

01-21-CD
ALLEN DETULLO et al -vs- VON BERGER et al

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

CIVIL DIVISION

AILEEN DELULLO and MARGARET
ANN GUIDO,

Plaintiffs,

vs.

VON BERGER and ELIZABETH
BERGER,

Defendants.

No. 01-24-00

Type of Pleading:
COMPLAINT

Filed on Behalf of Plaintiffs by:

ANTHONY S. GUIDO, ESQ.
Hanak, Guido and Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801
(814) 371 7768
PA Atty. ID #05877

FILED

JAN 04 2001

William A. Shaw
Prothonotary

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA**

CIVIL DIVISION

**AILEEN DELULLO and MARGARET
ANN GUIDO,**

Plaintiffs,

vs.

**VON BERGER and ELIZABETH
BERGER,**

Defendants.

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No. _____

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 defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiffs. 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. 1300

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA**

CIVIL DIVISION

**AILEEN DELULLO and MARGARET
ANN GUIDO,**

Plaintiffs,

vs.

**VON BERGER and ELIZABETH
BERGER,**

Defendants.

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No. _____

COMPLAINT

AND NOW, come the Plaintiffs, AILEEN DELULLO and MARGARET ANN DELULLO, and by their attorney, Anthony S. Guido, Esq., files this Complaint against the Defendants, VON BERGER and ELIZABETH BERGER, on a cause of action whereof the following is a statement:

First Count:

1. Plaintiff, AILEEN DELULLO, is an individual who resides at RD 4, Box 257B, DuBois, Clearfield County, Pennsylvania.
2. Plaintiff, MARGARET ANN GUIDO, is an individual who resides at RD 4, Box 257A, DuBois, Clearfield County, Pennsylvania.
3. Defendants, VON BERGER and ELIZABETH BERGER, are husband and wife and co-partners in a business operated under the trade name of Berger Painting and Wallpapering, with an office and place of business located at Suite 6, 23 East Park Avenue, DuBois, Clearfield County, Pennsylvania.
4. The Plaintiffs are the owners of a certain dwelling house located at RD 4, DuBois, Sandy Township, Clearfield County, Pennsylvania.

5. The parties entered into an oral agreement whereby the Defendants agreed to architecturally paint the interior of said dwelling as well as the attached garage thereof for an estimated price of \$50,000.
6. As an integral part of the agreement, the Defendants agreed to paint the interior of said dwelling on an architectural basis in a good and workmanlike manner.
7. The Defendants have not fulfilled the provisions of the agreement on their part to be performed in that the Defendants have not performed the work in a good and workmanlike manner as hereinafter set forth.
8. The Plaintiffs believe and therefore aver that the Defendants have charged the Plaintiffs for materials, labor and other charges that were not incorporated in the work.
9. The Plaintiffs believe and therefore aver that the Plaintiffs were charged for expenses which were normal overhead expenses of the Defendants as a cost of doing business, as hereinafter set forth, which were not part of the cost for which the Plaintiffs were obligated to the Defendants.
10. As a result of the unworkmanlike work performed by the Defendants in the architectural painting of the interior of said dwelling, it was necessary for the Plaintiffs to hire Buriak Painting and Dry Wall to correct the defects in said painting at a cost of \$11,500 in accordance with the terms set forth in a letter dated September 1, 2000, of Buriak Painting and Dry Wall, copy of which is attached hereto and marked Exhibit "A".
11. The excessive charges and the charges for the work not incorporated in the work by the Defendants in the architectural painting of the interior of said dwelling by the Defendants are as follows:

- a. 22 gallons of wood primer at a cost of \$806.30 which the Plaintiffs believe to be an excessive amount of wood primer required in performance of said work.
- b. 85 gallons of lacquer thinner at a cost of \$552.45 which the Plaintiffs believe to be an excessive amount of lacquer thinner required in performance of said work.
- c. 334 rolls (60,600 square feet) of masking tape at a cost of \$963.22 which the Plaintiffs believe to be an excessive amount of masking tape required for the work performed and further believe it should be part of the overhead costs of the Defendants in performance of said work.
- d. 21 five-gallon pails with lids at a cost of \$80.85 which the Plaintiffs believe is part of the overhead costs of the Defendants in performance of said work.
- e. 44 brushes at a cost of \$148.32 which the Plaintiffs believe is part of the overhead costs of the Defendants in performance of said work.
- f. 53 ten-pound boxes of grey sweatshirt at a cost of \$707.55 which the Plaintiffs believe is part of the overhead costs of the Defendants in performance of said work.
- g. 85 snap knives with 10 new blades each at a cost of \$46.90 which Plaintiffs believe is part of the overhead costs of the Defendants in performance of said work.
- h. 112 rollers at a cost of \$334.88 which Plaintiffs believe is part of the overhead costs of Defendants in performance of said work.

- i. 185 five-quart plastic pot liners at a cost of \$157.25 which Plaintiffs believe is part of the overhead costs of Defendants in performance of said work.
 - j. 100 tach cloths at a cost of \$59 which Plaintiffs believe is part of the overhead costs of Defendants in performance of said work.
 - k. 5 42-gallon contractor bags at a cost of \$31.95 which Plaintiffs believe is part of the overhead costs of Defendants in performance of said work.
 - l. 7 drop cloths at a cost of \$82.17 which Plaintiffs believe is part of the overhead costs of Defendants in performance of said work.
 - m. 5 gallons of stripper which the Plaintiffs believe was not incorporated within the work as the dwelling house was a new house which did not require stripper.
 - n. 35 gallons of mineral spirits at a cost of \$90.65 which the Plaintiffs believe to be an excessive amount of mineral spirits required for the work performed.
 - o. 33 gallons of satin polyurethane at a cost of \$797.40 which the Plaintiffs believe to be an excessive amount of polyurethane required for the work performed.
12. In addition to the above, the bills submitted by the Defendants to the Plaintiffs for the work performed included duplicate bills in the amount of \$405.66 and \$183.30 for a total of \$588.96.
13. The Defendants charged the Plaintiffs \$66,585 for the work performed despite the fact that the Defendants had submitted an estimate of \$50,000 for the work to be performed, including the painting of the interior of the garage and basement which work the Defendants did not perform.

14. In addition to the above, the Defendants charged the Plaintiffs 208 hours at a cost of \$20 per hour for a total of \$4,160 for prepping and priming the trim at the shop which is grossly excessive in view of the work performed.
15. The Defendants charged the Plaintiffs 875.5 hours at a cost of \$20 per hour for a total of \$17,510 to prep, stain and paint the doors which is grossly excessive in view of the work performed.
16. The Defendants charged the Plaintiffs a total of 3,329.25 man hours at a rate of \$20 per hour for a total of \$66,585 for the work performed and a total of \$10,803.48 for the cost of materials, totaling \$77,388.48 for total cost of labor and materials, which is far in excess of the amount of work and materials that should have been required to perform the required work.

WHEREFORE, Plaintiffs demand judgment against Defendants for the sum of \$11,500 plus an amount equal to the excessive charges for labor, materials and overhead costs wrongfully charged to the Plaintiffs by the Defendants, plus interest and costs of suit.

Second Count:

17. The Plaintiffs incorporate herein by reference the allegations contained in the First Count, Paragraphs 1 through 16, inclusive as though fully set forth herein.
18. As a result of the Defendants overcharging the Plaintiffs for work performed; charging for work not incorporated in the work product; charging for materials that were not incorporated in the work; the Defendants are guilty of engaging in fraudulent practices in violation of the *Unfair Trade Practices and Consumer Protection Law*, 72 P.S. Section 201-1, et seq.

19. As a result of the unfair trade practices committed by the Defendants as prohibited by said Act, the Plaintiffs have suffered damages as set forth in the First Count of this Complaint, the allegations of which are incorporated herein by reference thereto.
20. As a result of said unfair trade practices as prohibited by said Act engaged in by the Defendants, the Plaintiffs claim damages from the Defendants equal to three times the actual damages sustained by the Plaintiffs as provided for in Section 201-9.2 of said Act.
21. Damages claimed by the Plaintiffs from the Defendants on each Count exceed the sum of \$25,000.
22. A jury trial is demanded.

WHEREFORE, Plaintiffs demand judgment against Defendants for the damages claimed in this Count together with interest and costs of suit.

Respectfully submitted,

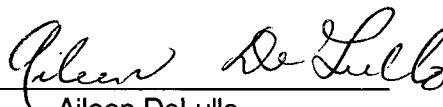


Anthony S. Guido, Esq.
Attorney for Plaintiffs

VERIFICATIONS


I verify that the statements made in this Complaint are true and correct. I understand that false statements herein are made subject to the penalties of Pa.Cons. Stat. Section 4904 relating to unsworn falsification to authorities.

DATE: 1-2-01


Aileen DeLullo

I verify that the statements made in this Complaint are true and correct. I understand that false statements herein are made subject to the penalties of Pa.Cons. Stat. Section 4904 relating to unsworn falsification to authorities.

DATE: 1-2-01


Margaret Ann Guido

Buriak's Painting & Drywall-----

September 1, 2000

RE: Aileen DeLullo Home Project
Rockton, PA

To whom it may concern;

As requested by the owner, Buriak's Painting and Drywall Company was hired to correct and /or complete paint work done at her new residence. We initially completed a walkthrough of the home with the owner to address her concerns with the quality of workmanship of the prior contractor. Upon inspection we noticed several flaws in craftsmanship, application methods, and coating choices that resulted in substandard quality overall. Outlined below are the major problem areas:

Walls- The walls in general have a rough profile to the touch. This profile is caused by either paint film contamination (dust, dirt, lint, etc...) or the use of a solvent based primer over new drywall surfaces. The use of solvent based primers as apposed to latex based primers will "raise" the paper surface of drywall or gypsum board creating a profile of fine sandpaper.

These particular wall finishes are that of decorative or Faux Painting architectural finishes consisting of several different coatings. The first coating is a base color, then one or more transparent or semi-opaque glazes of different colors. Although these finishes produce a random appearance, they should be uniform in that appearance. One bedroom has an overall flaw in that the second coat of glaze has been omitted on all walls except one, creating a nonuniform appearance that lacks depth. Another bedroom has noticeable start and stop marks present in corner areas. This is caused by applying glaze over glaze in succession. Although glazes may be that of the same color and mix, the point of stop and start has actually been coated twice creating a "lap" mark.

There are also areas where the paint has peeled from the substrate (drywall) next to the door jamb casings. This was caused by the removal of tape applied to project wall while paint work was done on the jamb casing.

Buriak's Painting & Drywall-----

Page 2 of 2

Trim- The wood crownmould casing, base board, doors, etc... show signs of coating contamination. This contamination seems to be in the final coat, which creates a rough profile that can be both seen and felt. The doors have not been sealed on the top and bottom edges, which will cause moisture absorption and eventual warping.

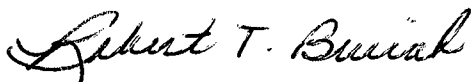
Electrical switches/recepticals- The prior contractor has painted these devices to match wall finishes. This is not advised because it affects the operation of the device itself. The slide dimmer switches, for overhead lighting, have been painted so that they do not slide properly or they do not slide at all.

Our observations also include overspray on ceramic tile, carpet, windows, countertops, tub enclosures and fixtures.

These imperfections are all avoidable during the course of the project simply by using skilled craftsmen and high quality materials applied as per the manufacturers recommendations. However, because these two conditions were not met, the overall quality of this particular project is poor.

The estimated cost to repair the aforementioned flaws and bring the project to professional standards is eleven thousand, five hundred dollars, (\$11,500.00).

Respectfully submitted,



Robert T. Buriak
Buriak's Painting and Drywall

RTB/jdb

FILED

JAN 04 2001

By *William A. Shaw*
William A. Shaw
Prothonotary

for M. J. O'Callahan
M. J. O'Callahan

PG

\$80.00

2cc Sherry

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10559

DELULLO, AILEEN & MARGARET ANN GUIDO

01-24-CD

VS.

BERGER, VON AND ELIZABETH

COMPLAINT

SHERIFF RETURNS

NOW JANUARY 11, 2001 AT 10:35 AM EST SERVED THE WITHIN COMPLAINT
ON VON BERGER, DEFENDANT AT SHERIFF'S OFFICE, COURTHOUSE, CLEARFIELD
CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO VON BERGER A TRUE
AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM
THE CONTENTS THEREOF.
SERVED BY: SHULTZ

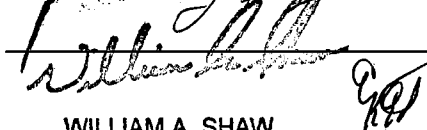
NOW JANUARY 11, 2001 AT 10:35 AM EST SERVED THE WITHIN COMPLAINT ON
ELIZABETH BERGER, DEFENDANT AT SHERIFF'S OFFICE, COURTHOUSE,
CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO ELIZABETH
BERGER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE
KNOWN TO HER THE CONTENTS THEREOF.
SERVED BY: SHULTZ

Return Costs

Cost	Description
35.22	SHFF. HAWKINS PAID BY: ATTY.
20.00	SURCHARGE PD. BY: ATTY.


Sworn to Before Me This

15th Day Of January 2001



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

So Answers,


Chester A. Hawkins
Sheriff

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

AILEEN DELULLO and MARGARET
ANN GUIDO,

Plaintiffs,

vs.

VON BERGER and ELIZABETH
BERGER,

Defendants.

24
No. 01-42-00

Type of Pleading: Preliminary Objections

Filed on behalf of: Ronald Berger and
Elizabeth Berger

Counsel of Record for this party:

DAVID J. HOPKINS, ESQUIRE
Attorney at Law
Supreme Court No. 42519

900 Beaver Drive
DuBois, Pennsylvania 15801

(814) 375-0300

FILED

JAN 25 2001

William A. Shaw
Prothonotary

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

AILEEN DELULLO and MARGARET
ANN GUIDO,

Plaintiffs,

vs.

VON BERGER and ELIZABETH
BERGER,

Defendants.

No. 01-²⁴~~42~~-00

PRELIMINARY OBJECTIONS

AND NOW, comes the Defendants, Ronald Berger (incorrectly identified as Von Berger) and Elizabeth Berger, by and through their attorneys, The Hopkins Law Firm, and files the within Preliminary Objections to Plaintiffs' Complaint pursuant to Pa.R.C.P. 1028 as follows:

PRELIMINARY OBJECTION - I

1. A Complaint was filed in this Honorable Court by Aileen DeLullo and Margaret Ann Guido to the above captioned term and number on January 4, 2001.
2. Plaintiffs' Complaint is based on the painting of Plaintiff's home by Von Berger Painting.
3. Plaintiffs' Complaint names Elizabeth Berger as a Defendant in the action.
4. The Complaint contains no information with respect to Elizabeth Berger concerning any statements made to or agreements made between Plaintiffs and Mrs. Berger.
5. The parties executed a contract dated September 27, 1999, a copy of which is attached hereto, which is signed by Von Berger Painting.

6. The Plaintiffs' entire alleged cause of action set forth in their Complaint is against Ronald Berger t/a/ Von Berger Painting and not Elizabeth Berger.

7. The Plaintiffs are improperly attempting to include Elizabeth Berger as a Defendant simply because Elizabeth Berger is the wife of Ronald Berger.

8. Plaintiffs' Complaint does not set forth a cause of action, nor does it contain any information, against Elizabeth Berger and consequently Elizabeth Berger should be dismissed from said Complaint.

WHEREFORE, Defendants, Ronald Berger and Elizabeth Berger, respectfully request this Honorable Court to grant their Preliminary Objections to Plaintiffs' Complaint and remove and dismiss Elizabeth Berger from the Complaint to the above captioned term and number and award them other relief as is just and proper.

PRELIMINARY OBJECTION – II

9. Defendants repeat all of the allegations set forth in Preliminary Objection I as if set forth at length herein.

10. Plaintiffs are Aileen DeLullo and Margaret Ann Guido.

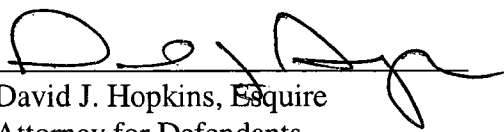
11. The Complaint states Aileen DeLullo and Margaret Ann Guido reside in different locations, although apparently relatively close to each other. Ms. DeLullo's address is R.D. #4, Box 257B, DuBois and Ms. Guido's address is R.D. #4, Box 257A, DuBois.

12. Plaintiffs' Complaint is based on the painting of Aileen DeLullo's home, R.D. #4, Box 257B, DuBois, pursuant to a contract dated September 27, 1999, a copy of which is attached hereto.

13. The contract is executed by Aileen DeLullo and Von Berger Painting. Margaret Ann Guido is not a party to the contract and has not alleged facts sufficient to give her standing to be a Plaintiff in this action.

WHEREFORE, Defendants, Ronald Berger and Elizabeth Berger, respectfully request this Honorable Court grant the Preliminary Objections to Plaintiffs' Complaint and remove and dismiss Margaret Ann Guido from the Complaint to the above captioned term and number and to award them other relief as is just and proper.

Respectfully submitted,



David J. Hopkins, Esquire
Attorney for Defendants

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

AILEEN DELULLO and MARGARET
ANN GUIDO,

Plaintiffs,

vs.

VON BERGER and ELIZABETH
BERGER,

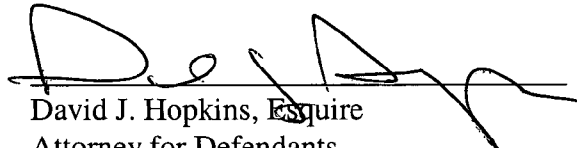
Defendants.

No. 01-²⁴~~42~~-00

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Preliminary Objections to Plaintiffs' Complaint, filed on behalf of Defendant, Ronald Berger and Elizabeth Berger, was forwarded on the 24th day of January, 2001, by U.S. Mail, postage prepaid, to all counsel of record, addressed as follows:

Anthony S. Guido, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801


David J. Hopkins, Esquire
Attorney for Defendants
Supreme Court No. 42519

Von Berger

R.D. 3, Box 178
Punxsutawney, PA 15767

Interior and Exterior Painting and Finishes

Custom Painting

Marbleizing

Lacquering

Faux Finishes

Graining

Wall Glazing

Crackle Lacquer

Antiquing

Toning

Gold Leafing

Silver Leafing

Wallpapering

Big Run, PA 814-427-5171

DuBois, PA 814-375-9923

Aileen DeLullo
107 E. Second Avenue
DuBois, PA 15801
371-4261

September 27, 1999

Interior of Home:

All Faux Finishes, Marbleizing, Leafing, Lacquering, Petina and any of Von's special finishes as well as regular painting will be done at the labor cost of \$20.00 per man per hour plus the cost of materials. Please note that this cost is a 15% discount from our normal \$23.50 per hour charge.

It is very difficult at this stage to give you a "ballpark" idea of the cost. The best I can tell you is that it will take approximately one month (5 working days per week, 8 hours per day, 4 weeks) to perform the work as discussed. We will have a minimum of 6 to 8 men there. Don't forget that this does not include materials.

Please let us know what month your contractor thinks you will be ready for us and we will hold that time frame open for our work. Return one copy of this estimate signed so that we can hold the length of time open for you as we tend to be booked up 3 to 4 months in advance.

9-28-99 Date

Aileen DeLullo Aileen DeLullo

9-28-99 Date

Von Berger Painting Von Berger Painting

FILED

JAN 25 2001

1771:10711000

William A. Shaw

Prothonotary

WAS

Shaw

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

AILEEN DELULLO and
MARGARET ANN GUIDO

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:

-vs-

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No. 01 - 24 - CD

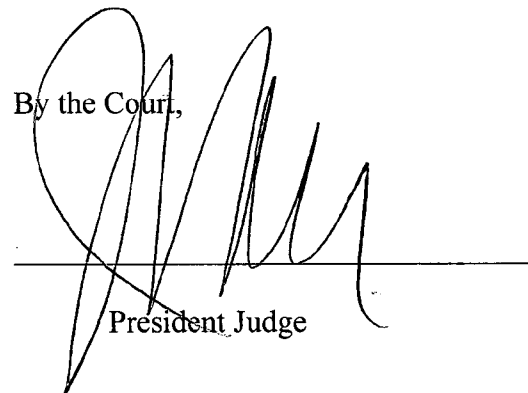
VON BERGER and
ELIZABETH BERGER

:
:

ORDER

NOW, this 19th day of April, 2001, following argument and briefs into Preliminary Objections filed on behalf of Defendants above-named, it is the ORDER of this Court that Defendants' first Preliminary Objection seeking to have Elizabeth Berger dismissed as a party Defendant shall be and is hereby denied. With regards to Defendants' second Preliminary Objection questioning the naming of Defendant Margaret Ann Guido to participate as a party Plaintiff, it is the ORDER of this Court that said Objection be and is hereby sustained and Margaret Ann Guido dismissed as a party Plaintiff in the above proceeding.

By the Court,



President Judge

FILED

APR 19 2001

William A. Shaw
Prothonotary

FILED

APR 19 2001

William A. Shaw
Prothonotary

2 cc -

1 - City D. Napkin

1 - City Guido
E. (KES)

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

AILEEN DELULLO and MARGARET
ANN GUIDO,

Plaintiffs,

vs.

VON BERGER and ELIZABETH
BERGER,

Defendants.

24
No. 01-42-00

Type of Pleading: Answer, New Matter
and Counterclaim

Filed on behalf of: Ronald Berger and
Elizabeth Berger

Counsel of Record for this party:

DAVID J. HOPKINS, ESQUIRE

Attorney at Law

Supreme Court No. 42519

900 Beaver Drive

DuBois, Pennsylvania 15801

(814) 375-0300

FILED

MAY 09 2001

William A. Shaw
Prothonotary

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

AILEEN DELULLO and MARGARET
ANN GUIDO,

Plaintiffs,

vs.

No. 01-²⁴~~42~~-00

VON BERGER and ELIZABETH
BERGER,

Defendants.

ANSWER AND NEW MATTER

AND NOW, comes the Defendants, Ronald Berger and Elizabeth Berger, by and through their attorneys, The Hopkins Law Firm, and answers the Complaint of Aileen DeLullo as follows:

FIRST COUNT

1. Admitted.

2. No answer is required of this paragraph inasmuch as Margaret Ann Guido has been dismissed as a Plaintiff pursuant to the Order of President Judge John K. Reilly, Jr. dated April 19, 2001.

3. Admitted in part and denied in part. Defendants Ronald Berger and Elizabeth Berger are husband and wife. It is denied they are co-partners in a business operated under the trade name Berger Painting and Wallpapering with an office at Suite 6, 23 East Park Avenue, DuBois, Clearfield County, Pennsylvania. It is admitted that Ronald Berger operates a business under the trade name Von Berger Painting and Architectural Finishes with an office at Suite 9, 25 East Park Avenue, DuBois, Pennsylvania.

4. Admitted. Plaintiff is the owner of a certain dwelling located at R.D. #4, Box 257B, DuBois, Pennsylvania.

5. Denied. Plaintiff and Defendant entered into a written agreement dated September 27, 1999 on a cost and material basis which the parties executed on September 28, 1999, a copy of which is attached hereto. Thereafter, the Plaintiff continued to expand the scope of the work. Defendants deny an estimated price of \$50,000.00 was given by Defendants to Plaintiff. Plaintiff and Ronald Berger discussed the job would not exceed \$50,000.00. However, Plaintiff continued to expand the project and the parties later agreed the job would not exceed \$100,000.00.

6. Admitted.

7. Denied. Defendant Ronald Berger completed all architectural finishes within Plaintiff's home in a good and workmanlike manner. Defendant Ronald Berger created the looks and finishes as specified by Aileen DeLullo.

8. Denied. Plaintiff was charged only for those materials and labor supplied to the Aileen DeLullo project with the exception that Plaintiff was improperly billed for five (5) gallons of stripper (\$78.78) and may have been double billed for materials costing \$588.96.

9. Denied. Defendant Ronald Berger charged Aileen DeLullo only for those materials and labor provided to her project with the exception that Plaintiff was improperly billed for five (5) gallons of stripper (\$78.78) and may have been double billed for materials costing \$588.96.

10. Denied. To the best knowledge, information and belief of Defendants, when Defendant Ronald Berger left the DeLullo project, all of the painting and architectural finishes were completed and there were no defects which needed to be corrected other than one (1) door

which Plaintiff wanted to be refinished which Defendant Ronald Berger was ready willing and able to refinish. Margaret Guido refused to allow Defendant Ronald Berger in the Plaintiff's home to refinish the door.

11(a) Denied. Twenty two (22) gallons of wood primer at a cost of \$806.30 were used in Aileen DeLullo's home.

(b) Denied. Eighty five (85) gallons of lacquer thinner at a cost of \$552.45 were used in Aileen DeLullo's home.

(c) Denied. Three hundred thirty four (334) rolls of masking tape at a cost of \$963.22 are not overhead, but rather, actual materials used at Aileen DeLullo's home.

(d) Denied. Twenty one (21) five (5) gallon pails with lids at a cost of \$80.85 are not overhead, but rather, actual materials used at Aileen DeLullo's home.

(e) Denied. Forty four (44) brushes at a cost of \$148.32 are not overhead, but rather, actual materials used at Aileen DeLullo's home.

(f) Denied. Fifty three (53) ten (10 lb.) pound boxes of gray sweatshirt at a cost of \$707.55 are not overhead, but rather, actual materials used at Aileen DeLullo's home.

(g) Denied. Eighty five (85) snap knives with ten (10) new blades each at a cost of \$46.90 are not overhead, but rather, actual materials used at Aileen DeLullo's home.

(h) Denied. One hundred twelve (112) rollers at a cost of \$334.88 are not overhead, but rather, actual materials used at Aileen DeLullo's home.

(i) Denied. One hundred eighty five (185) five (5) quart plastic pot liners at a cost of \$157.25 are not overhead, but rather, actual materials used at Aileen DeLullo's home.

(j) Denied. One hundred tach cloths at a cost of \$59.00 are not overhead, but rather, actual materials used at Aileen DeLullo's home.

(k) Denied. Five (5) forty two (42) gallon contractor bags at a cost of \$31.95 are not overhead, but rather, actual materials used at Aileen DeLullo's home.

(l) Denied. Seven (7) drop clothes at a cost of \$82.17 are not overhead, but rather, actual materials used at Aileen DeLullo's home.

(m) Admitted. Five (5) gallons of stripper was not used and incorporated in the work performed at Aileen DeLullo's house and Aileen DeLullo was incorrectly billed for stripper as a result of a clerical error. Had Plaintiff notified Defendant prior to the filing of this lawsuit, Defendant would have credited Plaintiff the cost of the stripper.

(n) Denied. Thirty five (35) gallons of mineral spirits was used and incorporated in the work performed at Aileen DeLullo's house.

(o) Denied. Thirty three (33) gallons of satin polyurethane at a cost of \$797.40 was used and incorporated in the work performed at Aileen DeLullo's house.

12. Neither admitted nor denied. After receiving Plaintiff's Complaint, Defendant researched this issue and Defendants are unable to admit or deny the allegations contained in paragraph 12 of Plaintiff's Complaint. Apparently Plaintiff was charged on duplicate bills in the amount of \$405.66 and \$183.30 for a total of \$588.96. Had Plaintiff brought this issue to the attention of Defendant prior to the filing of this lawsuit, Defendant would have credited Plaintiff \$588.96 if this is what occurred. By way of further answer, Plaintiff mentioned this discrepancy to Defendants and Defendant Ronald Berger told Plaintiff if there was an error in her bill then he would correct it.

13. Denied. Defendant Ronald Berger charged Plaintiff \$77,388.48 for work and materials. By way of further answer, Plaintiff continued to enlarge the scope of work which increased both the cost of materials, labor and ultimately the price charged Plaintiff. Plaintiff is

indebted to Ronald Berger in the amount of \$12,388.48 less the double billing set forth in paragraph 12 if it is determined that Plaintiff was double billed and for five (5) gallons of stripper Defendant Ronald Berger incorrectly billed as a result of a clerical error.

14. Denied. Defendant Ronald Berger spent 208 hours prepping and priming trim at his shop as requested by the Plaintiff.

15. Denied. Defendant Ronald Berger spent 875.5 hours to prep, stain and paint doors as requested by the Plaintiff.

16. Denied. Plaintiff was charged for all of the man hours and all of the materials used on Plaintiff's project which was requested by Plaintiff. By way of further answer, Plaintiff was constantly at the project and was well aware of the scope of work which she continued to expand.

WHEREFORE, Defendant Ronald Berger and Defendant Elizabeth Berger demand judgment dismissing Plaintiff's Complaint with prejudice together with cost of suit, sanctions for the inclusion of Elizabeth Berger in this lawsuit and such other and further relief as the Court deems fair, just and equitable.

SECOND COUNT

17. The Defendants repeat each of their answers set forth in paragraphs 1 through 16 as though same were set forth herein.

18. Denied. Defendants did not overcharge Plaintiff for work performed, work not incorporated in the work product nor for materials not incorporated in the work as set forth in paragraphs 1 through 16 and consequently have not engaged and are not guilty of engaging in fraudulent practices in violation of the Unfair Trade Practices and Consumer Protection Law, 72 P.S. Section 201-1 et seq.

19. Denied. Plaintiff has not suffered any damages as more fully described in Defendants' answers in paragraphs 1 through 16 which are incorporated herein.

20. Denied. Defendants have not engaged in a violation of the Unfair Trade Practices Act and consequently Plaintiff is not entitled to trebled damages.

21. Denied. Defendants owe Plaintiff no money.

22. No answer is required of this paragraph.

WHEREFORE, Defendant Ronald Berger and Defendant Elizabeth Berger demand judgment in their favor dismissing Plaintiff's Complaint with prejudice together with cost of suit, sanctions for the inclusion of Elizabeth Berger in this lawsuit and such other and further relief as the Court deems fair, just and equitable.

NEW MATTER

AND NOW comes Defendant Ronald Berger and Defendant Elizabeth Berger and files the within New Matter to Plaintiff's Complaint.

23. Plaintiff's Complaint is barred by Plaintiff's failure to pay consideration to Defendant Ronald Berger.

24. Plaintiff's claims are barred against Elizabeth Berger inasmuch as Elizabeth Berger is not a partner nor has any other proprietary interest in Von Berger Painting.

25. Plaintiff's claims against Elizabeth Berger are barred inasmuch as there is not privity of contract between Plaintiff and Elizabeth Berger.

26. Plaintiff's claims are barred inasmuch as Plaintiff has received the benefit of Plaintiff's bargain and all work was done at the request of Plaintiff and upon the rate schedule determined by the parties.

27. Plaintiff's claims are barred inasmuch as Plaintiff did not give Defendant Ronald Berger the ability to cure any alleged painting defects.

28. Plaintiff's claims are barred inasmuch as Plaintiff did not give Defendant Ronald Berger the opportunity to finish the painting at Plaintiff's home.

29. Plaintiff's claims are barred because all materials and labor were supplied by Defendant on Plaintiff's job.

30. Plaintiff's claims against Defendants as set forth in paragraph 11(m) and 12 are barred inasmuch as Plaintiff did not give Defendant the opportunity to adjust Plaintiff's bill after learning of a clerical error the in bill if such an error occurred.

31. Plaintiff's claims set forth in paragraph 11(m) and 12 are barred by mistake.

32. Plaintiff's claims are barred by the doctrine of acceptance in that Plaintiff paid Defendant throughout the project for all work other than the doors she wanted refinished and accepted Defendant Ronald Berger' work product.

COUNTERCLAIM

AND NOW, comes Ronald Berger, by and through his attorneys, The Hopkins Law Firm and files the within Counterclaim against Aileen DeLullo.

COUNT I

33. Ronald Berger is the Plaintiff in this Counterclaim and is an individual who maintains a business address at Suite 9, 25 East Park Avenue, Pennsylvania 15767.

34. The Defendant in this Counterclaim is Aileen DeLullo who is an individual who resides at R.D. #4, Box 257B, DuBois, Clearfield County, Pennsylvania.

35. Ronald Berger maintains a business known as Von Berger Painting and Architectural Finishes which specializes in architectural finishes, marbleizing, lacquering, faux

finishes, graining, wall glazing, crackle lacquer, antiquing, toning, gold leafing, silver leafing and wall papering. In addition thereto, Ronald Berger also has the ability to obtain floor covering for individuals and entities.

36. In the fall of 1999, Aileen DeLullo was building a new executive home.

37. On or about September 28, 1999, DeLullo and Berger entered into a contract, a copy of which is attached hereto, in which DeLullo hired Berger to paint and apply architectural finishes to DeLullo's home

38. Plaintiff and Defendant agreed Berger would charge \$20.00 per man hour plus the cost of all materials used at the DeLullo home. Berger began work pursuant to DeLullo's request. DeLullo continued to expand the scope of Berger's work far in excess of the parties' original planned scope of work.

39. The total man hour costs and material costs Berger expended at the DeLullo home totaled \$77,309.70.¹

40. DuLullo has paid Berger \$65,000.00 for Berger's painting and architectural finishes pursuant to the written contract.

41. There remains due from DeLullo to Berger \$12,309.70.²

42. DeLullo's failure to pay Berger the monies due and owing constitute breach of contract and Berger has suffered damages in the amount of \$12,300.98 (or \$11,720.74).

WHEREFORE, Defendant/Plaintiff on the Counterclaim Ronald Berger demands judgment against Plaintiff/Defendant on the Counterclaim Aileen DeLullo in the amount of

¹ DeLullo has alleged in her Complaint that Berger double billed DeLullo for materials in the amount of \$588.96. If it is determined Berger did in fact double bill DeLullo, then the amount due and owing is \$76,720.74.

² If it is determined that Berger double billed DeLullo, then the amount due and owing is \$11,720.74.

\$12,309.70 together with interest, cost of suit and such other and further relief as the Court deems fair just and equitable.

COUNT II

QUANTUM MERUIT

43. Ronald Berger repeats and incorporates the allegations of Count I of the Counterclaim as if set forth at length herein.

44. Berger provided painting and architectural finishes to DeLullo.

45. DeLullo has received the benefit of Berger's work, the fair market value of which is \$77,309.70. DeLullo has failed to pay Plaintiff in full. There remains due from DeLullo to Berger \$12,309.70.² Plaintiff is entitled to recovery, together with accrued interest, under the theory of quantum meruit.

WHEREFORE, Defendant/Plaintiff on the Counterclaim Ronald Berger demands judgment in his favor against Plaintiff/Defendant on the Counterclaim Aileen DeLullo in the amount of \$12,309.70 together with pre-judgment and post-judgment interest, costs of suit, attorneys fees and such other and further relief as the Court deems fair and equitable.²

COUNT III


UNJUST ENRICHMENT

46. Ronald Berger repeats and incorporates the allegations of Count I of the Counterclaim as if set forth at length herein.

46. Berger is entitled to recovery under the theory of unjust enrichment.

WHEREFORE, Defendant/Plaintiff on the Counterclaim Ronald Berger demands judgment in his favor against Plaintiff/Defendant on the Counterclaim Aileen DeLullo in the amount of \$12,309.70 together with pre-judgment and post-judgment interest, costs of suit, attorneys fees and such other and further relief as the Court deems fair and equitable.²

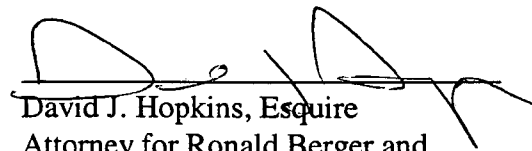
Respectfully submitted,



David J. Hopkins, Esquire
Attorney for Ronald Berger and
Elizabeth Berger

JURY DEMAND

Ronald and Elizabeth Berger demand a trial of twelve jurors on all issues.



David J. Hopkins, Esquire
Attorney for Ronald Berger and
Elizabeth Berger

Von Berger

R.D. 3, Box 178
Punxsutawney, PA 15767

Interior and Exterior

Painting and Finishes

Custom Painting

Marbleizing

Lacquering

Faux Finishes

Graining

Wall Glazing

Crackle Lacquer

Antiquing

Toning

Gold Leafing

Silver Leafing

Wallpapering

Big Run, PA 814-427-5171

DuBois, PA 814-375-9923

Aileen DeLullo
107 E. Second Avenue
DuBois, PA 15801
371-4261

September 27, 1999

Interior of Home:

All Faux Finishes, Marbleizing, Leafing, Lacquering, Petina and any of Von's special finishes as well as regular painting will be done at the labor cost of \$20.00 per man per hour plus the cost of materials. Please note that this cost is a 15% discount from our normal \$23.50 per hour charge.

It is very difficult at this stage to give you a "ballpark" idea of the cost. The best I can tell you is that it will take approximately one month (5 working days per week, 8 hours per day, 4 weeks) to perform the work as discussed. We will have a minimum of 6 to 8 men there. Don't forget that this does not include materials.

Please let us know what month your contractor thinks you will be ready for us and we will hold that time frame open for our work. Return one copy of this estimate signed so that we can hold the length of time open for you as we tend to be booked up 3 to 4 months in advance.

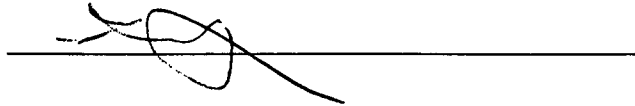
9-28-99 Date Aileen DeLullo Aileen DeLullo

9-28-99 Date Von Berger Painting Von Berger Painting

EXHIBIT "A"

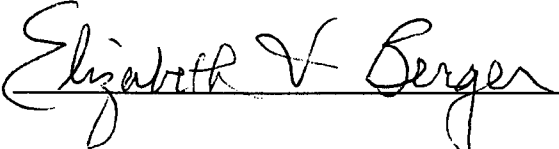
VERIFICATION

I hereby verify that the statements made in this pleading 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.

A handwritten signature, consisting of a stylized 'S' or 'Z' shape with a loop, is written over a solid horizontal line.

VERIFICATION

I hereby verify that the statements made in this pleading 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.



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

AILEEN DELULLO and MARGARET
ANN GUIDO,

Plaintiffs,

vs.

No. 01-42-00


VON BERGER and ELIZABETH
BERGER,

Defendants.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Answer, New Matter and Counterclaim, filed on behalf of Defendants, Ronald Berger and Elizabeth Berger, was forwarded on the 9th day of May, 2001, by U.S. Mail, postage prepaid, to all counsel of record, addressed as follows:

Anthony S. Guido, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801


David J. Hopkins, Esquire
Attorney for Defendants
Supreme Court No. 42519

FILED

MAY 09 2001

01/20/01

William A. Shaw
Prothonotary

One (1) cc to [signature]
[signature]

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

AILEEN DELULLO and MARGARET
ANN GUIDO,

Plaintiffs,

vs.

VON BERGER and ELIZABETH
BERGER,

Defendants.

24
No. 01-42-00

Type of Pleading: Motion to Quash
Motion for Production Request No. 1

Filed on behalf of: Ronald Berger and
Elizabeth Berger

Counsel of Record for this party:

DAVID J. HOPKINS, ESQUIRE
Attorney at Law
Supreme Court No. 42519

900 Beaver Drive
DuBois, Pennsylvania 15801

(814) 375-0300

FILED
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MAY 22 2001

William A. Shaw
Prothonotary

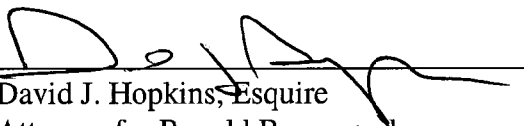
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

AILEEN DELULLO and MARGARET	:	
ANN GUIDO,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	No. 01-42-00
	:	
VON BERGER and ELIZABETH	:	
BERGER,	:	
	:	
Defendants.	:	

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Motion to Quash Motion for Production Request No. 1, filed on behalf of Defendants, Ronald Berger and Elizabeth Berger, was forwarded on the 21st day of May, 2001, by U.S. Mail, postage prepaid, to all counsel of record, addressed as follows:

Anthony S. Guido, Esquire
Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801


David J. Hopkins, Esquire
Attorney for Ronald Berger and
Elizabeth Berger
Supreme Court No. 42519

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

AILEEN DELULLO and MARGARET
ANN GUIDO,

Plaintiffs,

vs.

No. 01-²⁴42-00

VON BERGER and ELIZABETH
BERGER,

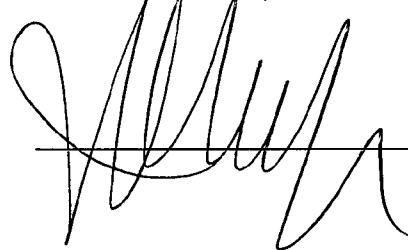
Defendants.

RULE TO SHOW CAUSE

AND NOW, this 29th day of May, 2001, upon consideration of the Foregoing Motion to Quash Motion for Production Request No. 1, filed on behalf of Defendants, Ronald Berger and Elizabeth Berger, a Rule is hereby issued upon the Plaintiff to show cause, if any, why the Prayer of the Petitioner should not be granted.

Rule Returnable on the 2nd day of July, 2001, at 9:30 o'clock A.M. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



JUDGE

FILED

MAY 29 2001

W. H. Shaw
Clerk

1
FILED 2 CC
MAY 29 2001
01:24 PM
William A. Shaw
Prothonotary
Att'y Hopkins
KAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

CIVIL DIVISION

AILEEN DELULLO

Plaintiff

vs.

VON BERGER and ELIZABETH
BERGER,

Defendants.

: No. 01 – 24 - CD

:
:
: Type of Pleading:
: ANSWER TO MOTION
: TO QUASH MOTION FOR
: PRODUCTION REQUEST
: Filed on Behalf of
: Plaintiff by:

:
: ANTHONY S. GUIDO
: Hanak Guido & Taladay
: 498 Jeffers Street
: PO Box 487
: DuBois, PA 15801
: (814) 371 7768
: PA Atty. ID #05877

FILED

JUN 05 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

CIVIL DIVISION

AILEEN DELULLO,

Plaintiff,

vs.

No. 01 – 24 - CD

VON BERGER and ELIZABETH
BERGER,

Defendants.

**ANSWER TO MOTION TO QUASH MOTION FOR
PRODUCTION REQUEST NO. 1**

AND NOW, comes AILEEN DELULLO, and by her attorney, Anthony S. Guido, Esq., files this Answer to Motion to Quash Motion for Production Request No. 1, as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied. The requested documents, being the Federal Income Tax Returns of the Defendants for the years 1996 through the year 2000, are discoverable due to the fact that said Income Tax Returns are important documents insofar as the issue of whether Elizabeth Berger is a partner of Ronald Berger in the operation of the business known as Von Berger Painting and Architectural Finishes.
5. As a consequence, the requested documents are not unreasonable and not an invasion of Ron Berger and Elizabeth Berger's expectation for privacy in

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of June, 2001, I served
PLAINTIFF'S ANSWER TO MOTION TO QUASH MOTION FOR PRODUCTION
REQUEST NO. 1 by regular mail, postage prepaid, to the following:

David J. Hopkins, Esq.
The Hopkins Law Firm
900 Beaver Drive
DuBois, PA 15801



Anthony S. Guido, Esq.
Attorney for Plaintiff

FILED

JUN 05 2001

William A. Shaw
Prothonotary

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

AILEEN DELULLO and MARGARET
ANN GUIDO,

Plaintiffs,

vs.

VON BERGER and ELIZABETH
BERGER,

Defendants.

²⁴
No. 01-~~42~~-00

Type of Pleading: Motion to Inspect
Plaintiff's House.

Filed on behalf of: Ronald Berger and
Elizabeth Berger

Counsel of Record for this party:

DAVID J. HOPKINS, ESQUIRE
Attorney at Law
Supreme Court No. 42519

900 Beaver Drive
DuBois, Pennsylvania 15801

(814) 375-0300

FILED

JUN 05 2001

William A. Shaw
Prothonotary

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

AILEEN DELULLO and MARGARET	:	
ANN GUIDO,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	No. 01-42-00
	:	
VON BERGER and ELIZABETH	:	
BERGER,	:	
	:	
Defendants.	:	

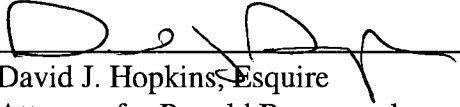
MOTION TO INSPECT PLAINTIFF'S HOUSE

AND NOW, comes the Defendants, Ronald Berger and Elizabeth Berger, by and through their attorneys, The Hopkins Law Firm, and files the within Motion to Inspect Plaintiff's House and in support thereof, states as follows:

1. On January 4, 2001, Plaintiff filed a Complaint against Defendant alleging inferior architectural painting and finishes in the interior of Plaintiff's home.
2. Defendant filed an Answer denying any of the workmanship was inferior.
3. Defendant requests the opportunity to inspect Plaintiff's house and inspect the workmanship Plaintiff alleges is inferior.
4. Defendant has made numerous requests to view Plaintiff's house by contacting Attorney Anthony Guido, each of which have gone unanswered.

WHEREFORE, Defendants, Ronald Berger and Elizabeth Berger, pray this Honorable Court enter an Order authorizing Defendants and their attorney and any experts Defendants may wish to bring access to Plaintiff's house during the daylight hours for the purpose of inspecting the alleged inferior architectural finishes.

Respectfully submitted,



David J. Hopkins, Esquire
Attorney for Ronald Berger and
Elizabeth Berger

FILED

JUN 05 2001
1:03/2ccatty Hopkins
William A. Shaw
Prothonotary
gws

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

AILEEN DELULLO and MARGARET
ANN GUIDO,

Plaintiffs,

vs.

No. 01-42-00

VON BERGER and ELIZABETH
BERGER,

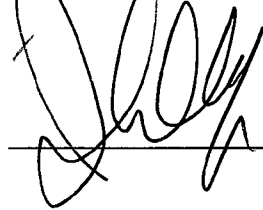
Defendants.

RULE TO SHOW CAUSE

AND NOW, this 6 day of June, 2001, upon consideration of the Foregoing Motion to Inspect Plaintiff's House, filed on behalf of Defendant, Ronald Berger and Elizabeth Berger, a Rule is hereby issued upon the Plaintiff to show cause, if any, why the Prayer of the Petitioner should not be granted.

Rule Returnable on the 2nd day of July, 2001, at 9:30 o'clock
A.M. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield,
Pennsylvania.

BY THE COURT,



JUDGE

FILED

JUN 07 2001

William A. Shaw
Prothonotary

FILED

JUN 07 2001

0194812x cathy Hopkins
William A. Shaw
Prothonotary

~~FILED~~

~~JUN 07 2001~~

~~William A. Shaw
Prothonotary~~

~~2 cc~~ ~~Nopkin~~

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

CIVIL DIVISION

AILEEN DELULLO

Plaintiff

vs.

VON BERGER and ELIZABETH
BERGER,

Defendants.

No. 01 – 24 - CD

Type of Pleading:
REPLY TO NEW
MATTER and ANSWER
TO COUNTERCLAIM
Filed on Behalf of
Plaintiff by:

ANTHONY S. GUIDO
Hanak Guido & Taladay
498 Jeffers Street
PO Box 487
DuBois, PA 15801
(814) 371 7768
PA Atty. ID #05877

FILED

JUN 06 2001

01/10:31/110CC

William A. Shaw
Prothonotary

[Signature]

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA**

CIVIL DIVISION

AILEEN DELULLO

Plaintiff,

vs.

**VON BERGER and ELIZABETH
BERGER,**

Defendants.

:
:
:
:
:
:
:
:

No. 01 – 24 - CD

REPLY TO NEW MATTER and ANSWER TO COUNTERCLAIM

AND NOW, comes the Plaintiff, AILEEN DELULLO, by her attorney, Anthony S. Guido, Esq., and files this Reply to New Matter and Answer to Counterclaim as follows.

REPLY TO NEW MATTER:

23. Denied. In answer thereto, Plaintiff incorporates by reference thereto all of the allegations contained Plaintiff's First Count, paragraphs 1 through 16, and the allegations contained in Plaintiff's Second Count, paragraphs 17 through 22, as though fully set forth herein. In further answer thereto, allegations contained in Paragraph 23 of Defendants' New Matter are conclusions of law and not averments of fact.
24. Denied. In answer thereto, Plaintiff incorporates by reference thereto all of the allegations contained Plaintiff's First Count, paragraphs 1 through 16, and the allegations contained in Plaintiff's Second Count, paragraphs 17 through 22, as though fully set forth herein. In further answer thereto,

allegations contained in Paragraph 24 of Defendants' New Matter are conclusions of law and not averments of fact.

25. Denied. In answer thereto, Plaintiff incorporates by reference thereto all of the allegations contained Plaintiff's First Count, paragraphs 1 through 16, and the allegations contained in Plaintiff's Second Count, paragraphs 17 through 22, as though fully set forth herein. In further answer thereto, allegations contained in Paragraph 25 of Defendants' New Matter are conclusions of law and not averments of fact.
26. Denied. In answer thereto, Plaintiff incorporates by reference thereto all of the allegations contained Plaintiff's First Count, paragraphs 1 through 16, and the allegations contained in Plaintiff's Second Count, paragraphs 17 through 22, as though fully set forth herein. In further answer thereto, allegations contained in Paragraph 26 of Defendants' New Matter are conclusions of law and not averments of fact.
27. Denied. During the course of the work, the Plaintiff complained about the manner in which the Defendants were performing the work. The Defendants failed to cure the defects and complete the work in accordance with the agreement and understanding between the parties. In further answer thereto, Plaintiff incorporates by reference thereto all of the allegations contained Plaintiff's First Count, paragraphs 1 through 16, and the allegations contained in Plaintiff's Second Count, paragraphs 17 through 22, as though fully set forth herein.

28. Denied. In answer thereto, the answer to Paragraph 27 is incorporated herein by reference thereto as though fully set forth herein.
29. Denied. In answer thereto, Plaintiff incorporates by reference thereto all of the allegations contained Plaintiff's First Count, paragraphs 1 through 16, and the allegations contained in Plaintiff's Second Count, paragraphs 17 through 22, as though fully set forth herein. In further answer thereto, allegations contained in Paragraph 29 of Defendants' New Matter are conclusions of law and not averments of fact.
30. Denied. In answer thereto, Plaintiff incorporates by reference thereto all of the allegations contained Plaintiff's First Count, paragraphs 1 through 16, and the allegations contained in Plaintiff's Second Count, paragraphs 17 through 22, as though fully set forth herein. In further answer thereto, allegations contained in Paragraph 30 of Defendants' New Matter are conclusions of law and not averments of fact.
31. Denied. In answer thereto, Plaintiff incorporates by reference thereto all of the allegations contained Plaintiff's First Count, paragraphs 1 through 16, and the allegations contained in Plaintiff's Second Count, paragraphs 17 through 22, as though fully set forth herein. In further answer thereto, allegations contained in Paragraph 31 of Defendants' New Matter are conclusions of law and not averments of fact.
32. Denied. In answer thereto, Plaintiff incorporates by reference thereto all of the allegations contained Plaintiff's First Count, paragraphs 1 through 16, and the allegations contained in Plaintiff's Second Count, paragraphs 17

through 22, as though fully set forth herein. In further answer thereto, allegations contained in Paragraph 32 of Defendants' New Matter are conclusions of law and not averments of fact.

ANSWER TO COUNTERCLAIM:

COUNT I

33. Admitted. However, Plaintiff believes and therefore avers that Defendant's spouse, Elizabeth Berger, is a partner in the business known as Von Berger Painting and Architectural Finishes.
34. Admitted.
35. Denied. It is averred that Ronald Berger and his spouse Elizabeth Berger are partners in and to the business known as Von Berger Painting and Architectural Finishes. The remainder of the allegations of Paragraph 35 is admitted.
36. Admitted.
37. Denied as stated. The writing dated September 28, 1999, is not a contract but an estimate provided by the Defendants to the Plaintiff for the work to be performed by the Defendants on the Plaintiff's home.
38. Denied as stated. It is admitted that Defendant Ronald Berger and his partner Elizabeth Berger agreed to charge \$20 per man-hour plus costs of materials used in the DELULLO home. It is denied that the Plaintiff continued to expand the scope of the work far in excess of the parties' original planned scope of work. In further answer thereto, the original

scope of the work included the painting of the basement and garage, which was not performed by the Defendants but was performed by another contractor.

39. Denied. In answer thereto, Plaintiff incorporates by reference thereto all of the allegations contained Plaintiff's First Count, paragraphs 1 through 16, and the allegations contained in Plaintiff's Second Count, paragraphs 17 through 22, as though fully set forth herein.
40. Admitted.
41. Denied. In answer thereto, Plaintiff incorporates by reference thereto all of the allegations contained in Plaintiff's First Count, paragraphs 1 through 16, and the allegations contained in Plaintiff's Second Count, paragraphs 17 through 22, as though fully set forth herein.
42. Denied. In answer thereto, Plaintiff incorporates by reference thereto all of the allegations contained Plaintiff's First Count, paragraphs 1 through 16, and the allegations contained in Plaintiff's Second Count, paragraphs 17 through 22, as though fully set forth herein. In further answer thereto, the allegations contained in Paragraph 42 are conclusions of law and not averments of fact and therefore no answer is required pursuant to the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Plaintiff demands that judgment be entered against the Defendants and in favor of the Plaintiff in accordance with the First and Second Counts of Plaintiff's Complaint.

COUNT II – QUANTUM MERUIT

43. Denied. In answer thereto, Plaintiff incorporates by reference thereto the allegations contained in Plaintiff's Answer to Count I of the Defendants' Counterclaim as though fully set forth herein.
44. Admitted.
45. Denied. In answer thereto, Plaintiff incorporates by reference thereto all of the allegations contained Plaintiff's First Count, paragraphs 1 through 16, and the allegations contained in Plaintiff's Second Count, paragraphs 17 through 22, as though fully set forth herein. In addition, the Defendants claim that the parties entered into a contract for the performance of the work which is the subject of these proceedings. A Quantum Meruit claim cannot be pursued when the parties have entered into a contract.

WHEREFORE, Plaintiff demands that Defendants' Counterclaim be dismissed and that Count II – Quantum Meruit claim be dismissed and demands that judgment be entered in favor of the Plaintiff and against Defendants as set forth in Count I and Count II of Plaintiff's Complaint.

COUNT III – UNJUST ENRICHMENT

46. Denied. In answer thereto, Plaintiff incorporates by reference thereto the answer to Count I of Defendants' Counterclaim as though fully set forth herein.

46. Denied. In answer thereto, Plaintiff incorporates by reference thereto the answer to Count II of Defendants' Quantum Meruit claim as though fully set forth herein.

WHEREFORE, Plaintiff demands that Defendants' Counterclaim be dismissed and that Count II – Quantum Meruit claim be dismissed and that Count III – Unjust Enrichment claim be dismissed and demands that judgment be entered in favor of the Plaintiff and against Defendants as set forth in Count I and Count II of Plaintiff's Complaint.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Anthony S. Guido", is written over a horizontal line.

Anthony S. Guido, Esq.
Attorney for Plaintiff

VERIFICATION

I verify that the statements made in this Reply to New Matter and Answer to Counterclaim are true and correct. I understand that false statements herein are made subject to the penalties of Pa.Cons. Stat. Section 4904 relating to unsworn falsification to authorities.

DATE: 6/4/01


Aileen DeLullo

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 2001, I served
PLAINTIFFS' REPLY TO NEW MATTER and ANSWER TO COUNTERCLAIM by
regular mail, postage prepaid, to the following:

David J. Hopkins, Esq.
The Hopkins Law Firm
900 Beaver Drive
DuBois, PA 15801



Anthony S. Guido, Esq.
Attorney for Plaintiff

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

AILEEN DELULLO,
Plaintiff

-vs-

VON BERGER and ELIZABETH
BERGER,
Defendants

No. 01-24-01

Type of Pleading:
Certificate of Service

Filed on Behalf of:
Plaintiff

Counsel of Record for This
Party:

Anthony S. Guido, Esq.
Supreme Court No. 05911

Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

FILED

JUN 07 2001

William A. Shaw
Prothonotary

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

AILEEN DELULLO,
Plaintiff

-vs-

VON BERGER and ELIZABETH
BERGER,
Defendants

No. 01-24-01

CERTIFICATE OF SERVICE

I certify that on the 6th day of June, 2001 two true and correct copies of Plaintiff's Answers to Expert Interrogatories, Plaintiff's Answers to Second Set of Interrogatories and Plaintiff's Answer to Motion for Production of Documents were sent via first class mail, postage prepaid, to the following:

David J. Hopkins, Esq.
Attorney for Defendants
900 Beaver Drive
DuBois, PA 15801



Anthony S. Guido
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

AILEEN DELULLO

:

-vs-

:

No. 01 - 24 - CD

VON BERGER and ELIZABETH

:

BERGER

:

ORDER

NOW, this 2nd day of July, 2001, following argument into Defendants' Motion to Inspect Plaintiff's House and Motion to Quash Motion for Production Request No. 1, it is the ORDER of this Court that Defendants' shall be and are hereby permitted to inspect Plaintiff's house at a time and date agreeable to the parties. It is the further ORDER of this Court that Defendants' Motion to Quash Motion for Production Request shall be and is hereby denied and counsel for Defendants shall make available for the inspection of counsel for the Plaintiff Defendants' tax returns for the years 1996, 1997, 1998, 1999, and 2000 in the office of counsel for Defendants. No further inspection or copies shall be granted except upon further request of counsel for Plaintiff.

By the Court

President Judge

FILED

JUL 02 2001

William A. Shaw
Prothonotary

FILED

02 2001

0132611cc atty Wludo
William A. Shaw
Prothonotary

cc atty Hprkdo
KAR

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

AILEEN DELULLO,
Plaintiff

-vs-

VON BERGER and ELIZABETH
BERGER,
Defendants

No. 01-24-01

Type of Pleading:
Praecipe for Discontinuance

Filed on Behalf of:
Plaintiff

Counsel of Record for This
Party:

Anthony S. Guido, Esq.
Supreme Court No. 05877

Hanak, Guido and Taladay
498 Jeffers Street
P.O. Box 487
DuBois, PA 15801

(814) 371-7768

FILED

JAN 17 2003

01/21/03
William A. Shaw
Prothonotary

(Sent to Atty)

Cert Disc to: *AG*
Atty Guido, Hopkins & CA

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

AILEEN DELULLO,
Plaintiff

-vs-

No. 01-24-01

VON BERGER and ELIZABETH
BERGER,
Defendants

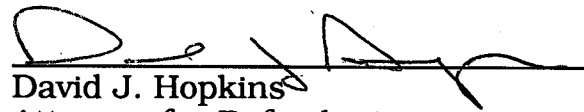
PRAECIPE FOR DISCONTINUANCE

TO THE PROTHONOTARY:

Mark the above case settled and discontinued with
prejudice.



Anthony S. Guido
Attorney for Plaintiff



David J. Hopkins
Attorney for Defendants

FILED

JAN 17 2003

William A. Shaw
Prothonotary

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

CIVIL DIVISION

**Aileen Delullo
Margaret Ann Guido**

Vs.

No. 2001-00024-CD

**Von Berger
Elizabeth Berger**

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 01/17/03 marked:

Settle and Discontinue

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

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 20th day of January A.D. 2003.

William A. Shaw, Prothonotary