

DOCKET NO. 173

NUMBER TERM YEAR

10 MARCH 1961

MONSANTO CO., A CORPORATION

VERSUS

THE DUTCH SODA COMPANY CO.,

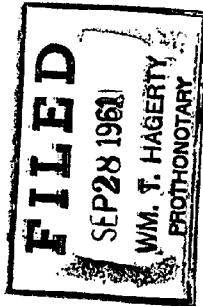
A CORPORATION

POINTS FOR CHARGE

1. Laches is a neglect or omission on the part of one party resulting in prejudicial injury to the rights of the other.

2. It is the natural effect upon the other party which gives vitality to an estoppel and where laches is prejudicial to the other party it works an estoppel.

Williston on Contracts quoted in Antone vs. New Amsterdam Casualty Company, 355 Pa., 134, 140.



1961-00000000000000000000000000000000

WILLIAM F. HAGERTY, PROTHONOTARY, SEPTEMBER 28, 1961

RECEIVED IN THE OFFICE OF THE PROTHONOTARY, WILLIAM F. HAGERTY, SEPTEMBER 28, 1961

1961-00000000000000000000000000000000

WILLIAM F. HAGERTY, PROTHONOTARY, SEPTEMBER 28, 1961

RECEIVED IN THE OFFICE OF THE PROTHONOTARY, WILLIAM F. HAGERTY, SEPTEMBER 28, 1961

1961-00000000000000000000000000000000

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

THORN'S, INC., A Corporation :

vs.

CLEARFIELD CONSTRUCTION
COMPANY, a Corporation

: No. 310 February Term, 1961

: In Assumpsit

MOTION

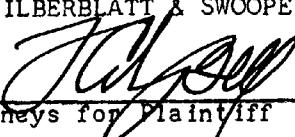
To William T. Hagerty, Prothonotary,

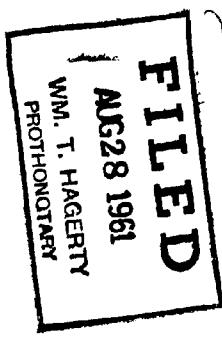
Sir:

In accordance with Order of Court of August 24, 1961, put
the above entitled case on the trial list.

BELL, SILBERBLATT & SWOOP

by


Attorneys for Plaintiff



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THORN'S, INC.

-vs-

No. 310 February Term, 1961

CLEARFIELD CONSTRUCTION COMPANY, :
a corporation :
: :
:

POINTS FOR CHARGE

The Court is requested to charge the jury as follows:

(1). The Plaintiff's claim is based on an oral
agreement to furnish certain labor and materials in the construc-
tion of a number of houses.

(2). Under the evidence in this case, it is not denied
that the materials and labor set out in the statements of the
Plaintiff were furnished.

(3). There is no evidence that the Defendant paid the
Plaintiff for the materials used and labor furnished in installing
the equipment set out in the Plaintiff's Exhibit 7.

(4). Any debtor is entitled to maintain an action for
materials and labor furnished for a period of six years after the
work was done and the materials furnished, unless the creditor can
show a payment or release of such obligation.

(5). If the jury finds that the various papers offered
by the Defendant, headed "Release of Lien", were only intended by
the parties to be a release by the Plaintiff of the right to file
a mechanic's or materialman's lien against said properties, the
jury may find that the Defendant still owes for labor and equipment
furnished.

(6). The Defendant would be obligated to see that all
obligations were paid or released if it is to be excused of
liability therefor.

(7). Under all the evidence in the case, your verdict
must be for the Plaintiff.

BELL, SILBERBLATT & SWOOP
By


F. Cortez Bell,
Attorneys for Plaintiff

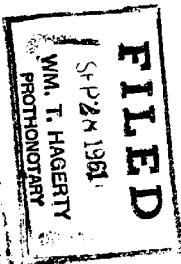
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENN -
SYLVANIA, No. 310 February
Term, 1961

THORN'S, INC.

-VS-

CLEARFIELD CONSTRUCTION
COMPANY, a corporation

POINTS FOR CHARGE



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

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

THORN'S, INC., A Corporation :

vs. : No. 310 February Term, 1961

CLEARFIELD CONSTRUCTION CO., : In Assumpsit
A Corporation :

AMENDED COMPLAINT

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

(1). The Plaintiff is a corporation incorporated under the law of the Commonwealth of Pennsylvania, and its principal office and place of business is 312 East Market Street, Clearfield, Pennsylvania.

(2). That the Defendant is a corporation organized and existing under the law of the State of Ohio and is registered to do business in Pennsylvania. Its mailing address is Clearfield, Pennsylvania, P. O. Box 428.

(3). The Defendant corporation orally employed the Plaintiff to furnish materials and labor in certain properties in Lawrence Township, Clearfield County, Pennsylvania.

(4). All contracts for the labor and materials supplied were entered into with Kenneth Gearhart of the Plaintiff corporation and either William Jordan or Richard Law of the Defendant corporation.

(5). Some of the verbal orders from the Defendant corporation were received from both William Jordan and Richard Law, both of whom are officers and employees of the Defendant corporation and were in charge of the work being done on the various properties.

(6). That the prices charged the Defendant for the labor and materials furnished were fair and the usual sum charged therefor.

(8). The time when the work was done and the identity of the house, at which said work was performed, as well as the prices charged are set out on copies of the invoices for labor and materials at each house, marked Plaintiff's Exhibit A and attached to the original Complaint, which are incorporated hereto by reference.

(9). In each instance, the work and materials were supplied within a period of thirty (30) days from the time of the original order for same, from either Mr. Jordan or Mr. Law.

(10). That the total amount of the labor and materials furnished as shown in Plaintiff's Exhibit A total \$7,364.71.

(11). That on or about December 10, 1959, the Plaintiff furnished to the Defendant, copies of said invoices.

(12). In the billing of December 10, 1959, the Plaintiff allowed the Defendant a discount of 30% which sum was deducted before the total of \$7,364.71 was arrived at.

(13). In January of 1960, the Plaintiff corporation notified the Defendant of an error in billing in the amount of \$22.49, for which a credit memorandum was given after the sum of \$7,364.71 was arrived at.

(14). In April of 1960, the Plaintiff allowed the Defendant an additional credit of \$20.00 on each of twenty (20) plumbing jobs and of \$10.00 in each of twenty-two (22) heating jobs, making a total credit of \$620.00.

(15). The credits referred to in paragraphs thirteen and fourteen are attached as part of Plaintiff's Exhibit A to the original Complaint and show a balance due to the Defendant on these jobs of \$6,722.22.

(16). In addition thereto, the Plaintiff corporation had been employed to install plumbing in a house on a written bid of \$780.00. Said Contract, being identified as Number 52616, is in the possession of the Defendant, and therefore not attached here-to, as the amount of said charge is not disputed.

(17). Extras were requested to said written contract, for which the Defendant was charged fair and reasonable sums.

(18). The total amount of said work and materials was on said written contract and verbal extras, \$1,105.50.

(19). On said contract, Defendant made payment of \$450.00 in 1959, leaving a balance of \$655.50, and on which the Defendant was given an additional credit of \$48.86 and paid \$100.00 on account, reducing the balance due on said job to \$506.64.

(20). That said written bid is not attached because the same is not in dispute between said parties.

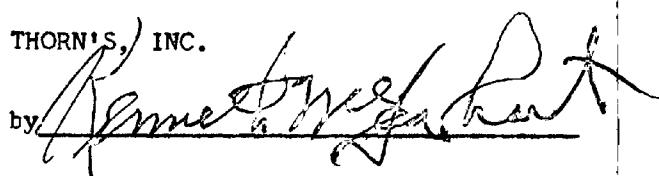
(21). That the total amount owed to the Plaintiff by the Defendant \$6,722.22 on the verbal orders and \$506.64 on the written bid plus the extras for a total of \$7,222.22.

(22). That the Defendant corporation has not, at anytime, ever claimed to the Plaintiff that the sums charged for either the labor or materials were not fair or just, nor has the Defendant ever asserted that there were any credits against said sum to which they were entitled to additional credit.

(23). The Plaintiff requests that judgment be rendered in its favor and against the Defendant for said sum of \$7,222.22, with interest on the respective items from the date they were furnished to the date of payment, as penalty for delay in payment.

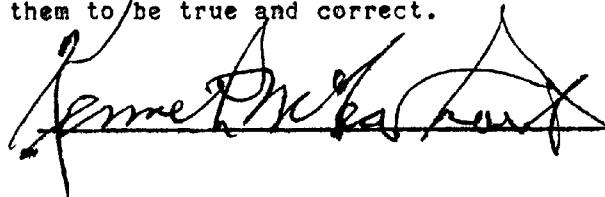
THORN'S, INC.

by

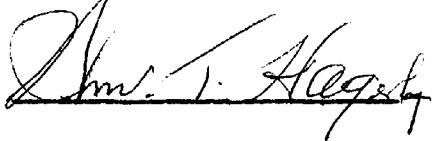


STATE OF PENNSYLVANIA :
ss:
COUNTY OF CLEARFIELD :

Before me, the subscribed hereto, came Kenneth Gearhart,
who being duly sworn according to law, deposes and says that he
has personal knowledge of the facts set out in said Complaint,
and that the facts averred therein are true and correct to the
best of his knowledge and belief when derived from the knowledge of
others, he verily believes them to be true and correct.



Sworn and subscribed to
this 7 day of
July, 1961.



PROTHONOTARY
My Commission Expires
1st Monday Jan. 1962

IN THE COURT OF COMMON
PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA
No. 310 Feb. Term, 1961

In Assumpsit

THORNS, INC., a corpora-
tion

vs.

CLEARFIELD CONSTRUCTION
CO., a corpora-
tion

AMENDED
COMPLAINT

TO THE WITHIN NAMED DEFEND-
ANT:

You are hereby notified
to plead to the within

Amended Complaint within

20 days from the date of
service hereof.

BELL, SILBERBLATT & SWOOPPE
by *John J. Bell*
ATTORNEYS FOR PLAINTIFF.

ED

1961
BELL, SILBERBLATT & SWOOPPE
ATTORNEYS FOR PLAINTIFF
CLEARFIELD COUNTY, PA.
CLEARFIELD, PENNA.

*John J. Bell
Attala & Silberblatt
1961*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THORN'S, INC., a Corporation :
VS. : No. 310 February Term, 1961
CLEARFIELD CONSTRUCTION :
COMPANY, a Corporation : IN ASSUMPSIT

PLAINTIFF'S REPLY

The Plaintiff makes reply to the New Matter attached to the Defendant's Answer as follows:

(1). Paragraph (1) of the Defendant's New Matter is denied as pled. It is specifically denied that there was any agreement that the labor costs as to any house or houses would fix the cost of labor on any other house. The labor performed and the materials furnished and the installing and connecting of the oil tanks, warm-air furnaces, as well as the labor costs and materials in roughing in the plumbing and fixtures in the two houses, namely Nos. 25 & 37 have not been paid and are included in the exhibit attached to the Plaintiff's Complaint and marked Plaintiff's Exhibit A.

(2). Paragraph (2) is denied. There never was any agreement that the labor on houses 25 & 37 were to fix the costs as to any other houses. It is noted that the costs as to houses 25 & 37, which are unpaid, are approximately the same as the costs on the other houses, which also are unpaid.

(3). Paragraph (3) is denied.

(4). In answer to Paragraph (4), the Plaintiff knew that most of the houses being built were for resale. The Plaintiff also knew that the costs of installing the equipment, materials and labor costs were parts of the costs in each house. The Plaintiff also knew that the Defendant had had considerable experience in building a number of dwellings for resale, and because of the fact that the Defendant had paid or was making payments as to houses where there were specific contracts involved, and because all equipment, less the discount given had been paid, the Plaintiff assumed that the Defendant was not desirous of checking the costs of each house in detail. An examination as to

the amount of these bills was mentioned by William Jordan to Kenneth Gearhart at several times prior to December 10, 1959, but the exact time or place of such conversations cannot now be recalled, but there was conversation between the two men mentioned, as to ascertaining the amount of said bill on several occasions prior to December 10, 1959.

(5). Paragraph (5) is denied as pled. It is admitted that the costs of the oil furnaces, bathroom fixtures and kitchen equipment were sent to the Defendant within a short period of time after they were ordered and delivered. Said bills did not include the labor costs of installation of said equipment, some of which were installed by the Defendant's ~~and~~ employees and some by the Plaintiff's employees.

(6). Paragraph (6) is denied as pled. It is specifically denied that the items referred to as A to V were bills for labor. On the contrary, it is averred that said bills were for equipment and materials only. It is also denied that the bills set out in items A to V in Paragraph 6 mentioned any particular house as set out in Paragraph 6. On the contrary, the bill of April 30, 1958, mentioned in Defendant's Answer as A, B & C, was one bill. The first item of which read:

three 275 gallon oil tanks, \$99.75
tubing 12.60 - installed in the
Collamer house.

the third tank and tubing
being in the amount of \$7.25, installed in the DeRomo house.

In April, 1958 when the bill was received, the Defendant knew that the items set out as subdivision A of Paragraph 6 covered three different properties and was not a bill for the Mastroianni property alone, as pled. All items dated April 30, 1958 and divided by the Defendant into subdivisions A, B & C were in one bill. The bill of October 17, 1958 in the amount of \$280.83 has been divided by the Defendant into item D and part of item B and part of item F. The same has been done with all of the items set out in the subdivisions of Defendant's Paragraph 6, and it is, therefore, denied as pled. On the contrary, it is averred that the Plaintiff on the various dates sent a

bill, usually including all items purchased by the Defendant as of that date, which had not been paid for. There was no understanding or agreement between the Plaintiff and the Defendant to fix the labor costs on one house on the amount of the labor costs as to any other house, whether the costs on the other house had been paid or not paid.

(7). It is admitted that the items described in the subdivisions of Paragraph 6 have been paid for, but it is denied that there were any invoices sent out covering the cost of installation or labor, as averred in Paragraph 6.

(8). Paragraph (8) is denied as pled. It is admitted that the equipment purchased at the Plaintiff's store was usually billed each month at a generous discount.

(9). Paragraph (9) is denied as pled. No invoices were ever withheld from the Defendant. It is admitted that the billing date of December 10, 1959 may have been 18 months after some of the labor was performed and only 3 months after some of the labor. It is averred that the Defendant knew of the existence of the debt for installation of the articles purchased, and that Mr. Jordan, of the Defendant Company, several times talked about coming in and straightening up the amount of this item. Upon his failure to do so within a reasonable time, the bill of December 10, 1959 was sent out.

(10). Paragraph (10) is denied. On the contrary, it is averred that the said bills were delivered to the office of the Defendant Corporation before Christmas, 1959.

(11). In answer to Paragraph (11), the Plaintiff does not recall what conversations were had, if any, with the office help but does state that Mr. Jordan did know that he had delivered the bill dated December 10, 1959 and commented as to the same before Christmas of that year.

(12). Paragraph (12) is denied. The bills were due; the work was done, and the Defendant does not deny owing the Plaintiff the amount claimed. The duty rested on the Defendant to find out what it owed before selling the house, but the Defendant made no inquiry of the Plaintiff as to the amount owed in

any particular house. It is further averred that the Defendant, through Mr. Jordan, talked about going over said charges several times prior to December 10, 1959.

(13). Paragraph (13) is denied. Most of the charges of the Plaintiff were for work done in the last 6 months prior to December 10, 1959. The items billed were still due and have not been paid for, all of which has been known by the Defendant since the work was done. The Defendant knew that the oil tanks and the basement and water service were done at its request by the Plaintiff, and that no payment had ever been made for such labor and that the Defendant was obligated for the same.

Respectfully submitted,

THORN'S, INC.
By

President

BELL, SILBERBLATT & SWOPE
By

Kathy Bell
Attorneys for Thorn's, Inc.

STATE OF PENNSYLVANIA: SS:
COUNTY OF CLEARFIELD :

Before me, the undersigned officer, personally appeared, KENNETH GEARHART, who deposes and says that the facts set forth in the foregoing Plaintiff's Reply are true and correct to the best of his knowledge, information and belief.

Sworn to and subscribed
before me this 14th
day of December, 1961.

Kenneth Gearhart

Now Aug 14 1961 served on me by copy
Barry R. Hamer
attorney for Clearfield Construction
Company, a Corp.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA No. 310 February Term, 1961 IN ASSUMPTION	
THORN'S, INC., a Corporation VS. CLEARFIELD CONSTRUCTION COMPANY, a Corporation	PLAINTIFF'S REPLY
 FILED Aug 14 1961 WM. T. HAGERTY PROTHONOTARY	
BELL, SILBERBLATT & SWOPE ATTORNEYS AT LAW CLEARFIELD, PENN. CLEARFIELD, PENNA.	

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

THORN'S, INC., a Corporation ;
vs : No. 310 February Term 1961
CLEARFIELD CONSTRUCTION : IN ASSUMPSIT
COMPANY, a Corporation :
;

O P I N I O N

The Preliminary Objections to the Complaint are sustained.
Paragraphs 3 to 6 inclusive, contain surplusage.

The objections to the manner in which the amount claimed due and payable, as set forth in the Complaint, are not pled as the rules require.

This appears, as nearly as can be ascertained from the various averments in the Complaint, the original action of assumpsit for materials and labor furnished the defendant, upon an oral agreement, concerning the amounts of material, the prices, and the labor necessary and required. There is nothing to indicate any departure from the usual and ordinary method of pleading an oral contract for the purchase of materials, and the performing of labor.

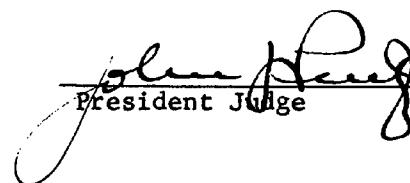
The plaintiff should further, if at all able, state the agent or officer of the defendant corporation, who made the purchases, and whether or not such orders were oral or written.

For the purposes of ascertaining the time in which the payment for materials and labor should be made, the dates on or about which the purchases were made should be averred, as well as the time demand for payment was made, and refused, if demand was made.

O R D E R

NOW, June 27, 1961, Preliminary Objections are sustained, with leave to the plaintiff to amend as indicated in the above Opinion, within twenty days from the date hereof.

BY THE COURT


John H. Peay
President Judge

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
IN ASSUMPSIT
No. 310 February Term 1961

THORN'S, INC., a Corporation

VS

CLEARFIELD CONSTRUCTION CO.,
a Corporation

OPINION AND ORDER

JOHN J. PENTZ
PRESIDENT JUDGE
CLEARFIELD, PENNSYLVANIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THORN'S INC., a corporation :

vs. : No. 310 February Term, 1961

CLEARFIELD CONSTRUCTION CO., : IN ASSUMPSIT
a corporation : :

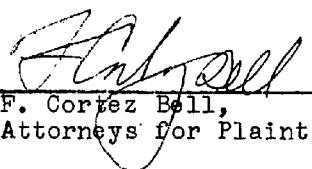
PRAECLYPE

To William T. Hagerty, Prothonotary

Sir: Please put the above captioned case on the next
argument list.

BELL, SILBERBLATT & SWOOP

By


F. Cortez Bell,
Attorneys for Plaintiff

April 12, 1961



IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYL-
VANIA, No. 310 February Term,
1961 - In Assumpsit

THORN'S INC., a corporation

-vs-

CLEARFIELD CONSTRUCTION CO.,
a corporation

PRAECLPHE

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

THORN'S INC., a corporation:

vs. : No. 310 February Term, 1961

CLEARFIELD CONSTRUCTION CO.: IN ASSUMPSIT
a corporation :
:

PRAECLP

To: William T. Hagerty, Prothonotary,

Sir:

Please enter the above entitled action on the next Argument

List.

BELL, SILBERBLATT & SWOOP

by D. Campbell

Attorneys for Plaintiff

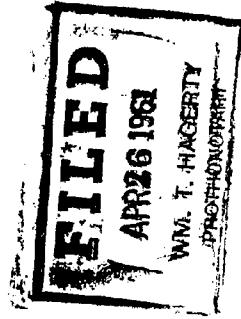
IN THE COURT OF COMMON
PLEAS OF CLEARFIELD
COUNTY, PENNSYLVANIA.
No. 310 Feb. Term, 1961
In Assumpsit

THORN'S, INC., a
corporation

vs.

CLEARFIELD CONSTRUCTION
CO., a corporation

PRAECIPE



Bell, Silberblatt & Swoope

THORN'S, INC.
versus
CLEARFIELD CONSTRUCTION COMPANY

In the Court of Common Pleas of
the county of Clearfield
of February Term, A. D. 19 61
No. 310
Real Debt, - - - - - \$6,722.20
Int. from
Costs, - - - - - \$
Entered and filed September 28, 1961

KNOW ALL MEN BY THESE PRESENTS, that Thorn's Inc.

the plaintiff named in the above entitled judgment, for and in consideration of the sum of one Dollar, lawful money of the United States, to IT paid by the defendant above named, the receipt whereof is hereby acknowledged, do hereby forever acquit, exonerate, discharge and release from the lien of the above entitled judgment, the following described property, to-wit:

ALL that certain lot or parcel of real estate situate in the Township of Lawrence, County of Clearfield and Commonwealth of Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin in the southern line of Parkview Road at the northern corner of Lot No. 62 in Country Club Hills, such point being situate north eighty six (86) degrees six (6) minutes west one hundred fifteen and fifty one one-hundredths (115.51) feet from the center of Country Club Lane; thence by the southern line of Parkview Road south eighty six (86) degrees six (6) minutes east fifty nine and ninety three one-hundredths (59.93) feet to an iron pin; thence by a curve to the right, the radius of which is twenty five (25) feet, and the long chord of which is forty four and twenty seven one-hundredths (44.27) feet to an iron pin in the western line of Country Club Lane; thence by the western line of Country Club Lane south eighteen (18) degrees twenty two (22) minutes west eighty six and ninety three one-hundredths (86.93) feet to an iron pin in the northern line of Lot No. 47; north seventy one (71) degrees thirty eight (38) minutes west sixty eight and one-tenth (68.1) feet to a common corner of Lots Nos. 47 and 62; thence by the eastern line of Lot No. 62 north six (6) degrees fifty four (54) minutes east one hundred one and two-tenths (101.2) feet to an iron pin in the southern line of Parkview Road and the place of beginning. Being Lot No. 63 in Flat of Country Club Hills.

And it is further agreed that the plaintiff above named will not look to the said above mentioned and described premises or any part thereof, for payment of any part of the principal and interest of said above entitled judgment, now or hereafter to become due, or in any way disturb, molest, put to charge or damage, the present or any future owner or owners, occupier or occupiers of the said above mentioned and described premises, or any part or portion thereof, for or by reason of the said judgment, or any matter, cause or thing thence accruing or to arise: Provided, that nothing herein contained shall affect the said judgment or its legal validity, so far as respects all other lands and tenements of the said defendant situate in the County aforesaid, which are not herein expressly exonerated therefrom.

IN WITNESS WHEREOF the said Thorn's, Inc.

has caused
this Indenture to be signed by its President, attested by its
Secretary and has caused the common and corporate seal of the said
corporation to be hereunto affixed this day of December 1962



Attest:

Henry E. Meyers By *Henry E. Meyers* President
Secretary

No. 310 February Term, 1961

THORN S. INC.

versus

CLEARFIELD CONSTRUCTION COMPANY

Release From Lien of Judgment

Upon Lot No. 63 in Plat of
Country Club Hills

Entered and filed September 28,
1961

Prothonotary.



1/16/61
Lee Kramer

The Supreme Court of Pennsylvania, } ss.
EASTERN DISTRICT
CITY AND COUNTY OF PHILADELPHIA }

The Commonwealth of Pennsylvania.

TO THE JUDGES of the

County of Clearfield

COURT of Common Pleas

GREETING:

Whereas, By virtue of our Writ of Certiorari from our SUPREME COURT of Pennsylvania for the Eastern District, returnable in the same Court on the **second** Monday of **November** in the year of our Lord one thousand nine hundred and **sixty-two** a record was brought into the same Court upon appeal by

CLEARFIELD CONSTRUCTION COMPANY

from your Judgment made in the matter of No. 310 February Term 1961, wherein

THORN'S, INC., a Corporation is PLAINTIFF and CLEARFIELD CONSTRUCTION COMPANY, a Corporation, is DEFENDANT

And it was so proceeded in our said Supreme Court, that the following judgment was made, to wit:

NON PROS

And the record proceedings thereupon, and all things concerning the same, were (agreeably to the directions of the Act of the General Assembly in such case made and provided) ordered by the said Supreme Court to be remitted to the Court of Common Pleas for the County of Clearfield aforesaid, as well for execution or otherwise as to justice shall appertain. Wherefore we here remit you the record of the judgment aforesaid and the proceedings thereupon, in order for execution or otherwise, as aforesaid.

Witness the Honorable **John C. Bell, Jr.** Chief Justice of our said Supreme Court, at Philadelphia, the **28th** day of **December** in the year of our Lord one thousand nine hundred and **sixty-two**.

George H. Illinois
Deputy Prothonotary

C.P. Clearfield County
No. 310 February Term 1961

No. 309 January Term, 19 62

Supreme Court

THORN'S, INC., a Corporation

v.

CLEARFIELD CONSTRUCTION COMPANY,
a Corporation

APPEAL OF: CLEARFIELD CONSTRUC-
TION COMPANY

REMITTITUR

Att'y



THORN'S INC.
versus
CLEARFIELD CONSTRUCTION COMPANY

In the Court of Common Pleas of
the county of Clearfield
of February Term, A. D. 1961
No. 310
Real Debt, - - - - - \$ 6,722.20
Int. from
Costs, - - - - - \$
Entered and filed September 28, 1961

KNOW ALL MEN BY THESE PRESENTS, that Thorn's Inc.

the plaintiff named in the above entitled judgment, for and in consideration of the sum of one Dollar, lawful money of the United States, to it paid by the defendant above named, the receipt whereof is hereby acknowledged, do hereby forever acquit, exonerate, discharge and release from the lien of the above entitled judgment, the following described property, to-wit:

ALL that certain lot or parcel of real estate situate in the Township of Lawrence, County of Clearfield and Commonwealth of Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin in the southern line of Josephs Road, such point being five hundred (500) feet westerly from the center line of Country Club Lane, being also the northwestern corner of Lot No. 11 in the Plat of Country Club Hills; thence by the western line of Lot No. 11 south two (2) degrees no minutes west one hundred twenty (120) feet to an iron pin at the northwestern corner of James A. and Phyllis L. Walker lot; thence by the northern line of the Walker lot north eighty eight (88) degrees no minutes west seventy (70) feet to an iron pin in the southeastern corner of Lot No. 9 in Country Club Hills; thence by the eastern line of Lot No. 9 north two (2) degrees no minutes east one hundred twenty (120) feet to an iron pin in the southern line of Josephs Road; thence by the southern line of Josephs Road south eighty eight (88) degrees no minutes east seventy (70) feet to the place of beginning. Being Lot No. 10 in the Plat of Country Club Hills.

And it is further agreed that the plaintiff above named will not look to the said above mentioned and described premises or any part thereof, for payment of any part of the principal and interest of said above entitled judgment, now or hereafter to become due, or in any way disturb, molest, put to charge or damage, the present or any future owner or owners, occupier or occupiers of the said above mentioned and described premises, or any part or portion thereof, for or by reason of the said judgment, or any matter, cause or thing thence accruing or to arise: Provided, that nothing herein contained shall affect the said judgment or its legal validity, so far as respects all other lands and tenements of the said defendant situate in the County aforesaid, which are not herein expressly exonerated therefrom.

IN WITNESS WHEREOF, Thorn's Inc. have hereunto set its ~~XXXXXX~~ seal
this day of November A. D. 1963.

~~XXXXXX~~
ATTEST:

Alce L. Danver
Assistant Secretary

THORN'S, INC.

By: *George E. Meyer*
Vice President

~~XXXXXX~~

SEAL

~~XXXXXX~~

No. 310 February Term, 1961.

11/
THORN'S, INC.

versus

11/ CLEARFIELD CONSTRUCTION COMPANY

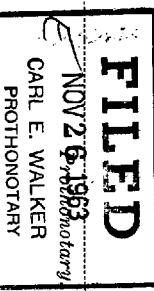
Release From Lien of Judgment

Upon Lot No. 10 in the Plot of

Country Club Hills

Entered and filed September 28, 1961.

FILED



Clarence R. Kramer
Attorney.

*11/ C.R. Kramer
Jordan*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THORN'S, INC., a Corporation :
vs. : No. 310 February Term, 1961
CLEARFIELD CONSTRUCTION : IN ASSUMPSIT
COMPANY, a Corporation :
:

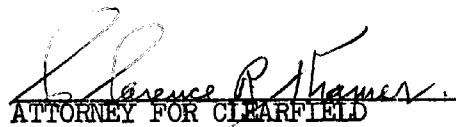
MOTION AND REASONS
FOR A NEW TRIAL

NOW, September 29, 1961, Clearfield Construction Company, Inc., the defendant, moves the Court for a new trial and assigns as reasons in support thereof the following:

1. The verdict was against the evidence
2. The verdict was against the weight of the evidence.
3. The charge of the Court contained fundamental error in so charging as to amount substantially to a direction to find for the plaintiff.
4. The learned Court erred in refusing specific verbal requests for charge.
5. That the learned Court erred in qualifying the second point for charge submitted in behalf of defendant.
6. That the learned Court erred in charging that the defendant showed no loss.
7. That the learned Court erred in so charging the jury that numerous questions were virtually removed from its consideration.

WHEREFORE, the defendant moves the Court that the testimony and the charge be written out, certified and filed so as

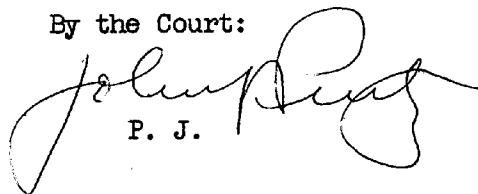
to become part of the record and that leave be granted the defendant to file additional reasons and/or to amplify the ones now given.


ATTORNEY FOR CLEARFIELD
CONSTRUCTION COMPANY, INC.

ORDER OF COURT ON THE
FOREGOING MOTION

NOW, Oct 2, 1961, it is ordered and directed that the testimony and charge of the Court be transcribed and filed as a part of the record in the case and leave be granted to the defendant to file additional reasons and/or amplify the ones now alleged within thirty (30) days after the testimony and charge are lodged with the Prothonotary.

By the Court:


John P. R. Peat
P. J.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 310 February Term, 1961
IN ASSUMPSIT

THORN'S, INC., a Corporation

vs.

CLEARFIELD CONSTRUCTION
COMPANY, a Corporation

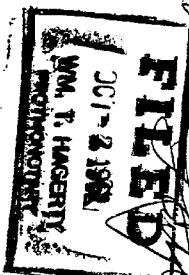
MOTION AND REASONS
FOR A NEW TRIAL

Now Oct 2, 1961

Answered by
John W. Haskett, Jr.

Bill Shulhoff, Jr.

John W. Haskett, Jr.



LAW OFFICES

CLARENCE R. KRAMER

CLEARFIELD, PA.

217 MARKET STREET

Plaintiffs &
versus
Clearfield Construction
Co. of Clearfield

IN THE COURT OF COMMON PLEAS
OF THE COUNTY OF CLEARFIELD, PA.
No. 210 Trial Term, 1961

VERDICT

And now to wit:

September 28, 1961, we, the Jurors
empanelled in the above entitled case, find A Verdict in Favor of the Plaintiff.

~~The Plaintiff of the Plaintiff
in the sum of \$6722,20 f.~~

John J. Miller
Foreman

No. 31046 Term, 1961

T. French

VERSUS

City Court Co.

VERDICT



NO. 310TERM FebDATE 9/27/61YEAR 1961

PLAINTIFF

Thomas Inca corporation

vs.

DEFENDANT

Clearfield Const. Coa corporation

JURY CALLED AND SWEORN:

9:58JURORS:

1. Mary M. Peab
2. Elizabeth Turb
3. Josephine Leibal
4. Helen A. Miller
5. Edith L. Biss
6. Terence M. Mastor

7. Mrs. L. C. Smith
8. August Gruender
9. Francis J. Shellen
10. Alice C. Roselli
11. Ruth Currier
12. Colvin D. Miller

PLAINTIFF WITNESSES:

Kenneth Dearhart
Henry Myers
Alice Daney

DEFENDANT WITNESSES:

Tom Jordan
Richard Sauer
Samothyke

PLAINTIFF'S ATTY. Bell S.DEFT. ATTY. FarnessADDRESS TO JURY: 2:40ADDRESS TO JURY: 1:45JUDGE: ADDRESS TO JURY: 3:25JURY OUT 4:3 JURY RETURN: 5:8

VERDICT:

Plaintiff \$ 792.70

THORN'S, INC.
versus
CLEARFIELD CONSTRUCTION COMPANY

In the Court of Common Pleas of
the county of Clearfield
of February Term, A. D. 19 61
No. 310
Real Debt, - - - - - \$ 6,722.20
Int. from
Costs, - - - - - \$
Entered and filed September 28, 1961

KNOW ALL MEN BY THESE PRESENTS, that Thorn's, Inc.

the plaintiff named in the above entitled judgment, for and in consideration of the sum of one Dollar, lawful money of the United States, to it paid by the defendant above named, the receipt whereof is hereby acknowledged, do hereby forever acquit, exonerate, discharge and release from the lien of the above entitled judgment, the following described property, to-wit:

ALL that certain lot or parcel of real estate situate in the Township of Lawrence, County of Clearfield and Commonwealth of Pennsylvania, bounded and described as follows:

BEGINNING at an iron pin in the line of Joseph Road at the southeast corner of Lot No. 33 in Country Club Hills, such point being situate eighty eight (88) degrees no minutes east one hundred forty one and sixty one one hundredths (141.61) feet from the center of Country Club Lane; thence by the eastern line of Lot No. 33 north two (2) degrees no minutes east eighty five and sixty one one hundredths (85.61) feet to an iron pin at the northeast corner of Lot No. 33, being also the southernmost corner of Lot No. 46; thence by the southeastern line of Lot No. 46 north fifty five (55) degrees twenty seven (27) minutes east fifty six and sixty nine one hundredths (56.69) feet to an iron pin at the southwestern corner of Lot No. 44; thence by the southern line of Lot No. 44 south eighty nine (89) degrees fifty one (51) minutes east fourteen and six one hundredths (14.06) feet to an iron pin at the northwestern corner of Lot No. 35; thence by the western line of Lot No. 35 south two (2) degrees no minutes west one hundred twenty (120) feet to an iron pin in the northern line of Joseph Road; thence by the northern line of Joseph Road north eighty eight (88) degrees no minutes west sixty (60) feet to an iron pin at the southeastern corner of Lot No. 33 and the place of beginning. Being lot No. 34 in Plat No. 2 of Country Club Hills, such Plat being recorded in Miscellaneous Book No. 73, page 415.

And it is further agreed that the plaintiff above named will not look to the said above mentioned and described premises or any part thereof, for payment of any part of the principal and interest of said above entitled judgment, now or hereafter to become due, or in any way disturb, molest, put to charge or damage, the present or any future owner or owners, occupier or occupiers of the said above mentioned and described premises, or any part or portion thereof, for or by reason of the said judgment, or any matter, cause or thing thence accruing or to arise: Provided, that nothing herein contained shall affect the said judgment or its legal validity, so far as respects all other lands and tenements of the said defendant situate in the County aforesaid, which are not herein expressly exonerated therefrom.

IN WITNESS WHEREOF the said Thorn's, Inc.

this Indenture to be signed by its President has caused
Secretary and has caused the common and corporate seal of the said
corporation to be hereunto affixed this 15th day of May 1962.



Attest:

Henry E. Mayor
Secretary

THORN'S, INC.

By

Kenneth W. Garhart
President

No. 310 February Term, 1961

THORN'S, INC.

versus

CLEARFIELD CONSTRUCTION COMPANY

Release From Lien of Judgment

Upon Lot No. 34 in Plat No.
2 of Country Club Hills

Entered and filed September 28, 1961

19.....

1961

FILED

NY 10-25-61
New York, 1961

CARL E. WALKER

PROTHONOTARY

John C. Walker
John C. Walker
Attorney

6-8-61

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

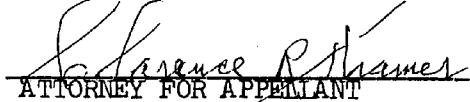
THORN'S, INC., a Corporation :
vs. : No. 310 February Term, 1961
CLEARFIELD CONSTRUCTION COMPANY, :
a Corporation : IN ASSUMPSIT

NOTICE OF APPEAL

To the Honorable John J. Pentz, President Judge of said Court:

Pursuant to Rule No. 63 of the Supreme Court of Pennsylvania, notice is hereby given that on April 17, 1962, an appeal from the judgment of the Court of Common Pleas of Clearfield County was entered by defendant in the office of the Supreme Court at Philadelphia.

Respectfully submitted:



ATTORNEY FOR APPELLANT

NOW, April 3^d, 1962, the copy of the above notice received from counsel for appellant.

By the Court:



P. J.

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

No. 310 February Term, 1961

IN ASSUMPSIT

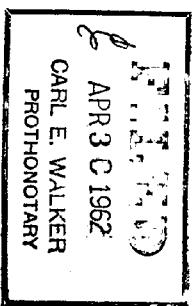
THORNIS, INC., a Corporation

vs.

CLEARFIELD CONSTRUCTION COMPANY,
a Corporation

Notice of Appeal

.....



In the Court of Common Pleas of Clearfield County.

Horn's Inv. Of Feb Term, 1966

Of Sept Term, 1966

Term, 196

No. 360

Plaintiff Bill of Costs

At _____ Term, 19____

VERSUS At _____ Term, 19_____
Clempford Manufacturing Company

CLEARFIELD COUNTY, SS:

Personally appeared before me Kenneth Leach, Jr., who being duly sworn, saith the above Bill of Costs is correct, that the witnesses named were subpoenaed, necessary, material, and in attendance as above stated, and that the mileage is correct as he believes.

Sworn to and subscribed before me this

29th day of Sept, A. D. 1961

NOTARY
My Commission Expires
1st Monday Jan. 1868

Kramer

No. 910 Tel. Term, 1961

Phone One

Venus

Clayfield Construction
Company

FILED

SEP 29 1961

WM. T. HAGERTY
PROTHONOTARY

Bell Telephone Co.
Attorney

Thoms Inc

VERSUS
Clifd Construction Co

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

No. ~~195~~ Term 510 Feb 19 60

To William T. Hagerty
Prothonotary.

Sir: Enter appearance for Plaintiff
in next against list

in above case.

Bill Silbukoff - Sun
Attorney for Plaintiff

510
No. ~~478~~ Term Dec 1961

James J. Dunc

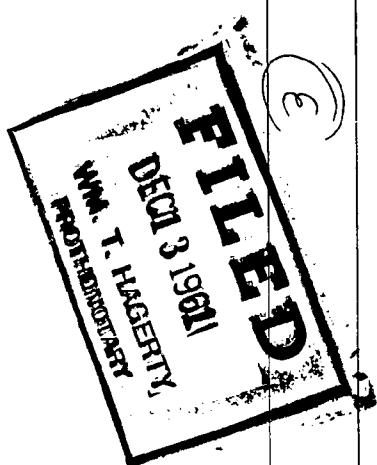
Off. of Construction Co

vs.

APPEARANCE

For

(E)



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

THORN'S, INC., a Corporation : No. 310 February Term 1961.

: VS : IN ASSUMPSIT

CLEARFIELD CONSTRUCTION COMPANY,:
a Corporation :

O P I N I O N

The jury rendered a verdict in favor of the plaintiff, in the sum of \$6,722.20, in the instant action of assumpsit, instituted by the plaintiff to recover that amount due it, for plumbing materials and labor installing the same, furnished the defendant during the years 1959 and 1960.

Plaintiff averred a verbal contract by which the plaintiff, upon request from the defendant, furnished and installed certain plumbing supplies in a group of twenty-one houses being constructed by the defendant in a housing development, known as Country Club Hills, adjacent to the Borough of Clearfield.

The Complaint was the usual complaint in assumpsit, alleging the furnishing of the materials and labor, and that the charges therefore were reasonable, and had been furnished at the verbal request of the defendant, specifying the dates, and particular dwelling houses in which the plumbing equipment was installed, and the labor therefore.

The defense not denying the materials, the labor and the prices thereof, claimed that there was an agreement between the plaintiff corporation and defendant corporation, through their chief executive officers, that the plaintiff was to do the plumbing and labor on two dwelling houses, and that thereafter, the plumbing costs on each of the twenty-one houses would be based upon the cost of the two model houses.

The plaintiff vigorously denied this, and asserted that the differences appearing in the installations in the various houses, was due to the fact that some of the dwelling houses were constructed with basements, and some were without basements, being built on a concrete slab. Other differences arose in the alteration in the type of heating. The majority of the houses were heated by oil furnaces, but one or two, at least one, were to be heated by a hot water system.

The evidence disclosed that these dwelling houses were prefabricated and shipped to the defendant, who then put them together on the various and several sites selected. Some were built to order of the purchaser, and some were built and then sold as purchasers thereof were found, or developed. These prefabricated houses arrived with oil furnaces and all bathroom and kitchen plumbing, but had to be connected with the water and sewer lines. Oil storage tanks and the necessary tubing to connect the oil storage tanks with the oil furnaces, were purchased from the plaintiff by the defendant, and installed by the plaintiff.

The evidence indicates that the dealings between the plaintiff and defendant were entirely on an open account basis.

Instead of twenty-one houses, it transpired that there were approximately one hundred houses erected by the defendant, for which the plaintiff furnished the plumbing.

Several times settlements had been made between the parties; and the two bookkeepers, shortly before the institution of this action, met in an effort to balance the accounts between them.

Based upon the agreement alleged by the defendant, that the plumbing in two houses would be taken as the cost of plumbing in all of the twenty-one houses, the defendant then developed its defense that, by reason of the failure of the plaintiff to furnish invoices for this plumbing, the defendant did not know the cost thereof, and sold all the dwelling houses without having any knowledge of the cost of this plumbing.

The defendant offered no evidence to show whether or not they would have charged more for the dwelling houses, had they received the bill for the plumbing, or that they lost any definite sum of money by reason of the lack of having the invoices at the time the houses were sold.

As a result of not receiving these invoices, the defendant claimed the plaintiff was guilty of laches, and argues on Motion for New Trial, that the jury should have been instructed to bring in a verdict for the defendant.

The Motion for New Trial filed following the verdict, is addressed largely to the fact that the Charge to the jury did not advise the jury that the plaintiff was guilty of laches; but, on the contrary, stated the transaction between the parties was one of ordinary sale and purchase of materials for dwelling houses, and that the defendant had failed to show any loss by reason of the plaintiff not furnishing invoices prior to December 1959.

Laches has been defined in GROTE TRUST, 390 Pennsylvania 261, 269:

"Laches arises when a defendant's position or rights are so prejudiced by length of time and inexcusable delay, plus the attendant facts and circumstances that it would be an injustice to permit presently the assertion of a claim against him."

There is nothing in the record in the instant case to in any way approach laches, as defined in GROTE TRUST, supra.

The testimony was reviewed, not in complete detail, but sufficiently to call to the attention of the jurors the matters they were to pass upon, and the evidence of the several parties, pertinent to these issues.

It is said in LIPPINCOTT VS. WARREN APT. CO., 312 Pa. 480, 482:

"As was stated by President Judge Rice in Com. v. Watson, 42 Pa. Superior Ct. 38, 62, "The extent to which a trial judge ought to go in reviewing, analyzing and commenting on testimony depends very largely upon the circumstances

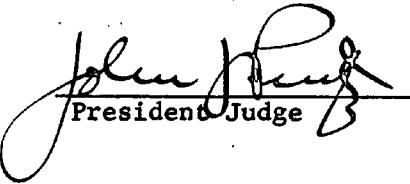
and nature of the case, and, to some extent, upon the line of argument pursued by counsel in addressing the jury. Generally it must be left to his sound discretion." It was pointed out by Mr. Justice Mitchell in Com. v. Kaiser, 184 Pa. 493, 499, that "It is not possible nor even desirable that the judge should refer to and emphasize every item of evidence on both sides in a way that the counsel would consider adequate."

O R D E R

NOW, March 6, 1962, Motion for New Trial refused.

Exception noted.

BY THE COURT


John H. Peay
President Judge

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNA.
No. 310 February Term 1961
IN ASSUMPSIT

THORN'S, INC., a Corporation

VS

CLEARFIELD CONSTRUCTION
COMPANY, a Corporation

OPINION and ORDER



JOHN J. PENTZ
PRESIDENT JUDGE
CLEARFIELD, PENNSYLVANIA

THIS AGREEMENT Made and entered into this 3rd day of August, 1962, between Thorn's, Inc., a Pennsylvania corporation with offices and place of business in the Borough of Clearfield, Pennsylvania, hereinafter called the plaintiff,

A

N

D

Clearfield Construction Company, an Ohio Corporation duly registered to transact business in the Commonwealth of Pennsylvania, with offices and place of business at Clearfield, Pennsylvania, herein-after called the defendant.

WHEREAS, the Plaintiff instituted action in assumpsit in the Court of Common Pleas of Clearfield County, Pennsylvania, to No. 310 ~~September~~^{February} Term, 1961, which case was actively contested by the defendant and went to trial, and

WHEREAS, the Plaintiff obtained a verdict on September 28, 1961, in its favor and against the defendant in the amount of Six thousand seven hundred twenty two and 20/100 (\$6,722.20) dollars, upon which the plaintiff entered judgment, from which judgment the defendant appealed on April 17, 1962, which appeal is now pending, and

WHEREAS, the parties have reached a meeting of the minds relative to a compromise settlement, payment and settlement to be made at a compromise figure and the appeal to be withdrawn,

NOW THIS AGREEMENT WITNESSETH: That the parties do hereby agree to the following settlement:

The Plaintiff will accept as settlement the sum of Five thousand (\$5000.00) dollars payable as follows: Five hundred (\$500.00) dollars which has heretofore been remitted and received by the Plaintiff through the sale of Lot No. 34 in Country Club Hills, credit for which Five hundred (\$500.00) dollars is hereby

allowed; a further payment of Two thousand (\$2000.00) dollars cash; and five additional payments of five hundred (\$500.00) dollars each payable from each lot up to the first five that shall subsequently be sold by the defendant from its development plot of land in Lawrence Township known as Country Club Hills. The Plaintiff hereby waives all claim for interest and upon the payment of the foregoing sums in full will enter satisfaction of the judgment upon the continuance Docket in the Office of the Prothonotary upon the defendant paying the record costs which are legally taxable, excluding the witness bill of the Plaintiff in the amount of Twenty five and 21/100 (\$25.21) dollars which will be waived by the Plaintiff.

IN CONSIDERATION WHEREOF, the defendant has heretofore paid the Plaintiff the sum of Five hundred (\$500.00) dollars from the sale of Lot No. 34 in Country Club Hills and pays Two thousand (\$2000.00) Dollars down in cash upon the signing and delivery of this agreement and will pay from each of the first five lots sold from defendant's development plan in Lawrence Township the sum of Five hundred (\$500.00) dollars from each lot as sold until five further payments of \$500.00 each or the further sum of Twenty Five Hundred (\$2500.00) dollars shall be paid by defendant to plaintiff subsequent to this date without interest and will further pay the legally taxable record costs, exclusive of the Plaintiff's witness bill which is hereby agreed to be waived by plaintiff.

UPON THE SIGNING of this agreement by both parties in duplicate and the acceptance by Plaintiff of the Two thousand (\$2000.00) dollars cash payment concurrently herewith, the defendant will discontinue its appeal now pending in the Supreme Court of Pennsylvania to No. 309 January Term, 1962, and will file in the Court of Common Pleas to No. 310 February Term, 1961, a copy of this settlement agreement signed by both parties.

IN WITNESS WHEREOF, the respective parties hereto have
caused this agreement to be signed by their respective
Presidents and attested by their respective Secretaries
and the seal of the respective corporations to be hereunto affixed.

ATTEST:

Henry E. Meyer
Secretary

THORNUS, INC.

BY Emmett Reardon
President

ATTEST:

Glacier P. Kanner
Assistant Secretary

CLEARFIELD CONSTRUCTION CO.

BY William Indian
President

2/19 FEB 1961

AGREEMENT

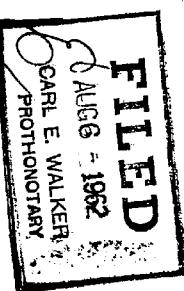
THORN'S, INC., Plaintiff

to

CLEARFIELD CONSTRUCTION CO.

Defendant

AGREEMENT OF SETTLEMENT



LAW OFFICES
CLARENCE R. KRAMER
CLEARFIELD, PA.
217 MARKET STREET