN LYON HOMES, INC.  
Plaintiff(s)

Vs.

No. 00-518-CD

GLOSSNER'S BLUE MAXX  
WALL SYSTEMS  
Defendant(s)

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was this day, the 21st, of August) A.D. 2000, marked:

DISCONTINUED IN ITS ENTIRETY, WITH PREJUDICE

Record costs in the sum of \$80.00 have been paid in full by Atty. Young .

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 21st day of August A.D. 2000.

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Prothonotary