

00-1374-CU
TRAVIS WELPOINT et al -vs- TIMOTHY BEMBENIC t/a/b/a. BEMBENIC
CONSTRUCTION

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

TRAVIS WELPOTT and MOLLY O'BRYON-
WELPOTT,

Plaintiff

vs.

TIMOTHY BEMBENIC, t/d/b/a/
BEMBENIC CONSTRUCTION,

Defendant

COMPLAINT

FILED

NOV 07 2000

Office of
William A. Shaw
Prothonotary
pd & 80.00

3cc atty

LAW OFFICES

BLAKLEY, JONES & MOHNEY
90 BEAVER DRIVE - BOX 6
DUBOIS, PA 15801

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

TRAVIS WELPOTT and MOLLY
O'BRYON-WELPOTT, : NO. 00-1374 -CD
PLAINTIFF : TYPE OF CASE: CIVIL
VS : TYPE OF PLEADING:
TIMOTHY BEMBENIC, t/d/b/a
BEMBENIC CONSTRUCTION, : COMPLAINT
DEFENDANT : FILED ON BEHALF OF:
: PLAINTIFF
: COUNSEL OF RECORD FOR
: THIS PARTY:
: BENJAMIN S. BLAKLEY, III
: SUPREME COURT NO.: 26331
: BLAKLEY, JONES & MOHNEY
: 90 BEAVER DRIVE, BOX 6
: DU BOIS, PA 15801
: (814) 371-2730

FILED

NOV 07 2000

William A. Shaw
Prothonotary

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

TRAVIS WELPOTT and MOLLY
O'BRYON-WELPOTT,

Plaintiff

No. 00 -

-CD

vs.

TIMOTHY BEMBENIC, t/d/b/a
BEMBENIC CONSTRUCTION,

Defendant

NOTICE TO DEFEND

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 is 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 an order may be entered against you by the Court without further notice for any money claimed in the Complaint requested by 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.

David S. Meholick,
Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814) 765-2641

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

TRAVIS WELPOTT and MOLLY
O'BRYON-WELPOTT, :
Plaintiff :
: No. 00 - -CD
vs. :
: :
TIMOTHY BEMBENIC, t/d/b/a :
BEMBENIC CONSTRUCTION, :
Defendant :
:

COMPLAINT

AND NOW, come the Plaintiffs, TRAVIS WELPOTT and MOLLY O'BRYON-WELPOTT by and through their attorneys, BLAKLEY, JONES & MOHNEY, and files the following Complaint, upon which the following is a statement:

1. Plaintiffs are TRAVIS WELPOTT and MOLLY O'BRYON-WELPOTT, adult individuals residing at 253 South Brady Street, Du Bois, Clearfield County, Pennsylvania.
2. Defendant is TIMOTHY BEMBENIC, t/d/b/a BEMBENIC CONSTRUCTION, with a business address of 113 Wilson Avenue, Du Bois, Clearfield County, Pennsylvania.
3. At all times material hereto, Plaintiffs were the owner of a residence and real property located at 253 South Brady Street, Clearfield County, Pennsylvania.
4. At all times material hereto, the Defendant was in the business of residential repair and remodeling.
5. That on November 24, 1998, the Defendant presented the Plaintiffs with a proposal to, among other matters, replace the roof on the Plaintiffs' residence, install up to eight (8) roof vents, and perform related work for a total cost of labor and materials of \$6,250.00. A copy of said proposal is attached hereto and marked as Exhibit "A."

6. Subsequent to the presentation of the above proposal, the Plaintiffs did agree to permit the Defendant to replace the said roof pursuant to said proposal.

7. That the Defendant did commence work upon the residence of the Plaintiffs during December of 1998 and completed his work upon the said roof on December 24, 1998.

8. That the Defendant was paid for his services by the Pennsylvania Housing Financing Agency in the amount of \$6,250.00, pursuant to his construction bid proposal. A copy of the check of the Pennsylvania Housing Finance Agency is attached hereto and marked as Exhibit "B."

9. Shortly after the completion of the Defendant's work upon the Plaintiffs' residence, the Plaintiffs observed leakage around the chimney area of the home and further observed that shingles were sliding off the roof of the residence.

10. That the work performed upon the Plaintiffs' residence by the Defendant was done in a poor, improper, and unworkmen-like manner and did not meet the standards of the industry, in that:

- a. The Defendant failed to follow standard nailing procedures in the installation of the shingles, as the shingles were not nailed above every slot or in the tar strips applied by the manufacturer.
- b. The Defendant failed to replace bad sheeting and/or re-nail nails that missed solid sheeting.
- c. No step flashing was placed at roof to wall junctions.
- d. The Defendant misplaced venting on the subject roof and the venting that was placed on the subject roof was inadequate for the proper venting of the residence.
- e. The Defendant failed to place ice and water shield on the subject roof.

- f. The Defendant failed to remove debris from gutters and down spouts upon the completion of the job.
- g. Valley pad was not trimmed to fit valley allowing water to run over gutter and to the ground.
- h. Hip saddles were not trimmed to match the roof, thereby covering the outside miter on the gutters and allowing water to bypass the gutters.
- i. No new flashing or counter-flashing was placed upon the porch roof with the roof being sealed with roof cement only causing cracking and leaking.
- j. Incorrectly installing box vents on the subject roof.

11. As a result of the actions of the Defendant in improperly replacing the roof upon the Plaintiffs' residence, the Plaintiffs will be required to expend \$11,283.00 to remedy the aforesaid breaches. A copy of the estimate of Dunkel Roofing, Inc. is attached hereto and marked as Exhibit "C."

WHEREFORE, Plaintiffs demand judgment against the Defendant in the amount of \$11,283.00, plus interest and costs of suit.

Respectfully submitted,

BLAKLEY, JONES & MOHNEY

BY:

Benjamin S. Blakley, III, Esquire

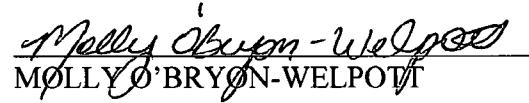
We verify that the statements made in this Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. Section 4904, relating to unsworn falsification to authorities.

DATE: 110200



TRAVIS WELPOTT

DATE: 11-2-00



MOLLY O'BRYAN-WELPOTT

BEMBENIC CONSTRUCTION
113 WILSON AVENUE
DUBOIS, PA 15801
(814)375-0234

TRAVIS WELPOTT
807 SOUTH BRADY STREET
DUBOIS, PA 15801
375-8878

11/24/98

CONSTRUCTION BID PROPOSAL:

PROJECT: 253 SOUTH BRADY STREET
DUBOIS, PA 15801

1. ROOF REPLACEMENT: REMOVE EXISTING SHINGLES ON MAIN ROOF, ALL DORMERS, FRONT PORCH, REAR PORCH AND GARAGE. INSTALL ALUMINUM DRIP EDGE AS NEEDED. INSTALL #15 FELT ON ALL AREAS. PLACE 25 YEAR SHINGLES ON ALL AREAS EXCEPT THE GARAGE (WHICH WILL BE HALF LAP, MINERAL SURFACED DOUBLE COVER). FLASH, CAP AND SEAL AS NEEDED. DISPOSE OF ALL DEBRIS AT AN APPROVED LANDFILL. INSTALL UP TO 8 ROOF VENTS. EXCLUDE ROOFING ON FLAT (UPPERMOST) SECTION OF HOUSE.

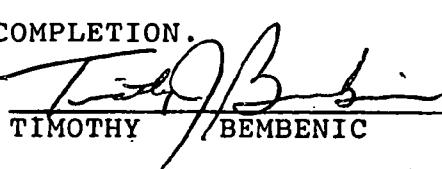
TOTAL LABOR AND MATERIALS.....\$ 6,250.00

2. CHIMNEY REPAIRS: TIME AND MATERIALS @ \$18.75 PER HOUR.
3. HOUSE PAINTING: BID ATTACHED..... 1,150.00
4. ELECTRICAL SERVICE: REPLACE EXISTING ELECTRICAL SERVICE WITH A 200 AMP 20 BREAKER PANEL. INCLUDE INSPECTION FEES. INSTALL ONE PORCELAIN LIGHT IN GARAGE..... 820.00

TOTAL OF ITEMS 1, 3 AND 4..... \$ 8,220.00

TERMS: \$4,000.00 PRE-PAYMENT/BALANCE UPON COMPLETION.

TRAVIS WELPOTT
MOLLY WELPOTT


TIMOTHY

BEMBENIC

EXHIBIT "A"

JAN-06-1999 01:50

SINGLE FAMILY

717 780 3804 P.02/02

~~DATE: 1/05/1999~~

238421

PROJECT
50064 1993 SFM ISSUE 064 BONDS

U
INVOICE DETAIL
WELPOTT INS PROCEEDS W

000238421
AMOUNT
6,250.00

CHECK TOTAL:

6,250.00

Pennsylvania Housing Finance Agency

2101 North Front Street

P.O. Box 3029

Harrisburg, Pennsylvania 17105-3029

(717) 730-3837

238421

DATE

1/05/1999

62-22311

AMOUNT

6,250.00 *

Six Thousand, Two Hundred Fifty dollars and no cents

PAY

TO

THE BEMBENIC CONSTRUCTION
ORDER 113 WILSON AVENUE
CITY DUBOIS

PA 15801

Brian A. Wilson

OVER \$200,000 TWO SIGNATURES REQUIRED

VOID 60 DAYS AFTER DATE

First State Bank
of Delaware, N.A.

238421 00340

EXHIBIT "B"

08/18/99

TOTAL P.02

Proposal

Page No. 1 of 2 Pages

DUNKEL ROOFING COMPANY, INC.

"Between You and the Weather Since 1896"
 R.D. #6 Box 20 Route 436
 PUNXSUTAWNEY, PENNSYLVANIA 15767
 (814) 938-9520 Fax (814) 938-9449

File No. 2000-149

PROPOSAL SUBMITTED TO MOLLY WELPOTT	PHONE 814-375-8878	DATE JULY 24, 2000
STREET 253 S. BRADY STREET	JOB NAME MOLLY WELPOTT RESIDENCE	
CITY, STATE and ZIP CODE DUBOIS, PA 15801	JOB LOCATION 253 S. BRADY STREET	
ARCHITECT	DATE OF PLANS	JOB PHONE DUBOIS, PA 15801

We hereby submit specifications and estimates for:

SHINGLE AREA
 (SHADED RED ON DRAWING)

1. REMOVE EXISTING SHINGLES. HAUL DEBRIS TO AN AUTHORIZED DUMP SITE.
2. INSTALL ICE AND WATER SHIELD ALONG DRIP EDGES.
3. OVER EXPOSED SHEETING, APPLY 15 LB. SHINGLERS FELT.
4. INSTALL NEW ALUMINUM DRIP EDGE AT PERIMETER.
5. INSTALL NEW FACTORY FABRICATED VENT PIPE FLASHINGS.
6. LAY 36 INCH WIDE EPDM RUBBER LINER IN VALLEY AREAS. OVER RUBBER LINER, INSTALL A CLOSED-CUT STYLE SHINGLE VALLEY.
7. INSTALL SHINGLE-OVER STYLE HIDDEN RIDGE VENTS AND OR TURBINE VENTILATORS. (DETERMINED AFTER STRUCTURE EXAMINATION)
8. INSTALL NEW STEP AND COUNTER FLASHING SYSTEM.
9. APPLY A STANDARD THREE-TAB 25 YEAR FIBERGLASS SHINGLE IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS.

LOW SLOPED AREAS
 (SHADED BLUE)

1. REMOVE EXISTING ROOFING. LEGALLY DISPOSE OF DIRT AND DEBRIS.
2. MECHANICALLY FASTEN FLEX BASE FR 60 SBS MODIFIED BASE MEMBRANE TO PREPARED ROOF SURFACE. (SAMPLE ENCLOSED)
3. TORCH APPLY U.S. INTEC GBSP-4 GRANULAR SURFACE MEMBRANE TO NEW BASE MEMBRANE. (SAMPLE ENCLOSED)
4. COMPLETE ALL FLASHING AND PERIMETER DETAILS IN COMPLETE ACCORDANCE WITH DESIGNS AND SPECIFICATIONS ESTABLISHED BY U.S. INTEC, INC.
5. PROVIDE A TWELVE (12) YEAR MATERIAL AND LABOR WARRANTY FROM U.S. INTEC, INC.

We Propose hereby to furnish material and labor — complete in accordance with above specifications, for the sum of:

Payment to be made as follows: dollars (\$ _____).

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Authorized
Signature _____

Note: This proposal may be withdrawn by us if not accepted within _____ days.

Acceptance of Proposal — The above prices _____

and conditions are satisfactory and are hereby accepted. You to do the work as specified. Payment will be made as outlined **EXHIBIT "C"**

Date of Acceptance: _____

Proposal

DUNKEL ROOFING COMPANY, INC.

"Between You and the Weather Since 1896"
 R.D. #6 Box 20 Route 436
 PUNXSUTAWNEY, PENNSYLVANIA 15767
 (814) 938-9520 Fax (814) 938-9449

File No. 2000-149

PROPOSAL SUBMITTED TO MOLLY WELPOTT	PHONE 814-375-8878	DATE JULY 24, 2000
STREET 253 S. BRADY STREET	JOB NAME MOLLY WELPOTT RESIDENCE	
CITY, STATE and ZIP CODE DUBOIS, PA 15801	JOB LOCATION 253 S. BRADY STREET	
ARCHITECT	DATE OF PLANS	JOB PHONE DUBOIS, PA 15801

We hereby submit specifications and estimates for:

NOTES:

1. TO UPGRADE TO A LAMINATED 25 YEAR SHINGLE WOULD ADD APPROXIMATELY \$150.00 TO \$300.00 TO THE BASE BID.
2. ANY DETERIORATED MASONRY, WOOD OR METAL FOUND DURING ROOF REMOVAL WILL BE REPAIRED ON A TIME AND MATERIAL BASIS. SOME REPAIRS ARE ANTICIPATED.
3. U.S. INTEC GBSP-4 MEMBRANE REQUIRES NO COATINGS FOR THE LIFE OF THE WARRANTY.
4. ANY LEAKS OR REPAIRS REQUIRED TO THE SHINGLE ROOF DUE TO DEFECTIVE WORKMANSHIP WILL BE MADE WITHOUT COST TO THE OWNER FOR A PERIOD OF TEN (10) YEARS.
5. WE CARRY \$1,000,000.00 COMBINED SINGLE LIMIT (BODILY INJURY AND PROPERTY DAMAGE) PUBLIC LIABILITY INSURANCE, ALONG WITH WORKER'S COMPENSATION INSURANCE.
EXCESS UMBRELLA COVERAGE - \$2,000,000.00.

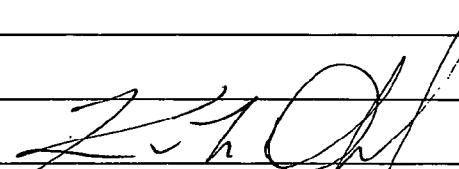
We Propose hereby to furnish material and labor — complete in accordance with above specifications, for the sum of:

ELEVEN THOUSAND TWO HUNDRED EIGHTY THREE DOLLARS AND 00/100----- dollars (\$ 11,283.00).

Payment to be made as follows:

NET DUE UPON COMPLETION

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Authorized
Signature 

Note: This proposal may be withdrawn by us if not accepted within _____ days.

Acceptance of Proposal — The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Date of Acceptance: _____

Signature _____

FREDERICK M. NEISWENDER
ATTORNEY AND COUNSELLOR AT LAW

501 EAST MARKET STREET • SUITE 3
CLEARFIELD, PENNSYLVANIA 16830



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

TRAVIS WELPOTT and MOLLY
O'BRYON-WELPOTT, :
Plaintiffs, :
vs. : No. 00-1374 - C.D.
TIMOTHY BEMBENIC, t/d/b/a :
BEMBENIC CONSTRUCTION, :
Defendant. :
: Type of case: Civil
: Type of pleading: Answer, New Matter
and Counterclaim
: Filed on behalf of: Defendant,
Timothy Bembenic, t/d/b/a
Bembenic Construction
: Counsel for Defendant:
: Frederick M. Neiswender, Esquire
: Supreme Court No. 74456
: 501 East Market Street, Suite 3
: Clearfield, Pennsylvania 16830
: (814) 765-6500

FILED

DEC 07 2000
0 13:45 (var)
William A. Shaw
Prothonotary

3 cent to Atty.

EAD

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

TRAVIS WELPOTT and MOLLY :
O'BRYON-WELPOTT, :
Plaintiffs, :
vs. : No. 00-1374 - C.D.
: :
TIMOTHY BEMBENIC, t/d/b/a :
BEMBENIC CONSTRUCTION, :
Defendant. :
:

NOTICE TO DEFEND

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**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
1 North Second Street
Clearfield, Pennsylvania 16830
(814) 765-2641

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

TRAVIS WELPOTT and MOLLY :
O'BRYON-WELPOTT, :
Plaintiffs, :
vs. : No. 00 - 1374 - C.D.
: :
TIMOTHY BEMBENIC, t/d/b/a :
BEMBENIC CONSTRUCTION, :
Defendant. :
:

ANSWER

NOW, comes the Defendant, TIMOTHY BEMBENIC t/d/b/a BEMBENIC CONSTRUCTION, by and through his attorney, FREDERICK M. NEISWENDER, ESQUIRE and makes his Answer to Plaintiffs' Complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted in part, Denied in part. Plaintiffs' original Agreement with Defendant also included chimney repairs, house painting and electrical service for a total contracted price of \$8,220.00 plus materials and labor for chimney repairs. *See Plaintiffs' Exhibit "A".*
6. Admitted.
7. Admitted.
8. Admitted.

9. Neither Admitted, nor Denied. Defendant does not have sufficient knowledge to respond to the averment made by Plaintiffs.

10. Denied.

a. Denied.

b. Denied.

c. Denied,

d. Denied.

e. Denied.

f. Denied.

g. Denied.

h. Denied.

i. Admitted in part, Denied in part. Defendant admits no new flashing was placed on the porch roof; however, new flashing was not part of the contract between the parties. The porch roof was sealed as per Defendant's contract with Plaintiffs. Defendant is unaware of any leaking or cracking of the porch roof.

j. Denied.

11. Denied.

WHEREFORE, Defendant respectfully requests this Court dismiss Plaintiffs' Complaint and enter judgment in favor of the Defendant.

NEW MATTER

NOW, comes the Defendant, TIMOTHY BEMBENIC t/d/b/a BEMBENIC CONSTRUCTION, by and through his attorney, FREDERICK M. NEISWENDER, ESQUIRE and avers as New Matter the following:

12. Defendant restates and incorporates Paragraphs 1 through 11 above as if stated at length herein.
13. Plaintiffs' original Agreement with Defendant also included chimney repairs, house painting and electrical service for a total contracted price of \$8,220.00 plus materials and labor for chimney repairs. *See Plaintiffs' Exhibit "A".*
14. At no time prior to the filing of their Compliant did Plaintiffs contact Defendant to inform him that they believed the work to be unsatisfactory.
15. At no time prior to the filing of their Complaint did Plaintiffs give Defendant the opportunity to make repairs to the roof they allege had leaks and missing shingles.
16. Materials that Plaintiffs allege were never installed by Defendant in paragraphs 10(b), 10(c), 10(e), and 10(i), were not part of the original contract between the parties.
17. The estimate provided to Plaintiffs by Dunkel Roofing Company, Inc., which is the basis for the amount of claimed damages, contains charges for items that were not contemplated in the original agreement between Plaintiffs and Defendant. *See Plaintiffs' Exhibit "C".* Those items are as follows:
 - a. The installation of ice shield was not in the contract between the parties. *See Plaintiffs' Exhibit "C" (Shingle Area Item 2).*

- b. The installation of a more expensive EDPM rubber liner in the valley areas was not in the contract between the parties. *See Plaintiffs' Exhibit "C" (Shingle Area Item 6).*
- c. The installation of more expensive shingle-over style hidden and/or turbine ventilators was not in the contract between the parties. *See Plaintiffs' Exhibit "C" (Shingle Area Item 7).*
- d. The installation of a flex base FR 60 SBS modified base membrane was recommended by Defendant, but Plaintiffs refused to pay the cost associated with this type roof; therefore, it was not included in the contract between the parties. *See Plaintiffs' Exhibit "C" (Low Sloped Areas Item 2).*
- e. The installation of U.S. Intec GBSP-4 granular surface membrane was recommended by Defendant, but Plaintiffs refused to pay the cost associated with this item; therefore, it was not included in the contract between the parties. *See Plaintiffs' Exhibit "C" (Low Sloped Areas Item 3).*
- f. Defendant recommended the installation of flashing and perimeter details in accordance with specifications established by U.S. Intec, Inc., but Plaintiffs refused to pay the cost associated with this item; therefore, it was not included in the contract between the parties. *See Plaintiffs' Exhibit "C" (Low Sloped Areas Item 4).*
- g. The estimate provided to Plaintiff by Dunkel Roofing Company, Inc., includes the upper section of the roof, which was not part of the original contract between the parties. *See Plaintiffs' Exhibit "C".*

WHEREFORE, Defendant respectfully requests this Court dismiss Plaintiff's Complaint and enter judgment in favor of the Defendant.

COUNTERCLAIM

NOW, comes the Defendant, TIMOTHY BEMBENIC t/d/b/a BEMBENIC CONSTRUCTION, by and through his attorney, FREDERICK M. NEISWENDER, ESQUIRE and avers as a Counterclaim the following:

COUNT I – UNJUST ENRICHMENT

18. Defendant restates and incorporates Paragraphs 1 through 17 above as if stated at length herein.
19. During the course of his contracted work for Plaintiffs, Defendant was asked to do additional work for Plaintiffs. *See Defendant's Exhibit "A".*
20. While this work was not included in the original estimate, it was orally agreed upon by the parties. *See Defendant's Exhibit "A".*
21. The Plaintiffs accepted this work by Defendant and Defendant expected to be compensated for the work. *See Defendant's Exhibit "A".*
22. To date, Defendant has not been compensated for this work. *See Defendant's Exhibit "A".*
23. As part of the original contract between the parties, Defendant was contracted to perform house painting and electrical service. *See Plaintiffs' Exhibit "A".*
 - a. Defendant was unable to paint the house due to inclement weather; however, Plaintiffs' subsequently kept the paint stored at their residence by Defendant. Defendant was never compensated for this paint. *See Defendant's Exhibit "A".*
 - b. During the course of Defendant's work on Plaintiffs' property, Plaintiffs' employed another person to complete the electrical service work. This individual used Defendant's

materials. Defendant was never compensated for these materials. *See Defendant's Exhibit "A".*

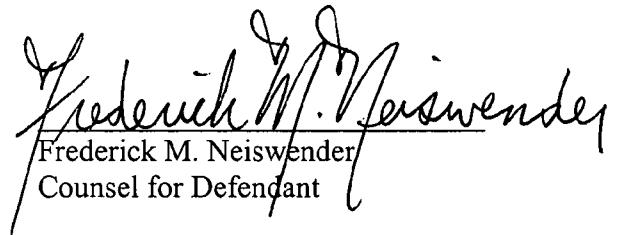
WHEREFORE, Defendant demands judgment in his favor and against the Plaintiffs.

COUNT II – EXPENSES, COSTS AND ATTORNEY'S FEES

24. Defendant restates and incorporates Paragraphs 1 through 23 above as if stated at length herein.
25. Defendant believes and therefore aver that Plaintiffs' Complaint is clearly without basis in fact or law, and was filed by Plaintiffs' solely for the purpose of causing expense, annoyance and harm to the Defendant.
26. As such, the conduct of Plaintiffs in commencing litigation as set forth in their Complaint is arbitrary, vexatious and in bad faith.
27. As a result, Defendant has been forced to retain counsel to defend this action, and is entitled to an award of counsel fees pursuant to 42 Pa. C.S.A. § 2503 (9).

WHEREFORE, Defendant demands judgment in his favor and against the Plaintiffs.

Respectfully submitted,



Frederick M. Neiswender
Counsel for Defendant

1. Relocation of range electrical wiring	
3 Hours @ \$18.75	\$56.25
Supplies/Equipment	20.00
	\$76.25
10% Management/Overhead	7.62
	\$83.87
10% Profit	8.38
Total	92.25
2. Restructuring of garage roof	
Jack up garage roof rafters	
Install additional roof rafters and support	
Install 1/2" Plywood	
Materials:	
10 1/2" Plywood @ \$12.75	\$127.10
8 2 x 6 x 16 @ \$7.16	57.28
Fasteners/Supplies	30.00
Labor: 36 Hr @ \$18.75	675.00
	\$889.38
10% Management/Overhead	88.93
	\$978.31
10% Profit	97.83
Total	\$1076.14
3. Seal coat top flat roof	
10 Gallon aluminum coating	\$60.00
Supplies	25.00
Labor: 8 Hr @ \$18.75	150.00
	\$235.00
10% Management/Overhead	23.50
	\$258.50
10% Profit	25.85
	\$284.35

4. Electrical
Materials

1	Circuit panel box	\$108.13
2	Grounding rods	8.65
2	Grounding clamps	2.65
30'	Grounding wire	5.80
16	20 amp breakers	39.86
1	Grounding bar	4.09
40'	Service cable	60.87
1	Weatherhead	8.62
1	Meter cabinet	29.47
3	1" Connectors	1.46
	Labor: 2 Hr @ \$18.75	<u>37.50</u>
		\$307.10
	10% Management/Overhead	30.71
		\$337.81
	10% Profit	33.78
	Total	\$371.59

5. Paint Materials

2	Gallon low temperature paint	\$43.04
	Labor: 1 Hr @ 18.75	<u>18.75</u>
		\$61.79
	10% Management/Overhead	6.17
		\$67.96
	10% Profit	6.79
		\$74.75

Summary

1.	Range Wiring	\$92.25
2.	Garage Roof	1076.14
3.	Roof Coating	284.35
4.	Electrical Service	371.59
5.	Paint Materials	<u>74.75</u>
		\$1899.08

TIMOTHY BEMBENIC t/d/b/a BEMBENIC CONSTRUCTION hereby states that he is the Defendant in this action and that the statements of fact made in the foregoing Answer, New Matter and Counterclaim are true and correct upon personal knowledge. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

DATE: 12-7-00

Timothy Bembenic
TIMOTHY BEMBENIC

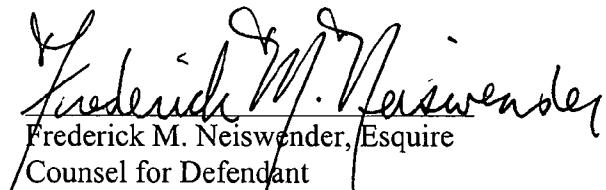
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

TRAVIS WELPOTT and MOLLY :
O'BRYON-WELPOTT, :
Plaintiffs, :
vs. : No. 00 - 1374 - C.D.
: :
TIMOTHY BEMBENIC, t/d/b/a :
BEMBENIC CONSTRUCTION, :
Defendant. :
:

CERTIFICATE OF SERVICE

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Answer, New Matter and Counterclaim was made upon Travis Welpott and Molly O'Bryon-Welpott, by mailing, first class, postage prepaid, a true copy to the office of their attorney of record, Benjamin S. Blakley III, Esquire, on December 7, 2000, at the following address:

Benjamin S. Blakley III, Esquire
Blakley, Jones & Mohney
90 Beaver Drive, Box 6
DuBois, Pennsylvania 15801


Frederick M. Neiswender, Esquire
Counsel for Defendant
501 East Market Street, Suite 3
Clearfield, Pennsylvania 16830

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10375

WELPOTT, TRAVIS AND MOLLY O'BRYON-WELPOTT

00-1374-CD

VS.

BEMBENIC, TIMOTHY T/D/B/A BEMBENIC CONSTRUCTION

COMPLAINT

SHERIFF RETURNS

NOW NOVEMBER 08, 2000 AT 10:32 AM EST SERVED THE WITHIN COMPLAINT ON
TIMOTHY BEMBENIC t/d/b/a BEMBENIC CONSTRUCTION, DEFENDANT AT
MEETING PLACE, TACO BELL PARKING LOT, DUBOIS, CLEARFIELD COUNTY,
PENNSYLVANIA BY HANDING TO TIMOTHY BEMBENIC A TRUE AND ATTESTED
COPY OF THE ORIGINAL COMPLAINT AND MAKE KNOWN TO HIM THE CONTENTS
THEREOF.

SERVED BY: COUDRIET

Return Costs

Cost	Description
28.21	SHFF. HAWKINS PD. BY ATTORNEY
10.00	SURCHARGE PD. BY ATTORNEY

FILED

DEC 13 2000
01 11:04
William A. Shaw
Prothonotary

So Answers,

Chester A. Hawkins
Chester A. Hawkins
Sheriff

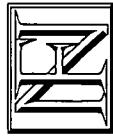
Sworn to Before Me This

13th Day Of December 2000

1,000.00
WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co. Clearfield, PA.

FREDERICK M. NEISWENDER
ATTORNEY AND COUNSELLOR AT LAW

501 EAST MARKET STREET • SUITE 3
CLEARFIELD, PENNSYLVANIA 16830



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

TRAVIS WELPOTT and MOLLY O'BRYON-WELPOTT, Plaintiffs, vs. No. 00-1374 - C.D.
TIMOTHY BEMBENIC, t/d/b/a BEMBENIC CONSTRUCTION, Defendant.
Type of case: Civil
Type of pleading: Amended Answer, New Matter and Counterclaim
Filed on behalf of: Defendant, Timothy Bembenic, t/d/b/a Bembenic Construction
Counsel for Defendant:
Frederick M. Neiswender, Esquire
Supreme Court No. 74456
501 East Market Street, Suite 3
Clearfield, Pennsylvania 16830
(814) 765-6500

FILED

MAR 06 2001

**William A. Shaw
Prothonotary**

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

TRAVIS WELPOTT and MOLLY :
O'BRYON-WELPOTT, :
Plaintiffs, :
vs. : No. 00 - 1374 - C.D.
: :
TIMOTHY BEMBENIC, t/d/b/a :
BEMBENIC CONSTRUCTION, :
Defendant. :
:

NOTICE TO DEFEND

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
1 North Second Street
Clearfield, Pennsylvania 16830
(814) 765-2641

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

TRAVIS WELPOTT and MOLLY :
O'BRYON-WELPOTT, :
Plaintiffs, :
vs. : No. 00 - 1374 - C.D.
: :
TIMOTHY BEMBENIC, t/d/b/a :
BEMBENIC CONSTRUCTION, :
Defendant. :
:

AMENDED ANSWER

NOW, comes the Defendant, TIMOTHY BEMBENIC t/d/b/a BEMBENIC CONSTRUCTION, by and through his attorney, FREDERICK M. NEISWENDER, ESQUIRE and makes his Answer to Plaintiffs' Complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted in part, Denied in part. Plaintiffs' original Agreement with Defendant also included chimney repairs, house painting and electrical service for a total contracted price of \$8,220.00 plus materials and labor for chimney repairs. *See Plaintiffs' Exhibit "A".*
6. Admitted.
7. Admitted.
8. Admitted.

9. Neither Admitted, nor Denied. Defendant does not have sufficient knowledge to respond to the averment made by Plaintiffs.
10. Denied. Defendant performed the work upon Plaintiffs' residence in a professional manner; meeting the standards of the industry and staying within the strict cost constraints set forth by the Plaintiffs.
 - a. Denied. Shingles were nailed in a manner consistent with the standards of the industry and within the strict cost constraints set forth by the Plaintiffs.
 - b. Denied. Replacement of sheeting was not within the original contract as this item was outside of Plaintiffs' budget.
 - c. Denied. Defendant used the existing step flashing as it was in adequate condition and the Plaintiffs had set strict cost constraints on Defendant.
 - d. Denied. Plaintiffs instructed and Defendant placed eight (8) roof vents in areas that Defendant determined would best ventilate the residence and remain within Plaintiffs' limited budget.
 - e. Denied. Ice shield and water shield were items that were not in the original contract as they were outside of Plaintiffs' budget.
 - f. Denied. Defendant removed debris from gutters and downspouts upon completion of the job.
 - g. Denied. Valley pad was trimmed by Defendant to meet industry standards.
 - h. Denied. Hip saddles were trimmed by Defendant to meet industry standards.
 - i. Admitted in part, Denied in part. Defendant admits no new flashing was placed on the porch roof; however, new flashing was not part of the contract between the parties. The

porch roof was sealed as per Defendant's contract with Plaintiffs. Defendant is unaware of any leaking or cracking of the porch roof.

- j. Denied. Box vents were installed on the subject roof to meet industry standards.
11. Denied. Defendant maintains the roof was replaced on Plaintiffs' residence to meet industry standards and remain with Plaintiffs' limited budget. Many of the items on the estimate submitted by Plaintiffs were not part of the original contract with Defendant and are luxury items, not required in the installation of a basic roof as requested by Plaintiffs.
- WHEREFORE, Defendant respectfully requests this Court dismiss Plaintiffs' Complaint and enter judgment in favor of the Defendant.

AMENDED NEW MATTER

NOW, comes the Defendant, TIMOTHY BEMBENIC t/d/b/a BEMBENIC CONSTRUCTION, by and through his attorney, FREDERICK M. NEISWENDER, ESQUIRE and avers as New Matter the following:

12. Defendant restates and incorporates Paragraphs 1 through 11 above as if stated at length herein.
13. Plaintiffs' original Agreement with Defendant also included chimney repairs, house painting and electrical service for a total contracted price of \$8,220.00 plus materials and labor for chimney repairs. *See Plaintiffs' Exhibit "A".*
14. At no time prior to the filing of their Compliant did Plaintiffs contact Defendant to inform him that they believed the work to be unsatisfactory.
15. At no time prior to the filing of their Complaint did Plaintiffs give Defendant the opportunity to make repairs to the roof they allege had leaks and missing shingles.
16. Materials that Plaintiffs allege were never installed by Defendant in paragraphs 10(b), 10(c), 10(e), and 10(i), were not part of the original contract between the parties.
17. The estimate provided to Plaintiffs by Dunkel Roofing Company, Inc., which is the basis for the amount of claimed damages, contains charges for items that were not contemplated in the original agreement between Plaintiffs and Defendant. *See Plaintiffs' Exhibit "C".* Those items are as follows:
 - a. The installation of ice shield was not in the contract between the parties. *See Plaintiffs' Exhibit "C" (Shingle Area Item 2).*

- b. The installation of a more expensive EDPM rubber liner in the valley areas was not in the contract between the parties. *See Plaintiffs' Exhibit "C" (Shingle Area Item 6).*
- c. The installation of more expensive shingle-over style hidden and/or turbine ventilators was not in the contract between the parties. *See Plaintiffs' Exhibit "C" (Shingle Area Item 7).*
- d. The installation of a flex base FR 60 SBS modified base membrane was recommended by Defendant, but Plaintiffs refused to pay the cost associated with this type roof; therefore, it was not included in the contract between the parties. *See Plaintiffs' Exhibit "C" (Low Sloped Areas Item 2).*
- e. The installation of U.S. Intec GBSP-4 granular surface membrane was recommended by Defendant, but Plaintiffs refused to pay the cost associated with this item; therefore, it was not included in the contract between the parties. *See Plaintiffs' Exhibit "C" (Low Sloped Areas Item 3).*
- f. Defendant recommended the installation of flashing and perimeter details in accordance with specifications established by U.S. Intec, Inc., but Plaintiffs refused to pay the cost associated with this item; therefore, it was not included in the contract between the parties. *See Plaintiffs' Exhibit "C" (Low Sloped Areas Item 4).*
- g. The estimate provided to Plaintiff by Dunkel Roofing Company, Inc., includes the upper section of the roof, which was not part of the original contract between the parties. *See Plaintiffs' Exhibit "C".*

WHEREFORE, Defendant respectfully requests this Court dismiss Plaintiff's Complaint and enter judgment in favor of the Defendant.

AMENDED COUNTERCLAIM

NOW, comes the Defendant, TIMOTHY BEMBENIC t/d/b/a BEMBENIC CONSTRUCTION, by and through his attorney, FREDERICK M. NEISWENDER, ESQUIRE and avers as a Counterclaim the following:

COUNT I – UNJUST ENRICHMENT

18. Defendant restates and incorporates Paragraphs 1 through 17 above as if stated at length herein.
19. During the course of his contracted work for Plaintiffs, Defendant was asked to do additional work for Plaintiffs. *See Defendant's Exhibit "A".*
20. While this work was not included in the original estimate, it was orally agreed upon by the parties. *See Defendant's Exhibit "A".*
21. The Plaintiffs accepted this work by Defendant and Defendant expected to be compensated for the work. *See Defendant's Exhibit "A".*
22. To date, Defendant has not been compensated for this work. *See Defendant's Exhibit "A".*
23. As part of the original contract between the parties, Defendant was contracted to perform house painting and electrical service. *See Plaintiffs' Exhibit "A".*
 - a. Defendant was unable to paint the house due to inclement weather; however, Plaintiffs' subsequently kept the paint stored at their residence by Defendant. Defendant was never compensated for this paint. *See Defendant's Exhibit "A".*
 - b. During the course of Defendant's work on Plaintiffs' property, Plaintiffs' employed another person to complete the electrical service work. This individual used Defendant's

materials. Defendant was never compensated for these materials. *See Defendant's Exhibit "A".*

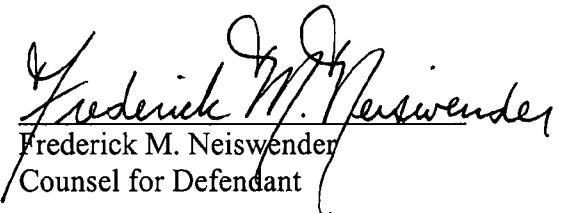
WHEREFORE, Defendant demands judgment in his favor and against the Plaintiffs in the amount of \$1899.08, plus interest and the cost of the suit.

COUNT II – EXPENSES, COSTS AND ATTORNEY'S FEES

24. Defendant restates and incorporates Paragraphs 1 through 23 above as if stated at length herein.
25. Defendant believes and therefore aver that Plaintiffs' Complaint is clearly without basis in fact or law, and was filed by Plaintiffs' solely for the purpose of causing expense, annoyance and harm to the Defendant.
26. As such, the conduct of Plaintiffs in commencing litigation as set forth in their Complaint is arbitrary, vexatious and in bad faith.
27. As a result, Defendant has been forced to retain counsel to defend this action, and is entitled to an award of counsel fees pursuant to 42 Pa. C.S.A. § 2503 (9).

WHEREFORE, Defendant demands judgment in his favor and against the Plaintiffs.

Respectfully submitted,


Frederick M. Neiswender
Counsel for Defendant

TIMOTHY BEMBENIC t/d/b/a BEMBENIC CONSTRUCTION hereby states that he is the Defendant in this action and that the statements of fact made in the foregoing Amended Answer, New Matter and Counterclaim are true and correct upon personal knowledge. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

DATE: 3-6-01



TIMOTHY BEMBENIC

1.	Relocation of range electrical wiring	
	3 Hours @ \$18.75	\$56.25
	Supplies/Equipment	<u>20.00</u>
		\$76.25
	10% Management/Overhead	<u>7.62</u>
		\$83.87
	10% Profit	<u>8.38</u>
	Total	92.25
2.	Restructuring of garage roof	
	Jack up garage roof rafters	
	Install additional roof rafters and support	
	Install $\frac{1}{2}$ " Plywood	
	Materials:	
	10 $\frac{1}{2}$ " Plywood @ \$12.75	\$127.10
	8 2 x 6 x 16 @ \$7.16	57.28
	Fasteners/Supplies	30.00
	Labor: 36 Hr @ \$18.75	<u>675.00</u>
		\$889.38
	10% Management/Overhead	<u>88.93</u>
		\$978.31
	10% Profit	<u>97.83</u>
	Total	\$1076.14
3.	Seal coat top flat roof	
	10 Gallon aluminum coating	\$60.00
	Supplies	25.00
	Labor: 8 Hr @ \$18.75	<u>150.00</u>
		\$235.00
	10% Management/Overhead	<u>23.50</u>
		\$258.50
	10% Profit	<u>25.85</u>
		\$284.35

4. Electrical
Materials

1	Circuit panel box	\$108.13
2	Grounding rods	8.65
2	Grounding clamps	2.65
30'	Grounding wire	5.80
16	20 amp breakers	39.86
1	Grounding bar	4.09
40'	Service cable	60.87
1	Weatherhead	8.62
1	Meter cabinet	29.47
3	1" Connectors	1.46
	Labor: 2 Hr @ \$18.75	<u>37.50</u>
		\$307.10
	10% Management/Overhead	<u>30.71</u>
		\$337.81
	10% Profit	<u>33.78</u>
	Total	\$371.59

5. Paint Materials

2	Gallon low temperature paint	\$43.04
	Labor: 1 Hr @ 18.75	<u>18.75</u>
		\$61.79
	10% Management/Overhead	<u>6.17</u>
		\$67.96
	10% Profit	<u>6.79</u>
		\$74.75

Summary

1.	Range Wiring	\$92.25
2.	Garage Roof	1076.14
3.	Roof Coating	284.35
4.	Electrical Service	371.59
5.	Paint Materials	<u>74.75</u>
		\$1899.08

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

TRAVIS WELPOTT and MOLLY :
O'BRYON-WELPOTT, :
Plaintiffs, :
vs. : No. 00 - 1374 - C.D.
: :
TIMOTHY BEMBENIC, t/d/b/a :
BEMBENIC CONSTRUCTION, :
Defendant. :
:

CERTIFICATE OF SERVICE

I, Frederick M. Neiswender, Esquire, hereby certify that service of the foregoing Amended Answer, New Matter and Counterclaim was made upon Travis Welpott and Molly O'Bryon-Welpott, by mailing, first class, postage prepaid, a true copy to the office of their attorney of record, Benjamin S. Blakley III, Esquire, on March 6, 2001, at the following address:

Benjamin S. Blakley III, Esquire
Blakley, Jones & Mohney
90 Beaver Drive, Box 6
DuBois, Pennsylvania 15801


Frederick M. Neiswender, Esquire
Counsel for Defendant
501 East Market Street, Suite 3
Clearfield, Pennsylvania 16830

FILED

MAR 06 2001
0/3 sec Ls,
William A. Shaw
Prothonotary

2 copies to Ato



IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
No. 00-1374-C.D.

TRAVIS WELPOTT and MOLLY O'BRYON
WELPOTT,

Plaintiffs

vs.

TIMOTHY BEMBENIC, t/d/b/a
BEMBENIC CONSTRUCTION,

Defendant]

REPLY TO AMENDED NEW MATTER AND
ANSWER TO AMENDED COUNTERCLAIM

FILED

APR 12 2001

O/A:O3/2 CC
William A. Shaw
Prothonotary

Robert Blakley

LAW OFFICES

BLAKLEY, JONES & MOHNEY
90 BEAVER DRIVE - BOX 6
DUBOIS, PA 15801

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

TRAVIS WELPOTT and MOLLY O'BRYON-WELPOTT, : NO. 00 - 1374 -CD
VS : PLAINTIFF : TYPE OF CASE: CIVIL
: : TYPE OF PLEADING:
TIMOTHY BEMBENIC, t/d/b/a BEMBENIC CONSTRUCTION, : : REPLY TO AMENDED NEW
: : MATTER AND ANSWER TO
: : AMENDED COUNTERCLAIM
DEFENDANT : : FILED ON BEHALF OF:
: : PLAINTIFF
: : COUNSEL OF RECORD FOR
: : THIS PARTY:
: : BENJAMIN S. BLAKLEY, III
: : SUPREME COURT NO.: 26331
: : BLAKLEY, JONES & MOHNEY
: : 90 BEAVER DRIVE, BOX 6
: : DU BOIS, PA 15801
: : (814) 371-2730

FILED

APR 12 2001

William A. Shaw
Prothonotary

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

TRAVIS WELPOTT and MOLLY
O'BRYON-WELPOTT, :
Plaintiff :
: No. 00 - 1374 -CD
vs. :
: :
TIMOTHY BEMBENIC, t/d/b/a
BEMBENIC CONSTRUCTION, :
Defendant :
:

REPLY TO AMENDED NEW MATTER AND
ANSWER TO AMENDED COUNTERCLAIM

AND NOW, comes Plaintiffs, TRAVIS WELPOTT and MOLLY O'BRYON-WELPOTT, by and through their attorneys, BLAKLEY, JONES & MOHNEY, who files the following Reply to Amended New Matter and Answer to Amended Counterclaim, of which the following is a statement:

REPLY TO AMENDED NEW MATTER

12. Requires no answer.
13. It is denied that the parties agreed with the Defendant that the Defendant perform chimney repairs, house painting and electrical services upon the Plaintiffs' residence, and on the contrary, it is averred that the Plaintiffs and Defendant discussed a construction bid proposal (Plaintiffs' Exhibit "A") with the parties ultimately agreeing that the Defendant would perform a roof replacement upon the real property of the Plaintiffs as set forth in said construction bid proposal.
14. It is denied that at no time prior to the filing of their Complaint did the Plaintiffs contact the Defendant to inform him that they believed his work to be unsatisfactory, and on the contrary, it is averred that during the entire course of the Defendant's work upon the Plaintiffs'

residence, the Plaintiffs complained to the Defendant about the quality of his work and/or the method of the performance of the Defendant's work.

15. Admitted. However, it is further averred that the Defendant at all times was aware of the complaints of the Plaintiffs as set forth in the previous paragraph and took no steps to correct the problems which had been brought to the Defendant's attention by the Plaintiffs.

16. It is denied that the materials that the Plaintiffs allege were never installed by the Defendant in paragraphs 10(b), 10(c), 10(e) and 10(i) were not part of the original contract between the parties, and on the contrary, it is averred that the Defendant, through his course of conduct, led the Plaintiffs to believe that all of the items set forth in the aforesaid paragraphs were to be a part of the contract between the parties. It is further averred that those items set forth in the foregoing paragraphs would be required to be installed by the Defendant in order for the work performed by the Defendant to be done in a good and workmanlike manner pursuant to the representations of the Defendant to the Plaintiffs and upon which the Plaintiffs relied in permitting the Defendant to commence work upon their real property.

17. It is denied that the estimate provided to the Plaintiffs by Dunkel Roofing Company, Inc., which is the basis for the amount of claimed damages, contain charges for items that were not contemplated in the original agreement between Plaintiffs and Defendant, and on the contrary, it is averred that the estimate provided by Dunkel Roofing Company, Inc. sets forth charges for items which would have been required for the Defendant to perform the roofing work upon the Plaintiffs' property in a good and workmanlike manner, which was contemplated in the original agreement between the Plaintiffs and the Defendant. Specifically:

a. It is denied that the installation of ice shield was not contemplated in the contract

- between Plaintiffs and Defendant, and on the contrary, it is averred that the Plaintiffs relied upon the Defendant to provide a proposal and work which was in a good and workmanlike manner;
- b. It is denied that the installation of EDPM rubber liner was not contemplated in the contract between Plaintiffs and Defendant, and on the contrary, it is averred that the Plaintiffs relied upon the Defendant to provide a proposal and work which was in a good and workmanlike manner;
- c. It is denied that the installation of shingle-over style hidden ridge vents and/or turbine ventilators were not contemplated in the contract between Plaintiffs and Defendant, and on the contrary, it is averred that the Plaintiffs relied upon the Defendant to provide a proposal and work which was in a good and workmanlike manner;
- d. It is denied that at any time the Defendant recommended the installation of a flex base FR 60 SBS modified base membrane, and it is further denied that at any time Plaintiffs refused to pay the costs associated with this type of roof, and on the contrary, it is averred that the Defendant never recommended such a flex base membrane and that the Plaintiffs contemplated that the Defendant would use such materials as would cause the work to be done upon the residence in a good and workmanlike manner, the same being relied upon by the Plaintiffs in contracting with the Defendant;
- e. It is denied that at any time the Defendant recommended the installation of a U.S. Intec GBSP-4 granular surface membrane, and it is further denied that at any time Plaintiffs refused to pay the costs associated with this item, and on the contrary, it is

averred that the Defendant never recommended such a membrane and that the Plaintiffs contemplated that the Defendant would use such materials as would cause the work to be done upon the residence in a good and workmanlike manner, the same being relied upon by the Plaintiffs in contracting with the Defendant;

- f. It is denied that at any time the Defendant recommended the installation flashing and perimeter details in accordance with the specifications established by U.S. Intec, Inc. and it is further denied that at any time Plaintiffs refused to pay the costs associated with this item, and on the contrary, it is averred that the Defendant never recommended such flashing and perimeter details and that the Plaintiffs contemplated that the Defendant would use such materials as would cause the work to be done upon the residence in a good and workmanlike manner, the same being relied upon by the Plaintiffs in contracting with the Defendant; and
- g. It is denied that the estimate provided to Plaintiff by Dunkel Roofing Company, Inc. includes the upper section of the roof, and on the contrary it is averred that the estimate provided to the Plaintiffs by Dunkel Roofing Company, Inc. encompasses only those areas which were contemplated by the Defendant's bid proposal of November 24, 1998, as set forth in Plaintiffs' Exhibit "A."

WHEREFORE, Plaintiffs respectfully request this Honorable Court award judgment to Plaintiffs as set forth in Plaintiffs' Complaint.

ANSWER TO AMENDED COUNTER-CLAIM

COUNT I

18. Requires no answer.

19. It is denied that during the course of the contracted work for the Plaintiffs the Defendant was asked to do additional work for the Plaintiffs, and on the contrary, it is averred that during the course of the Defendant's work for the Plaintiffs, the Plaintiffs made it clear to the Defendant that they wished him to do no further work upon their subject premises apart from the roof replacement that was contemplated by the Defendant's original construction bid proposal.

20. It is denied that Plaintiffs at any time orally agreed to any additional work to be done by the Defendant upon the real property, and on the contrary, it is averred that during the course of the Defendant's work for the Plaintiffs, the Plaintiffs made it clear to the Defendant that they wished him to do no further work upon their subject premises apart from the roof replacement that was contemplated by the Defendant's original construction bid proposal.

21. It is denied that the Plaintiffs accepted any additional work performed by the Defendant or that the Defendant performed any additional work to the subject premises for which Defendant expected to be compensated, and on the contrary, it is averred that the Defendant only performed roof replacement on the subject property for which the Defendant was compensated and for which is the subject of the Plaintiffs' action against the Defendant.

22. It is admitted that the Defendant has not been compensated for any work above and beyond the roof replacement performed upon the subject premises.

23. It is denied that the Defendant was contracted to perform house painting and electrical service upon the subject premises, and on the contrary, no such contract was entered into between the Plaintiffs and Defendant. The Plaintiffs answer the specific allegations contained within paragraph 23 of Defendant's Counterclaim as follows:

- a. It is denied that Defendant was unable to paint the house due to inclement weather, and on the contrary, it is averred that the Defendant was not contracted to paint the house by the Plaintiffs. As for the further allegations contained in paragraph 23. a. of the Defendant's Counterclaim, the Plaintiffs are without sufficient knowledge or information to determine the truth of the said allegations, and therefore, deny the same and demand strict proof thereof at trial.
- b. It is admitted that during the course of Defendant's work on the Plaintiffs property, the Plaintiff's employed another person to complete the electrical service work, as no agreement had been reached between the Plaintiffs and the Defendant for the Defendant to perform such electrical work upon the Plaintiffs residence. As for the further allegations contained in paragraph 23. b. of the Defendant's Counterclaim, the Plaintiffs are without sufficient knowledge or information to determine the truth of the said allegations, and therefore, deny the same and demand strict proof thereof at trial.

WHEREFORE, Plaintiffs respectfully request that this Court dismiss Count I of Defendant's Counterclaim and enter judgment in favor of the Plaintiffs.

COUNT II

24. Requires no answer.
25. It is denied that Plaintiffs' Complaint is without basis in fact or law and was filed by the Plaintiffs solely for the purpose of causing expense, annoyance and harm to the Defendant, and on the contrary, it is averred that the Plaintiffs filed their Complaint as a result of the inadequate and poor workmanship of the Defendant in his work upon the Plaintiffs' residence and therefore has

basis in fact or law.

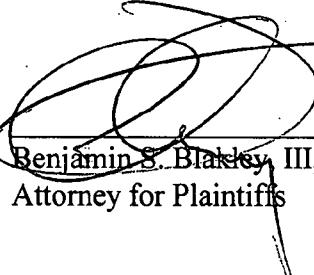
26. Denied for reasons set forth in the previous paragraph.
27. It is admitted that as a result of the Plaintiffs' suit against the Defendant, the Defendant has retained counsel to defend this action, but it is denied that Defendant is entitled to an award of counsel fees pursuant to 42 Pa. C.S.A. § 2503 (9), and on the contrary, it is averred that because Plaintiffs' Complaint against the Defendant is based upon fact and law and upon the poor and unworkmanlike manner in which the Defendant performed his work upon the residence of the Plaintiffs, the Defendant is not entitled to an award of counsel fees pursuant to 42 Ps. C.S.A. § 2503 (9).

WHEREFORE, Plaintiffs respectfully request this Court dismiss Count II of Defendant's Counterclaim and enter judgment in favor of the Plaintiffs.

Respectfully submitted,

BLAKLEY, JONES & MOHNEY

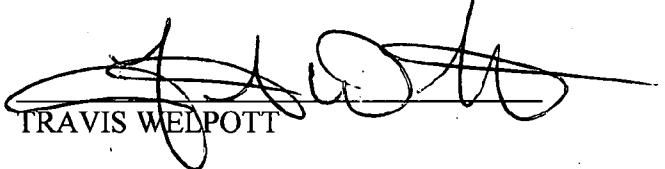
BY:



Benjamin S. Blakley, III, Esquire
Attorney for Plaintiffs

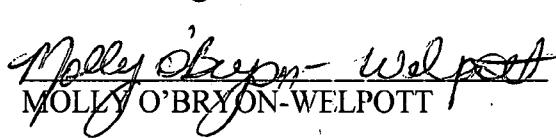
We verify that the statements made in this Reply to Amended Answer, New Matter and Counterclaim are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. Section 4904, relating to unsworn falsification to authorities.

DATE: 4/10/01



TRAVIS WELPOTT

DATE: 4-10-01



MOLLY O'BRYON-WELPOTT

LAW OFFICES
BLAKLEY, JONES & MOHNEY
90 BEAVER DRIVE - BOX 6
DUBOIS, PA 15801

CERTIFIED COPY

ATTORNEY FOR

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

TRAVIS WELPOTT and MOLLY O'BRYON-WELPOTT, PLAINTIFF
VS
TIMOTHY BEMBENIC, t/d/b/a BEMBENIC CONSTRUCTION, DEFENDANT

NO. 00 - 1374 -CD
TYPE OF CASE: CIVIL
TYPE OF PLEADING:
CERTIFICATE OF SERVICE
FILED ON BEHALF OF:
PLAINTIFF
COUNSEL OF RECORD FOR
THIS PARTY:
BENJAMIN S. BLAKLEY, III
SUPREME COURT NO.: 26331
BLAKLEY, JONES & MOHNEY
90 BEAVER DRIVE, BOX 6
DU BOIS, PA 15801
(814) 371-2730

FILED

APR 17 2001

William A. Shaw
Prothonotary

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

TRAVIS WELPOTT and MOLLY
O'BRYON-WELPOTT,

Plaintiff

No. 00 - 1374 -CD

vs.

TIMOTHY BEMBENIC, t/d/b/a
BEMBENIC CONSTRUCTION,

Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **PLAINTIFF'S REPLY TO AMENDED
NEW MATTER AND ANSWER TO AMENDED COUNTERCLAIM** was served upon counsel
for Defendants this 16th day of April, 2001, by Regular First-Class United States Mail, addressed
as follows:

Frederick M. Neiswender, Esquire
501 East Market Street
Clearfield, PA 16830

BLAKLEY, JONES & MOHNEY
BY
Benjamin S. Blakley, III, Esquire
Attorney for Plaintiff

FILED

APR 17 2001

M/12:45pm

William A. Shaw
Prothonotary

no c/c E
K29

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY,
PENNSYLVANIA
No. 00-1374-C.D.

TRAVIS WELPOTT and MOLLY
O'BRYON-WELPOTT,

Plaintiff

vs.

TIMOTHY BEMBENIC, t/d/b/a
BEMBENIC CONSTRUCTION,

Defendant

PRÆCIPUE TO SETTLE,
DISCONTINUE AND END,

FILED

APR 04 2002

04/04/02 cc atty Blakley
William A. Shaw
Prothonotary

(3) Cert. Do to atty Blakley

Copy to
atty Blakley

LAW OFFICES

BLAKLEY, JONES & MOHNEY
90 BEAVER DRIVE - BOX 6
DUBOIS, PA 15801

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

TRAVIS WELPOTT and MOLLY O'BRYON-WELPOTT,	:	NO. 00 - 1374 -CD
PLAINTIFF	:	TYPE OF CASE: CIVIL
VS	:	TYPE OF PLEADING:
TIMOTHY BEMBENIC, t/d/b/a BEMBENIC CONSTRUCTION,	:	PRAECIPE TO SETTLE, DISCONTINUE AND END
DEFENDANT	:	FILED ON BEHALF OF: PLAINTIFFS
	:	COUNSEL OF RECORD FOR THIS PARTY:
	:	BENJAMIN S. BLAKLEY, III
	:	SUPREME COURT NO.: 26331
	:	BLAKLEY, JONES & MOHNEY 90 BEAVER DRIVE, BOX 6 DU BOIS, PA 15801 (814) 371-2730

FILED

APR 04 2002

William A. Shaw
Prothonotary

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

TRAVIS WELPOTT and MOLLY
O'BRYON-WELPOTT, :
Plaintiff :
: No. 00 - 1374 -CD
VS. :
: :
TIMOTHY BEMBENIC, t/d/b/a
BEMBENIC CONSTRUCTION, :
Defendant :
:

PRAECIPE TO SETTLE, DISCONTINUE AND END

TO WILLIAM A. SHAW, PROTHONOTARY:

Please mark the above Complaint and Counterclaim settled, discontinued and ended.

BLAKLEY, JONES & MOHNEY

BY:

Benjamin S. Blakley, III, Esquire
Attorney for Travis Welpott and Molly O'Bryon
Welpott, Plaintiffs

Frederick M. Neiswender
Frederick M. Neiswender, Esquire
Attorney for Timothy Bembenic, t/d/b/a
Bembenic Construction, Defendant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

CIVIL DIVISION

**Travis Welpott and
Molly O'Bryon-Welpott**

Vs. **No. 2000-01374-CD**
**Timothy J. Bembenic, t/d/b/a
Bembenic Construction**

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 on April 4, 2002 marked:

Settled, Discontinued and Ended.

Record costs in the sum of \$80.00 have been paid in full by Benjamin S. Blakley, Esquire.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 4th day of April A.D. 2002.



William A. Shaw, Prothonotary