

01-229-CD  
FRANK M. SHEESLEY CO. -vs- ROBERT K. KITCHEN et al

01-229-CD

<b>SENDER: COMPLETE THIS SECTION</b>	
<ul style="list-style-type: none"><li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li><li>■ Print your name and address on the reverse so that we can return the card to you.</li><li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul>	
1. Article Addressed to: <b>Superior Court of Pennsylvania Office of the Prothonotary 1015 Grant Building Pittsburgh, PA 15219</b>	
01-229-CD	
2. Article Number (Copy from service label) <b>7000 0600 0023 6399 3985</b>	
PS Form 3811, July 1999	
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*JUL 11 2001  
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William A. Shaw  
Prothonotary*

01-229-CD

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Prothonotary  
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Restricted Delivery Fee (Email/Document Required)	
Total Postage	
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CLEARFIELD PA 16430  
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2001  
01-229-CD  
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1015 Grant Building  
City, State, ZIP+4  
Pittsburgh, PA 15219

See Reverse for Instructions

PS Form 3800, July 1999

7000 0023 9399 3985



01339.10

Frank M. Sheesley Co., Appellant ✓  
Robert K. Kitchen and Kitchen Contracting

### Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: June 1, 2001 Awaiting Original Record

ournal Number:

Case Category: Civil CaseType: Assumpsit

Consolidated Docket Nos.: Related Docket Nos.:

## SCHEDULED EVENT

Next Event Type: Docketing Statement Received

Next Event Due Date: June 19, 2001

Next Event Type: Original Record Received

Next Event Due Date: July 11, 2001

**FILED**

JUN 11 2001

11:32 a.m.

William A. Shaw  
Prothonotary

06/06/2001

3023

#16

**COUNSEL INFORMATION**

Appellant Frank E. Sheesley, Co.  
Pro Se: Appoint Counsel Status:

IPP Status: No

**Appellant Attorney Information:**

Attorney: Kuyat, Craig Edward  
Bar No.: 39590 Law Firm: Kuyat & Kuyat  
Address: Kuyat & Kuyat  
132 Gazebo Park #150  
Johnstown, PA 15901-1820

Phone No.: (814)539-8783 Fax No.: (814)535-4251

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellee Kitchen, Robert K  
Pro Se: Appoint Counsel Status:

IPP Status:

**Appellee Attorney Information:**

Attorney: Noble, Theron G.  
Bar No.: 55942 Law Firm: Ferraraccio & Noble  
Address: 301 East Pine Street  
Clearfield, PA 16830

Phone No.: (814)765-4990 Fax No.: (814)765-9377

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellee Kitchen Contracting  
Pro Se: Appoint Counsel Status:

IPP Status:

**Appellee Attorney Information:**

Attorney: Noble, Theron G.  
Bar No.: 55942 Law Firm: Ferraraccio & Noble  
Address: 301 East Pine Street  
Clearfield, PA 16830

Phone No.: (814)765-4990 Fax No.: (814)765-9377

Receive Mail: No

E-Mail Address:

Receive E-Mail: No

**FEE INFORMATION**

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
6/5/01	Notice of Appeal	55.00	55.00	2001SPRWD000709



## TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Division: Civil

Date of OrderAppealed From: May 17, 2001

Judicial District: 46

Date Documents Received: June 5, 2001

Date Notice of Appeal Filed: June 1, 2001

Order Type: Judgment Entered

OTN:

Judge: Reilly, John K.

Lower Court Docket No.: 01-229-CD

President Judge

## ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
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Date of Remand of Record:

## BRIEFS

## DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
June 1, 2001	Notice of Appeal Filed	Appellant	Frank E. Sheesley, Co.
June 5, 2001	Docketing Statement Exited (Civil)		Western District Filing Office

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY  
AND  
CLERK OF COURT

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

CLEARFIELD COUNTY



DAVID S. AMMERMAN

SOLICITOR

P.O. Box 549

CLEARFIELD, PENNSYLVANIA 16830  
(814) 765-2541 Ext. 1330

JOHN K. REILLY, JR., P.J.  
COURT OF COMMON PLEAS  
2<sup>ND</sup> & Market Street  
Clearfield, PA. 16830

KUYAT, CRAIG, EDWARD, ESQ.  
KUYAT & KUYAT  
132 Gazebo Park, # 150  
Johnstown, PA 15901-1820

NOBLE, THERON, G.  
FERRARACCIO & NOBLE  
301 East Pine Street  
Clearfield, PA 16830

FRANK M. SHEESLEY  
VS.  
ROBERT K. KITCHEN  
AND KITCHEN CONTRACTING

NO. 01-229-CD, SUPERIOR COURT NO. 968 WDA 2001

DEAR CCUNSEL:

PLEASE BE ADVISED THAT THE ABOVE REFERENCED RECORD WAS  
FORWARDED TO SUPERIOR COURT OF PENNSYLVANIA ON JULY 6, 2001

SINCERELY,

A handwritten signature in black ink, appearing to read "William A. Shaw".

WILLIAM A. SHAW  
PROTHONOTARY/CLERK OF COURTS

**3. IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
PENNSYLVANIA  
CASE # 01-229-CD**

**FRANK M. SHEESLEY CO.  
VS.  
ROBERT K. KITCHEN and  
KITCHEN CONTRACTING**

<b>ITEM NO.</b>	<b>DATE of FILING</b>	<b>NAME of DOCUMENT</b>	<b>NO of PAGES</b>
01	02/15/01	COMPLAINT	28
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03	03/14/01	DEFENDANTS' PRELIMINARY OBJECTIONS	06
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05	03/20/01	RULE TO SHOW CAUSE REQUESTING PRELIMINARY INJUNCTION	06
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07	03/23/01	DEFENDANT'S PRELIMINARY OBJECTIONS AS TO PRELIMINARY INJUNCTION	05
08	03/28/01	PLAINTIFF'S ANSWER TO DEFENDANT'S PRELIMINARY OBJECTION AS TO PRELIMINARY INJUNCTION	03
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**SEPARATE COVER**

Date	Judge
Frank M. Sheesley Co. vs. Robert K. Kitchen, Kitchen Contracting	
02/15/2001 Filing: Civil Complaint Paid by: Craig E. Kuyat, Esquire Receipt number: 1818517 Dated: 02/15/2001 Amount: \$80.00 (Check)	No Judge
03/02/2001 Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
03/14/2001 Defendants Preliminary Objections filed by Attorney Noble. No cc. Certificate of Service filed by Atty Noble. No cc	No Judge
03/16/2001 Certificate of Service, Motion for Issuance of Preliminary Injunction, upon Theron G. Noble, Esq. Filed by s/Craig E. Kuyat, Esq. no cc	No Judge
Motion For Issuance of Preliminary Injunction. Filed by s/Craig E. Kuyat, Esq.	No Judge
03/20/2001 Rule to Show Cause Requesting Preliminary Injunction issued upon Defendants, returnable April 3, 2001. By the Court, s/JKR,JR.,PJ 4 cc atty Kuyat	John K. Reilly Jr.
03/22/2001 Certificate of Service, Rule to Show Cause, upon Theron G. Noble, Esq. Filed by s/Craig E. Kuyat no cc	John K. Reilly Jr.
03/23/2001 Defendants' Preliminary Objections as to Preliminary Injunction, filed by s/Theron G. Noble, Esq. No Certified Copies Certificate of Service, filed.	John K. Reilly Jr.
03/28/2001 Plaintiff's Answer to Defendants' Preliminary Objections as to Preliminary Injunction. s/Craig E. Kuyat, Esq. no cc	John K. Reilly Jr.
Certificate of Service, Plaintiff's Answer to Defendants' Preliminary Objections as to Preliminary Injunction, upon Theron G. Noble, Esq. s/Craig E. Kuyat, Esq no cc	John K. Reilly Jr.
04/04/2001 ORDER, NOW, this 3rd day of Apr., 2001, re: Plaintiff's Motion for Preliminary Injunction. By the Court, s/JKR,JR.,P.J. 1 cc atty Kuyat, Noble	John K. Reilly Jr.
04/17/2001 ORDER, NOW, this 16th day of April, 2001, re: Counsel for the Defendant to supply the Court w/reply brief within no more than 20 days from this date. Temp Injunction. by the Court, s/JKR,JR.,P.J. 2 cc atty C. Kuyat, Noble	John K. Reilly Jr.
05/07/2001 Notice of Service, Defendants' BRIEF FOLLOWING HEARING ON PLAINTIFF'S REQUEST FOR PRELIMINARY INJUNCTION,upon Kuyat and Kuyat. s/Theron g. Noble, Esq.	John K. Reilly Jr.
05/17/2001 OPINION AND ORDER, NOW, this 17th day of May, 2001, re: Judgment Entered in favor of the Defendant and against the Plaintiff and the Preliminary Injunction entered by this Court dated April 03, 2001, shall be and is hereby Dissolved. by the Court, s/JKR,JR.,P.J. 1 cc atty Mikesell, Noble, and Kuyat	John K. Reilly Jr.
06/01/2001 Filing: Appeal to High Court Paid by: Kuyat, Craig E. (attorney for Sheesley Co., Frank M.) Receipt number: 1826134 Dated: 06/01/2001 Amount: \$45.00 (Check)	John K. Reilly Jr.
06/06/2001 Application For Order Granting Or Restoring Injunction. filed by s/Craig E. Kuyat, Esq. Verification, s/Charles J. Wisniewski no cc	John K. Reilly Jr.
06/11/2001 Appeal Docket Sheet from Superior Court, filed. Docket # 968 WDA 2001	John K. Reilly Jr.

OFFICE OF PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW

PROTHONOTARY  
AND  
CLERK OF COURT

JACQUELINE KENDRICK

DEPUTY PROTHONOTARY

CLEARFIELD COUNTY



DAVID S. AMMERMAN

SOLICITOR

P.O. Box 549

CLEARFIELD, PENNSYLVANIA 16830

(814) 765-2641 Ext. 1330

JULY 6, 2001

Superior Court of Pennsylvania  
Office of the Prothonotary  
1015 Grant Building  
Pittsburgh, PA 15219

RE: FRANK M. SHEESLEY

vs

ROBERT K. KITCHEN AND  
KITCHEN CONTRACTING  
No. 01-229-CD  
Superior Court No. 968-WDA 2001

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office. Also, please be advised enclosed is one transcript.

Sincerely,

William A. Shaw  
Prothonotary

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

FRANK M. SHEESLEY COMPANY :  
v. : NO. 01-229-CD

ROBERT K. KITCHEN AND :  
KITCHEN CONTRACTING :  
: :  
: :

ANSWER TO PRELIMINARY OBJECTIONS

Filed by:

Craig E. Kuyat, Esquire  
Attorneys for Defendant

Kuyat & Kuyat  
150 Central Park Law Building  
Gazebo Park at Locust Street  
Johnstown, PA 15901  
(814) 539-8783  
PA I.D. #39590

**FILED**

JAN 17 2002

1/10/02  
William A. Shaw  
Prothonotary

no cc  
JAN  
KBN

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

FRANK M. SHEESLEY COMPANY :  
: No. 01-229-CD  
v. :  
: :  
ROBERT K. KITCHEN AND KITCHEN :  
CONTRACTING :  
: :

DEFENDANT'S ANSWER TO PRELIMINARY OBJECTIONS

AND, now comes the Defendant, Frank M. Sheesley Company, by and through it's Attorneys, Kuyat & Kuyat, and files the following Answer to Preliminary Objections, as follows:

- (1) It is admitted that Plaintiff filed a Civil Complaint alleging that rental money is owing to him by Frank M. Sheesley Company; it is denied that any money is actually owed and Plaintiff admitted that such money was not owing, as set forth in Defendant's Answer, New Matter and Counter-Claim.
- (2) Admitted. The only remaining claim in the Complaint involves a claim for contractual damages.
- (3) Admitted, but Defendant also asserts additional matters in said pleading.
- (4) Admitted in part, Denied in part. The parties had litigated an issue involving a Preliminary Injunction only. However, your Honorable Court had dismissed the Complaint in Equity, on Page 2 of the attached Opinion and Order (see Exhibit "A" attached hereto). To the extent that other issues may still be pending in those proceedings, Defendant would request consolidation with the current litigation.
- (5) Admitted, and that issue is pending on appeal to the Pennsylvania Superior Court, with Argument scheduled for January 17, 2002, in Pittsburgh, PA.
- (6) It is admitted that the Preliminary Injunction issue, which was the most immediate and serious issue in that earlier litigation, is pending before the Pennsylvania Superior Court, as outlined above.

(7) It is admitted that the earlier Complaint in Equity had alleged overpayments to Mr. Kitchen; however, the Court never addressed such issues and the only issue considered at a hearing held on April 16, 2001 involved the Preliminary Injunction matter (see pages 1-6 of the Hearing Transcript, attached hereto as Exhibit "B").

(8) It is denied that such matters are pending because the earlier Complaint in Equity was dismissed; however, to the extent that such issues were never decided previously, Defendant requests consolidation herewith, if your Honorable Court determines that such matters were not previously concluded or dismissed.

Wherefore, Defendant requests that Plaintiff's Preliminary Objections be dismissed (alternatively, if the issue of overpayments to Mr. Kitchen is still pending from the earlier litigation, Defendant requests that such matters be consolidated herewith for trial).

Respectfully submitted,

Kuyat & Kuyat by



Craig E. Kuyat, Esquire  
Attorney for Defendant  
150 Central Park Law Building  
Gazebo Park at Locust Street  
Johnstown, PA 15901  
(814) 539-8783  
PA I.D. #39590

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

ROBERT K. KITCHEN, t/d/b/a :  
KITCHEN CONTRACTING :  
PLAINTIFF, : No. 01-229-CD  
FRANK M. SHEESELY COMPANY, :  
DEFENDANT :  
:

CERTIFICATE OF SERVICE

I, Craig E. Kuyat, Esquire, Attorney for Defendant, does hereby certify this 16th day of January, 2002, that I did mail a true and correct copy of Defendant's ANSWER TO PRELIMINARY OBJECTIONS, to the below counsel of record, via United States mail, first class, postage paid:

Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830

Respectfully Submitted,



Craig E. Kuyat, Esquire  
Attorney for Defendant  
150 Central Park Law Building  
Gazebo Park at Locust Street  
Johnstown, PA 15901  
(814) 539-8783  
PA I.D. No: 39590

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

FRANK M. SHEESLEY CO. :  
:  
-vs- : No. 01 - 229 - CD  
:  
ROBERT K. KITCHEN and KITCHEN  
CONTRACTING :  
:

**OPINION AND ORDER**

In May 1999, Robert K. Kitchen, Defendant above-named, entered employment with Plaintiff. Mr. Kitchen, a golf course construction specialist, was hired to permit Plaintiff to enter into the gold course construction market, an area in which Plaintiff was not involved prior thereto. At the time of his employment, the parties entered into an employment agreement containing a provision titled "Privileged Information and Agreement Not to Compete" as follows:

During the term of this Agreement, the Employee will have access to and become familiar with various records, information and other documents in the course of his employment as a golf course construction specialist. All files, records, documents, drawings, specifications, equipment and similar items relating to the business of golf course construction, whether prepared by Employee or otherwise coming into his possession, shall remain the exclusive property of the Employer and shall not be removed from the premises of Employer under any circumstances. The employee further agrees that upon termination of this Employment Agreement that the Employee shall not directly or indirectly enter into direct competition with the Employer in the business of golf course construction within the existing marketing areas of the Employer in the Commonwealth of Pennsylvania or any future marketing area of the Employer which was begun during the employment under the terms of this Agreement; Employee further agrees not to enter into a direct or indirect competition as described here, either as an individual or on his own or as a partner or joint venturer, or as an employee or agent for any person or entity, or as an officer, director or shareholder, or otherwise, for a period of 3 years after the date of termination of this Employment Agreement. This covenant on the part of the Employee shall be construed as an

Agreement independent of any other provision of this Agreement; and the existence of any claim or cause of action of Employee against Employer, whether predicted on this Agreement or otherwise, shall not constitute a defense to the Employer's enforcement of this covenant.

At the hearing held April 2, 2001, Plaintiff's president testified that his company was not in the business of golf course construction prior to hiring Defendant and Plaintiff provided no training for the Defendant, but relied on his skills, etc., relative to golf course construction in helping Plaintiff to diversify. In November, 2000, Defendant left Plaintiff's employ citing health reasons. Plaintiff now seeks to enforce the Agreement Not To Compete and seeks a permanent injunction prohibiting Defendant from engaging in the golf course construction industry within certain specified states, specifically Pennsylvania, Virginia, Maryland, Ohio, New Jersey, North Carolina and Florida. This Court does herein find in favor of the Defendant and dismisses Plaintiff's Complaint in Equity.

Initially it must be noted that Plaintiff was not in the business of golf course construction prior to hiring Defendant and indeed had only one client during the period of Defendant's employ, specifically the "Mercer Oaks" project in Mercer County, New Jersey. And, in fact, since Defendant has left Plaintiff's employ, Plaintiff has not replaced him nor sought additional contracts for golf course construction. Plaintiff does not deny that Defendant had the contractual right to terminate his employment but claims irreparable harm to his business if the Covenant Not To Compete is not enforced.

Before a restrictive covenant can be enforced, three elements must be present:

- (1) The covenant must relate either to a contract for the sale of good will or other property or to a contract for employment;
- (2) The covenant must be supported by adequate consideration; and
- (3) The application of the covenant must reasonably be limited in both time and territory. See

Maintenance Specialties v. Gottus, 455 Pa. 327, 331, 314 A.2d 279, 281 (1974) (Jones, C.J., concurring); Jacobson & Co. v. International Environmental Corp., 427 Pa. 439, 235 A.2d 612 (1967); Capital Bakers, Inc. v. Townsend, 426 Pa. 188, 231 A.2d 292 (1967); Barb-Lee Mobile Frame Co. v. Hoot, 416 Pa. 222, 206 A.2d 59 (1965); Morgan's Home Equipment Corp. v. Martucci, 390 Pa. 618, 136 A.2d 838 (1957). See also Restatement of Contracts §515(e) (1932). Piercing Pagoda, Inc. v. Hoffner, 465 Pa. 500, 506-7, 351 A.2d 207, 210 (1976).

However, there is an additional requirement necessary before such a covenant can be enforced. As the Superior Court held in Thermo-Guard, Inc. v. Cochran, 596 A.2d 188 (1991):

Although most courts dealing with the enforceability of restrictive covenants focus on whether the covenant provides reasonable temporal and geographic limits, there is an additional requirement of enforceability of such covenants. That is, such covenants must serve to protect a legitimate, i.e. a legally protectible, interest of the employer. . . .

Our courts will permit the equitable enforcement of post-employment restraints only where they are incident to an employment relation between the parties to the covenant, the restrictions are reasonably necessary for the protection of the employer, and the restrictions are reasonably limited in duration and geographic extent.

The court further held that trade secrets of an employer, customer good will and specialized training and skills acquired from the employer are all legitimate interests protectible through a restrictive covenant. In New Castle Orthopedic Assoc. v. Burns, 481 Pa. 460, 392 A.2d 1383, (1978), the trial courts were directed to determine whether an injunction:

“Is necessary to prevent immediate and irreparable harm which could not be compensated by damages; second, that the greater injury would result by refusing it than by granting it; and third, that it properly restores the parties to their status as it existed immediately prior to the alleged wrongful conduct.”

As to the nature of the injury:

"An injury is regarded as "irreparable" if it will cause damage which can be estimated only by conjecture and not by an accurate pecuniary standard." Sovereign Bank v. Harper, et al, 674 A.2d at 1085.

In the instant case, Plaintiff provided Defendant with no trade secrets, specialized training or skill. In fact, it was the Defendant who provided these matters to Plaintiff. There has been no showing of damage or harm to the Plaintiff by any employment of the Defendant contrary to the agreement not to compete. In Rollins Protective Services Company v. Shaffer, 557 A.2d 413 (1988) the Superior Court held that a former employer must suffer irreparable harm from the competition of a former employee before it can enforce a non-competition clause in the former employee's employment agreement. Here Plaintiff has filed to establish any harm resulting from Defendant's subsequent involvement with a competitor. The existence of a non-competition clause in an employment contract only permits the employer to seek relief from the court. It does not guarantee relief. Since irreparable harm is a requirement and none exists in the instant case, this Court will not grant injunctive relief to the Plaintiff. As a footnote, this Court notes that the only alleged employment of the Defendant in the golf course construction industry proved by the Plaintiff at hearing was merely his operating a bull dozer for a competitor which hardly qualifies as direct competition with Plaintiff's golf course construction aspirations.

WHEREFORE, the Court enters the following:

**ORDER**

NOW, this 17<sup>th</sup> day of May, 2001, following hearing and briefs into the above-captioned Complaint seeking injunctive relief, it is the ORDER of this Court that judgment be

and is hereby entered in favor of the Defendant and against the Plaintiff and the Preliminary  
Injunction entered by this Court dated April 3, 2001, shall be and is hereby dissolved.

By the Court,

/s/JOHN K. REILLY, JR.

President Judge

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

MAY 17 2001

Attest.

*William J. Reilly*  
Prothonotary

**COPY**

5 FRANK M. SHEESLEY COMPANY :  
6 -vs- : No. 01-229-CD  
7 ROBERT K. KITCHEN and :  
KITCHEN CONTRACTING :  
8  
9  
10 PROCEEDINGS: Hearing on the Merits  
11 BEFORE: HONORABLE JOHN K. REILLY, JR.  
President Judge  
12  
13 DATE: Monday, April 16, 2001  
14 PLACE: Clearfield County Courthouse  
Courtroom No. 1  
Clearfield, Pennsylvania  
15  
16 TAKEN BY: Thomas D. Snyder  
Official Court Reporter

19 APPEARANCES:

20 CRAIG E. KUYAT, ESQUIRE  
For - Plaintiff

22 THERON G. NOBLE, ESQUIRE  
For - Defendant

1                   I N D E X

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4	Redirect Examination by Mr. Kuyat . . . . .	13
5	Recross Examination by Mr. Noble . . . . .	13
6	<u>CHARLES JOHN WISNIEWSKI</u>	
7	Direct Examination by Mr. Kuyat . . . . .	14
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1	<u>E X H I B I T S</u>		
2	<u>PLAINTIFF'S EXHIBITS</u>		
3	1 - Letter . . . . .	MARKED 4	ADMITTED 4
4	2 - Employment Agreement . . . . .	4	4
5	3 - Termination Notice . . . . .	5	5
6	4 - Letter . . . . .	27	--
7	5 - Letter . . . . .	31	--
8	6 - Letter . . . . .	31	--
9	7 - Copy of Business Card . . . . .	33	--
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1                   P R O C E E D I N G S

2                   THE COURT: All right. Mr. Kuyat, you're  
3 Plaintiff.

4                   MR. KUYAT: Yes. Your Honor, we had reviewed some  
5 of the exhibits prior to today's hearing; and I believe,  
6 perhaps, we can stipulate to a couple of items. First of  
7 all, I would like to offer as Plaintiff's Exhibit 1 an April  
8 20th letter from Mr. Kitchen to Frank M. Sheesley Company  
9 outlining his requested terms of employment.

10                  As Exhibit 2, I would offer the actual employment  
11 agreement which was entered into and signed by the parties.  
12 A copy of it was given to Mr. Kitchen at the time he retired  
13 in the spring of 1999. I would offer that and mark that as  
14 Plaintiff's Exhibit 2.

15                  And it's my understanding that we can stipulate to  
16 those items, the authenticity; is that correct?

17                  MR. NOBLE: Yes, that's correct.

18                  THE COURT: One and two are admitted.

19                  (Letter and Employment Agreement were marked and  
20 admitted as Plaintiff's Exhibits 1 and 2.)

21                  MR. KUYAT: As Plaintiff's Exhibit 3, I would  
22 offer the employee's notice of termination of employment in  
23 accordance with that contract.

24                  THE COURT: Mr. Noble.

25                  MR. NOBLE: No problem.

1           They have also named as an additional Defendant  
2 Kitchen Contracting; but without an agreement in place to  
3 restrict Kitchen Contracting, who never signed anything, I  
4 don't think they're a defendant in this case.

5           Attorney Kuyat agreed with me. So what we're  
6 really only dealing with is an injunction as to Mr. Kitchen  
7 individually.

8           MR. KUYAT: I agree so far as the injunction is  
9 concerned, Your Honor. As far as the collateral issues that  
10 may also be asserted in the complaint, I believe that they  
11 would be on those.

12           THE COURT: All right. We're not addressing those  
13 today, though, as I understand it.

14           MR. KUYAT: That's correct.

15           THE COURT: Very well. You may proceed.

16           MR. KUYAT: I would like to begin by taking some  
17 brief testimony from Mr. Tom Veres from Operating Engineers.  
18 Thereupon,

19                            THOMAS E. VERES,  
20 the witness herein, having first been duly sworn, was  
21 examined and testified as follows:

22                            DIRECT EXAMINATION

23 BY MR. KUYAT:

24 Q           Sir, would you state your name and address for the  
25 record, please.

FRANK M. SHEESLEY CO., Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA
vs.	
ROBERT K. KITCHEN AND KITCHEN CONTRACTING, Appellees	No. 968 WDA 2001

Appeal from the Judgment entered May 17, 2001  
In the Court of Common Pleas of Clearfield County  
Civil, No. 01-229-CD

BEFORE: DEL SOLE, P.J., BOWES, and KELLY, JJ.

MEMORANDUM:

FILED FEB 8 2002

Appellant, Frank M. Sheesley Co., appeals from the judgment entered by the Clearfield County Court of Common Pleas in favor of Appellees, Robert K. Kitchen and Kitchen Contracting. We affirm.

The relevant facts and procedural history in this appeal have been concisely and correctly set forth in the trial court opinion. Therefore, we see no need to restate them.

On appeal, Appellant presents the following questions for our review:

SHOULD [APPELLEE] EMPLOYEE BE ENJOINED FROM WORKING IN GOLF COURSE CONSTRUCTION IN PENNSYLVANIA AND NEW JERSEY, AT A MINIMUM?

SHOULD [APPELLEE] BE ENJOINED FROM WORKING FOR HIS PRESENT EMPLOYER, WHEN HE LEARNED OF THAT JOB POSITION THROUGH HIS EMPLOYMENT WITH THE [APPELLANT] HEREIN?

SHOULD [APPELLEE] BE ENJOINED FROM CONTACTING ADDITIONAL CUSTOMERS OF THE [APPELLANT]?

FILED

MAR 22 2002  
152 P.M.  
William A. Shesley  
Prothonotary  
cc  
ret. Cc  
contents to Superior court of PA

(Appellant's Brief at 4).

Initially, we must determine the proper scope and standard of review applicable to this appeal. We will review Appellants' claims as assertions that the trial court erred in denying injunctive relief.

On appeal from a final decree, the standard of review is not whether there were "any apparently reasonable grounds for the action of the court below[,"] as is the case when the issuance [or] denial of preliminary injunctive relief is reviewed. On the contrary, the test is whether the trial court, in entering a final decree, abused its discretion or committed an error of law.

***Warehime v. Warehime***, 777 A.2d 469, 477 (Pa.Super. 2001) (quoting ***Frankel-Warwick Ltd. Partnership v. Local 274, Hotel, Bartenders & Restaurant Employees Union, AFL-CIO***, 482 A.2d 1073, 1074 (Pa.Super. 1987) (other citations omitted)).

After a thorough review of the record, the briefs of the parties, the controlling law and the well-reasoned opinion of the Honorable John K. Reilly, Jr., P.J., we conclude that there is no merit to the questions Appellant has raised on appeal. The trial court opinion correctly discusses and properly denies Appellant's request for a permanent injunction, because Appellant has failed to establish any harm resulting from Appellee's subsequent involvement with a competitor. **See** Trial Court Opinion and Order, filed May 17, 2001, at 2-5. According to the trial court, Appellant did not provide Appellee with trade secrets, specialized training, or skill. Moreover, Appellant failed to present competent evidence of direct

competition, loss of business opportunity, or irreparable harm. The only employment action taken by Appellee, following separation from Appellant, was the operation of a bulldozer for a competitor, which does not rise to the level of harm necessary to compel injunctive relief. We see no reason to disturb the decision of the trial court, as it does not demonstrate either an abuse of discretion or an error of law. **See Warehime, supra.** Accordingly, we affirm on the basis of the trial court opinion.<sup>1</sup>

Judgment affirmed.

Judgment Entered:

Eleanor R. Valecko  
Deputy Prothonotary

Date: FEB 8 2002

---

<sup>1</sup> We note one citation error on page 3 of the trial court opinion. The correct pinpoint citation for **Maintenance Specialties v. Gottus** is 314 A.2d 279, 282 (1974).

**The Superior Court of Pennsylvania**

**Sitting at Pittsburgh**

1015 Grant Building  
Pittsburgh, Pennsylvania  
15219

**CERTIFICATE OF CONTENTS OF REMANDED RECORD  
AND NOTICE OF REMAND**

**under**

**PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572**

THE UNDERSIGNED, Prothonotary (or Deputy Prothonotary) of the Superior Court of Pennsylvania, the said court of record, does hereby certify that annexed to the original hereof, is a true and correct copy of the entire record:

Record one transcripts and opinion

As remanded from said court in the following matter:

Frank M. Sheesley Co v Robert K. Kitchen, et al  
No. 968 WDA 2001  
Court of Common Pleas Civil Division, Clearfield County  
No. 01-229-CD

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded is: March 21, 2002

An additional copy of this certificate is enclosed with the original hereof and the clerk or prothonotary of the lower court or the head, chairman, deputy, or the secretary of the other government unit is hereby directed to acknowledge receipt of the remanded record by executing such copy at the place indicated by forthwith returning the same to this court.

*Eleanor R. Jilek*

**DEPUTY PROTHONOTARY**

RECORD, ETC. RECEIVED:

DATE: 3-22-02

*W. L. Shan*  
(Signature & Title)

4:30 P.M.

## Appeal Docket Sheet

Docket Number: 968 WDA 2001

Page 1 of 3

June 6, 2001

Superior Court of Pennsylvania



01-229-CD

Frank M. Sheesley Co., Appellant

Robert K. Kitchen and Kitchen Contracting

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: June 1, 2001 Awaiting Original Record

Journal Number:

Case Category: Civil CaseType: Assumpsit

Consolidated Docket Nos.: Related Docket Nos.:

### SCHEDULED EVENT

Next Event Type: Docketing Statement Received

Next Event Due Date: June 19, 2001

Next Event Type: Original Record Received

Next Event Due Date: July 11, 2001

FILED

JUN 11 2001

11:30 P.M.

William A. Shaw  
Prothonotary

See + 1 trans



#16

## Appeal Docket Sheet

Docket Number: 968 WDA 2001

Page 2 of 3

June 6, 2001

## Superior Court of Pennsylvania



## COUNSEL INFORMATION

Appellant Frank E. Sheesley, Co.  
 Pro Se: Appoint Counsel Status:

IFP Status: No

## Appellant Attorney Information:

Attorney: Kuyat, Craig Edward  
 Bar No.: 39590 Law Firm: Kuyat & Kuyat  
 Address: Kuyat & Kuyat  
 132 Gazebo Park #150  
 Johnstown, PA 15901-1820

Phone No.: (814)539-8783 Fax No.: (814)535-4251

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellee Kitchen, Robert K  
 Pro Se: Appoint Counsel Status:

IFP Status:

## Appellee Attorney Information:

Attorney: Noble, Theron G.  
 Bar No.: 55942 Law Firm: Ferraraccio & Noble  
 Address: 301 East Pine Street  
 Clearfield, PA 16830

Phone No.: (814)765-4990 Fax No.: (814)765-9377

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellee Kitchen Contracting  
 Pro Se: Appoint Counsel Status:

IFP Status:

## Appellee Attorney Information:

Attorney: Noble, Theron G.  
 Bar No.: 55942 Law Firm: Ferraraccio & Noble  
 Address: 301 East Pine Street  
 Clearfield, PA 16830

Phone No.: (814)765-4990 Fax No.: (814)765-9377

Receive Mail: No

E-Mail Address:

Receive E-Mail: No

## FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
6/5/01	Notice of Appeal	55.00	55.00	2001SPRWD000709

## Appeal Docket Sheet

Docket Number: 968 WDA 2001

Page 3 of 3

June 6, 2001

## Superior Court of Pennsylvania



## TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Date of OrderAppealed From: May 17, 2001

Date Documents Received: June 5, 2001

Order Type: Judgment Entered

Judge: Reilly, John K.

President Judge

Division: Civil

Judicial District: 46

Date Notice of Appeal Filed: June 1, 2001

OTN:

Lower Court Docket No.: 01-229-CD

## ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
----------------------	------------	---------------------

Date of Remand of Record:

## BRIEFS

## DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
June 1, 2001	Notice of Appeal Filed	Appellant	Frank E. Sheesley, Co.
June 5, 2001	Docketing Statement Exited (Civil)		Western District Filing Office

**CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA  
RULE OF APPELLATE PROCEDURE 1931(c)**

---

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

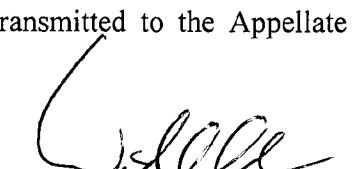
THE UNDERSIGNED, Clerk (or Prothonotary) of the Court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

**FRANK M. SHEESLEY  
VS.  
ROBERT K. KITCHEN AND  
KITCHEN CONTRACTING**  
01-229-CD

In compliance with Pa. R.A.P. 1931 (c).

The documents compromising the record have been numbered from **No. 1 to No. 17**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages comprising the document.

The date on which the record had been transmitted to the Appellate Court is  
July 6, 2001.

  
\_\_\_\_\_  
William A. Shaw

Prothonotary/Clerk of Courts

(seal)

Date	Judge
Frank M. Sheesley Co. vs. Robert K. Kitchen, Kitchen Contracting	
02/15/2001 Filing: Civil Complaint Paid by: Craig E. Kuyat, Esquire Receipt number: 1818517 Dated: 02/15/2001 Amount: \$80.00 (Check)	No Judge
03/02/2001 Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
03/14/2001 Defendants Preliminary Objections filed by Attorney Noble. No cc. Certificate of Service filed by Atty Noble. No cc	No Judge
03/16/2001 Certificate of Service, Motion for Issuance of Preliminary Injunction, upon Theron G. Noble, Esq. Filed by s/Craig E. Kuyat, Esq. no cc	No Judge
Motion For Issuance of Preliminary Injunction. Filed by s/Craig E. Kuyat, Esq.	No Judge
03/20/2001 Rule to Show Cause Requesting Preliminary Injunction issued upon Defendants, returnable April 3, 2001. By the Court, s/JKR,JR.,PJ 4 cc atty Kuyat	John K. Reilly Jr.
03/22/2001 Certificate of Service, Rule to Show Cause, upon Theron G. Noble, Esq. Filed by s/Craig E. Kuyat no cc	John K. Reilly Jr.
03/23/2001 Defendants' Preliminary Objections as to Preliminary Injunction, filed by s/Theron G. Noble, Esq. No Certified Copies Certificate of Service, filed.	John K. Reilly Jr.
03/28/2001 Plaintiff's Answer to Defendants' Preliminary Objections as to Preliminary Injunction. s/Craig E. Kuyat, Esq. no cc	John K. Reilly Jr.
Certificate of Service, Plaintiff's Answer to Defendants' Preliminary Objections as to Preliminary Injunction, upon Theron G. Noble, Esq. s/Craig E. Kuyat, Esq no cc	John K. Reilly Jr.
04/04/2001 ORDER, NOW, this 3rd day of Apr., 2001, re: Plaintiff's Motion for Preliminary Injunction. By the Court, s/JKR,JR.,P.J. 1 cc atty Kuyat, Noble	John K. Reilly Jr.
04/17/2001 ORDER, NOW, this 16th day of April, 2001, re: Counsel for the Defendant to supply the Court w/reply brief within no more than 20 days from this date. Temp Injunction. by the Court, s/JKR,JR.,P.J. 2 cc atty C. Kuyat, Noble	John K. Reilly Jr.
05/07/2001 Notice of Service, Defendants' BRIEF FOLLOWING HEARING ON PLAINTIFF'S REQUEST FOR PRELIMINARY INJUNCTION,upon Kuyat and Kuyat. s/Theron g. Noble, Esq.	John K. Reilly Jr.
05/17/2001 OPINION AND ORDER, NOW, this 17th day of May, 2001, re: Judgment Entered in favor of the Defendant and against the Plaintiff and the Preliminary Injunction entered by this Court dated April 03, 2001, shall be and is hereby Dissolved. by the Court, s/JKR,JR.,P.J. 1 cc atty Mikesell, Noble, and Kuyat	John K. Reilly Jr.
06/01/2001 Filing: Appeal to High Court Paid by: Kuyat, Craig E. (attorney for Sheesley Co., Frank M.) Receipt number: 1826134 Dated: 06/01/2001 Amount: \$45.00 (Check)	John K. Reilly Jr.
06/06/2001 Application For Order Granting Or Restoring Injunction. filed by s/Craig E. Kuyat, Esq. Verification, s/Charles J. Wisniewski no cc	John K. Reilly Jr.
06/11/2001 Appeal Docket Sheet from Superior Court, filed. Docket # 968 WDA 2001 John K. Reilly Jr.	

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

JUL 06 2001

Attest:

*William L. Reilly*  
Prothonotary

Date: 07/06/2001

Time: 09:04 AM

Page 2 of 2

Charfield County Court of Common Pleas

User: JPEPPERDAY

ROA Report

Case: 2001-00229-CD

Current judge: John K. Reilly Jr.

Date

Judge

07/02/2001 Transcript of Hearing on the Merits, April 16, 2001, before President Judge John K. Reilly Jr.  
Reilly

3. IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
PENNSYLVANIA  
CASE # 01-229-CD

FRANK M. SHEESLEY CO.  
VS.  
ROBERT K. KITCHEN and  
KITCHEN CONTRACTING

ITEM NO.	DATE of FILING	NAME of DOCUMENT	NO of PAGES
01	02/15/01	COMPLAINT	28
02	03/02/01	SHERIFF RETURNS	01
03	03/14/01	DEFENDANTS' PRELIMINARY OBJECTIONS	06
04	03/16/01	CERTIFICATE OF SERVICE	01
05	03/20/01	RULE TO SHOW CAUSE REQUESTING PRELIMINARY INJUNCTION	06
06	03/22/01	CERTIFICATE OF SERVICE	01
07	03/23/01	DEFENDANT'S PRELIMINARY OBJECTIONS AS TO PRELIMINARY INJUNCTION	05
08	03/28/01	PLAINTIFF'S ANSWER TO DEFENDANT'S PRELIMINARY OBJECTION AS TO PRELIMINARY INJUNCTION	03
09	03/28/01	CERTIFICATE OF SERVICE	01
10	04/04/01	ORDER	01
11	04/17/01	ORDER	01
12	05/07/01	NOTICE OF SERVICE	01
13	05/17/01	OPINION AND ORDER	05
14	06/01/01	NOTICE OF APPEAL	05
15	06/06/01	APPLICATION FOR ORDER GRANTING OR RESTORING INJUNCTION	06
16	06/11/01	APPEAL DOCKET SHEET	02
17	07/02/01	TRANSCRIPT	

SEPARATE COVER

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

I, **William A. Shaw**, Prothonotary/Clerk of Courts of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein

**FRANK M. SHEESLEY CO.**

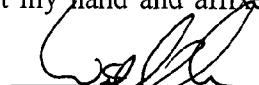
VS.

**ROBERT K. KITCHEN and  
KITCHEN CONTRACTING**

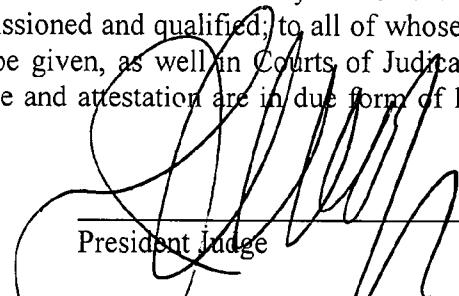
**01-229-CD**

so full and entire as the same remains of record before the said Court, at No. **01-229-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 2<sup>nd</sup> Day of July, 2001.

  
\_\_\_\_\_  
Prothonotary/Clerk of Courts

I, **John K. Reilly**, President Judge of the Forty-sixth Judicial District, do certify that **William A. Shaw** by whom the annexed record, certificate and attestation were made and given, and who, in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary/Clerk of Courts in and for said County of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere, and that the said record, certificate and attestation are in due form of law and made by the proper officer.

  
\_\_\_\_\_  
President Judge

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **John K. Reilly, Jr.**, President Judge by whom the foregoing attestation was made and who has thereunto subscribed his name was at the time of making thereof and still is President Judge, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In Testimony Whereof, I have  
hereunto set my hand and affixed  
the seal of said Court, this 6<sup>th</sup>  
day of July, 2001

  
\_\_\_\_\_  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANK M. SHEESLEY CO.,

: CIVIL ACTION

Plaintiff

: NO. 01 - 229-CD

vs.

: COMPLAINT

ROBERT K. KITCHEN and KITCHEN  
CONTRACTING,

Defendants

**FILED**

FEB 15 2001

William A. Shaw  
Prothonotary

(#1)

FRANK M. SHEESLEY CO., : IN THE COURT OF COMMON PLEAS OF  
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA  
vs. : NO. 2001 -  
ROBERT K. KITCHEN and KITCHEN : COMPLAINT  
CONTRACTING, :  
Defendants :  
.

NOTICE

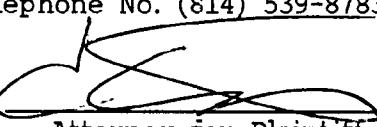
You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court, without further notice, for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

Clearfield County Court Administrator's Office  
Clearfield County Court House  
One N. Second Street  
Clearfield, PA 16830  
Telephone No. (814) 765-2641

Craig E. Kuyat, Esquire  
Supreme Court I.D. #39590

KUYAT & KUYAT  
150 Central Park Law Building  
Gazebo Park at Locust Street  
Johnstown, PA 15901  
Telephone No. (814) 539-8783

By   
Attorney for Plaintiff

FRANK M. SHEESLEY CO.,	:	IN THE COURT OF COMMON PLEAS OF
	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	NO. 2001 -
vs.	:	
ROBERT K. KITCHEN and KITCHEN	:	
CONTRACTING,	:	
Defendants	:	

COMPLAINT

AND NOW comes the Plaintiff, Frank M. Sheesley Co., by and through its attorneys, Kuyat & Kuyat, and files the following Complaint, as follows:

1. Plaintiff, Frank M. Sheesley Co., is a corporation organized and existing under the Laws of the Commonwealth of Pennsylvania, with a place of business located at 1464 Frankstown Road, Johnstown, Cambria County, Pennsylvania 15907.

2. Defendant, Robert K. Kitchen, is an individual and citizen of the Commonwealth of Pennsylvania, with an address located at R.D. #2, Box 234, Mahaffey, Clearfield County, Pennsylvania 15757.

3. Defendant, Kitchen Contracting, is a business organized and existing under the Laws of the Commonwealth of Pennsylvania, with a place of business located at R.D. #2, Box 234, Mahaffey, Clearfield County, Pennsylvania 15757.

4. At all relevant times hereinafter set forth, Defendant Robert K. Kitchen acted both in his individual capacity and as an agent, authorized representative and/or employee of Defendant, Kitchen Contracting.

5. Venue is proper in Clearfield County, as the defendants reside

or do business in this county, and as many of the acts upon which Plaintiff's claim is based took place here.

6. At all relevant times Plaintiff, Frank M. Sheesley Co., has been involved in the business of golf course construction in Pennsylvania, New Jersey and the marketing area in or near those two states.

7. Beginning on May 10, 1999, and continuing until December 31, 2000, Defendant, Robert K. Kitchen, was employed by Plaintiff as a specialist in golf course construction work; as such, his duties and salary are outlined in Articles II and III of the written employment contract, copy of which is attached hereto and marked as Exhibit "A".

8. Pursuant to this contract of employment, Defendant Robert K. Kitchen was responsible for soliciting work and supervising golf course construction projects for the plaintiff in the marketing and geographical areas which include, but are not limited to, Pennsylvania, New Jersey, Ohio, Virginia, Maryland and Delaware.

9. The term of employment is outlined in Article I which provides: "The Employer employs the Employee and Employee accepts employment with the Employer for a one year term beginning May 10, 1999 and continuing for one year successive periods thereafter, unless terminated in accordance with the provisions of this Agreement or unless terminated earlier, pursuant to the provisions of this Agreement. In the event that either party does not intend to renew this Contract for the next annual term, prior written Notice thereof must be provided to the other party, at least 60 days prior to May 10 of the next scheduled term; if such Notice is not provided, the Contract shall renew for another one year term, until properly terminated."

10. During the term of his employment with plaintiff, Defendant Robert K. Kitchen had access to plaintiff's confidential information concerning golf course construction projects and the bidding processes used on such projects.

11. All of the information and items set forth above were, and were known by Defendant Robert K. Kitchen to be competitively sensitive information which plaintiff treated, and Defendant Robert K. Kitchen knew or should have known that as an individual in a position of confidence and trust with plaintiff, he was to treat, as confidential, proprietary information inasmuch as the disclosure of such information and items would operate to the detriment of plaintiff, and to the commercial advantage of plaintiff's competitors.

12. During the term of Defendant Robert K. Kitchen's employment with plaintiff, Robert K. Kitchen was plaintiff's representative in dealing with plaintiff's various customers, owners and architects, including but not limited to the customers located in the geographical areas identified above, as well as plaintiff's potential customers located in or near the states outlined above and the marketing area within.

13. In connection with these customers and potential customers, the contract of employment further provides in Article IV that:

"During the term of this Agreement, the Employee will have access to and become familiar with various records, information and other documents in the course of his employment as a golf course construction specialist. All files, records, documents, drawings, specifications, equipment and similar items relating to the business of golf course construction, whether prepared by Employee or otherwise coming into his possession, shall remain the exclusive property of the Employer and shall not be removed from the premises of Employer under any circumstances without the prior written consent of the Employer. The Employee further agrees that upon termination of this Employment Agreement that the Employee shall not directly or indirectly enter into direct competition with the Employer in the business of golf course construction within the existing marketing area of the Employer in the Commonwealth of Pennsylvania or any future marketing area of the Employer which was begun during the employment under the terms of this Agreement; Employee further agrees not to enter into a direct or indirect competition as described here, either as an individual or on his own as a partner or joint venturer, or as an employee or agent for any person or entity, or as an officer, director or shareholder

or otherwise, for a period of 3 years after the date of termination of this Employment Agreement. This covenant on the part of the Employee shall be construed as an Agreement independent of any other provision of this Agreement; and the existence of any claim or cause of action of Employee against Employer, whether predicated on this Agreement or otherwise, shall not constitute a defense to the Employer's enforcement of this covenant. However, this covenant not to compete shall not be applicable if this Employment Contract is terminated under certain circumstances outlined in Article V, below; under such circumstances, and only under those limited circumstances, outlined below, the Employer will not be entitled to enforce this noncompetition clause."

14. In connection with the relevant contractual terms regarding termination of employment, the contract also provides under Article V that:

"The Agreement may be terminated by the Employee giving at least 60 days written Notice of Termination to the Employer; however, the Employee shall be bound by the above provisions, set forth in Article IV.

This Agreement may also be terminated by Employer pursuant to the provisions contained in Article I of this Employment Contract; however, the provisions of Article IV shall not be enforceable in that event."

15. On or about October 30, 2000, Defendant Robert K. Kitchen (the "Employee") voluntarily provided plaintiff (the "Employer") with a written "Notice to Terminate Employment", to be effective in 60 days in accordance with the terms of the Employment Agreement, outlined above. A copy of "Employee's Notice to Terminate Employment" is attached hereto and marked as Exhibit "B".

16. On or before October 20, 2000, Defendant Robert K. Kitchen had been in contact with the owners, architects and/or contractors for another proposed golf course project in East Amwell Township, New Jersey (located approximately 30 miles from the golf course under construction by Frank M. Sheesley Co. in West Windsor Township, New Jersey). A copy of a proposed draft of a letter to the owner/architect/designer from Robert K. Kitchen, dated October 20, 2000, is attached hereto and marked as Exhibit "C".

17. Upon information and belief, sometime in December, 2000, Defendant Robert K. Kitchen became employed at this other golf course construction project, referenced in Paragraph 16, or became affiliated or associated with Turco Construction, another contractor in the business of golf course construction work at this other golf course construction project in New Jersey.

18. By correspondence dated November 27, 2000, the plaintiff acknowledged the Employee's Termination Notice Letter dated October 30, 2000 pursuant to Article V of the Employment Agreement. Said correspondence also notified the employee of his responsibilities and obligations under Article IV of the Employment Agreement. A copy of plaintiff's November 27, 2000 correspondence is attached hereto and marked as Exhibit "D".

19. Upon information and belief, the Defendant Robert K. Kitchen left plaintiff's employ and took numerous drawings and other documents for possible future use by Robert Kitchen/Kitchen Contracting. The items include, but are not limited to, files, payroll records and documentation, pricing information, literature and copies of orders and/or other confidential information, including numerous documents highlighting problems encountered and solutions for problems incurred at plaintiff's golf course construction project in West Windsor Township, New Jersey.

20. Upon information and belief, Defendants Robert K. Kitchen and Kitchen Contracting may be using the information referred to above to their commercial and competitive advantage and to the commercial and competitive detriment of plaintiff.

21. Defendant Robert K. Kitchen's actions as aforesaid were

intentional and constitute a diversion of plaintiff's business opportunities.

22. Upon information and belief, Defendant Robert K. Kitchen undertook many of the activities described above prior to the time he left plaintiff's employ in December, 2000.

23. Plaintiff will suffer irreparable harm and injury if the actions of Defendants Robert K. Kitchen and Kitchen Contracting are not enjoined, including but not limited to the loss of clients, profits, business reputation and market share, the loss of confidential business information, and the loss of employees and revenues from golf course construction work.

24. Accordingly, plaintiff does not have an adequate remedy at law.

COUNT I - BREACH OF CONTRACT AND TORTIOUS  
INTERFERENCE WITH CONTRACT

25. Plaintiff incorporates herein by reference the allegations contained in Paragraphs 1 through 24, above, as fully as though the same were set forth herein at length.

26. Upon information and belief, Defendant Robert K. Kitchen has made use of confidential information during his ongoing business relationship with the directors, employees, agents and servants of Turco Construction and/or the owners or architects for other golf course construction projects in or near the plaintiff's golf course construction project in New Jersey and/or has made use of such information on his own or in connection with business dealings on behalf of Kitchen Contracting.

27. Upon information and belief, Defendant has and continues to deal with many of plaintiff's customers or potential customers with whom he dealt as

an employee of Frank M. Sheesley Co., in connection with his business dealings with golf course construction work, including but not limited to constructing of a golf course in or near East Amwell Township, New Jersey.

28. Upon information and belief, Defendant Robert K. Kitchen continues to compete with plaintiff in the same geographical area to which he was assigned pursuant to his contract of employment with plaintiff.

29. Defendant Robert K. Kitchen's actions as described above constitute material breaches of the written Employment Agreement with plaintiff.

30. As a result of said actions, plaintiff has suffered and will continue to suffer immediate and irreparable harm for which plaintiff has no adequate remedy at law.

31. Said wrongful acts will continue unless enjoined.

WHEREFORE, plaintiff demands judgment against defendants, and relief as follows:

- a. Preliminary and permanent injunctive relief enjoining Robert K. Kitchen's continued violation of his employment contract with plaintiff, continued use of plaintiff's confidential information and continued contact with plaintiff's customers;
- b. An order directing that the defendants return to plaintiff all of plaintiff's confidential information in defendant's possession or under defendant's control;
- c. An order enjoining Robert K. Kitchen and Kitchen Contracting from working at any golf course construction projects in the marketing and geographic areas including Pennsylvania, New Jersey, Ohio, Virginia, Maryland and Delaware for a period of 3 years from December 30, 2000;

- d. Compensatory damages;
- e. An award of reasonable attorney's fees and costs; and
- f. Such other relief as this Honorable Court deems appropriate.

COUNT II - BREACH OF FIDUCIARY DUTY

32. Plaintiff incorporates herein by reference the allegations contained in Paragraphs 1 through 31, above, as fully as though the same were set forth herein at length.

33. Upon information and belief, while Defendant Robert K. Kitchen was employed by plaintiff, he may have contacted plaintiff's various customers and told them of his intent to perform his own golf course construction work and discussed with them the possibility of doing business if or when he left plaintiff's employ.

34. Upon information and belief, while employed by plaintiff, Defendant Robert K. Kitchen may have also contacted potential customers of the plaintiff and told them of his intent to perform golf course construction work and discussed with them the possibility of their doing business with him.

35. Upon information and belief, since October, 2000 Robert K. Kitchen and/or Kitchen Contracting, began the solicitation of business from plaintiff's customers, owners, architects and competing contractors, in particular those identified in the above paragraphs, in direct violation of the express terms of his employment contract with plaintiff.

36. Upon information and belief, while still employed by plaintiff, Defendant Robert K. Kitchen and/or Kitchen Contracting began to seek work or

business in the area of golf course construction within plaintiff's marketing and geographic areas.

37. Upon information and belief, Defendant Robert K. Kitchen on his own behalf, and on behalf of Defendant Kitchen Contracting, will continue to act in the manners described above, to the detriment of plaintiff, all of which constitutes a breach of fiduciary duty owed to plaintiff by Defendant.

38. As a result of said actions, plaintiff has suffered and will continue to suffer immediate and irreparable harm for which plaintiff has no adequate remedy at law.

39. Said wrongful acts will continue unless enjoined.

WHEREFORE, plaintiff demands judgment against defendants, and relief as follows:

- a. Preliminary and permanent injunctive relief enjoining Robert K. Kitchen's continued violation of his employment contract with plaintiff and continued use of plaintiff's confidential information;
- b. Impoundment of the originals and all copies of any of plaintiff's confidential information currently in defendant's possession and/or under defendant's control;
- c. A declaration that Defendant has willfully violated his fiduciary duties to plaintiff;
- d. An Order enjoining Robert K. Kitchen Contracting from performing work at any golf course construction projects in the marketing and geographic areas including Pennsylvania, New Jersey, Ohio, Virginia, Maryland and Delaware for a period of 3 years from December 30, 2000;
- e. An award of compensatory damages;

- f. An award of reasonable attorney's fees and costs; and
- g. Such other relief as this Honorable Court deems appropriate.

COUNT III - UNFAIR COMPETITION AND USE OF TRADE  
SECRETS AND CONFIDENTIAL INFORMATION

40. Plaintiff incorporates herein by reference the allegations contained in Paragraphs 1 through 39, above, as fully as though the same were set forth herein at length.

41. Upon information and belief, when Defendant Robert K. Kitchen left the employ of plaintiff, he took with him numerous items of plaintiff's confidential information, including but not limited to customer lists, drawings, sketches, pricing strategies, pricing lists, marketing strategies and techniques and business strategies.

42. Upon information and belief, Defendant Robert K. Kitchen is using this confidential information on his own behalf and on the behalf of Defendant Kitchen Contracting.

43. Defendant's use of plaintiff's confidential information has and will continue to cause plaintiff immediate and irreparable harm for which plaintiff has no adequate remedy at law.

44. Said wrongful acts will continue unless enjoined.

WHEREFORE, plaintiff demands judgment against defendants, and relief as follows:

- a. Preliminary and permanent injunctive relief enjoining defendant's continued use of plaintiff's confidential information and trade secrets;
- b. Impoundment and return to plaintiff of the originals and all copies

of Plaintiff's confidential information and trade secrets currently in defendant's possession and/or under defendant's control;

c. An Order enjoining Robert K. Kitchen and Kitchen Contracting from working at any other golf course construction projects in the marketing and geographic areas including Pennsylvania, New Jersey, Ohio, Virginia, Maryland and Delaware for a period of 3 years from December 30, 2000;

d. An award of compensatory and punitive damages;

e. An award of reasonable attorney's fees and costs; and

f. Such other relief as this Honorable Court deems appropriate.

COUNT IV - RECOUPMENT FOR OVERPAYMENTS  
TO ROBERT K. KITCHEN

45. Plaintiff incorporates herein by reference the allegations contained in Paragraphs 1 through 44, above, as fully as though the same were set forth herein at length.

46. After receiving the Resignation of Employment Letter (Exhibit "B") from Defendant Robert K. Kitchen, the plaintiff advised Robert K. Kitchen of two overpayments on wages he had received under the Employment Agreement. See Exhibit "D" attached hereto.

47. Defendant Robert K. Kitchen was aware, and had been previously advised, that he was overpaid \$2,692.31 for the week ending March 4, 2000. A copy of the Payroll History Report, showing the overpayment, is attached hereto as Exhibit "E".

48. Defendant Robert K. Kitchen had requested an advance of

\$24,370.43 against his estimated future commission for the golf course construction project at West Windsor Township, New Jersey; that amount was paid to him in October, 1999. A copy of the Payroll History Report, showing such payment, is attached hereto as Exhibit "F".

49. At the time set forth in Paragraph 48, Robert K. Kitchen had calculated that the aforementioned golf course construction project in West Windsor Township, New Jersey would earn a profit of approximately \$750,000.00 for Frank M. Sheesley Co., plaintiff herein. Under the Employment Agreement, Robert K. Kitchen, would become entitled to a commission on net profits.

50. Plaintiff has recently discovered that Robert K. Kitchen's calculations were erroneous and that the golf course construction project in West Windsor Township, New Jersey will not make any profit; in fact, the plaintiff will lose significant money on this golf course construction project which Robert K. Kitchen bid on behalf of the plaintiff corporation.

51. Therefore, in addition to the \$70,000.00/year salary paid to Robert K. Kitchen since May 10, 1999, the Employee (Robert K. Kitchen) has received overpayments totalling \$27,062.74 from Frank M. Sheesley Co.

52. Based on the assurances of Robert K. Kitchen, plaintiff did not pursue recoupment of such overpayments at some earlier point, but since Robert K. Kitchen recently terminated his employment with Frank M. Sheesley Co. and the plaintiff no longer anticipates any profit on the aforementioned golf course construction project, the employer/plaintiff has requested repayment of said \$27,062.74 from the defendants (see Exhibit "D" attached hereto).

53. In the alternative, Defendant Robert K. Kitchen has been unjustly enriched, through his actions and assurances, resulting in overpayments

from the plaintiff totalling \$27,062.74 to Robert K. Kitchen.

WHEREFORE, plaintiff demands judgment against defendants in the amount of \$27,062.74, in addition to any other relief sought in this Complaint or which this Honorable Court deems appropriate.



Craig E. Kuyat, Attorney for Plaintiff

Supreme Court I.D. #39590  
KUYAT & KUYAT  
132 Gazebo Park, Suite 150  
Johnstown, PA 15901  
(814) 539-8783

EMPLOYMENT AGREEMENT

This Agreement is made on this 10th day of May, 1999, between FRANK M. SHEESLEY CO., Employer, having a principal place of business at 1464 Frankstown Road, Johnstown, PA 15907 and ROBERT K. KITCHEN, Employee, R. D. #2, Box 234, Mahaffey, PA 15757. In consideration of the mutual conveyance and agreements set forth below, the parties agree as follows:

ARTICLE I- TERM OF EMPLOYMENT

The Employer employs the Employee and Employee accepts employment with the Employer for a one year term beginning May 10, 1999 and continuing for one year successive periods thereafter, unless terminated in accordance with the provisions of this Agreement or unless terminated earlier, pursuant to the provisions of this Agreement. In the event that either party does not intend to renew this Contract for the next annual term, prior written Notice thereof must be provided to the other party, at least 60 days prior to May 10 of the next scheduled term; if such Notice is not provided, the Contract shall renew for another one year term, until properly terminated.

ARTICLE II - DUTIES OF EMPLOYEE

The Employee is employed as a specialist in golf course construction work and shall work at the main office of the Employer and at any other location,

as directed by the Employer. Additionally, the Employee's duties may also include marketing, sales and general supervision of golf course construction, as well as estimating and overseeing of general construction work performed by the Employer, as determined from time to time by the President of Frank M. Sheesley Co.

At the commencement of his employment, the Employee shall perform duties at the office of the Employer; however, if later deemed necessary by the Employer for business purposes, the Employee shall work at any other place or places specified by the Employer in order to fulfill the work duties. The Employee shall not directly or indirectly render any services of a business, construction, commercial, or professional nature to any other organization, whether for compensation or otherwise, without the prior written consent of the Employer.

### ARTICLE III - COMPENSATION

As compensation for services rendered under this Agreement, the Employee shall be entitled to receive from the Employer an annual salary of \$70,000.00 per year. As additional compensation for services rendered under this Agreement, Employee shall also be entitled to receive from the Employer a sum equal to 10 percent of the net profits of the Employer which are derived from golf course construction work only. The amount of net profits from golf course construction shall be determined at the end of each project. The term "net profits" shall mean the net income from golf course construction work performed by the Employer after deducting expenses, but before taxes, as determined according to generally accepted accounting principals by the certified public

accountants retained by Employer and in conformity with the prior accounting practices of the Employer.

ARTICLE IV - PRIVILEGED INFORMATION AND AGREEMENT NOT TO COMPETE

During the term of this Agreement, the Employee will have access to and become familiar with various records, information and other documents in the course of his employment as a golf course construction specialist. All files, records, documents, drawings, specifications, equipment and similar items relating to the business of golf course construction, whether prepared by Employee or otherwise coming into his possession, shall remain the exclusive property of the Employer and shall not be removed from the premises of Employer under any circumstances without the prior written consent of the Employer. The Employee further agrees that upon termination of this Employment Agreement that the Employee shall not directly or indirectly enter into direct competition with the Employer in the business of golf course construction within the existing marketing area of the Employer in the Commonwealth of Pennsylvania or any future marketing area of the Employer which was begun during the employment under the terms of this Agreement; Employee further agrees not to enter into a direct or indirect competition as described here, either as an individual or on his own or as a partner or joint venturer, or as an employee or agent for any person or entity, or as an officer, director or shareholder or otherwise, for a period of 3 years after the date of termination of this Employment Agreement. This covenant on the part of the Employee shall be construed as an Agreement independent of any other provision of this Agreement; and the existence of any

claim or cause of action of Employee against Employer, whether predicated on this Agreement or otherwise, shall not constitute a defense to the Employer's enforcement of this covenant. However, this covenant not to compete shall not be applicable if this Employment Contract is terminated under certain circumstances outlined in Article V, below: under such circumstances, and only under those limited circumstances, outlined below, the Employer will not be entitled to enforce this noncompetition clause.

ARTICLE V - TERMINATION OF THIS AGREEMENT

If the Employee wilfully breaches or habitually neglects the duties which he is required to perform under this Agreement, the Employer may, at its option, terminate this Agreement by giving written Notice of Termination to the Employee without prejudice to any other remedy to which the Employer may be entitled either at law, in equity, or under this Agreement; under such circumstances, the Employee shall be bound by the above provisions, set forth in Article IV.

The Agreement may be terminated by the Employee giving at least 60 days written Notice of Termination to the Employer; however, the Employee shall be bound by the above provisions, set forth in Article IV.

This Agreement may also be terminated by Employer pursuant to the provisions contained in Article I of this Employment Contract; however, the provisions of Article IV shall not be enforceable in that event.

Employee shall be entitled to the compensation earned prior to the date of termination of employment, as outlined in Article III of this Agreement, computed pro rata up through the date of termination, including any commissions

on net profits on golf course construction projects which had been earned up to and including the date of termination of employment. The Employee shall be entitled to no further compensation after the date of termination of employment, except for 10 percent of net profits on any pending project, for which the Employee has already earned commissions for net profits, in which event the commissions shall continue until the project has been completed and the final net profits are determined and distributed.

#### ARTICLE VI - AUTHORITY OF THE EMPLOYEE

It is expressly agreed that the Employee shall have no right or authority at any time to make any contract or binding promise of any nature on behalf of the Employer, whether oral or written, to extend credit on behalf of the Employer, incur any debt or otherwise obligate Employer for the payment of any obligation or to employ, hire or retain any person, firm, corporation or entity on behalf of the Employer, without the express written consent of the Employer.

#### ARTICLE VII - GENERAL PROVISIONS

Any notices to be given under this Agreement by either party to the other may be effected by personal delivery in writing or by mail, registered or certified, postage prepaid, with return receipt requested. Mailed notice shall be addressed to the party at the address appearing in the introductory paragraph of this Agreement or at any new address or location which has been properly provided, in writing, to the other party. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed

communicated as of 3 days after mailing.

This Agreement supersedes any other oral or written Agreements between the parties with respect to such employment and this Agreement contains all of the covenants and agreements between the parties with respect to the employment.

This Agreement shall be governed by and construed in accordance with the Laws of the Commonwealth of Pennsylvania.

If the Employee dies prior to the expiration of the term of employment, any money that may be due to him from the Employer under this Agreement, as of the date of death, shall be paid to the Executor, Administrator or other personal representative of Employee's Estate.

This Agreement has been executed by and between the parties on this 10th day of May, 1999.

FRANK M. SHEESLEY CO., EMPLOYER

Attest: Stuart Whinney  
Secretary

By Charles J. Kitchens  
President

Robert K. Kitchen  
ROBERT K. KITCHEN, EMPLOYEE

EMPLOYEE'S  
NOTICE TO TERMINATE  
EMPLOYMENT

THIS NOTICE IS GIVEN ON OCTOBER 30, 2000. ACCORDING TO THE ORIGINAL EMPLOYMENT AGREEMENT DATED MAY 10, 1999 THE EMPLOYEE MUST GIVE WRITTEN NOTICE TO TERMINATE SIXTY (60) DAYS IN ADVANCE.

DETERMINING FACTORS  
FOR TERMINATION

THE EMPLOYEE'S HEALTH IS NO LONGER ABLE TO STAND THE STRESS OF THIS TYPE OF EMPLOYMENT, AND IS IN NEED OF TIME OFF.

THE EMPLOYEE HAS SUFFERED OVER \$ 150,000.00 PER YEAR INCOME LOSS IN RELATION TO PRIOR EMPLOYMENT STATUS.

THE EMPLOYEE HAS LIVED THE MAJORITY OF HIS TIME EMPLOYED ON THE ROAD. SPECIFICALLY IN TRENTON, NEW JERSEY. THIS TIME AWAY IS PLACING STRESS ON THE FAMILY OF EMPLOYEE, AND IS NO LONGER TOLERABLE.

THE EMPLOYEE HAS WORKED IN SALES, ESTIMATING, SUPERVISION, HUMAN RESOURCES, SHAPING, AND LABOR. THIS SITUATION IS NO LONGER TOLERABLE.

THE JOB IN MERCER COUNTY, NEW JERSEY HAS HAD MANY OF SET BACKS, MAINLY THE WEATHER HAS HAMPERED THE JOB, AND THE REPRESENTATIVE'S WITHIN THE COUNTY HAVE DRAMATICALLY SLOWED THE PROGRESS BY INDECISION, AND NOT STANDING BY THEIR RESPONSIBILITIES FOR THE DE-WATERING OF THE PROJECT. THIS IS NO LONGER TOLERABLE.

THE EMPLOYEE HAS BEEN SCRUTINIZED BY PRINCIPALS OF THE EMPLOYER IN A LESS THAN PROPER FASHION, WHICH HAS CHALLANGED THE EMPLOYEE'S PROFESSIONALISM AND ETHICS. THIS IS NOT TOLERABLE.

PROPOSAL  
FOR EMPLOYMENT  
ALTERNATIVE

THE EMPLOYEE ROBERT KITCHEN IS WILLING TO ALTER THE EMPLOYMENT AGREEMENT AS FOLLOWS. EMPLOYEE WILL WORK AS A GOLF COURSE CONSULTANT TO THE EMPLOYER TO AID IN THE CONSTRUCTION OF GOLF COURSE'S. THIS POSITION WILL ENABLE THE EMPLOYER TO USE THE EMPLOYEE AND HIS WORK HISTORY TO BID AND BUILD GOLF COURSE'S.

THE EMPLOYEE WILL REVIEW BIDS, BE AVAILABLE FOR CONSULTATION WHEN NEEDED.

THE EMPLOYEE WILL BE PAID \$30,000.00 A YEAR PLUS BENEFITS AND RETIREMENT.

THE EMPLOYEE WILL SUB-CONTRACT SHAPING AND OTHER SPECIALTY WORK AS NEEDED.

THE EMPLOYEE WILL NOT BE DUE ANY PORTION OF THE EMPLOYER'S PROFITS OTHER  
THEN THE \$30,000.00 A YEAR RETAINER-SALARY, PLUS ALL MONEY'S FOR SUB-CONTRACT WORK  
PERFORMED.

THE EMPLOYEE'S OFFICE WILL BE AT HOME.

THE EMPLOYEE WILL HAVE THE ABILITY TO SUB-CONTRACT WORK FROM OTHER  
CONTRACTOR'S.

#### GENERAL PROVISIONS

THE EMPLOYEE UNDERSTANDS THAT THE MERCER COUNTY JOB WILL NOT BE COMPLETED  
UNTIL THE SPRING OF 2001, AND AT THAT TIME THE CORP. WILL BE ABLE TO CALCULATE THE  
TRUE AMOUNT OF PROFIT FROM THE JOB- ARBITRATION-LITIGATION, AT THAT TIME THE  
EMPLOYER AND EMPLOYEE WILL SETTLE ALL FINANCIAL DIFFERENCES.

THE EMPLOYEE UNDERSTANDS THAT THE COMPANY HAS MADE INVESTMENTS IN  
MACHINES AND OTHER EQUIPMENT NECESSARY TO FUNCTION WITHIN THE GOLF COURSE  
BUSINESS. IF THE COMPANY ELECTS TO BACK AWAY FROM THE GOLF COURSE CONSTRUCTION  
THE EMPLOYEE WOULD BE INTERESTED IN PURCHASING THE EQUIPMENT.

THE EMPLOYEE IS OPEN FOR NEGOTIATION, HOWEVER NOTICE OF TERMINATION SHALL  
STAY IN FORCE, AND SHALL BECOME EFFECTIVE WITHIN 60 DAYS.

IF THE EMPLOYER IS NOT INTERESTED IN NEGOTIATION, THE EMPLOYEE IS IN AGREEMENT  
TO SHORTEN THE TERMS OF TERMINATION TO A MUTUALLY BENEFICIAL TIME PERIOD.

THIS TERMINATION NOTICE HAS BEEN DOCUMENTED BY ROBERT K. KITCHEN  
ON THIS 30th DAY OF OCTOBER IN THE YEAR 2000

BY   
EMPLOYEE -ROBERT K. KITCHEN.

16:30 16/24/00

## KITCHEN CONTRACTORS

1172 box 234  
Mahaffey, PA 15757  
USAPhone (814)277-4525  
Fax (814)277-4525

MR.

October 20, 2000

Attn. Joel Moore  
The Ridge @ Backbrook

DEAR MR. MOORE

Dear Sir,

As the golf course representative for the Frank M. Sheesley Co. I would like to thank you for the opportunity you have given us to bid on your high profile golf course project. After reviewing the specifications and the blue prints we regret that we are not able to furnish you with the lump sum bid that you require for your project. Our subcontractors need at least an additional 2 weeks to give you the proper consideration that is required to be competitive. After talking with Tom Griswold I understand the other contractor's involved have already sharpened their pencils a time or two, and you are eager to get your project started. In consideration of all the ~~unique~~ <sup>unique</sup> conditions that exist at this time I have been authorized to submit the following proposal. ~~FOR YOUR~~ <sup>WOULD BE PLEASED</sup> ~~CONSIDERATION.~~

~~COST + 7% OVERHEAD + 5% PROFIT. WITH THE UNDERSTANDING THAT WE WOULD PARTNER THIS PROJECT WITH YOU TO REVIEW ALL COST ISSUES FOR THE MOST ECONOMICAL METHODS.~~

~~CLARIFICATIONS TO THIS PROPOSAL:~~

1. Robert Kitchen will personally rough shape out the entire frame work of the golf course insuring the proper tie-ins and transitions needed to aid in the evolution of design that the Fazio designer's have perfected.
2. Robert Kitchen will personally oversee the superintendent, and the finish shaping, as well as all other aspects of the course construction.

Advantages to this proposal.

1. Generally in contract construction the means and the methods belong to the contractor. In this proposal you are directly involved in the means and methods and all savings are passed directly back to you.

2. We are looking at what I consider an extremely tight schedule. There is rock problems, water problems, with compaction problems and settling problems. We are now entering the fall season, the days are getting shorter, drying time for the materials will be minimized. I believe that this job needs to be built in ~~a surgical type manner~~ whereas we would stay focused on short hauls and balanced cut and fill situations. Using this method we can stay focused on shaping and design throughout the construction - design process. As we are working ~~through~~ <sup>the winter, spring season we will have developed the most efficient, and cost effective ways of moving and</sup> ~~building and lining the problem areas.~~ <sup>ADDRESSING ALL</sup> ~~POTENTIAL PROBLEM AREAS~~ <sup>COMING</sup>

3. Currently the market is strong and construction is booming, many contractor's are no longer bidding, they are simply throwing out numbers. By choosing this ~~alternative for construction~~ <sup>which will give us ample time for shopping the market</sup> which will insure the best possible numbers for you. ~~COSTS FOR YOU.~~ <sup>PRICING OF THE INDUSTRY</sup> ~~ALTERNATE METHODS~~

4. Many courses get recognized for their strong holes, but they ~~simply~~ do not make it to a top 100 Golf course. I believe that in order to attain your desire to have a top rated course there is no room for any ~~weak~~ holes. I also believe that haste produces waste, and often results in forced design. I believe in the Fazio Philosophy

OMIT

IMPRESSIBLE

FEB-01-2001 13:48 FROM FRANK M. SHEESLEY CO

16:31 10/20/00

TO

5354251

P.04

Hut 43

Which Places quality ahead of quantity, and at times places form ahead of function. At the present time the existing land forms are stable. If this site is totally ripped open going into the winter it will introduce ~~undesirable~~ <sup>? project</sup> on the design and construction efforts, not to mention the inability to complete the course on time.

In closing I would like to wish you good fortune in your golf course endeavor. AND HOPEFULLY  
YOUR CONSIDERATION IN WORKING WITH YOU ON  
THIS PROJECT.

Sincerely,

Robert K. Kitchen



**FRANK M. SHEESLEY CO.** GENERAL CONTRACTOR  
1464 FRANKSTOWN ROAD P.O. BOX 339  
(814) 536-5303 JOHNSTOWN, PA 15907  
FAX (814) 539-8038

November 27, 2000

Mr. Robert Kitchen  
R. D. 2, Box 234  
Mahaffey, PA 15757

Dear Mr. Kitchen:

By your letter dated October 30, 2000, this letter acknowledges termination of the Employment Agreement dated May 10, 1999, pursuant to Article V of the Agreement. It is also our understanding that you have filed for disability benefits with our insurance company, The Guardian, stating your actual last day of work was November 2, 2000.

As you are aware, you were previously overpaid by our company for the week ending March 4, 2000 by error in the amount of \$2,692.31. Also, you have previously been paid \$24,370.43 on October 13, 1999 toward compensation under Article III of the Employment Agreement. At that time there was an expectation by both the employee and employer that the golf course construction project in Trenton, New Jersey would make a profit. You are aware that position has changed drastically. These issues along with several others need to be addressed as soon as possible.

We request at this time that you return the company vehicle, company records, credit cards, cell phone, etc. Please call to make these arrangements.

Please be advised that pursuant to Article IV of the Employment Agreement, you have certain responsibilities and obligations. Those provisions are applicable for three years from the date of termination of the Employment Agreement.

Sincerely,

Charles J. Wisniewski  
President

Date: 12/22/00  
Time: 10:43:42AM

Frank M. Sheesley Co.  
EMPLOYEE PAYROLL HISTORY

Page: 3

EXHIBIT "E"

Earnings							Taxes							Benefits And Deductions			
Type	Amount	Hours	Type	Code	Earnings	Tax Amt	Def	ST/Code/Def	Description	Type	Earnings	Amount					
Check	510				Issue date Pay period end	2/23/00			Net Pay Reimbursement		2,169.72						
Check Type	Regular					2/18/00				0.00							
Reg	2,692.31	0.00	FIT		2,692.31	221.25	WC	PA-1	GRADING OF LAND	Bft	2,692.31	169.88					
			SocSec "SSE"		2,692.31	168.92											
			SocSec "SSR"		2,692.31	168.92											
			Med "MEDICE"		2,692.31	38.04											
			Med "MEDICR"		2,692.31	38.04											
			State PA		2,692.31	75.38											
			FUTA "FUTA"		0.00	0.00											
			SUTA PA		0.00	0.00											
Total	2,692.31	0.00															
Check	581				Issue date Pay period end	3/8/00			Net Pay Reimbursement		3,848.90						
Check Type	Regular					3/4/00				0.00							
Reg	5,384.62	0.00	FIT		5,384.62	973.02	WC	PA-1	GRADING OF LAND	Bft	5,384.62	339.77					
			SocSec "SSE"		5,384.62	333.85											
			SocSec "SSR"		5,384.62	333.85											
			Med "MEDICE"		5,384.62	78.08											
			Med "MEDICR"		5,384.62	78.08											
			State PA		5,384.62	150.77											
			FUTA "FUTA"		0.00	0.00											
			SUTA PA		0.00	0.00											
Total	5,384.62	0.00															
Check	635				Issue date Pay period end	3/22/00			Net Pay Reimbursement		2,169.72						
Check Type	Regular					3/18/00				0.00							

EMPLOYEE NUMBER KITC7519 EMPLOYEE NAME ROBERT K. KITCHEN

SOCIAL SECURITY NUMBER 267-58-7519

PERIOD ENDING	HOURS			TAXES			DEDUCTIONS -- BENEFITS		
	REGULAR	SICK	OV-TIME	GROSS	FED	STATE	POST-TAX	W/C DED	UNION BEN
CHK ISSUE DATE	HOLIDAY	PRE-TAX	SOC SEC	LOCAL	NET PAY	CHECK #	W/C DED	WCOMP BEN	
CHECK TYPE	VACATION	ADJ. GR.	MEDICARE	DIS			MISC. DED	401K BEN	
09 OCT 1999	0.00	0.00	24370.43	6823.72	682.37	0.00	0.00	0.00	
13 OCT 1999	0.00	0.00	0.00	1510.97	0.00	15000.00	0.00	1537.77-	
Manual	0.00	0.00	24370.43	353.37	0.00	9884	0.00	0.00	
16 OCT 1999	0.00	0.00	2692.31	223.85	75.38	0.00	0.00	0.00	
20 OCT 1999	0.00	0.00	0.00	166.92	0.00	2187.12	0.00	169.88-	
Calculated	0.00	0.00	2692.31	39.04	0.00	9942	0.00	0.00	
30 OCT 1999	0.00	0.00	2692.31	223.85	75.38	0.00	0.00	0.00	
03 NOV 1999	0.00	0.00	0.00	166.92	0.00	2187.12	0.00	169.88-	
Calculated	0.00	0.00	2692.31	39.04	0.00	10059	0.00	0.00	
13 NOV 1999	0.00	0.00	2692.31	223.85	75.38	0.00	0.00	0.00	
17 NOV 1999	0.00	0.00	0.00	166.92	0.00	2187.12	0.00	169.88-	
Calculated	0.00	0.00	2692.31	39.04	0.00	10171	0.00	0.00	
27 NOV 1999	0.00	0.00	2692.31	223.85	75.38	0.00	0.00	0.00	
01 DEC 1999	0.00	0.00	0.00	166.92	0.00	2187.12	0.00	169.88-	
Calculated	0.00	0.00	2692.31	39.04	0.00	10279	0.00	0.00	

\*\*\*\*\* EMPLOYEE ROBERT K. KITCHEN

TOTALS \*\*\*\*\*

PERIOD ENDING	HOURS			TAXES			DEDUCTIONS -- BENEFITS		
	REGULAR	SICK	OV-TIME	GROSS	FED	STATE	POST-TAX	W/C DED	UNION BEN
CHK ISSUE DATE	HOLIDAY	PRE-TAX	SOC SEC	LOCAL	NET PAY	CHECKS	W/C DED	WCOMP BEN	
CHECK TYPE	VACATION	ADJ. GR.	MEDICARE	DIS			MISC. DED	401K BEN	
	0.00	0.00	63408.92	10069.54	1775.38	0.00	0.00	0.00	
	0.00	0.00	0.00	3931.31	0.00	46713.24	0.00	2995.48-	
	0.00	0.00	63408.92	919.45	0.00	£6	0.00	0.00	

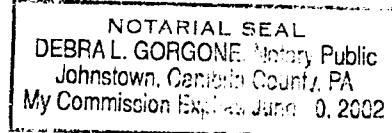
COMMONWEALTH OF PENNSYLVANIA :  
: SS:  
COUNTY OF CAMERIA :

Personally appeared before me, a Notary Public in and for said County and State, CHARLES J. WISNIEWSKI, President of Frank M. Sheesley Co., who being duly sworn according to law, deposes and says that the matters set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

  
Charles J. Wisniewski

Sworn to and subscribed before me  
this 14th day of February, 2001.

Debra L. Gorgone  
Notary Public



NO. 2001 -

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

FRANK M. SHEESLEY CO.,

Plaintiff

vs.

ROBERT K. KITCHEN and KITCHEN  
CONTRACTING,

Defendants

COMPLAINT

**FILED**

*Red*  
FFP 15 7/11  
D. J. Latty, Kuyat  
William A. Shaw  
Prothonotary  
pd. \$80.00

KUYAT & KUYAT

ATTORNEYS AT LAW  
150 CENTRAL PARK LAW BUILDING  
GARIBO PARK AND LOCUST STREET  
JOHNSTOWN, PENNSYLVANIA 15901

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10705

FRANK M. SHEESLEY CO.

01-229-CD

VS.

KITCHEN, ROBERT K. and KITCHEN CONTRACTING

**COMPLAINT**

**SHERIFF RETURNS**

NOW FEBRUARY 23, 2001 AT 1:39 PM EST SERVED THE WITHIN COMPLAINT  
ON ROBERT K. KITCHEN, DEFENDANT AT RESIDENCE, RD #2, BOX 234,  
MAHAFFEY, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO CAMILLE  
KITCHEN, WIFE, A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT  
AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: NEVLING

NOW FEBRUARY 23, 2001 AT 1:39 PM EST SERVED THE WITHIN COMPLAINT  
ON KITCHEN CONTRACTING, DEFENDANT AT RESIDENCE, RD # 2, BOX 234,  
MAHAFFEY, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO CAMILLE  
KITCHEN, WIFE/PIC, A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT  
AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: NEVLING

---

**Return Costs**

Cost	Description
35.78	SHFF. HAWKINS PAID BY: ATTY.
20.00	SURCHARGE PAID BY: ATTY.

**FILED**

MAR 02 2001  
10:455 pm  
William A. Shaw  
Prothonotary *JKS*

Sworn to Before Me This

2nd Day Of March 2001  
*William A. Shaw*

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

So Answers,

*Chester Hawkins*  
*by Marilyn Hamer*  
Chester A. Hawkins  
Sheriff

#2

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

FRANK M. SHEESLEY CO., :  
PLAINTIFF, :  
v. : CIVIL ACTION NO.  
ROBERT K. KITCHEN and :  
KITCHEN CONTRACTING, :  
DEFENDANTS. :  
: TYPE OF PLEADING:  
: DEFENDANTS'  
: PRELIMINARY OBJECTIONS  
: FILED BY:  
: DEFENDANTS  
: COUNSEL FOR THIS PARTY:  
: Theron G. Noble, Esquire  
: Ferraraccio & Noble  
: 301 East Pine Street  
: Clearfield, PA 16830  
: 814-375-2221  
: PA I.D. #: 55942

**FILED**

MAR 14 2001

William A. Shaw  
Prothonotary

107  
#3

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

PLAINTIFF: **ROBERT M. KELLY, JR.**  
DEFENDANT: **BRUCE R. BROWN**  
CIVIL MOTION NO: **01-358-CB**  
TYPE OF PLEADING: **DEFENDANT'S**  
DEFENDANT(S): **BRUCE R. BROWN**  
FILED BY: **DEFENDANT'S**  
CONSEIL FOR THIS PARTY:  
Attala, O. Kopke, Padilla  
101 Elm Street, PA 16870  
412-343-5551  
PA 16101-9805

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

FRANK M. SHEESLEY CO., )  
Plaintiff, )  
v. ) No. 01- 229 -CD  
ROBERT K. KITCHEN and )  
KITCHEN CONTRACTING, )  
Defendants. )

DEFENDANTS' PRELIMINARY OBJECTIONS

AND NOW, comes the Defendants, Robert K. Kitchen and Kitchen Contracting, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of their PRELIMINARY OBJECTION:

1. This matter was initiated with the filing of a CIVIL COMPLAINT, which was duly served on the Defendants.
2. That Defendants have timely responded to said CIVIL COMPLAINT with the filing of these PRELIMINARY OBJECTIONS.

I: Demurrer

3. That Plaintiff states as its second cause of action Breach of Fiduciary Duty.
4. That the only relationships alleged by Plaintiff in its CIVIL COMPLAINT between it and Defendants are (i) contractual and (ii) employment.
5. That Plaintiff does not state any grounds upon which either Defendant owed Plaintiff a fiduciary duty.
6. In that Plaintiff has failed to state any fiduciary owed to it by either Defendant, Defendants can not have breached any such fiduciary duty.
7. That Pursuant to Pa.R.Civ.P. 1028(a)(4), a demurrer should be granted as to Plaintiff's second count.

II: Lack of Jurisdiction

8. In numerous prayers for relief, Plaintiffs request as follows:

"An order enjoining Rokert K. Kitchen and Kitchen Contracting from working at any golf course construction projects in the marketing areas and geographic areas including Pennsylvania, New Jersey, Ohio, Virginia, Maryland and Delaware for a period of 3 years from December 30, 2000". [emphasis added]

9. That this Court does not have jurisdiction to enjoin activity in New Jersey, Ohio, Virginia, Maryland or Delaware.

10. That pursuant to Pa.R.Civ.P. 1028(a)(1), Plaintiff should be required to delete such portions concerning its prayers for relief.

III: Attorney's Fees

11. That Plaintiff seeks in numerous of its prayers for relief that it should be awarded Attorney's Fees.

12. That Pennsylvania law does not permit the recovery of attorney's fees absent a specific statutory provision, applicable case law, or agreement of the parties.

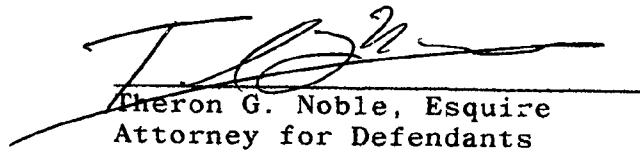
13. Plaintiff has not relied upon any agreement of the parties concerning its request for Attorney's Fees.

14. Plaintiff has not identified any case law or applicable statutory provision for its request of Attorney's Fees, nor is any such argument readily observed.

WHEREFORE, Defendants request as follows:

- A. That Plaintiff's second count be ORDERED stricken;
- B. That Plaintiff's prayer for relief as to its injunction request be limited to relief which this Court can award;
- C. That Plaintiff's request for Attorney's Fees be removed from its prayers for relief; and
- D. That Plaintiff be ORDERED to file and AMENDED CIVIL COMPLAINT within twenty (20) days in conformity with this Court's ORDER.

Respectfully Submitted,



\_\_\_\_\_  
T. G. Noble  
Theron G. Noble, Esquire  
Attorney for Defendants

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

FRANK M. SHEESLEY CO., )  
Plaintiff, )  
v. )  
ROBERT K. KITCHEN and )  
KITCHEN CONTRACTING, )  
Defendants. )  
No. 01-229-CD

## ORDER

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2001,  
upon argument and consideration of Defendants' PRELIMINARY  
OBJECTIONS, the same are hereby GRANTED. Plaintiff shall  
within twenty (20) days hereof file an AMENDED COMPLAINT  
which shall (i) remove its current second cause of action,  
being an alleged breach of fiduciary duty; (ii) remove its  
request for injunction relief for any area outside of  
Pennsylvania; and (iii) remove its request for attorney's  
fees.

By the Court.

Judge

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

FRANK M. SHEESLEY CO., )  
Plaintiff, )  
v. )  
ROBERT K. KITCHEN and )  
KITCHEN CONTRACTING, )  
Defendants. )  
No. 01- 229 -CD

**CERTIFICATE OF SERVICE**

I, Theron G. Noble, Esquire, attorney for Defendants, does hereby certify that I did this 12th day of March, 2001, mail a true and correct copy of Defendants' PRELIMINARY OBJECTIONS to the below listed individual, being counsel of record for the Plaintiff, by depositing the same in the United States Mail, first class, postage pre-paid, addressed as follows:

Kuyat and Kuyat  
150 Central Park Law Building  
Gazebo Park at Locust Street  
Johnstown, PA 15901

Respectfully Submitted,

Theron G. Noble, Esquire  
Attorney for Defendants

FILED  
MAR 14 2001  
[initials]  
William A. Shaw  
Prothonotary

KUYAT & KUYAT  
ATTORNEYS AT LAW  
150 CENTRAL PARK LAW BUILDING  
GAZEBO PARK AT LOCUST STREET  
JOHNSTOWN, PENNSYLVANIA 15901

FRANK M. SHEESLEY CO., : IN THE COURT OF COMMON PLEAS OF  
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA  
vs. : NO. 01-229 C.D.  
ROBERT K. KITCHEN and KITCHEN :  
CONTRACTING, :  
Defendants :  
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Issuance of Preliminary Injunction was forwarded by First Class Mail, postage prepaid, upon the following counsel on March 15, 2001:

Theron G. Noble, Esquire  
FERRARACCIO & NOBLE  
301 East Pine Street  
Clearfield, PA 16830

**FILED**

MAR 16 2001

William A. Shaw  
Frothonotary

Respectfully submitted,

KUYAT & KUYAT

By

Craig E. Kuyat, Attorney for  
Frank M. Sheesley Co.

#4

FRANK M. SHEESLEY CO., : IN THE COURT OF COMMON PLEAS OF  
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA  
vs. : NO. 01-229 C.D.  
ROBERT K. KITCHEN and KITCHEN :  
CONTRACTING, :  
Defendants :  
:

RULE TO SHOW CAUSE REQUESTING PRELIMINARY INJUNCTION

After filing of a Complaint in this cause of action, copy of which was served on the Defendants by the Sheriff's Office of Clearfield County, PA on February 23, 2001, and on Motion of Craig E. Kuyat, Esquire, attorney for the Plaintiff,

It is ordered that the above-named Defendants, Robert K. Kitchen and Kitchen Contracting, show cause before this Court on April 3, 2001, at 3:00 o'clock P.M., at the Courthouse in the City of Clearfield, County of Clearfield, Commonwealth of Pennsylvania, why a preliminary injunction should not issue during the pendency of this action, according to the prayer of the Complaint.

3-20-01

BY THE COURT:

Judge

**FILED**

MAR 20 2001

William A. Shaw  
Prothonotary

AS

FILED

MAR 20 1980  
11:45 AM  
William A. Shaw atty Kunkel  
Prothonotary  
6/20

FRANK M. SHEESLEY CO., : IN THE COURT OF COMMON PLEAS OF  
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA  
vs. : NO. 01-229 C.D.  
ROBERT K. KITCHEN and KITCHEN :  
CONTRACTING, :  
Defendants :  
:

**FILED**

MAR 16 2001

William A. Shaw  
MOTION FOR ISSUANCE OF PRELIMINARY INJUNCTION Prothonotary

AND NOW comes the Plaintiff, by and through their attorneys, Kuyat & Kuyat, and files the following Motion with the Court, as follows:

- 1) The Defendant, Robert K. Kitchen, was hired by the Plaintiff, Frank M. Sheesley Co., on or about May 10, 1999, to work as a "specialist in the area of golf course construction work" as outlined in Article II of the Employment Agreement, which is attached to the Complaint, as Exhibit "A". Defendant's duties included marketing, sales and general supervision of golf course construction.
- 2) The Defendant, Robert K. Kitchen, was hired to perform such duties at employer's place of business or "at any other place or places specified by the employer in order to fulfill the work duties" as outlined under Article II of the Employment Agreement.
- 3) As further stated in Article II of the Employment Agreement, the employee was prohibited from providing similar services to any other business or party, without the prior written consent from the employer.
- 4) Prior to May 1999, the Plaintiff herein, a general contractor, had not been involved in the specialized area of golf course construction work. Robert K. Kitchen was hired for his expertise in this type of work, based upon

the past work history which he related to the Officers of Frank M. Sheesley Co., including construction of golf courses in and near the State of Florida.

5) Under Article III of the Employment Agreement, Robert K. Kitchen was paid an annual salary of \$70,000.00, in addition to other fringe benefits. He would also receive a commission of 10% of the net profits from golf course construction projects.

6) While bidding on a golf course construction project near Trenton, New Jersey, also known as the "Mercer Oaks" golf course project, Robert K. Kitchen projected, to the owners and officers of Frank M. Sheesley Co., that the project would earn profits of approximately \$750,000.00 for Frank M. Sheesley Co.

7) Based upon such assurances, Frank M. Sheesley Co. also paid Robert K. Kitchen, in October 1999, a draw of approximately \$25,000.00 against the projected profits that would be made on this golf course construction project known as "Mercer Oaks" located near Trenton, New Jersey.

8) The "Mercer Oaks" golf course construction project will result in a substantial net loss to Frank M. Sheesley Co., totalling at least \$350,000.00, according to the newest information.

9) In October 2000, as outlined in the Complaint and Exhibit "B", attached thereto, Robert K. Kitchen provided his employer, Frank M. Sheesley Co., with the required 60 day notice of termination of the Employment Agreement, pursuant to Paragraph 2 of Article V; thereunder, it is further provided that "the Employee shall be bound by the above provisions set forth in Article IV."

10) Also in October 2000, the Defendant, Robert K. Kitchen, while acting as an agent, representative or employee of Frank M. Sheesley Co., had been in direct contact with the owner or developer of another golf course, to be

constructed within 25 miles of the "Mercer Oaks" golf course (see Exhibit "C" attached to the Complaint).

11) It has come to the attention of the owners and officers of Frank M. Sheesley Co. that Robert K. Kitchen has been or is employed by a competitor in golf course construction work, at the aforementioned golf course being constructed within 25 miles of the "Mercer Oaks" golf course.

12) Pursuant to Article IV of the Employment Agreement, which is entitled "Privileged Information and Agreement Not to Compete", it was agreed that Robert K. Kitchen "will have access to and become familiar with various records, information and other documents in the course of his employment as a golf course construction specialist". The Defendant, Robert K. Kitchen, further agreed that "for a period of 3 years after the termination of this Employment Agreement", that he will not enter into competition with Frank M. Sheesley Co. "in the business of golf course construction within the existing marketing area of the Employer in the Commonwealth of Pennsylvania or any future marketing area of the Employer which was begun during the employment under the terms of this Agreement."

13) The Plaintiff's existing marketing area includes the State of New Jersey, and specifically the areas near Trenton, New Jersey, as well as marketing areas in Pennsylvania, Ohio, Virginia, Maryland and Delaware, where Frank M. Sheesley Co. and/or Robert K. Kitchen had secured information relating to other potential golf course construction projects. All of the aforementioned information was obtained after May 10, 1999, when the parties entered into the Employment Agreement.

14) Unless Defendant, Robert K. Kitchen, is required to comply with

the provisions of the Employment Agreement and enjoined from working with competing owners or contractors, on golf course construction projects, Frank M. Sheesley Co. will continue to suffer immediate, substantial and irreparable harm in that:

- A. Frank M. Sheesley Co. has been hindered in its ability to satisfy contractual obligations entered into while Robert K. Kitchen was an employee;
- B. Frank M. Sheesley Co. has been and will be exposed to additional loss caused by Robert K. Kitchen's ongoing use of documents and information compiled during his term of employment with Frank M. Sheesley Co.; Robert K. Kitchen failed to return such documents and information after termination of his employment, using the same for his own financial gain; and
- C. Frank M. Sheesley Co. has suffered and will continue to suffer a loss of business as a result of damage to its goodwill and reputation in the industry. As a result of this, its ability to bid on future contracts has been and will continue to be impaired.

15) Greater injury and financial impact will be inflicted upon the Plaintiff by denial of relief than will be inflicted upon Defendants, by granting the requested relief.

WHEREFORE, Frank M. Sheesley Co. respectfully requests that its Motion be granted and that a Preliminary Injunction be granted.

Respectfully submitted,

KUYAT & KUYAT

By

  
Craig E. Kuyat, Attorney for  
Frank M. Sheesley Co.

FRANK M. SHEESLEY CO.,	:	IN THE COURT OF COMMON PLEAS OF
	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	NO. 01-229 C.D.
vs.	:	
ROBERT K. KITCHEN and KITCHEN	:	
CONTRACTING,	:	
Defendants	:	

DECREE AWARDING PRELIMINARY INJUNCTION

AND NOW this \_\_\_\_\_ day of \_\_\_\_\_, 2001, the Court having on \_\_\_\_\_, 2001, heard the application for a Preliminary Injunction, on Motion of Plaintiff and after notice to Defendants, and having then taken the matter under advisement and directed counsel for the respective parties to submit Briefs, the Court being now fully advised herein, from the evidence finds that Robert K. Kitchen properly exercised his right to terminate his Employment Agreement with Frank M. Sheesley Co., however, he is prohibited from working in competition with Frank M. Sheesley Co. in the area or business of golf course construction within the existing marketing area of Frank M. Sheesley Co., or future marketing areas begun during the term of his employment with Frank M. Sheesley Co.; the noncompetition clause is effective for 3 years from the date of termination of the Employment Agreement, effective December 29, 2000.

It is hereby ordered that Robert K. Kitchen be enjoined from performing any work, either individually or as a partner, employee or agent for any other person or entity, within New Jersey, Pennsylvania, Ohio, Virginia, Maryland and Delaware, in the business of golf course construction, until the final hearing of this case, or further order of the court.

BY THE COURT:

---

Judge

NO. 01-229 C.D.

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

FRANK M. SHEESLEY CO.,

Plaintiff

vs.

ROBERT K. KITCHEN and KITCHEN  
CONTRACTING,

Defendants

MOTION FOR ISSUANCE  
OF PRELIMINARY INJUNCTION

FILED

MAR 16 2001

William A. Shaw  
SAC  
Prothonotary

KUYAT & KUYAT

ATTORNEYS AT LAW  
150 CENTRAL PARK LAW BUILDING  
GAZETTE PARK AT LOCUST STREET  
JOHNSTOWN, PENNSYLVANIA 15901

FRANK M. SHEESLEY CO., : IN THE COURT OF COMMON PLEAS OF  
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA  
vs. : NO. 01-229 C.D.  
ROBERT K. KITCHEN and KITCHEN :  
CONTRACTING, :  
Defendants :  
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Rule to Show Cause Requesting Preliminary Injunction was forwarded by First Class Mail, postage prepaid, upon the following counsel on March 21, 2001:

THERON G. NOBLE, ESQUIRE  
FERRARACCIO & NOBLE  
301 EAST PINE STREET  
CLEARFIELD, PA 16830

Respectfully submitted,

KUYAT & KUYAT

By

Craig E. Kuyat, Attorney for  
Frank M. Sheesley Co.

**FILED**

MAR 22 2001

William A. Shaw  
Prothonotary

#6

No. 01-229 C.D.

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

FRANK M. SHEESLEY CO.,

Plaintiff

vs.

ROBERT K. KITCHEN and KITCHEN  
CONTRACTING,

Defendants

CERTIFICATE OF SERVICE

KUYAT & KUYAT  
ATTORNEYS AT LAW  
150 CENTRAL PARK LAW BUILDING  
GAZELLE PARK AT LINDSTREET  
JOHNSTOWN, PENNSYLVANIA 15901

**FILED**

MAR 22 2001  
11:00 AM  
William A. Shaw  
Prothonotary

No C/L 808

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

FRANK M. SHEESLEY CO., :  
PLAINTIFF. : CIVIL ACTION NO.  
v. : 01- 229 -CD  
ROBERT K. KITCHEN and :  
KITCHEN CONTRACTING, :  
DEFENDANTS. : TYPE OF PLEADING:  
: DEFENDANTS'  
: PRELIMINARY OBJECTIONS  
: AS TO  
: PRELIMINARY INJUNCTION  
: FILED BY:  
: DEFENDANTS  
: COUNSEL FOR THIS PARTY:  
: Theron G. Noble, Esquire  
: Ferraraccio & Noble  
: 301 East Pine Street  
: Clearfield, PA 16830  
: 814-375-2221  
: PA I.D.#: 55942  
**FILED** :  
MAR 23 2001 :  
William A. Shaw :  
Prothonotary :  
#7

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

FRANK M. SHEESLEY CO., )  
Plaintiff, )  
v. ) No. 01- 229 -CD  
ROBERT K. KITCHEN and )  
KITCHEN CONTRACTING, )  
Defendants. )

DEFENDANTS' PRELIMINARY OBJECTIONS  
AS TO PRELIMINARY INJUNCTION

AND NOW, comes the Defendants, Robert K. Kitchen and Kitchen Contracting, by and through their counsel of record, Theron G. Noble, Esquire, of Ferraraccio & Noble, who avers as follows in support of their PRELIMINARY OBJECTION AS TO PLAINTIFF'S PRELIMINARY INJUNCTION:

1. This matter was initiated with the filing of a CIVIL COMPLAINT, which was duly served on the Defendants.
2. That Defendants have timely responded to said CIVIL COMPLAINT with the filing of PRELIMINARY OBJECTIONS.
3. That Plaintiff filed a request for PRELIMINARY INJUNCTION on, or about March 15th.
4. That the sole basis for the PRELIMINARY INJUNCTION is the covenant not to compete as contained in the employment agreement between Plaintiff and Defendant. (See averments 3 - 6 of Plaintiff's PRELIMINARY INJUNCTION).
5. That Plaintiff only alleges as sole basis as a violation of the covenant not to compete the work performed by the Defendant in New Jersey. (See averments 10 - 13 of Plaintiff's PRELIMINARY INJUNCTION).

Count I: Jurisdiction

6. That this Court does not have jurisdiction as to activities which occurred in the State of New Jersey.

7. Plaintiff does not allege any violation of the covenant not to compete which occurred in Pennsylvania.

8. Plaintiff does not assert any damages which occurred to it in Pennsylvania as a result of the alleged breach of the covenant not to compete.

9. In fact, Plaintiff avers that prior to hiring the Defendant that it was not engaged in the specialized nature of golf course construction work.

10. Plaintiff does not allege any other project it is, or attempted to be, involved with, concerning golf course construction other than the (i) The Mercer Oaks project, located in New Jersey; and (ii) one allegedly bid upon by Defendant, also located in New Jersey.

11. Plaintiff has only established arguable damages which only occurred in New Jersey.

12. That pursuant to Pa.R.Civ.P. 1028(a)(1), Plaintiff's request for Injunctive Relief should be dismissed in that the complained of activities only occurred in New Jersey and there is no basis for damages occurring outside of New Jersey.

WHEREFORE, Defendants request that Plaintiff's request for PRELIMINARY INJUNCTION be DISMISSED for lack of jurisdiction.

Count II: Demurrer

13. The averments of paragraphs 1 - 12 are hereby incorporated as if again fully set forth at length.

14. That Plaintiff must establish, in order to be entitled to a preliminary injunction, "immediate, substantial and irreparable injury".

15. That Plaintiff acknowledges this fact by pleading it has suffered such damage. (See averment 14 of Plaintiff's PRELIMINARY INJUNCTION).

16. That Plaintiff, even assuming all of its pleading as true and further assuming Pennsylvania Courts have jurisdiction, has not established that it has suffered any damages, let alone damage that is immediate, substantial or irreparable.

17. Plaintiff has not plead any damages caused to it by the alleged acts of the Defendant which have harmed either its Mercer Oaks construction or any harm to the second potential site located twenty-five miles from the Mercer Oaks site.

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

FRANK M. SHEESLEY CO., )  
Plaintiff, )  
v. )  
ROBERT K. KITCHEN and )  
KITCHEN CONTRACTING, )  
Defendants. )  
No. 01-229-CD

CERTIFICATE OF SERVICE

I, Theron G. Noble, Esquire, attorney for Defendants, does hereby certify that I did this 22nd day of March, 2001, mail a true and correct copy of Defendants' PRELIMINARY OBJECTIONS AS TO PRELIMINARY INJUNCTION to the below listed individual, being counsel of record for the Plaintiff, by depositing the same in the United States Mail, first class, postage pre-paid, addressed as follows:

Kuyat and Kuyat  
150 Central Park Law Building  
Gazebo Park at Locust Street  
Johnstown, PA 15901

Respectfully Submitted,

Theron G. Noble, Esquire  
Attorney for Defendants

REC'D MAR 23 2001  
1148 AM  
William A. Shaw  
Prothonotary

**FILED**

FRANK M. SHEESLEY CO., : IN THE COURT OF COMMON PLEAS OF  
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA  
vs. : NO. 01-229 C.D.  
ROBERT K. KITCHEN and KITCHEN :  
CONTRACTING, :  
Defendants :  
:

PLAINTIFF'S ANSWER TO DEFENDANTS' PRELIMINARY  
OBJECTIONS AS TO PRELIMINARY INJUNCTION

AND NOW comes the Plaintiff, by and through their attorneys Kuyat & Kuyat, and files the following Answer, as follows:

1. Admitted.

**FILED**  
MAR 28 2001

2. Admitted.

William A. Shaw  
Prothonotary

3. Admitted.

4. Denied. Although there is no Notice to Plead on Defendants' Preliminary Objections, filed on or about March 22, 2001, plaintiff's entitlement to a Preliminary Injunction cannot be questioned by means of Preliminary Objections. See 15 Standard PA Practice 2D, Section 83:360, Footnote 65, Page 339. Furthermore, at a hearing for the Preliminary Injunction, witnesses for both the Plaintiff and Defendant may be heard, 15 Standard PA Practice 2D, Section 83:365, Page 341-343, and documentary evidence may be presented, 15 Standard PA Practice 2D, Section 83:366, Page 343. Also see Pa. R.C.P. 1531(a).

5. Denied. Although there is no Notice to Plead on Defendants' Preliminary Objections, filed on or about March 22, 2001, plaintiff's entitlement to a Preliminary Injunction cannot be questioned by means of Preliminary Objections. See 15 Standard PA Practice 2D, Section 83:360, Footnote 65, Page

#8

338. Furthermore, at a hearing for the Preliminary Injunction, witnesses for both the Plaintiff and Defendant may be heard, 15 Standard PA Practice 2D, Section 83:365, Page 341-343, and documentary evidence may be presented, 15 Standard PA Practice 2D, Section 83:366, Page 343. Also see Pa. R.C.P. 1531(a).

COUNT I: ANSWER

Paragraphs 6. through 12. are denied. There are numerous cases where covenants not to compete are enforced outside of the Commonwealth of Pennsylvania, if the covenant or agreement is entered into by the parties within the Commonwealth of Pennsylvania. See Sidco Paper Co. v. Aaron, 465 Pa. 586, 351 A.2d 250 (1976) where the Pennsylvania Supreme Court affirms issuance of an injunction issued regarding Pennsylvania, Maryland, District of Columbia, Virginia, but denied as to New York, New Jersey, Delaware, Massachusetts and all other states. Also see Hillard v. Medtronic, Inc., 910 F.Supp. 173 (M.D. Pa. 1995) which recites and follows Sidco Paper, Supra., as well as Bryant Co. v. Sling Testing & Repair, 471 Pa. 369 A.2d 1164 (1977) and Thermo-Guard, Inc. v. Cochran, 408 Pa. Super. 54, 596 A.2d 188 (1991); Davis & Warde, Inc. v. Tripodi, 420 Pa. Super. 450, 615 A.2d 1384 (1992).

WHEREFORE, it is respectfully requested that the hearing, on the Request for Preliminary Injunction, be held by the Court on April 3, 2001, as scheduled, and that a later hearing be scheduled on Defendants' Preliminary Objections to the Complaint.

COUNT II: ANSWER

Paragraphs 13. through 18. are denied. Whether or not a party is entitled to a Preliminary Injunction, on the merits, is not a matter to be raised in Preliminary Objections. See Paragraphs 4 and 5, above, as well as 15 Standard PA Practice 2D, Section 83:331, Page 309, "Observation" and Footnote 17.

WHEREFORE, it is respectfully requested that the hearing, on the Request for Preliminary Injunction, be held by the Court on April 3, 2001, as scheduled, and that a later hearing be scheduled on Defendants' Preliminary Objections to the Complaint.

Respectfully submitted,

KUYAT & KUYAT

By   
Craig E. Kuyat, Attorney for  
Frank M. Sheesley Co.

NO. 01-229 C.D.

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

FRANK M. SHEESLEY CO.,

Plaintiff

vs.

ROBERT K. KITCHEN and KITCHEN  
CONTRACTING,

Defendants

PLAINTIFF'S ANSWER TO DEFENDANTS'  
PRELIMINARY OBJECTIONS AS TO  
PRELIMINARY INJUNCTION

**FILED**

MAR 28 2001

William A. Shaw  
Prothonotary

KUYAT & KUYAT

ATTORNEYS AT LAW  
150 CENTRAL PARK LAW BUILDING  
LAZERNO PARK AT LOCUST STREET  
JOHNSTOWN, PENNSYLVANIA 15901

FRANK M. SHEESLEY CO., : IN THE COURT OF COMMON PLEAS OF  
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA  
vs. : NO. 01-229 C.D.  
ROBERT K. KITCHEN and KITCHEN :  
CONTRACTING, :  
Defendants :  
:

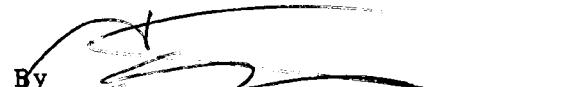
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiff's Answer to Defendants' Preliminary Objections as to Preliminary Injunction was forwarded by First Class Mail, postage prepaid, upon the following counsel on March 26, 2001:

Theron G. Noble, Esquire  
FERRARACCIO & NOBLE  
301 East Pine Street  
Clearfield, PA 16830

Respectfully submitted,

KUYAT & KUYAT

  
Ry \_\_\_\_\_  
Craig E. Kuyat, Attorney for  
Frank M. Sheesley Co.

**FILED**

MAR 28 2001

William A. Shaw  
Prothonotary

(#9)

NO. 01-229 C.D.

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

FRANK M. SHEESLEY CO.,

Plaintiff

vs.

ROBERT K. KITCHEN and KITCHEN  
CONTRACTING,

Defendants

CERTIFICATE OF SERVICE

**FILED**

MAR 28 2001

William Shaw  
Prothonotary

KUYAT & KUYAT  
ATTORNEYS AT LAW  
150 CENTRAL PARK LAW BUILDING  
FAZELLO PARK AT LOCUST STREET  
JOHNSTOWN, PENNSYLVANIA 15901

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

FRANK M. SHEESLEY CO. : :

-vs- : No. 01 - 229 - CD

ROBERT K. KITCHEN and KITCHEN : :

CONTRACTING : :

**ORDER**

NOW, this 3<sup>rd</sup> day of April, 2001, this being the day and date set for consideration of Plaintiff's Motion for Preliminary Injunction, upon agreement of the parties, it is the ORDER of this Court that hearing on the merits shall be scheduled for Monday, April 16, 2001, at 1:00 p.m. pending which Defendant shall be and is hereby enjoined from participating as a golf course construction specialist within the state of New Jersey, and further shall forthwith deliver to Plaintiff any and all documents or other material which came into his possession while employed by Frank M. Sheesley Co.

By the Court,

President Judge

**FILED**

APR 04 2001

William A. Shaw  
Prothonotary

#10

**FILED**

APR 04 2001

Q19:14 1cc City Kuwait  
William A. Shaw  
Prothonotary  
1cc City of Napa

Shaw

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

FRANK M. SHEESLEY CO. :  
-vs- : No. 01-229-CD  
ROBERT K. KITCHEN and :  
KITCHEN CONTRACTING :

O R D E R

NOW, this 16th day of April, 2001, following the conclusion of the taking of testimony into the above captioned matter, it is the ORDER of this Court that counsel for the Defendant supply the Court with reply brief within no more than twenty (20) days from this date. In the interim, the temporary injunction shall remain in full force and effect.

BY THE COURT,

**FILED**

ADD 17 2001

William A. Shaw  
Prothonotary

11

FILED 4 CC  
APR 17 2001 2 Pkg - C. Kuyat  
William A. Shaw 2 Pkg - Noble  
Prothonotary  
*E. Shaw*

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

FRANK M. SHEESLEY CO., )  
Plaintiff, )  
v. ) No. 01- 229 -CD  
ROBERT K. KITCHEN and )  
KITCHEN CONTRACTING, )  
Defendants. )

NOTICE OF SERVICE

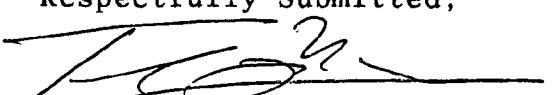
To: William A. Shaw, Prothonotary

Date: May 3, 2001

I, Theron G. Noble, Esquire, attorney for Defendants, does hereby certify that I did this 3rd day of May, 2001, mail a true and correct copy of Defendants' BRIEF FOLLOWING HEARING ON PLAINTIFF'S REQUEST FOR PRELIMINARY INJUNCTION to the below listed individual, being counsel of record for the Plaintiff, by depositing the same in the United States Mail, first class, postage pre-paid, addressed as follows:

Kuyat and Kuyat  
150 Central Park Law Building  
Gazebo Park at Locust Street  
Johnstown, PA 15901

Respectfully Submitted,



\_\_\_\_\_  
Teron G. Noble, Esquire  
Attorney for Defendants

FILED

MAY 07 2001

111:03  
William A. Shaw  
Prothonotary

#12

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

FRANK M. SHEESLEY CO. :

-vs- :

No. 01-229-CD

**FILED**

ROBERT K. KITCHEN and KITCHEN  
CONTRACTING :

MAY 17 2001

**OPINION AND ORDER**

**William A. Shaw  
Prothonotary**

In May 1999, Robert K. Kitchen, Defendant above-named, entered employment with Plaintiff. Mr. Kitchen, a golf course construction specialist, was hired to permit Plaintiff to enter into the gold course construction market, an area in which Plaintiff was not involved prior thereto. At the time of his employment, the parties entered into an employment agreement containing a provision titled "Privileged Information and Agreement Not to Compete" as follows:

During the term of this Agreement, the Employee will have access to and become familiar with various records, information and other documents in the course of his employment as a golf course construction specialist. All files, records, documents, drawings, specifications, equipment and similar items relating to the business of golf course construction, whether prepared by Employee or otherwise coming into his possession, shall remain the exclusive property of the Employer and shall not be removed from the premises of Employer under any circumstances. The employee further agrees that upon termination of this Employment Agreement that the Employee shall not directly or indirectly enter into direct competition with the Employer in the business of golf course construction within the existing marketing areas of the Employer in the Commonwealth of Pennsylvania or any future marketing area of the Employer which was begun during the employment under the terms of this Agreement; Employee further agrees not to enter into a direct or indirect competition as described here, either as an individual or on his own or as a partner or joint venturer, or as an employee or agent for any person or entity, or as an officer, director or shareholder, or otherwise, for a period of 3 years after the date of termination of this Employment Agreement. This covenant on the part of the Employee shall be construed as an

#13

Agreement independent of any other provision of this Agreement; and the existence of any claim or cause of action of Employee against Employer, whether predicted on this Agreement or otherwise, shall not constitute a defense to the Employer's enforcement of this covenant.

At the hearing held April 2, 2001, Plaintiff's president testified that his company was not in the business of golf course construction prior to hiring Defendant and Plaintiff provided no training for the Defendant, but relied on his skills, etc., relative to golf course construction in helping Plaintiff to diversify. In November, 2000, Defendant left Plaintiff's employ citing health reasons. Plaintiff now seeks to enforce the Agreement Not To Compete and seeks a permanent injunction prohibiting Defendant from engaging in the golf course construction industry within certain specified states, specifically Pennsylvania, Virginia, Maryland, Ohio, New Jersey, North Carolina and Florida. This Court does herein find in favor of the Defendant and dismisses Plaintiff's Complaint in Equity.

Initially it must be noted that Plaintiff was not in the business of golf course construction prior to hiring Defendant and indeed had only one client during the period of Defendant's employ, specifically the "Mercer Oaks" project in Mercer County, New Jersey. And, in fact, since Defendant has left Plaintiff's employ, Plaintiff has not replaced him nor sought additional contracts for golf course construction. Plaintiff does not deny that Defendant had the contractual right to terminate his employment but claims irreparable harm to his business if the Covenant Not To Compete is not enforced.

Before a restrictive covenant can be enforced, three elements must be present:

- (1) The covenant must relate either to a contract for the sale of good will or other property or to a contract for employment;
- (2) The covenant must be supported by adequate consideration; and
- (3) The application of the covenant must reasonably be limited in both time and territory. See

Maintenance Specialties v. Gottus, 455 Pa. 327, 331, 314 A.2d 279, 281 (1974) (Jones, C.J., concurring); Jacobson & Co. v. International Environmental Corp., 427 Pa. 439, 235 A.2d 612 (1967); Capital Bakers, Inc. v. Townsend, 426 Pa. 188, 231 A.2d 292 (1967); Barb-Lee Mobile Frame Co. v. Hoot, 416 Pa. 222, 206 A.2d 59 (1965); Morgan's Home Equipment Corp. v. Martucci, 390 Pa. 618, 136 A.2d 838 (1957). See also Restatement of Contracts §515(e) (1932). Piercing Pagoda, Inc. v. Hoffner, 465 Pa. 500, 506-7, 351 A.2d 207, 210 (1976).

However, there is an additional requirement necessary before such a covenant can be enforced. As the Superior Court held in Thermo-Guard, Inc. v. Cochran, 596 A.2d 188 (1991):

Although most courts dealing with the enforceability of restrictive covenants focus on whether the covenant provides reasonable temporal and geographic limits, there is an additional requirement of enforceability of such covenants. That is, such covenants must serve to protect a legitimate, i.e. a legally protectible, interest of the employer. . . .

Our courts will permit the equitable enforcement of post-employment restraints only where they are incident to an employment relation between the parties to the covenant, the restrictions are reasonably necessary for the protection of the employer, and the restrictions are reasonably limited in duration and geographic extent.

The court further held that trade secrets of an employer, customer good will and specialized training and skills acquired from the employer are all legitimate interests protectible through a restrictive covenant. In New Castle Orthopedic Assoc. v. Burns, 481 Pa. 460, 392 A.2d 1383, (1978), the trial courts were directed to determine whether an injunction:

“Is necessary to prevent immediate and irreparable harm which could not be compensated by damages; second, that the greater injury would result by refusing it than by granting it; and third, that it properly restores the parties to their status as it existed immediately prior to the alleged wrongful conduct.”

As to the nature of the injury:

"An injury is regarded as "irreparable" if it will cause damage which can be estimated only by conjecture and not by an accurate pecuniary standard." Sovereign Bank v. Harper, et al, 674 A.2d at 1085.

In the instant case, Plaintiff provided Defendant with no trade secrets, specialized training or skill. In fact, it was the Defendant who provided these matters to Plaintiff. There has been no showing of damage or harm to the Plaintiff by any employment of the Defendant contrary to the agreement not to compete. In Rollins Protective Services Company v. Shaffer, 557 A.2d 413 (1988) the Superior Court held that a former employer must suffer irreparable harm from the competition of a former employee before it can enforce a non-competition clause in the former employee's employment agreement. Here Plaintiff has failed to establish any harm resulting from Defendant's subsequent involvement with a competitor. The existence of a non-competition clause in an employment contract only permits the employer to seek relief from the court. It does not guarantee relief. Since irreparable harm is a requirement and none exists in the instant case, this Court will not grant injunctive relief to the Plaintiff. As a footnote, this Court notes that the only alleged employment of the Defendant in the golf course construction industry proved by the Plaintiff at hearing was merely his operating a bull dozer for a competitor which hardly qualifies as direct competition with Plaintiff's golf course construction aspirations.

WHEREFORE, the Court enters the following:

**ORDER**

NOW, this 17<sup>th</sup> day of May, 2001, following hearing and briefs into the above-captioned Complaint seeking injunctive relief, it is the ORDER of this Court that judgment be

and is hereby entered in favor of the Defendant and against the Plaintiff and the Preliminary  
Injunction entered by this Court dated April 3, 2001, shall be and is hereby dissolved.

By the Court,

President Judge

**FILED**

MAY 17 2001

013:5514c mukasey  
William A. Shaw

Prothonotary

cc - atty noble  
*for*

cc - atty kirkpatrick

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

FRANK M. SHEESLEY CO., :  
Plaintiff : NO. 01 - 229 - CD  
vs. :  
ROBERT K. KITCHEN and KITCHEN  
CONTRACTING, :  
Defendants :  
:

NOTICE OF APPEAL

Notice is hereby given that Frank M. Sheesley Co., Plaintiff, above named, hereby appeals to the Superior Court of Pennsylvania from the Opinion and Order entered in this matter on the 17th day of May, 2001. This Opinion and Order has been entered in the docket as evidenced by the attached copy of the Docket Entry.

KUYAT & KUYAT

By   
Craig E. Kuyat, Esquire

132 Gazebo Park  
Johnstown, PA 15901  
(814) 539-8783  
Attorneys for Plaintiff

FILED

JUN 01 2001

William A. Shaw  
Prothonotary

#14

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

FRANK M. SHEESLEY CO.,	:	
	:	NO. 01 - 229 - CD
Plaintiff	:	
	:	
vs.	:	
	:	
ROBERT K. KITCHEN and KITCHEN	:	
CONTRACTING,	:	
	:	
Defendants	:	

REQUEST FOR TRANSCRIPT

A Notice of Appeal having been filed in this matter, the official court reporter is hereby ordered to produce, certify and file the transcript in this matter in conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.

KUYAT & KUYAT

By



Craig E. Kuyat, Esquire

132 Gazebo Park  
Johnstown, PA 15901  
(814) 539-8783  
Attorneys for Plaintiff

FRANK M. SHEESLEY CO., : IN THE COURT OF COMMON PLEAS OF  
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA  
vs. :  
ROBERT K. KITCHEN and KITCHEN :  
CONTRACTING, :  
Defendants :  
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Notice of Appeal and Request for Transcript were forwarded by First Class Mail, postage prepaid, upon the following parties on June 1, 2001:

Attorney for Defendants:  
THERON G. NOBLE, Esquire  
FERRAPACCIO & NOBLE  
301 East Pine Street  
Clearfield, PA 16830

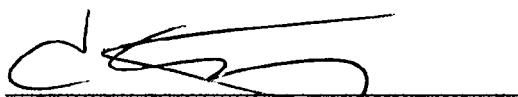
Honorable John K. Reilly, Jr., P.J.  
Clearfield County Court House  
230 East Market Street  
Clearfield, PA 16830

Court Administrator  
Clearfield County Court House  
230 East Market Street  
Clearfield, PA 16830

Official Court Reporter  
c/o Clearfield County Court House  
230 East Market Street  
Clearfield, PA 16830

Respectfully submitted,

KUYAT & KUYAT

By   
Craig E. Kuyat, Attorney for  
Frank M. Sheesley Co.

1  
Atty Kuwait  
012-51461 pg. 150 Pro  
JUN 20 1968 550.00 Supr.

William A. Show

Prothonotary

Ex

ICC will check to Superior

Date	Judge
Frank M. Sheesley Co. vs. Robert K. Kitchen, Kitchen Contracting	
02/15/2001 Filing: Civil Complaint Paid by: Craig E. Kuyat, Esquire Receipt number: 1818517 Dated: 02/15/2001 Amount: \$80.00 (Check)	No Judge
03/02/2001 Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
03/14/2001 Defendants Preliminary Objections filed by Attorney Noble. No cc. Certificate of Service filed by Atty Noble. No cc	No Judge
03/16/2001 Certificate of Service, Motion for Issuance of Preliminary Injunction, upon Theron G. Noble, Esq. Filed by s/Craig E. Kuyat, Esq. no cc	No Judge
Motion For Issuance of Preliminary Injunction. Filed by s/Craig E. Kuyat, Esq.	No Judge
03/20/2001 Rule to Show Cause Requesting Preliminary Injunction issued upon Defendants, returnable April 3, 2001. By the Court, s/JKR,JR.,PJ 4 cc atty Kuyat	John K. Reilly Jr.
03/22/2001 Certificate of Service, Rule to Show Cause, upon Theron G. Noble, Esq. Filed by s/Craig E. Kuyat no cc	John K. Reilly Jr.
03/23/2001 Defendants' Preliminary Objections as to Preliminary Injunction, filed by s/Theron G. Noble, Esq. No Certified Copies Certificate of Service, filed.	John K. Reilly Jr.
03/28/2001 Plaintiff's Answer to Defendants' Preliminary Objections as to Preliminary Injunction. s/Craig E. Kuyat, Esq. no cc	John K. Reilly Jr.
Certificate of Service, Plaintiff's Answer to Defendants' Preliminary Objections as to Preliminary Injunction, upon Theron G. Noble, Esq. s/Craig E. Kuyat, Esq no cc	John K. Reilly Jr.
04/04/2001 ORDER, NOW, this 3rd day of Apr., 2001, re: Plaintiff's Motion for Preliminary Injunction. By the Court, s/JKR,JR.,P.J. 1 cc atty Kuyat, Noble	John K. Reilly Jr.
04/17/2001 ORDER, NOW, this 16th day of April, 2001, re: Counsel for the Defendant to supply the Court w/ reply brief within no more than 20 days from this date. Temp Injunction. by the Court, s/JKR,JR.,P.J. 2 cc atty C. Kuyat, Noble	John K. Reilly Jr.
05/07/2001 Notice of Service, Defendants' BRIEF FOLLOWING HEARING ON PLAINTIFF'S REQUEST FOR PRELIMINARY INJUNCTION, upon Kuyat and Kuyat. s/Theron g. Noble, Esq.	John K. Reilly Jr.
05/17/2001 OPINION AND ORDER, NOW, this 17th day of May, 2001, re: Judgment Entered in favor of the Defendant and against the Plaintiff and the Preliminary Injunction entered by this Court dated April 03, 2001, shall be and is hereby Dissolved. by the Court, s/JKR,JR.,P.J. 1 cc atty Mikesell, Noble, and Kuyat	John K. Reilly Jr.

I hereby certify this to be a true and attested copy of the original statement filed in this case.

JUN 01 2001

Attest:

*[Signature]*  
P. Mikesell

**KUYAT & KUYAT**  
ATTORNEYS AT LAW  
150 CENTRAL PARK LAW BUILDING  
GAZEBO PARK AT LOCUST STREET  
JOHNSTOWN, PENNSYLVANIA 15901

EDWARD G. KUYAT, JR.  
CRAIG E. KUYAT

FAX  
535-4251

June 1, 2001

539-8783  
AREA CODE 814

William A. Shaw, Prothonotary  
Clearfield County Court House  
230 East Market Street  
Clearfield, PA 16830

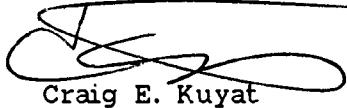
RE: Frank M. Sheesley Co.  
vs. Robert K. Kitchen  
and Kitchen Contracting  
No. 01-229 C.D.

Dear Mr. Shaw:

Enclosed for filing please find two copies of Notice of Appeal with attached Request for Transcript and Certificate of Service. Also enclosed please find check in the amount of \$55.00, payable to the Superior Court of Pennsylvania, as well as check in the amount of \$45.00, payable to the Prothonotary of Clearfield County.

Please forward a copy of this Notice of Appeal and related papers, along with check for the filing fee, to the Prothonotary of the Superior Court, pursuant to Pa. R.A.P. 905, et seq.

Very truly yours,



Craig E. Kuyat

CEK:dg

Enclosures

cc: Theron G. Noble, Esquire  
Honorable John K. Reilly, Jr., P.J.  
Official Court Reporter of  
Clearfield County  
Court Administrator

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

FRANK M. SHEESLEY CO., :  
Plaintiff : NO. 01 - 229 - CD  
vs. :  
ROBERT K. KITCHEN and KITCHEN :  
CONTRACTING, :  
Defendants :  
:

ORDER

AND NOW this \_\_\_\_\_ day of June, 2001, it is hereby ordered as follows during the pendency of an Appeal to the Pennsylvania Superior Court:

1. Robert K. Kitchen is enjoined from performing golf course construction work in Pennsylvania and New Jersey,
2. Robert K. Kitchen is enjoined from contacting, approaching, corresponding with and talking with any businesses or customers established during his employment with Frank M. Sheesley Co., except for his current employment with Turco Construction, and
3. Robert K. Kitchen is enjoined from distributing business cards, information or other literature in Pennsylvania and New Jersey relating to golf course construction or work connected therewith.

Within 10 days from this date, Plaintiff shall post a Bond in the amount of \$5,000.00, naming the Commonwealth as Obligee, pursuant to Pa. R.C.P. 1531(b).

BY THE COURT:

Judge

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

FRANK M. SHEESLEY CO., : NO. 01 - 229 - CD  
Plaintiff : FILED  
vs. : JUN 01 2001  
ROBERT K. KITCHEN and KITCHEN :  
CONTRACTING, :  
Defendants : William A. Shaw  
Prothonotary

**FILED**

JUN 06 2001

William A. Shaw  
Prothonotary

APPLICATION FOR ORDER GRANTING OR RESTORING INJUNCTION

AND NOW comes the Plaintiff, Frank M. Sheesley Co., by and through its attorneys, Kuyat & Kuyat, and files the following request for injunction, during the pendency of an Appeal to the Pennsylvania Superior Court, for the following reasons:

1. On or about February 14, 2001, the Plaintiff filed a Complaint against the Defendants, requesting an injunction to prevent Plaintiff's former employee, Robert K. Kitchen, from contacting its customers or working in competition with Frank M. Sheesley Co. in golf course construction for a period of 3 years, pursuant to Article IV of the Employment Contract between the Plaintiff and Defendant, entitled "Privileged Information And Agreement Not To Compete".

2. On April 3, 2001, a Preliminary Injunction was entered whereby Robert K. Kitchen was enjoined from participating as a golf course construction specialist in the State of New Jersey pending hearing and decision on the merits.

3. On May 17, 2001, after hearing, the Trial Court dismissed Plaintiff's Complaint in Equity, which had requested an injunction against Robert

# 15

K. Kitchen. In the Opinion, your Honorable Court agreed that trade secrets, customer good will and specialized training and skills are legitimate interests protectible through such a restrictive covenant, but the Court determined that "Plaintiff has failed to establish any harm resulting from Defendant's subsequent involvement with a competitor... this Court notes that the only alleged employment of the Defendant in the golf course construction industry proved by the Plaintiff at hearing was merely his operating a bull dozer for a competitor which hardly qualifies as direct competition...."

4. Most recently, during the week of May 21, 2001, Robert K. Kitchen contacted Mr. Robert Bishop, Supervisor for Mercer County Parks Authority on the golf course being constructed by Frank M. Sheesley Co. near Trenton, New Jersey. Robert K. Kitchen advised Mr. Bishop that he won a lawsuit against the Frank M. Sheesley Co., inquired about future golf course projects, and asked Mr. Bishop to refer news of future golf course construction projects on to their new business, Greens Tees Buckers Incorporated.

5. Robert K. Kitchen gave Mr. Bishop a business card (copy of which is attached hereto as Exhibit "A") for the new business that Mr. Kitchen and his wife established for golf course construction, named Greens Tees Bunkers Incorporated. The card lists an email address of "camrobkitchen@penn.com" for the business.

6. Greens Tees Bunkers Incorporated is registered as a PA Corporation, with an address of 7 Marshall Road, Mahaffey, PA 15757, which is the same address as Robert and Camille Kitchen, husband and wife. The aforementioned corporation was established when Articles of Incorporation were filed on February 12, 2001 with the PA Department of State, Corporation Bureau,

said business having been incorporated less than one week prior to the filing of the Complaint in these proceedings.

7. Additionally, in conversing with Mr. Bishop, Robert K. Kitchen indicated that the Mercer Oaks Golf Course Project, being constructed by Frank M. Sheesley Co., has "gone to hell" and advised Mr. Bishop that he is working for a competitor of the Frank M. Sheesley Co. and is available to work on any golf course construction projects.

8. Robert K. Kitchen became acquainted with Mr. Bishop during his employment with the Frank M. Sheesley Co., on construction of the Mercer Oaks Golf Course near Trenton, New Jersey.

9. Robert K. Kitchen has further violated his Employment Agreement with the Frank M. Sheesley Co. by contacting a customer of the Plaintiff, with whom Mr. Kitchen became acquainted during his 1 1/2 years of employment with the Frank M. Sheesley Co. He is directly soliciting business from at least one customer of the Frank M. Sheesley Co.

10. Additionally, Robert K. Kitchen has made disparaging comments about Frank M. Sheesley Co., which affects the goodwill that Frank M. Sheesley Co. has established with its customers.

WHEREFORE, during the pendency of Appeal to the Pennsylvania Superior Court and with this further egregious conduct by the Defendant, it is respectfully requested that your Honorable Court enter an Order:

- (a) Enjoining Robert K. Kitchen from performing golf course construction work in Pennsylvania,
- (b) Enjoining Robert K. Kitchen from performing any golf course construction work in the State of New Jersey, where he

last worked for the Frank M. Sheesley Co.,

(c) Enjoining Robert K. Kitchen from approaching, corresponding with, talking with, or contacting any businesses or customers established during Mr. Kitchen's employment with Frank M. Sheesley Co., and

(d) Enjoining Robert K. Kitchen from the practice of distributing business cards or information in Pennsylvania or New Jersey relating to the construction of golf courses or work connected therewith.

Respectfully submitted,

KUYAT & KUYAT

By

  
Craig E. Kuyat, Attorney for  
Frank M. Sheesley Co.

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

FRANK M. SHEESLEY CO., :  
Plaintiff : NO. 01 -229 - CD  
vs. :  
ROBERT K. KITCHEN and KITCHEN :  
CONTRACTING, :  
Defendants :  
:

VERIFICATION

I, CHARLES J. WISNIEWSKI, President of Frank M. Sheesley Co., verify  
that the statements made in this Application for Order Granting or Restoring  
Injunction are true and correct. I understand that false statements herein made  
are subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn  
falsification to authorities.

Dated: June 5, 2001

  
Charles J. Wisniewski



NO. 01 - 229 - CD

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

FRANK M. SHEESLEY CO.,

Plaintiff

vs.

ROBERT K. KITCHEN and  
KITCHEN CONTRACTING,

Defendants

APPLICATION FOR ORDER GRANTING  
OR RESTORING INJUNCTION

**FILED**

JUN 05 2001  
M(311)7066

William A. Shaw  
Prothonotary

KUHVAT & KUHVAT  
ATTORNEYS AT LAW  
150 CENTRAL, PARK LAW BUILDING  
CLAZIERE PARK AND LOCUST STREET  
JOHNSTOWN, PENNSYLVANIA 15901

**KUYAT & KUYAT**  
ATTORNEYS AT LAW  
150 CENTRAL PARK LAW BUILDING  
GAZEBO PARK AT LOCUST STREET  
JOHNSTOWN, PENNSYLVANIA 15901

EDWARD G. KUYAT, JR.  
CRAIG E. KUYAT

FAX  
535-4251

539-8783  
AREA CODE 814

June 5, 2001

Honorable John K. Reilly, Jr.  
Clearfield County Court House  
230 East Market Street  
Clearfield, PA 16830

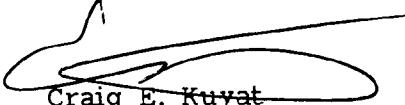
RE: Frank M. Sheesley Co.  
vs. Robert K. Kitchen  
and Kitchen Contracting  
No. 01-229 C.D.

Dear Judge Reilly:

You should have received a copy of the appeal papers which were filed in the above case last Friday. Enclosed please find Application for Order Granting or Restoring Injunction, with proposed Order, which we are presenting to the Trial Court for consideration, especially in light of the new information contained in Paragraphs 4 through 10.

I hereby certify that a copy of these documents are being provided to defense counsel, along with a copy of this letter. A copy is also being forwarded to the Prothonotary of Clearfield County, to record on the docket. If the Court deems that any further hearings or conferences are required for consideration of this application, please advise. Thank you for your attention to this matter.

Very truly yours,

  
Craig E. Kuyat

CEK:dg

Enclosure

cc:  William A. Shaw, Prothonotary  
THERON G. NOBLE, Esquire  
FRANK M. SHEESLEY CO.

## Appeal Docket Sheet

Docket Number: 968 WDA 2001

Page 1 of 3

June 6, 2001

Superior Court of Pennsylvania



01329-00

Frank M. Sheesley Co., Appellant   
 Robert K. Kitchen and Kitchen Contracting

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: June 1, 2001 Awaiting Original Record

Journal Number:

Case Category: Civil Case Type: Assumpsit

Consolidated Docket Nos.: Related Docket Nos.:

## SCHEDULED EVENT

Next Event Type: Docketing Statement Received

Next Event Due Date: June 19, 2001

Next Event Type: Original Record Received

Next Event Due Date: July 11, 2001

FILED

JUN 11 2001

m 11:32 p.m.

William A. Shaw  
Prothonotary

#16

**Appeal Docket Sheet****Docket Number:** 968 WDA 2001**Page 2 of 3****June 6, 2001****Superior Court of Pennsylvania****COUNSEL INFORMATION**

**Appellant** Frank E. Sheesley, Co.  
**Pro Se:** Appoint Counsel Status:

**IFP Status:** No

**Appellant Attorney Information:**

Attorney: Kuyat, Craig Edward  
 Bar No.: 39590 Law Firm: Kuyat & Kuyat  
 Address: Kuyat & Kuyat  
 132 Gazebo Park #150  
 Johnstown, PA 15901-1820  
 Phone No.: (814)539-8783 Fax No.: (814)535-4251  
 Receive Mail: Yes  
 E-Mail Address:  
 Receive E-Mail: No

**Appellee** Kitchen, Robert K  
**Pro Se:** Appoint Counsel Status:

**IFP Status:**

**Appellee Attorney Information:**

Attorney: Noble, Theron G.  
 Bar No.: 55942 Law Firm: Ferraraccio & Noble  
 Address: 301 East Pine Street  
 Clearfield, PA 16830  
 Phone No.: (814)765-4990 Fax No.: (814)765-9377  
 Receive Mail: Yes  
 E-Mail Address:  
 Receive E-Mail: No

**Appellee** Kitchen Contracting  
**Pro Se:** Appoint Counsel Status:

**IFP Status:**

**Appellee Attorney Information:**

Attorney: Noble, Theron G.  
 Bar No.: 55942 Law Firm: Ferraraccio & Noble  
 Address: 301 East Pine Street  
 Clearfield, PA 16830  
 Phone No.: (814)765-4990 Fax No.: (814)765-9377  
 Receive Mail: No  
 E-Mail Address:  
 Receive E-Mail: No

**FEE INFORMATION**

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
6/5/01	Notice of Appeal	55.00	55.00	2001SPRWD000709

## Appeal Docket Sheet

Docket Number: 968 WDA 2001

Page 3 of 3

June 6, 2001

## Superior Court of Pennsylvania



## TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Date of OrderAppealed From: May 17, 2001

Date Documents Received: June 5, 2001

Order Type: Judgment Entered

Judge: Reilly, John K.

President Judge

Division: Civil

Judicial District: 46

Date Notice of Appeal Filed: June 1, 2001

OTN:

Lower Court Docket No.: 01-229-CD

## ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
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Date of Remand of Record:

## BRIEFS

## DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
June 1, 2001	Notice of Appeal Filed	Appellant	Frank E. Sheesley, Co.
June 5, 2001	Docketing Statement Exited (Civil)		Western District Filing Office

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ROBERT K. KITCHEN,

Plaintiff

Nos. 01-1273-CD and  
01-229-CD

vs.

FRANK M. SHEESLEY COMPANY

Defendant

NOTICE OF TAKING DEPOSITION ON ORAL EXAMINATION  
UNDER PENNSYLVANIA R.C.P. NO. 4007.1

TO: Robert K. Kitchen  
c/o Theron G. Noble, Esquire  
FERRARACCIO & NOBLE  
301 East Pine Street  
Clearfield, PA 16830

FILED

JUL 05 2002

William A. Shaw  
Prothonotary

NOTICE is given herewith that pursuant to Pennsylvania R. C. P. No. 4007.1, the Deposition of Robert K. Kitchen will be taken on oral examination at the office of Sargent's Court Reporting Service, 106 North Second Street, Clearfield, PA 16830 on Monday, August 5, 2002 at 10:00 a.m. and any and all adjournments thereof.

The deponent is also required to bring with him and produce, at the time of deposition, all papers, documents, photographs, etc. relating to the claims set forth in the above captioned proceedings, including all papers relating to the amount of damages alleged. This request specifically includes:

1. Any and all written notes, commentaries, letters or diaries prepared by the deponent or his wife concerning the subject matter of these actions,
2. All W-2's, K-1's, unemployment compensation records, forms or papers and any other earnings records or statements, including Federal and State Tax Returns, for the years 1997 through 2001, for deponent, his wife, their businesses, or the business of

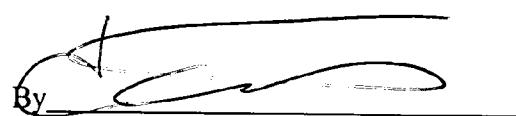
"Greens, Tees and Bunkers" or "Greens, Tees, Bunkers Inc.",

3. Any and all documents relating to the purchase, repairs and maintenance costs, and all income derived from the use of the Caterpillar 416C Backhoe described in the pleadings, from 1997 to date.

The oral examination of the above named individual will be taken before an Official Court Reporter.

KUYAT & KUYAT

Dated: July 3, 2002



Craig E. Kuyat, Esquire  
Attorney for Defendant

cc: ✓William Shaw, Prothonotary  
Sargent's Court Reporting Services, Inc.

KUYAT & KUYAT  
ATTORNEYS AT LAW  
150 CENTRAL PARK LAW BUILDING  
1000 THIRD AVENUE  
NEW YORK, N.Y. 10022  
TELEPHONE 212-554-1234  
TELETYPE 212-554-1235

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

FRANK M. SHEESLEY CO.,

Plaintiff : No. 01-229-CD

vs. :

ROBERT K. KITCHEN and  
KITCHEN CONTRACTING, :

Defendants :

ROBERT K. KITCHEN, t/d/b/a  
ROBERT KITCHEN CONTRACTING :

Plaintiff : No. 01-1273-CD

vs. :

FRANK M. SHEESLEY CO., :

Defendant :

**FILED**

AUG 07 2002

u/2:45 (w)

William A. Shaw

Prothonotary

wcc

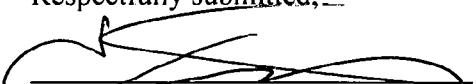
*EKA*

CERTIFICATE OF SERVICE

I, Craig E. Kuyat, Esquire, Attorney for Frank M. Sheesley Company, do hereby certify this 2nd day of August, 2002, that I did mail a true and correct copy of Answers to Interrogatories, Answers to Request for Production and Answers to Request for Admissions, to the below counsel of record, via United States Mail, first class, postage pre-paid:

Theron G. Noble, Esquire  
Attorney for Plaintiff  
Ferraraccio & Noble  
301 East Pine Street  
Clearfield, PA 16830

Respectfully submitted, —

  
Craig E. Kuyat, Esquire  
Kuyat & Kuyat  
150 Central Park Law Bldg.  
Gazebo Park at Locust Street  
Johnstown, PA 15901

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

FRANK M. SHEESLEY COMPANY, :

Plaintiff, : CIVIL ACTION NO. 01-229-CD

v. :

ROBERT K. KITCHEN, :  
and KITCHEN CONTRACTING, :

Defendants, :  
:

PRAECIPE TO SETTLE AND DISCONTINUE

TO THE PROTHONOTARY:

Kindly mark the docket settled, discontinued and forever ended, with prejudice, in the  
above captioned case.

Respectfully submitted,



Craig E. Kuyat, Esquire  
Attorney for Plaintiff



Theron G. Noble, Esquire  
Attorney for Defendant

**FILED**

OCT 02 2002

William A. Shaw  
Prothonotary

FILED  
cc

312-18801

OCT 02 2002

Disc. to Amy Kuyat

William A. Shaw Copy of Disc to cl/A  
Prothonotary

*W.A.S.*

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

COPY

CIVIL DIVISION

Frank M. Sheesley Company

Vs.

No. 2001-00229-CD

Robert K. Kitchen and  
Kitchen Contracting

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 October 2, 2002 marked:

Settled, Discontinued and Forever Ended with Prejudice

Record costs in the sum of \$180.78 have been paid in full by Craig E. Kuyat, Esq..

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 2nd day of October A.D. 2002.

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William A. Shaw, Prothonotary