

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOMER NEFF, Bloomington Avenue, :
Curwensville, Pennsylvania

vs.

No. 540, Nov. Term, 1960

PARK AVENUE SUPPLY (J. S. ^{Beahan} BEHEAN,
OWNER), Clearfield, Pennsylvania :

TO: WILLIAM T. HAGERTY, PROTHONOTARY

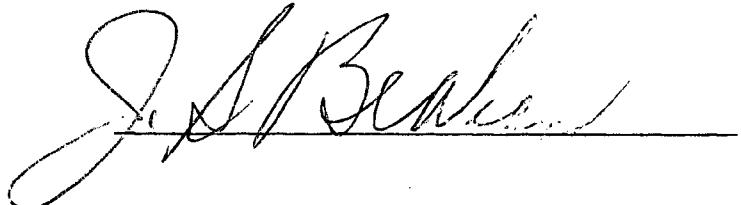
NOW, this 1st day of February 1960, Defendant appeals.

CHAPLIN & ARNOLD

By Don F. Arnold

COMMONWEALTH OF PENNSYLVANIA : SS:
COUNTY OF CLEARFIELD : :

Beahan
J. S. ~~BEAHAN~~, being duly sworn according to law,
deposes and says that this Appeal is not taken for the purpose of
delay but because in his opinion the Defendant is not liable and
if no appeal is taken he will be obliged to pay money that is not
justly due.



Sworn to and subscribed
before me this 1st day
of February, 1961.

Wm G. Hagan

PROTHONOTARY
My Commission Expires
1st Monday Jan. 1962

TRANSCRIPT -- CIVIL SUIT

Published by The Plankenhorn Co.
Williamsport, Pa.

Homer Neff
Bloomington Avenue
Curwensville, Pennsylvania
VERSUS
Park Avenue Supply
(J.S. Behean, Owner)
Clearfield, Pennsylvania
COST OF

(New Fees—Acts No. 492 Approved January 7, 1952, and Act No. 179 Approved June 28, 1951)

EACH	COSTS	TAX HERE
7.50	Assumpsit or Trespass Involving \$100.00 or less	
10.00	Assumpsit in for for Involving more than \$100.00	\$10.00
15.00	Landlord—Tenant Proceeding	1.50
5.00	Attachment in Execution Proceeding after Judgment (Such Fees shall include all charges including when called for the costs relating to de- positions and interrogatories and the costs of postage and registered mail, except the costs of a transcript of every proceeding on appeal or certiorari, including affidavit bail and certificate, which shall be \$2.50 per transcript.)	
	CONSTABLE L.E. Strunk Clearfield, Pa.	
1.50	Serving Summons Each Person	1.50
.10	Miles, circ. 2 miles	.20
1.00	Serving Execution Items, at 2c	
.10	Miles, circ.	
2.50	Levying	
1.50	Serving Subpoena Additional Names 75cts	
.10	Miles, circ.	
1.50	Receiving and paying over Without Sale	
	Total	1.70
	Grand total	13.20

Summons in ASSUMPSIT issued January 6 1961,
to L. E. Strunk Constable.
Returnable the 13th day of January 1961,
between the hours of 10:30 o'clock A.M., and 11:30 o'clock A.M.
Served on Defendant by handing him a true and attested copy
of the original, so answered L. E. Strunk, Constable.

Hearing dates continued at request of both parties, hearing
finally scheduled for January 24, 1961 at 7:30 P.M.
Date and time of hearing having arrived, parties at interest,
present. J. S. Behean and wife, Deft. and witness and
Homer Neff, Pltff. sworn according to law. Pltff. establishes
the amount of claim of \$341.52 amount of claim not disputed
by Deft. Deft. exhibits proposal made by Pltff. to construct
a building.

No evidence produced showing that Pltff. had not com-
plied with terms of his proposal which were acceptable to
Deft. Deft. claims some relief to condition of water
entering the building should be afforded by Pltff. Pltff.
and Deft. agree that presence of water had not manifested
itself until after building was completed, sometime after
completion. There being no evidence to indicate presence of
water or possibility of water course originating, therefore,
nothing was incorporated in Pltff.'s proposal to arrange for
care of unforeseen developments of such nature. In view

of foregoing testimony Judgment in favor of Pltff., Homer Neff, is publicly given against
Park Avenue Supply, Deft., at 8:20 P.M. January 24, 1961 in amount of claim \$341.52,
Notice fee \$1.50, J.P. Costs \$10.00, Constables Service \$1.50, Constables Mileage .20¢,
Total Judgment \$354.72. Deft. pays costs and enters an appeal.

Received Satisfaction,

Now, January 24, 1961, Defendant appeals. ~~for~~ ~~for~~
Deft. pays costs and takes an appeal.
~~for~~ ~~for~~
~~for~~ ~~for~~

I hereby certify that the above is a correct
Transcript of the proceedings had before
me in the above suit, and of record on my
docket.

Address:

Clearfield

County, ss:

Witness my hand and seal this 31st

day of January 1961.

Charles W. McElroy
~~for~~ ~~for~~ Justice of the Peace

My Commission expires first Monday of January, 19 62

being duly sworn according to law, deposes and says that the appeal in the within case is not taken for the purpose of delay, but because deponent verily believes that injustice has been done.

Sworn and Subscribed before me this

day of 19

[Seal]

Alderman—Justice of the Peace

My Commission Expires first Monday of January, 19

NOTE—Follow the form of the blank within from your Docket Entry

No. Term, 19

Homer Neff
Bloomington Avenue
Curwensville, Pennsylvania

versus

Park Avenue Supply (J.S. Behan)

Clearfield, Pennsylvania

*Transcript

from the Docket of
Charles W. McClure, Justice of the
Peace
Curwensville, Pennsylvania

Entered and Filed 19

Prothonotary

Attorney

*Say "Of Appeal" or "Of Judgment" as the case may be.

The Plankinton Co., Williamsport, Pa.

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

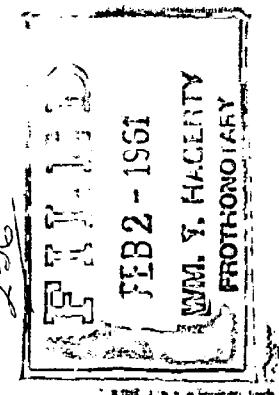
No. 540, *27*, Term 1960

HOMER NEFF, Bloomington Avenue,
Curwenville, Pennsylvania

vs.

PARK AVENUE SUPPLY (J. S.
BEAHAN, OWNER), Clearfield,
Pennsylvania

APPEAL



LAW OFFICES
CHAPLIN & ARNOLD
CLEARFIELD, PA.

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

HOMER NEFF

:

versus

: No. 540 November Term, 1960

PARK AVENUE SUPPLY
(J. S. Beahan, Owner)

: In Assumpsit

COMPLAINT

The above-named Plaintiff complains of the above-named Defendant upon a cause of action, the nature and character of which are as follows:

(1). The above action is an Appeal from Justice of the Peace, Charles W. McClure of Curwensville Borough in action in assumpsit in which judgment was rendered in favor of the Plaintiff and against the Defendant.

(2). The Plaintiff is an individual residing in Curwensville Borough and a son of Clair J. Neff, said Homer Neff, the Plaintiff having succeeded to and operating the business, formerly done under the name of Clair J. Neff & Sons.

(3). The Defendant is an individual operating under the name of Park Avenue Products, having a place of business in or near Clearfield Borough at 502 Park Avenue, Clearfield, Pennsylvania.

(4). That the Defendant requested the Plaintiff to give him a quotation on the cost of erecting a store building at 502 Park Avenue, Clearfield Borough.

(5). Under date of April 26, 1958, the Plaintiff submitted a written list of specifications and quotations on an addition to the store building of the Defendant, the total cost as listed therein being, \$10,175.00. A copy of said proposal is attached hereto, marked Exhibit A, and made a part hereof.

(6). That the Defendant accepted the proposal of the Plaintiff, and the work was commenced.

(7). That during the process of the work, certain changes, and alterations were made, as a result of which, the total amount of work done for the Defendant totaled \$13,399.37.

(8). On said bill, the Defendant made payments at various times, the total amount paid by Defendant on account being, \$13,050.00, leaving a balance owed of \$349.37.

(9). That no dispute exists between the Plaintiff and the Defendant as to the items charged for the materials, equipment or labor, making a total of \$13,399.37, copies of the bill have previously been furnished to the Defendant, and for the reason that the items are not in dispute and that the Defendant already has copies of the bill, a statement is not attached hereto or made a part hereof, but will be supplied if necessary.

(10). That bills were furnished to the Defendant at various times and the bill was completely recopied and rebilled on August 5, 1960, following which the Defendant made a payment on account of \$200.00, leaving a balance of \$349.37 remaining due and owing to the Plaintiff from the Defendant. Said payment of \$200.00 was made on November 30, 1960. At the hearing before the Justice of the Peace, the Defendant admitted that the items, equipment and labor were furnished and did not dispute the proposal attached hereto, marked exhibit A, which was the proposal on which the contract was made, but sought to avoid payment of the balance due, because of some water seeping into the building.

(11). It was admitted by both the Plaintiff and Defendant that there was no water present or manifested until sometime after the building was completed, nor was there any evidence to indicate the present of water or the possibility of any water entering the building.

(12). That the proposal of the Plaintiff contains no statement about prevention of water nor were there any subsequent agreements written or verbal obligating the Plaintiff to exclude water seepage coming through the walls and the floor of said building.

WHEREFORE, the Plaintiff avers there is due and owing to him the sum of \$349.37 with interest from May 6, 1960, at the time the job was completed and bill furnished for the same.

The Plaintiff further asks that there be added to said sum of \$349.37, interest from May 6, 1960 at the recognized rate of 6% per annum, as damage for delay in the payment of said bill owed by the Defendant to the Plaintiff.

WHEREFORE, the Plaintiff asks that judgment be rendered in his favor and against the Defendant, for the sum due and owing plus damage for delay in the payment.

And he will ever pray.

BELL, SILBERBLATT & SWOOP

by

J. A. Bell
Attorneys for Plaintiff

STATE OF PENNSYLVANIA :

SS:

COUNTY OF CLEARFIELD :

Before me, the undersigned officer, came, Homer Neff, who being duly sworn according to law, deposes and says that the facts set forth in the within Complaint in Assumpsit are true and correct to the best of his knowledge, information and belief.

Homer M. Neff

Sworn and subscribed to
before me this 20th
day of March,
1961.

Wm T. Haysty
PROTHONOTARY
My Commission Expires
1st Monday Jan. 1962

Exhibit A

April 26, 1958

Beahans Park Ave. Supply
502 Park Avenue
Clearfield, Pa.

Dear Mr. Beahan:

The following is a list of specifications and quotation on the addition you plan to your store building.

Excavate for footer.

Lay blocks to make a nine (9) foot ceiling in rear, using block reinforcing.

Pour four (4) inch concrete floor reinforced.

Four (4) steel I beams to support roof.

Roofing to be cold process, built up roof.

Four (4) inch concrete walk in front of store to coincide with present front.

The new addition to match the present building in appearance and construction.

Ceiling of entire new addition to be covered with 1x4 furrowing and ceiling tile.

The sides of front section to be covered with peg board.

One (1) 8x7 overhead garage door in rear.

One (1) walk-in door in rear.

Cut archway through to present building.

Partition for furnace room, wash room and stock room and cover with sheetrock.

Plumbing includes lavatory and closet completely installed and drains with 3/4" waterline extended down to Park Avenue.

Heat includes twelve (12) hot and twelve (12) cold radiators to the entire first floor. Oil fired forced air.

Insulate ceiling of new building.

Wiring includes forty (40) open circuit low entrance less fixtures.

Moveable partition with peg board on one side.

Spouting on long side of building to drain.

Paint exterior of new building two (2) coats.

Cost as listed \$10,175.00

If wood beams and posts are used, you may deduct \$700.00
Thank you for the opportunity of serving you.

Yours Truly,

Homer Neff

HM/or

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA

No. 540 November Term, 1960

HOMER NEFF

versus

PARK AVENUE SUPPLY

(J. S. Beahan, Owner)

Complaint

To the within named Defendant:

You are hereby notified
to file an Answer to the
within Complaint within 20
days from the date of
service hereof.

BELL, SILBERBLATT & SWOPE
by *J. S. Beahan*

Attorneys for Plaintiff

BELL, SILBERBLATT & SWOPE
ATTORNEYS AT LAW
CLEARFIELD TRUST CO., BLDG.
CLEARFIELD, PENNA.
1-200-61

COMMERCIAL PRINTING CO., CLEARFIELD, PA

W-20-61
Accepted
D. P. And

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOMER NEFF : No. 540 November Term 1960
vs. : IN ASSUMPSIT
PARK AVENUE SUPPLY :
(J. S. Beahan Owner) :

ANSWER

1. Paragraphs 1 through 6 are not denied.
7. It is denied that the proper charge for alterations and changes and the work done by the plaintiff totals \$13,399.37, and on the contrary it is averred that the following items are not proper charges and should not have been included in said bill dated March 8, 1961, a copy of which has been supplied to the defendant, and which bill is not attached to the Complaint but by agreement will be admitted at the trial:

- (a) All items of paint purchased by the plaintiff as all paint was supplied by the defendant.
- (b) Page 2 - Barn, stable and fence interior paint labor - \$118.00.
- (c) Page 3 - Dean Phipps Auto Stores - floor tile \$280.00
- (d) Page 5 - D. Kessler (dog kennel heat leak at house) - \$18.00.
- (e) Page 7 - Dean Phipps Auto Stores - lezzers - \$243.44
Reed - \$27.30
5 gal. roof pitch - \$4.25
- (f) Page 8 - At House
11 feet x 1/2" Copper - \$ 3.30
1 1/2" adapter .20
1 1/2 x 3/4 adapter .28
1 1/2" ell .15
Bowery 11.25
Kessler 8.40

8. It is admitted that the defendant has paid on account \$13,050, but it is denied that there is a balance due of \$349.37 for the reason that the items set forth in paragraph 7 are not proper charges.

9. Denied for the reasons set forth in paragraph 7.

10. Paragraph 10 is admitted in part, but it is denied that there is a balance due of \$349.37 for the reasons set forth in paragraph 7, and it is specifically denied that at the hearing before the justice of the peace the defendant admitted that the items in the complete bill were proper. No bill was presented at the hearing.

11. It is denied by the defendant that there was no water present until after the building was completed as the defendant had no knowledge of the conditions at the building site, and all such details, by virtue of the contract between the parties, was within the exclusive domain of the plaintiff.

12. Paragraph 12 is not denied, but it is averred that there is an implied covenant to complete the building according to the specifications in a good and workmanlike manner, and that the same was not done by the plaintiff.

NEW MATTER AND
COUNTERCLAIM

13. That the building as erected by the plaintiff was defective in that the roof was not properly installed and permitted water to leak into the building and ruin various merchandise of the defendant which was stored therein.

14. That in the construction of the building plaintiff did not take proper steps to prevent water seeping into the building in and about the floors and walls of the same, and that such seepage has caused extensive damages to the defendant's merchandise and equipment stored in said building, has interfered with the proper conduct of the defendant's building, has ruined the tile floor installed in said building, and has caused the damages as

more particularly itemized and set forth in defendant's Exhibit 1 attached hereto and made a part hereof.

15. That plaintiff knew the purpose for which the building was to be used that he contracted to erect for the defendant, and all of the details of the manner of construction were left entirely in plaintiff's judgment.

16. That the defendant herein is engaged in the wholesale and retail sale of pet foods and supplies, sporting goods, garden equipment and similar merchandise, and defendant has no particular knowledge of the manner or methods to be used in the construction of store buildings, all of which was known to the plaintiff prior to entering into the contract for the erection of the store building for the defendant.

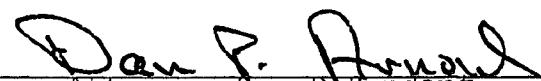
17. That defendant herein relied on the experience, judgment and abilities of the plaintiff as a contractor and builder, and at the time the contract was entered into between the parties, was assured of having a good and workmanlike job done on the construction.

18. Plaintiff, in recognition of his failure to construct a water-tight practical building for the defendant, has corrected the leak in the roof and has made efforts to prevent water from entering defendant's building about the floors and walls, but the latter condition still exists and has not been corrected by the plaintiff.

19. By virtue of the plaintiff's failure to use reasonable care and judgment in the erection and construction of the building of the defendant, the defendant suffered the damages as set forth in defendant's Exhibit 1 attached hereto.

WHEREFORE, defendant asks judgment against the plaintiff.

LAW OFFICES
CHAPLIN & ARNOLD
CLEARFIELD, PA.


Dan F. Arnold
Attorney for Defendant

COMMONWEALTH OF PENNSYLVANIA : SS:
COUNTY OF CLEARFIELD :

J. S. BEAHAN, being duly sworn according to law, deposes and says that the facts set forth in the foregoing Answer and New Matter and Counterclaim are true and correct to the best of his knowledge, information and belief.



Sworn to and subscribed
to before me this 10th day
of May 1961.



PROTHONOTARY
My Commission Expires
1st Monday Jan. 1962

EXHIBIT 1

LOSS ON MERCHANDISE DUE TO IMPROPER INSTALLATION OF ROOF:

Bird Food	\$ 75.00
Dog Food	72.00
Labor in Repacking Merchandise when cases were ruined due to above	<u>24.00</u>
Total	\$171.00
	\$171.00

LOSS ON MERCHANDISE DUE TO WATER ENTERING FIRST FLOOR OF STORE
BUILDING AND RUINING MERCHANDISE:

Hardware Merchandise	\$ 43.11
Pet Merchandise	100.00
Sporting Goods	24.00
Lawn Supplies	<u>50.00</u>
Total	\$217.11
	\$217.11

LOSS OF BUSINESS DUE TO MERCHANDISE BEING STACKED HIGH
ON COUNTERS AND NOT DISPLAYED PROPERLY: \$100.00

ESTIMATED COST OF CORRECTING THE CONDITION OF WATER
ENTERING BUILDING AND REPLACING FLOOR TILE: \$355.00

MERCHANDISE PURCHASED BY NEFF ON JULY 9, 1960: 86.33

TOTAL \$929.44

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 540 November Term 1960
IN ASSUMPSIT

HOMER NEFF

vs.

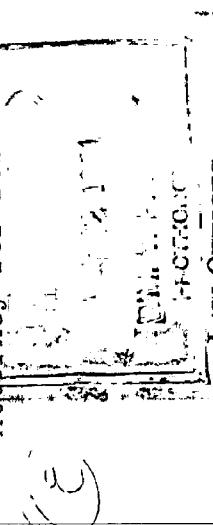
PARK AVENUE SUPPLY
(J. S. Beahan, Owner)

ANSWER
NEW MATTER AND COUNTER-
CLAIM

TO THE WITHIN PLAINTIFF:

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

John J. Arnald
John J. Arnald
Attorney for Defendant



LAW OFFICES
CHAPLIN & ARNOLD
CLEARFIELD, PA.

mm may 23 1961 service acqld by copy
Bell Subpoena - Sub
F. P. Johnson

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

HOMER NEFF

vs.

PARK AVENUE SUPPLY
(J. S. BEAHAN, OWNER)

: No. 540 November Term, 1960

: In Assumpsit

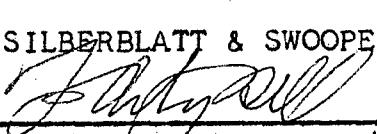
PRAECIPE

To William T. Hagerty, Prothonotary:

Sir:

Place the above case on the next Argument List.

BELL, SILBERBLATT & SWOOP

by 

Attorneys for Plaintiff

Dated:

June 21960

1937 ADVO.

00001 . 00002 00003 00004 00005 00006 00007 00008 00009 00010

REFERENCES

Y14503 871 NO. 329
(11200 1981 4 12 57)

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„teilJ tneemda fkom set no geed avode en' jefelj

HOMER NEFF

4
5

PARK AVENUE SUPPLY

PRAECLIPSE

FILED
JUN 7 1961
WM. T. HAGERTY
PROTHONOTARY

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOMER NEFF : No. 540 November Term, 1960
-vs- :
PARK AVENUE SUPPLY : IN ASSUMPSIT
(J. S. Beahan Owner) :

PRELIMINARY OBJECTIONS TO
DEFENDANT'S NEW MATTER AND COUNTER-CLAIM

The Plaintiff, by his attorneys, Bell, Silberblatt & Swoope, preliminarily objects to the Defendant's New Matter and Counter-Claim for the following reasons:

MOTION FOR MORE SPECIFIC PLEADING

(1). That Paragraphs 13 through 19 are all in general terms and not sufficiently specific to enable the Plaintiff to answer, for example:

A. In Paragraph 13 the Defendant fails to aver what merchandise was ruined.

B. In Paragraph 14 the Defendant fails to aver what the Plaintiff did not do or what he should have done or what the extensive damages are that are referred to; in what way the use of the building has been interfered with; in what way the tile floor has been damaged; and as to Defendant's Exhibit 1 the Plaintiff is entitled to know the kind and character of the bird food in the amount of \$75, the kind and character of the dog food in the amount of \$72, and how many hours of labor were used in repacking merchandise, if any. Said Exhibit also fails to identify the hardware merchandise in the amount of \$43.11, the pet merchandise in the amount of \$100, the sporting goods in the amount of \$24 and the lawnsupplies in the amount of \$50, and the Plaintiff is entitled to be informed of the kind and character of each of these items.

There is also stated a loss of business for merchandise being stacked too high in the amount of \$100. This is a general averment and strict proof will be required at trial but some information should be given to the Plaintiff as to what business was lost and how it is figured. As to the estimated cost of correcting the condition of water entering the building and replacing floor tile in the amount of \$355, the Plaintiff is entitled to know who made the estimate and the type of work required to be done. As to merchandise purchased by Neff on July 9, 1960, the Plaintiff denies having purchased the same and the items making up said bill are requested to be listed.

As to all of which the Plaintiff requests that a specific answer be given.

BELL, SILBERBLATT & SWOOP
By



F. Cortez Bell,
Attorneys for Plaintiff

STATE OF PENNSYLVANIA :
: SS.
COUNTY OF CLEARFIELD :
:

Before me, the undersigned officer, personally appeared HOMER NEFF, who being duly sworn according to law, deposes and says that the facts set forth in the within Preliminary Objections are true and correct to the best of his knowledge, information and belief.

Homer Neff

Homer Neff

Sworn and subscribed to
before me this 1st day
of June, 1961.

Wm T. Hagerty

PROTHONOTARY
My Commission Expires
1st Monday Jan. 1962

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENN-
SYLVANIA, No. 540 November
Term, 1960 - In Assumpsit

HOMER NEFF

-vs-

PARK AVENUE SUPPLY
(J. S. Behan Owner)

PRELIMINARY OBJECTIONS TO
DEFENDANT'S NEW MATTER
AND COUNTER-CLAIM

1961

W. T. HAGERTY
NOTARY

BELL, SILBERBLATT & SWOOPPE
ATTORNEYS AT LAW
CLEARFIELD TRUST CO. BLDG.
CLEARFIELD, PENNA.

6-5-6
Accepted
Sept 1st
and 11th
for draft

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

HOMER NEFF

: No. 540 November Term, 1960

vs.

: IN ASSUMPSIT

PARK AVENUE SUPPLY
(J. S. Beahan, Owner)

:

STIPULATION

THIS STIPULATION entered into this 13 day of June 1961 between F. Cortez Bell of Bell, Silberblatt & Swoope, attorney for the plaintiff, and Dan P. Arnold, attorney for the defendant, who agree as follows:

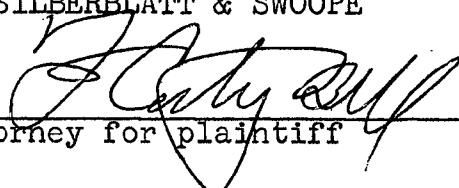
The plaintiff shall be deemed to have expressly denied all of the matters set forth in the defendant's New Matter and Counterclaim, and strict proof of each and every item of damages claimed by the defendant in the Counterclaim will be required at the trial.

The defendant has furnished to the plaintiff the estimate of Greydon Z. Bowers in the amount of \$355 set forth in Defendant's Exhibit 1.

The disposal of the Preliminary Objections by the Court is waived and the case shall proceed to arbitration under this Stipulation.

BELL, SILBERBLATT & SWOOP

By


Attorney for plaintiff


Dan P. Arnold, Attorney for defendant

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 540 November Term, 1960
IN ASSUMPSIT

HOMER NEFF

vs.

PARK AVENUE SUPPLY
(J. S. Beahan, Owner)

STIPULATION

RECEIVED
JULY 1 1960
CLERK'S OFFICE
CLEARFIELD COUNTY
PA

LAW OFFICES
CHAPLIN & ARNOLD
CLEARFIELD, PA.