

10-188-00
FDR, INC. -vs- FREEDOM FORD SALES, INC. et al

CLERAFFIELD, PENNSYLVANIA 16830
RD. BOX 552
21 1/2 EAST LOCUST STREET
ATTORNEY AT LAW
JAMES A. NADDEO

— Lap over margin —

FILED

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JAMES A. NADDEO
William A. Shaw
Prothonotary
PA 680.00
JCC-Sheriff

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

BJR, INC., *
d/b/a CONSERVCO, *
a Pennsylvania Corporation, *
Plaintiff, *
*
v. * No. 01 - 789 - CD
*
FREEDOM FORD SALES, INC., *
a Pennsylvania Corporation, *
Defendant, *
*
and *
*
MARIO L. LUTHER, *
an adult individual, *
Defendant. *

*
*
* Type of Pleading:
*
* Complaint
*
*
* Filed on behalf of:
* Plaintiff
*
* Counsel of Record for
* this party:
*
* James A. Naddeo, Esq.
* Pa I.D. 06820
*
* 211 1/2 E. Locust Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

FILED

MAY 23 2001

William A. Shaw
Prothonotary

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

BJR, INC., *
d/b/a CONSERVCO, *
a Pennsylvania Corporation, *
Plaintiff, *
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v. * No. 01 - - CD
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FREEDOM FORD SALES, INC., *
a Pennsylvania Corporation, *
Defendant, *
*
and *
*
MARIO L. LUTHER, *
an adult individual, *
Defendant. *

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.

Court Administrator
CLEARFIELD COUNTY COURTHOUSE
230 East Market Street
Clearfield, PA 16830
814-765-1601

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

BJR, INC., *
d/b/a CONSERVCO, *
a Pennsylvania Corporation, *
Plaintiff, *
*
v. * No. 01 - - CD
*
FREEDOM FORD SALES, INC., *
a Pennsylvania Corporation, *
Defendant, *
*
and *
*
MARIO L. LUTHER, *
an adult individual, *
Defendant. *

COMPLAINT

NOW COMES the Plaintiff, BJR, Inc., d/b/a Conservco, and by its attorney, James A. Naddeo, Esquire, sets forth the following:

1. That the Plaintiff, BJR, Inc., d/b/a Conservco, is a Pennsylvania corporation, whose principal place of business is located at One Washington Avenue, Hyde, Pennsylvania, 16843.
2. That the Defendant, Freedom Ford Sales, Inc., is a Pennsylvania corporation with a place of business located at Route 22, Ebensburg, Pennsylvania, 15931.
3. That the Defendant, Mario L. Luther, is an adult individual, with a place of business located at Route 119 South, Homer City, Pennsylvania, 15748.

COUNT I

BJR, INC., d/b/a CONSERVCO v. FREEDOM FORD SALES, INC.

4. That on or about July 10, 1999, the parties entered into a construction Agreement, which Agreement was signed and accepted by Plaintiff at its principal place of business located at PO Box 1404, Clearfield, Pennsylvania, 16830. A copy of said Agreement is attached hereto as Exhibit "A".

5. That Plaintiff, in accordance with the Agreement attached hereto as Exhibit "A", was to construct on behalf of Defendant a commercial car dealership of +/- 22,000 sq. ft. as an erected steel building including the majority of subcontractor disciplines.

6. That Plaintiff commenced construction on or about August 9, 1999.

7. That all work required to be performed by Plaintiff under the Agreement was completed in a good or workman like fashion on or about September 18, 2000.

8. That during the course of the construction Plaintiff invoiced Defendant in accordance with the Agreement provisions.

9. That Plaintiff submitted an invoice for final payment to Defendant on or about September 25, 2000. A copy of said invoice is attached hereto as Exhibit "B".

10. That the amount currently owed by Defendant to Plaintiff is Forty Eight Thousand Five Hundred Seventy Six and 84/100 (\$48,576.84) Dollars, which amount has been due since November 9, 2000.

WHEREFORE, Plaintiff claims damages from the Defendant, Freedom Ford Sales, Inc., in the amount of Forty Eight Thousand Five Hundred Seventy Six and 84/100 (\$48,576.84) Dollars with interest allowable by law.

COUNT II

BJR, INC., d/b/a CONSERVCO v. MARIO L. LUTHER

11. That the Plaintiff incorporates Paragraphs One through Ten of this Complaint by reference and makes them a part hereof.

12. That the contract attached hereto as Exhibit "A" was executed by the corporate Defendant, Mario L. Luther, who is believed to be President of the said corporation and by the Defendant, Mario L. Luther, in his individual capacity.

COUNT III

BJR, INC., d/b/a CONSERVCO v. FREEDOM FORD SALES, INC.
and MARIO L. LUTHER

13. That the Plaintiff incorporates Paragraphs One through Twelve of this Complaint by reference and makes them a part hereof.

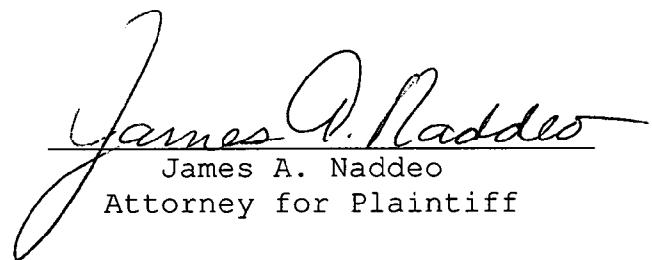
13. That Plaintiff believes and therefore avers that Defendants received said invoice, attached hereto as Exhibit "B", on or about September 25, 2000.

13. That following receipt of the invoice, attached hereto as Exhibit "B", Defendants failed to provide Plaintiff within seven (7) days from receipt of said invoice with written notice of Defendants' reason for withholding payment as required by the Contractor and Subcontractor Payment Act 73 P.S. § 506(b).

14. That Plaintiff has been required to retain counsel to prosecute this suit upon the fee schedule attached hereto as Exhibit "C".

15. That Plaintiff claims penalties and attorney's fees as provided by the Contractor and Subcontractor Payment Act 73 P.S. § 512(a)(b).

WHEREFORE, Plaintiff demand judgment against Defendants for penalties and counsel fees as required by the Contractor and Subcontractor Payment Act 73 P.S. § 512(a)(b).



James A. Naddeo
James A. Naddeo
Attorney for Plaintiff

Standard Form of Agreement Between Owner and Contractor

*where the basis of payment is a
STIPULATED SUM*

*THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES. CONSULTATION WITH AN ATTORNEY IS
ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.*

Document A101-1997

AGREEMENT

made as of the 10th day of July, Nineteen Hundred and Ninety Nine
(In words, indicate day, month, and year)

BETWEEN the Owner:

(name and address)

Freedom Ford
Route #22
Cambria County
Ebensburg, PA

and the Contractor:

Conservco
805 S. Second Street
Clearfield, PA 16830

The Project is:

(name and location)

Freedom Ford
Rt. 22
Ebensburg, PA

The Architect is:

(name and address)

Skyco Engineering
P.O. Box 383
Clearfield, PA 16830

The Owner and Contractor agree as set forth below.

ARTICLE 1

The Contract Document consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and

Modifications issued after execution of this agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
(Insert the date of commencement if it differs from the date of this Agreement, or if applicable, state that the date will be fixed in a notice to proceed.)

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

3.2 The Contract Time shall be measured from the date of commencement (or other date if applicable).

3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than *(insert # of days)* from the date of commencement, or as follows:
(insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

Subject to adjustments of the Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

ARTICLE 4 CONTRACT SUM

4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Seven Hundred Thirty Four Thousand One Hundred Dollars and no cents (\$734,100.00), subject to additions and deductions as provided in the Contract Documents.

4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner.

(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

4.3 Unit prices, if any, are as follows:

ARTICLE 5 PAYMENTS

5.1 PROGRESS PAYMENTS

5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

Provided that an Application for Payment is received by the Architect not later than *(insert day)* of a month, the Owner shall make payment to the Contractor not later than the last day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than 45 days after the Architect receives the Application for Payment.

5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Application for Payment.

5.1.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of 0 percent (%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Subparagraph 7.3.8 of AIA Document A201-1997;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of 0 percent (%).
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of AIA Document A201-1997

5.1.7 The progress payment amount determined in accordance with Subparagraph 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Subparagraph 9.8.5 of AIA Document A201-1997 requires release of applicable retainage upon Substantial Completion of Work with content of surety, if any.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Subparagraph 9.10.3 of AIA Document A201-1997.

5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Clauses 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provision for such reduction or limitation.)

5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

5.2 FINAL PAYMENT

5.2.1 Final payment constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Subparagraph 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

5.1.2 FINAL PAYMENT

5.2.1 Final Payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Subparagraph 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect

5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

ARTICLE 6 TERMINATION OR SUSPENSION

6.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-1997.

6.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997.

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 Where reference is made in the Agreement to a provision of AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located
(insert rate of interest agreed upon, if any.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations of the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

7.3 The Owner's representative is: **Mario Luther**
(Name, address and other information)

7.4 The Contractor's Representative is: **Joseph Kane**
(Name, address and other information)

7.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

7.6 Other Provisions:

ARTICLE 8 ENUMERATION OF CONTRACT DOCUMENTS

8.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

8.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A101-1997.

8.1.2 The General conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997.

8.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual date (*insert date*), and are as follows:

Document	Title	Pages
----------	-------	-------

8.1.4 The Specifications are those contained in the Project Manual dated *insert date*, as in Subparagraph 8.1.3, and are as follows:

Section	Title	Pages
---------	-------	-------

8.1.5 The Drawings are as follows, and are dated *February 5, 1999* unless a different date is shown below:

Number	Title	Date
1 thru Z	Freedom Ford	
1 of 1	Revised Floor Plan	

8.1.6 The Addenda, if any, are as follows:

Number	None	Title	Pages
--------	------	-------	-------

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

8.1.7 Other documents, if any, forming part of the Contract Documents are as follows:

Bid proposal work sheets (4 pages) dated 2/17/99, initialed, a marked exhibit 1-A, 1-B, 1-C, 1-D

Conserveto Letter (3 pages) dated 2/17/99, initialed, a marked exhibit 2-A, 2-B, 2-C

(List here any additional documents that are intended to form part of the Contract documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.


OWNER (Signature)


CONTRACTOR (Signature)

Mario Luther
(Printed name and title)

Joseph F. Kane
(Printed Name and Title)

Exhibit 1 A

FREEDOM FORD DEALERSHIP

BID PROPOSAL WORK SHEET

ITEM NO.COST

1. Mobilization includes moving to the project site all equipment and material that will be needed for the completion of the project. (L S)	\$ <u>5,000.00</u>
2. Removing topsoil and vegetation from the project site. (L S)	\$ <u>116</u>
3. Demolition includes but not limited to the demolition of three existing buildings and the removal from the site all materials unsuitable for incorporation into the project. (L S)	\$ <u>10,000.00</u>
4. Cut and fill for site preparation. (L S) Excavation for footers. (320 CY) Excavation of trenches for storm and sanitary sewer lines, and water lines. (700 LF) Excavation for underground utility lines. (200 LF)	\$ <u>—</u> \$ <u>—</u> \$ <u>—</u> \$ <u>—</u> Subtotal \$ <u>5,000.00</u>
5. RC Concrete footers. (77 CY CI A) RC Concrete piers, light posts & pads. (96 CY CI AA) RC Concrete 6" slab floor. (349 CY CI AAA) RC Concrete 4" sidewalk 4' wide. (300 LF CI AAA)	\$ <u>10,000.00</u> \$ <u>12,000.00</u> \$ <u>45,998.00</u> \$ <u>4,500.00</u> Subtotal \$ <u>71,500.00</u>
6. Pre-engineered metal building complete to include Z purlin roof using 25 ga standing seam roof and siding. Minimum roof insulation R-19 and minimum side insulation R-14. Building design = 90 - 40. (L S) Canopy 27' X 74". (LS)	\$ <u>—</u> \$ <u>—</u> Subtotal \$ <u>195,000.00</u>
7. Masonry front split face 10" block including pillars (2200 blocks) Masonry sides split face 8" block. (3890 blocks) Masonry fdn. 12" regular block. (2780 blocks)	\$ <u>6,504.00</u> \$ <u>4,000.00</u> \$ <u>3,500.00</u> Subtotal \$ <u>50,000.00</u>
8. Interior walls 2" X 4" X 10' metal studs. (450 LF) Interior walls 8" X 8" X 16" conc. block. (256 LF)	\$ <u>14.00</u> \$ <u>49.00</u> Subtotal \$ <u>19,500.00</u>
9. Doors. Note: unless otherwise indicated all doors to be 3' - 0" X 6' - 8" 1 3/4" solid w/metal frames. "C" Label doors. (2 EA) "B" Label door. (1 EA) Exterior doors w/panic hdw & exit signs. (8 EA) Interior doors. (15 EA) 4' - 6" X 7' - 8" exterior double door. (6 EA)	\$ <u>800.00</u> \$ <u>400.00</u> \$ <u>14.00</u> \$ <u>3,750.00</u> \$ <u>3000.00</u> Subtotal \$ <u>8,000.00</u>

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Exhibit 1-B

FREEDOM FORD DEALERSHIP

BID PROPOSAL WORK SHEET

PAGE TWO

ITEM NO.	COST
10. 8' X 10' showroom thermopane glass windows. (5 EA)	\$ 6,000
11. 3' X 4' thermopane glass windows. (9 EA)	\$ 3,600
	Subtotal
	\$ 9,600.00
11. Tri Chord 3" thick overhead doors 12' - 0" X 10' - 0" (7 EA)	\$ 21,000.00
12. Drop ceiling 2' X 4' panels w/ hangers & track. (7000 SF)	\$ 9,000.00
13. Floor covering VCT tile. (580 SY)	\$ 9.90
Floor covering, carpeting. (100 SY)	\$ 10.00
Floor covering, Terrazzo tile. (100 SY)	\$ 45.00
	Subtotal
	\$ 11,500.00
14. Rest Rooms ceramic tile walls (includes all trim) (1680 SF)	\$ 12,500.00
15. Interior walls 4' x 8' drywall sheets painted w/ premium 70 paint. (280 EA)	\$ 7,500.00
16. Rest rooms to be equipped with fixtures to meet sect 60.33(11) regs.	\$ 10,000.00
17. 4" PVC sanitary sewer pipe w/ fittings & traps. (150 LF)	\$
3/4" water supply pipe w/ fittings. (100 LF)	\$
1" water supply pipe w/ fittings for wash bay and exterior. (100 LF)	\$
(This item to include self-draining water taps in 6 light pole bases.)	
6" PVC underdrain. (625 LF) W/ gutter & downspout pipes	\$
8" gutter drain. (625 LF)	\$
15' storm sewer. (800 LF)	\$
Storm sewer drop inlets. (6 EA)	\$
	Subtotal
	\$ 18,000.00
18. 2 - oil fired forced hot air furnaces complete with ductwork, and vents, and hot water heaters to supply heat and hot water to the entire building. (LS)	\$ —
19. Central air conditioner(s), condensors, compressors and ductwork and vents to provide air conditioning to the entire building, except the service bay area. (LS)	\$ 65,000.00
20. 600 amp electric service entrance. (LS)	\$
Service entrance underground cable. (200 LF)	\$
Interior lights show room, 2nd floor and offices. (94 EA)	\$
Interior lights service bay and wash bay areas. (62 EA)	\$
Receptacles. (85 EA)	\$
(Includes switches & wiring.)	
	Subtotal
	\$ 75,000.00

Exhibit 1-C

FREEDOM FORD DEALERSHIP

BID PROPOSAL WORK SHEET

PAGE THREE

ITEM NO.	COST
21. Bituminous Paving:	
1 1/2" Wearing. (450 ton)	\$ _____
2 1/2" Binder. (765 ton)	\$ _____
3 1/2" BCBC. (1070 ton)	\$ _____
Line painting to comply with 60.32(5) H.C. parking. (LS)	\$ _____
Bituminous curb. (600 LF)	\$ _____
Subtotal	\$ <u>85,000.00</u>
22. Outside lighting to include 17 light poles with electric outlets at the base of each pole and all underground wiring and fixtures. (LS)	\$ <u>21,000.00</u>
23. Second floor 57' X 61'.	
Enclosed stairways w/ 1 hr rated walls. (2 EA)	\$ <u>13,500.00</u>
Pre-engineered TJI floor joists @ 16" C - C. (LS)	\$ <u>7,000.00</u>
OSB Flooring. (LS)	\$ <u>2,000.00</u>
5/8" drywall. (LS)	\$ <u>1,000.00</u>
Subtotal	\$ <u>15,500.00</u>
24. Service bay area:	
5 HP air compressor w/ piping to service stations. (LS)	\$ _____
Exhaust system vented through walls. (LS)	\$ _____
Floor drain 6" wide. (80 LF)	\$ _____
Floor drains in wash bay areas. (2 EA)	\$ _____
Concrete floor to be treated to resist oil & grease. (LS)	\$ _____
Subtotal	\$ <u>10,400.00</u>

Estimated time to completion. _____

NOTE: THE OWNER MAY INCREASE OR DECREASE THE QUANTITY OF ANY ITEM. A REVISED
COST WILL BE NEGOTIATED.Signature: A. J. LaneDate: 3-23-99Company: Consercor

Consercor

FREEDOM FORD AUTOMOBILE DEALERSHIP

Concurrent

CAMBRIA TOWNSHIP, CAMBRIA COUNTY, PA.

ITEM NO.	DESCRIPTION	COST
1	MOBILIZATION - MOVING IN OFFICE TRAILERS, EQUIPMENT AND MATERIAL	5,000
2	CLEARING & GRUBBING - REMOVING TOP SOIL, VEGETATION AND UNSUITABLE MATERIALS	N.I.C.
3	DEMOLITION OF THREE EXISTING BLDGS. AND REMOVAL OF ALL UNSUITABLE MATERIALS	10,000
4	EARTHWORK - CUT & FILL, FOOTER EXCAVATION AND PIPE TRENCHES	5,000
5	CONCRETE - FOOTERS, PIERS, FLOORS, SIDEWALKS, LIGHT POST BASES AND PADS	71,500
6	METAL BUILDING - PRE-ENGINEERED METAL BUILDING COMPLETE WITH CANOPY	195,000
7	MASONRY - CEMENT BLOCK FOUNDATION WALLS, SPLIT FACED BLOCK FRONT AND SIDES AS SHOWN	50,000
8	INTERIOR WALLS - STEEL OR WOOD STUDS, DRYWALL, CONC. BLOCK WALLS UNDER MEZZANINE	19,500
9	DOORS, FRAMES & HARDWARE	8,000
10	WINDOWS AND FRAMES - THERMOPANE GLASS, METAL FRAMES	8,600
11	OVERHEAD DOORS - 12' X 10' WITH AUTOMATIC OPENERS	21,000
12	DROP CEILING - 2' X 4' PANELS (SHOW ROOM & OFFICE AREAS)	9,000
13	FLOOR COVERING - TILE OR CARPETING IN OFFICE AREAS	11,500
14	WALLS - CERAMIC TILE REST ROOMS	13,500
15	WALLS - DRY WALL PAINTED OR WALL PAPER	7,500
16	REST ROOMS - INCLUDES ALL FIXTURES, DIVIDERS AND DOORS (HANDICAP ACCESSABLE)	10,000
17	PLUMBING - SANITARY SEWERS, STORM WATER DRAINS AND WATER SUPPLY LINES	18,000
18	HEATING - FURNACE, VENTS, UNIT HEATERS AND DUCT WORK	65,000
19	AIR CONDITION - COMPRESSORS, CONDENSORS, VENTS AND DUCT WORK	-
20	ELECTRIC - SERVICE ENTRANCE, PANELS, WIRING, FIXTURES, LIGHTING	75,000
21	BITUMINOUS PAVING - BASE, BINDER AND WEARING COURSES, LINE PAINTING AND CURBS	85,000
22	OUTSIDE LIGHTING - UNDERGROUND WIRING, LIGHT POLES, FIXTURES, CONTROL PANELS AND SWITCHES	21,000
23	SECOND FLOOR	15,000
24	SERVICE AREA - LIFTS, AIR COMPRESSOR, EXHAUST SYSTEM, FLOOR DRAIN SYSTEM	10,000
	ATTACH WORK SHEET	
	TOTAL BID AMOUNT	734,100

Exhibit 1-D

CONSERVCO

Exhibit 2-A

GENERAL CONTRACTORS

MAILING ADDRESS
805 SOUTH SECOND STREET
CLEARFIELD, PA. 16830

OFFICE ADDRESS
ONE WASHINGTON AVENUE
HYDE, PA. 16843

J. F. KANE
R. HELSEL
(814) 765-5725
FAX: (814) 765-2380

February 17, 1999

Skyco Engineering
305 Chester Ave.
Clearfield, Pa.
16830

Re: Freedom Ford

Dear Larry;

Thank you for affording us the opportunity of submitting the following preliminary number for your review. We are enclosing herein your work sheets with the following comments..

Item # 1 Does not include any permits or fees or bonds

Item # 2 Before this number can be determined some exploratory excavating to be done along with soil density testing to determine the bearing capacities of the ground

Item # 3 This item can vary greatly by the materials involved and the local dumping fees. I would recommend an allowance of \$ 10,000.00

Item # 4 Cut and fill can not be determined until floor elevations are established. Our price is based on a level site and includes footprint excavation and backfill

Item # 5 This price is based on furnishing a Ceco pre-engineered building

Item # 6 Our price includes footprint concrete along with foundations, and sidewalks. The size of the building foundation will vary depending on the soil conditions. There is a question as to the floor surface under the canopy.

CONSERVCO**GENERAL CONTRACTORS**

MAILING ADDRESS
805 SOUTH SECOND STREET
CLEARFIELD, PA. 16830

OFFICE ADDRESS
ONE WASHINGTON AVENUE
HYDE, PA. 16843

J. F. KANE
R. HELSEL
(814) 765-6725
FAX: (814) 765-2380

Item # 7 The cost of split face block can vary greatly depending on pattern, color, and mortar color.

Item # 8 We have included sound insulation as required

Item # 9 We have included solid core birch doors in the public area with steel doors and frames in the service area. 3068 exterior passage doors are part of the building

Item # 10 Assumes low "E" tempered and tinted glass with bronze frames

Item # 11 We have included absolute top of the line doors with springs rated at 50,000 cycles and side mount three stage openers.

Item # 12 Allowed for Armstrong # 942 fissured tile on commercial weigh grid system.

Item # 13 There is a question as to the wall base type. You should allow \$ 1,000.00 for this item

Item # 14 We have based our price on materials costing \$ 4.00 per square foot.

Item # 15 We have figured approximately 15,000 square feet of wall area to be painted plus the doors and frames

Item # 16 The quality of fixtures and partitions can vary greatly. We would suggest an allowance of \$ 10,000.00.

Item # 17 We have included only footprint plumbing including hose bibs at the light stations. Sanitary and domestic connection costs can not be determined until same are located.

Item # 18 Combined with item # 19

Item # 19 We would recommend, if at all possible the use of natural gas

Exhibit 2-B

CONSERVCO**GENERAL CONTRACTORS**

MAILING ADDRESS
805 SOUTH SECOND STREET
CLEARFIELD, PA. 16830

OFFICE ADDRESS
ONE WASHINGTON AVENUE
HYDE, PA. 16843

J. F. KANE
R. HELSEL
(814) 765-8725
FAX: (814) 765-2380

Item # 20 We have assumed that the utility company will bring the service to the building and have not included monies for same.

Item # 21 Our sub contractor has recommended eliminating the binder and increasing the BCBC thickness

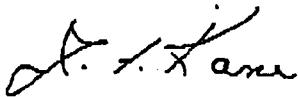
Item # 22 The cost of the light fixture and pole can vary greatly

Item # 23 We would suggest a minimum of 100 PSI loading which might require the installation of a center span beam and columns

Item # 24 We would recommend an allowance of \$ 10,000.00 for these items

Ceco deliveries are currently running 8 to 10 weeks. This should put the building on site just as site work and foundations are completed. We would suggest a four to five month construction schedule. Our total price of \$ 735,000.00 includes many items that will require additional clarification. We have tried to develop cost estimates that should cover most contingencies. Larry I would be pleased to again meet with you and Mario at your convenience.

Sincerely Yours,



Joseph F. Kane

WAIVER OF MECHANICS' LIEN CLAIM(S)

WHEREAS, CONSERVCO, (hereinafter "Contractor") of 805 South Second Street, Clearfield, Pennsylvania, 16830, did enter into a contract dated July 10, 1999 with MARIO L. LUTHER (hereinafter "owner") of Rte 119 South, Homer City, Pennsylvania, 15748, to provide materials and perform labor necessary for the erection and construction of buildings, improvements and structures relative to Freedom Ford, an automobile dealership, on property consisting of four (4) parcels of land situate along Admiral Peary Highway. Said property being those four (4) certain pieces or parcels of land lying, situate and being in the Township of Cambria, County of Cambria and Commonwealth of Pennsylvania title to which became vested in Mario L. Luther by deed of Mahlon N. Zimmerman, an individual, dated August 13, 1997 and of record in the Recorder's Office of Cambria County in Record Book Vol. 1486, Page 729 and by deed of John E. Correll and Clare M. Correll, his wife, dated June 28, 1999 and of record in the Recorder's Office of Cambria County in Record Book Vol. 1613, Page 340.

It is hereby stipulated and agreed upon by and between the parties referenced herein, as part of the July 10, 1999, contract and for the consideration therein set forth, that NEITHER THE CONTRACTOR NOR ANY SUBCONTRACTOR(S), MATERIALMAN OR OTHER PERSON(S) FURNISHING LABOR OR MATERIALS TO THE CONTRACTOR SHALL FILE A MECHANICS' LIEN CLAIM FOR WORK DONE OR MATERIALS FURNISHED TO THE IMPROVEMENT OR ANY PART THEREOF.

This stipulation is intended to be filed with the Prothonotary of Cambria County prior to the commencement of work under said contract in accordance with the requirements of the Mechanics' Lien Law of 1963, 49 P.S. § 1402, et seq.

DATED: 9/17/99

BY: CONSERVCO

Mario L. Luther
Contractor

TAK MECHANICS LIEN

BY: FREEDOM FORD/MARIO LUTHER

T. A. [Signature]
Owner attorney for Mario Luther

APPLICATION AND CERTIFICATE FOR PAYMENT

TO/OWNER
Freedom Ford

PROJECT:
New Building

APPLICATION NO: ten
PAGE ONE OF PAGES

FROM (CONTRACTOR)

ENGINEER

Conservco
Larry Obelinski

PERIOD TO: 09-15-00

ENGINEER
PROJECT NO:

CONTRACT DATE: 7/10/99

CONTRACTOR'S APPLICATION FOR PAYMENT

CHANGE ORDER SUMMARY

Change Orders approved in
previous months by Owner

Approved this Month Number	Date Approved	ADDITIONS	DEDUCTIONS	
		\$149,396.00	\$158,600.00	
Total				
				\$25,000.00
TOTALS		\$140,306.00	\$183,600.00	\$0.00
Net change by Change Orders		\$43,294.00		

The undersigned Contractor certifies that to the best of the contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:
By: J. J. Lane

1 ORIGINAL CONTRACT SUM	<u>\$734,100.00</u>
2 Net change by Change Orders	<u>(\$43,294.00)</u>
3 CONTRACT SUM TO DATE	<u>\$690,806.00</u>
4 TOTAL COMPLETE & STORED TO DATE	<u>\$690,806.00</u>
(Column G on G703)	

5 RETAINAGE	
A. % of Completed work	\$0.00
(Column D + E on G703)	
B. % of Stored Material	\$0.00
Total in Column I of G703	\$0.00
6 TOTAL EARNED LESS RETAINAGE	\$0.00
(Line 4 less Line 5 Total)	
7 LESS PREVIOUS CERTIFICATES FOR PAYMENT	(\$645,250.00)
(Line 6 from previous)	
8 CURRENT PAYMENT DUE	\$45,556.00
9 BALANCE TO FINISH, PLUS RETAINAGE (Line 3 less Line 6)	\$0.00

State of: Subscribed and sworn to before me this day of 19
County of: Notary Public:
My Commission expires:

ENGINEER'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance without he Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED: \$
(Attach explanation if amount certified differs from the amount applied for.)
ENGINEER
By:
Date:
This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

James A. Naddeo, Esquire
211 ½ East Locust Street
PO Box 552
Clearfield, PA 16830

814-765-1601

814-765-8142 fax

FEE SCHEDULE

Office Conference:	\$ 75.00 minimum fee
Hourly Fee	\$ 150.00 per hour
Associate Time	\$ 75.00 per hour
Paralegal Time	\$ 35.00 per hour

Court Time:	\$ 200.00 per hour
with minimum	\$ 250.00 per
Court includes: Magistrates,	appearance
Administrative Bodies and other	
Tribunals.	

Telephone Calls:	\$ 25.00 flat fee
------------------	-------------------

Letters:	\$ 35.00 flat fee
----------	-------------------

Research:	\$ 50.00 per hour
-----------	-------------------

Accepted:

James A. Naddeo
Attorney

5/15/01
Date

Accepted:

Wendy L. Scavilica
Client

*The Pennsylvania Canon of Ethics for Attorneys requires that I provide you written notification of my fee structure.

COMMONWEALTH OF PENNSYLVANIA)
ss.
COUNTY OF CLEARFIELD)

Before me, the undersigned officer, personally appeared WENDY L. SCIABICA, who being duly sworn according to law, deposes and states that she is a thorized by BJR, Inc. d/b/a Conservco to execute this Affidavit and further that the facts set forth in the foregoing Complaint are true and correct to the best of her knowledge, information and belief.

Wendy L. Sciabica
Wendy L. Sciabica

SWORN and SUBSCRIBED before me this 18th day of May, 2001.

Shannon R. Wisor

Notarial Seal
Shannon R. Wisor, Notary Public
Clearfield Boro, Clearfield County
My Commission Expires Aug. 25, 2003

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11035

BJR, INC. d/b/a CONSERVCO

01-789-CD

VS.

FREEDOM FORD SALES, INC. & LUTHER, MARIO L.

COMPLAINT

SHERIFF RETURNS

NOW MAY 24, 2001, DONALD BECKWITH, SHERIFF OF INDIANA COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON MARIO L. LUTHER, DEFENDANT.

NOW MAY 30, 2001 SERVED THE WITHIN COMPLAINT ON MARIO L. LUTHER, DEFENDANT BY DEPUTIZING THE SHERIFF OF INDIANA COUNTY. THE RETURN OF SHERIFF BECKWITH IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED BOB BOOKNER, MGR.

NOW MAY 24, 2001, BOB KOLAR, SHERIFF OF CAMBRIA COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON FREEDOM FORD SALES, INC., DEFENDANT.

NOW MAY 30, 2001 SERVED THE WITHIN COMPLAINT ON FREEDOM FORD SALES INC., DEFENDANT BY DEPUTIZING THE SHERIFF OF CAMBRIA COUNTY. THE RETURN OF SHERIFF KOLAR IS HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED BILL FRANK, MGR.

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11035

BJR, INC. d/b/a CONSERVCO

01-789-CD

VS.

FREEDOM FORD SALES, INC. & LUTHER, MARIO L.

COMPLAINT

SHERIFF RETURNS

Return Costs

Cost	Description
43.86	SHFF. HAWKINS PAID BY: ATTY.
32.00	SHFF. BECKWITH PAID BY: ATTY.
23.07	SHFF. KOLAR PAID BY: ATTY.
20.00	SURCHARGE PAID BY: ATTY.

Sworn to Before Me This

27th Day Of June 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 Mario L. Hamer*
Chester A. Hawkins
Sheriff

FILED

JUN 27 2001
013145 pm
William A. Shaw
Prothonotary



INDIANA COUNTY SHERIFF

825 PHILADELPHIA STREET
INDIANA, PENNSYLVANIA 15701
(724) 465-3930
FAX: (724) 465-3937

Donald L. Beckwith
Sheriff
David J. Rostis
Chief Deputy Sheriff

PAGE: 581

CASE NUMBER: 01-789-CD

AFFIDAVIT OF SERVICE

NOW. **MAY 30, 2001** , **AT** **1100 A.M.** **SERVED**

THE WITHIN COMPLAINT

UPON **MARIO L. LUTHER**

AT RT 119 SOUTH HOMER CITY PA., 15717

BY HANDING TO BOB BOOKNER, MANAGER IN CHARGE OF BUSINESS AT TIME OF SERVICE

A TRUE AND CORRECT COPY(S) OF THE WITHIN COMPLAINT

AND MAKING KNOWN TO HIM/HER/ THEM THE CONTENTS THEREOF:

.....

FAILED TO FIND THE WITHIN

FAILED TO FIND THE WITHIN

WITHIN MY BAILIWICK. REASON UNABLE TO LOCATE: _____

Digitized by srujanika@gmail.com

SO ANSWERS:

Donald A. Beckwith
DONALD A. BECKWITH, SHERIFF

BY:

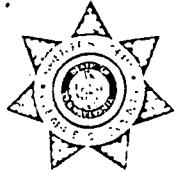
ROBERT F. CIANCIO JR. DEPUTY

SWORN AND SUBSCRIBED BEFORE ME.
THIS 5th DAY OF JUNE 01

David J. Rostes

COSTS: \$32.00

NOTARIAL SEAL
David J Rostis, Notary Public
Indiana, Pa, Indiana County
My Commission Expires January 28, 2002



Sheriff's Office Clearfield County

OFFICE (814) 765-2641
AFTER 4:00 P.M. (814) 765-1533
CLEARFIELD COUNTY FAX
(814) 765-6089
5915

CHESTER A. HAWKINS
SHERIFF

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

DARLENE SHULTZ
CHIEF DEPUTY

MARILYN HAMM
DEPT. CLERK

MARGARET PUTT
OFFICE MANAGER

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BJR, INC. d/b/a CONSERVCO

SERVE BY: 6/22/01

VS:

or

FREEDOM FORD SALES, INC. a1

HEARING DATE:

TERM & NO.: 01-789-CD

DOCUMENT TO BE SERVED:

COMPLAINT

SERVE: MARIO L. LUTHER

ADDRESS: Rt 119 South, Homer City, Pa. 15748

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF of INDIANA County Pennsylvania to execute this writ.

This Deputation being made at the request and risk of the Plaintiff this 24th day of MAY 2001.

MAKE REFUND PAYABLE TO: JAMES A. NADDEO, Attorney

Respectfully,


CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY

CASE # PLAINTIFF
90151-01 BJR, INC. D/B/A CONSERVCO
DATE 5/30/01

DEFENDANT
FREEDOM FORD SALES 2001-789

AT 14;10 HRS. SERVED THE COMPLAINT WITH NOTICE TO DEFEND UPON FREEDOM FORD SALES INC. BY HANDING A TRUE AND ATTESTED COPY THEREOF UPON BILL FRANK MANAGER AT RTE. 22 EBENSBURG, CAMBRIA CO. PA. AND MAKING CONTENTS THEREOF KNOWN TO HIM. MY COSTS PAID BY ATTORNEY FOR PLAINTIFF.

SHERIFF COSTS 20.07

PRO. 3.00

TOTAL COSTS 23.07

SO ANSWERS,

Bob Kolar

BOB KOLAR, SHERIFF

SWORN AND SUBSCRIBED TO BEFORE ME THIS 21RST DAY OF JUNE, 01.
PROTHONATARY *Patty DerKehle*.

C A M B R I A C O U N T Y
S H E R I F F

6/18/01

JAMES NADDEO
211 1/2 EAST LOCUST STREET

CLEARFIELD PA 16830-0000

BOB KOLAR, SHERIFF
CAMBRIA COUNTY
PENNSYLVANIA

STATEMENT

BOB KOLAR, SHERIFF SHERIFF, CAMBRIA COUNTY, PA	ICIVIL REC & DOCKETING & R ICIVIL SERVICE IGENERAL MILEAGE IPROTHONOTARY NOTARY IREFUND ON DOCKET	9.00 9.00 2.07 3.00 76.93
BJR, INC. D/B/A CONSERVCO		

BJR, INC. D/B/A CONSERVCO
90151-01
COMPLAINT - BJR INC. VS. FREEDOM FOR
BJR, INC. D/B/A CONSERVCO

V S
FREEDOM FORD SALES 2001-789

JAMES NADDEO
211 1/2 EAST LOCUST STREET

CLEARFIELD, PA 16830

TOTAL COSTS.....	100.00
TOTAL RECEIPTS.....	100.00

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CREWELIERD, PA 08301

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EEEDOM FORD SALES 5001-188
A V

BIG, INC. D&B/A CONSEVCO
COMMODITY - BIG, INC. A/S, EEEEDOM FORD
TO-1010
BIG, INC. D&B/A CONSEVCO
SHEREE, CANNABIA CONN, PA, YTTA
BOB KOGAR, SHEREE

REOUND ON DOCKEL	00.00
YATON YATONHOTUB	00.00
OFNEKIM LARVEE	00.00
ICTAIG SERVACE	00.00
ICIAIG KEC & DOCKELING & K	00.00

ITEMS

CREWELIERD PA 08301-0000

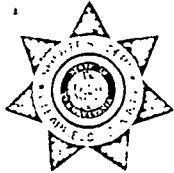
TELETS TSOS TEEA S1 TIS
OOPPAN SEMAL

AINAVGYNNE
CANNABIA CONN
BOB KOGAR, SHEREE

EXTRA

.....

.....



**Sheriff's Office
Clearfield County**

OFFICE (814) 765-2641
AFTER 4:00 P.M. (814) 765-1533
CLEARFIELD COUNTY FAX
(814) 765-6080
5915

2001-9051

CHESTER A. HAWKINS
SHERIFF

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

DARLENE SHULTZ
CHIEF DEPUTY

MARILYN HAMM
DEPT. CLERK

MARGARET PUTT
OFFICE MANAGER

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BJR, INC. d/b/a CONSERVCO

SERVE BY: 6/22/01

VS:

FREEDOM FORD SALES, INC. a1

or
HEARING DATE:

TERM & NO.: 01-789-CD

DOCUMENT TO BE SERVED:

COMPLAINT

SERVE: FREEDOM FORD SALES, INC.

ADDRESS: RT. 22, Ebensburg, Pa.

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF of CAMBRIA County Pennsylvania to execute this writ.

This Deputation being made at the request and risk of the Plaintiff this 24th day of MAY 2001.

MAKE REFUND PAYABLE TO: JAMES A. NADDEO, Attorney

Respectfully,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY

CLEARFIELD, PENNSYLVANIA 16830
P.O. BOX 552
21 1/2% EAST LOCUST STREET
ATTORNEY AT LAW
JAMES A. NADDEO

- Lap over margin

FILED

111 02 2001
01 3301 2cc at Nudde
William A. Shaw
Prothonotary
Feb 10

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

BJR, INC.,
d/b/a CONSERVCO,
a Pennsylvania Corporation,
Plaintiff,

v.

FREEDOM FORD SALES, INC.,
a Pennsylvania Corporation,
Defendant,

and

MARIO L. LUTHER,
an adult individual,
Defendant.

* No. 01 - 789 - CD

* Type of Pleading:

* Certificate of Service

* Filed on behalf of:

* Plaintiff

* Counsel of Record for
this party:

* James A. Naddeo, Esq.
* Pa I.D. 06820

* 211 1/2 E. Locust Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

FILED

11 02 2001

William A. Shaw
Prothonotary

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

BJR, INC., *
d/b/a CONSERVCO, *
a Pennsylvania Corporation, *
Plaintiff, *
*
v. * No. 01 - 789 - CD
*
FREEDOM FORD SALES, INC., *
a Pennsylvania Corporation, *
Defendant, *
*
and *
*
MARIO L. LUTHER, *
an adult individual, *
Defendant. *

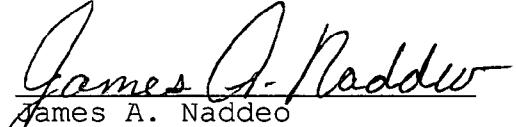
CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a true and correct copy of Notice of Default in the above-captioned action was served on the following persons and in the following manner on the 2nd day of July, 2001:

First-Class Mail, Postage Prepaid

Freedom Ford Sales, Inc.
Route 22
Ebensburg, PA 15931

Mario L. Luther
Route 119 South
Homer City, PA 15784


James A. Naddeo
Attorney for Plaintiff

TOMB, MACK AND KAUFFMAN
ATTORNEYS AT LAW
52 SOUTH NINTH STREET
INDIANA, PENNSYLVANIA 15701

**BJR, INC., d/b/a CONSERVCO.
A Pennsylvania Corporation,
Plaintiff**

vs.

**FREEDOM FORD SALES, INC.,
A Pennsylvania Corporation,
and
MARIO L. LUTHER,
An adult individual,
Defendants**

APPEARANCE

NOW COMES Thomas A. Kauffman, of the law firm of Tomb, Mack and Kauffman, who files an Appearance on behalf of Defendants, Freedom Ford Sales, Inc., and Mario L. Luther, in the above captioned action.

Respectfully Submitted,

Thomas A. Kauffman, Esquire

TOMB, MACK AND KAUFFMAN
ATTORNEYS AT LAW
52 SOUTH NINTH STREET
INDIANA, PENNSYLVANIA 15701

BJR, INC., d/b/a CONSERVCO,
a Pennsylvania Corporation,

Plaintiff,

v.

FREEDOM FORD SALES, INC.,
a Pennsylvania Corporation,

Defendant,

and

MARIO L. LUTHER,
an adult individual,

Defendant.

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

: NO. 01 - 789 - CD

: TYPE OF PLEADING:

: ANSWER, NEW MATTER AND COUNTER-
: CLAIMS FILED ON BEHALF OF
: DEFENDANTS

: COUNSEL OF RECORD FOR THESE
: PARTIES:

: Thomas A. Kauffman, Esquire
: TOMB, MACK & KAUFFMAN, LLP
: Pa. ID # 16498
: 52 South Ninth Street
: Indiana, PA 15701
: 724-357-9990

FILED

AUG 20 2001

William A. Shaw
Prothonotary

To Plaintiff:

You are hereby notified to file a written
response to the enclosed New Matter and
Counter-Claims within twenty (20) days
from service hereof or a judgment may
be entered against you.


Thomas A. Kauffman
Attorney for Defendants
Freedom Ford Sales and Mario Luther

BJR, INC., d/b/a CONSERVCO, a Pennsylvania Corporation,	: IN THE COURT OF COMMON PLEAS
	: CLEARFIELD COUNTY, PENNSYLVANIA
	:
Plaintiff,	:
	:
vi.	:
	:
	:
FREEDOM FORD SALES, INC., a Pennsylvania Corporation,	:
	:
Defendant,	: NO. 01 - 789 - CD
	:
	:
and	:
	:
MARIO L. LUTHER, an adult individual,	:
	:
Defendant.	:

ANSWER

NOW come the Defendants, Freedom Ford Sales, Inc. and Mario L. Luther, an individual, by and through their attorney, Thomas A. Kauffman, Esquire and set forth the following:

1. Denied. After reasonable investigation, the Defendants are without knowledge or information sufficient to form a belief as to the truth of this averment. Thus, the same is denied.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Denied. After reasonable investigation, the Defendants are without knowledge or information sufficient to form a belief as to the truth of this averment. Thus, the same is denied.
7. Denied. It is strictly denied that the work required to be performed by the Plaintiff under the agreement was completed in a good and/or workman-like fashion. By way of further Answer, it

is strictly denied that the work was completed on or about September 18, 2000. Due to the Plaintiff's failure to perform the Agreement as contemplated, the Defendants were unable to obtain an Occupancy Permit for the building until February of 2001. Additionally, Plaintiff failed to perform significant amounts of the work contemplated in the Agreement.

8. Denied. It is specifically denied that during the course of construction Plaintiff invoiced Defendants pursuant to the Agreement. Thus, said allegations are denied and strict proof thereof shall be demanded at trial.

9. Admitted in part and denied in part. It is admitted that Plaintiff submitted an invoice on or about September 25, 2000. However, it is strictly denied that said invoice accurately reflects the balance due between the parties and/or represents a "final" invoice. Consequently, strict proof thereof is demanded at trial.

10. Denied. It is strictly denied that Defendants currently owe Plaintiff Forty-eight Thousand Five Hundred Seventy-six and 84/100 (\$48,576.84) Dollars, and that the same has been due and owing since December 9, 2000. By way of further Answer, it is strictly denied that Plaintiff performed the work required pursuant to the Agreement and that the value of any work performed by Plaintiff equals the sum set forth in Paragraph 10 of Plaintiff's Complaint. Therefore, strict proof thereof shall be demanded at trial.

WHEREFORE, Defendants demand judgment in their favor and against the Plaintiff, plus cost and interest of suit.

COUNT 2

11. The Defendants incorporate by reference Paragraphs 1 through 10 of this Answer as though the same were herein set forth fully at length.

12. Denied. It is strictly denied that Mario L. Luther signed the Agreement in his individual capacity. By way of further Answer, said Agreement states that it is between "Freedom Ford" and the Plaintiff. Further, the signature line on the Agreement has the word "Owner" underneath of it, and can only be reasonably interpreted to mean that the signor was signing as the Owner of Freedom Ford. Thus, it is strictly denied that Mario L. Luther is obligated in any personal and/or individual capacity and strict proof thereof shall be demanded at trial.

WHEREFORE, Defendant, Mario L. Luther, an adult individual, demands judgment in his favor and against the Plaintiff, plus cost and interest of suit.

COUNT 3

13. The Defendants incorporate by reference Paragraphs 1 through 12 of this Answer as though the same were herein set forth fully at length.

14. Denied. After reasonable investigation, the Defendants are without knowledge or information sufficient to form a belief as to the truth of this averment. Thus, the same is denied and strict proof thereof is demanded at trial.

15. Denied. It is strictly denied that Defendants received said invoice as averred in Paragraph 15 of Plaintiff's Complaint. By way of further Answer, the averments set forth in Paragraph 15 of Plaintiff's Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is deemed required, the same is strictly denied.

16. Admitted.

17. Denied. It is strictly denied that Plaintiff has properly set forth claims which entitle it to penalties and/or attorney's fees. Further, Paragraph 17 of Plaintiff's Complaint contains conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is deemed to be required, the same is strictly denied.

WHEREFORE, Defendants demand judgment against Plaintiff for penalties and counsel fees as the Court shall deem appropriate.

NEW MATTER OF DEFENDANT FREEDOM FORD SALES, INC.

18. Defendant, Freedom Ford Sales, Inc., hereby incorporates by reference Paragraphs 1 through 17 of this Answer as if fully set forth at length herein.

19. Plaintiff has failed to set forth a cause of action upon which relief can be granted.

20. The Plaintiff's claim is barred by the applicable statutes of limitation, latches and as otherwise time barred.

21. The Defendant hereby pleads it does not owe any duty to the Plaintiff, and therefore, cannot be liable for any alleged duty.

22. The Defendant hereby pleads that the doctrine of contributory/comparative negligence serves as a complete bar to the entirety of the Plaintiff's Complaint.

WHEREFORE, Defendant demands judgment in its favor and against the Plaintiff, plus cost and interest of suit.

NEW MATTER OF DEFENDANT MARIO L. LUTHER

23. Defendant, Mario L. Luther, an individual, hereby incorporates by reference Paragraphs 1 through 22 of this Answer as if fully set forth at length herein.

24. Plaintiff has failed to set forth a cause of action upon which relief can be granted.

25. The Plaintiff's claim is barred by the applicable statutes of limitation, latches and as otherwise time barred.

26. The Defendant hereby pleads he does not owe any duty to the Plaintiff, and therefore, cannot be liable for any alleged duty.

27. The Defendant hereby pleads that the doctrine of contributory/comparative negligence serves as a complete bar to the entirety of the Plaintiff's Complaint.

WHEREFORE, Defendant demands judgment in his favor and against the Plaintiff, plus cost and interest of suit.

DEFENDANT, FREEDOM FORD SALES, INC., FIRST COUNTER-CLAIM

28. Paragraphs 1 through 27 are incorporated herein by reference as though fully set forth herein.

29. Plaintiff breached the contract with the Defendant by performing much of the required work in an unworkman-like, unprofessional and faulty manner.

30. The Plaintiff is in breach of the contract because it failed to do some of the work as required by the contract.

31. The Plaintiff is in breach of the contract because it failed to perform the work required therein in a timely manner as indicated by its own construction letter dated February 17, 1999 which is attached as Part of Exhibit "A" to Plaintiff's Complaint.

WHEREFORE, Defendant claims damages from the Plaintiff in the amount of \$25,000.00 with interest allowable by law.

DEFENDANT FREEDOM FORD SALES, INC., SECOND COUNTER-CLAIM

32. The Defendant hereby incorporates Paragraphs 1 through 31 as though fully set forth herein.

33. Due to Plaintiffs faulty workmanship and performing much of the required work in a non-workmanlike manner, the building was unable to be certified to receive an Occupancy Permit until March 2001.

34. As a direct result of Plaintiff's breach of contract, delay, negligence and faulty workmanship, the Defendant was unable to open its new store for business for a period in excess of five months.

35. By being unable to open for business within the time frame provided by Plaintiff, Defendant incurred losses and damages in excess of \$10,000.00 per month.

WHEREFORE, Defendant demands judgment be entered in its favor in excess of \$25,000.00 against Plaintiff.

RESPECTFULLY SUBMITTED:


THOMAS A. KAUFFMAN, ESQ
TOMB, MACK & KAUFFMAN LLP
Attorney for Defendants

VERIFICATION

I, Mario L. Luther, President of Freedom Ford Sales, Inc., a Defendant herein, have read the foregoing Answer, New Matter and Counter-Claim. The statements contained therein are true and correct to the best of my personal knowledge, information, and belief. This statement and verification is made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities, which provides that if I would make knowingly false statements, I may be subject to criminal penalties.

Date 07-17-01



Mario L. Luther, President
Freedom Ford Sales

VERIFICATION

I, Mario L. Luther, an individual, a Defendant herein, have read the foregoing Answer, New Matter and Counter-Claim. The statements contained therein are true and correct to the best of my personal knowledge, information, and belief. This statement and verification is made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities, which provides that if I would make knowingly false statements, I may be subject to criminal penalties.

Date 08-17-01


Mario L. Luther

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

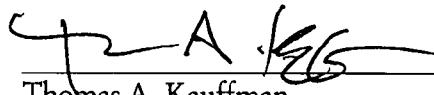
CIVIL DIVISION

BJR, INC. d/b/a CONSERVCO, Plaintiff	:	CIVIL ACTION - LAW
	:	NO. 01-789 CD
	:	ANSWER, NEW MATTER and COUNTER-CLAIM
vs.	:	
FREEDOM FORD SALES, INC., a Pennsylvania Corporation Defendant	:	Filed on behalf of Defendants, FREEDOM FORD SALES, INC and MARIO L. LUTHER
and	:	
MARIO L. LUTHER, an adult individual, Defendant	:	

CERTIFICATE OF SERVICE

I, the Undersigned, hereby certify that on the 17th day of August, a true and correct copy of Defendants' Answer, New Matter and Counter-claim was sent first class mail, postage prepaid to the following:

James A. Naddeo, Esquire
211½ East Locust Street
P.O. Box 552
Clearfield, PA 16830



Thomas A. Kauffman

CLERAFFIELD, PENNSYLVANIA 16830
R.O. BOX 552
211 1/2 EAST LOGCUST STREET
ATTORNEY AT LAW
JAMES A. NADDEO

— Lap over margin —

FILED

SEP 10 2001
DJK 35/32-CITY
William A. Shaw
Prothonotary
EKA

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

BJR, INC.,

*

d/b/a CONSERVCO,

*

a Pennsylvania Corporation,

*

Plaintiff,

*

*

v.

* No. 01 - 789 - CD

*

FREEDOM FORD SALES, INC.,

*

a Pennsylvania Corporation,

*

Defendant,

*

*

and

*

*

MARIO L. LUTHER,

*

an adult individual,

*

Defendant.

*

*

*

* Type of Pleading:

*

* Answers to New Matters
* and Counterclaims

*

*

*

* Filed on behalf of:
* Plaintiff

*

* Counsel of Record for
* this party:

*

*

* James A. Naddeo, Esq.
* Pa I.D. 06820

*

* 211 1/2 E. Locust Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

FILED

SEP 1 1 2001

William A. Shaw
Prothonotary

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

BJR, INC., *
d/b/a CONSERVCO, *
a Pennsylvania Corporation, *
Plaintiff, *
*
v. * No. 01 - 789 - CD
*
*
FREEDOM FORD SALES, INC., *
a Pennsylvania Corporation, *
Defendant, *
*
and *
*
MARIO L. LUTHER, *
an adult individual, *
Defendant. *

ANSWER TO NEW MATTER OF DEFENDANT FREEDOM FORD SALES, INC.

NOW COMES the Plaintiff, and by his attorney, James A. Naddeo, Esquire, sets forth the following:

1. Paragraph 18 no answer required.
2. Paragraph 19 states a legal conclusion to which no answer is required.
3. Paragraph 20 states a legal conclusion to which no answer is required.
4. Paragraph 21 states a conclusion of law to which no answer is required.
5. Paragraph 22 states a conclusion of law to which no answer is required.

WHEREFORE, Plaintiff claims damages as set forth in its Complaint.

ANSWER TO NEW MATTER OF MARIO L. LUTHER

6. Paragraph 23 no answer required.
7. Paragraph 24 states a conclusion of law to which no answer is required.
8. Paragraph 25 states a conclusion of law to which no answer is required.
9. Paragraph 26 states a conclusion of law to which no answer is required.
10. Paragraph 27 states a conclusion of law to which no answer is required.

WHEREFORE, Plaintiff claims damages as set forth in its Complaint.

ANSWER TO DEFENDANT, FREEDOM FORD SALES INC., FIRST COUNTERCLAIM

11. Paragraph 28 no answer required.
12. Paragraph 29 states a conclusion to which no answer is required. To the extent that an answer may be required, it is specifically denied that work was performed in an unworkman-like or unprofessional and faulty manner.
13. Paragraph 30 is denied and on the contrary it is alleged that Plaintiff performed all work required by the contract.
14. Paragraph 31 is denied and on the contrary it is alleged that all work was performed in a timely manner. In

further answer thereto, it is alleged that any construction delay was caused by Defendant and/or otherwise unavoidable within the meaning of the parties' contract.

WHEREFORE, Plaintiff claims damages as set forth in its Complaint.

ANSWER TO DEFENDANT, FREEDOM FORD SALES, INC., SECOND COUNTERCLAIM

15. Paragraph 32 no answer required.

16. Paragraph 33 is denied after reasonable investigation Plaintiff is without knowledge or information sufficient to form a belief as to the truth of said averment.

17. Paragraph 34 states a conclusion to which no answer is required. To the extent that an answer may be required, it is specifically denied that Plaintiff breached a contract, delayed construction or engaged in faulty workmanship which in any manner delayed the opening of Defendant's store. In further answer thereto, it is alleged that said store was substantially complete and available for occupancy in a timely manner.

18. Paragraph 35 is denied in so far as it implies that Plaintiff's conduct resulted in Defendant being unable to be open for business. In further answer thereto, the remainder of said allegation is denied after reasonable investigation.

WHEREFORE, Plaintiff claims damages as set forth in its
Complaint.

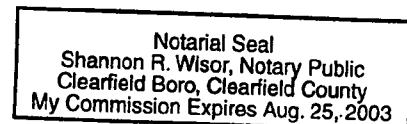
James A. Naddeo
James A. Naddeo
Attorney for Plaintiff

Before me, the undersigned officer, personally appeared JOSEPH F. KANE, who being duly sworn according to law, deposes and states that he is a thorized by BJR, Inc. d/b/a Conservco to execute this Affidavit and further that the facts set forth in the foregoing Answers to New Matters and Counterclaims are true and correct to the best of his knowledge, information and belief.

Joseph F. Kane
Joseph F. Kane

SWORN and SUBSCRIBED before me this 10th day of September, 2001.

Shannon F. Wiser



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

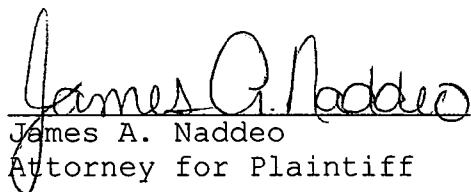
BJR, INC., *
d/b/a CONSERVCO, *
a Pennsylvania Corporation, *
Plaintiff, *
*
v. * No. 01 - 789 - CD
*
FREEDOM FORD SALES, INC., *
a Pennsylvania Corporation, *
Defendant, *
*
and *
*
MARIO L. LUTHER, *
an adult individual, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Answers to New Matters and Counterclaims in the above-captioned action was served on the following persons and in the following manner on the 10th day of September, 2001:

First-Class Mail, Postage Prepaid

Thomas A. Kauffman, Esquire
Tomb, Mack & Kauffman, LLP
52 South Ninth Street
Indiana, PA 15701


James A. Naddeo
Attorney for Plaintiff

CLEARFIELD, PENNSYLVANIA 16830
P.O. BOX 552
21 1/2 EAST LOCUST STREET
ATTORNEY AT LAW
JAMES A. NADDEO

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FILED

OCT 17 2001
01 10 35 AM '01
William A. Shaw
Archontary
cc - attorney needed
EWS

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

BJR, INC.,
d/b/a CONSERVCO,
a Pennsylvania Corporation,
Plaintiff,

v.

FREEDOM FORD SALES, INC.,
a Pennsylvania Corporation,
Defendant,

and

MARIO L. LUTHER,
an adult individual,
Defendant.

* No. 01 - 789 - CD

* Type of Pleading:

* Certificate of Service

* Filed on behalf of:

* Plaintiff

* Counsel of Record for
this party:

* James A. Naddeo, Esq.
* Pa I.D. 06820

* 211 1/2 E. Locust Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

FILED

OCT 17 2001

William A. Shaw
Prothonotary

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

BJR, INC., *
d/b/a CONSERVCO, *
a Pennsylvania Corporation, *
Plaintiff, *
*
v. * No. 01 - 789 - CD
*
FREEDOM FORD SALES, INC., *
a Pennsylvania Corporation, *
Defendant, *
*
and *
*
MARIO L. LUTHER, *
an adult individual, *
Defendant. *

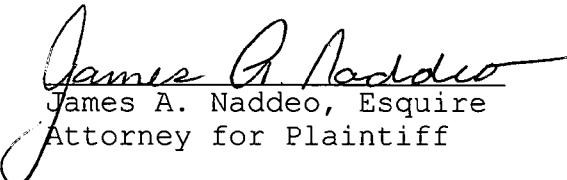
CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, Attorney for Plaintiff,
BJR, Inc., t/d/b/a Conservco, do hereby certify that a true and
correct copy of Notice of Deposition of Mario L. Luther in the
above matter was served by first-class mail, postage prepaid, upon
the following:

Thomas A. Kauffman, Esquire
Tomb, Mack & Kauffman, LLP
52 South Ninth Street
Indiana, PA 15701

ASAP Court Reporting
PO Box 345
Ebensburg, PA 15931

Said Notice of Deposition was mailed this 17th day of
October, 2001.


James A. Naddeo, Esquire
Attorney for Plaintiff

CLIFFFIELD, PENNSYLVANIA 16830
P.O. BOX 552
211½ EAST LOCUST STREET
ATTORNEY AT LAW
JAMES A. NADDEO

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

BJR, INC.,
d/b/a CONSERVCO,
a Pennsylvania Corporation,
Plaintiff,

v.

FREEDOM FORD SALES, INC.,
a Pennsylvania Corporation,
Defendant,

and

MARIO L. LUTHER,
an adult individual,
Defendant.

*
*
*
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*

* No. 01 - 789 - CD

*
*
*
*
*

* Type of Pleading:

*
* MOTION FOR PROTECTIVE
* ORDER

*
*

* Filed on behalf of:
* Plaintiff

*
*

* Counsel of Record for
* This party:

*
*

* James A. Naddeo, Esq.
* Pa I.D. 06820

*
*

* 211 1/2 E. Locust Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

FILED

FEB 27 2002

013-3d 1cc atty naddeo
William A. Shaw
Prothonotary

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

BJR, INC., *
d/b/a CONSERVCO, *
a Pennsylvania Corporation, *
Plaintiff, *
*
v. * No. 01 - 789 - CD
*
FREEDOM FORD SALES, INC., *
a Pennsylvania Corporation, *
Defendant, *
*
and *
*
MARIO L. LUTHER, *
an adult individual, *
Defendant. *

RULE

AND NOW, this 15th day of March, 2002, upon consideration of the attached Motion a Rule is hereby issued upon Defendant to Show Cause why the Motion should not be granted. Rule Returnable the 21 of March, 2002, for filing written response.

NOTICE

A MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING MOTION, YOU MUST TAKE ACTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE MOVANT. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

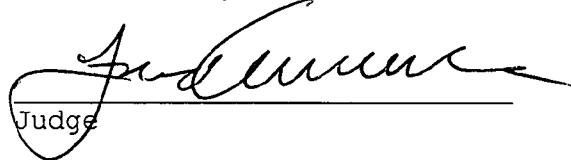
YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PA 16830
(814) 765-2641

FILED

MAR 01 2002

BY THE COURT,



Judge

William A. Shaw
Prothonotary

FILED 1cc
03/01/2002 Atty Nadeau
MAR 01 2002
William A. Shaw
Prothonotary

WAS

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

BJR, INC., *
d/b/a CONSERVCO, *
a Pennsylvania Corporation, *
Plaintiff, *
*
v. * No. 01 - 789 - CD
*
FREEDOM FORD SALES, INC., *
a Pennsylvania Corporation, *
Defendant, *
*
and *
*
MARIO L. LUTHER, *
an adult individual, *
Defendant. *

MOTION FOR PROTECTIVE ORDER

NOW COMES the Plaintiff, and by its attorney, James A. Naddeo, Esquire, sets forth the following:

1. That Plaintiff received notice to take the deposition of Joseph F. Kane, President of BJR, Inc., d/b/a/ Conservco, on February 1, 2002.

2. That said Notice directs that Joseph F. Kane and his counsel appear at the office of defense counsel, 52 South Ninth Street, Indiana, Pennsylvania, on Tuesday, April 2, 2002, at 9:00 a.m.

3. That Plaintiff received notice to take the deposition of L.P. Opalisky on February 1, 2002.

4. That said Notice directs that L.P. Opalisky and his counsel appear at the office of defense counsel, 52 South Ninth Street, Indiana, Pennsylvania, on Tuesday, April 2, 2002, at 10:00 a.m.

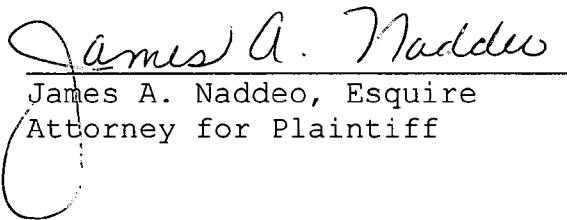
5. That this litigation is presently pending in the Court of Common Pleas of Clearfield County, Pennsylvania.

6. That both deponents as well as counsel for Plaintiff maintain their homes and businesses in Clearfield County.

7. That the Notices served by the Defendant require the parties as well as Plaintiff's counsel to appear for depositions at a location which is both inconvenient and unreasonably expensive.

WHEREFORE, Plaintiff respectfully requests your Honorable Court to enter an Order to show cause why the situs of depositions should not be changed, or alternatively why Defendant should not be ordered to pay Plaintiff's reasonable expenses to attend the deposition scheduled by Defendant.

Respectfully submitted,



James A. Naddeo, Esquire
Attorney for Plaintiff

JAMES A. NADDEO
ATTORNEY AT LAW
211 1/2 EAST LOCUST STREET
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

CERTIFIED TRUE AND CORRECT COPY

James A. Marle

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

BJR, INC.,
d/b/a CONSERVCO,
a Pennsylvania Corporation,
Plaintiff,

v.

FREEDOM FORD SALES, INC.,
a Pennsylvania Corporation,
Defendant,

and

MARIO L. LUTHER,
an adult individual,
Defendant.

* No. 01 - 789 - CD

* Type of Pleading:

* **CERTIFICATE OF SERVICE**

* Filed on behalf of:
* Plaintiff

* Counsel of Record for
* This party:

* James A. Naddeo, Esq.
* Pa I.D. 06820

* 211 1/2 E. Locust Street
* P.O. Box 552
* Clearfield, PA 16830
* (814) 765-1601

FILED

MAR 04 2002

William A. Shaw
Prothonotary

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

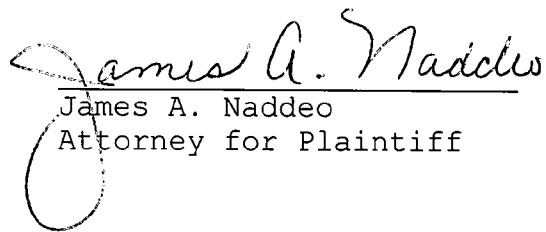
BJR, INC., *
d/b/a CONSERVCO, *
a Pennsylvania Corporation, *
Plaintiff, *
*
v. * No. 01 - 789 - CD
*
FREEDOM FORD SALES, INC., *
a Pennsylvania Corporation, *
Defendant, *
*
and *
*
MARIO L. LUTHER, *
an adult individual, *
Defendant. *

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of Motion for Protective Order filed in the above-captioned action was served on the following person and in the following manner on the 1st day of March 2002:

First-Class Mail, Postage Prepaid

Thomas A. Kauffman, Esquire
Tomb, Mack & Kauffman, LLP
52 South Ninth Street
Indiana, PA 15701


James A. Naddeo
Attorney for Plaintiff

FILED NOCC
10:50 AM
MAR 04 2002
S. J. [Signature]

William A. Shaw
Prothonotary

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

BJR, INC., d/b/a CONSERVCO, a
Pennsylvania corporation,

Plaintiff, No. 01-789-CD

v.

FREEDOM FORD SALES, INC., and
MARIO L. LUTHER,

Defendants.

**PRAECIPE FOR
SUBSTITUTION OF COUNSEL**

Filed on behalf of:
Plaintiff

Counsel of Record for this Party:

Bradley S. Tupi, Esquire
PA Id. No. 28682

Christopher A. Coppula, Esquire
Pa. Id. No. 81619

Tucker Arensberg, P.C.
1500 One PPG Place
Pittsburgh, Pennsylvania 15222
(412) 566-1212
(412) 594-5619 Fax

LIT:321163-1 013828-113500

FILED

MAY 03 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BJR, INC., d/b/a CONSERVCO, a
Pennsylvania corporation,

CIVIL DIVISION

Plaintiff,

No. 01-789-CD

v.

FREEDOM FORD SALES, INC., and
MARIO L. LUTHER,

Defendants.

PRAECIPE FOR SUBSTITUTION OF COUNSEL

Please enter the appearance of Bradley S. Tupi, Christopher A. Coppula and Tucker Arensberg, P.C. as counsel of record on behalf of Plaintiff, BJR, Inc., in this action.

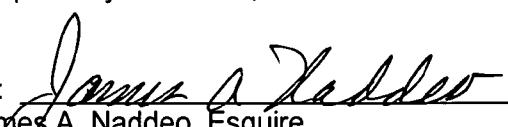
Respectfully submitted,

TUCKER ARENSBERG, P.C.

By: _____
Bradley S. Tupi, Esquire
PA Id. No. 28682
Tucker Arensberg, P.C.
1500 One PPG Place
Pittsburgh, Pennsylvania 15222
(412) 566-1212
(412) 594-5619 fax

Please **withdraw** the appearance of James A. Naddeo, Esquire, on behalf of the Plaintiff, BJR, Inc., in this action.

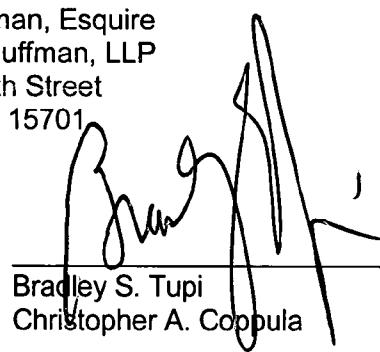
Respectfully submitted,

By: 
James A. Naddeo, Esquire
PA Id. No. 06820
2 1/2 E. Locust Street
Clearfield, PA 16830
(814) 765-1601

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Praeclipe for Substitution of Counsel was served by first class, U.S. mail, postage prepaid, this 20 day of April, 2004, upon the following:

Thomas A. Kauffman, Esquire
Tomb, Mack & Kauffman, LLP
52 South Ninth Street
Indiana, PA 15701



Thomas A. Kauffman's handwritten signature is written in black ink. It consists of a series of fluid, overlapping loops and lines that form the letters 'T', 'A', 'K', 'a', 'u', 'f', 'f', 'm', 'a', 'n', 'n', and 's'.

Bradley S. Tupi
Christopher A. Coppula

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

BJR, INC., d/b/a CONSERVCO, a
Pennsylvania corporation,

Plaintiff, No. 01-789-CD

v.

FREEDOM FORD SALES, INC., and
MARIO L. LUTHER,

Defendants.

**CERTIFICATE OF READINESS
FOR TRIAL**

Filed on behalf of:
Plaintiff

Counsel of Record for this Party:

Bradley S. Tupi, Esquire
PA Id. No. 28682

Christopher A. Coppula, Esquire
Pa. Id. No. 81619

Tucker Arensberg, P.C.
1500 One PPG Place
Pittsburgh, Pennsylvania 15222
(412) 566-1212
(412) 594-5619 Fax

LIT:341296-1 013828-113500

FILED NO^o cc
M/1/30/04
NOV 08 2004

WAS
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BJR, INC., d/b/a CONSERVCO, a
Pennsylvania corporation, CIVIL DIVISION

Plaintiff,

No. 01-789-CD

v.

FREEDOM FORD SALES, INC., and
MARIO L. LUTHER,

Defendants.

CERTIFICATE OF READINESS FOR TRIAL

Discovery is Completed: Yes

Pleadings are closed: Yes

Amount at Issue: \$50,000

Type of Trial Non-Jury

Date Jury demand filed: Not Applicable

Estimated number of witnesses at trial: 3

Estimated length of trial: 2 days

Special issues of fact or law: None

Counsel who will actually try the case: Telephone:

Plaintiff: Bradley S. Tupi, Esquire (412) 566-1212

Defendant: Thomas A. Kauffman, Esquire (724) 357-9990

Objections to the Certificate of Readiness are to be made within 10 days of service, otherwise the opposition will be deemed to be in agreement with the statements contained therein.

Respectfully submitted,

TUCKER ARENSBERG, P.C.

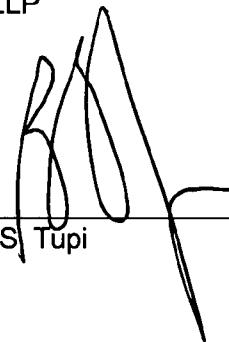
By: _____
Bradley S. Tupper, Esquire
PA Id. No. 28682
Tucker Arensberg, P.C.
1500 One PPG Place
Pittsburgh, Pennsylvania 15222
(412) 566-1212
(412) 594-5619 fax

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Certificate of Readiness was served by first class, U.S. mail, postage prepaid, this 5th day of November, 2004, upon the following:

Thomas A. Kauffman, Esquire
Tomb, Mack & Kauffman, LLP
52 South Ninth Street
Indiana, PA 15701

Bradley S. Tupi



A handwritten signature in black ink, appearing to read "Bradley S. Tupi". The signature is fluid and cursive, with a small arrow pointing to the right at the end of the "i".

TOMB, MACK & KAUFFMAN, L.L.P.
ATTORNEYS AT LAW
52 SOUTH NINTH STREET
INDIANA, PENNSYLVANIA 15701

BJR, INC., d/b/a CONSERVCO, a
Pennsylvania corporation

Plaintiff,

vs.

FREEDOM FORD SALES, INC and
MARIO L. LUTHER,

Defendants.

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

: CIVIL ACTION - LAW

: No. 01 -00789-CD

: OBJECTION TO PLAINTIFF'S
: CERTIFICATE OF READINESS

: FILED ON BEHALF OF DEFENDANTS

: COUNSEL OF RECORD FOR
: DEFENDANTS:

: THOMAS A. KAUFFMAN, ESQUIRE
: TOMB, MACK & KAUFFMAN, LLP
: 52 SOUTH NINTH STREET
: INDIANA, PA 15701
: (724)357-9990
: SUPREME COURT ID #66498

FILED

11:05 AM
NOV 16 2004

cc
William A. Shaw
Prothonotary/Clerk of Courts

BJR, INC., d/b/a CONSERVCO, a
Pennsylvania corporation : IN THE COURT OF COMMON PLEAS
Plaintiff, : CLEARFIELD COUNTY, PENNSYLVANIA
vs. :
FREEDOM FORD SALES, INC and : CIVIL ACTION – LAW
MARIO L. LUTHER, : No. 01 -00789-CD
Defendants. :
:

OBJECTION TO PLAINTIFF'S CERTIFICATE OF READINESS

The Defendants, Freedom Ford Sales, Inc. and Mario L. Luther, by and through their attorney, Thomas A. Kauffman, submit the following objection to Certificate of Readiness, and aver as follows:

1. On November 5, 2004, the Plaintiff did file a Certificate of Readiness for trial in this matter.
2. At this time, no pretrial conference has been scheduled.
3. Contemporaneous with this Objection, the Defendants' have filed a Motion for Judgment of Non Pros as well as a brief thereon.
4. As a result of Defendants' Motion, Defendants submit that this case is not ready for trial as that there are Pre-Trial Motions pending.
5. Defendants submit that until final disposition of their Pre-Trial Motion, this case is not ready for trial.

WHEREFORE, the Defendants submit this Objection and request the Court to remove this case from the trial list until such time as this Court renders a decision on Defendants' Motion for Judgment of Non Pros and/or any other Pre-trial Motions.

Respectfully submitted,

Travis

Thomas A. Kauffman, Esquire
Attorney for Defendants

BJR, INC., d/b/a CONSERVCO, a
Pennsylvania corporation : IN THE COURT OF COMMON PLEAS
Plaintiff, : CLEARFIELD COUNTY, PENNSYLVANIA
vs. :
FREEDOM FORD SALES, INC and : CIVIL ACTION – LAW
MARIO L. LUTHER, : No. 01 -00789-CD
Defendants. :
:

ORDER OF COURT

AND NOW, this _____ day of _____, 2004 after careful
consideration of Defendants' Objection to Plaintiff's Certificate of Readiness for Trial it
is hereby ORDERED AND DECREED that this case be removed from the trial list until
Defendants' Motion for Non Pros and/or any other Pre-Trial Motions have been disposed
of.

BY THE COURT

J.

in

TOMB, MACK & KAUFFMAN, L.L.P.
ATTORNEYS AT LAW
52 SOUTH NINTH STREET
INDIANA, PENNSYLVANIA 15701

BJR, INC., d/b/a CONSERVCO, a
Pennsylvania corporation

Plaintiff,

vs.

FREEDOM FORD SALES, INC and
MARIO L. LUTHER,

Defendants.

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: CIVIL ACTION - LAW
:
: No. 01 -00789-CD
:
:
:
:
:
: MOTION FOR JUDGMENT
: OF NON PROS
:
: FILED ON BEHALF OF DEFENDANTS
:
: COUNSEL OF RECORD FOR
: DEFENDANTS:
:
: THOMAS A. KAUFFMAN, ESQUIRE
: TOMB, MACK & KAUFFMAN, LLP
: 52 SOUTH NINTH STREET
: INDIANA, PA 15701
: (724)357-9990
: SUPREME COURT ID #66498

FILED *cc*
m/11/05/04 Atty Kauffman
NOV 16 2004


William A. Shaw
Prothonotary/Clerk of Courts

BJR, INC., d/b/a CONSERVCO, a Pennsylvania corporation Plaintiff,	:	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
vs.	:	CIVIL ACTION – LAW
FREEDOM FORD SALES, INC and MARIO L. LUTHER,	:	No. 01 -00789-CD
Defendants.	:	

MOTION FOR JUDGMENT OF NON PROS

The Defendants, Freedom Ford Sales, Inc., and Mario L. Luther, by and through their attorney, Thomas A. Kauffman, submit the following Motion for Judgment of Non Pros in the above-captioned matter, and aver as follows:

1. The Plaintiff filed a Civil Complaint on May 23, 2001 alleging breach of a July 10, 1999 construction agreement.
2. A complete list of the docket entries in this case is reflected below, and is attached hereto as Exhibit "A":
 1. May 23, 2001 – Filing of Civil Complaint;
 2. June 27, 2001 – Sheriff's Return;
 3. July 2, 2001 – Certificate of Service;
 4. July 30, 2001 – Appearance, on behalf of the Defendants;
 5. August 20, 2001 – Answer, New Matter and Counter-Claims filed on Behalf of Defendants
 6. September 10, 2001 – Answers to New Matters and Counterclaims;
 7. October 17, 2001 – Certificate of Service, Notice of Deposition;
 8. February 27, 2002 – Motion For Protective Order
 9. March 1, 2002 – Rule;
 10. May 3, 2004 – Praecipe for Substitution of Counsel;

11. November 8, 2004 – Certificate of Readiness for Trial.

3. The circumstances in which a Court may exercise its discretion to enter Judgment of Non Pros are:

- a. that a party has shown lack of due diligence by failing to proceed with reasonable promptitude;
- b. there is no compelling reason for the delay; and
- c. the delay has caused prejudice to the adverse party.

4. A review of the docket entries in this case reflects a lack of due diligence on the part of the Plaintiff who has failed to proceed with reasonable promptitude.

5. The docket entries reflect a complete lack of docket activity from March 1, 2002 through May 3, 2004, a period of approximately two (2) years and two (2) months.

6. The Defendants contend further that there has been a complete lack of substantive docket activity from October 17, 2001 to present. As the recent docket activity has been merely a Praecipe for Substitution of Counsel and a Certificate of Readiness.

7. The Plaintiff cannot offer the Defendants, nor this Court, a compelling reason for the delay in prosecuting this action nor the inactivity on the docket.

8. Attached hereto as Exhibit "B" is a letter from the original attorney in this matter, James A. Naddeo, which demonstrates the Plaintiff's failure to even offer a compelling reason for its failure to proceed or act with reasonable promptitude.

9. The Defendants contend that they are prejudiced in this matter as memories of the principals and witnesses are stale; some witness may be either inaccessible at this time due to health issues or their whereabouts may not be determinable at this time; and/or the dissipation of evidence from the time of the original Complaint in this matter has denied Defendants the opportunity to sufficiently defend against Plaintiff's claims as well as to proceed with their own counterclaims.

10. Although, the delay of over two years in docket activity is no longer per se "presumed prejudice," the Defendants contend that it is a factor for the Court to consider when evaluating the prejudice involved in this matter.

WHEREFORE, the Defendants' respectfully request that this Honorable Court enter a judgment of non pros in this action in favor of Defendants and against the Plaintiff.

Respectfully submitted,



Thomas A. Kauffman, Esquire
Attorney for Defendants

Date: 11/12/2004

Clearfield County Court of Common Pleas

Time: 09:19 AM

ROA Report

Page 1 of 1

Case: 2001-00789-CD

Current Judge: Fredric Joseph Ammerman

BJR, Inc. vs. Freedom Ford Sales, Inc.. Mario L. Luther

Civil Other

Date	Judge	
05/23/2001	Filing Civil Complaint Paid by: Naddeo, James A. (attorney for BJR, Inc.) Receipt number: 1825700 Dated: 05/23/2001 Amount: \$80.00 (Check) Two CC Sheriff	No Judge
06/27/2001	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
07/02/2001	Certificate of Service, Notice of Default, upon Freedom Ford Sales, Inc. & No Judge Mario L. Luther, s/James A. Naddeo, Esq. 2 cc atty Naddeo	No Judge
07/30/2001	Appearance, on behalf of the Defendants. s/Thomas A. Kauffman, Esq. 4 cc atty Kauffman	No Judge
08/20/2001	Answer, New Matter and Counter-Claims Filed on Behalf of Defendants. Filed by s/Thomas A. Kauffman, Esq. no cc Cert of Svc/	No Judge
09/10/2001	Answers to New Matters and Counterclaims. Filed by s/James A. Naddeo, Esq. Verification. s/Joseph F. Kane Cert of Svc 3 cc Atty	No Judge
10/17/2001	Certificate of Service, Notice of Deposition of Mario L. Luther upon Thomas A. Kauffman, Esq. Filed by s/James A. Naddeo, Esq. 1 cc Atty Naddeo	No Judge
02/27/2002	Motion For Protective Order. Filed by s/James A. Naddeo, Esq. 1 cc Atty Naddeo	No Judge
03/01/2002	RULE, AND NOW, this 1st day of March, 2002, issued upon Defendant, returnable 21st day day of March 2002, for filing written response. by the Court, s/FJA,J. 1 cc Atty Naddeo	Fredric Joseph Ammerman
	Certificate of Service, Motion for Protective Order upon Thomas A. Kauffman, Esq. Filed by s/James A. Naddeo, Esq. no cc	Fredric Joseph Ammerman
05/03/2004	Praeclipe For Substitution Of Counsel. Entry by: S/Bradley S. Tupi, Esquire Withdrawal: s/James A. Naddeo, Esquire Certificate of Service no cc Copy to C/A	Fredric Joseph Ammerman
11/08/2004	Certificate of Readiness for Trial, Bradley S. Tupi, Esq. No CC	Fredric Joseph Ammerman

EXHIBIT

tabbed

"A"

ASSOCIATE
LINDA C. LEWIS

JAMES A. NADDEO
ATTORNEY AT LAW
211½ EAST LOCUST STREET
MARINO BUILDING
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

TELEPHONE
(814) 765-1601
TELECOPIER
(814) 765-8142

June 10, 2003

Thomas A. Kauffman, Esquire
Tomb, Mack & Kauffman, LLP
52 South Ninth Street
Indiana, PA 15701

RE: BJR, Inc. v. Freedom Ford Sales, Inc. &
Mario L. Luther
01-789-CD

Dear Mr. Kauffman:

I met with my client on Friday, June 6, 2003. I have been instructed by BJR, Inc., to take no further action in respect to the above-referenced litigation. BJR has no plans to employ alternate counsel. You may move this litigation in whatever direction you deem necessary.

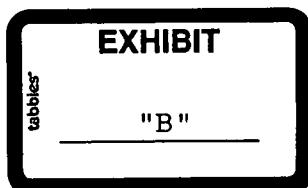
Sincerely,

James A. Naddeo
James A. Naddeo

JAN/jr

cc: BJR, Inc.

VIA FAX ONLY



BJR, INC., d/b/a CONSERVCO, a
Pennsylvania corporation : IN THE COURT OF COMMON PLEAS
Plaintiff, : CLEARFIELD COUNTY, PENNSYLVANIA
vs. :
FREEDOM FORD SALES, INC and : CIVIL ACTION – LAW
MARIO L. LUTHER, : No. 01 -00789-CD
Defendants. :
:

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Defendants' Motion for Judgment of Non Pros was sent first class mail, postage prepaid on this 12th day of November, 2004 to the following:

Bradley S. Tupi
TUCKER ARENSBERG
1500 One PPG Place
Pittsburgh, PA 15222



Thomas A. Kauffman, Esquire
Attorney for Defendants

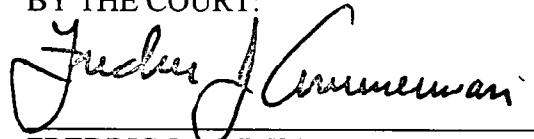
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

BJR, INC., d/b/a CONSERVCO, a :
Pennsylvania corporation :
vs. : No. 01-789-CD
FREEDOM FORD SALES, INC. and :
MARIO L. LUTHER :
:

O R D E R

AND NOW, this 17th day of November, 2004, it is the ORDER
of the Court that argument on Defendants' Objection to Plaintiff's Certificate of
Readiness filed in the above matter has been scheduled for the 16 day of
December, 2004, at 2:30 P.M, in Courtroom No. 1,
Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

FILED ^{E6K}
11/23/04
NOV 17 2004
2 CC to Atty
Kaufman w/
memo to Re: service

William A. Shaw
Prothonotary/Clerk of Courts



**OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA**

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

***** Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

BJR, INC., d/b/a CONSERVCO, a
Pennsylvania corporation
Plaintiff,

vs.

FREEDOM FORD SALES, INC and
MARIO L. LUTHER,

Defendants.

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: CIVIL ACTION - LAW
:
: No. 01 -00789-CD
:
:

ORDER OF COURT

AND NOW this 19 day of November, 2004, the Court having
considered Defendants' Motion for Judgment of Non Pros, is hereby ORDERED AND
DECREEED that a hearing be scheduled for the 16 day of
October, 2004, at 10:00 AM in Courtroom No. 1 to
determine Defendants' Motion for Judgment of Non Pros.

BY THE COURT



J.

cc: FILED 3cc
10/4/2004 *Atty Kaufman*
NOV 22 2004 *w/ memo re: service*

William A. Shaw
Prothonotary/Clerk of Courts



**OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA**

**CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830**

**DAVID S. MEHOLICK
COURT ADMINISTRATOR**

**PHONE: (814) 765-2641
FAX: 1-814-765-7649**

**MARCY KELLEY
DEPUTY COURT ADMINISTRATOR**

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***** Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

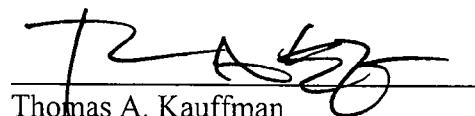
CIVIL ACTION -- LAW

BJR, INC., d/b/a CONSERVCO, a :
Pennsylvaniana corporation :
Plaintiff : No. 01-00789-CD
:
vs. :
:
FREEDOM FORD SALES, INC and :
MARIO LUTHER, :
Defendant :
:

AFFIDAVIT OF SERVICE

The undersigned does swear and confirm that on this 23rd day of November, 2004 a copy of the Court Order indicating the Hearing scheduled for the 16th of December at 1:00 p.m. to consider Defendant's Objection to Readiness and the Court Hearing scheduled for the 16th day of December, 2004 at 2:00 p.m. to consider Defendant's Motion for Judgment of Non Pros were sent to the Plaintiff's Bradley Tupi at 1500 One PPG Place, Pittsburgh, PA 15222 on the 23rd day of November, 2004 via United States First Class Postage prepaid mail.

DATE: 11/23/04

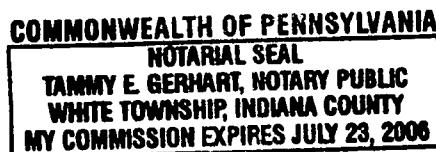


Thomas A. Kauffman

Sworn to and subscribed before me
this 23rd day of November, 2004.



Tammy E. Germhart
Notary Public



FILED ^{EGR}
NOV 1 3584
NOV 24 2004


William A. Shaw
Prothonotary/Clerk of Courts

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

FILED

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614 DEC 23 2004

BJR, INC., d/b/a CONSERVCO, :
a Pennsylvania Corporation :
-vs- :
FREEDOM FORD SALES, INC. al :

William A. Shaw
Prothonotary

O R D E R

NOW, this 16th day of December, 2004, following argument on the Defendants' Motion for Non Pros and Motion to Remove Case from the Civil Trial List, it is the ORDER of this Court as follows:

1. The case is hereby removed from the Winter 2005 Trial List and counsel shall not be required to appear for Call of the List on January 4, 2005;

2. The Court Administrator is directed to schedule an evidentiary hearing on the Defendants' Motion for Non Pros. Estimated time of the same being one (1) hour. The hearing shall be scheduled during the month of January 2005;

3. Upon disposition of the Motion for Non Pros, assuming the same is not granted, the Court intends to schedule a pre-trial conference in order that the matter can be scheduled for non-jury trial. The provisions of this paragraph are to make it clear that the Court does not

expect that either party shall be required to file any additional certificate of readiness in that the Court is not willing to wait to schedule the trial until the Spring 2005 Term of Court.

BY THE COURT,



President Judge

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

BJR, INC., d/b/a CONSERVCO :
vs. : No. 01-789-CD
FREEDOM FORD SALES, al :
:

O R D E R

AND NOW, this 23rd day of December, 2004, it is the ORDER of the Court that an Evidentiary Hearing on Defendants' Motion for Non Pros in the above-captioned matter is hereby scheduled for Thursday, January 20, 2005 at 3:00 P.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA. One (1) hour has been allotted for this matter.

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

FILED

01/09/2005
DEC 27 2004

1cc
Atlys Tupi
Kauffman
(CIA envelopes)
William A. Shaw
Prothonotary/Clerk of Courts

6X

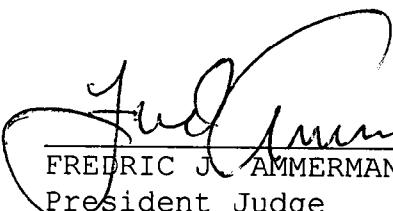
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

BJR, INC., d/b/a CONSERVCO, :
a Pennsylvania Corporation :
: vs. : NO. 01-789-CD
: :
FREEDOM FORD SALES, et al :
:

O R D E R

NOW, this 14th day of January, 2005, counsel for the Defendant having requested the Court by his letter of January 13, 2005 to withdraw the Defendant's Motion for Judgment of Non Pros; it is the ORDER of this Court that the Defendant's request for withdrawal of Motion for Judgment of Non Pros is GRANTED; and the Court Administrator is directed to cancel the Evidentiary Hearing that was scheduled for January 20, 2005. The Prothonotary shall mark said Motion as withdrawn.

BY THE COURT,


FREDRIC J. AMMERMAN

President Judge

FILED
08:47 AM 1/18/2005
2005 Kauffman
JAN 18 2005

William A. Shaw
Prothonotary

CR

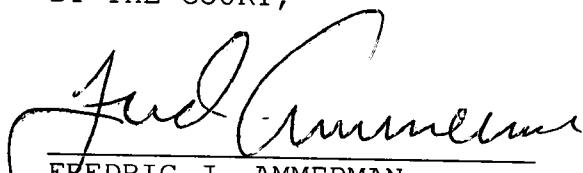
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

BJR, INC., d/b/a CONSERVCO, :
a Pennsylvania Corporation :
: vs. : NO. 01-789-CD
: :
FREEDOM FORD SALES, et al :
:

O R D E R

AND NOW, this 14 day of January, 2005, it is
the ORDER of the Court that a Pre-Trial Conference in the above
matter shall be held on the 11 day of March, 2005
in Chambers at 1:30 o'clock P.m.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED
6K 08:50 BA 100 atty Kaufman
2cc atty Tupper
JAN 18 2005

William A. Shaw
Prothonotary

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

BJR, INC., d/b/a CONSERVCO, a *
Pennsylvania corporation, *
Plaintiff *
vs. * NO. 01-789-CD
FREEDOM FORD SALES, INC., and *
MARIO L. LUTHER, *
Defendants *

O R D E R

NOW, this 17th day of March, 2005, following pre-trial conference among
counsel and President Judge Fredric J. Ammerman, it is the Order of this Court as follows:

1. The Court Administrator shall place the case with the undersigned for further
proceedings;
2. The Plaintiff shall have no more than thirty (30) days from this date to file a
Motion Requesting to Amend the Pleadings. Plaintiff's brief shall be submitted along with the
said Motion;
3. Defense shall have no more than twenty (20) days from the filing of the
Plaintiff's Motion to file an Answer to the same and to submit their brief concurrently to the
Court;
4. Upon receipt of the Plaintiff's Motion and the Defendants' Answer, the Court
Administrator shall list the same for oral argument before the undersigned;
5. The dates of June 6, 7 and 8, 2005 are no longer available for trial purposes.
Non-Jury trial shall be scheduled before the undersigned following future conference with
counsel.

FILED

BY THE COURT,

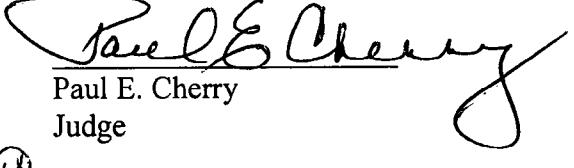
MAR 18 2005

William A. Shaw
Prothonotary/Clerk of Courts

SENT TO ATTYS

B.TUPI (6)

T. KAUFFMAN


Paul E. Cherry

Judge

BJR, INC., d/b/a CONSERVCO,
a Pennsylvania Corporation,
Plaintiff,

v.

FREEDOM FORD SALES, INC.,
a Pennsylvania Corporation,

Defendant,

and

MARIO L. LUTHER,
an adult individual,

Defendant.

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

FILED 3 Cert. of
M 12/4/05 Disc. to
AUG 05 2005 Atty
Kaufman
William A. Shaw
Prothonotary Clerk of Courts
Copy to CJA

NO. 01 - 789 - CD

PRAEPIPE

TO THE PROTHONOTARY:

Kindly mark the above-captioned case, including any Counter-Claims, as
"Settled and Discontinued," with prejudice.

RESPECTFULLY SUBMITTED:



THOMAS A. KAUFFMAN
PA ID # 66498

Attorney for DEFENDANTS

52 SOUTH NINTH STREET
INDIANA, PA 15701
(724) 357 9990



BRADLEY S. TUPI
PA ID # 28682
NEIL J. GREGORIO
PA ID # 90859

Attorneys for PLAINTIFF

TUCKER & ARENSBURG, P.C.
1500 ONE PPG PLACE
PITTSBURGH, PA 15222
(412) 566-1212

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

 COPY

BJR, Inc.

Vs.

No. 2001-00789-CD

Freedom Ford Sales, Inc.

Mario L. Luther

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 August 5, 2005, marked:

Settled and Discontinued with Prejudice

Record costs in the sum of \$80.00 have been paid in full by James A. Naddeo, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 5th day of August A.D. 2005.

William A. Shaw, Prothonotary

CA

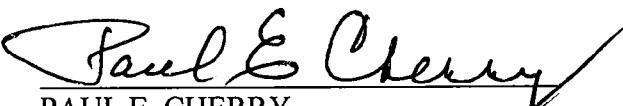
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

BJR, INC., d/b/a CONSERVCO, :
a Pennsylvania Corporation :
vs. : No. 01-789-CD
FREEDOM FORD SALES, INC., and :
MARIO L. LUTHER :
:

O R D E R

NOW, this 4th day of November, 2005, upon consideration
of the Court's Order entered on March 17, 2005, in the above matter, it is the
ORDER of this Court that a Status Conference is scheduled for the 22nd day of
November, 2005, at 3:30 P.M. in Courtroom No.
2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


PAUL E. CHERRY
Judge


FILED

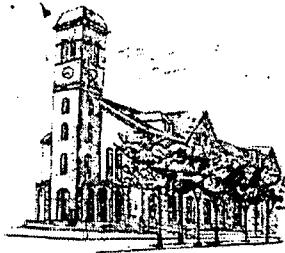
NOV 04 2005 

William A. Shaw
Prothonotary/Clerk of Courts

CLERK COPIES TO

ATTY'S
Twp
+

KAUFFMAN



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

Date: 7/25/2005

Clearfield County Court of Common Pleas

User: DPETERS

Time: 11:54 AM

ROA Report

Page 1 of 2

Case: 2001-00789-CD

Current Judge: Paul E. Cherry

BJR, Inc. vs. Freedom Ford Sales, Inc., Mario L. Luther

*Put in
File*

Civil Other

Date		Judge
5/23/2001	Filing: Civil Complaint Paid by: Naddeo, James A. (attorney for BJR, Inc.) Receipt number: 1825700 Dated: 05/23/2001 Amount: \$80.00 (Check) Two CC Sheriff	No Judge
6/27/2001	Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
7/2/2001	Certificate of Service, Notice of Default, upon Freedom Ford Sales, Inc. & Mario L. Luther. s/James A. Naddeo, Esq. 2 cc atty Naddeo	No Judge
7/30/2001	Appearance, on behalf of the Defendants. s/Thomas A. Kauffman, Esq. 4 cc atty Kauffman	No Judge
8/20/2001	Answer, New Matter and Counter-Claims Filed on Behalf of Defendants. Filed by s/Thomas A. Kauffman, Esq. no cc Cert of Svc/	No Judge
9/10/2001	Answers to New Matters and Counterclaims. Filed by s/James A. Naddeo, Esq. Verification. s/Joseph F. Kane Cert of Svc 3 cc Atty	No Judge
10/17/2001	Certificate of Service, Notice of Deposition of Mario L. Luther upon Thomas A. Kauffman, Esq. Filed by s/James A. Naddeo, Esq. 1 cc Atty Naddeo	No Judge
2/27/2002	Motion For Protective Order. Filed by s/James A. Naddeo, Esq. 1 cc Atty Naddeo	No Judge
3/1/2002	RULE, AND NOW, this 1st day of March, 2002, issued upon Defendant, returnable 21st day of March, 2002, for filing written response. by the Court, s/FJA,J. 1 cc Atty Naddeo	Fredric Joseph Ammerman
3/4/2002	Certificate of Service, Motion for Protective Order upon Thomas A. Kauffman, Esq. Filed by s/James A. Naddeo, Esq. no cc	Fredric Joseph Ammerman
5/3/2004	Praecipe For Substitution Of Counsel. Entry by: S/Bradley S. Tupi, Esquire Withdrawal: s/James A. Naddeo, Esquire Certificate of Service no cc Copy to C/A	Fredric Joseph Ammerman
11/8/2004	Certificate of Readiness for Trial, Bradley S. Tupi, Esq. No CC	Fredric Joseph Ammerman
11/16/2004	Objection to Plaintiff's Certificate of Readiness, filed by s/Thomas A. Kauffman, Esq. One CC Attorney Kauffman	Fredric Joseph Ammerman
	Motion for Judgment of Non Pros, filed by s/Thomas A. Kauffman, Esq. One CC Attorney Kauffman (Motion withdrawn per Court Order Jan. 14, 2005)	Fredric Joseph Ammerman
11/17/2004	Order, AND NOW, this 17th day of Nov. 2004, it is the ORDER of the Court Fredric Joseph Ammerman that argument on Defendants' Objection to Plaintiff's Certificate of Readiness filed in the above matter has been scheduled for the 16th day of Dec. 2004 at 2:00 p.m. in Courtroom No. 1 of the Clfd. Co. Courthouse. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2CC To Atty Kauffman w/ memo Re: Service.	Fredric Joseph Ammerman
11/22/2004	Order, AND NOW this 19th day of Nov. 2004, it is ORDERED that a hearing be scheduled for the 16th of Dec., 2004, at 2:00 p.m. in Courtroom no. 1 to determine Defendant's Motion for Judgment of Non Pros. BY THE COURT, /s/ Fredric J. Ammerman, President Judge. 3 CC Atty. Kauffman w/ memo Re: Service.	Fredric Joseph Ammerman
11/24/2004	Affidavit of Service, copy of Court Orders dated Nov. 17, 2004 and Nov. 19, 2004 were sent on Nov. 23, 2004 to Bradley Tupi, filed by s/ Thomas A. Kauffman. No CC	Fredric Joseph Ammerman

Date: 7/25/2005

Clearfield County Court of Common Pleas

User: DPETERS

Time: 11:54 AM

ROA Report

Page 2 of 2

Case: 2001-00789-CD

Current Judge: Paul E. Cherry

BJR, Inc. vs. Freedom Ford Sales, Inc., Mario L. Luther

Civil Other

Date	Judge
12/23/2004	Order, NOW, this 16th day of Dec., 2004, following argument on the Defendants' Motion for Non Pros and Motion to Remove Case from the Civil Trial List, it is the ORDER of this Court as follows: (see original). s/Fredric J. Ammerman, President Judge. 3CC Atty Kaufman
12/27/2004	Order, filed Cert. to Atty's Tupi & Kauffman NOW, this 23rd day of December, 2004, Hearing on Defendants' Motion for Judgment of Non Pros, 1-20-05
1/18/2005	NOW, this 14th day of January, 2005, counsel for the Def. having requested the Court by his letter of Jan. 13, 2005 to withdraw the Def's Motion for Judgment of Non Pros; it is the ORDER of this Court that the Def's request for withdrawal of Motion for Judgment of Non Pros is Granted; and the Court Administrator is directed to cancel the Evidentiary Hearing that was scheduled for Jan. 20, 2005. The Prothonotary shall mark said Motion as withdrawn. s/FJA 1 CC to Atty. Tupi 2 CC to Atty. Kauffman. (Motion of Nov. 16th, 2005 marked withdrawn per Court order). Order, AND NOW, this 14th day of Jan., 2005, it is the ORDER of this Court that a Pre-Trial Conference in the above matter shall be held on the 11th day of March, 2005 in Chambers at 1:30 p.m. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Atty Kaufman, 2CC Atty Tupi
3/18/2005	Order, NOW, this 17th day of march, 2005, following pre-trial conference among counsel and President Judge Fredric J. Ammerman, it is the Order of this Court as follows: 1. Court Administrator shall place the case for further proceedings; 2. Plaintiff shall have no more than 30 days from this date to file motion Requesting to Amend the Pleadings. 3. Defense shall have no more than 20 days from the filing of motion to file an Answer and to submit their brief concurrently 4. Upon receipt of the Plaintiff's motion and the Defendants' Answer, the Court Administrator shall list the same for oral argument 5. The dates of June 6, 7 and 8, 2005 are no longer available for trial. Non-Jury trial shall be scheduled before the undersigned following future conference with counsel. BY THE COURT: /s/ Paul E. Cherry, Judge. CC to Atty's Bitupi & T. Kauffman

TOMB, MACK & KAUFFMAN, L.L.P.
ATTORNEYS AT LAW
52 SOUTH NINTH STREET
INDIANA, PENNSYLVANIA 15701
613-1100-120

BJR, INC., d/b/a CONSERVCO, a
Pennsylvania corporation

Plaintiff,

vs.

FREEDOM FORD SALES, INC and
MARIO L. LUTHER,

Defendants.

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: CIVIL ACTION - LAW
:
: No. 01 -00789-CD
:
:
: PRE-TRIAL STATEMENT
:
:
: FILED ON BEHALF OF DEFENDANTS
:
: COUNSEL OF RECORD FOR
: DEFENDANTS:
:
: THOMAS A. KAUFFMAN, ESQUIRE
: TOMB, MACK & KAUFFMAN, LLP
: 52 SOUTH NINTH STREET
: INDIANA, PA 15701
: (724)357-9990
: SUPREME COURT ID #66498

Next
term

RECEIVED
MAR 11 2005
COURT ADMINISTRATOR'S
OFFICE

BJR, INC., d/b/a CONSERVCO, a Pennsylvania corporation	:	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff,	:	
vs.	:	
FREEDOM FORD SALES, INC and MARIO L. LUTHER,	:	
Defendants.	:	

PRE-TRIAL STATEMENT

The Defendants, Freedom Ford Sales, Inc. and Mario L. Luther, by and through their attorney, Thomas A. Kauffman, submit the following Pre-Trial Statement:

I. NARRATION OF FACTS

On or about July 10, 1999, the parties did enter into an Agreement wherein the Plaintiff was to provide services, *i.e.* the building of an automobile dealership, for Defendants. Pursuant to representations made by the Plaintiff, the work to be performed was to be completed in the early fall of 2000.

Due to the Plaintiff's failure to provide the work in a timely and workmanlike manner in accordance to the standards set forth by the Department of Labor and Industry, the Defendant was denied an Occupancy Permit until February of 2001. This delay caused the Defendants to suffer damages in an amount in excess of Ten Thousand Dollars (\$10,000.00) per month.

As a result of Plaintiff's failure to provide the work as contracted, and to perform the work in a timely and workmanlike manner, the Plaintiff is not entitled to the amounts it seeks. Additionally, the Defendants did provide written documentation to the Plaintiff by way of letters by Larry Opalisky, the Project Manager, within seven (7) days from the receipt of invoices from Plaintiff. As such, the Plaintiffs are not entitled to relief pursuant to the Contractor and Sub-Contractor Payment Act, 73 P.S. § 506(b). Further,

the Defendants are entitled to the damages they claim pursuant to their Counter-Claims which are in excess of Ten Thousand (\$10,000.00) Dollars per month.

II. UNUSUAL QUESTIONS OF LAW

The Defendants are absolutely baffled by this part of Plaintiff's Pre-Trial Statement. What is "unusual" about this question of law is the fact that the Plaintiff, on the "eve of trial," is now attempting to assert a defense which it has never previously raised or plead in this matter. The Plaintiffs, in their Certificate of Readiness filed in November of 2004, certified to the Court that all pleadings in this matter where closed along with an assertion that there are no special issues of fact or law to be considered.

The Defendants vehemently object to: (a) Plaintiffs being permitted to request permission to assert the defense of waiver at this time; and (b) any finding which would determine that Defendants made any waiver of damages in this matter.

The first time that Plaintiffs communicated such an intent to raise the affirmative defense of waiver was on March 9, 2005 at 8:30 a.m. There is absolutely no mention of a "waiver" in the Plaintiff's Complaint filed in May of 2001, Plaintiff's Answer to New Matters and Counter-Claims filed in September 2001, or any of the correspondence, discovery and/or other pleadings, including the Plaintiff's Certificate of Readiness. To allow Plaintiff to assert such an affirmative defense at this time, in Defendants' opinion, would constitute a violation of the Pennsylvania Rules of Civil Procedure and clearly cause prejudice to the Defendants.

The Defendants request that the Court address this issue and give the parties a clear decision regarding the same to avoid any confusion at trial.

III. WITNESSES

1. Joseph F. Kane, Contractor
2. Mario L. Luther, Owner
3. Lawrence P. Opalisky, Project Manager
4. Karen Holby, Freedom Ford

5. Tom Baglio, Freedom Ford
6. Joel Martin, Safety Inspector, Bureau of Occupational and Industrial Safety
7. Bob Fisher, Jr., Safety Inspector Supervisor, Bureau of Occupational and Industrial Safety
8. Michael Gensemer, Regional Manager, Bureau of Occupational and Industrial Safety, L & I
9. Any and all witnesses listed in Plaintiff's Pre-Trial Statement
10. Defendants reserve the right to amend this Pre-Trial Statement at any time prior to trial.
11. Defendants reserve the right to amend this Pre-Trial Statement to include documents used for the purposes of rebuttal or impeachment.

IV. EXPERT REPORTS

None

V. DAMAGES

As specified in Counter-Claims

VI. EXHIBITS

1. Any and all pleadings filed in this matter.
2. Transcripts of any and depositions taken in this matter.
3. Any and all written discovery requests and responses in this matter.
4. Construction contract between Freedom Ford and Conservco, including any documents attached to the original Complaint.
5. Any and all documents received by any party during discovery in this matter.
6. Any and all change orders.
7. Any and all invoices or applications for payment.

8. Any and all correspondence between the parties and/or Lawrence Opalisky.
9. Any relevant document prepared by the Bureau of Occupational and Industrial Safety.
10. To the extent not listed, any and all documents enumerated in Plaintiff's Pre-Trial Statement.
11. Defendants reserve the right to amend this Pre-Trial Statement at any time prior to trial.
12. Defendants reserve right to amend this Pre-Trial Statement to include documents used for the purposes of rebuttal or impeachment.

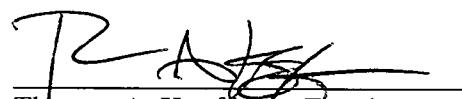
VII. ESTIMATED LENGTH OF TRIAL

3 days

VIII. STIPULATIONS OF THE PARTIES

The parties have not stipulated to any facts or legal principles in this matter.

Respectfully submitted,



Thomas A. Kauffman, Esquire
Attorney for Defendants

BJR, INC., d/b/a CONSERVCO, a
Pennsylvania corporation

Plaintiff,

vs.

FREEDOM FORD SALES, INC and
MARIO L. LUTHER,

Defendants.

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

: CIVIL ACTION - LAW

: No. 01 -00789-CD

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Defendants' Pre-Trial Statement was sent first class mail, postage prepaid and faxed on this 10th day of March, 2005 to the following:

Bradley S. Tupi, Esquire
Tucker Arensberg
1500 One PPG Place
Pittsburgh, PA 15222
Fax (412) 594 5619



Thomas A. Kauffman, Esquire
Attorney for Defendant

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

BJR, INC., d/b/a CONSERVCO, a
Pennsylvania corporation,

Plaintiff, No. 01-789-CD

v.

FREEDOM FORD SALES, INC., and
MARIO L. LUTHER,

Defendants.

Filed on behalf of Plaintiff:
BJR, Inc., d/b/a Conservco

Counsel of Record for this Party:

Bradley S. Tupi, Esquire
PA Id. No. 28682

Christopher A. Coppula, Esquire
Pa. Id. No. 81619

Neil J. Gregorio, Esquire
Pa. Id. No. 90859

Tucker Arensberg, P.C.
1500 One PPG Place
Pittsburgh, Pennsylvania 15222
(412) 566-1212
(412) 594-5619 Fax

RECEIVED
MAR 10 2005
COURT ADMINISTRATOR'S
OFFICE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BJR, INC., d/b/a CONSERVCO, a
Pennsylvania corporation,

CIVIL DIVISION

Plaintiff,

No. 01-789-CD

v.

FREEDOM FORD SALES, INC., and
MARIO L. LUTHER,

Defendants.

PRE-TRIAL STATEMENT

Plaintiff BJR, Inc. d/b/a Conservco ("Conservco") by its attorneys, Tucker Arensberg, P.C., files the following Pre-Trial Statement.

I. NARRATION OF FACTS

On or about July 10, 1999, Conservco entered into a construction agreement with Defendant Freedom Ford Sales, Inc. ("Ford") to build a commercial car dealership structure for Ford pursuant to drawings and specifications provided by Skyco Engineering. The contract price to construct the structure in accordance with the Skyco plan drawings and specifications was \$734,100.00.

Conservco's construction work began in August 1999 and ended in September 2000. During the project, Ford issued several change orders, altering the original scope of work. Taking into account all of the change orders, Conservco's total billed construction cost was \$690,806.00, of which Ford paid \$645,250.00. However, Conservco also performed work on the project for which it did not bill Ford. When properly calculated, there remains a balance due and owing to Conservco from Ford of \$48,576.84.

II. UNUSUAL QUESTIONS OF LAW

Within Ford's second counterclaim, Ford demands consequential damages for five months that Ford allegedly was unable to utilize the new dealership. Such a demand is improper because Ford waived consequential damages in its contract with Conservco. The contract between the parties is an AIA A101-1997 "Standard Form Agreement Between Owner and Contractor." Article 1 of the contract states: "The contract documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions)." Article 8 entitled "Enumeration of Contract Documents" specifically incorporates the General Conditions of the Contract for Construction AIA Document A201-1997. Section 4.3.10 of the General Conditions, entitled "Claims for Consequential Damages", states:

The Contractor and Owner waive claims for consequential damages arising out of or relating to this contract. This mutual waiver includes:

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons.

III. WITNESSES

1. Joseph F. Kane (liability/damages)
2. Mario L. Luther (liability/damages)
3. Lawrence P. Opalisky (liability/damages)
4. Any and all witnesses listed in Defendants' Pre-Trial Statement
5. Conservco reserves the right to amend this Pre-Trial Statement at any time prior to trial.
6. Conservco reserves the right to amend this Pre-Trial Statement to include documents used for the purposes of rebuttal or impeachment.

IV. EXPERT REPORTS

None

V. DAMAGES

\$48,576.84 plus interest at the prevailing legal rate, a 1% monthly penalty of all amounts wrongfully withheld from October 25, 2000, and attorneys' fees pursuant to the Pennsylvania Contractor and Subcontractor Payment Act, 73 P.S.C.S.A §501 et seq.

VI. EXHIBITS

1. Any and all pleadings filed in this matter.
2. Transcripts of any and all depositions taken in this matter.
3. Any and all written discovery requests and responses in this matter.
4. Construction contract between Freedom Ford and Conservco, including those documents incorporated therein by reference.
5. Any and all documents received by any party during discovery in this matter.
6. Conservco's Bid Proposal.
7. Any and all change orders.
8. Any and all invoices or applications for payment .
9. Any and all correspondence between the parties and/or Lawrence Opalisky.
10. To the extent not listed, any and all documents enumerated in Defendant's Pre-Trial Statement.
11. Conservco reserves the right to amend this Pre-Trial Statement at any time prior to trial.
12. Conservco reserves the right to amend this Pre-Trial Statement to include documents used for the purposes of rebuttal or impeachment.

VII. ESTIMATED LENGTH OF TRIAL

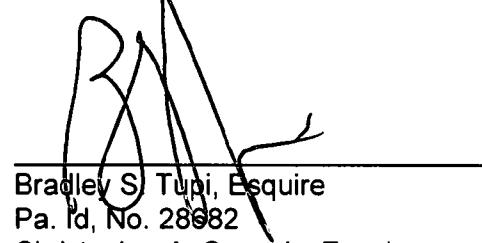
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VIII. STIPULATIONS OF THE PARTIES

The parties have not stipulated to any facts or legal principles in this matter. However, as trial approaches, the parties will work to stipulate to certain facts and legal principles to effect a more efficient trial.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



Bradley S. Tupi, Esquire
Pa. Id. No. 28082
Christopher A. Coppula, Esquire
Pa. Id. No. 81619
Neil J. Gregorio, Esquire
Pa. Id. No. 90859

1500 One PPG Place
Pittsburgh, PA 15222
(412) 566-1212

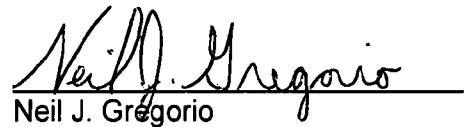
Counsel for Plaintiff

LIT:354154-1 013828-113500

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Pre-Trial Statement was served via facsimile this 9th day of March, 2005 upon the following:

Thomas A. Kauffman, Esquire
Tomb, Mack & Kauffman, LLP
52 South Ninth Street
Indiana, PA 15701


Neil J. Gregorio

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

BJR, INC., d/b/a CONSERVCO, a
Pennsylvania corporation,

Plaintiff, No. 01-789-CD

v.

FREEDOM FORD SALES, INC., and
MARIO L. LUTHER,

Defendants.

**MEMORANDUM OF LAW IN OPPOSITION
TO DEFENDANTS' MOTION FOR
JUDGMENT OF NON PROS**

Filed on behalf of Plaintiff:
BJR, Inc., d/b/a Conservco

Counsel of Record for this Party:

Bradley S. Tupi, Esquire
PA Id. No. 28682

Christopher A. Coppula, Esquire
Pa. Id. No. 81619

Neil J. Gregorio, Esquire
PA Id. No. 90859

Tucker Arensberg, P.C.
1500 One PPG Place
Pittsburgh, Pennsylvania 15222
(412) 566-1212
(412) 594-5619 Fax

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BJR, INC., d/b/a CONSERVCO, a
Pennsylvania corporation,

CIVIL DIVISION

Plaintiff,

No. 01-789-CD

v.

FREEDOM FORD SALES, INC., and
MARIO L. LUTHER,

Defendants.

**MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS'
MOTION FOR JUDGMENT OF NON PROS**

In Jacobs v. Halloran, the Supreme Court of Pennsylvania held that:

To dismiss a case for inactivity pursuant to a defendant's motion for non pros there must first be a lack of due diligence on the part of the plaintiff in failing to proceed with reasonable promptitude. Second, the plaintiff must have no compelling reason for the delay. Finally, the delay must cause *actual* prejudice to the defendant.

710 A.2d 1098, 1103 (Pa. 1998) (emphasis from original).

Here, Defendants' Motion for Non Pros must be denied because Defendants have not suffered *actual* prejudice.¹

Defendants argue that potential problems, such as memories that may have faded and/or documents that may be unobtainable, are sufficient to grant a dismissal. Under Jacobs, Defendants' argument must fail because such speculation does not support a finding of *actual* prejudice. To prove *actual* prejudice, Defendants need to offer evidence to establish that memories have faded and/or specifically identify documents that Defendants have tried but were unsuccessful in obtaining. So far,

¹ Defendants' counsel set forth the wrong test for the entering of a Judgment of Non Pros. Jacobs v. Halloran is the most recent opinion from the Supreme Court of Pennsylvania regarding the test. In light of Jacobs v. Halloran, it was not proper for Defendants' counsel to cite to James Brothers Lumber Co. v. Union Banking and Trust, 247 A.2d 587 (Pa. 1968).

Defendants have offered neither.

As for Defendants' allegation that they cannot find Larry Opalisky, he and his wife live on Bloomington Avenue, Curwensville, Clearfield County, Pennsylvania 16833. Their phone number is (814) 236-2733. A simple search by Defendants would have revealed Mr. Opalisky's whereabouts because he and his wife have lived at the same address for over twenty years.

Regarding the letter of June 10, 2003, it was evident that Defendants' counsel misunderstood it because he requested Plaintiff's counsel to execute a Praeclipe to Settle and Discontinue. In fact, Plaintiff's counsel recognized this misunderstanding and clarified it less than a week later by letter dated and faxed on June 16, 2003.² It stated:

I believe you misinterpreted Plaintiff's intention. I have not been instructed to discontinue the suit filed by BJR, Inc. To the contrary, I have been instructed to discontinue participation in this litigation.³

Clearly, after receiving the June 16, 2003 letter, Defendants had no reason to stop preparing their case. Therefore, it is simply unfair for Defendants to argue such.

WHEREFORE, because Defendants have not established *actual* prejudice, Defendants Motion for Judgment of Non Pros must be denied.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



Neil J. Gregorio, Esquire
Attorneys for Plaintiff

² Defendants' Brief incorrectly states that the letter from Plaintiff's former counsel was dated June 13, 2003. The letter was actually dated June 10, 2003 and is attached as Exhibit A.

³ The relevant letters and fax receipt are attached as Exhibits B and C.

ASSOCIATE
LINDA C. LEWIS

JAMES A. NADDEO
ATTORNEY AT LAW
211½ EAST LOCUST STREET
MARINO BUILDING
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

TELEPHONE
(814) 765-1601
TELECOPIER
(814) 765-8142

June 10, 2003

Thomas A. Kauffman, Esquire
Tomb, Mack & Kauffman, LLP
52 South Ninth Street
Indiana, PA 15701

RE: BJR, Inc. v. Freedom Ford Sales, Inc. &
Mario L. Luther
01-789-CD

Dear Mr. Kauffman:

I met with my client on Friday, June 6, 2003. I have been instructed by BJR, Inc., to take no further action in respect to the above-referenced litigation. BJR has no plans to employ alternate counsel. You may move this litigation in whatever direction you deem necessary.

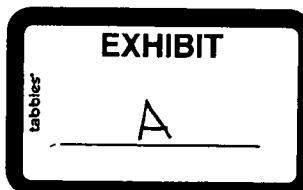
Sincerely,

James A. Naddeo
James A. Naddeo

JAN/jr

cc: BJR, Inc.

VIA FAX ONLY



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* TRANSACTION REPORT
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P. 01

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LAW OFFICES
TOMB, MACK & KAUFFMAN, L.L.P.

MYRON HAY TOMB
JOSEPH N. MACK
THOMAS A. KAUFFMAN

52 SOUTH NINTH STREET
INDIANA, PENNSYLVANIA 15701

TEL: 724-357-9990
FAX: 724-357-9960
tmk.law@verizon.net

RYAN S. FRITZ

June 12, 2003

Mr. James A. Naddeo, Esquire
211 1/2 E. Locust Street
Marino Building
P.O. Box 552
Clearfield, PA 16830

JUN 13 2003

RE: BJR Inc. v. Freedom Ford Sales, Inc. and Mario L. Luther
No. 01-789

Dear Attorney Naddeo:

I am in receipt of your letter dated June 10, 2003.

I have spoken with my client concerning this matter, and he too does not wish to take any further action with respect to the above referenced litigation.

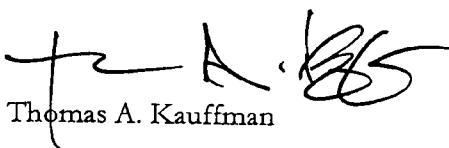
Accordingly, I have enclosed a signed Praecipe to have this matter marked settled and discontinued. I ask that you please execute the same on behalf of your client and return the signed document in the self addressed stamped envelope.

I will ensure that this document gets filed and be responsible for any filing fees associated therewith. Additionally, a time-stamped, filed copy shall be forwarded to your office for your records.

Thank you for your cooperation and professionalism in handling this matter. I look forward to closing this file.

Very truly yours,

TOMB, MACK & KAUFFMAN, LLP


Thomas A. Kauffman

TAK:cg

Enclosure

C:\CAG\luther Ford\BJR-cvr ltr for praecipe.doc

EXHIBIT

tables

B

ASSOCIATE
LINDA C. LEWIS

JAMES A. NADDEO
ATTORNEY AT LAW
211½ EAST LOCUST STREET
MARINO BUILDING
P.O. BOX 552
CLEARFIELD, PENNSYLVANIA 16830

TELEPHONE
(814) 765-1601
TELECOPIER
(814) 765-8142

June 16, 2003

Thomas A. Kauffman, Esquire
Tomb, Mack & Kauffman, LLP
52 South Ninth Street
Indiana, PA 15701

RE: BJR, Inc. v. Freedom Ford Sales, Inc. &
Mario L. Luther
01-789-CD

Dear Mr. Kauffman:

I received your letter concerning the above-captioned case. I believe you misinterpreted Plaintiff's intention. I have not been instructed to discontinue the suit filed by BJR, Inc. To the contrary, I have been instructed to discontinue participation in this litigation. Plaintiff has not employed alternate counsel. I will remain attorney of record for the time being.

Sincerely,

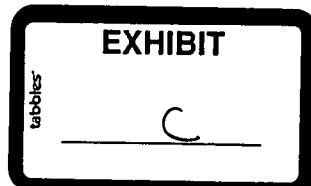
James A. Naddeo
James A. Naddeo

JAN/jlr

cc: BJR, Inc.

VIA FAX ONLY

PS: I appreciate your discussion last Friday. Your concern for my family was very much appreciated.



*
* TRANSACTION REPORT
*
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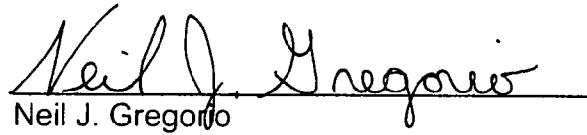
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Memorandum of Law In Opposition to Defendants' Motion for Judgment of Non Pros was hand-delivered on the 16th day of November, 2004 to the following:

Thomas A. Kauffman, Esquire
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52 South Ninth Street
Indiana, PA 15701


Neil J. Gregorio

LIT:343641-1 013828-113500

TOMB, MACK & KAUFFMAN, L.L.P.
ATTORNEYS AT LAW
52 SOUTH NINTH STREET
INDIANA, PENNSYLVANIA 15701

BJR, INC., d/b/a CONSERVCO, a
Pennsylvania corporation

Plaintiff,

vs.

FREEDOM FORD SALES, INC and
MARIO L. LUTHER,

Defendants.

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: CIVIL ACTION - LAW
:
: No. 01 -00789-CD
:
:
:
: BRIEF IN SUPPORT OF
: MOTION FOR JUDGMENT
: OF NON PROS
:
: FILED ON BEHALF OF DEFENDANTS
:
: COUNSEL OF RECORD FOR
: DEFENDANTS:
:
: THOMAS A. KAUFFMAN, ESQUIRE
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: SUPREME COURT ID #66498

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COURT ADMINISTRATOR'S
OFFICE

BJR, INC., d/b/a CONSERVCO, a
Pennsylvania corporation
Plaintiff,
vs.
FREEDOM FORD SALES, INC and
MARIO L. LUTHER,
Defendants.

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA
: CIVIL ACTION – LAW
: No. 01 -00789-CD
:

ARGUMENT

**ISSUE: WHETHER JUDGMENT OF NON PROS SHOULD BE ENTERED IN FAVOR
OF DEFENDANTS AND AGAINST PLAINTIFF?**

SUGGESTED ANSWER: AFFIRMATIVE.

I. Factual Background

This case was originated in May 2001 when Plaintiff filed a lawsuit against Defendants based upon breach of a contract entered into in 1999. In August of 2001, the Defendants did file an Answer, New Matter and Counter-Claims. In September 2001, Plaintiff did Answer Defendants New Matter and Counter-Claims, and all pleadings were complete.

The Plaintiff deposed Defendant, Mario Luther, on November 28, 2001. The parties then took depositions of Joseph Kane and Larry Opalisky on May 24, 2002. From the time the depositions were taken until when current counsel entered its appearance, there has been no activity with this case. A copy of the docket activity is attached as Exhibit "A" in Defendants' Motion. The only communication between the parties was Plaintiff's June 13, 2003 letter wherein it communicates its intention to not take any further action in this matter. A copy of this letter is attached as Exhibit "B" in Defendants' Motion. The parties never discussed settlement, discovery and/or any other issues for over twenty six (26) months. Since May of 2004, substitute counsel has entered an appearance and filed a Certificate of Readiness.

The Defendants contend that the Plaintiff's lack of substantive action for over thirty (30) months together with its attempt to mislead Defendants about the vitality of their case, has

caused Defendants prejudice. As such, Defendants' have requested that this Court remove this case from the Trial List and grant a Judgment of Non Pros.

II. Legal Standard

The standard in Pennsylvania for granting a Motion for Judgment of Non Pros was most recently reviewed in Jacobs v. Halloran, 551 Pa. 350, 710 A.2d 1098 (1998). In Jacobs, the Supreme Court began by reiterating the long-standing rule that the granting of a Judgment of Non Pros is within the sound discretion of the trial court. Id. At 1101.

The Supreme Court then reinstated the three-prong test, as set forth in James Brothers Lumber Company v. Union Banking and Trust, 432 Pa. 129, 247 A.2d 587 (1968), which is used to determine when a trial court may exercise its discretion to enter a Judgment of Non Pros. The three-prong test for the entering of a Judgment of Non Pros as established by James Brothers is as follows:

1. A party has shown a lack of due diligence by failing to proceed with reasonable promptitude;
2. There is no compelling reason for the delay; and
3. The delay has caused some prejudice to the adverse party.

James Bros., at 589.

The Supreme Court in Jacobs abandoned the concept of presumed prejudice in the event of two-year or more docket inactivity. Id. at 1101. In Jacobs, the Supreme Court reinstated the prejudice requirement, noting that prejudice could be established by the death or absence of a material witness and/or any substantial diminution of a party's ability to properly present its case at trial. Id. at 1103, citing James Brothers and Metz Contracting Inc., v. Riverwood Builders, Inc., 360 PaSuper. 445, 520 A.2d 891 (1987).

admitted

A. Lack of Due Diligence

The docket entries on file with the Prothonotary of Clearfield County clearly show inactivity in the instant case in excess of two (2) years, from March 1, 2002 through May 3, 2004. The docket was completely dormant for approximately two (2) years and two (2) months. Further, the Defendants submit that there is a lack of substantive docket activity from October 17, 2001 until November 8, 2004, when Plaintiff filed a Certificate of Readiness.

The Defendants submit that there has been a complete lack of meaningful action in this case from the time the last deposition was taken until November of 2004. During this thirty (30) month period of inaction, the Plaintiff can offer no explanation for its vegetative state. Significantly, the Plaintiff's only communication to Defendants during this time was to communicate, in June of 2003, that it had decided to "take no further action." See, letter from Plaintiff's original attorney dated June 10, 2003, which is attached to Defendants' Motion.

Defendants contend that the record, as supported by the docket inactivity in this matter, clearly demonstrates a failure, for over thirty (30) months, by the Plaintiff to proceed with reasonable promptitude.

admitted

B. Compelling Reason for Delay

The Defendants are unaware of any compelling reason for the total lack of activity which was in excess of two years. In Streidel v. Community General Hospital, 529 Pa. 360, 603 A.2d 1011 (1992), the Supreme Court set forth circumstances that constitute compelling reasons for delay. The Supreme Court in Streidel states that:

...where the delay was caused by bankruptcy, liquidation or other operation of law, or where the case was delayed awaiting significant developments in the law, there will be a per se determination that a compelling reason for the delay has occurred.

Streidel at 11012

However, it has been held many times that settlement negotiations, discovery and financial considerations do not present compelling reasons for delay. County of Erie v. Peerless Heater Co., ____ Pa.Cmwlth. ____, 660 A.2d 238 (1995). As a result, a Plaintiff's activity in pursuing discovery and settlement will not justify the failure to move the case forward. Id.

In the instant case, the Defendant is unaware of any reasons which contributed to the delay and, as such, submits that a compelling reason for the delay does not exist. The only explanation that Plaintiff may present here is obtaining new counsel, as current counsel is new. Defendants contend that such a reason is not compelling.

The Defendants are unaware of any case law that holds that substitution of counsel has been determined to be a compelling reason for the delay in moving a case forward. In contrast, the Courts have held that a party cannot delay a case for years, and then simply obtain new counsel to somehow eradicate its years of delay. It is wholly inadequate merely to assert that new counsel appears on behalf of a party after a lengthy void. Metz citing Stringer v. Kaytes, 318 Pa.Super. 393, 465 A.2d 11 (1983). Exasperation with an attorney, without more, does not provide a sufficient basis for delay. Ibid. Thus, the Defendants contend that obtaining new counsel is not a compelling reason for delay.

Additionally, the Defendants point again to the letter dated June 13, 2003 by Plaintiff's then attorney. In such letter, which was the only communication between the parties for a period in excess of two (2) years, the Plaintiff's attorney states that the Plaintiff will not be taking further action in the litigation between the parties and "[Plaintiff] has no plans to employ alternate counsel." The only reasonable interpretation of this letter is that the Plaintiff, who had not done anything with the case for over a year at that point, had elected to not proceed further. Clearly, the Plaintiff does not attempt to set forth any compelling reason for its failure to move the case. The Defendants read this letter to simply state that Plaintiff made an informed and counseled decision to not go forward after reviewing the depositions taken in 2002 and Defendants' Counterclaims.

Overall, the record and the June 2003 letter demonstrate a complete lack of due diligence on the part of Plaintiff to move this case forward with no compelling reason for its delay.

C. Prejudice

The Defendants submit that they have suffered prejudice by the Plaintiff's delay in this matter. The Metz holding requires some prejudice to the adverse party, such as death of or unexplained absence of a material witness. Metz, at 894, citing Moore v. v. George Heebner Inc., 321 Pa.Super. 226, 467 A.2d 1336 (1983) quoting James Brothers Lumber Co. v. Union

Banking & Trust Co., at 589. The Metz Court however, then explains that the determination of prejudice is not limited to the death or absence of a material witness as contemplated in James Bros., but rather, if any substantial diminution of a party's ability to present its case at trial results, then prejudice can be said to have attached. Metz citing American Bank & Trust Co. v. Ritter, Todd & Haayen, 274 Pa.Super. 285, 418 A.2d 408 (1980). In Metz, the Superior Court found that prejudice existed due to the potential inaccessibility of relevant records. Metz at 894, emphasis added. The Metz Court held that evidentiary difficulties, even based upon potential problems, were sufficient to grant a dismissal.

*W/T
Correct*

In the instant case, several potential and actual problems exist due to the delay by Plaintiff. To begin, all witnesses and principals would have the disadvantage of their memories being more stale due to the almost three (3) years that have passed since the depositions were taken and over five (5) years that have passed since the work that is at issue was performed. At present, despite diligent attempts, Defendants have not been able to locate a material witness, Larry Opalisky, who was Defendant's Project Manager and Engineer. Defendants' do not know Mr. Opalisky's whereabouts nor if, considering his age, he is still in good health. If located, Defendants fear that Mr. Opalisky's memory may potentially be the most adversely affected by the Plaintiff's delay. Other potential witnesses of Defendants no longer work for Defendants, and their whereabouts are also unknown at this time. Defendants intended to obtain documents, records and/or reports from the Department of Labor & Industry Inspector who examined the building in 1999. Defendants do not know whether this Inspector and/or his complete records are accessible at this time. The Defendants cannot be assured that the voluminous documents necessary for this case have been preserved in their entirety.

Lastly, and most significantly germane, is the letter dated June 13, 2003 and its only plausible meaning. Coupled with its complete lack of activity, the Plaintiff makes the unambiguous, unsolicited advancement to the Defendants that it plans neither to take further action nor employ alternate counsel. The prejudice of such a statement is palpable, as it goes further than just doing nothing, but it intentionally communicates that this matter is, for all intents and purposes, finished. Why would the Defendants continue with preparations of witnesses and evidence for trial in light of this letter? Defendants certainly were not going to

incur costs and attorney fees when the initiator of the lawsuit has declared its intention to go no further. Defendants have been prejudiced by the impact and affect of Plaintiff's communication which led them to believe, as of June 2003, that this matter was finished. To permit the Plaintiff to go forward at this point would be to condone over two (2) years of inaction, and to reward the Plaintiff's single, pointed action that, by design, placed Defendants at a disadvantage.

Thus, the Defendants contend, that the facts and circumstances of the instant case demonstrate that Defendants' ability to proceed in this matter has been prejudiced.

III. Conclusion

For the foregoing reasons, the Defendants contend that the entry of the Judgment of Non Pros is appropriate in the instant case because there has been a complete lack of due diligence and a failure to proceed with reasonable promptitude on the part of Plaintiffs, no compelling reason exists for the delay, and the Plaintiff's delay has caused prejudice to the Defendants.

Respectfully submitted,



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52 South Ninth Street
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724-357-9990
Pa. ID No. 66498

BJR, INC., d/b/a CONSERVCO, a
Pennsylvania corporation
Plaintiff,

vs.

FREEDOM FORD SALES, INC and
MARIO L. LUTHER,

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: IN THE COURT OF COMMON PLEAS
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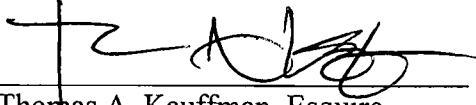
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Defendants' Brief in Support of Motion for Judgment of Non Pros was sent first class mail, postage prepaid on this 15th day of November, 2004 to the following:

Bradley S. Tupi, Esquire
Tucker Arensberg
1500 One PPG Place
Pittsburgh, PA 15222


Thomas A. Kauffman, Esquire
Attorney for Defendants

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

BJR, INC. : NO. 01-789-CD
: :
V. : :
: :
FREEDOM FORD SALES, INC. and :
MARIO L. LUTHER : :

ORDER

AND NOW, this 9th day of November, 2005, the Court having received
notification that a Praeclipe to Settle and Discontinue Case was filed with regard to this
matter on August 5, 2005, it is the ORDER of this Court that Status Conference
scheduled on November 22, 2005, shall be and is hereby CANCELLED.

BY THE COURT,


PAUL E. CHERRY,

JUDGE

FILED

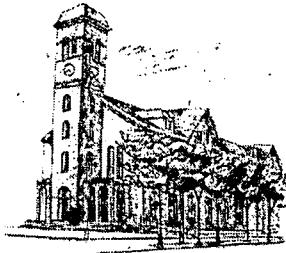
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cc Attns: Tupa
C. Coppula
T. Kaufman

William A. Shaw
Prothonotary



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

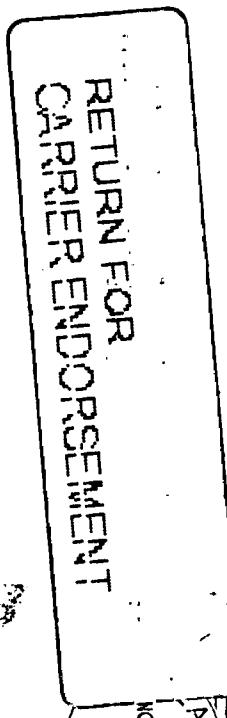
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WILLIAM A. SHAW
PROTHONOTARY
and CLERK of COURTS
P.O. BOX 549
CLEARFIELD, PENNSYLVANIA 16830

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M/9:43 AM
William A. Shaw
Prothonotary

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1500 One PPG Place
Pittsburgh PA 15222



Christopher A. Coppula
11 Stanwix Street, 15th Floor
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IN THE COURT OF COMMON PLEAS
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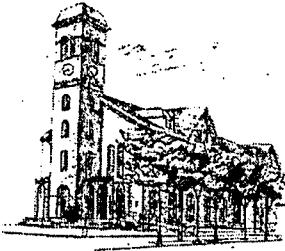
PAUL E. CHERRY,
JUDGE

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

NOV 10 2005

Attest.

John B. Cherry
Prothonotary/
Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

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Defendant(s)/Attorney(s)

Other

Special Instructions: